

Terms and Conditions for the Receipt of Waste for Disposal (Version: May 2015)

**I. Miscellaneous**

1. ARE Deutzen GmbH (in the following: "**ARE**") receives waste materials, contaminated soils and rubble (in the following: "**Waste**") in its disposal facility or facilities (in particular the soil treatment facility in Deutzen) on behalf of the client (in the following: "**Client**") in accordance with the provisions set out in the individual contract and these Terms and Conditions (in the following: "**T&C**"). Deviating provisions contained in the contract shall take precedence over these T&C as individual contractual arrangements.
2. These T&C apply only to commercial transactions with registered businesses in the meaning of Section 14 German Civil Code (BGB), legal entities governed by public law or separate funds under public law.
3. Client's terms and conditions that may partially or wholly deviate from these T&C shall not apply, unless they have been accepted in writing by ARE. The ARE T&C shall also apply exclusively where services are provided unconditionally by ARE in full awareness of the Client's deviating terms and conditions.

**II. Contractual conclusion and termination**

1. ARE shall remain bound to the quotation and the terms of the quotation for a period of three months, beginning with the date of the quotation.
2. The contract shall enter into force when the order is confirmed by the Client. Where there are differences between the order and the ARE quotation, the contract shall not enter into force until the deviating order has been confirmed by ARE in writing.
3. Where there is no written order confirmation, the contract shall enter into force according to the terms of the quotation upon receipt by ARE of the Waste delivered by the Client as set out in Section IV. subsection 1.
4. The agreement of binding dates of performance shall be predicated on their explicit written confirmation by ARE. Only the industry-standard workdays shall be counted where deadlines are stated in days.
5. The contractual relationship shall be dissolved insofar as necessary official authorisations are refused or withdrawn. Where the contract is terminated for these reasons, the Client shall remunerate the Contractor for the services that it has already provided based on the agreed rates and otherwise based on standard rates, except where alternative contractual agreements are in place.
6. Insofar as changes in laws introduced after conclusion of the contract necessitate the provision of services by ARE in addition to the services it owes (e.g. additional validation or analysis) and that are associated with extra workload, the Client shall be required to carry the actual and verified additional costs.

**III. ARE services**

1. ARE shall accept the following waste management services according to the terms set out in the agreed order:
  - a) paid receipt of Waste in its disposal facilities, including proper weighing of the Waste for disposal (recovery/removal);
  - b) paid performance of all necessary monitoring services in accordance with the Ordinance on Waste Recovery and Disposal Records (NachwV), e.g. disposal records, consignment notes or receipt notes; and
  - c) where necessary the paid transport of Waste from the Client to its disposal facility, provided this has been explicitly agreed between the Client and ARE.
2. ARE shall only accept Waste whose contamination does not exceed the limit values communicated by the Client and that otherwise satisfies the Conditions of Acceptance.
3. Where ARE agrees to the transport of Waste, the vehicles shall be loaded on the part of the Client according to these Terms and Conditions. The Client must ensure that the vehicles used by ARE can access the removal/loading point without obstruction. As a rule, the access roads must be suitable for vehicles up to 40 t that are not equipped with four-wheel drive. Loading time must not exceed 30 minutes. The Client shall be liable for hindrances or delays that occur during receipt and/or loading.
4. It shall be at the equitable discretion of ARE to select the processing technology used for the proper and orderly treatment and disposal of the Waste in accordance with environmental law, as the means and methods of the process are not covered by the contract concluded between the Client and ARE. This shall not apply where the Client and ARE have explicitly selected a certain processing technology. Even when a certain process has been agreed, ARE shall only be required to perform the services owed. ARE shall neither owe nor guarantee the success of processing technology selected in this way.
5. Where the contract refers to the receipt of Waste as contaminants or intrusive material for treatment/disposal and the feasibility of the procedure has not been unequivocally confirmed upon conclusion of the contract, performance of the contract shall depend on the validation of treatability in an attempt that shall be performed by ARE and whose actual costs shall be carried by the Client. ARE shall notify the Client without undue delay of the outcome of the attempt and, where the attempt fails, shall return to the Client all payments that exceed the costs of the attempt.
6. All other measures undertaken by ARE in addition to receipt for disposal purposes (e.g. sampling, analysis) shall be exclusively for compliance with its legal obligations.
7. The Client shall carry the costs of any identity inspection performed by ARE on the accepted Waste, provided that ARE has itemised these costs in the individual quotation. Where this identity inspection determines contamination or levels that are greater than those declared by the Client, ARE shall be entitled to charge the Client for the actual costs of the identity inspection incurred due to the incorrect declaration, even if they are not itemised in the quotation or are higher than those that were itemised in the quotation.
7. ARE is entitled to use third parties for the performance of this contract.

#### IV. Receipt of Waste

1. Once weighing by ARE is complete, the Waste shall be received by physical acceptance of the Waste for disposal purposes (removal/recovery) in its disposal facilities (in the following: "**Receipt**").
2. ARE is entitled, either immediately before or after weighing, to refuse the Receipt of Waste where its properties or quantities differ from the contractual agreement or from other declarations or records provided by the Client.
3. ARE is entitled to take samples of the Waste after its delivery and to use these samples as binding quality samples on which the contract shall be based.
4. The delivered Waste is not a hazardous material pursuant to the Ordinance on the Domestic and International Transport of Dangerous Goods by Road, Rail and Inland Waterways (GGVSEB) or the European Agreement concerning the International Carriage of Dangerous Goods by Road (ARD), except where it is described as such in the contract.
5. Upon Receipt of the Waste in the ARE disposal facility, responsibility for the proper disposal (removal/recovery) of the Waste shall be transferred from the Client to ARE according to the terms set out in the following. Transfer of responsibility pursuant to sentence 1 shall be predicated in every case on the condition that the Waste conforms to the contractually agreed properties and that its treatability according to Section III. subsection 5 is hence demonstrated in the event that contaminants or intrusive materials are present (in the following: "**Conditions of Acceptance**").
6. Ownership of the Waste shall not be transferred to ARE until all Conditions of Acceptance have been satisfied and the Client has paid the agreed remuneration. Until this time, ARE shall safeguard the delivered material on behalf of the Client.
7. ARE shall notify the Client in the event that a failure to satisfy the Conditions of Acceptance is ascertained. When instructed to do so by ARE, the Client must retrieve and take possession of the Waste at its own expense and risk if the Client and ARE cannot agree on a new contract that considers the actual quantity/properties of the Waste, i.e. any necessity for treatment outside the ARE disposal facilities or elimination and disposal of intrusive materials. Any invoice that has already been placed shall be cancelled in this case. Where the Waste is retrieved, ARE shall be entitled to charge storage costs amounting to 10% of the quoted price per month and tonne, as well as the actual costs incurred through performance of an identification analysis. Where the Client fails to retrieve the Waste within a reasonable period despite instruction by ARE to do so, ARE shall be entitled, without prejudice to other rights, to commission third parties with the transport of the Waste to the Client at the expense of the Client.
8. For the event that the Conditions of Acceptance are not satisfied, ARE shall submit to the Client a new quotation for recovery (disposal/removal). Received payments shall be offset with the new quoted price.
9. Where purposeful treatment of the delivered Waste in the respective disposal facility is entirely impossible due to differences between the actual properties of the material and the declaration analysis, ARE will notify the competent authority according to the terms of the authorisation and current statutory requirements and will wait for its decision on further procedures, before continuing in accordance with Section IV. subsection 8 above.

#### V. Obligations of the Client

1. The Client undertakes to provide ARE with detailed written information on the type, composition and characteristic properties of the Waste by no later than upon conclusion of the contract. The Client alone is responsible for accurate declaration of the Waste. The Client is liable for damages incurred due to a failure to designate or inform, as well as due to inadequate or incorrect data. By the same measure, the Client shall be liable for any delays caused by belated notification and any authorisations that shall subsequently become necessary.
2. The Client is obliged to comply with the statutory validation procedure. The Client must prepare a declaration for the disposal facility no later than before delivery of the material; the Client must obtain the necessary authorisations and submit them to ARE. The transporter must hold a valid license according to Section 54 Closed Substance Cycle & Waste Management Act (KrWG).
3. The Client must adhere to the conditions of the disposal certificate. The Client must only deliver Waste that conforms to the specifications set out in the disposal certificate.
4. As a rule, the Waste shall be delivered by the Client to the disposal facility or facilities named in the quotation, except where other written agreements have been made. Where particular transport routes to and from the respective treatment facility are mandated by a traffic management plan, these routes must be adhered to. The plan is a condition of the ARE quotation or shall be notified by ARE upon conclusion of a contract. Transport vehicles travelling to and from the area of the facilities shall only be admitted if they are in an orderly condition. Waste must be transported in suitable and approved containers. The load must be secured according to valid regulations. Loading capacities must be adhered to. The lorry and containers must be cleaned by a certified rinsing facility in accordance with the statutory regulations after the transport of contaminated Waste.

#### VI. Payments and collateral

1. The Client shall remunerate acceptance of the Waste through payment of a tonnage price according to the terms set out in the quotation conditions. The weight determined during weighing in the disposal facility shall be binding for Waste that is charged according to weight. The minimum load, and hence the basis for the weight contained in the price, must not be less than 25 t per vehicle. ARE will weigh the transport vehicle before and after delivery. The average value of the weighing slip will be forwarded to the Client by its submission to the transporter. The original weighing slip remains with ARE and is used as the basis for invoicing. ARE shall also charge a tonnage price premium itemised in the quotation for additional factors such as the actual constituents of the received Waste.
2. Waste shall not be accepted based on volume.

3. Quoted prices are net. Payments must be made plus the statutory rate of value added tax and any local taxes or duties. Unless otherwise agreed explicitly, a fixed price arrangement shall not include fees and tariffs, e.g. those that are charged by government agencies, regional authorities and allocation entities.
4. ARE is entitled to claim remuneration upon receipt of the soil according to Section I. subsection 1 sentence 1, irrespective of whether the Conditions of Acceptance are satisfied. As a rule, ARE will invoice the Client for its services on the date of receipt. ARE is entitled to charge for the receipt of several deliveries of Waste in one invoice.
5. The constitution and maturity of a claim to remuneration do not depend on the time at which validations set out in Section III. subsection 1 are prepared or submitted. It follows, therefore, that the Client does not have a right of retention.
6. Remuneration for receipts is payable within 10 days of invoicing by ARE. The punctuality of payment shall depend on the receipt of payment (value date of the credit entry) on the bank account of ARE.
7. ARE shall be entitled, from the date of maturity, to charge the statutory rate of arrearage interest on late payments, as well as administrative fees of EUR5.00 for each dunning notice. The right to claim additional compensation for late payment is unaffected.
8. The Client shall only be entitled to withhold payments or offset payments with counterclaims insofar as the counterclaims are undisputed or have been adjudicated upon finally.
9. ARE is entitled to insist that collateral be provided as payment security for the services rendered; this collateral can be submitted as a directly enforceable bank guarantee from an approved bank or banking institution.

#### **VII. Liability**

1. ARE shall be liable toward the Client according to the statutory provisions for damages that are caused by wilful intent or gross negligence and by wilful intent or gross negligence on the part of its company officers and vicarious agents, as well as for injury to life, limb and health.  
Moreover, ARE shall be liable for typical and foreseeable damages and for damages caused by ARE or its company officers/vicarious agents through the violation of essential contractual obligations. Essential contractual obligations are such as are necessary for the fulfilment of the contractual purpose.
2. Where ARE agrees to conduct an authorisation procedure/the procedure required to obtain official authorisation, ARE shall not be liable for obtaining official authorisation, except where ARE is at fault for the failure to obtain such authorisation.
3. The limitation of liability applies to all claims for indemnification, irrespective of the legal grounds and especially in regard to the pre-contractual and ancillary agreements.
4. Additional liability is excluded, unless it refers to statutory liability or to accepted assurances.

#### **VIII. Force majeure**

1. Incidents of force majeure shall extend a performance period agreed in writing by the duration of the obstruction, plus a reasonable lead time. Instances of strike, lock-out, industrial disruption, administrative order or other unforeseen events that significantly impair or render impossible adherence to the performance period shall be considered equal to force majeure, provided ARE is not at fault.
2. There shall be no right to claim indemnification in these cases, except where ARE is liable under law.

#### **IX. Final provisions**

1. Changes and additions to contracts must be confirmed by ARE in writing and are otherwise invalid. This applies also to any derogation from this written form requirement.
2. The laws of the Federal Republic of Germany shall govern the contractual arrangements.
3. Rights and obligations set out in this contract can only be assigned with the consent of ARE.
4. The legal venue for all disputes arising from or in connection with the contract is Leipzig.
5. The place of fulfilment is the registered address of ARE.