



ECOTEC Standard Terms And Conditions

These Standard Terms and Conditions are attached and incorporated by reference into each Sales Quote between Ecotec Solutions, Inc. ("ECOTEC") and the customer ("CUSTOMER") identified therein. These Standard Terms and Conditions are further incorporated into each Monitoring and Services Agreement entered into by ECOTEC and the CUSTOMER identified therein. ECOTEC objects to any different or additional terms and conditions other than the terms and conditions set forth herein and within the Sales Quote or Monitoring and Services Agreement, as applicable, which constitute the exclusive terms of the contractual relationship between ECOTEC and CUSTOMER. Different or additional terms and conditions may be agreed to between ECOTEC and CUSTOMER only by way of a separate written agreement mutually executed by ECOTEC and CUSTOMER.

1 DEFINITIONS – "Monitoring Agreement" when used herein means the Monitoring and Services Agreement between ECOTEC and CUSTOMER. "ECOTEC" when used herein means ECOTEC Solutions, Inc. "CUSTOMER" when used herein means the CUSTOMER identified in the Monitoring Agreement or the Sales Quote, as applicable, and "goods" means the equipment, parts, materials or services described in the Monitoring Agreement or the Sales Quote, as applicable. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Monitoring Agreement or the Sales Quote, as applicable.

2 TERM – The Initial Term of the Monitoring Agreement shall commence on the date that the Equipment is shipped from ECOTEC to CUSTOMER and shall renew for successive periods of equal duration to the Initial Term at the CPI-adjusted Annual Fee/Monthly Fee as more particularly described in Section 3 until terminated by sixty (60) days' written notice prior to the expiration of the then current Term. The Initial Term and any renewals are referred to hereunder as the "Term". CUSTOMER shall not be entitled to any abatement, deduction, reduction, set-off, counterclaim, recoupment or defense against fees for any reason, including without limitation, early termination of the Monitoring Agreement, scheduled maintenance or any non-working time of the Equipment, except as provided otherwise herein.

3 PAYMENT OF FEES – If paying monthly, CUSTOMER shall pay a prorated amount of the Monthly Fee for the partial calendar month in which the Term commences in addition to the Monthly Fee for the immediately succeeding calendar month before ECOTEC will ship the Equipment to CUSTOMER. Thereafter, Monthly Fee shall be made on the first day of each succeeding calendar month in advance during the Minimum Term. If paying annually, CUSTOMER shall pay a prorated amount of the Annual Fee for the partial calendar month in

which the Term commences, in addition to the Annual Fee for the immediately succeeding fiscal year before ECOTEC will ship the Equipment to CUSTOMER. Thereafter, the Annual Fee shall be made on the first day of each succeeding Fiscal Year in advance during the Minimum Term. For periods covering a partial calendar month, the fees shall be prorated based upon the number of days in such month. All payment shall be undiminished by any offset or credit on account of CUSTOMER's sooner surrender of the Equipment or the reasonable rental value thereof, whether or not thereafter ECOTEC shall itself use said Equipment or shall rent any comparable Equipment it may have to others, or on account of any payment by CUSTOMER of surcharge payments or of any other charges, costs or damages hereunder. CUSTOMER shall be responsible for and pay: i) all taxes, levies, fees and other public charges against or upon any of the Equipment, including without limitation, sales, use, value added or personal property taxes; ii) all fines, penalties, forfeitures, court costs, expenses and attorneys' fees arising with respect to CUSTOMER's possession, transportation, or use of the Equipment. CUSTOMER shall pay the Monthly Fee/Annual Fee to the offices of ECOTEC at the address set forth in the Monitoring Agreement. For all other charges that are invoiced by ECOTEC to CUSTOMER, CUSTOMER shall pay such amounts in full within thirty (30) days of the invoice date. Unpaid amounts shall bear interest from the due date until paid at 10% per annum, and accrual or payment of such interest shall not impair ECOTEC's right otherwise to repossess the Equipment or to terminate the Monitoring Agreement or to any other remedies it may have. On individual payments of ten thousand dollars (\$10,000) or more, ECOTEC reserves the right to require such payments to be made by wire, ACH, or other electronic funds transfer, as designated by ECOTEC. The Monthly Fee/Annual Fee shall increase effective upon the commencement of each renewal of the Term to the extent of the change in the Consumer Price Index (All items in U.S. city average, all urban consumers, not seasonally adjusted) ("CPI") between January and November of the most recent calendar year, as determined by multiplying the Monthly Fee/Annual Fee by a fraction, the numerator being November CPI, the denominator being January CPI.

4 OPERATION, COSTS, AND REPAIRS – The Equipment shall be inspected by the CUSTOMER at, or prior to the beginning of the Term, and acceptance of delivery by CUSTOMER shall constitute acknowledgment that the Equipment received has been inspected and is then in good and serviceable condition, safe and fit for the use of CUSTOMER. CUSTOMER, at its own expense, shall at all times maintain the Equipment in good and safe operating condition. Subject to the warranty provisions set forth herein, CUSTOMER shall pay ECOTEC for all labor, materials, parts and supplies of every nature and kind required to operate and so maintain the Equipment and to make all necessary repairs and replacements thereon. CUSTOMER shall immediately inform ECOTEC of any damage, accident, misuse or mechanical failures of or involving the Equipment. CUSTOMER is not authorized to incur any liability or to expend any money for ECOTEC's account for any operating, maintenance or repair cost or expense without prior written authority from ECOTEC. Title to any repairs or replacements, and parts and supplies furnished in connection therewith shall vest in ECOTEC.

5 RETURN OF EQUIPMENT – CUSTOMER shall return the Equipment to ECOTEC no later than three (3) business days after the expiration of the then current Term, or within three (3) business days after an earlier termination of the Monitoring Agreement. Any delinquent return

of the Equipment shall result in an increase in the rate to 200% of the then current Monthly Fee/Annual Fee (prorated monthly) during such delinquency period, and all payment shall be made monthly until the Equipment is received by ECOTEC at ECOTEC's facility in Colton, California. CUSTOMER shall return the Equipment to ECOTEC unencumbered and in the same condition as when received by CUSTOMER, reasonable wear resulting from proper use alone excepted. Condition shall be determined by an inspection by ECOTEC and ECOTEC will notify CUSTOMER of any required repairs within twenty (20) days of such inspection. The expiration of the Term shall not modify CUSTOMER's obligations for any necessary repairs.

6 SHIPPING – The Equipment shall be sent by ECOTEC to CUSTOMER via Federal Express or other national overnight carrier at the sole expense of CUSTOMER. CUSTOMER shall furnish timely instructions for shipment address. ECOTEC shall furnish shipping instructions for the return, which shall also be at CUSTOMER's sole expense. CUSTOMER assumes all expense and risk of loss during transportation of Equipment to or from CUSTOMER, same being loaded and shipped EXW ECOTEC's location or other shipping point designated by ECOTEC, and from CUSTOMER to ECOTEC, until received and accepted at ECOTEC's facility in Colton, California.

7 USE OF EQUIPMENT – CUSTOMER shall keep and use the Equipment at its place of designated use until ECOTEC in writing permits its removal and shall use it only in the conduct of CUSTOMER's business. At no time shall the Equipment be subjected to improper use, any careless or needlessly rough use or to any use in violation of any federal, state or municipal statute, ordinance or regulation. The Equipment shall not be altered or modified in any way. The Equipment shall not be rented, leased, borrowed or otherwise used by any party other than CUSTOMER as an end-user. CUSTOMER shall not remove, alter, disfigure or cover up any numbering, lettering, insignia or signage placed upon the Equipment. CUSTOMER shall not disassemble any Equipment for any reason whatsoever, nor shall CUSTOMER attempt to repair any Equipment without ECOTEC's express written consent. CUSTOMER shall not, without the prior written consent of ECOTEC, except as otherwise provided herein, surrender or part with the possession, custody or control thereof. CUSTOMER shall, if requested, advise ECOTEC of the exact location and condition of the Equipment.

8 APPLICABLE LAW & JURISDICTION – The interpretation of any agreement between the parties shall be construed under and governed by the internal laws of the State of California without regard to its conflicts of law principles that may result in the application of the law of any other jurisdiction.

9 SALE OF GOODS, IF OTHERWISE APPLICABLE – For any action at law or in equity, any dispute between the parties shall be resolved exclusively in a state or federal court located in San Bernardino County, California, and the parties submit to the personal jurisdiction of the courts located in San Bernardino County, California for the purpose of litigating such disputes.

10 TAXES – CUSTOMER agrees to pay or reimburse ECOTEC, at its option, for any such taxes which it or its contractors or suppliers are required to pay.

11 DEFAULT/TERMINATION RIGHTS – ECOTEC shall have the right to terminate this Agreement if: (1) CUSTOMER fails to make any payment as herein provided within five (5) days after its due date; (2) CUSTOMER at any time during the term hereof, fails to perform any of the other terms and conditions CUSTOMER is obligated to perform, and such failure continues for a period of five (5) days after CUSTOMER receives written notice of default from ECOTEC; (3) CUSTOMER becomes insolvent or makes an assignment for the benefit of creditors or becomes the subject of any reorganization or bankruptcy proceeding; (4) CUSTOMER changes the rental start date by more than fourteen (14) days after the Target Start Date; 5) if ECOTEC shall deem it to be in its best interest to do so to protect its interests or protect the Equipment against loss or damage; or (6) CUSTOMER attempts to assign or delegate any of its rights or obligations hereunder (whether by assignment of this Agreement or a change of control in CUSTOMER) without the express prior written consent of ECOTEC. Upon termination of this Agreement for any of the foregoing reasons, then ECOTEC and its agents or representatives may, in addition to any other rights or remedies it may have hereunder or at law or in equity, without notice or demand or liability or legal process, demand CUSTOMER halt further operation of the Equipment, enter any premises where said Equipment is or is believed to be located and take any actions necessary to secure and protect the Equipment from further use, repossess all or any part thereof. CUSTOMER expressly waives all further rights to possession of the Equipment and all claims for injury suffered through or loss caused by such termination and/or repossession. If ECOTEC shall repossess the Equipment or shall institute any proceeding to recover any monies due hereunder to recover possession of the Equipment or any part thereof or to enforce any term or condition hereof, CUSTOMER shall pay ECOTEC's costs incurred therein including ECOTEC's attorney's fees, expert fees, litigation expenses other than costs of suit permitted by statute and all costs of suit. CUSTOMER stipulates that expert fees and litigation expenses other than costs of suit may be recovered by post-judgment motion and need not be proven at trial. ECOTEC's rights hereunder are cumulative and not exclusive.

12 VALUATION – For purposes herein, the valuation of the Equipment not returned by CUSTOMER to ECOTEC shall be deemed to be one hundred and ten percent (110%) of the manufacturer's suggested retail price as of the commencement of the Term with no reduction for depreciation or amortization.

13 FORCE MAJEURE – ECOTEC shall not be liable for failure to perform or for delay in performance due to pandemic, fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the CUSTOMER, riot embargo, fuel or energy shortage, car shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or due to any cause beyond ECOTEC's reasonable control. Provided further that none of the foregoing shall forgive or excuse performance under this Agreement by CUSTOMER. Rather, in the event of ECOTEC's delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

14 WARRANTY – ECOTEC warrants to CUSTOMER that goods of its manufacture will be free from defects in material and workmanship caused by ECOTEC for a period of one (1) year

from the date the Equipment is shipped to CUSTOMER. The obligation of ECOTEC and CUSTOMER's sole and exclusive remedy hereunder shall be limited, at ECOTEC's option, to: (a) repair or replace the defective work, including repair or replacement of defective parts or equipment upon return thereof within the warranty period, or (b) provide a temporary replacement of the defective Equipment within five (5) business days, while Ecotec performs the repairs. If ECOTEC is unable to repair the defects, then the temporary replacement shall become a permanent replacement. Upon ECOTEC's delivery of the repaired equipment, CUSTOMER shall promptly return the temporary replacement equipment to ECOTEC. All shipping costs relating to replacement equipment shall be borne by CUSTOMER.

ECOTEC warrants to CUSTOMER that the services supplied hereunder will be performed in accordance with generally accepted standards for such services.

In no event shall ECOTEC be responsible for working access to the defect, including the removal, disassembly, replacement or reinstallation of any equipment materials or structures to the extent necessary to permit ECOTEC to perform its warranty obligations or transportation costs to and from the ECOTEC factory or repair facility, or for damage to equipment components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. The conditions of any tests shall be mutually agreed upon and ECOTEC shall be notified of, and may be present at all tests that may be made.

All warranty work shall be performed in a single shift on a straight time basis, Monday through Friday. In the event that the product requires correction of warranty items on an overtime Schedule per CUSTOMER's request, the premium portion of such overtime shall be paid for by CUSTOMER.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHICH ECOTEC DISCLAIMS and CUSTOMER DISCLAIMS, RELEASES AND RENOUNCES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), EXCEPT OF TITLE.

15 LIMITATION OF LIABILITY – ECOTEC, its contractors and suppliers of any tier, shall not be liable in contract, in tort (including active and passive negligence) or otherwise for damage or loss of other property or equipment, loss of profits or revenue, loss of use of equipment or power system, cost of capital, cost of purchased or replacement power or temporary equipment (including additional expenses incurred in using existing facilities), claims of customers of CUSTOMER, or for any special, indirect, incidental, or consequential damages whatsoever. In no event shall the liabilities of ECOTEC under the Monitoring Agreement exceed the total amount paid by CUSTOMER to ECOTEC under the Monitoring Agreement. In no event shall the liabilities of ECOTEC hereunder exceed the total amount paid by CUSTOMER to ECOTEC.

16 VOID WARRANTY – No Warranty shall apply and any warranty shall become null and void, and ECOTEC shall have no liability under any warranty if the equipment:

- Is tampered with;
- Is damaged by Acts of God, power surge, misuse, abuse, negligence, accident, excessive wear and tear, mishandling, misapplication, modification or other causes unrelated to defective materials or workmanship;
- Has its serial number or warranty decals defaced, altered or removed;
- Is damaged by programs, data, viruses, or files, or while in transit;
- Is used improperly or is not regularly maintained, cleaned or serviced in accordance with manufacturer specifications;
- Is repaired, modified or altered by other than by a ECOTEC authorized repair center;
- Is damaged due to CUSTOMER's failure to maintain an industry standard safety shutdown/alarm system; or
- Customer does not participate in instrument operation and start-up procedure trainings.

The remedies of the CUSTOMER set forth herein are exclusive and the liability of ECOTEC with respect to any contract, or anything done in connection therewith such as the performance or breach thereof or from the manufacture, sale, delivery, resale, installation or technical direction of installation, maintenance or technical direction of maintenance, repair or use of any equipment covered by or furnished under the contract (correction of any nonconformity), whether in contract, in tort (including active and passive negligence) or otherwise shall not exceed the price set forth herein for the work.

Any action for breach of contract or otherwise by CUSTOMER against ECOTEC hereunder must be commenced within one year after the cause of action has accrued, or such cause of action shall be forfeited and time-barred.

17 PATENT INFRINGEMENT - - Subject to the following provisions, ECOTEC shall, at its own expense, defend, or at its option settle any claim, suit or proceeding brought against the CUSTOMER solely to the extent it is based on an allegation that any goods, material, equipment, device or article (hereinafter referred to as a product) or any part thereof furnished hereunder constitutes a direct or a contributory infringement of any claim of any patent of the United States. This obligation shall be effective only if CUSTOMER shall have timely made all payments then due hereunder and if ECOTEC is notified promptly in writing and given authority, information and assistance for the defense of said claim, suit or proceeding. ECOTEC shall pay all damages and costs related to the claim (or portion thereof) required hereunder to be defended. In case the product or any part thereof furnished hereunder becomes the subject of any claim, suit or proceeding for infringement of any United States patent, or in the event of an adjudication that such product or part infringes any United States patent, or if the use or sale of such product or parts is enjoined, then ECOTEC shall at its option and its own expense, either: a) procure for the CUSTOMER the right to continue using said product or part thereof, (b) replace it with a non--infringing product, (c) modify it so it becomes non--infringing, or (d) as a last resort refund the purchase price and the

transportation and installation costs thereof.

The foregoing obligations of ECOTEC do not apply to the following: (1) Patented processes performed by the product, or another product produced thereby; (2) Products supplied according to a design other than that of ECOTEC and which is required by the CUSTOMER; (3) Combination of the product with another product not furnished hereunder unless ECOTEC is a contributory infringer; or (4) Any settlements of a suit or proceeding made without ECOTEC's written consent.

The foregoing states the entire liability of ECOTEC with respect to patent infringement by said product or any part thereof.

If a suit or proceeding is brought against ECOTEC solely on account of activities enumerated in subsections (1), (2), or (3) above, CUSTOMER agrees to defend, indemnify and hold ECOTEC harmless in the manner and to the extent ECOTEC indemnified CUSTOMER in the paragraph above insofar as the terms thereof are appropriate.