

Empire Disposal
2437 Alice
Detroit, MI 48212

TERMS AND CONDITIONS

- 1. Term of Agreement, Termination and Liquidated Damage.**
This agreement is a legally binding contract and shall extend for a minimum initial term of sixty (60) months from the date that the Agreement is executed. This Agreement shall automatically be renewed for successive twenty-four (24) month terms after the initial term, unless either Contractor or Customer gives the other party written notice of non-renewal by certified mail, return receipt requested, at least sixty (60) calendar days prior to the then scheduled expiration date of the Agreement.
Contractor agrees that if Customer no longer requires any collection and disposal service for its waste materials, as a result of discontinuance of its business, relocation outside the area in which the Contractor provides collection service, but excluding a sale of its business to another entity, Customer may terminate this Agreement upon written notice to the Contractor at least 60 days prior to the intended termination date but only by paying in full all amounts then currently due the Contractor and including said payment in full with its written notice of termination.
In the event the Customer should terminate the Service Agreement other than as provided above, it is agreed that the Customer shall pay to Contractor as liquidated damages a sum equal to six (6) months charges for hauling, recycling and disposal of solid waste, which charges shall be determined on the basis of the average of the latest six months' invoices during the existence of the Service Agreement, or if Customer has not been serviced for six months, Customer's most recent monthly charge multiplied by six, together with any outstanding balance due and unpaid, accrued late charges, if any, attorneys fees and costs of collection.
- 2. Exclusive Contract.**
The Customer, by entering into this Service Agreement, grants Contractor the exclusive right to collect and dispose of all solid waste, including all recyclable materials generated by Customer during the term of the Agreement. Customer grants to Contractor the right to compete with any offer which customer receives or intends to make pertaining to provision of non-hazardous waste collection and disposal services. Upon the termination of this Agreement for any reason, Customer agrees to give Contractor written notice of any such offer and reasonable opportunity to respond to it.
- 3. Services, Charges and Payment.**
Customer shall pay the Contractor for services and equipment provided hereunder in accordance with the schedule of services and charges set forth on the reverse side of this Agreement. Payment shall be made by Customer within ten (10) days after receipt of an invoice from Contractor. Customer agrees that it may orally request additional services of Contractor and any additional charges for services so rendered shall be paid for by Customer at the rates specified for such services herein and appear on the next invoice. Any amount not paid when due or outstanding for thirty (30) days or more from the date of the invoice will be subject to a one and one-half percent (1 1/2%) per month late charge. Should Customer fail to pay for services when due requiring Contractor to incur collection costs to obtain payment in full, all costs of collection, including reasonable attorney fees, shall be the responsibility of the Customer.
- 4. Suspension of Services.**
Contractor may suspend disposal services to Customer for Customer's non-payment of invoices when due. This suspension of services by Contractor may continue until such time as the delinquent account is paid in full. Contractor suspension shall not be deemed a breach of contract as Customer's obligation to pay Invoices when due is a condition precedent to continued services by Contractor. The Contractor's right to suspend services is in addition to any right or remedy provided by this Contract and is in addition to any other remedies at law or in equity.
- 5. Customer's Duties and Liability.**
Customer shall be responsible for the cleanliness and safekeeping and proper operation, if operation is required by Customer's equipment when located on Customer's premises. Customer shall not make any alterations or improvements to the equipment without the prior written consent of Contractor. Customer shall not overload the equipment by weight or volume of waste deposited, nor use it for incineration purposes and shall be liable to Contractor for the loss or damage to the equipment, reasonable wear and tear excepted. If equipment is overloaded, an additional charge will be added to Customer's invoice. All equipment furnished by the Contractor shall remain the property of the Contractor and the Customer shall have no right, title or interest in said equipment. On collection day, the Contractor's vehicle shall at all times have clear access to the equipment. If the equipment is blocked so as to prohibit collection, Contractor will attempt to notify Customer so pick up can be accomplished while Contractor is still in the area. Should this effort by Contractor be unsuccessful, any additional collection will be charged to Customer as an extra pick up. No credit will be issued for a regularly scheduled pick up if Contractor is unable to collect waste due to inability to approach the container.
- 6. Driveways and Parking Areas.**
Customer warrants that any right-of-way provided by Customer for Contractor's equipment location and travel to said equipment is sufficient to bear the weight of all of Contractor's equipment and vehicles required to perform the services herein contracted. Contractor shall not be responsible for damages to any private pavement, curbs, or accompanying sub-surface of any route reasonably necessary to perform the services herein provided.
- 7. Customer Warranty Regarding Existing Contracts.**
Customer represents and warrants that as of the date of the execution of this Contract and commencement of service hereunder, Customer is not and will not be contractually or otherwise obligated to take or obtain any similar or competing service from any other person, entity or corporation and that the execution of this Agreement by Customer does not or will not constitute an interference with a default or breach under any existing contract to which Customer is a party. Customer further agrees to notify any third party rendering services similar to those offered by Contractor of the existence of this Agreement should they offer to render a similar service to Customer.
- 8. Customer Warranties Regarding Waste Material Content.**
Customer warrants and represents that all waste material generated by the Customer to be collected by Contractor pursuant to this Agreement is solid waste as defined by applicable state and Federal Law including all recyclable materials and specifically shall exclude all medical waste, asbestos, liquid waste, industrial wastes and sludges, incinerator ash and volatile, highly flammable, explosive, toxic or hazardous material. The term hazardous material shall include, but not be limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or applicable state law. Contractor shall acquire title to the waste material when loaded into its trucks. However, title to and liability for any waste excluded above shall remain with the Customer who shall be required to properly dispose of same. Customer expressly agrees to defend, indemnify and hold harmless Contractor, its officers, agents and employees, from and against any and all liabilities, demands, claims, suits, losses, causes of action, damages, penalties, fines, liabilities and legal actions, including costs of defense and attorney fees resulting from or arising out of a breach by Customer of the warranties and representations made herein. Should Customer breach the warranties contained herein, Contractor shall be entitled to terminate this Agreement upon seven (7) days written notice to Customer.
Should Customer breach its warranty to deposit for pick up by Contractor only solid waste defined in this Paragraph 8, the Contractor shall be entitled to be indemnified and defended by Customer and shall also be entitled to recover its actual damages including the cost for the proper handling and disposal of the excluded waste material should Customer fail to dispose of same, together with all penalties, fines and attorney fees incurred by Contractor.
- 9. Change of Customer Service Address.**
This Agreement shall continue in full force and effect for the entire term and shall continue notwithstanding Customer's removal of his business to a different location within the area in which Contractor provides collection services.
- 10. Release and Indemnity.**
The Customer agrees to assume all risk of loss and to indemnify and hold the Contractor, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of actions, fines or judgments, including costs, attorney and witness fees, and expenses incident thereto for injuries to persons (including death) and for loss of damage to or destruction of property (including property of Contractor) arising out of or in connection with this Agreement unless caused by the sole negligent or willful misconduct of Contractor, its officers, agents or employees. In the event that any demand or claim is made or suit is commenced against the Contractor, the Contractor shall give prompt notice thereof to Customer. The Contractor shall have the right, but not the obligation, to compromise or defend the same to the extent of its own interest.
- 11. Acts of God-Disruption of Service.**
Customer hereby waives any and all damages for any delivery, interruption or postponement or delay of service caused by an act of God, including strikes, lockouts or other labor disturbances, wars, riots, explosions, fires, tornadoes, hurricanes or other weather conditions making travel and transportation hazardous or impossible, or requiring no more than 45 days to comply with local government requests to assist on local clean-up efforts or any other cause not within the control of Contractor.
- 12. Remedies and Damages for Breach of this Service Agreement.**
In the event of a material breach of this Agreement by Customer, other than for improper termination as provided in Paragraph 1 hereof, Contractor shall be entitled to terminate this Agreement upon written notice to Customer. In addition to its right to terminate the Agreement, Contractor shall be entitled to recover its actual damages, including but not limited to, all lost profits and expenses, service fees due and unpaid together with late fees, if any, attorney fees, costs of collection, and court costs.
- 13. Attorney Fees.**
In the event of a breach of this Agreement by either party, the breaching party shall pay all reasonable attorney fees, collection fees and costs of the other party incident to any action brought to enforce this Agreement.
- 14. Assignment and Binding Effect.**
This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors or executors by operation of law or otherwise. This Agreement may be assigned by Customer only upon written consent of the Contractor. The parties agree Contractor may assign this Agreement without Customers consent. Should Customer sell its business or otherwise leases or sub-leases the premises associated with the service provided, Customer agrees to bind all new owners of the business or its leases or sub-leases or other transferees to the terms of this Agreement as part of the sale, lease or transfer of the business or premises.
- 15. Authority.**
The Customer has read the foregoing Agreement in its entirety and understands all of its terms and conditions and represents and warrants that the person signing on behalf of the Customer has the authority and power to execute this Agreement on behalf of the Customer and upon execution hereof, the Customer shall be bound by all of the terms and conditions herein.
- 16. Landfill Disposal and Fuel Cost Adjustments.**
Contractor shall be entitled to increase the rates charged to Customer upon 30 days written notice to cover any increased costs incurred by Contractor for landfill disposal, including without limitation any surcharge, fee, tax or other charge imposed upon or assessed by Contractor as a result of any state, local or federal law, rule or ordinance regarding the disposal of Customer's waste. Contractor shall be entitled to increase the rates charged to Customer to cover any increased fuel costs. Any changes in Customer's waste stream collected by Contractor that materially affects the weight or compaction ability of the waste shall entitle Contractor to increase its rate to reflect the change in waste stream.
- 17. CPIU Rate Adjustment.**
Contractor may increase its rate charged to Customer on an annual basis by the percentage increase in the U.S. City Average (all Items in) Consumer Price Index for Urban All Consumers over the previous year. The schedule of charges may be adjusted for reasons other than increases in landfill disposal costs, fuel costs or increases in the CPIU subject to approval by Customer.
- 18. Governing Law, Amendment Severability.**
This contract, its validity, interpretation and performance shall be governed pursuant to the laws of the State of Michigan.
This Service Agreement supersedes all prior Agreements, whether written or oral and shall not be modified, amended or terminated except in writing and executed by the parties hereto.
This Agreement shall be deemed to be severable and as such, should any paragraph or portion thereof be deemed invalid or unenforceable for any reason, then, in such event the rest of this Service Agreement shall remain effective and in full force and effect except insofar as the invalid portion thereof shall be stricken.