

**TERMS AND CONDITIONS OF FOR THE SUPPLY OF SERVICES  
WESTREX  
(Issue Date: 1 May 2024)**

The following Terms and Conditions govern the supply of services by WestRex.

**1. Definitions**

In these Terms and Conditions:

- (a) **Acceptable Waste** means any Waste which meets the definition set out in the Facility Rates Schedule for a Facility and these Terms and Conditions and for which the Customer holds a Quotation;
- (b) **Accepted Quantity** means the quantity of Waste accepted by WestRex at a Facility;
- (c) **Accepted Waste** means Waste which has been accepted by WestRex at a Facility in accordance with the Contract;
- (d) **Additional Charges** has the meaning given in clause 11.2;
- (e) **Approval** means any approval, authorisation, certificate, consent, determination, exemption or permit of any Government Authority;
- (f) **Business Day** means a day that is not a Saturday, Sunday, or bank or public holiday in Queensland;
- (g) **Certificate of Analysis** means a certificate issued by a NADA approved facility showing the characteristics of a Waste sample;
- (h) **Change in Law** means a change in an existing Law or the introduction of a new Law which takes effect after the date of entry into the Contract by WestRex and could not reasonably have been anticipated or foreseen by WestRex, and includes the imposition of any temporary or permanent levy or surcharge of any kind, but excludes any change to income tax or which is related to the calculation of income tax;
- (i) **Charges** means the charges payable by the Customer under the Contract and includes the Service Charges and any Additional Charges.
- (j) **Commencement Date** means the date on which the Contract is formed;
- (k) **Confidential Information** means any information provided by or on behalf of the Disclosing Party to the Receiving Party:
  - (i) which the Disclosing Party has identified as confidential; or
  - (ii) the Receiving Party ought reasonably to know is confidential,but excludes any information of the Disclosing Party that:
  - (iii) is in or becomes part of the public domain other than through a breach of the Contract by the Receiving Party; or
  - (iv) was already in the Receiving Party's possession at the time of receipt from the Disclosing Party without any obligation of confidentiality to the Disclosing Party;
- (l) **Contract** means:

- (i) the contract (which includes these Terms and Conditions) formed upon WestRex's receipt of a Quotation Request; or
- (ii) a Services Agreement;
- (m) **Credit Account** means a credit account granted by WestRex to the Customer;
- (n) **Customer** means the person identified in a Quotation Request and, where the context requires, includes the Customer's Personnel;
- (o) **Customer Specific Rates** means any rates which have been agreed in writing by WestRex and the Customer for the supply of the Services, including under a Services Agreement, as adjusted from time to time in accordance with the Contract;
- (p) **Defaulting Party** means a party subject to an insolvency event in accordance with clause 18;
- (q) **Delivery Sample** has the meaning given in clause 6.12;
- (r) **Delivery Time** means the designated time for delivery of a Waste Shipment to a Facility;
- (s) **Disclosing Party** means a party whose Confidential Information is disclosed, communicated or delivered or otherwise made known to the other party;
- (t) **Environmental Authority** means an Approval held by the owner or operator of a Facility under the *Environmental Protection Act 1994* (Qld);
- (u) **Facility** means a waste disposal facility identified in the Quotation, which may include the facilities owned or operated by WestRex located at:
  - (i) 40742 Warrego Highway, Jackson QLD 4426;
  - (ii) 15 Production Street, Wacol, QLD 4076;
  - (iii) 90 Potassium Street, Narangba, QLD 4504;
  - (iv) 118 Dalmere Road, Leyburn, QLD 4365; and
  - (v) 29 Airport Road, Injune, QLD 4454.
- (v) **Facility Rates Schedule** means the schedule of rates and Acceptable Waste for a Facility as published by the Facility, as amended from time to time.
- (w) **Facility Rules** means any rules means any rules, policies and procedures applicable to a Facility or WestRex's premises or land, as amended from time to time;
- (x) **Force Majeure Event** means any event or cause beyond the reasonable control and without default or negligence of the party claiming force majeure (provided such party has taken reasonable precautions), but does not include a lack of, or inability to use, money or available funds for any reason;
- (y) **GHS Labelling Requirements** means the requirements for the classification and labelling of chemicals under the *Globally Harmonized System of Classification and*

*Labelling of Chemicals* issued by UNECE as adopted under the relevant WHS Legislation.

- (z) **Government Authority** means any Federal, State or local government, and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute;
- (aa) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (bb) **Insolvency Event** means any of the following events in respect of any party:
  - (i) the party disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
  - (ii) the party ceases to carry on business or is deregistered;
  - (iii) the party ceases to be able to pay its debts as they become due;
  - (iv) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business;
  - (v) any step is taken to enter into any arrangement between the party and its creditors;
  - (vi) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, an administrator or other like person to the whole or part of the party's assets, operations or business;
  - (vii) where the party is a partnership, any step is taken to dissolve that partnership or a partner dies; or
  - (viii) where the party is an individual, the party dies;
- (cc) **Interest Rate** means 4% above the Cash Rate Target specified by the Reserve Bank of Australia from time to time;
- (dd) **Invoice** means a tax invoice issued by WestRex in relation to the Services;
- (ee) **Job number** means the unique job number assigned by WestRex as set out in a Quotation.
- (ff) **Law** means any present and future applicable law including legislation, ordinances, regulations, permits, codes, by-laws, orders, judgments, ordinances and other subordinate legislation, in force from time to time in any applicable jurisdiction;
- (gg) **Loss** means damage, loss, cost, expense, suit, charge, action, right or action, or liability (whether actual or contingent);
- (hh) **Notifiable Incident** means an incident or event, the occurrence of which is required to be notified to a Government Authority under any Law;
- (ii) **Operating Hours** means the operating hours for a Facility, as published by WestRex from time to time;
- (jj) **Permitted Tolerance** means a variation in the volume of any class of Waste in a Waste Shipment of plus or minus 5% or such other amount as may be specified in a Quotation;
- (kk) **Personnel** of a party means officers, employees, agents, contractors, subcontractors and secondees of that party and its Related Bodies Corporate, except that:
  - (i) WestRex and its officers, employees, agents, contractors, subcontractors and secondees are not Personnel of the Customer; and

- (ii) the Customer and its officers, employees, agents, contractors, subcontractors and secondees are not Personnel of WestRex;
- (ll) **Preapproval Sample** means a sample of Waste from a proposed Waste Shipment in such form and quantity as reasonably required by WestRex;
- (mm) **Prohibited Waste** means any waste or material that is not permitted under the Department of Environment and Science protection permit number EPPR01050513;
- (nn) **Quotation** means a written quotation issued by WestRex to the Customer offering to accept delivery of a Waste Shipment at a Facility, but does not include a quotation which has:
  - (i) expired or been withdrawn before acceptance by the Customer; or
  - (ii) lapsed pursuant to clause 5.3(b);
- (oo) **Quotation Request** means an application by the Customer to dispose of Waste at a Facility, in such form as notified or approved by WestRex from time to time;
- (pp) **Receiving Party** means a party who is in receipt of Confidential Information of the other party;
- (qq) **Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth);
- (rr) **Service Charges** means the charges payable by the Customer for the Services calculated in accordance with clause 11.1;
- (ss) **Services** means any services supplied or to be supplied by WestRex to the Customer pursuant to the Contract, including the acceptance of Acceptable Waste at a Facility;
- (tt) **Services Agreement** means a contract between WestRex and the Customer for a specific or indefinite period that expressly incorporates these Terms and Conditions;
- (uu) **Special Condition** means a special condition, if any, set out in the Contract;
- (vv) **Term** means the period commencing on the Commencement Date and ending on completion of performance of the Services in accordance with the Contract or earlier lawful termination;
- (ww) **Terms and Conditions** means these terms and conditions in relation to the Services;
- (xx) **Unacceptable Waste** has the meaning given in clause 6.1;
- (yy) **Volume Record** means the record of the volume of Acceptable Waste in a Waste Shipment accepted by WestRex at a Facility, as issued by WestRex at or about the time of delivery;
- (zz) **Waste** means:
  - (i) any waste product identified in a Facility Rates Schedule;
  - (ii) any waste product identified in a Quotation; or
  - (iii) waste as defined in section 8AA of the *Waste Reduction and Recycling Act 2011* (Qld);
- (aaa) **Waste Shipment** means a shipment of Waste delivered to a Facility;
- (bbb) **Waste Transport Certificate** means a waste transport certificate required under *Environmental Protection Regulation 2019* (Qld) or any similar legislation in any other jurisdiction;

- (ccc) **WestRex** means WestRex Services Pty Ltd ACN 132 840 923 as trustee for The WestRex Operations Unit Trust ABN 78 858 680 576 (**WestRex Services**) and, where the context requires:
- (i) each Related Body Corporate of WestRex Services; and
  - (ii) each subcontractor of WestRex Services engaged in the performance of the Services; and
- (ddd) **WHS Legislation** means any Law relating to workplace health and safety and includes the *Work Health and Safety Act 2011* (Qld).

## 2. Interpretation

2.1 In the Contract, headings and bold text are for ease of reference only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to the Contract and a reference to the Contract includes any schedule or annexure;
- (d) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.

2.2 If a Party consists of more than one person, the obligations of each person are joint and several.

## 3. Application of these Terms and Conditions and Contract Formation

3.1 The Terms and Conditions apply to every provision of the Services, unless otherwise agreed in writing by WestRex. The submission of a Quotation Request by the Customer is evidence of the Customer's acceptance of the Terms and Conditions.

3.2 The Contract constitutes the entire agreement between the Customer and WestRex with respect to the Services. All prior negotiations, proposals, previous dealings, correspondence, trade custom or trade usage are superseded by and will not affect the interpretation of the Contract.

3.3 Any purported incorporation of other standard terms and conditions by the Customer is void and of no effect, unless specifically agreed in the Contract.

3.4 If there is any inconsistency between any of the documents comprising the Contract, the documents will rank, in the following order of precedence, from highest to lowest:

- (a) any Special Conditions;

- (b) if the Contract is a Services Agreement, the express terms of the Services Agreement, excluding these Terms and Conditions;
- (c) the Quotation;
- (d) these Terms and Conditions; and
- (e) any other document incorporated by reference in the Contract.

3.5 A Contract is formed and binding on the parties when:

- (a) WestRex and the Customer execute a Services Agreement; or
- (b) if the parties have not executed a Services Agreement, WestRex receives a Quotation Request from the Customer.

## 4. Quotation Requests

4.1 A Customer may make a request to dispose of Waste at a Facility by issuing a Quotation Request to WestRex.

4.2 Unless WestRex agrees otherwise, the Customer must submit a Quotation Request including all required information, including any Certificate of Analysis, not later than 2 Business Days prior to the proposed delivery of a Waste Shipment to a Facility.

4.3 A Quotation Request must include:

- (a) a detailed specification of the Waste;
- (b) the estimated quantity of the Waste;
- (c) if applicable, a Certificate of Analysis for the relevant Waste; and
- (d) any other information reasonably required by WestRex.

4.4 Following receipt of a Quotation Request or any Certificate of Analysis, Preapproval Sample or other information under clause 4.4(a), WestRex may, in its discretion:

- (a) request the provision of:
  - (i) a Certificate of Analysis or a Preapproval Sample, if either has not already been provided or it is not satisfied with the previously provided certificate or sample; or
  - (ii) any other information it reasonably requires regarding the Quotation Request, a Certificate of Analysis or Preapproval Sample;
- (b) notify the Customer that the Quotation Request has been rejected, which notification must include the basis for the rejection; or
- (c) issue the Customer with a Quotation which sets out:
  - (i) the Job Number;
  - (ii) any conditions which the Customer must meet prior to the provision of the Services; and
  - (iii) any directions or instructions regarding the delivery of the Waste Shipment to the Facility.

4.5 The Customer must use reasonable endeavours to respond promptly to any request by WestRex under clause 4.4(a).

- 4.6 Without limiting any other right or discretion of WestRex, WestRex will not issue a Quotation for any Waste which falls outside the Environmental Authority for a Facility.
- 4.7 The Customer must ensure that any Preapproval Samples are:
- (a) representative of the Waste expected to be delivered to the Facility in a Waste Shipment; and can be demonstrated to be representative upon request;
  - (b) clearly labelled with the Customer's name and a description of the Waste and any other information required by Law; and
  - (c) packaged and delivered in a manner to avoid damage to the sample or risk to any person or property and otherwise in accordance with all applicable Laws.

## 5. Quotations

5.1 Despite the issue of a Quotation Request, WestRex is not required to provide the Services unless it has issued, and the Customer has accepted, a Quotation.

5.2 The Customer may accept a Quotation by:

- (a) notifying WestRex of its acceptance;
- (b) booking a Delivery Time for a Waste Shipment under the Quotation; or
- (c) delivering a Waste Shipment to the Facility under the Quotation,

whichever occurs first.

5.3 Unless the Quotation states otherwise:

- (a) it is provided on the basis that the Services will be subject to these Terms and Conditions; and
- (b) without limiting clause 5.4, it will automatically lapse if the Customer has not:
  - (i) accepted it; and
  - (ii) delivered the Waste Shipment to the Facility within thirty (30) days after the date of issue.

5.4 WestRex may withdraw, revoke or vary a Quotation at any time prior to its acceptance.

5.5 The final Service Charges for Services for which WestRex has issued a Quotation will be calculated on the Accepted Quantity. WestRex may adjust or withdraw any volume-based discount in a Quotation if the Accepted Quantity (for any category of Waste) is less than the anticipated quantity identified in the Quotation.

5.6 The amount of any Charges set out in a Quotation is exclusive of any Additional Charges which may be payable in accordance with the Contract.

## 6. Delivery

6.1 WestRex will not accept a Waste Shipment at a Facility unless the Customer holds a Job Number.

6.2 Following receipt of a Quotation, the Customer must book a time to deliver the Waste Shipment to the Facility during Operating Hours at least 24 hours before the proposed time of delivery, unless WestRex agrees otherwise.

6.3 The Customer must notify WestRex as soon as reasonably practicable if it reasonably expects to be unable to deliver the Waste Shipment to the Facility at the Delivery Time and if it receives such a notice from the Customer, WestRex agrees to use reasonable endeavours to reschedule the Delivery Time.

6.4 Unacceptable Waste means:

- (a) Prohibited Waste;
- (b) Waste of a description which is not specified in a Quotation;
- (c) Waste which is not represented by any Preapproval Sample provided for the Quotation
- (d) Waste in a Waste Shipment in a volume in excess of the Permitted Tolerance;
- (e) any Waste for which the Customer does not hold a Job Number;
- (f) Waste which is outside the license specifications of an Environmental Authority for a Facility; and
- (g) any other Waste identified in the Facility Rates Schedule as being unacceptable, except as expressly approved in a Quotation.

6.5 The Customer must not deliver, or attempt to deliver, Unacceptable Waste to a Facility.

6.6 The Customer must deliver the Waste Shipment to the Facility at the Delivery Time, and at the time of delivery:

- (a) provide evidence of the Job Number; and
- (b) ensure that all Waste in the Waste Shipment is correctly labelled, including all individual packages (drums and/or IBCS), with the Customer's (or generator's) name, the Waste product name, the Job Number and GHS Labelling Requirements.

6.7 WestRex may in its absolute discretion reject any Waste Shipment, in whole or in part, that is delivered to the Facility if the Waste Shipment (or any part of it):

- (a) is not accompanied by a Job Number;
- (b) is not accompanied by a valid Waste Transport Certificate;
- (c) is not delivered at the scheduled Delivery Time and it is not reasonably practicable for WestRex to accept delivery at the time of proposed delivery, including because of unavailability of personnel, facilities or plant or equipment;
- (d) is incorrectly labelled or coded, or otherwise does not conform to the description or specification set out in the quote and Job Number;
- (e) exceeds the Permitted Tolerance;
- (f) does not conform to any Certificate of Analysis provided for that Waste Shipment;
- (g) does not correspond with any Preapproval Sample provided for that Waste Shipment;
- (h) is Unacceptable Waste or WestRex reasonably believes to be Unacceptable Waste; or
- (i) is contaminated with Unacceptable Waste, or WestRex reasonably believes to be contaminated with Unacceptable Waste.

6.8 If the Customer delivers mixed Waste to the Facility, and WestRex agrees in its absolute discretion to accept the delivery, all the Waste in the Waste Shipment will be treated as, and charged at the rate for, the highest risk Waste in the shipment.

6.9 WestRex will measure the quantity of Acceptable Waste accepted from a Waste Shipment at the Facility and issue a Volume Record to the Customer.

6.10 The Customer must immediately and lawfully remove any Waste rejected by WestRex under clause 6.7.

- 6.11 Subject to clause 7, title to and risk in all Acceptable Waste delivered to a Facility will pass to WestRex upon unloading from the delivery vehicle.
- 6.12 WestRex may take and retain samples of any Waste accepted at a Facility (**Delivery Sample**).
- 6.13 If the Customer requires a truck cleaning (internal or external) at the Facility:
  - (a) it must be scheduled at least 24 hours in advance;
  - (b) it will be completed subject to the assessment of any risk of environmental contamination and the Waste complying with the Quotation conditions and the Environmental Authority conditions;
  - (c) the washout of non-standard Waste or materials, including oily sludges and sludges contaminated with asbestos and firefighting foams, will have wash water charged at the same rate as the delivered Waste or materials; and
  - (d) the price is chargeable by 30-minute increments.

**7. Unacceptable Waste**

- 7.1 All Unacceptable Waste delivered to a Facility remains the property of the Customer and at the risk of the Customer at all times, including in circumstances where it has not been rejected by WestRex under clause 6.7, unless the manager of the Facility acknowledges in writing that they are aware that the Waste is Unacceptable Waste and the basis upon which it is Unacceptable Waste and agrees in writing to accept ownership of it.
- 7.2 If a Party becomes aware of any evidence or circumstances indicating that Waste which has been accepted by WestRex at a Facility:
  - (a) as Acceptable Waste comprises or contains, or might reasonably be suspected to comprise or contain Unacceptable Waste; or
  - (b) as Unacceptable Waste under clause 7.1 is Unacceptable Waste on a basis which is different to the basis upon which it was characterised as Unacceptable Waste for the purposes of clause 7.1,
 it must give prompt written notice to the other Party.

- 7.3 If Accepted Waste is subsequently identified to comprise or contain Unacceptable Waste, WestRex may in its absolute discretion:
  - (a) if it is reasonably practicable for the Unacceptable Waste to be removed from the Facility, give written notice the Customer requiring the Customer to remove the Unacceptable Waste and, where relevant, the other Waste containing the Unacceptable Waste, from the Facility; or
  - (b) invoice the Customer for the costs and expenses incurred by WestRex to dispose of, process or otherwise deal with the Unacceptable Waste and, where relevant, the other Waste containing the Unacceptable Waste.

- 7.4 If WestRex issues a notice to the Customer under clause 7.3(a), the Customer must arrange the removal of the Waste from the Facility at its own cost and risk and in accordance with all Laws, as soon as reasonably practicable and in any event within 5 Business Days.

**8. WestRex's Obligations**

- 8.1 WestRex must:
  - (a) accept Acceptable Waste at the Facility, subject to clause 6;
  - (b) subject to clause 7.4 store, process or dispose of Accepted Waste; and

- (c) otherwise perform the Services, in accordance with the Contract and all applicable Laws.

**8.2 WestRex must:**

- (a) comply with all applicable Laws relating to the handling, use, storage and disposal of Delivery Samples; and
- (b) use all reasonable endeavours to ensure that all Delivery Samples are retained and stored in a suitable environment to preserve their integrity as far as reasonably practicable.

**9. The Customer's Obligations**

**9.1 The Customer must ensure that all Waste in a Waste Shipment delivered to a Facility:**

- (a) is the subject of a Quotation and a Job Number;
- (b) meets the specifications in the Quotation Request and in any Certificate of Analysis, which has been provided for that Waste Shipment;
- (c) if the Customer has provided a Preapproval Sample, conforms to that sample; and
- (d) is correctly labelled, including all individual packages (drums and/or IBCS), with the Customer's (or generator's) name, the Waste product name and the Job Number.

**9.2 The Customer must:**

- (a) obtain all required Approvals and comply with all Laws relating to the transportation of any Waste Shipments to the Facility or the removal of any Unacceptable Waste from a Facility;
- (b) ensure that all information provided for quotation is accurate and complete and not misleading;
- (c) promptly provide to WestRex any information reasonably requested by WestRex in relation to any Waste Shipment;
- (d) comply, and ensure that all of its Personnel comply, with all Facility Rules including in relation to access, safety, confidentiality and the environment at all times when accessing or at a Facility;
- (e) immediately notify WestRex if it or its Personnel causes or becomes aware of any:
  - (i) incident that causes property damage or injury to any person at the Facility;
  - (ii) unauthorised release of a substance or material at the Facility;
  - (iii) provision of Waste to Facility that does not comply with the description, Preapproval Sample or specification of the Waste included with the Quotation Request or any Certificate of Analysis, including any circumstances where the Waste described in a Quotation Request or Quotation differs from the Waste delivered to a Facility in a Waste Shipment; or
  - (iv) Notifiable Incident involving:
    - (A) a Waste Shipment; or
    - (B) occurring at a Facility involving any of the Customer's Personnel or which the Customer's Personnel has a duty to report to a Governmental Authority,

- (f) unless agreed by WestRex, accept the return of any Unacceptable Waste which, if handled or removed by WestRex, is done only as the agent of the Customer;
- (g) clean up any spills of Waste:
  - (i) occurring before deliver to a Facility;
  - (ii) during or after loading Waste for removal by the Customer under clause 7.4;
- (h) assist WestRex, as reasonably required with the clean-up of any spills of Waste during unloading at a Facility; and
- (i) pay the Charges to WestRex in accordance with clause 11.

in a timely manner.

## 10. Attendance at Facility

10.1 The Customer must ensure that all of its Personnel who attend a Facility comply with:

- (a) the Facility Rules, including, if required, completing any site inductions;
- (b) all WHS Legislation; and
- (c) all reasonable directions of WestRex Personnel.

10.2 The Customer must, if reasonably requested by WestRex:

- (a) remove any member of its Personnel from a Facility; and
- (b) ensure that any such person is not authorised or permitted to re-enter a Facility without the prior written consent of WestRex.

10.3 Each Party must notify the other Party immediately if it becomes aware, in the performance of the Contract, of any matter or hazard which may affect the safety of either Party's Personnel or of any other person at a Facility.

## 11. Payments to WestRex

11.1 The Service Charges will be calculated according to the following principles:

- (a) the Services Charges will be calculated according to the Quotation subject to clause 5.5, and subject to the remainder of this clause 11.1.
- (b) If Customer Specific Rates are in force between WestRex and the Customer, those rates will apply, to the extent applicable to the relevant Waste.
- (c) Service Charges will be based on the quantity of Waste accepted at a Facility as set out in the relevant Volume Record.
- (d) If a Waste Shipment contains mixed Waste types, the Service Charge will be calculated for the entire volume of Waste based on the rate applicable for the most hazardous Waste in the shipment.
- (e) The Customer is not entitled to any refund or credit for Service Charges paid or payable for Waste returned to the Customer under clause 7.4.
- (f) The Service Charges may be adjusted under clause 11.3.

11.2 WestRex may invoice the Customer for, and the Customer must pay, charges in addition to the Service Charges, for the following (**Additional Charges**):

- (a) The provision of any labels or packaging provided by WestRex to the Customer for the transport of Waste to or from the Site, or which the Customer has failed to provide prior to the delivery of a Waste Shipment to a Facility.
- (b) The washing of any vehicles at a Facility, where the cost of such washing is not otherwise included in the Service Charges for a Waste Shipment.
- (c) For the storage of Waste, for which WestRex has issued a notice to the Customer under clause 7.3(a), in excess of 5 Business Days.
- (d) Additional receival charges and any government and statutory charges reasonably incurred by WestRex in connection with the handling or disposal of Unacceptable Waste.
- (e) To the extent not otherwise covered by clause 11.2(d), all costs and expenses reasonably incurred by WestRex resulting from discrepancies between the descriptions, samples or specifications provided by the Customer and the actual Waste delivered to a Facility in a Waste Shipment, including if required, transport to and disposal at a different facility.

11.3 If there is a Change in Law which either:

- (a) necessitates a change to the Services or otherwise adversely affects the performance of WestRex's obligations under the Contract; or
- (b) directly results in an increase in WestRex's cost of carrying out the Services,

WestRex is entitled to adjust the Service Charges to compensate for the additional costs of complying with the Change in Law.

## 12. Invoicing and Payment

12.1 Except as otherwise set out in the Contract, WestRex will issue an Invoice to the Customer upon receipt of the Acceptable Waste.

12.2 Unless the Contract provides otherwise and subject to the remaining provisions in this clause 12, the Customer must pay the Charges set out in an Invoice within 14 days upon receipt of the Invoice.

12.3 A Customer may apply for a Credit Account by completing and submitting a credit application to WestRex.

12.4 WestRex may grant a Credit Account to the Customer and set a credit limit from time to time, in its absolute discretion.

12.5 For the purposes of considering an application for a Credit Account or assessing the Customer's credit record, defaults and ability to perform its obligations under the Contract and to assist WestRex in the collection of any overdue payments, the Customer authorises WestRex to collect, retain, record, use and disclose the Customer's consumer and/or commercial creditworthiness, credit standing, credit history or credit capacity information, to a credit reporting agency or a credit provider to the extent permitted by Law, including the *Privacy Act 1988* (Cth).

12.6 If the Customer holds a current Credit Account with WestRex:

- (a) the Customer must pay each Invoice in accordance with the terms of the Credit Account or, if not specified, within 14 days from the date of each Invoice;
- (b) the Customer must not exceed its approved credit limit from time to time; and
- (c) if the Customer is in default under the terms of its Credit Account or the aggregate of the amount payable under an Invoice and the current balance of the Customer's Credit Account exceeds its approved credit limit, without prejudice to any other remedy

available to WestRex, WestRex may require immediate payment of the Invoice or such part of the Invoice to ensure the Customer does not exceed the approved credit limit.

12.7 The Customer must reimburse WestRex on demand for all costs incurred with the recovery of any unpaid invoiced amounts, including reasonable legal and collection agents' fees, court costs, interest on the total costs at the Interest Rate and WestRex's reasonable internal costs for time incurred with the recovery process.

12.8 The Customer is not entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by WestRex, nor is the Customer entitled to withhold payment of any Invoice because part of that Invoice is in dispute.

12.9 If the Customer does not pay any amount owing to WestRex by the due date for payment, WestRex may charge default interest on the unpaid amount at the Interest Rate, from the due date until payment is received in full (after as well as before judgment).

### 13. GST

13.1 In this clause 13, a word or expression defined in the GST Law has the meaning given to it in that law.

13.2 All amounts payable under a Contract are expressed exclusive of GST.

13.3 If a party makes a supply under or in connection with a Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 13.3 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made unless that consideration is stated to already include GST.

13.4 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 13.3.

13.5 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with a Contract.

13.6 A party need not make a payment for a taxable supply made under or in connection with a Contract until it receives a tax invoice for the supply to which the payment relates.

### 14. Confidential Information

14.1 The Receiving Party must:

- (a) take all reasonable steps to safeguard the confidentiality of the Confidential Information; and
- (b) not disclose, make public or use for purposes other than for the purposes of the Contract any Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party.

14.2 Any obligation of the Receiving Party under this clause 14 will not be taken to have been breached if the Confidential Information was required to be disclosed by law or court order, provided that the Receiving Party, to the extent reasonably practicable, gives the Disclosing Party prompt notice of the existence of such an obligation and makes a reasonable effort to otherwise protect the confidentiality of such information.

### 15. Warranties

15.1 WestRex warrants that it:

- (a) has the required skills to perform the Services in accordance with the Contract;
- (b) will exercise the skill, care and expertise reasonably expected of a professional provider experienced in the provision of the same or similar services to the Services; and
- (c) will perform the Services in accordance with all applicable Laws.

15.2 WestRex makes no other warranty to any person (including the Customer) in relation to the Services except those expressly set out in the Contract and those warranties which cannot be specifically excluded under law and WestRex expressly excludes all other terms, conditions, warranties, undertakings, inducements or representations, whether expressly or implied or implied by statute.

### 16. Liability and Indemnities

16.1 Nothing in the Contract excludes, restricts or modifies any terms, conditions or warranties or WestRex's liability for them which are imposed or implied by any statute, including to the *Competition and Consumer Act 2010* (Cth), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that WestRex may legally do so.

16.2 Subject to clauses 16.1 and 16.4, WestRex's liability for any breach of clause 15.1 or any failure to provide the Services or perform its obligations in accordance with the Contract is limited to:

- (a) in the case of goods, to any one of the following, at WestRex's option:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
- (b) in the case of services, to any one of the following, at WestRex's option:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

16.3 Subject to clauses 16.1, 16.2 and 16.4, to the maximum extent permitted by law, a Party's liability to the other Party for any claim for loss or damages (including legal expenses) made in connection with the Contract whether in contract, tort (including negligence), under statute, in equity or otherwise will be limited to an amount equal to the Charges paid or payable under the Contract.

16.4 The exclusions and limitations of liability in clauses 16.2, 16.3 and 16.5 do not apply to or limit any of the following obligations or liabilities:

- (a) liability arising from or in relation to the death, illness or injury of any person;
- (b) liability arising from fraudulent or criminal acts or omissions of a Party or any of its Personnel;
- (c) the Customer's liability to pay the Charges in accordance with the Contract and any Charges which would have been payable but for the Customer's breach of the Contract or WestRex's termination as a result of the Customer's breach, or any costs and expenses reasonably incurred by WestRex in recovering or attempting to recover payment of the Charges;
- (d) the Customer's liability arising from any property damage caused, including environmental damage, caused by the Customer or its Personnel, or by its vehicles, while at the Facility;
- (e) the Customer's liability under clause 16.6; or
- (f) liability which by law a Party cannot contract out of or limit.

16.5 Subject to clauses 16.1 and 16.4 neither Party will be liable to the other Party for, and each Party waives any right it has to claim, any loss not arising naturally according to the usual course of things, any loss of income, loss of actual or anticipated profit, loss of production, loss of contract, loss of customers, goodwill, opportunity or business, or loss of data arising under or in connection with the Contract, whether in contract, tort (including negligence), under statute, in equity or otherwise.

16.6 Subject to clause 16.7, the Customer must indemnify WestRex and each of WestRex's Personnel (each, an **Indemnified Party**) from and against any Loss suffered or incurred by an Indemnified Party arising out of or in connection with:

- (a) the handling, processing, storing or disposal of any Unacceptable Waste delivered to a Facility, including under clause 7.3;
- (b) bodily injury or death, or loss of or damage to tangible property (including the property of any Indemnified Party or the Customer or any of its Personnel) caused or contributed to by the Customer or the Customer's Personnel;
- (c) the incorrect labelling or description of any Waste Shipment;
- (d) any breach of a Law by the Customer or the Customer's Personnel; or
- (e) any breach of a Law by WestRex or any WestRex Personnel caused directly or indirectly by a breach of the Contract by the Customer or any unlawful or negligent act or omission of the Customer or the Customer's Personnel.

16.7 The Customer's liability to indemnify an Indemnified Party under clause 16.6 is reduced proportionately to the extent that the Loss is caused or contributed to by a breach of contract by WestRex or the negligent or unlawful act or omission of the Indemnified Party.

16.8 WestRex may claim for the indemnified amounts on demand. If WestRex pays for such amounts, interest on the total costs and penalties will accrue at the Interest Rate commencing on the date of payment.

**17. Insurance**

17.1 The Customer must effect and maintain (or be insured under), and ensure that all of its subcontractors effect and maintain (or are insured under) each of the following insurances at all times during the Term and as a condition of accessing a Facility:

- (a) public and third party liability insurance, including product liability insurance, covering legal liability for damage to any real or personal property (including the property of WestRex) personal injury, illness or death of any person. Unless otherwise stated in the Contract, such insurance must have an indemnity limit of not less than \$20 million per event and in the aggregate;
- (b) workers' compensation insurance as required by law; and
- (c) motor vehicle liability insurance, with a limit of indemnity of not less than \$20 million per occurrence, covering liability to third parties for bodily injury or death, or loss of or damage to tangible property arising out of the use of any vehicles that are registered (or are capable of being registered) for road use, for any vehicle used in connection with the Contract, including for the transport of Waste to or from a Facility.

17.2 WestRex must effect and maintain (or be insured under), and ensure that all of its subcontractors effect and maintain (or are insured under) each of the following insurances at all times during the Term:

- (a) public and third party liability insurance, including product liability insurance, covering legal liability for damage to any real or personal property (including the property of the Customer) personal injury, illness or death of any person, with an indemnity limit of not less than \$20 million per event and in the aggregate;

- (b) workers' compensation insurance as required by law; and
- (c) motor vehicle liability insurance, for the duration of the Services with a limit of indemnity of not less than \$20 million per occurrence, covering liability to third parties for bodily injury or death, or loss of or damage to tangible property arising out of the use of any vehicles that are registered (or are capable of being registered) for road use, for any vehicle used in connection with the Contract.

17.3 A Party must produce evidence, on demand and to the reasonable satisfaction of the other Party, that such insurances have been effected and maintained.

**18. Term and Termination**

18.1 The Contract commences on the Commencement Date and, unless otherwise terminated in accordance with the Contract, continues for the Term.

18.2 WestRex may terminate the Contract by written notice to the Customer if:

- (a) the Customer has not complied with the terms of payment pursuant to clause 10;
- (b) the Customer is subject to an Insolvency Event; or
- (c) the Customer is otherwise in breach of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from WestRex requesting the breach be remedied.

18.3 The Customer may terminate the Contract by written notice to WestRex if:

- (a) WestRex is subject to an Insolvency Event; or
- (b) WestRex is otherwise in breach of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from the Customer requesting the breach be remedied.

18.4 Clauses 18.2(b) and 18.3(a) do not apply if the Defaulting Party enters into voluntary administration, receivership or is subject to a scheme of arrangement, as contemplated by the Ipso Facto Law Reform. For clarity, this clause 18.4 will only apply while the administration, receivership or scheme of arrangement is ongoing, and will cease in the event that the Defaulting Party is wound up.

18.5 The Customer must pay for all Services performed prior to the termination of the Contract.

18.6 If these Terms and Conditions form part of a Services Agreement, unless the Services Agreement expressly provides to the contrary, either party may terminate the Contract by not less than 30 days' written notice to the other party.

18.7 Termination of a Services Agreement under clause 18.6 does not terminate any Quotation for which a Delivery Time is booked before the effective date of the termination.

**19. Force Majeure**

Neither party will be liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed by a Force Majeure Event provided that it gives notice to the other party of the delay and uses reasonable efforts to remedy the cause of the delay as soon as reasonably practicable.

**20. Disputes**

20.1 Nothing in this clause 20 prevents WestRex or the Customer seeking urgent injunctive or other interim relief from a court, or from continuing existing court proceedings.

20.2 It is a condition precedent to the commencement of any proceedings in any court in any jurisdiction (other than for urgent interlocutory relief) that the parties first follow the procedure in this clause 20.



- 20.3 A party claiming that a dispute has arisen out of or in connection with the Contract (**Dispute**) must provide the other party with written notice of the nature of the Dispute and the relevant facts.
- 20.4 In the first instance, the Dispute will be referred to the representatives of each party. A meeting of the representatives must be convened and held by WestRex and the Customer as soon as reasonably practicable to attempt to resolve the Dispute.
- 20.5 If a Dispute is not resolved within twenty (20) Business Days after the issue of a notice under clause 20.3, either party may commence court proceedings for the resolution of the Dispute.
- 20.6 Each party must bear its own costs of complying with this clause 20.

## 21. Notices

- 21.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
  - (b) marked for the attention of the person, and hand delivered or sent by prepaid post or email to the recipient's address, as varied by any Notice given by the recipient to the sender.
- 21.2 Communications by email need not be marked for the attention in the way required by clause 21.1(b). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.
- 21.3 A Notice given in accordance with clause 21.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by prepaid post, six (6) Business Days after the date of posting (or ten (10) Business Days after the date of posting if posted to or from a place outside the country of delivery); or
  - (c) if sent by email, at the time the email was sent unless the sender receives an automated message that the email has not been delivered,
- but if receipt is not on a Business Day or is after 5.00pm on a Business Day (in the time zone of the addressee), the Notice is taken to be received at 9.00am on the next Business Day.
- 21.4 For the purposes of this clause 21, the address of each Party, unless and until amended under clause 21.1(b) is as follows:
- WestRex: As set out in the Quotation.
- The Customer: As set out in the Quotation Request.

## 22. Assignment

- 22.1 WestRex reserves the right to assign its rights or novate its rights or obligations under the Contract (in whole or in part) to any person with the prior written consent of the Customer, which consent must not be unreasonably withheld.
- 22.2 The Customer may not assign its rights or novate its rights or obligations under the Contract (in whole or in part) to any person without the prior written consent of WestRex, which consent must not be unreasonably withheld.

## 23. Severance

If any provision or part of any provision of the Contract is invalid, illegal or unenforceable, such provision or part thereof will be severed from the Contract and the remainder will continue in full force and effect.

## 24. Waiver

Waiver of any power or right under this agreement must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver.

## 25. Governing Law and Jurisdiction

- 25.1 The Contract will be governed by and construed in accordance with the laws in force in Queensland.
- 25.2 Each party submits to the non-exclusive jurisdiction of the courts of Queensland.