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## **Standard Terms and Conditions for the Supply of Services**

### **Application of these Standard Terms and Conditions**

1.1 JM Ecotech Solutions Co.(hereinafter referred to as “Ecotech”) provides a range of environmental remediation and waste treatment services to its customers. The elements which comprise these services may include one or more of the following: plant and equipment; chemical reagents; project management and other personnel; technological and chemistry know-how; site monitoring and assessment; laboratory testing and analysis; and reporting.

1.2 These Standard Terms and Conditions for the Supply of Services (the “Standard Terms”) apply to all agreements for the sale and delivery of services by Ecotech. These Standard Terms constitute a legally binding contract between Ecotech and the Customer.

1.3 No addition or modification to these Standard Terms, nor any other term or condition put forward by the Customer or printed on or conditional to the Customer’s Purchase Order, shall have any legal or binding effect unless expressly agreed to in writing by Ecotech.

1.4 In these Standard Terms: “Confidential Information” means any information related to the Intellectual Property shared by the Parties pursuant to a Proposal and these Standard Terms.

“Contract” means the legal and binding agreement entered into between the Customer and Ecotech comprising the Proposal, the Purchase Order and these Standard Terms.

“Customer” means any person, agency, organisation, firm or company, or other incorporated or unincorporated body who enters into a Contract with Ecotech and who agrees to accept and pay for the supply of Goods or Services from Ecotech.

“Equipment” means any plant, equipment, machinery, or tools owned by Ecotech, which is furnished to the Customer for its use as part of the Service but which remains the property of Ecotech.

“Fee” means the charge by Ecotech to the Customer for the Goods or Service as defined by the Proposal.

“Goods” mean any products, chemical reagents, plant, equipment, instruments, tools, or other physical item supplied by Ecotech to the Customer in order to implement the Service.

“Intellectual Property” means the trade secrets, trade names, trade marks, service marks, copyrights, drawings, illustrations, diagrams, flowcharts, reports, designs, specifications, formulae, know-how, procedural protocols and methods, manuals, samples, models, patterns, and other know-how of Ecotech.

“Legislative Requirement” means any Act, ordinance, regulation, by-law, order, award or proclamation of the Country of the Philippines, a State or Territory, a local government authority or other relevant government or authority in the territory in which the Service is being carried out.

“Party” means a Party to these Standard Terms, namely Ecotech and the Customer.

“Proposal” means the written quotation, contract document and/or technical proposal submitted by Ecotech to the Customer for the provision of the Goods or Services described therein, which is accepted by the Customer as evidenced by the issuance of a Purchase Order.

“Purchase Order” means a formal, official purchase order or other formal notification issued by the Customer approving provision of the Service.

“Service” means all technical services, including but not limited to the Goods, the Equipment, technology solutions and know how, waste treatment and site remediation services, sold and provided by Ecotech to the Customer under a Contract.

“Site” means any land, facility, plant or premises occupied by a Customer or any other place, including any delivery point, to which Ecotech requires access for the provision of the Service.

“Term” means from the date a Purchase Order for the Service is issued by the Customer through to the delivery of the Service by Ecotech.

“Variation” means written advice by the Customer to vary the Contract for additional or modified work by Ecotech; a variation cannot reduce the Fee without the prior written consent of Ecotech.

## **Scope of Service;**

### **Contract**

2.1 Ecotech intends to employ the methods, procedures, chemical reagents, techniques and personnel as set out in the Proposal to deliver the Service, but reserves the right to modify such items, subject to consultation with the Customer.

2.2 The Proposal outlines, among other things, the scope of work contemplated by the Service, the agreed Fee for the Service, the payment schedule for the Service, and other matters relevant to the provision of Service.

2.3 The Customer agrees that by issuing the Purchase Order it agrees to enter into the Contract and accepts the Fee, payment terms, payment amounts, and other elements of the Proposal along with these Standard Terms.

### **Fee**

3.1 The Customer is not liable for any cost, liability or expense incurred by Ecotech in performing its obligations under the Contract, except as provided in the Proposal.

3.2 The Fee for the Service will be specified in the Proposal. Unless specifically quoted as a fixed Fee for a pre-determined period or subject to price changes in the Proposal to which these Standard Terms are a schedule or otherwise agreed in writing, all Fees are subject to variation from time-to-time by Ecotech, who will notify such variations to the Customer accordingly.

3.3 All Fees, unless otherwise stated in the Proposal, do not include transportation costs or charges relating to transportation, handling or storage, which costs shall be the sole responsibility of the Customer.

3.4 Any additional fees to be charged by Ecotech to the Customer must be the subject of a Variation.

3.5 Unless stated otherwise, all Fees are exclusive of Value Added Tax (VAT) or any other tax, duty or levy.

3.6 VAT or any other tax (when applicable) will be charged at the rate ruling at the time of supply.

### **Payment**

4.1 Ecotech will issue the Customer an invoice on the first available business day after the completion of the Service (or on a similar date if related to a progress payment or as specified in the Proposal). The invoice will include a description of the Service, date of performance of the Service, any applicable VAT, any discounts or set-offs (if applicable), and Ecotech's address for payment.

4.2 Unless otherwise agreed to in writing (e.g. as specified in the Proposal), full payment by the Customer of all invoices issued by Ecotech must reach Ecotech by the thirtieth (30th) day following the issuance of a tax invoice by Ecotech.

4.3 Ecotech should be notified immediately of any error on a invoice.

4.4 Payment of the Fee is evidence and admission by the Customer that the Service has been provided by Ecotech.

4.5 The Customer shall not make any set-off or raise any counterclaim in diminution of the sums due for the Fee, but must pay the Fee in accordance with the above provisions and other charges (if any) on the date(s) agreed.

4.6 If during the performance of the Contract any Fee payment is overdue or if the Customer becomes insolvent then Ecotech is not obligated to continue performance under the Contract and may stop the delivery of Goods or provision of Services to the Customer, and may terminate the Contract without further obligation to the Customer.

4.7 Upon default by the Customer of a Fee payment when due, payment shall become immediately due for all Goods or Services supplied, and Ecotech may withhold all subsequent work until the full Fee is settled. Acceptance by Ecotech of less than full payment of the Fee shall not be a waiver of any of its other rights hereunder.

4.8 Ecotech may charge interest on any Fee amount overdue at the rate of three percent (3%) per month compounding monthly.

### **Subcontracting**

5.1 Ecotech may subcontract or allow a subcontractor to assign or subcontract the delivery of the Service or any part of it.

5.2 From time-to-time, Ecotech will provide to the Customer particulars in writing of any work to be subcontracted and the name and the address of the subcontractor so that the Customer has current details of work which has been subcontracted.

5.3 Approval to subcontract shall not relieve Ecotech of any obligation under these Standard Terms.

### **Delivery and Storage**

6.1 Ecotech reserves the right to charge for delivery of any Goods or Equipment.

6.2 If full delivery of Goods or Equipment cannot be made to the agreed delivery point due to a Customer's act or omission, Ecotech may additionally charge for abortive journeys or part deliveries.

6.3 If the Customer fails to accept delivery of Goods or Equipment, Ecotech shall be entitled to make arrangements for storage of Goods or Equipment and to charge the Customer accordingly, and the Customer shall become responsible for the risk of loss or damage to Goods or Equipment and for paying the Fee as if the Goods or Equipment had been delivered.

6.4 Any stated shipment or delivery dates for Goods or Equipment are approximate only and are contingent upon the Customer's prompt acceptance of Ecotech's Proposal offer. Ecotech will use every reasonable effort to meet estimated shipment or delivery dates. Ecotech's obligation with respect to the shipment of Goods or Equipment shall not extend beyond (a) putting the Goods or Equipment in the possession of a suitable carrier and making a contract for the transportation thereof as may be reasonable, having due regard for the nature of the Goods or Equipment, and (b) delivering within a reasonable time such documents as may be necessary for the Customer to obtain possession of the Goods or Equipment. Delay in shipment shall not be considered as a default under this Contract nor give rise to any liability on the part of Ecotech for any incidental, special or consequential damage.

### **Reservation of Ownership of Goods**

7.1 Goods being sold to the Customer by Ecotech shall remain the property of Ecotech until the full Fee has been paid.

7.2 In the case of Goods which after delivery cannot be distinguished from or become intermingled with other goods of the same or similar nature, any such Goods in the possession of the Customer or his agent shall be conclusively deemed to be or to include Goods which are the property of Ecotech by virtue of sub-clause 7.1, and Ecotech shall have the right to nominate at its discretion which part of such Goods are its property.

7.3 In the event that a Fee is not paid on the date(s) specified, Ecotech shall have the right to enter the Site to recover any Equipment or unpaid Goods.

### **Risk in Goods**

8.1 The risk in Goods being sold shall pass to the Customer or his agent upon delivery at the agreed delivery point or upon collection by the Customer or his agent.

8.2 The Customer shall have the right to inspect the Goods upon their receipt. Any shortage, loss, damage or discrepancy must be notified promptly to Ecotech or to the designated carrier, if not Ecotech. Ecotech shall not be liable unless notification (confirmed in writing) is received within three (3) business days of delivery or collection in the case of shortage, damage or discrepancy or within fourteen (14) business days from the date of intended despatch in the case of non-delivery.

Damaged Goods and packing must be kept for inspection by Ecotech and/or the carrier. The Customer's failure to inspect the Goods or failure to notify Ecotech in writing that the Goods are non-conforming shall constitute a waiver of the Customer's right to inspect and/or reject the Goods for nonconformity and shall be equivalent to an irrevocable acceptance of the Goods by the Customer.

### **Site Access**

9.1 Pursuant to clauses 19.1 and 19.3 of these Standard Terms, the Customer shall allow Ecotech access to the Customer's site at all reasonable times for the purpose of supplying the Services, and installing, inspecting, maintaining, repairing, replacing or withdrawing Goods or Equipment.

9.2 Access to the Site will only confer on Ecotech a right to such use as is necessary to enable Ecotech to execute the Service.

9.3 The Customer's employees, agents, consultants and contractors may at any time have access to any part of the Site for any purpose. Ecotech must permit the execution of work on the Site by persons engaged or authorised by the Customer and must co-operate with them and coordinate provision of the Service under the Contract with their work.

9.4 Unless otherwise agreed, the Customer shall provide free of charge during installation, maintenance, servicing or removal of Goods or Equipment ancillary services that Ecotech, its employees, sub-contractors and their vehicles may reasonably require. Such ancillary services include, but are not limited to, provision of labour for unloading or loading Goods or Equipment, electricity, water and materials for use during testing and commissioning.

9.5 Ecotech may use hired cranes or other heavy equipment for the installation, servicing and removal of Goods or Equipment. If so, Ecotech, the equipment operator and the Customer shall, by prior agreement, settle crane access and requirements, it being the Customer's responsibility (provided that the crane operator has taken all visual and reasonable precautions) to ensure that what is provided is safe and adequate.

9.6 The Customer shall be responsible for the safe custody of Equipment and its sub-contractors' equipment, materials and other property on the Site during installation, operation, servicing or removal of Equipment. The Customer shall have no rights over any property of Ecotech (or its agents or subcontractors) brought onto the Site.

9.7 Ecotech will, during the period of access to the Site, take all necessary care to avoid loss, damage or injury to any person or property and will comply with the Customer's policies and procedures at all time.

### **Installation and Commissioning on Site**

10.1 Where Ecotech agrees to carry out installation of Goods or Equipment, Ecotech and the Customer shall bear their respective responsibilities and charges for supplying equipment, materials and service, including labour and preparatory works, as specified in the Proposal.

10.2 The Customer shall obtain any planning permission, building regulation or other statutory consent required for the installation of Goods or Equipment in accordance with any specifications contained in the Proposal. All works carried out by the Customer and Ecotech will comply with such consents. The Customer's work shall also be carried out to Ecotech's reasonable satisfaction and in the event of Ecotech not being so satisfied it reserves the right to cancel in full any relevant Contract and all costs and expenses incurred by Ecotech up to such date shall be for the account of the Customer.

10.3 All premises, plant, machinery and structures upon or in relation to which the Service is to be carried out shall be ready and in suitable condition for Ecotech to proceed, and any materials or service for which the Customer is responsible shall be readily available to Ecotech.

10.4 Ecotech's obligations in relation to the installation of Goods and/or Equipment shall be fulfilled and the Customer's responsibility for such installation shall commence when Ecotech has completed tests that reasonably establish that the installation is in good and safe working order to the satisfaction of the Customer and in accordance with the specifications contained in the Proposal.

10.5 Ecotech will endeavour to complete the installation within the time specified but accepts no liability for delay in completion. Ecotech may increase the installation charge to cover extra costs caused by additions or Variations to the Proposal or delays beyond the reasonable control of Ecotech.

10.6 Any person engaged in work on the Customer's site in connection with the Contract (other than an employee or agent of Ecotech) shall be deemed to be an employee or agent of the Customer. The Customer shall be liable for any injury or damage suffered by Ecotech, its employees or agents on the Customer's site, except to the extent caused by the negligence of Ecotech, its employees or agents.

### **Customer's Responsibilities and Obligations**

11.1 The Customer must pay Ecotech the Fee together with any additions or deductions made pursuant to these Standard Terms.

11.2 The Customer warrants that it is not insolvent at law and there is no unfulfilled or unsatisfied judgment or Court order outstanding against it.

11.3 The Customer warrants it is registered for GST and warrants it will notify Ecotech if it ceases to be registered for GST.

11.4 The Customer warrants that it has provided Ecotech with complete and accurate information concerning the Site, its policies and procedures, and its service needs.

11.5 From time-to-time, the Customer may have in its possession Equipment, which is the sole property of Ecotech. The Customer shall be responsible for the safe custody and good condition of Equipment from handover until Ecotech signs for its return. Any loss or damage must be reported promptly to Ecotech. Advice on safe custody and good condition of Equipment is available from Ecotech on request. In particular the Customer shall:

- (a) use the Equipment properly and safely. In no event is Ecotech responsible for attachments beyond the agreed takeover point;
- (b) not use the Equipment for any purpose other than the purpose for which it was designed and installed;
- (c) ensure that all personnel who operate the Equipment have received adequate training;

- (d) use all reasonable precaution to ensure that no foreign matter enters the Equipment;
- (e) ensure that nothing is installed or operated in the vicinity of the Equipment likely to create a hazard;
- (f) ensure that the Equipment is kept clean and the surrounding area is kept clear;
- (g) ensure that the Equipment is not moved or altered after installation, without Ecotech's written permission;
- (h) not obliterate, remove or deface identification marks or notices on the Equipment; and
- (i) carry out routine inspection of all pipe work and the Equipment for which Ecotech does not have maintenance responsibility.

11.6 The Customer shall compensate Ecotech in the case of replacement at current selling price or repair at current charges, for loss of or damage to the Equipment (fair wear and tear excepted) unless due to Ecotech's negligence.

11.7 The Customer shall not mortgage, pledge, sell, or lend or pass in possession of any Equipment.

11.8 The Customer shall secure all necessary consents and approvals required to implement the Service on the Site, and will comply with all relevant environmental and occupational health and safety Legislative Requirements which are in any way applicable to the performance of its obligation under these Standard Terms.

11.9 Unless otherwise agreed in writing all pipelines upstream or downstream of the agreed take-over point of the Goods and Equipment, whether or not installed by Ecotech, are and remain the Customer's property and responsibility.

### **Ecotech's Responsibilities and Obligations**

12.1 Ecotech must execute and complete the Service under this Contract and in accordance with the Proposal.

12.2 Ecotech must:

- (a) supply materials, labour, plant, equipment and/or anything else necessary for carrying out of the Service;
- (b) carry out the Service in accordance with the Proposal, these Standard Terms, and Legislative Requirements;
- (c) provide all things and take all measures necessary to protect people and property;
- (d) use reasonable endeavours to avoid and minimise the effect of inundation arising from the use of Goods and/or Equipment at the Site;
- (e) avoid unnecessary interference with the passage of people and vehicles; and
- (f) prevent (or if prevention is not practicable, minimise as much as practicable) disruption to any neighbours or any other person associated with the Site.

12.3 Ecotech warrants that it is suitably qualified and experienced and will exercise the necessary professional skill, care and diligence in the execution and completion of the Service.

12.4 Ecotech prepared the Proposal with the usual care and thoroughness of the profession. The Proposal was based on data and other information provided by the client and generally accepted practices and standards at the time it was prepared. No other warranty, expressed or implied, is made as to the accuracy or professional advice contained therein. Ecotech has made no independent valuation of data beyond the scope of work contained therein, and Ecotech assumes no responsibility for omissions or the accuracy of the information provided.

12.5 Ecotech has satisfied itself of the Legislative Requirements relevant to the Service and its obligations with respect to the Customer's Site policies.

12.6 Ecotech has made proper allowance in the Fee for all matters and risks which might reasonably be expected or anticipated by Ecotech and which might impact upon Ecotech's ability to complete the Service.

12.7 Ecotech has, or will be able to, obtain all necessary consents, permits or authorities necessary in order to carry out the Service, notwithstanding any consents, permits or authorities for which the Customer is responsible.

12.8 Ecotech will make fully aware, educate and train its employees or subcontractors and agents in relation to the Customer's Site policies.

12.9 Ecotech warrants it is registered for GST.

12.10 Ecotech warrants that it is not insolvent at law there is no unfulfilled or unsatisfied judgment or Court order outstanding against it.

12.11 In the event of defect, malfunction or damage to the Equipment for which Ecotech has maintenance responsibility, the Customer shall notify Ecotech and Ecotech will affect necessary repairs.

12.12 Ecotech reserves the right to charge the Customer for repair work due to the Customer's misuse of the Equipment or the Customer's failure to take proper care of it.

12.13 Ecotech's responsibility shall be discharged when Ecotech is satisfied the repair or maintenance it finds to be necessary has been properly effected. The Customer shall have no claim against Ecotech for damage or loss or expense arising from any failure of the Equipment or delay in restoring the Equipment to working order.

12.14 Ecotech reserves the right to replace the Equipment during the Contract.

12.15 Ecotech will comply with all relevant environmental and occupational health and safety Legislative Requirements which are in any way applicable to the performance of its obligation under these Standard Terms.

12.16 Ecotech shall not be responsible or liable for any delay directly or indirectly resulting from or contributed to by limitations on Ecotech's or its suppliers' capabilities beyond its reasonable control, or to delays due to fires, explosions, acts of God, strikes or other differences with workers, shortage of utility, facility, components or labour, delay in transportation, breakdown or accident, war and acts of war, compliance with or actions taken to carry out the intent or purposes of any law or regulation, changes in Services, or any other causes or contingencies not caused by Ecotech or over which Ecotech had no control. In the event that any such delay occurs nothing herein shall be construed in any way as lessening the full amount of Services purchased or sold by Ecotech but only as deferring delivery and payment in the event(s) and to the extent herein provided for.

### **Latent Conditions**

13.1 A "Latent Condition" is:

(a) a physical, biological and/or methodological condition related to the land, plant, industrial location or other place or process to be made available to Ecotech by the Customer for the purpose of delivering the Service or its surroundings, including artificial things at the Site, but excluding weather conditions, which differ materially from the Site conditions if Ecotech had:

(i) examined all information made available in writing by the Customer to Ecotech;

(ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Service and obtainable by the making of reasonable enquiries; and

(iii) inspected the Site and its surroundings (provided that Ecotech has inspected the Site).

(b) a materially adverse condition which may affect the Service; or

(c) any other condition which the Proposal identifies as a Latent Condition.

13.2 If during the execution of these Standard Terms, Ecotech observes, becomes aware or otherwise knows of a Latent Condition which may require a change to the nature or scope of the Service, Ecotech shall forthwith and where possible before the Latent Condition is disturbed, give written notice thereof to the Customer.

13.3 If required by the Customer, Ecotech shall provide a statement in writing specifying:

(a) the Latent Condition encountered and in what respects it differs materially from agreed conditions;

(b) the additional work and additional resources which Ecotech estimates to be necessary to deal with the Latent Condition;

(c) the time Ecotech anticipates will be required to deal with the Latent Condition and the expected delay in achieving delivery of the Service;

(d) Ecotech's estimate of the cost of the measures necessary to deal with the Latent Condition; and

(e) other details reasonably required by the Customer.

13.4 Upon receipt of a notice in writing from Ecotech advising the Customer of a Latent Condition, the Customer shall advise Ecotech whether the Latent Condition constitutes a Variation. If the Variation can be effected, Ecotech shall:

(a) advise the Customer of the effect which Ecotech anticipates that the Variation will have on the Service and any changes to the delivery time; and

(b) provide an estimate of the cost (including delay costs, if any) of the proposed Variation.

13.5 The Customer shall pay Ecotech for the costs of complying with the requirements of the Variation.

13.6 All costs incurred by Ecotech in performing the Variation directed or approved by the Customer shall be added to and form part of the Fee, and shall be paid by the Customer to Ecotech.

13.7 A delay caused by a Latent Condition may justify an extension of the Term.

### **Variations**

14.1 The Customer may change the nature or scope of the Service by issuing a Variation in writing by directing Ecotech to:

(a) increase, decrease or omit any part of the Service;

(b) change the character or quality of any material or work;

- (c) change the levels, lines, positions or dimensions of any part of the Service;
- (d) execute additional work; and/or
- (e) demolish or remove material or work no longer required by the Customer.

14.2 Ecotech shall not vary the work to be undertaken, except as directed by the Customer.

14.3 Ecotech is bound only to execute a Variation which is within the general scope of the Contract.

14.4 Ecotech shall not be bound to execute a Variation directed after the expiry of the Term.

14.5 Upon receipt of a notice in writing from the Customer advising Ecotech of a proposed Variation, Ecotech shall advise the Customer whether the proposed Variation can be effected.

14.6 If the Variation can be effected, Ecotech shall:

- (a) advise the Customer of the effect which Ecotech anticipates that the Variation will have on the Service and any changes to the delivery time; and
- (b) provide an estimate of the cost (including delay costs, if any) of the proposed Variation.

14.7 The Customer shall pay Ecotech for the costs of complying with the requirements of the Variation.

14.8 All costs incurred by Ecotech in performing a Variation directed or approved by the Customer shall be added to and form part of the Fee and shall be paid by the Customer to Ecotech.

14.9 Unless the Customer otherwise directs a Variation, Ecotech shall not be entitled to an extension of time in respect of a Variation or anything arising out of a Variation which would not have arisen had the Variation not been approved.

### **Security; Creditworthiness**

15.1 As security for the payment by the Customer of amounts

payable to Ecotech pursuant to these Standard Terms, the Customer may be required by Ecotech to provide a letter of credit in the amount in form and substance, and from a bank, acceptable to Ecotech (the "Letter of Credit").

15.2 Ecotech shall have the right to draw upon the Letter of Credit to obtain payment of any invoice amount that is past due.

15.3 The Customer's issuance of a Purchase Order constitutes the Customer's acceptance of Ecotech's initial and continuing credit disclosure, investigation and evaluation procedures and policies. Ecotech reserves the right to modify its credit and credit disclosure requirements in light of the Customer's payment performance.

### **Warranty of Goods and Services**

16.1 Ecotech warrants to the Customer that the Goods, Equipment and Service will be supplied and/or performed in a professional manner and using reasonable skill and care.

16.2 Ecotech undertakes to repair, or at its option, replace parts of equipment which fail (fair wear and tear excepted) as a result of a defect in Ecotech's materials or workmanship arising within twelve (12) months of the sale of the equipment to the Customer or the execution of Service by Ecotech as appropriate (or within such other period as may be specified by Ecotech in the Contract having regard to the nature and properties of the Service concerned) and occurring under normal conditions and subject to proper storage, use and maintenance provided that:

- a) the Customer notifies Ecotech promptly in writing with details of any alleged defect or malfunction of equipment; and
- b) the Customer gives Ecotech or its agent the opportunity to inspect the equipment and if reasonably requested by Ecotech the equipment are returned promptly carriage paid (and details of carriage notified in writing to Ecotech in advance);
- c) the equipment have not been repaired, tampered with, modified or altered by anyone other than Ecotech or its agents; and
- d) the warranty is void unless installation, operation and maintenance of the Goods, Equipment and/or Services are done in accordance with Ecotech 's instructions.

16.3 In no event shall Ecotech be liable for any loss, damage, injury or expense resulting from the use or operation of, or erosion or corrosion of, equipment or from ordinary wear and tear of the equipment, unless otherwise agreed in writing.

16.4 In the case of parts not of Ecotech's manufacture, the Customer shall be entitled (subject to compliance with (a), (b) (c) and (d) of clause 16.2 above) only to the benefit of any warranty Ecotech may have from the supplier or manufacturer.

16.5 If equipment is found to be defective, Ecotech undertakes to repair or replace, at its option, a defect in the material or workmanship during the warranty period. All labour required to make such repairs or replacement shall be made by the Customer and at the Customers expense unless otherwise agreed in writing.

16.6 Ecotech may at its option elect to refund or forego a portion of the Contract price and take back equipment supplied in satisfaction of any liability or obligation under clause 16.2 above.

16.7 The foregoing warranty is exclusive and in lieu of all other express or implied warranties, guarantees, agreements, conditions or representations made by any person with respect to the Services made by this offer including any implied warranty of merchantability or fitness for a particular purpose which are hereby specifically disclaimed. The Customer must satisfy itself that the Services are suitable for the conditions under which it intends to use them. In no case will Ecotech be liable for any direct, indirect, special, incidental or consequential damages resulting from a breach of warranty or any other cause including,

but not limited to, loss of use of the product, loss of time, inconvenience, injury, loss or damage to person or property, commercial loss, loss of profits, liabilities of the purchaser to its customers or third persons or other matters not specifically stated, whether based on contract, tort or any other legal theory.

#### **Technical Specifications, Catalogues, Quantities**

17.1 Descriptions, technical specifications, drawings, illustrations or particulars of weights or dimensions given in literature issued by Ecotech while given in good faith shall not form part of the Contract unless specifically incorporated.

Ecotech reserves the right to alter such details in design or arrangement of the Goods, which in its judgement, constitutes an improvement in construction, application or operation. After acceptance of the Proposal any changes in the Services offered or in the type of Goods to be provided will be at the Customer's expense.

17.2 Quantities in the Proposal are estimate quantities only. A Variation is not required to be given by Ecotech by reason of the actual quantity of an item required to perform the Service being greater or lesser than the quantity shown in the Proposal.

17.3 Ecotech retains copyright and ownership of its drawings specifications, data and other documents. However, Ecotech permits and encourages the copying and dissemination of its safety literature.

#### **Statutory Requirements; Political Risk**

18.1 The Customer must advise Ecotech of and assist Ecotech to ensure that Ecotech complies with all Legislative Requirements in which the Service is being provided.

18.2 If any requirement of any law of any jurisdiction in which the Service is being carried out is at variance with a provision of the Contract, i.e., a Variation, as soon as the Customer or Ecotech discovers the Variation they must notify the other Party in writing specifying the difference.

18.3 If any requirement of any law of any jurisdiction in which the Service is being performed necessitates a change to the Service or method of working as may be specified in the Contract, the Customer shall direct a Variation and the Customer will pay the cost for implementing that change.

18.4 The Customer:

(a) shall pay any fees or charges necessary to comply with the requirements referred to in Clause 18.1; and

(b) if a requirement necessitates the provision or expansion of work due to a municipal, public or statutory authority in relation to the Service, shall pay any or charge payable to the authority for the work.

18.5 Ecotech shall give the Customer copies of documents issued to Ecotech by municipal, public or other statutory authorities in respect of the Service.

18.6 In addition to insurance requirements specified elsewhere in these Standard Terms, Ecotech may, in its discretion, elect to take out an Export Finance and Insurance Corporation ("EFIC") policy (or its equivalent) to insure any political and sovereign risks that it may bear arising out of or in connection with delivering the Service. If Ecotech elects to take out an EFIC policy, the Customer must reimburse Ecotech for the cost of taking out and maintaining the EFIC policy, at the written request of Ecotech.

#### **Insurance**

19.1 Before Ecotech commences work on the Service, the Customer may be required at its cost to take out or have in effect an insurance policy acceptable to Ecotech covering all risks associated with personal injury or death, including claims arising under any statute or common law, the loss of or damage to property (real or personal) of any person including existing property in or upon which the Service is being carried out, including any Equipment, arising out of or in connection with delivery of the Service, and this indemnity is not defeated or reduced by reason of any negligence, omission, default or breach of any non delegable duty of care of Ecotech or any person for whom the Contract is responsible.

19.2 The insurance policy may be in the joint names of the Customer and Ecotech, and shall cover Ecotech, the Customer and all subcontractors employed from time-to-time in relation to the Service for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by Ecotech, and shall be in effect until no less than twelve (12) months from the end of the Term.

19.3 Ecotech shall take out and maintain insurance covering any loss of or damage to any Goods, Equipment, plant and equipment, and appliances or things used in the delivery of the Service which Ecotech or its subcontractors bring onto the Site for the performance of the Service. Such insurance will cover any loss of or damage to the Goods, Equipment, plant and equipment and appliances or things both on and off the Site during the performance of the Service and will be limited to the replacement value of such.

19.4 Before Ecotech commences work, the Customer may be required to take out a public liability policy of insurance which covers the Customer, Ecotech, and all subcontractors employed from time-to-time in connection with the Service for their respective rights and interests and which covers their liabilities to third parties. The policy shall cover Ecotech's liability to the Customer and the Customer's liability to Ecotech for loss of or damage to property (other than property required to be insured by clause 19.3) and the death of or injury to any person (other than liability which is required by law to be insured under a Workers Compensation Policy). The public liability policy of insurance shall be for an amount mutually agreed by both parties, and shall be maintained until no less than twelve (12) months from the end of the Term.

19.5 Before commencing work Ecotech shall insure against liability for death of or injury to persons employed by Ecotech, including liability by statute and at common law. The insurance cover shall be maintained until no less than twelve (12) months from the end of the Term.

19.6 Ecotech shall ensure that every subcontractor is similarly insured.

19.7 The Party effecting insurance under the terms of this clause 19 shall ensure that each policy of insurance will:

- (a) whenever the insurer gives the Party a notice of cancellation or other notice concerning the policy, inform the other Party in writing that the notice has been given; and
- (b) whenever the Party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the other Party and prior to the insurer giving any notice of cancellation.

19.8 Both parties must immediately give the other notice in writing of any occurrence that may give rise to a claim under a policy of insurance required by the terms of this clause 19 and must keep each other informed of subsequent developments concerning the claim.

## **Time**

20.1 Except to the extent that the Proposal expressly states otherwise, all references to the amount of time that will be expended in carrying out the Service and the date by which all or any part of the Service will be complete, are estimates only.

20.2 Ecotech shall commence work on the Site within no more than fourteen (14) days after the Customer has granted Ecotech access to the Site to enable Ecotech to commence work.

20.3 When it becomes evident to Ecotech that anything, including an act or omission of the Customer or the Customer's employees, consultants and other contractors or agents, may delay the delivery of the Service, Ecotech shall promptly notify the Customer in writing with details of the possible delay and the cause.

20.4 If it becomes evident to the Customer that anything they are obliged to do or provide under these Standard Terms may be delayed, the Customer shall give written notice to Ecotech of the extent of such likely delay.

20.5 If Ecotech is or will be delayed in the delivery of the Service by any cause beyond the reasonable control of Ecotech, including a cause described in the next sentence and within fourteen (14) days after the delay occurs, Ecotech will give the Customer a written claim for an extension of time setting out the facts on which the claim is based and including the number of days required for the extension, and Ecotech shall be entitled to an extension of time. The causes include delays brought about by the Customer, the Customer's employees, consultants or other contractors and agents, a Latent Condition, inclement weather, industrial action or strikes, a Variation, changes in the law, directions or delays by municipal, public or statutory authorities, any breach of these Standard Terms by the Customer, or any other cause which is expressly stated in these Standard Terms to be a cause for an extension of time.

20.6 If Ecotech is entitled to an extension of time, the Customer shall, within fourteen (14) days after receipt of the notice of the number of days an extension is claimed, grant a reasonable extension of time. If within fourteen (14) days the Customer does not grant the full extension of time claimed, the Customer shall before the expiration of the fourteen (14) days give Ecotech notice in writing of the reason.

20.7 In determining a reasonable extension of time for an event causing delay, the Customer shall have regard to whether Ecotech has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.

## **Confidentiality; Intellectual Property**

21.1 Drawings, specifications, recipes, processes, samples, models, patterns and the like, supplied by either the Customer to Ecotech or Ecotech to the Customer marked or otherwise identified or indicated as confidential, shall be regarded as Confidential Information by the Parties, and shall not be disclosed to a third party except with the prior agreement of the Parties to these Standard Terms.

21.2 The Customer must ensure that its employees, agents, directors, partners, shareholders or consultants must not disclose to any person any Confidential Information relating to the Service during, on expiration or after termination of the Contract.

21.3 These Standard Terms confer on neither Party any right to use the name, service marks, trademarks, trade names, patents, trade secrets or proprietary information of the other Party except as expressly provided herein. The Customer shall not use or make reference to the Intellectual Property without the prior written consent of Ecotech.

21.4 The Customer acknowledges that as between the Customer and Ecotech the Intellectual Property in the methodologies and technology used to deliver the Service remains the property of Ecotech.

21.5 Ecotech acknowledges that certain Intellectual Property of Ecotech will relate to the Service ("Service Intellectual Property"), and Ecotech will grant to the Customer a perpetual, irrevocable, royalty-free and non-exclusive license to use such Service Intellectual Property for the purpose of maintaining and operating the Service.

21.6 On creation, ownership of the Service Intellectual Property vests in the Customer.

21.7 If required by Ecotech, the Customer and certain of its employees, directors, agents, contractors and consultants to whom Confidential Information is disclosed may be required to execute a deed of confidentiality in a form satisfactory to Ecotech. Such deeds of confidentiality will be made available to Ecotech at the request of an authorised representative of Ecotech.

21.8 Ecotech does not warrant that any design, materials, documents and methods of working provided by Ecotech will not infringe any patent, registered design, trademark or name, copyright or other protected right.

21.9 For a period of three (3) years from the date of disclosure thereof, each of the Parties to these Standard Terms will treat these Standard Terms, its notices, supplements, Service information, descriptions, Fees, methods of operation, their terms and conditions, and all other information exchanged in the course of the performance of these Standard Terms, as strictly confidential. Neither Party will disclose any of this information or any of these materials to any person who is not a Party to these Standard Terms. Notwithstanding the foregoing, each of the Parties to these Standard Terms may disclose the terms and conditions as required by law to regulatory authorities, provided the disclosing Party first notifies the other Party of its intention to make the disclosure and accords the non-disclosing Party an opportunity to seek a protective order, seal or other assurance of confidentiality. This duty of confidentiality extends to all information considered by the communicating Party to be confidential and proprietary. A disclosure made orally is subject to the provisions of this clause.

21.10 Each Party acknowledges that the breach of its obligations pursuant to this clause 21 would cause irreparable harm not fully compensable by money damages, and that an injunction would be necessary to restrain threatened, potential or actual future violations of such obligations.

21.11 Neither Party shall issue any information, publication, document or article for publication concerning the Service in any media without prior approval of the other Party, which approval shall not be unreasonably withheld.

21.12 Any know-how or technical information or documents supplied at any time by Ecotech or its agents or sub-Contractors to the Customer in connection with the Contract or any earlier associated trials shall be treated as confidential by the Customer, its employees and agents and shall not be reproduced or disclosed to any third Party or used for any purpose other than for the purpose of the Contract without Ecotech's written consent, unless and until the same is public knowledge or comes into the Customer's legal possession from a bona fide third Party.

21.13 All confidential information concerning the Customer or any of the Customer's activities will be treated by Ecotech as confidential and shall not be disclosed to any third party (other than Ecotech's professional advisers) unless the Customer gives prior written consent, Ecotech is required by law or by any regulatory authority to make the disclosure, or the information legally enters the public domain.

21.14 The obligation in clauses 21.1 and 21.2 is without limit in time and survives termination or expiry of the main provisions of these Standard Terms.

21.15 Ecotech warrants that Goods of Ecotech 's standard manufacture (but not any particular use of such Goods) are free of third party patent or other intellectual property restrictions in Australia and the Customer accepts full liability for any infringement of patent and other intellectual property rights not covered by the above warranty.

21.16 Ecotech has the exclusive rights to deliver processes and technologies patented by Virotec Global Solutions throughout the Philippines. In the event that such patented processes and/or technologies are utilised in the Contract, Ecotech grants to the Customer a personal, non-transferable and non-sub-licensable licence for use of the process and/or technology for that specific purpose and at that specific site provided by Ecotech to the Customer as part of the Contract. This licence is subject to the payment of a licence fee, the value of which will be defined by Ecotech. Waiver of the licence fee for a pilot or demonstration trial does not imply waiver for any subsequent application of the patented processes and/or technologies at the site. No licence is granted to any other person or for the use of the patented processes and/or technologies at any of the Customer's other sites or for other than that specific purpose.

21.17 Each Party agrees to be bound by the provisions of any Legislative Requirement in relation to the Service that may apply to the other Party with respect to any act done, or practice engaged in, by the other Party in the same way and to the same extent as the other Party would have been bound by them had it been done or engaged in by that Party.

### **Termination; Suspension of Services; Waiver**

22.1 The Customer may suspend provision of the Service by Ecotech for any reason for up to thirty (30) calendar days without being in breach of these Standard Terms. The Customer may instruct Ecotech to re-commence provision of the Service at any time during this thirty- (30) day period.

22.2 If the Customer suspends the Service for more than thirty consecutive calendar (30) days without terminating the Contract for a breach of these Standard Terms by Ecotech, then the Customer will be in breach of these Standard Terms.

22.3 If the Customer suspends and recommences provision of the Service pursuant to clause 22.1 for any reason other than a breach of these Standard Terms by Ecotech, then the Customer must pay Ecotech such costs and expenses as were reasonably and necessarily incurred by Ecotech as a direct consequence of the suspension and commencement.

22.4 If the Customer terminates the Contract for any reason prior to the end of the Term other than for a breach of these Standard Terms by Ecotech and such termination occurs before the Service has been fully provided by Ecotech, then the Customer will pay to Ecotech the full Fee as if the Service had been provided.

22.5 The Contract may be terminated by either Party upon thirty (30) days prior written notice by the Parties or in the event of a default by either Party.

22.6 The following shall constitute an event of default: (a) non-compliance by either Party with these Standard Terms, the Contract or a confidentiality deed;

(b) filing by the Customer of a petition in any court for protection from creditors or relief from its debts, commencement of winding up or liquidation of the

Customer's business, or, if the Customer is an individual or a sole proprietorship, the death or incapacity of its principal(s);

(c) the inability or failure of the Customer to pay its obligations as they come due, the filing against the Customer of a petition in bankruptcy or seeking the liquidation of the Customer's assets or the appointment of a receiver or trustee for the assets of the Customer, where such petition is not dismissed within forty-five (45) days, or cessation of Customer's business for more than thirty (30) days; or

(d) conduct by the Customer that could draw Ecotech into disrepute or failure by the Customer to maintain standards of conduct and ethical business dealings in accordance with the Contract.

22.7 The Contract will terminate only if a default is not cured within thirty (30) days after written notice thereof to the defaulting Party, or wilful or intentional violations of any other provision of these Standard Terms for which there will be no right of cure. However, following a default which is cured within the permitted cure period, any subsequent default of the same provision will entitle the other Party to terminate the Contract immediately upon notice without opportunity to cure.

22.8 An aggrieved Party shall have the right to terminate the Contract after giving to the defaulting Party written notice and an opportunity to cure, as follows:

(a) for breach of any provision of clause 22.2, no period of prior notice or opportunity to cure is required; however notice contemporaneous with termination shall be provided;

(b) for breach of an obligation to pay Fees when due, five (5) days notice and opportunity to cure; and (c) for breach of any other obligation set forth in these Standard Terms, thirty (30) days notice and opportunity to cure. Ecotech reserves the right to suspend Service to the Customer immediately and without prior notice upon default by the Customer of its obligations to pay Fees when due or to provide a Letter of Credit if required by Ecotech.

22.9 No waiver by either Party of any provision of the Contract shall be binding upon such Party unless made expressly and in writing. No waiver as to one occurrence or condition shall relate to subsequent occurrences or conditions of the same or similar type.

22.10 The Customer will pay all legal costs, fees and any other expenses incurred by Ecotech in respect to a default by the Customer.

## **Dispute Resolution**

23.1 The standard terms and conditions of the service shall be governed by and in accordance with the laws of the Republic of the Philippines. The venue of any and all the disputes arising in connection to the standard terms and conditions shall be exclusively lodge either in competent court(s) in Caloocan City or Valenzuela City, Philippines.

## **Authority; Indemnification; Disclaimers of Liability**

24.1 The representations and warranties of the Customer set forth in these Standard Terms shall be deemed to be continued and renewed throughout the Term and throughout any renewal period.

24.2 The Customer shall indemnify and hold harmless Ecotech, its stockholders, officers, directors, employees, and agents from and against any and all claims, losses, damages and liabilities (including Ecotech's legal fees) arising from the breach of the Customer's representations and warranties set forth in the Contract.

24.3 Neither Party shall be liable to the other Party or to any other person or organization for any indirect, special, incidental or consequential loss or damages, howsoever caused, including, without limitation, by such Party's negligence or the negligence of its employees or otherwise, arising out of these Standard Terms, whether such loss or damage was due to mistakes, omissions, interruptions, delays, errors or defects in the carrying out of either Party's obligations or arising in any other manner and the performance or non-performance of obligations hereunder or otherwise.

24.4 The Customer hereby agrees to indemnify and save Ecotech, its directors, officers and employees, harmless from all loss, liability, damages, costs and expenses (including legal fees and other expenses of litigation), resulting from any claim or action for personal injury or death or damage to or loss of property or violation of or failure to comply with any applicable law, regulation, rule or order arising from the use by the Customer, its employees, agents, Customers, invitees or by other third parties of the Services to be provided under these Standard Terms. The Customer, at its expense, shall defend any such claim or suit against Ecotech and/or its directors, officers and employees and shall pay any judgement resulting therefrom.

24.5 Ecotech shall have the right, but not the duty, to participate in the defence of any such claim or suit with legal support of its own selection without relieving the Customer of any of its obligations hereunder. This indemnity shall survive delivery of the Goods or performance of the Services under the Contract.

## **Force Majeure**

25.1 Where circumstances beyond the reasonable control of Ecotech result in an interruption or suspension of Services by Ecotech or failure by Ecotech to carry out the Services in accordance with the Contract (i.e., "Force Majeure"), Ecotech shall have no liability to the Customer in respect of such interruption, suspension or failure. The Customer will be informed as soon as reasonably possible of any Force Majeure.

25.2 Force Majeure includes, but is not limited to:

- a) the Customer not providing appropriate facilities, access or information or providing inaccurate information;
- b) physical or geological conditions or the presence of hazardous materials or waste of a nature or in locations, quantities, concentrations or conditions which could not reasonably have been expected by Ecotech;
- c) fire, storm or tempest;
- d) unavailability of labour, materials or services;
- e) process shutdown or industrial accident;
- f) acts of God or the public enemy;
- g) kidnapping, hijacking, terrorism, riot, civil commotion or war;
- h) strikes, labour disputes or industrial action; or
- i) future changes in applicable law, standards or the practice or requirements of any governmental or other official agency.

25.3 In the event of Force Majeure, the Customer and Ecotech shall enter into negotiations in good faith with a view to resolving the Force Majeure including, where appropriate, amending the Contract in a manner acceptable to both Parties.

25.4 However, nothing in this clause 25 shall relieve the Customer of its obligation to pay Fees when due.

## **Limitation of Liability; Responsibility for Safety and Legal Obligations**

26.1 Ecotech shall not be liable on any grounds whatsoever (whether under the Contract or in negligence or under any other law) for any indirect, consequential or economic loss (including loss of profits) of the Customer.

26.2 Save as aforesaid all warranties or conditions implied by common law or statute into a Contract for the sale of Goods or supply of Services are expressly excluded hereunder except where any such warranty or condition cannot by law be so excluded.

26.3 The Customer is responsible for any risks to health or safety for Goods and Equipment in its possession and/or control. Safety literature will be supplied by Ecotech and attention is drawn to the fact that statutory regulations and recognised codes of practice exist covering the use, handling, processing, storing and transporting of Goods or Equipment. The Customer must ensure that persons who use, handle, process, maintain, store or transport Goods and Equipment receive adequate training and safety literature.

## General

27.1 If by arrangement with the Customer, Goods or Services are supplied to any person who is not a Party to the Contract, the Customer shall ensure that such persons agree to be bound by these conditions as though a Party to the Standard Terms, and the Customer shall indemnify and hold harmless Ecotech against any consequences (including any claim made by such person which he could not make if a Party to the Contract) of the Customer failing to do so of such person not fulfilling its obligations under the Contract.

27.2 Neither Party may assign its rights or delegate its duties under these Standard Terms without written consent of the other Party, except that either Party may, without such consent, assign its rights and delegate its duties under these Standard Terms to a wholly owned subsidiary or to the successor in interest to substantially all of its assets.

27.3 These Standard Terms establish an arms-length, vendor-vendee relationship and not a partnership or joint venture. Neither Party shall hold itself out to any person as the agent or partner of the other Party.

27.4 Except where the other Party is in breach of these Standard Terms, each Party promises and undertakes to each other Party to carry out all its obligations, exercise all its rights, and generally in its dealings under these Standard Terms to act in good faith towards each other and each Party relies on this promise in entering into this Contract.

27.5 Any failure on the part of Ecotech to exercise or enforce any right conferred by these Standard Terms or the acquiescence of Ecotech in the course of the performance under this Contract shall not be deemed to be a waiver of any such rights nor operate so as to prevent the enforcement thereof at any time or times thereafter.

27.6 If at any time any one or more of these Standard Terms is or becomes invalid or illegal or unenforceable in any way under any law the validity, legality or enforceability of the remaining provisions thereof shall not in any way be affected or impaired thereby and the condition or conditions concerned shall be deemed to be replaced by enforceable conditions as nearly as permissible reflecting the intention of the original conditions.

27.7 The Contract and these Standard Terms shall be governed by and construed in accordance with the laws of the Philippines.

27.8 All notices hereunder shall be in writing and sent by recognized courier, addressed to the Parties (however, invoices and notices not asserting or responding to an allegation of breach of these Standard Terms or suspension of Services, may be sent by electronically acknowledged facsimile transmission).

27.9 Ecotech reserves the right to accept or decline any Purchase Order (including any Purchase Order made pursuant to a Proposal) in whole or part. Where possible, all Purchase Order accepted by Ecotech will be confirmed by way of a confirmation email or facsimile sent by Ecotech to the Customer.

27.10 The Proposal and these Standard Terms constitute the entire agreement between the Parties in relation to the matters dealt with herein and supersedes all previous agreements between the Parties and representations, relating to the subject matter hereof, made by either Party, whether such agreements or representations are oral or written.

27.11 These Standard Terms may be modified only if such modification is in writing and signed by a duly authorized representative of the Party to be charged.

27.12 Article and section headings are provided for the convenience of the reader and form no part of these Standard Terms.

27.13 No presumption or rule of construction disfavoring the drafter shall apply to the construction or interpretation of these Standard Terms.

27.14 The singular includes the plural and vice versa, and a gender includes other genders.

27.15 Another grammatical form of a defined word or expression has a corresponding meaning.

27.16 A reference to a document, proposal, or instrument includes the document, proposal or instrument as novated, altered, supplemented or replaced from time to time.

27.17 A reference to currency, Philippine Peso (P), Php, in the Proposal, Purchase Order or invoice is to Philippine currency, unless otherwise specified.

27.18 A reference to a party is to a Party to these Standard Terms, and a reference to a party to a document includes the Party's officers, employees, executors, administrators, successors and permitted assigns and substitutes.

27.19 A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.

27.20 A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, or re-enactments or replacement of any of them.

27.21 The meaning of general words is not limited by specific examples introduced with words such as "including", "for example" or similar expressions.

27.22 Any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) binds them and is for the benefit of them jointly and severally.

27.23 If a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

27.24 Where there is an inconsistency in or between any of the Contract documents, the inconsistency will be resolved first by interpreting the documents in the following order of precedence: 1) the Proposal; 2) these Standard Terms; and 3) the Customer's Purchase Order. If an inconsistency still exists, the inconsistency will be resolved by applying the provision or interpretation that imposes the higher standard or obligation on the Customer.