

Benzene Emissions Application (www.processemissions.com)

Terms and Conditions

DEFINITIONS

"Services" are defined as those services performed by Process Ecology Inc.

"Client" is defined as the party paying for the Services

"Agreement" is the agreement, including the attached Terms & Conditions, between Process Ecology Inc. and the Client related to the Services.

1. SCHEDULE

- 1.1 **Term.** Process Ecology will commence the Services promptly and will proceed with due diligence until completion of the Services. However, it is agreed and understood that Process Ecology shall not have any liability or responsibility of any kind for delays in the performance of its Services or the impact of such delays on Client's project or other activities.

2. WARRANTY

- 2.1 **Warranty.** Process Ecology warrants that it shall perform the Services with the standard (the "Standard") of care, skill and diligence normally provided by qualified and experienced professionals performing services of a similar type and nature. Process Ecology shall re-perform, at no additional cost to Client, any Services that do not meet the Standard, provided that Process Ecology shall be notified in writing of such failure to meet the Standard within one year after the date the last of the Services are performed, abandoned or terminated, whichever shall occur first. Process Ecology's sole liability and obligation, and Owner's sole right and remedy, for any error, omission, defect or deficiency in the Services shall be Process Ecology's obligation to re-perform the Services in accordance with this Section. No other warranty, express or implied, is made or intended by this Agreement or by any act of Process Ecology.

3. LIABILITY

- 3.1 **Limitation of Liability.** Client and Process Ecology agree, notwithstanding anything to the contrary contained in this Agreement:

A. Process Ecology's aggregate liability for any and all claims, damages, injuries, losses (including reasonable lawyer's fees and legal costs) and other liabilities of any kind (together, "Exposures") in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement shall be limited to the total compensation received by Process Ecology for the Services.

B. In no circumstances shall Process Ecology be liable in contract, tort (including negligence or breach of statutory duty) or otherwise, whether foreseeable or not, and whatever the cause thereof: (i) for any increased costs or expenses, (ii) for any loss of profit, business, contracts, revenue, anticipated savings, use, opportunity, goodwill, or capital, or (iii) for any special, indirect, consequential, incidental, exemplary, or punitive damage of any nature whatsoever.

C. No action may be commenced by Client in connection with this Agreement more than one year after the date the last of the Services are performed, abandoned or terminated.

D. Client agrees to release, indemnify, defend and hold Process Ecology harmless from and against any Exposures arising by reason of or in connection with this Agreement, to the extent that such Exposures (i) are in excess of the liability assumed by Process Ecology in paragraph A, (ii) are excluded in paragraph B, or (iii) relate to claims that were not commenced within the time required by paragraph C.

- 3.2 **Inclusions.** For the purpose of paragraphs A, B and D of Section 5.1, reference to Process Ecology shall include Process Ecology's shareholders, directors, officers, employees and agents.

- 3.3 **Survival.** The disclaimers, limitations, expiry and exclusions of liability, and the releases and indemnities in this Agreement shall survive the termination of this Agreement.

4. INSURANCE

- 4.1 **Process Ecology's Insurance.** Process Ecology shall provide and maintain, at its own expense, with respect to and during the performance of the Services, the following insurance coverages: (a) Workers' Compensation, to the extent required in the jurisdiction in which the Services are being performed; (b) Comprehensive General Liability Insurance including a bodily injury and property damage combined single limit of \$1,000,000 per occurrence and in the aggregate; and (c) Automobile Liability insurance covering all owned, non-owned and hired motor vehicles of Process Ecology, with a limit of \$1,000,000 per occurrence and in the aggregate.

- 4.2 **Terms of Insurance.** The insurance provided by Process Ecology shall be provided in accordance with the following terms and conditions: (a) the Comprehensive General Liability Insurance policy shall provide that the insurers waive their rights of subrogation against the Client; (b) the insurers shall, where requested, provide a 30-day notice of cancellation; and (c) Process Ecology shall provide the Client with a certificate of insurance evidencing the types and amounts of insurance set out in Section 6.1(b) and (c), if requested to do so.

5. GOVERNING LAW

- 5.1 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the province of Alberta.

6. MISCELLANEOUS

- 6.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and wholly cancels, terminates and supersedes all prior written and oral agreements, proposals, offers, understandings and representations, collateral or otherwise between them. This Agreement shall be amended only by written instrument signed by both the Client and Process Ecology. Client agrees that its issuance or use of a purchase order or other documentation in connection with the Services is solely for administrative purposes, does not modify this Agreement, and in no event shall Process Ecology be bound to any terms and conditions on such purchase order or other documentation, regardless of Process Ecology's signature on such administrative documentation.

- 6.2 **Assignment and Enurement.** Neither Party shall sell, assign or in any manner transfer its interests herein, in whole or in part, without the written consent of the other Party.
- 6.3 **Independent Contractor.** Process Ecology shall be an independent contractor, and any workers or other personnel compensated by Process Ecology shall be Process Ecology's employees, independent contractor or agents as the case may be, and shall not in any sense be considered to be, or be, the employees or agents of the Client. Process Ecology shall be responsible for its employees and for their compensation, benefits and contributions. No provision in this Agreement shall be deemed or construed to create a joint venture, partnership or other such association between the Parties. The Client acknowledges that Process Ecology is not a fiduciary and that it has no fiduciary duties to the Client.
- 6.4 **Confidentiality.** Process Ecology shall keep all information and data originating from the Client pertaining to the Services strictly confidential, and unless such information and data is already in the public domain as at the date of this Agreement, shall not publish or otherwise disseminate such information and data to any third party without receiving express written permission to do so from the source of such information or data. This provision shall not affect the legal obligation of Process Ecology to comply with any federal, provincial or municipal requirement for the submission of Services information to authorities having jurisdiction over the Services.
- 6.5 **Property.** All reports, drawings, plans or other documents (or copies) furnished to Process Ecology by Client shall, at Client's written request, be returned to Client upon completion of the Services; provided that Process Ecology may retain one copy of all such documentation for its records. Process Ecology retains ownership of all patent, copyright and other intellectual property rights in all reports, drawings, plans, documents, software, source code, object code, field notes, and work product or copies thereof in any form prepared or furnished by Process Ecology under this Agreement ("Process Ecology's Work Product"). As part consideration for the payments due to Process Ecology under this Agreement, Process Ecology hereby provides the Client with a non-exclusive, non-transferable license to use Process Ecology's Work Product for the purposes of the Client's project. Client releases Process Ecology from liability and agrees to defend, indemnify, protect and hold harmless Process Ecology from any and all claims, liabilities, damages or expenses (including reasonable lawyer's fees and legal costs) arising, in whole or in part, from the Client's modification of the Process Ecology's Work Product or use of Process Ecology's Work Product for other purposes or projects.
- 6.6 **Severability.** The provisions of this Agreement shall be deemed to be severable, and any illegality, invalidity or unenforceability of any provision or part thereof in this Agreement shall not affect the legality, validity or enforceability of the remaining provisions or part thereof of this Agreement.
- 6.7 **Business Conduct.** Process Ecology agrees to conduct all of its activities in relation to the Performance of the Services with high ethical standards.
- 6.8 **Arbitration.** All disputes arising out of or in connection with this Agreement or the interpretation or breach thereof ("Disputes") shall be referred by either Party to the Parties' respective senior representatives, as designated by each Party for such purpose, who shall meet and attempt in good faith to resolve the Dispute within a period of not more than ten (10) days from the date of the reference.

If the Dispute between the Parties cannot be resolved by mediation as set out above, then the Dispute shall be referred to and finally resolved by arbitration in accordance with the National Arbitration rules of the ADR Institute of Canada, Inc. then in effect. The place and seat of arbitration shall be the city of Calgary, Alberta and the language of the arbitration shall be English. The arbitrator(s) shall determine the dispute in accordance with the law governing this Agreement. The arbitration award shall be final and binding on the Parties, and may be entered in any court having jurisdiction thereof. In no event shall the demand for arbitration be made after the date when institution of legal, equitable or other proceedings based on such claim, dispute or other matter in question would be barred by the limitation period set out in Section 5.1(c) above.