



## Terms and Conditions for Purchase Orders for Recycling Materials

This Agreement is made by and between AEROJET-GENERAL CORPORATION, an Ohio corporation with a place of business at Rancho Cordova, California ("Aerojet") and Enter Name, a Enter State where Corporation is formed corporation with a place of business at Enter City and State where located, ("Recycler"), hereinafter a Party or the Parties, on the following terms and conditions:

### 1. Surplus Materials

The items that are the subject of this Agreement ("the Materials") are described and set forth in select one and are generated at Aerojet's facility. The chemical composition of the residual material, if any, which may be found within said items are as generally specified in the Material Safety Data Sheets (MSDS), copies of which are attached hereto.

### 2. Recycler Services

The Parties agree that the Recycler shall provide its services hereunder at the prices shown in the Purchase Order. Recycler agrees to accept the Materials at its Aerojet's facility or such other location as may be agreed on in writing, transport the Materials, and recycle or otherwise properly dispose of the Materials at or through its facility located at Enter Recycler's facility location. Arrangements for pickup are to be mutually agreed upon between Aerojet and Recycler prior to each Recycler's arrival at the Aerojet facility.

### 3. Limitation of Warranty, Remedy

Aerojet warrants only that the Materials conform in all material respects with the MSDS provided hereunder, and will be marked, labeled or otherwise designated in conformance with government regulations, and that it holds clear title to the Materials. ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Recycler accepts the Materials "AS IS" subject to warranty set forth above and has the sole responsibility to assess, and bears all losses unless such loss results from a breach of warranty relating to:

- (1) the ability of the Materials conveyed under this contract to pass, without objection under their contract description, among merchants and purchasers in the trade;
- (2) the conformity of such Materials to fair average quality within their contract description;
- (3) the fitness of the Materials for the ordinary purposes for which such materials are used;
- (4) the consistency of quality and quantity within each unit of the Materials and among all units involved;
- (5) the adequacy of containers, packaging, and labeling of the Materials;
- (6) the conformity of the Materials to promises or affirmations of fact (if any) made on their labels or containers other than as described in the MSDS; and
- (7) the conformity of the Materials to standards of quality observed by other merchants in the trade with respect to materials of similar description.

Any description of the Materials, or plans and specifications, are furnished are for the sole purpose of identifying the Materials, or suggesting the nature of the Materials. They are not the basis of bargaining and do not warrant the nature or quality of the Materials. Recycler hereby represents that the Materials will be used in a manner in which the Materials are commonly used, such that the Materials constitute surplus material.

Recycler's sole remedy hereunder for any claim other than a breach of warranty shall be a return to Aerojet of the Materials. Aerojet shall not be responsible, under any obligation other than a warranty claim in connection herewith, for any special, indirect or consequential damages. In no event shall Aerojet have for any reason whatsoever in connection with this Agreement, other than in connection with a warranty claim, any monetary liability to Recycler in excess of the contract price hereunder. Recycler must notify Aerojet of any claim that Recycler asserts Aerojet has any liability for hereunder within 30 days of actual or constructive knowledge of the facts giving rise to such claim. Any such claim must be filed in a court of competent jurisdiction in the State of California within one year from the date of each delivery of the Materials herein, or be forever barred.

#### **4. Indemnification; Insurance**

A. Recycler warrants that it possesses the specialty/expertise, facilities, licenses and permits necessary for its handling, storage, proposed use and further disposition of the Materials, that it understands the hazards to persons, property and the environment presented by the transportation, storage, processing and disposal of the Materials, and that it will operate hereunder in full compliance with all applicable federal, state and local laws, regulations and ordinances. Further, in the event Recycler's facility located at Enter Recycler's facility location loses its permitted status during the term of this Agreement, Recycler will immediately notify Aerojet of such condition.

B. Recycler shall, at its own expense, maintain with insurers which are rated A- or better by A.M. Best, general liability, worker's compensation and environmental impairment insurance covering all liabilities that might be incurred which are in any way related to Recycler's obligations under this Agreement, whether to Recycler, Aerojet or third parties, and in amounts customary for prudent and conservative businesses. Recycler's insurance shall be primary to any insurance of Aerojet, without right of subrogation under any Aerojet insurance, and shall identify Aerojet as an additional named insured. Upon Aerojet's request, Recycler shall furnish Aerojet with evidence of its compliance with this requirement. Recycler shall not assert against Aerojet, and does hereby waive, any and all claims against Aerojet for losses, damages, liability, judgments, and other costs (including attorney's fees) imposed upon or incurred by Recycler as a result of, or arising out of, this Agreement to the extent they are covered by any insurance policy of Recycler (whether or not described in this Agreement).

C. Recycler shall submit evidence, upon request, of the following minimum insurance coverage:

**1. Workers' Compensation and Employer's Liability Insurance:**

- a. Coverage A: Recycler shall maintain such insurance as will protect it from any and all claims under worker's compensation laws of the State of *Kansas* and the laws of any other state in which work under this order is performed.
- b. Coverage B: Employer's Liability – *Recycler* shall maintain coverage in the amount of at least \$1,000,000.00

**2. Commercial General Liability Insurance:** *Recycler* shall maintain third party liability insurance, including operations, products, completed operations, contractual and independent contractors, that will protect *Recycler* from claims for damages because of bodily injury, including death, or damages because of injury of loss, destruction or loss of use of property,

which may arise from *Recycler's* activities in performing under this order, whether such activities be by *Recycler* or *Recycler's* subcontractors or anyone directly or indirectly employed by either of them, including all independent contractors used by *Recycler* in performing under this order.

- a. Limits of Liability shall be no less than:
    - (i) Bodily Injury: \$1,000,000 per occurrence
    - (ii) Property Damage: \$1,000,000 per occurrence
  - b. Policy shall name Aerojet as an additional insured as its interest may appear.
  - c. Policy certificate(s) of insurance shall include a thirty (30) day advance written notice of material change or cancellation. See paragraph 4.b below.
- 3. Commercial Automobile Liability Insurance:** *Recycler* shall maintain automobile liability insurance covering own, non-owned and hired vehicles.
- a. Limit of Liability shall be no less than
    - (i) Bodily Injury: \$1,000,000 per occurrence or \$1,000,000 per accident
    - (ii) Property Damage: \$1,000,000 per accident.
  - b. Policy shall name Aerojet as an additional insured as its interest may appear.
  - c. Policy certificate(s) of insurance shall include a thirty (30) day advance written notice of material change or cancellation. See paragraph 4.b. below.
- 4. Evidence of Insurance Coverage:**
- a. Prior to commencing work under this order, *Recycler* shall provide to Aerojet certificates evidencing worker's compensation, commercial general liability and *Recycler's* insurance.
  - b. Each of the above certificates(s) shall provide for a thirty (30) day advance written notice in the event of material change or cancellation of said policies of insurance.
- 5. Right of Subrogation:** Should the *Recycler* be unable to comply with the named additional insured requirements of 1 through 3 above, *Recycler's* insurance policies shall be specifically endorsed to include a waiver of the right of subrogation in favor of Aerojet, substantially as follows:
- “The insurer hereby waives subrogation of any and all rights of recovery which the insured may have against Aerojet, its officers, agents, servants, and employees, except with respect to those claims resulting from a breach of warranty by or the negligence or fault of Aerojet. This purchase order shall be interpreted in accordance with the Laws of the State of California.”
- 7. Waiver:** Any failure of the *Recycler* or its insurer to comply in full with the above provisions shall in no way constitute a waiver by Aerojet of any contractual rights hereunder, unless said waiver is in writing and signed by an authorized employee of Aerojet

D. Notwithstanding the existence or lack of insurance, and as an unrelated matter, *Recycler* shall defend, indemnify and hold Aerojet harmless from any losses, claims, demands or suits, including those of *Recycler's* employees, and including reasonable attorney's fees and costs, for bodily injury (including death) or property damage, howsoever arising out of, or in any way related to, the use, sale, distribution, processing, shipment, storage or disposal of the Materials, or any derivative thereof, except to the extent caused by Aerojet's gross negligence or breach of warranty.

E. The indemnities in paragraph B above include all costs and expenses reasonably required to investigate and to defend any such claims or actions, any amount paid or required to be paid to settle any such

claims or actions, and any amount finally awarded by a court as damages or otherwise for any such claims or actions, provided that neither Party will have an obligation to pay or to reimburse the other for the amount of any internal expenses (including, but not limited to, compensation paid to its employees) that it may incur in connection with its cooperation in the investigation and/or defense of such claim or action.

F. The provisions of this Clause shall survive the expiration or termination of this Agreement.

## **5. Safety Precautions**

The Materials may be toxic, hazardous, or contain toxic or hazardous constituents, or otherwise pose a hazardous risk, including without limitation the risk of explosiveness or flammability, and Recycler shall undertake its own evaluation thereof and proceed hereunder at its own risk. Recycler shall provide all means appropriate and necessary to protect its employees, agents and all third parties from injury which may result from Recycler's transportation, use, processing or incorporation into other goods or disposal of the Materials. Recycler shall strictly comply with all laws and regulations affecting the Materials or Recycler's use or handling thereof, including, without limitation, laws relating to products liability, protection of the environment and personal safety. If Recycler fails to comply with any provision of this paragraph or any applicable standards and regulations, and personal injury or property damage (including environmental impairment) occurs as a result thereof, Recycler shall indemnify, defend and hold Aerojet harmless from any such liability in the manner specified in section 3.C hereof.

## **6. Records**

Recycler shall keep such full and detailed records of its operations hereunder as are necessary to demonstrate its compliance with the requirements of this Agreement, as well as the requirements imposed by law and regulation. Such records shall be maintained for a period of at least three (3) years after the date of each resale or disposal of the Materials, or any derivatives thereof, or for any longer period required by law or regulation. Such records shall be made available for Aerojet's inspection at any time, but during normal business hours and upon reasonable notice, during the retention period.

## **7. Inclusive Price**

Recycler shall bear all costs, expenses, fees and taxes (federal, state, local, use, excise and other applicable taxes) which may be incurred in Recycler's performance of its obligations under the Purchase Order.

## **8. Acceptance, Transfer of Title and Shipment**

Unless otherwise specified, the transfer point shall be Aerojet's facility (if Aerojet is providing transportation, transfer point will be Recycler's facility). Recycler shall be deemed to have taken possession of and accepted the Materials when the Materials are loaded for shipment at Aerojet's facility (if transportation is provided by Aerojet possession occurs when material is delivered to Recycler). At that point, title, risk of loss and damage, and all other incidents, rights and obligations of ownership to the Materials shall be transferred to Recycler. Aerojet has no responsibility for transporting, unpacking or unloading the Materials.

## **9. Aggregation of Surplus Materials**

Recycler agrees to commingle the Materials with other materials, to the maximum extent possible, such that the resultant materials are not identifiable as Aerojet materials.

## **10. Force Majeure**

Neither Party shall be liable for delay in performance hereunder caused by fires, floods, accidents, unanticipated hazards, transportation failures, strikes, labor disputes, material shortage (including delay of material from Aerojet's usual source of supply), a change in federal or state legislation, or any causes beyond a Party's reasonable control. For any such event, the date of performance of the affected party shall be extended day-for-day while the force majeure condition exists.

## **11. Term and Termination**

This Agreement shall come into effect on the date of the last of the signatures below, and shall remain in effect until terminated by either Party upon thirty (30) days written notice to the other, provided, however, that Aerojet may terminate this Agreement immediately for cause.

## **12. Entire Agreement.**

The Purchase Order and the attached MSDS's describing the Materials, together with these terms and conditions and any documents referenced herein (which have the same effect as if fully set forth in this Agreement) constitute the entire, complete and exclusive agreement between Recycler and Aerojet with respect to the subject matter hereof and, supersede all prior discussions and writings between the Parties. No responsive terms and conditions, prior course of dealings, course of performance, usage of trade, oral understandings or other agreement shall modify, vary or supplement any provision hereof unless in writing and signed by an authorized representative of Aerojet. Acceptance of this Agreement is strictly limited to its written terms, and any additional terms, conditions, specifications or prices are hereby objected to and rejected by Aerojet.

## **13. Modifications.**

Aerojet shall not be bound by any modification or amendment to this Agreement unless it is in the form of a written instrument signed by a duly authorized representative of Aerojet.

## **14. Assignment.**

No delegation of any obligation owed, nor performance of any duty, by Recycler shall be made without the prior written permission of Aerojet. Any such attempted assignment or delegation shall be void.

## **15. Choice of Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California with the exception of its conflicts of law provisions. Any dispute hereunder which cannot be resolved except by legal process shall be referred to a court of competent jurisdiction in California, without resort to binding arbitration. Recycler hereby consents and submits to the exclusive jurisdiction of federal and state courts in the State of California.

***THEREFORE the Parties, intending to be legally bound, execute this Agreement by their authorized representatives.***

Aerojet-Gencorp Corporation	RECYCLER
SIGNED	SIGNED
NAME	NAME
TITLE	TITLE
DATE	DATE