

## TERMS AND CONDITIONS

Definitions. For purposes of these Terms and Conditions, (i) "TTC" means Tonawanda Terminals Corp., a New York corporation, and (ii) "you" means the party identified on the Proposal, Quotation, Purchase Order, Statement of Work or other agreement with TTC to which these Terms and Conditions are attached and/or shall apply, together with your affiliates, principals and any person acting as your representative.

Payment Terms. All fees for services provided by TTC are due and owing upon receipt of the applicable invoice, in immediately available funds. All amounts more than five (5) days past due shall accrue interest at the lesser of (i) 1.5% per month, or (ii) the maximum interest rate permitted by law. You agree to pay any costs or expenses incurred by TTC for collection of an overdue account, including attorneys' fees.

Taxes. You are responsible for paying all sales, excise, export or other taxes, duties or charges, if any, applicable to the services provided by TTC, unless you provide TTC with an appropriate tax exemption certificate. You agree to defend, indemnify and hold harmless TTC from and against all claims by any governmental or taxing authority seeking payment of taxes for which you are responsible.

Termination. TTC may terminate the services to be provided (i) upon your breach of these Terms and Conditions, or (ii) if TTC has a reasonable belief that you may not be able to pay for the services. Upon completion or termination of the services contemplated by the Proposal, TTC shall not have any further obligation to you hereunder. You agree to pay promptly any and all amounts due and owing TTC for services performed prior to the effective date of termination.

Materials. You represent and warrant to TTC that the soil(s) to be treated and/or transported by TTC are impacted solely by oil, gasoline and/or diesel fuel, that any Petroleum-Impacted Soil Characterization Profile you submit fully and accurately sets forth the character of the soil(s) to be treated and/or transported by TTC, and that you have no knowledge or awareness of any other soil conditions that would impact the performance or cost of the services to be provided by TTC.

Indemnification. You agree to defend, indemnify and hold harmless TTC, its officers, directors, employees, agents and representatives from and against any and all injuries, claims, suits, losses, damages, liabilities and expenses, including without limitation reasonable attorneys' fees and costs, for any and all injuries, damages or losses to TTC arising out of, related to or otherwise attributed to (i) your breach of any provision of these Terms and Conditions, (ii) the services provided by TTC under the Proposal, or (iii) any action against TTC by a third party as a result of TTC's performance of services for you under the Proposal, except to the extent attributable to TTC's negligence or misconduct.

Independent Contractor. It is understood that TTC is an independent contractor responsible for its own actions. Nothing contained in these Terms and Conditions shall be construed to constitute TTC as your employee, partner or agent, and neither party shall have any authority to bind the other in any respect.

Disclaimer of Warranties. TO THE FULLEST EXTENT PERMITTED BY LAW, TTC HEREBY DISCLAIMS ALL

EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TTC DOES NOT WARRANT THAT THE RESULTS OBTAINED FROM ITS SERVICES WILL MEET YOUR EXPECTATIONS.

Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, TTC SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR RELATED TO THE SERVICES PROVIDED BY TTC, EVEN IF TTC HAS BEEN ADVISED OF THE POTENTIAL FOR SUCH DAMAGES AND WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW OR OTHERWISE. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS, TTC'S LIABILITY TO YOU FOR ANY DAMAGES RELATED TO OR ARISING OUT OF TTC'S PROVISION OF THE SERVICES SHALL NOT EXCEED THE AGGREGATE AMOUNT PAID BY YOU TO TTC FOR SUCH SERVICES.

Force Majeure. TTC shall not be liable for any failure or delay in providing services by reason of any occurrence or set of circumstances outside of its control, including without limitation, as a result of flood, fire or other natural disaster, strike or other labor dispute, riot, insurrection or war, shortage of labor or materials, ruling or action of any foreign or domestic government or regulatory agency, or any other act of God or similar occurrence.

Miscellaneous. Any notices or communications to be delivered to TTC must be in writing and delivered to TTC at 2440 Sheridan Drive, Tonawanda, New York 14150. No agreement or other understanding between TTC and you purporting to modify these Terms and Conditions shall be binding upon TTC unless otherwise agreed to by TTC in writing. You may not assign your rights and obligations under these Terms and Conditions without the prior written consent of TTC. The failure or delay by TTC to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision. Any provision of these Terms and Conditions that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof. These Terms and Conditions shall be interpreted, construed, governed by and enforced in accordance with the laws of the State of New York without giving effect to the conflicts of law principles thereof. Any dispute, controversy or claim arising out of or relating to the services provided by TTC or these Terms and Conditions shall be brought in the state or federal courts situated in Erie County, New York. The prevailing party in any such action shall be entitled to reimbursement by the other party for any and all legal costs, including without limitation attorneys' fees, reasonably incurred by the prevailing party in enforcing its rights under these Terms and Conditions.