



# Disruptive Energy Services Incorporated

## General Terms and Conditions

These General Terms and Conditions are the conditions upon which Disruptive Energy Services Incorporated (Disruptive) is prepared to provide Services to the Company and, unless there is a valid master services agreement between the Parties, these General Terms and Conditions shall govern the provision of Services to the Company.

### 1. General Provisions

#### 1.1 Definitions.

- a) **"Agreement"** means and is comprised of: (i) the Quote; (ii) these General Terms and Conditions; (iii) the Schedules hereto, as applicable; (iv) each Service Order, as applicable; and (v) any applicable change orders.
- b) **"Applicable Laws"** means all applicable statutes, rules, regulations, ordinances, requirements, judgments, decrees, and orders of each federal, provincial, and local governmental authority, agency, or court including any and all laws, regulations, rules, orders, ordinances, requirements or determinations of any governmental authority (including court rulings establishing common law liability) pertaining to the presence or release of environmental contaminants (including any Hazardous Waste), or relating to natural resources (including any protected species) or the environment (including the air, water, surface or subsurface of the ground) as same are in effect at any time.
- c) **"Claim"** means any action, injury, claim, liability, suit, proceeding, loss, damage, demand, penalty, fine, expense (including legal fees on a solicitor and own client basis), cost, obligation, judgment, cause of action, and premium of every kind and nature whatsoever.
- d) **"Company"** means the corporation identified as the customer on the cover page of the Quote.
- e) **"Confidential Information"** means all technical, commercial or other information or materials, and all documents and other tangible items which record information, whether on paper, in computer readable format or otherwise, relating to the disclosing Party's business, including business plans, property, ways of doing business or business results or prospects, the terms and negotiations of this Agreement, proprietary software and business records.
- f) **"Default"** has the meaning set out in Article 17.
- g) **"Effective Date"** means the commencement date of the Agreement as set forth on the cover page of the Quote.
- h) **"Equipment"** means all equipment, supplies, materials, apparatus and machinery used or provided by Disruptive (including all associated repair and maintenance services) in the performance of the Services where title does not transfer to the Company.
- i) **"Expiry Date"** means the completion date of the Agreement as set forth on the cover page of the Quote.
- j) **"Facility"** means any site, including facility offices, owned, leased, and/or operated by Disruptive.
- k) **"Force Majeure"** means an event or circumstance beyond a Party's reasonable control, does not arise by reason of the negligence or default of such Party and which such Party could not reasonably foresee, prevent or overcome, but does not include labour disturbances, stoppages, strikes, lock-outs or other industrial actions.
- l) **"General Terms and Conditions"** means these terms and conditions, as amended by Disruptive from time to time and posted to Disruptive Energy's website at [www.disruptiveenergy.ca/for-customers](http://www.disruptiveenergy.ca/for-customers).
- m) **"Party"** means either Company or Disruptive, as the context may require, and "Parties" means both of them.
- n) **"Performance Assurance"** has the meaning set out in Article 16.
- o) **"Quote"** means the quotation or proposal, including any Rate, provided to Company for the provision of Services by Disruptive Energy.
- p) **"Rates"** means the rates as negotiated by both Parties and included in the Quote or, if not specified in the Quote, Disruptive Energy's published book rates for Services (subject to amendment in accordance with Article 4).
- q) **"Representative"** means a representative of a Party who is authorized to bind such Party to this Agreement or any other document on behalf of the Party.
- r) **"Schedule"** means a schedule appended to and made part of this Agreement as applicable to the Services and outlined in Article 1.2.



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- s) **"Services"** means all services, including rental equipment, provided to Company by Disruptive Energy.
- t) **"Service Order"** means a purchase order, work order, and/or authorization for the request of Services issued under this Agreement by Company to Disruptive Energy and any applicable change order thereto. (x)
- u) **"Disruptive Energy"** means Disruptive Energy Services Incorporated having its head office located at 49561 Range Road 10, Leduc County, Alberta, Canada T0C 2P0.
- v) **"Disruptive Energy Indemnified Persons"** means Disruptive Energy, its affiliates, and its and their directors, officers, employees, consultants, subcontractors, agents and representatives.

### 1.2 Schedules.

N/A

### 1.3 Order of Precedence.

In the event of any conflict among these General Terms and Conditions, the Schedules and any attachments thereto, the Quote, any Service Order, or any other document issued as part of the Agreement, the various contract documents shall be given priority in the following order:

- a) these General Terms and Conditions;
- b) Schedule A, if applicable;
- c) a change order, if any;
- d) the Quote; and
- e) a Service Order, if any.

### 1.4 Interpretation.

In this Agreement, unless the context otherwise requires:

- a) the headings in this Agreement are included for convenience and do not affect the construction or interpretation of this Agreement;
- b) words importing the singular include the plural and vice versa and words importing a gender include each gender;
- c) references to "includes" or "including" means "including, without limitation"; and
- d) all monetary amounts refer to Canadian dollars unless otherwise specifically stated.

**2. Independent Contractor.** Disruptive Energy is an independent contractor and shall not hold itself out as Company's agent or representative. This Agreement will not be construed to create, does not create, nor is it evidence of an employee-employer relationship, association, partnership or joint enterprise of any kind. Services shall be provided at Disruptive Energy's discretion.

**3. Warranty.** Disruptive Energy will use the degree of care and skill in the performance of the Services as that required by the applicable governmental authorities. No other warranty or guarantee expressed, implied or statutory is made or intended by this Agreement.

**4. Rates.** Disruptive Energy may from time to time revise its Rates to account for: (i) any increase in disposal, fuel or transportation costs or change in location of disposal; (b) increased costs due to circumstances outside of Disruptive Energy's control, including transportation, changes in Applicable Laws, imposition of taxes, fees or surcharges, or the closure or maintenance of roads necessary to provide the Services.

**5. Rental Equipment.** At all times title to rental Equipment, remains with Disruptive Energy and the Company takes care, custody and control while the rental Equipment is in its possession. The Company acknowledges that it is renting the rental Equipment only and agrees to provide and pay for skilled and competent operators, if required, and all necessary grease, lubrication, maintenance and repairs required for the proper operation of the rental Equipment and to ensure the rental Equipment is returned in clean condition and good repair, reasonable wear and tear excepted. The Company



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further acknowledges that the rental Equipment is provided by Disruptive Energy without any representation or warranty whatsoever and that the Company has inspected the rental Equipment and accepts the rental Equipment in its present condition. The Company shall be responsible for and agrees to pay Disruptive Energy for replacing or repairing any damage to the rental Equipment.

**6. Indemnification** by Company. The Company shall be liable for and indemnify and save and hold harmless Disruptive Energy Indemnified Persons from and against any and all Claims that may be asserted or brought against, or suffered or incurred by the Disruptive Energy Indemnified Persons for or in respect of, or arising in any way whatsoever, out of the acts or omissions of the Company, its affiliates, and its and their directors, officers, employees, consultants, subcontractors, agents and representatives.

**7. Limitation on Liability.** Neither Party shall be liable to compensate or indemnify the other Party for any indirect or consequential damages (including special, punitive or exemplary damages), lost profits, or loss of opportunity, whether or not such losses were foreseeable at the time of entering into this Agreement. Notwithstanding the foregoing, the Company's liability for the following matters shall not be limited by this Article: (i) any third party claims; or (ii) any liability, damages, or costs suffered or incurred by Disruptive Energy arising out of the gross negligence or willful misconduct of the Company, its affiliates, and its and their directors, officers, employees, consultants, subcontractors, agents and representatives.

**8. Financial Assurance.** The Company shall, at the request of Disruptive Energy, furnish to Disruptive Energy reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. A credit application is required:

- a) for all new customers prior to the performance of Services;
- b) on an annual basis; and
- c) if the Company's credit rating is downgraded.

### **9. Remuneration and Payments.**

**9.1 Company's Obligations.** The Company shall pay for the Services furnished by Disruptive Energy in accordance with the Rates. Within 14 days of Disruptive Energy's request, the Company shall provide Disruptive Energy with all applicable information and coding which Disruptive Energy must include on the invoice such as: (i) Company's legal entity name ("bill-to"); (ii) Company location/property/UWI/lease name; (iii) project name and/or number; (iv) Service Order number (where DISRUPTIVE ENERGY SERVICES INCORPORATED); (v) AFE number; (vi) cost center; (vii) account code; (viii) account major/minor code; and (ix) any other required coding. If the Company fails to provide the requested information and coding in accordance with the foregoing, Disruptive Energy shall deem the invoice complete and issue the invoice to the Company, and the Company shall not object to the invoice on the basis that it lacks the appropriate information and coding.

**9.2 Deemed Approval.** Where applicable, all coding and/or approval to be provided by the Company Representative must be received within 14 days of Disruptive Energy's request for such coding and/or approval. On the 15th day following Disruptive Energy's request, the coding and/or approval shall be deemed to have been received and Disruptive Energy shall invoice Company in accordance with the Agreement.

**9.3 Invoice Submission.** Disruptive Energy shall prepare and submit to Company an itemized invoice for the Services rendered by Disruptive Energy along with all relevant supporting documents upon the earlier of: (i) 30 days after the end of each calendar month in which Services are provided; or (ii) completion of the Services. The invoice shall include: (a) Disruptive Energy's legal entity name, address and telephone number; (b) invoice number and date of invoice; (c) Disruptive Energy's applicable taxation registration number(s); (d) Company Service Order number (where applicable);



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(e) an itemization of the Services provided; (f) the total invoice amount; and (g) the applicable taxation rate and total taxation amount.

**9.4 Invoice Payment.** The Company shall pay each invoice within 30 days from the date of the invoice. Payment remittance shall be made to Disruptive Energy's address as it appears on the invoice. Overdue amounts are subject to interest calculated daily at 18% per annum from the 31st day after the date of the invoice until payment is received by Disruptive Energy. For any amounts disputed by the Company in good faith, the Company is required to provide Disruptive Energy with written notice within 7 days after receipt of the invoice, and the disputed amount may be held back from Disruptive Energy until resolution. For all undisputed amounts and any amounts that were the subject of a resolved dispute, should the Company delay payment for more than 60 days, all outstanding amounts shall immediately become due and owing and Disruptive Energy reserves the right, in its sole discretion, to demand payment prior to performing any further Services, suspend the Services, or terminate this Agreement without notice. In the event that Disruptive Energy terminates this Agreement in accordance with the foregoing, Disruptive Energy shall be entitled to recover any Equipment on the Company's premises and recover payment for all Services performed to date and any other reasonable costs, including costs incurred to enforce its rights.

**9.5 Taxes.** Rates for the Services do not include any amounts payable by Company for the goods and services tax or harmonized sales tax (collectively, "GST") or any similar or replacement value added or sales or use tax enacted, or any provincial sales tax ("PST") imposed by a province. Company shall pay to Disruptive Energy the amount of the GST and PST payable on the Services in addition to all other amounts payable under this Agreement. Company and Disruptive Energy shall provide each other with the information required to make such GST or PST remittance or claim any corresponding input tax credits, including GST and PST registration numbers.

**9.6 Set-Off.** Disruptive Energy or Disruptive Energy's affiliates shall have the right to set-off all or any part of an amount owing to Disruptive Energy or Disruptive Energy's affiliates, against payment of any amount owing to the Company or the Company's affiliates by Disruptive Energy or Disruptive Energy's affiliates under this Agreement or any other agreement.

**10. Compliance.** Each Party shall comply with the requirements of all Applicable Laws. Both Parties shall ensure that all Waste is packaged and transported in accordance with all Applicable Laws. If Disruptive Energy is delayed in the performance of the Services for reasons caused by the Company including, but not limited to, stand-by time due to repacking Waste or incorrect paperwork, and/or any other reason outside Disruptive Energy's control, additional fees as per Disruptive Energy's published book rates may be charged to the Company. Facility access will be weather permitting.

**11. Incident Notification.** The Company shall immediately report to Disruptive Energy all written or verbal communications, including inspections, infractions, violations, orders, notifications, advice from government or regulatory bodies and all incidents, injuries, damage and losses arising out of or incidental to the provision of the Services.

**12. Safety.** Company shall observe Disruptive Energy's policies regarding health, safety, security and environment, and take reasonable precautions, as prescribed by Disruptive Energy, for the health, safety, and security of Disruptive Energy's personnel and Equipment. Disruptive Energy shall make such policies readily available to the Company and its personnel, whether at the jobsite, at [www.disruptiveenergy.ca](http://www.disruptiveenergy.ca) or otherwise. In the case of Disruptive Energy entering a site owned or operated by the Company, Disruptive Energy shall observe the Company's policies regarding health, safety, security and environment, as made available to Disruptive Energy.

**13. Confidential Information.** All Confidential Information obtained by Company or Disruptive Energy from the other Party related to or resulting from the provision of Services will not be divulged to any third party by the recipient Party without the prior written consent of the disclosing Party. This Article 13 will not apply to any part of Confidential Information which:



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- a) is generally available to the public or subsequently enters the public domain through no fault of the recipient Party;
- b) was received by the recipient Party without obligation of confidence from a third party who the recipient Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence;
- c) was developed and applied by the recipient Party using only their knowledge and resources or using the knowledge and resources of a third party not connected with or under an obligation of confidentiality in relation to the Confidential Information of the other Party; or
- d) is subject to a legal obligation of disclosure.

Notwithstanding the foregoing, if the Parties have executed a separate confidentiality or non-disclosure agreement, such agreement shall prevail in respect of the treatment of Confidential Information.

**14. Dispute Resolution.** If a dispute arises with respect to the interpretation or performance of, or the relationship created by, all or any part of this Agreement, the Parties shall attempt in good faith to resolve the dispute commencing at the authorized Representative level. Failing resolution at such level, the Parties shall escalate the dispute to senior management of both Parties to be resolved through negotiation on a good faith basis. Neither Party will commence litigation unless and until the dispute is not resolved within 30 days of being escalated to senior management. Any dispute (other than litigation which has been commenced), negotiations, mediation and arbitration proceedings between the Parties shall be deemed to be Confidential Information.

**15. Performance Assurance.** Should Disruptive Energy reasonably believe it necessary to assure payment or performance of this Agreement, Disruptive Energy may at any time require, by written notice to the Company, advance cash payment or satisfactory security in the form of a letter or letters of credit or guarantee, in a form and, as applicable, from a bank acceptable to Disruptive Energy ("**Performance Assurance**").

**16. Default.** The occurrence of any of the following events or conditions shall constitute a default under the Agreement: (i) the Company fails to make payment when due in accordance with Article 9.4 and such non-payment continues for a period of more than 60 days; (ii) the Company fails to provide Performance Assurance when requested by Disruptive Energy; (iii) a Party is in breach or default of any material requirement of this Agreement and such breach or default continues for a period of 10 business days after the non-defaulting Party delivers notice to the defaulting Party reasonably detailing the nature of the breach or default; or (iv) a Party is dissolved (other than pursuant to a consolidation, amalgamation, or merger), becomes insolvent or is unable to pay its debts or fails to pay its debts, makes a general assignment, arrangement or composition with or for the benefit of its creditors, institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, monitor or other similar official for all or substantially all of its assets (each, a "Default"). If a Party is in Default under this Agreement, the non-defaulting Party may do any one or more of the following:

- a) suspend this Agreement, with immediate effect, by giving notice to the defaulting Party;
- b) terminate this Agreement, with immediate effect, by giving notice to the defaulting Party and Disruptive Energy shall be entitled to recover any Equipment on the Company's premises, and recover payment for all Services performed to date and any other reasonable costs, including costs incurred to enforce its rights;
- c) claim damages occasioned by the breach or default or other relief;
- d) if the Company is in Default, Disruptive Energy may refuse to provide further Services, in whole or in part, without liability to the Company; (e)



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- e) if Disruptive Energy is in Default, the Company may refuse to accept further Services, in whole or in part, without liability to Disruptive Energy except in respect of Services already performed; (f)

The rights and remedies provided in this Article 16 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**17. Governing Law.** The laws applicable in the Province of Alberta govern this Agreement and any actions initiated by either Party, without giving effect to any choice or conflict of law principles that may direct the application of the law or rules of another jurisdiction. The Parties hereby accept and irrevocably attorn and submit to the exclusive jurisdiction of the courts of the Province of Alberta.

**18. Waiver.** The waiver by either Party of a breach or violation of any provision of this Agreement will not be construed as a waiver of any subsequent breach or violation. None of the provisions of this Agreement will be considered as waived by either Party unless the same is done in writing and agreed to by the waiving Party.

**19. Entire Agreement.** Other than the credit agreement submitted by the Company and any applicable valid confidentiality or non-disclosure agreement between the Parties, this Agreement constitutes the entire agreement between the Company and Disruptive Energy relating to the subject matter hereof, and there are no oral statements, representations, warranties, undertakings except as specifically set forth or incorporated herein. Company understands that any terms and conditions issued with a Service Order to Disruptive Energy for Services will be null and void, and these General Terms and Conditions will govern the Agreement. Except as provided herein, no amendment to this Agreement will be binding upon the Parties unless it is in writing and duly executed by each of the Parties.

**20. Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth.

**21. Force Majeure.** If either Party is delayed in or prevented from carrying out any of its obligations under this Agreement due to Force Majeure, that Party shall be excused from performance of such obligation for as long as and to the extent that the prevention or delay lasts (excluding the cost of all Equipment rental charges). This is provided that the Party affected gives the other as much advance notice of such circumstances as is practicable, uses all reasonable endeavors to minimize the effect of such Force Majeure and resume its obligations hereunder, and in any event shall have notified the other in writing within 7 days of discovery of such circumstances, identifying the same and indicating the anticipated period and Services (if applicable) affected. A Party affected by such circumstances shall use all reasonable endeavors to minimize the extent and duration of their effect on this Agreement. For clarity, lack of funds or inability to pay shall not be considered an event of Force Majeure.

**22. Notices.** Any notice or other communication to be given under this Agreement shall:

- a) be in English and in writing;
- b) be delivered by hand, email, or sent by pre-paid courier; and
- c) be deemed to have been received, if delivered by hand or courier, on the date of delivery, and if by email, then on the next business day after confirmed sending of the email. The provisions of this Article shall not apply in relation to the Service of any document in connection with litigation proceedings, suits or actions.



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**23. Assignment.** Neither Party may assign or transfer any or all of its rights or obligations under this Agreement, in whole or in part, to a third party without the prior written consent of the other Party, and which consent shall not be unreasonably withheld, provided however, that Disruptive Energy may without such consent assign any of its rights and/or obligations under the Agreement in whole or in part to any affiliate of Disruptive Energy, as defined in the Alberta Business Corporations Act.

**24. Enurement.** This Agreement shall enure to the benefit of and be binding upon the Parties together with their respective heirs, executors, administrators, successors, and permitted assigns.

**25. Counterparts.** This Agreement may be executed may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. This Agreement may be executed with signatures transmitted and received via electronic means and all signatures received via electronic means shall be treated for all purposes of the Agreement as original signatures and shall be deemed valid, binding and enforceable by and against both Parties.