

# TERMS AND CONDITIONS

## Terms and Conditions for the supply of Services by Averda to Customer (T&Cs)

### 1. Definitions

**Averda:** the Averda entity whose details are set out in the Quote.

**Collection:** The periodic collection of Waste, the particulars of which are set out in the Quote.

**Container:** A receptacle for temporary storage of Waste, the particulars of which are set out in the Quote.

**Contract:** The contract between Averda and the Customer for the supply of Services, which automatically comes into existence on the signing of the Quote by the Customer and Averda and comprises the Quote and these T&Cs and excludes any other documents, including any terms or conditions which the Customer purports to apply.

**Customer:** The person or company who purchases the Services from Averda, whose details are set out in the Quote.

**Fees:** The fees which will be paid by the Customer to Averda in return for Averda providing Services, the details of which are set out in the Quote.

**Force Majeure:** An event beyond the reasonable control of Averda including, without limitation, industrial disputes, failure of a utility service or transport network, war, riot, civil commotion, acts of terrorism, acts of the government or government bodies, compliance with any law or governmental order, accident, breakdown of machinery, fire, flood or storm.

**Hazardous Waste:** All hazardous waste which is required by applicable law to be treated and/or dispatched to a secure final disposal site including, without limitation, Infectious Waste, toxic, pollutant and radioactive waste or similarly identified waste which is hazardous to human health.

**Infectious Waste:** Medical or biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that may be identified in applicable law.

**Parties:** Averda and the Customer and **Party** means any one of them.

**Payment Terms:** The terms of payment of the Fees by the Customer to Averda is 30 days from the invoice date, unless otherwise specified in the Quote.

**Quote:** The quote provided by Averda to the Customer in connection with the Services to which these T&Cs form part.

**Services:** The services to be supplied

by Averda to the Customer, as described in the Quote and on the terms set out in the Contract.

**Service Address:** The location where the Services shall be performed by Averda, as set out in the Quote.

**Service Start Date:** The start date for the provision of Services, as set out in the Quote.

**T&Cs:** These Terms and Conditions for the supply of Services, which form part of the Contract.

**Duration:** The duration of the Contract, as set out in the Quote and as automatically extended in accordance with clause 7.1. **Waste:** The waste to be collected by Averda in connection with the Services.

### 2. Application of T&Cs; changes by Averda

**2.1 Application:** These T&Cs apply to all sales and quotations for Services made or issued by Averda. Any representations made to or by the Customer about the Services shall have no effect unless expressly agreed in writing and incorporated into the Contract.

**2.2 Changes to T&Cs by Averda:** Save for the amendments described in clause 6.1, Averda reserves its right to modify or replace these T&Cs from time to time, provided such change is by email and notice of such change is given to the Customer at least 10 days before the implementation of such change.

### 3. Provision of Services

**3.1 Supply:** Averda shall supply the Services to the Customer on the terms set out in the Contract.

**3.2 Service Address:** Delivery of the Containers and supply of the Services shall take place at the Service Address. On or before the Service Start Date, Averda shall deliver the Containers to the Service Address. The Customer will ensure that the Containers are at the Service Address for Collection and that Averda's trucks and personnel have unrestricted access to the Service Address to enable Averda to perform the Services and to access its Containers. If, through no fault of its own, Averda cannot access the Containers and/or the Service Address to perform the Services, then the Customer agrees to pay 50% of the Fees for such unperformed Services irrespective of whether or not they are performed.

**3.3 Time:** Any dates or time specified by Averda for the supply of Services are intended to be an estimate only. Averda will not be liable for loss, costs or damages caused by any delay in performing the Services nor will any delay entitle the

Customer to terminate the Contract unless such delay exceeds 15 days.

**3.4 Proof of Service:** Averda is not obliged to obtain a signature from a representative of the Customer as proof of Collection. Averda shall use reasonable endeavours to obtain a signature from a representative of the Customer at the time of each Collection however the absence of the Customer signature on any proof of service log does not release the Customer from any payment obligations related to the service provided.

**3.5 Recycling Reports:** Averda shall generate recycling reports for the previous month on request by the Customer. The Customer shall pay such reasonable fee for the report as is notified to it by Averda.

### 4. Payment of Fees

**4.1 Payment:** The Customer will pay the Fees to Averda in accordance with the Payment Terms. No deductions shall be made by the Customer from any Fees owing to Averda.

**4.2 Late Payment:** If the Customer fails to pay the Fee in full on the due date and in accordance with the Payment Terms the Customer will be liable to pay interest to Averda on such sum from the due date for payment until payment is made at the annual rate of 4% above the base rate of HSBC Bank Middle East Limited, accruing on a daily basis. The Customer agrees to have the services suspended until all outstanding Fees have been received. The Customer agrees to pay all costs associated with the recovery of the payment including but not limited to: courier, legal etc.

**4.3 Additional Fees:** In addition to the Fees, Averda may also charge the Fees referred to in clause 3.2 for unperformed Services and the following additional charges:

Collection Delays	5 OMR per 15 minutes
Administration Charge	3 OMR per 15 minutes

**4.4 VAT:** All amounts payable by the Customer are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Averda to the Customer, the Customer shall pay to Averda such additional amounts in respect of VAT as are chargeable in the supply of the Services at the same time as payment is due for the supply of the Services.

### 5. Containers

**5.1 Supply; condition; ownership:** Containers shall be supplied by Averda to the Customer in good condition. From the time of delivery, the Customer assumes the entire risk, and will pay Averda, for loss, damage (whether malicious or accidental; fair wear and tear accepted), theft or destruction of or to

Containers. Unless otherwise stated in the Quote, Containers are and will at all times remain the property of Averda and will be returned to Averda on termination of the Contract in the same condition as they were supplied (fair wear and tear excepted), failing which the Customer shall pay Averda the costs incurred by Averda for repair or replacement of such Containers.

**5.2 Use:** The Customer will not and will procure that anyone else will not: (a) use the Containers for any other purpose other than as a receptacle for Waste and those specifically related to the Services; (b) put anything in the Containers which is not Waste. In case the services agreed upon in the Quote are related to non-hazardous waste, Averda may refuse to provide the Services in connection with any waste material which does or which Averda believes may contain Hazardous Waste or any other waste which is harmful or dangerous to health or if the collection, handling or disposal of such material might cause Averda to incur any liability or unreasonable expense; (c) overload the Containers with Waste beyond a level load or the specified quantity or weight or level set out in the Quote or the Contract by Averda; (d) set fire to anything deposited in the Containers; or (e) present the Waste in such a manner that it cannot be transported in compliance with local regulations. Should any of the above events occur, Averda may refuse

to collect the Waste and the Customer agrees to pay for the Services irrespective of whether or not they are performed.

## **6. Variations**

**6.1 Variations requested by Customer:** Fees are quoted having regard to the nature of the Services, the level of urgency, Service Address, transport requirements, Container type and number and the Frequency of Services. In the event that any of the foregoing is varied before or after the Service Start Date on the Customer's request, the Parties will agree in writing any such variations. Averda may revise the Fee for the Services in accordance with such variation.

**6.2 Changes by Averda:** Averda reserves its right by giving written notice to the Customer to: (a) make any changes to the Services which are necessary to comply with any applicable law or safety requirement in relation to the Services or the Waste; or (b) increase the Fee to reflect any increase in the cost to Averda which is due to any factor beyond the control of Averda including, but not limited to, any amendment to or enactment of regulations relating to the supply of Services or a significant increase to the cost of fuel, landfill fees, disposal fees, treatment fees,

transport fees and/or insurance.

## **7.Duration; Termination**

**7.1 Duration:** The Services shall commence on/around the Service Start Date and shall continue in force for the Duration, following which it shall be renewed automatically for additional periods which are equal to the Duration, unless either Averda or the Customer provides each other with at least 30 days' notice of its intention not to renew the Contract prior to the expiration of the Duration. Except as set out in clauses 7.2 and 7.3, the Contract may not be terminated before the end of the Duration.

**7.2 Termination by Averda:** If the Customer breaches the Contract including, without limitation: (a) the Customer defaults in paying Fees when due; or (b) the Customer commits a breach of its obligations hereunder; or (c) the Customer becomes insolvent or passes a resolution to be wound up, then Averda may terminate the Contract with immediate effect by written notice, upon which Averda shall stop providing the Services and may remove the Containers from the Service Address without need for the Customer's consent.

**7.3 Termination by Customer:** If Averda breaches the Contract including, without limitation: (a) Averda stops providing the Services for a period exceeding 15 days and such stoppage is not due to a reason set out in the preceding clause or due to any other breach of the Contract by the Customer; or (b) Averda becomes insolvent or passes a resolution to be wound up, then the Customer may terminate the Contract with immediate effect by written notice. Upon termination, all Fees which are already due to be paid shall be immediately paid by the Customer to Averda.

**7.4** The Parties acknowledge and agree that a court order will not be required to give effect to any termination of the Contract.

## **8. Indemnity; limitation of liability**

This clause sets out the entire financial liability of each Party to the other Party arising out of or in connection with the Contract. Each Party shall be responsible for and indemnify the other party against any direct loss or damage which a Party may suffer as a result of a breach of the Contract. A Party shall not be liable to the other Party for any indirect or consequential loss arising out of or in connection with the Contract. A Party's maximum liability arising out of or in connection with the Contract shall be limited to the Fees, with the exception of any liability arising out of clauses 4, 5.1 and 5.2.

## **9. Force Majeure**

Neither party shall be considered in default of its obligations hereunder if the performance of such obligations is delayed,

hindered or prevented by Force Majeure, provided that within seven days from the start an event or occurrence claimed as Force Majeure the Party affected by Force Majeure gives the other Party written notice of such event and immediate steps are taken by the affected Party to mitigate where possible the effects of the event or occurrence.

## **10. Assignment and subcontracting**

Averda may at any time assign, transfer or subcontract all or any of its rights and obligations under the Contract to any third party or agent.

## **11. Notices**

Any notice or other communication which is given by either Party to the other under the Contract shall be in writing and sent either by email or by courier at the billing address of the Customer and the registered address of Averda as stated in the Quote.

## **12. Waiver**

A waiver of any right under the Contract is only effective if it is in writing. No failure or delay by a Party in exercising any right under this Contract or by law shall constitute a waiver of that or any other right.

## **13. Severance**

If a competent authority finds that any provision or part-provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **14. Third parties**

A person other than the Customer and Averda shall not have rights under or in connection with the Contract.

## **15. Variation:**

Any variation to the Contract shall only be binding when agreed in writing between Averda and the Customer, except as stated in clauses 2.2 and 6.2

## **16. Governing law and jurisdiction**

**16.1** The Contract and/or any quote issued by Averda shall be governed by and construed in accordance with the laws of Sultanate of Oman.

**16.2** The Parties agree that all disputes or claims arising out of or in connection with the Contract and/or any quote issued by Averda shall be resolved by the courts of Sultanate of Oman.