



# Mission Support Alliance Provision

## SPECIAL PROVISIONS - HAZARDOUS WASTE TRANSPORTATION AND DISPOSAL SP-14 REV. 0 March 14, 2011

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## 1.0 PREAMBLE

- A. These Special Provisions are requirements of any Subcontract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Subcontract and are in addition to the General Provisions and other Special Provisions that apply to this Subcontract. In the event of a conflict between these Special Provisions and the General Provisions or in the Special Provisions SP-13, "General Transportation Instructions," these Special Provisions shall take precedence.
- B. These Special Provisions apply to this Subcontract because of the existence of certain rights and obligations of parties to a Subcontract, which involves the handling, packaging, and shipping of hazardous materials. The clauses below are addressed primarily to the processes of inspection and acceptance (or rejection) of hazardous material loads or shipments. In this kind of activity, both parties make warranties as to the condition of the load, how it was prepared, and what both will do in the event of an incident or occurrence that may damage the load or expose the public to risk or danger.

## 2.0 REJECTION OF WASTE PRODUCTS

Prior to acceptance, Subcontractor may reject waste products which it has determined by visual inspection or testing to be nonconforming. Subcontractor shall give Buyer notice of the waste products rejected and the reasons for such rejection.

## 3.0 ACCEPTANCE AND TITLE

- A. Acceptance of the waste products shall occur at the time Subcontractor takes possession of or accepts delivery of the waste products at the place of tender and, at that time, title, risk of loss and all other incidents of ownership to the waste products shall be transferred from the Government and vested in the Subcontractor.
- B. When Subcontractor provides loading, the Subcontractor shall be deemed to have taken possession of the waste products upon commencement of such loading service. When the Subcontractor provides transportation only, the Subcontractor shall be deemed to have taken possession upon completion of such loading services.

## 4.0 REVOCATION OF ACCEPTANCE

Within 72 hours after acceptance, Subcontractor may revoke its acceptance of nonconforming waste products, provided that the waste products have not been materially changed or disposed. However, revocation of acceptance of waste products which have been transferred from Buyer's container(s) to a bulk container, such as a tank truck or storage tank, must be based upon an analysis of a representative sample of such waste products taken prior to transfer from Buyer's container to the bulk container. Such sample must be split with Buyer at the time it is taken. A justified revocation of acceptance shall operate to revert title; risk of loss and all other incidents of ownership in the Government at the time notice of revocation is given to the Buyer.



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### 5.0 BUYER'S OPTIONS IN EVENT OF REJECTION OR REVOCATION OF ACCEPTANCE

- A. In the event Subcontractor rejects the waste products or revokes its acceptance of waste products, Buyer may, within (5) business days after receipt of notice of rejection or revocation, notify Subcontractor of Buyer's intent to test the waste product, to verify the alleged nonconformity. Buyer may, if lawfully permitted, direct Subcontractor to arrange for such testing or corrections, pursuant to Buyer's instructions and at Buyer's cost. All testing or corrections shall be completed within twenty-one (21) business days of Buyer's receipt of the rejection or revocation notice.
- B. Upon mutual agreement of the parties that the waste products are not nonconforming for the reasons specified in Subcontractor's notice, the notice of rejection or revocation as to such waste products shall be deemed null and void as of the time of its original issuance.

### 6.0 SUBCONTRACTOR'S OPTIONS AS TO RIGHTFULLY REJECTED OR REVOKED WASTE PRODUCTS

- A. If Subcontractor rejects the waste products or revokes its acceptance of the waste products, Subcontractor and Buyer shall, in good faith, attempt to amend the Subcontract to provide for disposal of the nonconforming materials. If the parties cannot, within a reasonable time after rejection or revocation (including any time provided for correction or testing in paragraph 5.0), agree on necessary amendments, Buyer shall make prompt arrangements for the removal of the nonconforming materials from the disposal facility to another lawful place of storage or disposition.
- B. Buyer agrees to pay Subcontractor, upon receipt of substantiation thereof, its reasonable expenses and costs incurred, subsequent to rejection or revocation, for handling, loading, stowing, preparing for transport, transporting, storing and caring for any waste products returned to Buyer pursuant to this paragraph. If Buyer has paid for any services, which will not be performed because of rejection or revocation of the waste products, Subcontractor shall refund such payment to Buyer.
- C. If Buyer has not paid for any services performed prior to rejection or revocation, Buyer shall upon receipt of invoice, pay the amount specified for such service in the Subcontract.

### 7.0 SUBCONTRACTOR WARRANTIES

Subcontractor warrants and represents to the Buyer that:

- A. Subcontractor understands the currently known hazards and risks which are presented to human beings, property and the environment in the handling, transportation, storage, treatment, processing and disposal of the waste products as they have been described by the Buyer in the Waste Profile Sheet; and,
- B. Subcontractor is engaged in the business of transportation, storage and disposal of industrial and other wastes, and has developed the requisite expertise for the handling, transportation, storage, treatment, processing, and disposal of such; and,
- C. Subcontractor will handle, transport, store, treat, process, and dispose of the waste products in a safe and workmanlike manner and in full compliance with all valid and applicable statutes,



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ordinances, Subcontracts, rules and regulations of the Federal, state and local governments in whose jurisdictions such activities are performed under this Subcontract; and,

- D. Any and all vehicles or vessels, Waste Products containers and personnel to be provided by Subcontractor in the performance of this Subcontract have obtained or will obtain all permits, licenses, certificates or approvals required to comply with valid and applicable statutes, ordinances, Subcontracts, rules and regulations of the Federal, state and local governments; and,
- E. The disposal facility (or facilities) has been issued, as of the date of execution of the Subcontract, all permits, licenses, certificates or approvals, required by valid and applicable statutes, ordinances, Subcontracts, rules and regulations of the Federal, state and local governments in which such facility is located, necessary to allow such facility to accept and store, treat, process and dispose of the waste products. In addition, if required by Federal, state or local law, regulations or ordinance, Subcontractor has filed with the appropriate governmental agency a notification of hazardous waste activity and/or an application to operate a hazardous waste storage, treatment or disposal facility and the storage, treatment or disposal facility has achieved "interim status" as defined by Federal and applicable state law and regulations. Subcontractor shall provide Buyer with reasonable advance notice if any such permit, license, certificate or approval is to expire and not to be renewed during the term of the Subcontract, or become the subject of judicial or administrative action seeking revocation or suspension. Such notice shall also be provided if Subcontractor determines not to seek any necessary permit, license, certificate or approval, which becomes required after execution of the Subcontract.

If, during the term of this Subcontract, Subcontractor determines not to renew any existing permit, license, certificate or approval or not to seek any necessary permit, license, certificate or approval which becomes required after execution of the Subcontract, Buyer shall retain all the rights and remedies it may have at law or equity.

### 8.0 BUYER WARRANTIES

The Buyer warrants and represents to Subcontractor that:

- A. Waste products tendered to Subcontractor will conform to the descriptions and specifications contained in the Waste Profile Sheet; and,
- B. Buyer will prepare the waste products for transportation and tender to Subcontractor in accordance with all valid and applicable statutes, ordinances, Subcontracts, rules and regulations of the Federal, state and local governments in whose jurisdiction such waste products are to be tendered to Subcontractor, pertaining to: (1) container specifications for any container not supplied by Subcontractor; and, (2) marking and labeling of all containers; and,
- C. The Buyer has sole title, or the full right to transfer title, to waste products which will be tendered to Subcontractor.

### 9.0 TENDER OF DELIVERY

Buyer shall tender delivery of the waste products to Subcontractor at times and places specified by the Buyer. Buyer shall, at the same time and place, tender to Subcontractor those completed documents, shipping papers or manifests as are required, for lawful transfer of the waste products to Subcontractor,



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by valid and applicable statutes, ordinances, Subcontracts, rules or regulations of the Federal, state, or local governments.

### 10.0 LOADING AND TRANSPORTATION OF WASTE PRODUCTS

- A. The Subcontractor is to provide transportation, and/or loading, including but not limited to pumping. Subcontractor shall transport waste products to the disposal facility specified in the Subcontract. Subcontractor shall be responsible for clean up and disposal of any waste product spill during such loading or transportation and shall fully indemnify and hold Buyer harmless therefore.
- B. The Subcontractor is to provide transportation services. Selection of transportation vehicles or vessels, times of travel and routes shall be solely determined by Subcontractor. However, Buyer shall have the right to refuse to load or permit the loading of its waste products if it reasonably finds that the transportation vehicle is unfit or unsafe for transportation of the waste products.

### 11.0 DISPOSAL

- A. Subcontractor shall dispose of the waste products at the particular facility or facilities, referred to in the Subcontract as "the disposal facility." Subcontractor shall be solely responsible for determining the specific times and techniques for storage, processing, treatment and disposal of the waste products. However, such processing, treatment and disposal shall occur within a reasonable time. Subcontractor shall submit to Buyer a Certificate of Treatment/Destruction for the waste products upon completion of disposal.
- B. If the Subcontractor uses, distributes, or sells any of the waste products or components or residue thereof, Subcontractor agrees to indemnify and save harmless the Buyer, its affiliates, its present and future officers or directors (or officials), employees and agents, from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes or action, suites and costs and expenses incidental thereto (including, cost of defense, settlement and reasonable attorneys fees), which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of bodily injuries (including death) to any person, damage (including loss of use) to any property (public or private), contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, Subcontracts, rules or regulations of any governmental entity or agency caused by or arising out of the use, distribution or sale of the waste products.

### 12.0 INSPECTIONS

#### 12.1 BUYER

The Buyer shall have the right, but not the obligation, to inspect and obtain copies of all written licenses, permits or approvals, issued by any governmental entity or agency to Subcontractor or its lower-tier Subcontractors which are applicable to the performance of this Subcontract; to inspect transportation vehicles or vessels, containers or disposal facilities provided by Subcontractor; and to inspect the handling, loading, transportation, storage or disposal operations conducted by Subcontractor in the performance of this Subcontract. Such inspections or lack of inspections shall not operate to relieve Subcontractor of its responsibility or liability under this Subcontract.



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### **12.2 SUBCONTRACTOR**

Subcontractor shall have the right, but not the obligation, to inspect, sample, analyze or test any tendered waste products before accepting such products.

### **13.0 NONEXCLUSIVITY**

This Subcontract is not to be construed as granting Subcontractor the exclusive right to transport, hold, treat and/or dispose of Buyer's waste, and Buyer reserves the right to Subcontract with other parties for such services as it deems necessary.