



## ERA NPC Terms of Business

These terms and conditions ("Terms") will apply to the relationship between you and us, in general during our engagement by you, and to each specific Service Level Agreement. We may vary these Terms from time to time and will notify you in writing when we do so. Definitions, if not provided in the body of the Terms, are in paragraph 12.

### 1 General terms of engagement

You and we will agree on the terms of our engagement by concluding a Service Level Agreement, which agreement will also incorporate these Terms and these Terms will apply to any Service Level Agreement.

### 2 Your obligations

Your obligations shall be as set out in the respective Service Level Agreement.

### 3 Our obligations

#### 3.1 We shall:

- 3.1.1 be responsible for and have oversight of the conduct of the Services and the details of the Services;
- 3.1.2 make all strategic decisions regarding the Services;
- 3.1.3 issue Service Requests to enable you to deliver the Services timeously, effectively, and in a way that enables you to comply with your obligations under a Service Level Agreement; and
- 3.1.4 co-operate with you in all matters relating to the Services.

### 4 Non-exclusivity

Services shall be provided on a non-exclusive basis and accordingly, we shall not be precluded from providing or appointing any other service provider to provide services similar to the Services, and you shall not be precluded from providing any other PRO services similar to the Services.

### 5 Payment terms

- 5.1 Unless otherwise agreed between us in respect of a particular Service Request, the following payment terms shall apply:
  - 5.1.1 you shall invoice us monthly in arrears for the Service Fee payable in respect of the applicable Services. The Service Fees shall be paid by us to you within 30 (thirty) days of the date of any invoice issued by you; and
  - 5.1.2 all amounts which we must pay to you in terms of a Service Level Agreement, and which are not paid on due date will bear interest at 2% per month calculated from due date to date of payment.
- 5.2 You shall keep complete and accurate books and records in accordance with the International Financial Reporting Standards issued by the International Accounting Standards Board from time to time. You will permit us or our representatives to inspect, audit and copy such books and records at any time during normal business hours at our expense.
- 5.3 We shall send you a written notice ("Disputed Amount Notice") within 14 (fourteen) calendar days of the conclusion of an audit pursuant to clause 5.2 above of any discrepancy of the cost of any Services. The Disputed Amount Notice shall contain a reasonably detailed explanation of our calculation of the disputed amount, as well as the aggregate amount in South African Rands of any proposed adjustments.
- 5.4 You and we shall use our best efforts for a period of 30 (thirty) calendar days after your receipt of the Disputed Amount Notice, or

such longer period as you and we may mutually agree upon in writing to resolve any disagreements over the disputed amount.

### 6 Limitations on liability

Notwithstanding anything to the contrary contained in a Service Level Agreement, we shall not be liable to you for any claims, liabilities, damages, losses, penalties, expenses and costs (including legal costs on an attorney and own client scale) in terms of or pursuant to a Service Level Agreement.

### 7 Goods in transit indemnity and insurance

- 7.1 You shall at all times have valid and paid-up professional indemnity insurance in respect of any claim we may have against you for damages resulting from any acts, errors, or omissions committed by you arising out of your appointment and/or the provision of the Services.
- 7.2 You shall at all times have valid and paid-up goods in transit insurance covering loss, damage or destruction of any goods placed in your possession or found to be in your possession as a result of the Service Level Agreement. The limit of indemnity of this policy shall be as set out in the Service Level Agreement and/or Service Request, to the extent applicable.
- 7.3 You shall, if requested, furnish to us a letter evidencing the abovementioned indemnity insurance in place and evidence of payment of the premiums in respect thereof.

### 8 Force majeure

- 8.1 If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under the respective Service Level Agreement by any cause beyond the reasonable control of that party, including, without limitation, acts of God, civil commotion, riots, insurrection, acts of government, fire, explosion, the elements, epidemics, governmental embargoes or like causes, the party so affected shall, to the extent so prevented, be relieved of its obligations during the period of such events and shall not be liable for any delay or failure in the performance of any obligations or loss or damage either general, special or consequential which the other party may suffer due to or resulting from such delay or failure.
- 8.2 The party subject to force majeure shall as soon as possible notify the other party in writing of the circumstances amounting to force majeure and shall provide an estimate (which shall be updated in writing from time to time) of when those circumstances are expected to cease to apply.
- 8.3 In conditions of force majeure, each party shall take all reasonable steps by whatever lawful means are available to resume all performance of its obligations under the Service Level Agreement as soon as reasonably possible and shall discuss with the other party ways and means to overcome such conditions.
- 8.4 If conditions of force majeure persist continuously in respect of a party for a period in excess of two months and have a material adverse effect on the other party, and the parties are within such period unable to reach written agreement on amendments to the relevant provisions of the Service Level Agreement to take into account such conditions, the other party may terminate the Service Level Agreement with immediate effect on written notice.

<b>9</b>	<b>Consequences of termination</b>	12.1.5	'Service Request' has the meaning as defined in the Service Level Agreement;
9.1	The provisions of this clause 9 should be read in conjunction with any other provisions of the Service Level Agreement that regulate the rights and obligations of the parties on termination of a Service Level Agreement.	12.1.6	'you' means the party who enters into a Service Level Agreement with us and who provides the Services in accordance with the Service Level Agreement; and
9.2	Upon termination of a Service Level Agreement for any reason whatsoever, each party thereto ("requesting party") shall be entitled to demand that the other party ceases use in any manner whatsoever and returns (or destroys, on request) all physical and electronic copies of confidential information belonging to the requesting party. The requesting party shall also be entitled to send one representative (including a professional advisor) to inspect and/or audit the other party in order to confirm that it has complied with this clause 9.	12.1.7	'we', 'our' or 'us' means ERA E-Waste Recycling Authority NPC, a non-profit company registered in accordance with the laws of the Republic of South Africa or (if appropriate) its affiliated firms, alliance partners or other entities.
9.3	Any termination of a Service Level Agreement, howsoever occasioned, will, unless otherwise provided for herein, be without prejudice to any other rights or remedies to which the parties thereto may be entitled at law and will not affect any accrued rights or liabilities of the counterparty nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into force or to continue in force on or after such termination.	12.2	<b>Calculating days.</b> Where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day.
9.4	Neither party thereto will be liable to the other party for loss or damage arising from the lawful termination of a Service Level Agreement.	12.3	<b>Deemed performance.</b> Where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day.
9.5	Any active and incomplete Service Requests at the time of termination of a Service Level Agreement will remain in operation until completed by you, notwithstanding the termination of a Service Level Agreement and unless terminated by agreement between the parties thereto.	12.4	<b>Addresses and notices.</b>
<b>10</b>	<b>Dispute resolution</b>	12.4.1	Any written notice in connection with a Service Level Agreement shall be deemed to have been duly given:
	Any disputes between you and us arising out of or in connection with a Service Level Agreement or the subject matter of the Service Level Agreement may be referred in the first instance to mediation, failing which to arbitration to be finally determined in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa. Any arbitration will be held in Johannesburg, and will be further subject to any arbitration agreement contained in a Service Level Agreement between us.	i.	5 Business Days after posting (14 Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the party's address;
<b>11</b>	<b>General terms</b>	ii.	on delivery, if delivered to the party's physical address before 17h00 on a Business Day, or if delivered on a Business Day but after 17h00 on that Business Day or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was delivered;
11.1	<b>No stipulation for the benefit of a third person.</b> Save as is expressly provided for in a Service Level Agreement, no provision of these Terms or a Service Level Agreement constitutes a stipulation for the benefit of a third person (ie a <i>stipulatio alteri</i> ) which, if accepted by the person, would bind any party in favour of that person.	iii.	on despatch, if sent to the party's then fax number or e-mail address before 17h00 on a Business Day or if sent on a Business Day but after 17h00 on that Business Day, or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was sent;
11.2	<b>No representations.</b> A party to the Service Level Agreement may not rely on any representation which allegedly induced that party to enter into a Service Level Agreement unless the representation is recorded in the Service Level Agreement.	iv.	unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
11.3	<b>Applicable law.</b> These Terms and any Service Level Agreement are to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.	12.4.2	A party may change that party's address or fax number or e-mail address for this purpose by notice in writing to the other party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.
<b>12</b>	<b>Definitions and Interpretation</b>	12.4.3	A written notice or communication actually received by a party shall be an adequate written notice or communication to that party notwithstanding that it was not sent to or delivered at that party's chosen address in the Service Level Agreement.
12.1	<b>Definitions.</b> In these Terms the following words will bear the meanings given to them here:	12.4.4	A party may change that party's address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other party such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.
12.1.1	'Business Day' means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;		
12.1.2	'Services' means the services to be provided by you to us under a Service Level Agreement;		
12.1.3	'Service Fee' has the meaning as defined in the Service Level Agreement;		
12.1.4	'Service Level Agreement' means any service level agreement entered into between us and you in terms of which you provide the Services to us;		