

General Terms & Conditions for Receipt and Treatment of Wastewater (GTC-WW) of Evides Industriewater B.V.

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for Receipt and Treatment of Wastewater (GTC-WW)  
of  
Evides Industriewater B.V.



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## ARTICLE 1 \_\_\_\_\_ DEFINITIONS

The following definitions apply throughout these General Terms & Conditions and related Term sheet(s):

- 1.1. **Advance Payment Instalments**  
The advance payments against future settlement, charged to Discharger by the Treatment Company.
- 1.2. **Discharge or Transfer**  
The discharge or transfer of Wastewater to the Treatment Company.
- 1.3. **Final Payment Term**  
A period of time specified by the Treatment Company within which the Discharger may yet fulfil contractual obligations for which the agreed term has expired.
- 1.4. **Final Settlement Date**  
The date as described in article 6.2.
- 1.5. **Maximum rate of discharge**  
The maximum quantity of Wastewater expressed in m<sup>3</sup>/hour that Discharger may transfer at any instant during any hour to the Treatment Company for Treatment.
- 1.6. **Nitrification inhibition**  
Indication for the acute toxicity of substances in the Wastewater with respect to nitrifying active sludge, by measurement of the breakdown of ammonia.
- 1.7. **Non-sanitary discharge**  
Wastewater with a composition deviating from Wastewater discharged by households, for which the total pollutant level is determined by measurement and sampling.
- 1.8. **Permit issuing authority**  
The competent government authority that issues or has issued the WVO permit.
- 1.9. **Point of discharge and receipt**  
The place where the Wastewater is transferred from Discharger to Treatment Company, being the point where the Wastewater flow leaves the industrial site of the Discharger (property boundary), unless agreed otherwise in the Term sheet.
- 1.10. **Pollutant level**  
The total number of pollutant units (the equivalent of "vervuilings eenheden") that serves as mean value for calculating the annual charges for Receipt and Treatment of the discharged Wastewater.
- 1.11. **Pollutant unit ("vervuilings eenheid")**  
(1) For oxygen consuming substances: a population equivalent that represents the con-

sumption of 136 grams of oxygen per day of 24 hours;  
(2) Substances other than oxygen consuming substances: as stated in the Term sheet.

- 1.12. Precipitation**  
Legal term for all water falling from the sky, including rainfall, hail or snow.
- 1.13. Receipt**  
The receipt of Wastewater.
- 1.14. Respiration inhibition**  
Indication for the acute toxicity of substances in the Wastewater with respect to aerobic sludge, by measurement of the rate of respiration.
- 1.15. Sanitary discharge**  
A discharge of which the composition corresponds to household Wastewater and of which the total pollutant level is determined by the quantity of discharged or transferred water, and not by measurement and sampling.
- 1.16. Site**  
The business site of the Discharger.
- 1.17. Statutory interest**  
The statutory interest is calculated according to article 6:119a of the civil code of The Netherlands, in effect from 7 August 2002.
- 1.18. Supplier or Discharger**  
The party entering an agreement with the Treatment Company for Receipt and Treatment of Wastewater as described in the Term sheet.
- 1.19. Term sheet**  
The Agreement between Treatment Company and Discharger in regard to the Receipt and Treatment of Wastewater.
- 1.20. Treatment**  
The treatment of Wastewater.
- 1.21. Treatment Company**  
Evides Industriewater BV (EIW), a subsidiary of Evides N.V. with offices in Rotterdam, or any personnel in service of the Treatment Company.
- 1.22. Waste substances**  
Waste substances, pollutants or contaminants, in any form whatsoever, as intended in article 1, first paragraph of the Surface Waters Pollution Act (WVO). See also definition 1.26.

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**1.23. Wastewater**

Water that is contaminated with waste substances, pollutants and/or contaminants, and which is emitted as a consequence of industrial or household activities.

**1.24. Water treatment facilities**

Facilities operated by the Treatment Company for the purpose of transportation and/or Treatment of Wastewater and/or sludge.

**1.25. WVO**

Surface Waters Pollution Act (Dutch: Wet Verontreiniging Oppervlaktewater, 1970).

**1.26. WVO permit**

The permit issued by the competent government authority for discharge of wastewater containing contaminating or polluting substances into surface water.

**ARTICLE 2 \_\_\_\_\_ GENERAL PROVISIONS**

- 2.1. Wherever these General Terms & Conditions refer to external standards, directives and regulations, the definitions stated in those documents shall apply, provided they do not conflict with these General Terms & Conditions.
- 2.2. These General Terms & Conditions form an integral part of the Term sheet between Treatment Company and Discharger. They may be referred to as the General Terms & Conditions for Receipt and Treatment of Wastewater or GTC-WW.
- 2.3. In exceptional circumstances, at the discretion of the Treatment Company, the Treatment Company may permit departure from the provisions of this GTC-WW or the Treatment Company may specify additional terms and/or conditions in agreement with Discharger. Such departure or non-standard terms and conditions shall have no legal effect unless in writing and signed by both Treatment Company and Discharger.

**ARTICLE 3 \_\_\_\_\_ AGREEMENT FOR DISCHARGE, RECEIPT AND TREATMENT**

- 3.1. Receipt and Treatment shall take place subject to the written and signed Termsheet between the Treatment Company and Discharger. The Wastewater is discharged by Discharger as soon as it passes the point of Discharge and Receipt.

**ARTICLE 4 \_\_\_\_\_ INDEXING OF TARIFFS**

- 4.1. The tariffs charged under the Term sheet shall be adjusted effective January 1 of each year, through multiplication of the tariff in force the previous year by:

$$A + B \times \frac{Mt}{M(t-1)} + C \times \frac{Lt}{L(t-1)} + D \times \frac{Et}{E(t-1)}$$

where  $A+B+C+D = 1$  (one). The symbols used in these formulas are defined as follows:

- 4.1.1.  $L_t$  = the index figure for collective agreement wages per hour as published by the Dutch department of statistics, including exceptional wages, "SBI 40-41 Energy and Water Supply companies, from the month of August of the year preceding the calendar year of supply.
- 4.1.2.  $L_{t-1}$  = as for  $L_t$ , but for the month of August of one year earlier.
- 4.1.3.  $M_t$  = the arithmetic mean of the index figure, published by the Dutch department of statistics, for "industrial revenue, domestic industrial revenue, investment goods (2000 = 100)" for the months of September up to and including August of the year preceding the calendar year of supply.
- 4.1.4.  $M_{t-1}$  = as for  $M_t$ , but for the months of August up to and including September of one year earlier.
- 4.1.5.  $E_t$  = the arithmetic mean of the producers price index published by the Dutch department of statistics, for industrial products, domestic revenue, electricity (2000 = 100), for the months of September up to and including August of the year preceding the calendar year of supply.
- 4.1.6.  $E_{t-1}$  = as for  $E_t$ , but for the months of August up to and including September of one year earlier.
- 4.2. The weighting factors A, B, C and D are the weighting factors stated in the Term sheet.
- 4.3. The weighting factors used in the formulas above are applicable for a period of five (5) years. At the end of these five years, the Treatment Company has the right to subject the weighting factors in effect at that time to a recalibration. The Treatment Company shall notify Discharger of any adjustments deemed necessary as a result of this recalibration.
- 4.4. If the outcome of the indexing formulas is a value less than one (1), then the value of one (1) shall apply.
- 4.5. If the Dutch department of statistics or its legal successor should cease to publish the index figures required for the application of this article, then by mutual agreement and in consultation with the Dutch department of statistics or its legal successor, the parties shall determine which figures correspond as nearly as possible to the previously available index figures, and which shall then be used for indexing of tariffs.
- 4.6. To the extent that and for as long as the index figure intended in this article remains unknown, the Treatment Company shall apply an estimated value for the year in question for the purpose of establishing a provisional price.

- 4.7. Immediately following publication of the definitive index figures by the Dutch department of statistics, the Treatment Company shall prepare a recalculation based on the definitive price for the year in question.

#### ARTICLE 5 \_\_\_\_\_ TAXES AND GOVERNMENT CHARGES

Taxes, surcharges, retribution, sufferance tax etc. that the Treatment Company is obligated and/or authorised by the government to charge to Discharger as a consequence of the agreed Receipt or Treatment, shall be added to all amounts charged to Discharger under this GTC-WW and the related Term sheet.

#### ARTICLE 6 \_\_\_\_\_ PAYMENT

- 6.1. The Treatment Company shall charge Discharger by means of a monthly invoice for all amounts due from Discharger under this GTC-WW and the related Term sheet, unless otherwise agreed. The Treatment Company shall at the same time notify Discharger how the invoice may be paid.
- 6.2. The amount invoiced under article 6.1 must be paid in full no later than 30 days after the invoice date (the Final Settlement Date) by direct deposit to the bank account of the Treatment Company with the account number stated on the invoice.
- 6.3. The existence of a dispute or difference of opinion as to the amounts due or the validity of amounts charged shall not discharge Discharger from the obligation to pay.
- 6.4. The Treatment Company and Discharger shall at no time leverage any payment due under the Term sheet against any other amounts that may be due either to or from the other party.

#### ARTICLE 7 \_\_\_\_\_ LATE PAYMENT

- 7.1. If Discharger fails to deposit the amounts due under article 6 to the bank account of the Treatment Company stated on the invoice by the Final Settlement Date, then the Treatment Company has the right:
- i) To charge Statutory Interest to Discharger, effective from the Final Settlement Date; and
  - ii) To notify Discharger in writing of a Final Payment Term.
- 7.2. If Discharger continues to default on its payment obligations within the Final Payment Term, then the Treatment Company has the right to cease Receipt and Treatment, to prematurely terminate the Term sheet under the terms of Article 14, and/or to charge Discharger for the Instalments under the terms of Article 8 subject to the applicable conditions, without prejudice to the right of the Treatment Company to demand that Discharger

fulfils its obligations, and to obtain compensation for any damages that may have been suffered as a result of Discharger's default on its obligations.

## **ARTICLE 8 \_\_\_\_\_ ADVANCE PAYMENT INSTALMENTS**

- 8.1. The Treatment Company has the right to charge Advance Payment Instalments to Discharger, if:
  - i) The Treatment Company has twice notified Discharger of a Final Payment Term within a period of 12 months, or
  - ii) A credit situation comes into effect as described in article 15 paragraph 3.
- 8.2. The charging of Advance Payment Instalments shall remain in effect at least until the end of the current calendar year, or in the event of a situation as described in article 8.1.ii, for as long as the Treatment Company deems necessary until in the reasonable judgment of the Treatment Company such situation no longer applies.
- 8.3. Discharger is obligated to pay the Advance Payment Instalments within 5 working days after receipt of the Instalment invoice, which is deemed to have taken place on the first working day following the invoice date.
- 8.4. The Treatment Company shall determine the amount of the Advance Payment Instalments in all reasonableness. The Advance Payment Instalments shall be of an amount no greater than 3 times the amount of the Invoice of the last complete month prior to the invoice date of the Instalment invoice.

## **ARTICLE 9 \_\_\_\_\_ ESTABLISHMENT OF A POINT OF DISCHARGE AND RECEIPT**

The connection for Receipt/Discharge to the collection and transportation system of the Water Treatment Facilities of the Treatment Company is established by, or by order of the Treatment Company and at the expense of Discharger.

The manner and place of connection is at the discretion of the Treatment Company, in consultation with the (future) Discharger. The connection and/or its parts located outside the property boundary of Discharger's site, remains the property of the Treatment Company.

## **ARTICLE 10 \_\_\_\_\_ INTERRUPTIONS TO THE RECEIPT AND TREATMENT**

- 10.1. If Receipt and Treatment are interrupted by the Treatment Company, then the Treatment Company shall take every possible action within reason to enable Receipt and Treatment to be resumed as quickly as possible.
- 10.2. Situations can arise (for example, repairs to the Water Treatment Facilities or if the Treatment Company is legally compelled to take such steps) during which interruption to Receipt and/or Treatment is unavoidable. When such situations arise, the Treatment

Company shall take all possible steps within reason to resume Receipt and Treatment within the shortest possible time.

- 10.3. The obligations of the Parties shall be suspended during any period designated as force majeure, as defined in article 6:75 of the Civil Code of The Netherlands. Each party shall notify the other in a timely manner, in the event of a (threat) of force majeure.
- 10.4. The Treatment Company and Discharger agree to operate their facilities in such a way that any interruption or reduction in Receipt and Treatment or Discharge of Wastewater respectively, due to any force majeure situation, shall have the minimum impact and duration possible.

## ARTICLE 11 INTERRUPTION DUE TO DEFAULT

- 11.1. In addition to the provisions of article 7 paragraph 2, the Treatment Company is authorised to suspend the Receipt and Treatment following a written demand for fulfilment, taking account of a period of seven days after receipt by Discharger of the written demand, if, and for as long as:
- Discharger defaults on its obligations under the agreement other than those stated in article 7 paragraph 2 (including these GTC-WW);
  - In the request for permission to discharge, Discharger has supplied such incorrect and/or incomplete information to the Treatment Company that the Treatment Company would have rejected Discharger's request, if this information had been known, or would have permitted discharge solely under terms and conditions other than those in this GTC-WW, and Discharger does not wish to accept these terms and conditions.
- All costs arising from of the applicability of this article shall be charged to Discharger.
- 11.2. The suspension of Receipt and Treatment under article 11 paragraph 1 shall be continued until such time as the costs of suspension and resumption of Receipt and Treatment, plus any related damages suffered by the Treatment Company, are fully paid. The Treatment Company may at its discretion make resumption of Receipt and Treatment subject to additional terms and conditions.
- 11.3. Discharger is authorised to suspend payment of sums charged by the Treatment Company following a written demand for fulfilment of Receipt and Treatment services, taking account of a period of seven days following receipt by the Treatment Company of this written demand, until such time as the Treatment Company no longer defaults on its obligations under the Term sheet.

## ARTICLE 12 OTHER OBLIGATIONS OF PARTIES

- 12.1. In carrying out the work specified in or under the Agreement, the Treatment Company shall exercise such care as may reasonably be expected from a reputable, professional organisation.

- 12.2. Whenever the Treatment Company is present on the site of Discharger, the Treatment Company shall at all times observe all safety regulations of Discharger (the Regulations) that are in force at that time and place. At the time of entering into an agreement with the Treatment Company, Discharger shall notify the Treatment Company of the Regulations that are in force, and shall provide a copy of these Regulations. Discharger shall subsequently provide timely notification to the Treatment Company of all changes to the Regulations.
- If the Treatment Company fails to observe the Regulations, then Discharger is legally entitled to either deny the Treatment Company access to its site, or to remove the Treatment Company from its site.
- 12.3. Discharger is obligated to provide all cooperation as deemed necessary by the Treatment Company in the application and execution of its obligations under the Agreement and in verifying the fulfilment thereof, in particular by:
- Notifying the Treatment Company without delay of any presumed or observed damage, faults or irregularities in the system for conveying Wastewater on the site,
  - Allowing access to Discharger's site for persons carrying an identification or authority issued by the Treatment Company, provided these persons comply with the Regulations published by Discharger, as described in the previous paragraph.

## ARTICLE 13 LIABILITY

- 13.1. The Treatment Company is totally exempt from liability to compensate Discharger for any damages in any form whatsoever that have been or may be suffered by Discharger as a consequence of the Receipt and Treatment of Wastewater and/or interruption to or reduction in the Receipt and Treatment, except where the damages suffered are the result of intentional, grossly negligent or grossly irresponsible acts committed by the Treatment Company, in which case compensation shall be limited to damages to persons and/or property, and solely when such damages are the direct result of Receipt and Treatment of Wastewater discharged by Discharger, or of interruption to or reduction in the Receipt and Treatment of Wastewater discharged by Discharger. Compensation for damages under this article shall at no time exceed € 100.000,- (one hundred thousand Euro) per incident and € 400.000,- (four hundred thousand Euro) per year and a maximum of € 1.000.000,- (one million Euro) during the entire term of the Term sheet. Years are calculated from the commencement date of the Term sheet.
- 13.2. At no time shall either party be liable to compensate the other party for indirect or consequential damages such as damage due to inability to conduct normal business, loss of income or profit, etc. Indirect or consequential damages includes: all damages other than direct damage to persons and/or property, such as damages due to inability to conduct normal business, loss of income or profit, etc.
- 13.3. Discharger indemnifies the Treatment Company from liability to third parties arising from damages that have been or may be suffered by such parties as a result of Receipt and Treatment and/or interruption to or reduction in Receipt and Treatment, except in the

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event of intentional, grossly negligent or grossly irresponsible acts committed by the Treatment Company.

#### ARTICLE 14 \_\_\_\_\_ TERM OF AGREEMENT

- 14.1. Unless:
- i) otherwise specified in the Term sheet, or
  - ii) than 12 (twelve) months prior to the expiry date of the initial term or extended term of the Term sheet, on expiry of the initial term, the term of the Term sheet shall automatically be extended each year by one (1) year.
- 14.2. Upon expiry or termination of the Term sheet at the end of the initial or extended term subject to article 14.1, neither party shall be liable to compensate the other party for direct or indirect damages of any kind whatsoever arising from the termination or non-extension of the Term sheet.

#### ARTICLE 15 \_\_\_\_\_ PREMATURE TERMINATION

- 15.1. While this Term sheet is subject to Article 265 of book 6 of the Civil Code of The Netherlands, the following paragraphs of the current article shall also apply to this Term sheet.
- 15.2. Discharger may not terminate the Term sheet during the Term of the Term sheet as a result of interruption to or reduction in the Receipt and Treatment as stated in articles 10 and 11.
- 15.3. Either Party (the Petitioning Party) has the right (a) to immediately terminate the Term sheet during the Term of the Term sheet without judicial intervention, or (b) to demand that the other Party provide a financial surety to the Petitioning Party, if one or more of the following circumstances (the Credit Circumstances) arises in regard to the other Party or another party that has provided a form of surety for the other Party (in both cases referred to henceforth as the Party in Question):
- i) Bankruptcy procedures are instituted against the Party in Question at the relevant magistrates' court;
  - ii) The Party in Question applies for protection from creditors;
  - iii) A seizure order is enforced on an important part of the property of the Party in Question;
  - iv) The Petitioning Party has reasonable grounds to believe that the financial position of the Party in Question is weakened to such an extent that the Petitioning Party can no longer reasonably expect that the Party in Question is in a position to fulfil its obligations under the Agreement completely and in a timely manner;
  - v) Changes take place in the ownership structure of the Party in Question, of such a nature and/or to the extent that Petitioning Party has reasonable grounds to believe that Party in Question will default on one or more obligations under this Agreement.

- 15.4. The demand for provision of a financial surety to guarantee the complete fulfilment of the obligations under this Term sheet and the notification of the premature termination of the Term sheet may take place solely by means of registered letter from the Petitioning Party to the Party in Question at the address of the Party in Question as stated in the Term sheet.
- 15.5. If the Petitioning Party waives the right to prematurely terminate the Term sheet, and elects to demand that a financial surety be provided, then the Petitioning Party may exercise the right to prematurely terminate the Term sheet solely if the Party in Question fails to provide or have another party provide this financial surety within 3 days after receipt of the demand for financial surety.

#### **ARTICLE 16 \_\_\_\_\_ MUTUAL EXCHANGE OF INFORMATION AND CONFIDENTIALITY**

- 16.1. Information provided by either Party to the other Party under the Term sheet shall be transmitted in writing. Notifications, statements and promises made orally shall have no legal validity, except and solely when confirmed in writing by an appropriately authorised person. "In writing" in this instance is taken to include confirmation by means of facsimile or e-mail transmission carried out by an authorised person.
- 16.2. Neither Party shall disclose any information related to the negotiation, existence and/or execution of the Term sheet to any third party except with the approval of the other Party, and unless compelled to do so by legal regulations or court order.

#### **ARTICLE 17 \_\_\_\_\_ DUTCH LANGUAGE**

The communication between the Parties shall take place in the language of The Netherlands (Dutch language) unless Parties agree otherwise in writing.

#### **ARTICLE 18 \_\_\_\_\_ SETTLEMENT OF DISPUTES**

- 18.1. Parties shall cooperate in a spirit of good will to resolve any and all problems that may arise as a consequence of the Term sheet, or of any other Term sheet or understanding between the Treatment Company and Discharger related to the Term sheet.
- 18.2. This cooperation shall also take place whenever problems arise due to changed circumstances during the Term of the Term sheet, that are of such a nature and extent that the one Party cannot in reasonableness demand that the other Party fulfil their obligations under the Term sheet.
- 18.3. After expiry of a period of three months after the first meeting between parties under articles 18.1 and 18.2, if in the opinion of one or both Parties the cooperation has not ultimately led to the desired result, then there is an instance of a dispute as soon as one

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of the Parties notifies the other of such in writing. Disputes under this Term sheet shall be submitted to the Rotterdam magistrates' court for arbitration, unless the parties agree to an alternative form of arbitration.

**ARTICLE 19** \_\_\_\_\_ **APPLICABLE LAW**

This GTC-WW and the related Term sheet are subject to Dutch law.

**ARTICLE 20** \_\_\_\_\_ **TRANSFER OF RIGHTS AND OBLIGATIONS**

Each of the Parties has the right to transfer their rights and obligations under this Agreement and the associated GTC-WW to a third party, provided the transferring Party ensures that the third party also takes over all intended rights and obligations and without prejudice to the right of the other Party to the Term sheet to withhold agreement with the takeover, if the other Party to the Term sheet has reasonable grounds for doing so. The transferring Party guarantees that any transfer under the terms of this article shall immediately be notified in writing to the other Party to the Term sheet (not meaning the receiving party of the takeover).

Evides Industriewater B.V. board of directors

December 2005



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