



## **RE:CIRCLE Ontario LLC**

### **Terms and Conditions**

### **for Provision of Materials for Anaerobic Digestion**

v4 dated February 11, 2025

**RE:CIRCLE Ontario LLC  
Terms and Conditions  
for Provision of Materials  
for Anaerobic Digestion**

1. Unless otherwise agreed in writing by RE:CIRCLE Ontario LLC ( "**Customer**" ), these terms and conditions ( "**Terms**" ) are the only terms and conditions that govern the provision of organic waste materials ( "**Materials**" ) by Customer to the processing company ( "**Processor**" ) for purposes of anaerobic digestion. The Frame Agreement for Provision of Materials for Anaerobic Digestion ( "**Frame Agreement**" ), which are made a part hereof and incorporated herein, and these Terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Processor will be deemed to have accepted and hereby agrees to be bound by these Terms upon acceptance of any Materials. These Terms prevail over any of Processor's general terms and conditions of purchase regardless of whether or when Processor has submitted such terms.

2. Prices shall be determined based on the mutual agreement of price levels of Processor or Customer, if any, at time of delivery.

3. Customer shall deliver quantities of Materials as determined by Customer in its sole discretion.

4. The Materials will be delivered within a reasonable timeframe subject to the parties' agreed upon delivery date.

5. Either party may cancel any shipment on a commercially reasonable basis and with the consent of the other party, such consent not to be unreasonably withheld.

6. Title to and ownership of the Materials shall vest in Processor upon delivery. Delivery terms will be as set forth on the Frame Agreement accompanying confirmation.

7. Processor shall inspect the Materials immediately upon arrival at Processor's facility, before the Materials are offloaded from Customer's vehicle into the Processor's system. Processor will be deemed to have accepted the Materials unless Processor notifies Customer immediately in writing of any rejection before such offloading of the Materials and furnishes such written evidence or other documentation as reasonably required by Customer. If Processor timely notifies Customer of

any rejection, then Customer shall be afforded an opportunity to examine the Materials promptly in the state in which they were delivered. After such examination, Customer may, in its sole discretion, ship, at its expense and risk of loss, the Materials to another facility.

8. CUSTOMER MAKES NO WARRANTY WHATSOEVER (EXPRESS OR IMPLIED), AND EXPRESSLY DISCLAIMS ANY WARRANTY, WITH RESPECT TO THE MATERIALS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (III) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER DOES NOT GUARANTEE THE QUALITY OR CONTENTS OF THE MATERIALS OR THAT THE MATERIALS WILL BE FREE FROM DEFECT. Customer shall not be liable in any manner whatsoever for any claimed breach of any warranty set forth in this Section. Processor is solely responsible for any defect that arises because Processor failed to follow Customer's oral or written instructions as to the storage, processing, use or maintenance of the Materials or if Processor alters or modifies such Materials without the prior written consent of Customer.

9. IN NO EVENT SHALL CUSTOMER BE LIABLE TO PROCESSOR OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT PROCESSOR WAS AWARE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL CUSTOMER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO PROCESSOR FOR THE MATERIALS PROCESSED HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

10. In addition to any remedies that may be provided under these Terms, Customer may terminate these Terms with immediate effect upon



written notice to Processor, if Processor: (i) has not performed or complied with any of these Terms, in whole or in part; or (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

11. Customer shall not be liable for any default or delay in performance if caused, directly or indirectly, by fire, flood, earthquakes, acts of God, stricken, riots or civil disorders, unavoidable casualty, governmental order or state of war, accidents, interruption of transportation facilities or delays in transit, supply shortages, failure of any party to perform any contract with Customer relative to the delivery of the Materials, or any other cause, whether similar or dissimilar to the causes enumerated herein, beyond the reasonable control of Customer. If Customer has a pending delivery, Customer shall notify Processor of the occurrence of any such contingency within a reasonable period of time. If due to excusable delay, performance cannot be completed within the original period for performance, the period of performance shall be extended for a reasonable period of time to allow completion of performance.

12. Processor shall comply with all applicable laws, regulations, and ordinances. Processor shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these Terms.

13. During the pendency of these Terms and for a period of three years thereafter, Processor shall, at its own expense, maintain and carry adequate insurance in full force and effect with financially sound and reputable insurers.

14. No waiver by Customer of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Customer. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from these Terms operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15. Processor shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Customer. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Processor of any of its obligations under these Terms.

16. These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or

implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

17. All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of the State of California without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of California.

18. Any legal suit, action, or proceeding arising out of or relating to these Terms shall be instituted in the federal courts of the United States District Court for the Central District of California, Eastern Division or the courts of the State of California, located in San Bernardino, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. In the event of suit or any other legal and/or administrative action brought by the parties herein to enforce their legal rights, the prevailing party is entitled to recovery of reasonable attorney's fees, collection agency costs, and court costs.

19. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the order confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (i) upon receipt of the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.

20. If any term or provision of these Terms is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

21. These Terms may be amended by Customer at any time upon prior written notice to the Processor.

22. Those provisions of these Terms which by their nature apply, or are reasonably likely to apply, beyond any termination or expiration of these Terms shall survive.