

## **AEROSOLTRACKER<sup>SM</sup> TERMS AND CONDITIONS**

These Terms and Conditions ("Terms") govern (a) your use of the WM LampTracker, Inc. ("WMLT") AEROSOLTRACKER<sup>SM</sup> container (the "Container") with which these Terms were delivered to you, in connection with the WMLT AEROSOLTRACKER<sup>SM</sup> recycling program (the "Program"); and (b) the relationship between WMLT and the user of the Container ("You" or "Customer"). If you have any questions regarding these Terms, consult WMLT's Web Site (currently: [www.wmlamptracker.com](http://www.wmlamptracker.com)) or call WMLT at 1-800-664-1434.

### **USE OF THE CONTAINER CONSTITUTES ACCEPTANCE OF THESE TERMS.**

1. **RETURNS.** If you do not accept these Terms, you may not use the Container or WMLT's services. However, you may return the Container within ten (10) days (the "Return Period") from the day you received the Container by doing one of the following during the Return Period: (a) return the Container to the place of purchase; or (b) contact WMLT and complete all return instructions.

2. **LIMIT ON PROGRAM AVAILABILITY.** The Program is not available to Customers located outside of the continental United States and in Puerto Rico and in the States of Alaska, Arkansas, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, New Hampshire, New York, Pennsylvania, Rhode Island, Vermont or Virginia.

3. **RECYCLING SERVICES.** Subject to these Terms, upon receipt and acceptance of a Container and subject to limits set forth in Section 9 herein, WMLT or its designee will perform the following "Recycling Services": (a) process, recycle and/or dispose of the Recycled Materials in accordance with federal, state and local laws and regulations; and (b) prepare and process legally required paperwork.

4. **TITLE TO CONTAINER.** Until WMLT or its designee receives and accepts the Container, subject to limits set forth in Section 9 herein: (a) title to and risk of loss of the Container and its contents will remain with Customer; and (b) Customer is solely responsible for the contents of the Container.

5. **EXPIRATION OF CONTAINER; UNUSED CONTAINERS.** Each Container must be received by WMLT or its designee by the expiration date printed on the Container ("Expiration Date"). WMLT has no obligation after the Expiration Date even where the carrier identified on a Prepaid Label fails or refuses to ship the Container. WMLT will not be obligated to give a refund for unused Containers.

6. **PACKAGING.** Customer shall pack and seal the Container in accordance with the instructions included with the Container and any additional instructions that WMLT may send to the Customer or post on the WMLT Web Site prior to shipment of the Container by Customer (the "Instructions"). Customer shall pack in the Container only Recycled Materials, and shall exclude any and all Non-Conforming Waste, as defined in Section 9 herein.

7. **SHIPPING.** Customer shall comply with all Instructions related to shipping. You will have received a prepaid return shipping label (the "Prepaid Label") with your Container. The Container must be shipped from the state in which it was originally ordered by the Customer and received from WMLT.

8. **ADDITIONAL SHIPPING CHARGES.** You remain responsible for all charges of shipping the Container to WMLT or its designee, including, without limitation, increases imposed by the carrier after you purchase a Prepaid Label. If the carrier identified on the Prepaid Label will not transport the Container, WMLT's sole obligation will be to refund the actual shipping charge received by WMLT. This obligation is conditioned upon receipt of written request for such refund prior to the Expiration Date.

9. **NON-CONFORMING WASTE.** The Container may only be used for recycling aerosol cans (the "Recycled Materials"). Material will be considered non-conforming if (i) it is not an aerosol can; (ii) it is a type of aerosol can that the Instructions specify should not be packed in the Container; (iii) it is a type of aerosol can that is ineligible for shipment as a "Consumer Commodity" under U.S. Department of Transportation ("DOT") regulations, (iv) it is generated or shipped by any one other than a household or a Conditionally Exempt Small Quantity Generator as defined in relevant federal or state hazardous waste regulations, or (v) it is otherwise not authorized for ground shipment in the Container to the facility specified on the Prepaid Label under all applicable federal, state and local statutes, ordinances, orders, permits, licenses, rules and regulations. All such materials will be referred to as "Non-Conforming Waste" and are not Recycled Materials. A list of examples of Non-Conforming Wastes (which is an integral part of these Terms) is provided at the end of these Terms. If WMLT or its designee determines that any Container contains Non-Conforming Waste, WMLT or its designee may, at their sole discretion, and at Customer's sole cost and expense: (a) reject the Container and return it to Customer; (b) return the Non-Conforming Waste to Customer; or (c) process the contents of the Container and Customer shall pay for any and all costs associated with

processing the Non-Conforming Waste. WMLT will never take title to Non-Conforming Waste, and title to such waste shall remain with Customer.

10. CHARGES FOR FAILURE TO COMPLY WITH TERMS AND INSTRUCTIONS; NON-CONFORMING WASTE; CHANGED CONDITIONS; AND ADDITIONAL SERVICES. WMLT reserves the right to bill additional amounts for any of the following: (a) costs associated with handling any Non-Conforming Waste; (b) shipping materials in the wrong Container; (c) additional shipping charges beyond the amounts prepaid for any Prepaid Label; (d) any costs or expenses incurred by WMLT other than the usual and ordinary costs of WMLT in the performance of the Recycling Services; (e) any costs related to changes in applicable law occurring after the date of purchase of the Container; or (f) costs associated with any failure by Customer to comply with the Terms or Instructions.

11. PAYMENT TERMS. Payments are due within 30 days of the invoice date. Company reserves the right to charge a late fee no greater than that allowed by law on balances not paid within thirty (30) days of the date of the invoice. Prices are subject to change at any time upon notice.

12. WARRANTY. WMLT warrants: (a) the design of the Container complies with applicable performance standards for transport of Recycled Materials; and (b) if the Container is packed, sealed and shipped strictly in accordance with the Instructions, it is adequate for ground transport of Recycled Materials to the facility specified on the Prepaid Label from authorized points within the continental United States under ordinary commercial shipping conditions. Other than as expressly warranted herein, the Container is provided "as is," and WMLT disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. Customer warrants that it will not ship any Non-Conforming Waste in the Container and that Customer will otherwise comply with all Instructions and these Terms.

13. INDEMNITY. WMLT will indemnify Customer from and against any and all claims and damages, causes of action, costs, reasonable attorneys' fees, losses, or liability arising out of WMLT's breach of these Terms or violation of law by WMLT. Customer will indemnify, defend (with counsel of WMLT's choosing) and hold harmless, WMLT and its directors, shareholders and employees from and against any and all claims and damages, causes of action, costs, reasonable attorneys' fees, losses, or liability arising from the use, packing and/or shipping of the Container (prior to acceptance by WMLT or its designee), any contents packaged in the Container, breach of these Terms or violation of any applicable city, county, state or federal law, rule or regulation by Customer or any carrier shipping the Container. This Section will survive any termination of the parties' relationship.

14. LIMITATION ON LIABILITY. Other than the obligations of WMLT set forth in these Terms: (a) neither WMLT nor its suppliers, officers, agents, affiliates, shippers, carriers, contractors and employees shall be responsible or liable with respect to the Container, or any use thereof, under any theory of contract, negligence, strict liability or other theory; (b) in no event shall WMLT be liable or responsible for any matter beyond WMLT's reasonable commercial control; (c) in no event shall WMLT be liable to Customer for any amount in excess of the amount received by WMLT for the purchase of this Container; and (d) in no event shall WMLT be liable or responsible for any acts or omissions of the carrier or facility specified on the Prepaid Label or their owners, operators, officers, employees, agents, affiliates, or contractors.

15. GOVERNING LAW AND VENUE. These Terms will be interpreted in accordance with the laws of the State of Texas, without regard to its choice of law provisions, as though all acts and omissions occurred in the State of Texas. All disputes arising under these Terms will be brought in a state or federal court in Houston, Texas, and, in such instance, Customer: (a) waives any objection which it might have now or hereafter to the exclusive venue of any such litigation, action or proceeding, (b) irrevocably submits to the exclusive jurisdiction of any such court, (c) waives any claim or defense of inconvenient forum; and (d) waives any right to trial by jury of any claim or cause of action by or against WMLT.

16. FORCE MAJEURE. WMLT shall not be in default for its failure to perform or delay in performance caused by events or significant threats of events beyond its reasonable control, whether or not foreseeable, including, but not limited to, strikes, labor trouble, riots, imposition of laws or governmental orders, fires, acts of war or terrorism, acts of God, and the inability to obtain equipment, acts or omissions of shippers, carriers or contractors, and WMLT shall be excused from performance during the occurrence of such events.

17. ENTIRE AGREEMENT; CONSTRUCTION. These Terms constitute your entire agreement with WMLT with respect to the purchase and use of any Container, superseding all prior communications, agreements or correspondence between the parties or their representatives related to the Container and the Recycling Services; provided, however, obligations which apply to users of Containers set forth in the Instructions are hereby incorporated herein. If any provision in these Terms is determined to be illegal, invalid or unenforceable, the remainder of these Terms will nonetheless survive and govern the rights and obligations of the parties hereto. No provision of the Terms will be

deemed waived, amended, or modified by either party unless such waiver, amendment, or modification is in writing signed by the party against whom enforcement is sought. Any additional or different terms or conditions contained in any document furnished by Customer are hereby objected to and rejected by WMLT. No representation or statement made by any employee, agent, or representative of WMLT shall be binding on WMLT to the extent such representation or statement differs from these Terms.

### **Examples of Non-Conforming Wastes**

Customers are prohibited from placing or shipping in the Container any materials that are not authorized for ground shipment in the Container to the facility specified on the Prepaid Label under all applicable federal, state, and local statutes, ordinances, orders, permits, licenses, rules, and regulations. Such Non-Conforming Wastes include, but are not limited to, the following:

- (1) Aerosols generated or shipped by persons other than households or Conditionally Exempt Small Quantity Generators ("CESQGs"), as defined by applicable federal, state, or local hazardous waste laws.
- (2) Aerosols generated in or shipped from any location outside the continental United States.
- (3) Aerosols generated in or shipped from any U.S. State other than the one in which the Container was originally ordered by the Customer and received from WMLT.
- (4) Aerosols that are not in good condition (e.g., damaged, corroded, punctured, leaking, or crushed).
- (5) Aerosols with labels that are missing, covered, illegible, or obscured.
- (6) Aerosols with a capacity of greater than 1 liter (1000 ml).
- (7) Products that are not true aerosols (i.e., non-refillable cylinders containing a gas under pressure, used solely to expel a liquid, paste, or powder from the cylinder through a self-closing release device). Examples of prohibited non-aerosols include:
  - Pump sprays.
  - Oxygen canisters.
  - Signal horns.
  - Non-pressurized self-defense sprays.
  - Liquified petroleum gas ("LPG") cylinders.
  - Gas for powering toy pellet guns.
  - Other cylinders containing gases only.
- (8) Aerosols that are specially regulated or not authorized for receipt, including:
  - CFC-containing products (e.g., certain inhalers and refrigerants).
  - Expanding foam products (e.g., insulation foam).
  - PCB-containing products (e.g., certain paints, pesticides, or adhesives that are greater than 25 years old).
  - Pepper sprays.
  - Pesticides/herbicides that are not intended for household use or that have labels which do not authorize recycling of used aerosol cans.
  - Silicone gasket-maker products.
  - Tear gas cartridges or devices.
  - Zinc-based paints/primers/coatings (e.g., zinc-rich cold galvanizing sprays).
- (9) Industrial or other aerosols that do not have potential consumer uses.
- (10) Aerosols that do not have tops, caps, or lids that are capable of preventing accidental discharge during transport and related handling (e.g., aerosols designed with a removable cap if the cap is missing).
- (11) Aerosols that are discarded by facilities in any of the following industries: (a) petroleum refining, (b) chemical manufacturing, (c) coke by-product recovery, or (d) treatment, storage, or disposal facilities handling benzene wastes from any of these three industries. Customers should check the WMLT Web Site for updates to this list prior to initiating a shipment of a Container in order to ensure that no Non-Conforming Wastes are shipped in the Container.