

## **Terms and Conditions for Third-Party Haulers Using Hercules On-Site Diesel Fuel**

Effective as of December 1, 2024

These Terms and Conditions ("Agreement") govern the use of the on-site diesel fuel provided by Hercules Material Holdings, LLC ("Hercules") to third-party haulers ("Hauler," or "You") utilizing our fuel network for refueling. By accepting fuel cards and using our on-site fuel services, You agree to comply with the terms and conditions outlined below.

### **1. Fuel Usage and Fuel Cards**

**1.1 Fuel Access:** Hercules will provide Hauler with fuel cards to access on-site diesel fuel for fueling purposes. These cards are issued and assigned by Hercules based on the information provided by Hauler, including the driver's name, ID, and truck number.

**1.2 Card Restrictions:** Fuel cards are valid only within Hercules' internal fuel network. They cannot be used for any other purposes, including but not limited to unauthorized fuel stations or personal use.

**1.3 Card Assignment:** Fuel cards will be assigned to individual drivers based on the details provided by Hauler (name, ID, truck number). Hauler is responsible for ensuring the accuracy of the information provided for card allocation.

### **2. Competitive Pricing and Updates**

**2.1 Fuel Pricing:** Hercules offers competitive pricing on diesel fuel. Fuel prices are updated weekly and communicated to Hauler via email every Friday. The prices sent will remain valid for the entire upcoming week, unless there are exceptional market conditions (e.g., sudden price spikes due to unforeseen events), in which case Hercules will provide prior notice of any adjustments to fuel prices.

### **3. Fuel Activity Reporting and Payment**

**3.1 Weekly Fuel Statements:** Hercules will provide Hauler with a weekly statement detailing all fuel activity associated with each fuel card. The statement will include information such as:

- Date and time of fueling
- Fueling location
- Fuel card number
- Driver ID
- Truck number (unit number)
- Hub meter reading

A sample of the weekly statement is attached for reference.

**3.2 Fuel Deduction:** Fuel usage will be aggregated into a weekly batch. The cost of the fuel will be deducted from the corresponding weekly payment to Hauler as a credit memo. If the fuel total

exceeds the hauling payment for the week, Hauler agrees to pay for the balance due within 30 days.

**3.3 Accuracy of Data:** Hauler agrees to review and confirm the accuracy of each weekly fuel statement. Any discrepancies or errors in the statement should be reported to Hercules within 7 days of receipt for resolution. Failure to report discrepancies in a timely manner shall result in the forfeiture of any claim.

#### **4. Liability and Disclaimer**

**4.1 Use of Fuel:** Hauler acknowledges and agrees that all fuel provided by Hercules is to be used in accordance with applicable laws and regulations and solely for the purpose of fueling their trucks. Hercules is not responsible for any misuse, mishandling, or unauthorized use of the fuel by Hauler or its drivers, employees, officers, agents, and affiliates. Hercules is not the manufacturer of any fuel provided under this Agreement. Therefore, HERCULES EXPRESSLY DISCLAIMS ANY AND ALL FUEL WARRANTIES AND REMEDIES, EXPRESS OR IMPLIED.

**4.2 Indemnification:** Hauler agrees to indemnify and hold harmless Hercules, including its affiliates, subsidiaries, employees, officers, directors and agents, from and against any and all claims, lawsuits, judgments, losses, civil penalties, actions (administrative or judicial), liabilities, damages, fines, costs, and expenses (including reasonable attorney's fees) incurred or to be incurred, and which may be made or are brought against the Hercules by any individual, person (including, but not limited to Hauler's employees or agents), corporation, government, governmental agency, class, or any other entity whatsoever arising out of or alleged to have arisen out of this Order or in any relating to the use of the fuel, including but not limited to:

- Damages resulting from fuel spills, improper fueling, or any other accidents occurring during or after fueling.
- Any legal claims arising from environmental or regulatory violations caused by Hauler's use of the fuel.

This indemnification provision does not apply to the extent that such claims are directly caused by Hercules' gross negligence or willful misconduct.

**4.3 No Liability for Fuel-Related Damages:** HERCULES WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RELATED TO DAMAGES TO HAULER'S VEHICLES, MACHINERY, OR EQUIPMENT, AS WELL AS ANY LOSS OF PROFITS DUE TO FUEL-RELATED ISSUES OR FAILURES, WHETHER BASED ON STATUTE, TORT, CONTRACT, OR OTHERWISE, AND WHETHER OR NOT ARISING FROM HERCULES' NEGLIGENCE, STRICT LIABILITY OR FAULT. IN NO EVENT WILL HERCULES BE RESPONSIBLE FOR DAMAGES DUE TO THE ACTIONS OF OTHERS OR THE FAILURE OF HAULER TO COMPLY WITH ITS OBLIGATIONS. HERCULES' LIABILITY FOR ANY CLAIMS WILL BE LIMITED TO THE PURCHASE PRICE OF THE FUEL PURCHASED BY HAULER.

## **5. Termination of Fuel Access**

**5.1 Termination by Hercules:** Hercules reserves the right to immediately suspend or terminate access to the on-site fuel network at any time if Hauler violates any of these terms or engages in any fraudulent or unauthorized use of the fuel cards.

**5.2 Termination by Hauler:** Hauler may discontinue the use of the fuel cards at any time by providing written notice to Hercules. Upon termination, all outstanding fuel charges will be immediately payable to Hercules.

## **6. General Terms**

**6.1 Amendments:** Hercules reserves the right to modify or amend these terms and conditions at any time, with or without prior notice. Any changes will be communicated to Hauler via email, and continued use of the fuel cards after such modifications shall be deemed acceptance of the revised terms.

**6.2 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflict of law principles.

**6.3 Entire Agreement:** This Agreement constitutes the entire understanding between the parties regarding the use of the on-site diesel fuel and supersedes all prior agreements, whether written or oral, relating to the subject matter hereof.