

AMS Customer Agreement

Please Read the following AMS Customer Agreement Carefully.

By signing this Agreement, you are consenting to be bound by and are becoming a party to this Agreement.

Please contact us at producers@autostewardship.ca or 1-888-575-4870 for any inquiries about this agreement or your obligations related to Automotive Materials in Ontario.

1. THE PARTIES TO THIS AGREEMENT

- 1.1 **We”, “Our” and “Us”** means Automotive Materials Stewardship Inc. (“**AMS**”) and includes AMS’s administrative service provider. AMS is a not-for-profit producer responsibility organization (“**PRO**”) incorporated under the Canada Not-for-profit Corporations Act.
- 1.2 **“You” or “Your”** means the person or company whose address and contact information appears at the end of this Agreement and who intends to register with AMS on Your behalf and on behalf of your affiliated companies, if any.
- 1.3 You are a brand holder, importer, marketer or volunteer organization¹ of antifreeze, oil containers, and/or or oil filters (collectively, “**Automotive Hazardous and Special Products**” or “**Automotive HSP**”) as defined under Ontario Regulation 449/21 (the “**Regulation**”) made under the *Resource Recovery and Circular Economy Act, 2016* (the “**RRCEA**”).
- 1.4 The Regulation permits You to enter into this Agreement with Us for the purpose of carrying out Your responsibilities consisting of:
 - (a) Arranging for the establishment or operation of the collection or management system,
 - (b) Establishing or operating a collection or management system,
 - (c) Preparing and submitting reports, and
 - (d) Implementing a promotion and education program (but for greater certainty, AMS is not assuming any of Your responsibilities, if applicable to You, regarding visible HSP fees in section 37 of the Regulation),(collectively, “**Your Producer Responsibilities**”) under the Regulation.

2 YOUR OBLIGATIONS AS A CUSTOMER OF THE AMS PRO

- 2.1 Appointment of AMS. By this Agreement, You are appointing AMS under the Regulation as Your PRO to carry out Your Producer Responsibilities in section 1.4, on the understanding that You will be responsible for any other obligations applicable to You under the RRCEA or the Regulation.
- 2.2 New Customer. By both registering with AMS and filing this signed Agreement on the WeRecycle Portal you are becoming a customer of the AMS PRO.
- 2.3 Exclusive PRO Relationship. While a customer of the AMS PRO, You will not join another PRO to fulfill Your Producer Responsibilities with respect to Automotive HSP.
- 2.4 Provision of Information.

¹ As those words are defined in Ontario Regulation 449/21 found here <https://www.ontario.ca/laws/regulation/r21449>

- 2.4.1 You agree to provide AMS with:
- 2.4.1.1 all relevant and up to date contact details (telephone numbers, and email addresses) of Your primary contact for all communications under and in connection with the Agreement, and
 - 2.4.1.2 name and contact information of an employee who has authority to bind Your company (Signing Officer)
 - 2.4.1.3 Your Registry ID number assigned to You by the Resource Productivity and Recovery Authority (“**Authority**”) upon completion of the Authority’s registration process according to their requirements where You appoint AMS as Your PRO
- 2.4.2 You agree to file Customer Reports, and such other information as may be reasonably required by Us in order to discharge Our obligations to You under this Agreement, within the time limits set out in this Agreement or as may be otherwise required, including any brands and affiliates You reported on, a description of your methodology (i.e. how You have collected data and calculated your quantities of Automotive HSP), as well as rationale for any deductions You have applied to Your reported amounts.
- 2.4.3 You agree to inform AMS promptly upon becoming aware that any information originally supplied is not accurate or complete for any reason and shall as soon as practicable thereafter supply to AMS a statement in writing explaining the inaccuracy/incompleteness, together with the corrected/completed information. In order for such a correction to result in an adjustment to Your Fees or Customer Reports, You will need to comply with the Customer-Initiated Adjustment Policy and section 2.7.6 of this Agreement and the Authority’s policies, as applicable.
- 2.4.4 You agree to inform AMS in writing, as soon as practicable and in any event within thirty (30) calendar days of the happening of any of the following events:
- 2.4.4.1 The sale or acquisition of all or part of Your business including the sale or acquisition of any subsidiary/brands that form(s) part of the Customer’s company and the sale or acquisition date and any impact on Your obligation to pay Fees;
 - 2.4.4.2 A change in the registered office address or contact details provided to AMS or any factor that impacts Your status as an obligated Producer of Automotive HSP or Your ability to pay fees.
- 2.4.5 Customer Report.
- 2.4.5.1 You must submit your Customer Report to Us by no later than each of January 31, April 30, July 31 and October 31 each year by reporting sales quantities for the three months preceding period ending December 31, March 31, June 30 and September 30 respectively in accordance with the table in Schedule A. We reserve the right to change the reporting frequency or reporting deadlines on at least 90 days’ notice to You.
 - 2.4.5.2 If You join the AMS PRO on or after any Reporting Obligation Quarter, You must submit your Customer Report as soon as reasonably practical, but in any event no later than thirty (30) calendar days from the date you became a Customer. For all subsequent Reporting Obligation Quarters, You shall submit the Customer Report to AMS by no later than the quarterly reporting deadline

of each respective Reporting Obligation Quarter in accordance with the table in Schedule A.

- 2.4.6 Our Disclosure of Information to the Authority. You agree that AMS shall be entitled to obtain from You and provide copies and/or details of information You have provided to AMS to the Authority. Where practical in the circumstances, AMS agrees to use reasonable effort to provide You with prior notice of any such disclosure out of the ordinary course of AMS's operations.
- 2.5 Records Retention. You shall maintain and store in either electronic or written form all documents, data and/or records in respect of Your Automotive HSP, Your reports to AMS and/or the Authority, and Your obligations under this Agreement to substantiate and verify the amount of Automotive Materials set out in each Customer Report for a period of five (5) years from the filing date of each Customer Report. This includes all supporting data and/or records (as applicable) for each Customer Report.
- 2.6 Verification and Audit. You are responsible for complying with the Authority's Registry Procedure - Verification and Audit, as it may be updated by the Authority from time to time.
- 2.7 Fees.
- 2.7.1 Amount and Principles. You shall pay Fees to AMS in respect of each Fee Obligation Quarter for which you are obligated on the invoice due date. By no later than October 1 of the preceding year, AMS shall post the Fees for the subsequent year on the AMS website. In computing the costs and expenses, AMS will be required to estimate such costs and expenses as it shall consider reasonable and appropriate and shall take into account in calculating the Fees any surplus or deficit in AMS as a result of its operations.
- 2.7.2 Recalculation. Notwithstanding the foregoing, AMS may further recalculate the Fees on the basis set out in this Agreement and may adjust (either upwards or downwards) the Fees subject to a notice period of at least 90 days.
- 2.7.3 Payment Terms. The Fees for each Fee Obligation Quarter shall be payable within 30 days of the invoice due date in accordance with the table in Schedule A. All sums payable under this Agreement are exclusive of any applicable taxes which shall be added to such sum to the extent applicable. All sums payable under and in accordance with the Agreement by the Customer shall be paid in full without any deduction, withholding, counterclaim or set off.
- 2.7.4 Interest. If any sum payable by You to AMS under this Agreement remains unpaid for more than thirty (30) calendar days from the date of the invoice, AMS may charge You interest on such sum at four percent (4%) per annum above the Canadian Imperial Bank of Commerce's (CIBC) prime lending rate. Interest will be calculated on a daily basis from the date upon which such sum became due and compounded monthly and is payable on demand.
- 2.7.5 Remedies for Non-Payment. In addition to any other remedies that AMS may have in this Agreement for Your non-payment of Fees or Interest, including but not limited to the right to terminate this Agreement, You agree that AMS may withhold submission of Your Annual Report to the Authority and/or to You in relation to Your Producer Responsibilities in section 1.4.
- 2.7.6 Customer-Initiated Report Adjustments. If report corrections or revisions to Your Customer Report are identified by AMS or You or the Authority, an adjustment request

must be prepared and submitted by You by no later 60 calendar days of the applicable report submission due date (the “Due Date”) in accordance with the Customer-Initiated Adjustment Policy. Customer-initiated report adjustment requests submitted after this Due Date will not be accepted. If AMS approves all or part of the Customer’s adjustment request, the Customer shall be invoiced or credited any difference in fees paid. AMS reserves the right to review the adjustment requests for accuracy and compliance with the Customer-Initiated Adjustment Policy and apply such other reasonable adjustment principles and issue an invoice or credit note as is applicable in AMS’ sole discretion.

2.8 Compliance with Your Obligations. You are responsible for ensuring that you are compliant with Your obligations under the RRCEA, the Regulation, and the Authority’s policies and procedures, other than Your Producer Responsibilities in section 1.4 of this Agreement, which We have assumed on Your behalf, subject to Your compliance with this Agreement.

3 OUR OBLIGATIONS

3.1 Guiding Principles. AMS shall:

- 3.1.1 Act in the best interests of all customers of the AMS PRO;
- 3.1.2 Use reasonable commercial efforts to carry out Our obligations diligently and in a reasonable, proper and cost-effective manner having regard to the interests of all customers of the AMS PRO; and
- 3.1.3 Exercise the skill and expertise to be reasonably expected of a PRO under the Regulation.

3.2 Assumption of Responsibilities. Provided that You fulfill Your obligations in this Agreement and remain in compliance with this Agreement (“**Good Standing**”), we will assume Your Producer Responsibilities for Automotive HSP listed in section 1.4.

3.2.1 If You require AMS’s assistance beyond the scope of Our obligations or if this Agreement is terminated in accordance with section 7, We reserve the right to charge You an additional fee for any duties that You ask Us to undertake on Your behalf or duties which we must provide after the effective date of termination.

3.2.2 For Your annual report to the Authority (the “**Annual Report** ”), provided that you are in Good Standing, We will:

- 3.2.2.1 provide you with an electronic copy of Your Annual Report (and You are responsible for retaining this report for your records for a period of five (5) years in accordance with the Regulation); and
- 3.2.2.2 file your Annual Report with the Authority in accordance with the Authority’s filing deadline.

3.3 Notice Requirements. We shall notify You in the event one of the following occurs:

- 3.3.1 If We receive any written notices from the Authority alleging that We have not complied with the Regulation;
- 3.3.2 If We are charged or convicted with an offence under the RRCEA; or
- 3.3.3 If the Authority issues an administrative penalty against AMS under the RRCEA.

3.4 Insurance. We will possess comprehensive or commercial general liability insurance, including coverage for bodily injury, property damage, complete operations and contractual liability with combined single limits of not less than \$2,000,000 per occurrence, \$5,000,000 general

aggregate. AMS shall cause a certificate(s) of existing insurance executed by the insurer available upon request.

4 LIMITATION OF LIABILITY AND REMEDIES

- 4.1 Limitation of Liability. In no event will either party be liable for any indirect, incidental, special, exemplary or consequential losses or damages, including lost or anticipated profits, savings, interruption to business, loss of business opportunities, loss of business information, the cost of recovering such lost information, or any other pecuniary loss arising out of this Agreement, whether you have advised us or we have advised you of the possibility of such damages. Each party's aggregate liability in respect of any and all claims will be limited to the amount of Fees paid by you to AMS in the most current Fee Obligation Quarter. The foregoing limitations apply regardless of the cause or circumstances giving rise to such loss, damage or liability, even if such loss, damage or liability is based on negligence or other torts or breach of contract (including fundamental breach or breach of a fundamental term).
- 4.2 A party may not institute any action in any form arising out of this Agreement more than one (1) year after the cause of action has arisen. Some provinces do not allow the exclusion of limitation of incidental or consequential damages so the above exclusions may not apply. Sections 4.1 and 4.2 shall survive termination or expiration of this Agreement.

5 SUCCESSORS AND ASSIGNS

- 5.1 Successors and Assigns. You may not assign Your rights and duties under this Agreement to any party at any time without our consent which will not be unreasonably withheld. This Agreement will enure to the benefit of and will be binding on Us and our respective successors and permitted assigns. In the event of Our corporate merger, amalgamation, divestiture or asset sale, We will have the right to transfer and assign Our rights and obligations hereunder to any third party (the "**Assignee**"), upon written notice to You.

6 CONFIDENTIALITY

- 6.1 Subject to section 6.2, the You and AMS (which includes any service provider to AMS) each acknowledge that all customer, technical, financial and other business information received from the other in connection with this Agreement is considered private and confidential ("**Confidential Information**"). Both You and AMS will use reasonable diligence and care to prevent the unauthorized disclosure, reproduction or distribution of such confidential information to any other person.
- 6.2 In accordance with section 2.4.6, AMS will use reasonable effort to provide you with prior notice before disclosing information to the Authority. In all other cases, unauthorized disclosure, reproduction or distribution of such Confidential Information to any other person or association will first have to be consented to in writing by the disclosing party.
- 6.3 Confidential Information does not include:
- 6.3.1 Information that is already in the public domain;
 - 6.3.2 Information already known to the receiving party, as of the date of the disclosure, unless the receiving party agreed to keep such information in confidence at the time of its original receipt;
 - 6.3.3 Information hereafter obtained by the receiving party, from a source not otherwise under an obligation of confidentiality with the disclosing party; and

- 6.3.4 Information that the receiving party is obligated to produce under order of a court of competent jurisdiction, provided that the receiving party promptly notifies the disclosing party of such an event so that the disclosing party may seek an appropriate protective order.
 - 6.3.5 Notwithstanding anything to the contrary contained herein, You acknowledge that We may be required to disclose Your confidential information in the circumstances referred to in Section 2.4.6 above (Disclosure of Information).
- 6.4 This section regarding Confidential Information shall survive termination or expiration of this Agreement.

7 TERM AND TERMINATION

- 7.1 Term. The term of this Agreement will commence on the date of Your submission to Us of this Agreement as set out at the end of this Agreement, either as an amendment to this Agreement with Us or as a new Agreement pursuant to these terms. This Agreement will renew automatically for successive one (1) year terms on January 1 of each calendar year in accordance with the terms of this Agreement, as it may be automatically amended in accordance with section 8.9 by posting such amendment(s) on the AMS website with a minimum of 60 calendar days' notice to You.
- 7.2 Termination. This Agreement shall continue unless it is terminated in the following manner:
 - 7.2.1 By AMS: by notice in writing to You to take effect either forthwith or at such time as maybe specified in such notice on or after the occurrence of any of the following events:
 - 7.2.1.1 Any material breach by You of any of Your obligations under this Agreement which, if capable of remedy, shall not have been remedied to the reasonable satisfaction of AMS within thirty (30) calendar days of receipt by You of a written request from AMS for such breach to be remedied;
 - 7.2.1.2 Deliberate falsification of data or a pattern of providing false or misleading data in relation to Your Customer Reports;
 - 7.2.1.3 Notwithstanding anything to the contrary contained herein, any failure by You to pay to AMS any sum due hereunder within thirty (30) calendar days of the due date for payment thereof;
 - 7.2.1.4 If a petition in bankruptcy is filed and a judgment is entered against You or if You are adjudged a bankrupt, or if You are insolvent or unable to make payments to creditors when due or You take advantage of any insolvency act or debtor's relief act, or You make an assignment for the benefit of Your creditors, or if You pass any resolutions or take any other actions for Your liquidation, winding up or dissolution.
 - 7.2.2 By You. You are only permitted to terminate this Agreement with an effective date of December 31 of a calendar year by providing Us with a written notice of termination on or before July 1 of the same calendar year. For greater certainty, except in the case of Your bankruptcy, termination other than in accordance with these terms will not be effective.

- 7.2.3 The termination of this Agreement for whatever reason shall not affect any provision of this Agreement which is expressed to survive or operate in the event of such termination and shall not prejudice or affect the rights of either party against the other in respect of any breach of this Agreement or any monies payable by one party to the other in relation to any period prior to the effective date of termination. Without limiting the generality of the foregoing, all payment obligations in respect of monies payable by one party to the other shall survive termination or expiration of this Agreement.
- 7.2.4 If We or You terminate this Agreement, effective as of the termination date, You will have no past, present or future right or entitlement to:
- 7.2.4.1 AMS's reserves (or any part thereof) including AMS's reserves that accrued while you were a Customer of AMS; or
- 7.2.4.2 Retroactive or prospective Fee credits (if any) that apply to the time period when you were an AMS Customer.

8 GENERAL

- 8.1 Disputes. Disputes between AMS and You as to Your obligations under this Agreement shall be made under the dispute resolution process available upon request. Referral of any disputed matter shall not act to stay or defer Your obligations under this Agreement.
- 8.2 Entire Agreement. This Agreement constitutes the entire Agreement between You and Us relating to the subject matter contained in this Agreement.
- 8.3 Force Majeure. Notwithstanding anything herein to the contrary, other than obligations to make payments pursuant to this Agreement, neither party shall be liable for any delay or failure in performance caused by circumstances beyond its reasonable control.
- 8.4 Relationship of the Parties. This Agreement does not constitute a partnership or joint venture, and nothing herein contained is intended to constitute, nor will it be construed to constitute, such a partnership or joint venture. Except as expressly provided in this Agreement, neither We nor You will have any power or authority to act in the name or on behalf of the other party, or to bind the other party to any legal agreement.
- 8.5 Severability. The provisions of this Agreement are to be considered separately, and if any provision hereof should be found by any court of competent jurisdiction to be invalid or unenforceable, this Agreement will be deemed to have effect as if such provision were severed from this Agreement.
- 8.6 Notices. All notices and communications required or permitted under this Agreement will be in writing and will be sent by electronic mail to Us or You at the respective addresses we provide to each other or to such other address as We or You may from time to time specify by notice to the other given as provided in this paragraph.
- 8.6.1 In Our case, Our address is: producers@autostewardship.ca.
- 8.6.2 In Your case, Your address is the address and contact particulars provided to AMS pursuant to the Provision of Information clause set forth in this Agreement.
- 8.6.3 Each such notice or communication shall be deemed to have been given or made and delivered within one Business Day of email transmission.
- 8.7 Jurisdiction. The parties hereby irrevocably attorn to the exclusive jurisdiction of the province of Ontario in accordance with the Dispute Resolution Policy posted on the AMS website with

respect to any dispute arising hereunder.

- 8.8 Governing Law. This Agreement shall be deemed to have been made in the province of Ontario and shall be construed and interpreted according to the laws of the province of Ontario and the applicable laws of Canada.
- 8.9 Revisions to this Agreement. Revisions to this Agreement will be considered in Q1 of each year. We will provide written electronic notice of those changes on or before May 30. Revisions made in accordance with this Agreement shall be automatically effective and binding on You on January 1 of any the subsequent calendar year. Notwithstanding the foregoing, if any such revision is necessary to comply with the RRCEA or the Regulation, as may be amended from time to time, such revision shall have effect from the date specified in the notice.
- 8.10 Execution of this Agreement. This Agreement may be executed in any number of counterparts and may be delivered by Portable Document Format or other electronic means ("PDF") and each original, PDF copy, when executed and delivered, shall be deemed to be an original and all of which taken together then construed one and the same instrument.

THIS AGREEMENT submitted for acceptance and is effective this [_____] day of [____], 20____.

Company Name (please print): _____

Per (please sign): _____

Authorized Signing Officer

(I have authority to bind the Corporation)

Name of Signing Officer (please print): _____

Title:

Address:

Email address:

Telephone Number: (_____)

SCHEDULE A

The annual reporting schedule will be quarterly in accordance with the table below.

Data Period to Inform Customer Reports <i>(from the preceding quarter)</i>	Customer Reporting & Payment Obligation Period	Quarterly Reporting Due Dates	Invoices Issued	Payment Due
Q4 (Oct 1 – Dec 31)	Q1	January 31	February 1	March 2
Q1 (Jan 1 – Mar 31)	Q2	April 30	May 1	May 30
Q2 (Apr 1 – June 30)	Q3	July 31	August 1	August 31
Q3 (July 1 – Sept 30)	Q4	October 31	November 1	November 30