

1. Definitions

- 1.1 “Company” shall mean Cleanway Environmental Services Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Cleanway Environmental Services Pty Ltd.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Company to the Client.
- 1.3 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Waste” shall mean all Waste (including, but not limited to, Environmental Protection Authority (EPA) prescribed waste) that are collected, transported, processed, and/or recycled by the Company.
- 1.5 “Services” shall mean all Services supplied by the Company to the Client and includes the collection, transportation, processing, and/or recycling of Waste, and any advice or recommendations.
- 1.6 “Price” shall mean the price payable for the Services as agreed between the Company and the Client in accordance with clause 5 of this contract.

2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by the Company from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Company.
- 3.4 The Client shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Company as a result of the Client’s failure to comply with this clause.
- 3.5 Services are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Company Not A Common Carrier

- 4.1 The Company is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Company subject only to these conditions and the Company reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

5. Price and Payment

- 5.1 At the Company’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Client in respect of Services supplied; or
 - (b) the Company’s current price as at the date of the delivery of the Services according to the Company’s current Price list; or
 - (c) the Company’s quoted Price (subject to clause 5.2) which shall be binding upon the Company provided that the Client shall accept the Company’s quotation in writing within thirty (30) days.
- 5.2 The Company reserves the right to change the Price in the event of a variation to the Company’s quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of unforeseen circumstances or as a result of increases to the Company in the cost of materials and labour) will be charged for on the basis of the Company’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At the Company’s sole discretion a deposit may be required.
- 5.4 The Company may submit detailed progress payment claims in accordance with the Company’s specified payment schedule. Such payment claims may include the reasonable value of authorised variations.
- 5.5 At the Company’s sole discretion:
 - (a) payment shall be due on delivery of the Services; or
 - (b) payment shall be due before delivery of the Services; or
 - (c) payment for approved Clients shall be made by instalments in accordance with the Company’s payment schedule; or
 - (d) payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices.
- 5.6 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 5.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Company.

5.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

6. Waste

- 6.1 The Client shall disclose the exact nature and composition of all Waste delivered to the Company for processing, or that are being collected by the Company, and shall provide the Company with all necessary information and documentation relating to the Waste, in addition to any documentation requested by the Company. The Client warrants that this information shall be true and correct, and shall comply with all EPA and other regulatory requirements.
- 6.2 The Client acknowledges that if, at the time of collecting/receiving the Waste, the Waste are not as what was described by the Client at the time of quotation, then the Company reserves the right to refuse to collect/receive the Waste and charge the Client for any costs incurred by the Company. At the Company's sole discretion the Waste may be transported/accepted for processing subject to a change in the quoted Price.
- 6.3 While on the Company's premises, the Client shall follow all procedures and instructions given by the Company, and the Client warrants that any employee of the Client who delivers Waste to the Company's premises has been suitably trained and is qualified to transport and handle the Waste.
- 6.4 The Client shall be solely liable for, and hereby indemnifies the Company against, all loss or damage that is incurred due to the Client not complying with any part of this clause 6 (including, without limitation, failure by the Client to disclose the exact nature and composition of the Waste). The Company's limitation of liability shall include all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against the Company or incurred or become payable by the Company, and shall apply even if the Waste have been converted into Goods.

7. Delivery of Services

- 7.1 At the Company's sole discretion delivery of the Services shall take place when:
- (a) the Company collects the waste at the Client's address; or
 - (b) the Client or Client's nominated carrier delivers the waste to the Company's address.
- 7.2 At the Company's sole discretion the costs of delivery are:
- (a) in addition to the Price; and
 - (b) for the Client's account.
- 7.3 The Client shall make all arrangements necessary to have the waste available for collection whenever the Company has arranged to collect the waste. In the event that the Client has not made the waste available for collection as arranged then the Company shall be entitled to charge a reasonable fee for recollection.
- 7.4 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 7.5 The Company may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.6 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 7.7 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of the Company.

8. Risk

- 8.1 If the Company retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.

9. Access

- 9.1 The Client shall ensure that the Company has clear and free access to the Waste to be collected to enable them to collect the Waste. The Company shall not be liable for any loss or damage to the collection site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas, and site equipment, such as septic tanks) unless due to the negligence of the Company. The Client acknowledges that any claim made to the Company for damage to the collection property, must be lodged with the Company within twelve (12) hours of collection of the Waste.
- 9.2 The Company reserves the right to refuse to enter the site to collect Waste in the event that the Company believes the site to be unsafe. In this event, the Client agrees that it is their responsibility to ensure the site is made safe before the Company will enter the site, the Company shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe collection site.

10. Title

- 10.1 The Company and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid the Company all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.
- 10.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Services shall continue.

11. Errors and Omissions

11.1 The Client shall within three (3) days of delivery (time being of the essence) notify the Company of any alleged fault in the Services, or any other errors, omissions or failure of the Services to comply with the description or quote. The Client shall afford the Company an opportunity to review the Services performed within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any error or omission. For unsatisfactory Services, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services or rectification of the Services.

12. Default and Consequences of Default

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Company.
- 12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 12.4 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Security and Charge

- 13.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

- 14.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

- 15.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Company.

- 15.2 The Client agrees that the Company may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Client and Company or required by law from time to time):
- (a) the provision of Services; and/or
 - (b) the marketing of Services by the Company, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 15.5 The Company may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that the Company is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Company, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by the Company has been paid or otherwise discharged.

16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 16.3 The Company shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.
- 16.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 16.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.