

TERMS and CONDITIONS OF SALE

1. Interpretation

Unless inconsistent with the context:

“**Agreement**” shall mean and include the terms and conditions contained herein and on the following pages

“**Company**” shall mean and include Master Waste Management Pty Limited

“**Customer**” means and includes any natural person, company, partnership or other entity which enters into this Agreement with the Company

“**Goods**” means the goods supplied by the Company pursuant to this Agreement.

“**Services**” means the services supplied by the Company pursuant to this Agreement

“**GST**” means goods and/or services tax.

2. Exclusion of inconsistent terms

Any terms and conditions of the Customer’s order deviating from or inconsistent with these terms and conditions (including any statement by the Customer that the Customer’s terms and conditions shall prevail) are expressly excluded. Subject to Clause 14, this Agreement constitutes the entire agreement between the parties.

3. Formation of Contract

A contract shall only be or be deemed to have been entered into between the Company and the Customer for the provision of Services or sale of Goods when, upon an order or request having been placed with the Company for Services or Goods, that order has been accepted by the Company either in writing or by conduct.

4. Prices.

4.1 “Price” means, unless the contrary intention appears, the Price for which goods are sold and/or services are provided pursuant to the Terms and Conditions and is the amount payable by the customer, inclusive of any GST payable by the company in respect of the sale.

4.2 Prices are subject to change without notice. .

5. Payment

5.1 Unless otherwise agreed by the Company in writing, payment for all goods and/or services shall be made within 14 days following the issuance of an invoice for said goods and/or services (“the due date for payment”). Punctual payment is agreed to be the essence of this agreement.

5.2 Breach by the Customer of Clause 5.1 shall entitle the Company to:-

- (a) require immediate payment of all invoices rendered by the Company to the Customer;
- (b) terminate this Agreement (without notice) without prejudice to any antecedent rights accruing to the Company;
- (c) Recover liquidated damages on any amount outstanding of an amount equal to two per cent (2%) of that amount for each month or part of a month from the due date until the date of payment in full;
- (d) add to the Customer’s account and require payment of all expenses incurred as a consequence of the actions taken by the Company to recover outstanding monies from the Customer;

5.3 In respect of any proceedings in any Court of competent jurisdiction, a Certificate signed by the Manager of the Company stating the quantum of the debt owed by the Customer to the Company shall be deemed to be conclusive proof of the quantum of the debt owed by the Customer to the Company.

6. Supply and Delivery

6.1 The company reserves the right to withhold services or supply to the Customer where the Company has determined in its absolute discretion that credit should no longer be extended to the Customer.

6.2 Sole evidence of performance of a service shall be a screenshot of the last service date from Sydney Water’s waste management system, or a Service Docket or similar. If a Service Docket is provided, it may be either in the name of the Company or the subcontractor performing the service.

6.3 Customer acknowledges that the service schedule is determined by Sydney Water in accordance with the trade waste agreement between Customer and Sydney Water, and the Customer has a legal obligation to have these services performed. The Company may provide scheduled services without prior notification to Customer.

6.4 Where the Company reasonably believes access has been arranged to Customer’s site for the purpose of providing the service, and the service is unable to be provided because access to the Customer’s site has not been provided, the Company is entitled to charge a Futile Visit fee. The quantum of this fee may be up to the Service Fee agreed between the Customer and the Company. The imposition of the Futile Visit fee is at the sole discretion of the Company.

7. Proper Law

The contract between the Company and the Customer shall be governed and construed according to the Laws of New South Wales and the Customer agrees to submit to the jurisdiction of the courts located in the Capital City of New South Wales.

8. Indemnity

The Customer shall indemnify and keep indemnified the Company from and against all losses, claims, proceedings, damages, costs and expenses in respect of or arising directly or indirectly from.

- (a) the provision of services;
- (b) from any advice given to the Customer by the Company save and except as provided for in paragraph 14;
- (c) any breach by the Customer of the terms of this agreement.

9. Severance

If for any reason any part of these terms and conditions would render the Agreement ineffective, void, voidable, illegal or unenforceable, that part shall, without in any way affecting the validity of the remainder of the Agreement, be severable herefrom and the Agreement shall be read and construed and take effect for all purposes as if that part were not contained herein.

10. Ownership of Goods

10.1 All waste products removed by the Company from the Customer premises under the provisions of this Service Agreement shall be deemed to remain the property of the Customer until all monies have been paid in full (including all charges made in accordance with clause 5) and all cheques and all other negotiable instruments have been cleared.

11. Waiver

The waiver by the Company of any breach by the Customer of any term of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.

12. Implied terms

12.1 Except as required by statute (including the Trade Practices Act 1974), all implied conditions and warranties are hereby excluded. Subject to the extent that such conditions and warranties cannot be excluded under statute (including the Trade Practices Act), the Customer’s sole and exclusive remedy for any breach of a condition, warranty or undertaking hereunder (whether direct, indirect, special or consequential) shall be limited at the sole discretion of the Company to any one of the following:-

- (a) in the case of service:-
 - 1) the supply of the services again; or
 - 2) the payment of the cost of having services supplied again.

12.2 Except as required by statute (including the Trade Practices Act 1974) the Company does not accept any liability for any direct, indirect or consequential loss or damage caused to the Customer or any other person which arises out of the negligence or carelessness of the Company or any of its employees, servants or agents. For the purpose of the foregoing “consequential loss” shall include, but not be limited to, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of goods or services.

12.3 Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended), Section 6 of the Manufacturer’s Warranties Act 1974 of the State of South Australia or Section 7 of the Law Reform (Manufacturer, Warranties) Ordinance of the Australian Capital Territory or any other relevant Act which by Law cannot be excluded restricted or modified.

13. Changes to the particulars of the proprietors or the business.

The Customer hereby undertakes to advise the Company within 7 days by certified mail of any actual or proposed change in:-

- (a) the address of the business and the address at which the services are to be provided (if it differs to the business address);
- (b) the trading name of the business;
- (c) the person(s), the Directors, the Trustee or the partnership conducting the business;
- (d) the proprietorship of the business in that the business is converted into a trust or company or is sold to a trust or company.

The Customer further accepts and agrees that where such a change occurs the Company will require that a new Service Agreement will be sought and considered and the Customer will sign all documents and do all acts and things appropriate to such new application for a Service Agreement.

The Customer further accepts and agrees that where such a change occurs, the Customer is responsible for the payment of all invoices for the provision of services provided by the Company, until such time that the Company acknowledges that this Service Agreement has been terminated.

14. Notices

All notices between the Company and the Customer shall be considered to have been sufficiently delivered if mailed in the ordinary course of post or facsimile to the last known address of the Company or the Customer, or by email to the email address provided by the Customer in this agreement, whichever may apply. Notices shall be deemed to have been delivered two (2) days after mailing; and in the case of facsimile or email upon completion of the transmission. The customer hereby charges all of his/her or its property both real and personal with the amount of any indebtedness to the Company and such charge is separate and distinct from the reservation of title to the Goods referred to above.