



These are the entire Terms and Conditions of Supply for all Services and Equipment supplied by Manton Nominees Proprietary Limited ACN 005 081 489 t/as Stows Waste Management ABN 86 705 229 811 and associated, related, subsidiary and parent companies, successors and assigns ("the Supplier").

The Glossary

1. DEFINITIONS AND INTERPRETATION

Additional Expenses means any duties, fees, taxes (including GST), imposed by these Terms, including delivery charges, merchant fees and surcharges, freight charges, permit and licence fees, toll or other road charges, fuel levies, third party gate opening fees, weighbridge costs, additional costs to dispose of mattresses, futile charges where bulk bins are not accessible on changeover, storage fees and environmental levies.

Credit Account means the approved commercial account You have with Us to purchase Services on credit pursuant to these Terms.

Customer means any person, firm or company placing an Order with Us for the purchase of Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

Due Date means the date listed on Our invoice for Your payment of the Services.

EPA means the Environment Protection Agency of Victoria;

Equipment means bulk bins, ablution blocks and portable toilets, motor vehicles, trailers, tankers, machinery, tools and other equipment hired to You or supplied to Your Site for Us to provide the Services.

Force Majeure means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

Hire means any supply of Our Equipment to You on a hire or rental basis, including Hire with an operator.

Insolvency Event means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

Loss means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

Order means a request to purchase Services placed by You.

PPSA means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of the PPS Act.

Prohibited Waste means special or hazardous waste that We in Our sole discretion exclude from the Services from time-to-time, including but not limited to asbestos, radioactive waste, flammable waste, explosives, biomedical waste, human or animal waste, toxic waste, hazardous liquids (such as oil, paint and pesticides), poisons, batteries and vehicle tyres.

Quote means Our written description and price of the Services to be supplied to You, which is valid for 30 days.

Services means waste management services provided by Us to You pursuant to any Quote, Order and these Terms, including any Hire of Our Equipment.

Site means any place at which You request Services to be supplied.

Supplier means the entity or entities specified in these Terms as supplying the Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

Terms means these Terms and Conditions of Supply, including any special conditions listed on Your Order.

Waste means waste product generated or owned by You that We agree to clean, remove, recycle, process, transport, store or dispose as part of the Services, including waste that is categorised by the EPA or the *Environmental Protection Act 2017* (Vic) as amended or replaced as prescribed industrial waste (or such other term used from time-to-time). Waste does not include Prohibited Waste.

Website means www.stows.com.au as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Services are being supplied;
- (b) writing includes by email and communication through Our website;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings and any explanatory notes are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (g) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (h) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

Duly signed and accepted in full on behalf of _____

Signature _____ Name _____ Position _____ Date _____

2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions of all Services supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing) or where special terms and conditions are listed by Us on any Quote, these Terms apply notwithstanding any provisions to the contrary which may appear on any other document.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order, or by instructing Us to supply the Services.
- (d) You engage Us to provide Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria applying the laws of that State.

3. CHANGES AND UPDATES TO THESE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms. Any updated or altered Terms will apply from the date of alteration. A copy of current Terms can be found on Our website or by requesting a copy from Us.
- (b) We will endeavour to notify You of any updated or altered Terms. However, there is no obligation whatsoever on Us to notify You of updated Terms and You agree that You must regularly inspect Our website for any updated Terms.
- (c) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

Supplying the Services and Equipment

4. PRICES, QUOTATIONS AND ORDERS

- (a) You may purchase Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (b) We may accept or decline any Order by notifying You in writing, delivering the Equipment or supplying the Services. The parties agree that these Terms apply to all Orders for the supply of Services.
- (c) We may issue a Quote to You, but a Quote is not an offer by Us to supply Services to You. We may vary or cancel any Quote before an Order is accepted.
- (d) You cannot cancel an Order after acceptance without Our written consent and at Our absolute discretion.
- (e) Prices specified on any of Our price lists are subject to change without notice to You. You will be charged in accordance with the price that is current at the time You place Your order.

- (f) Unless the parties agree differently in writing, the price You must pay for Services is specified in Our invoice and may include Additional Expenses.
- (g) We have the right to change the prices of Services supplied under these Terms in the following ways:
 - i) Before accepting any Order or request for a Quote, We may change our prices without notice to You;
 - ii) Once a Quote has been issued to You and held for 30 days, We may amend any Quote or change Our prices; and
 - iii) In any other circumstance, We will provide you with 14 days' notice of any price changes.

5. SUPPLY AND DELIVERY

- (a) Specifications for the Services being supplied under these Terms (including the types of Waste that We agree to service and any Hire of Equipment) are contained in the Order/s You submit from time-to-time.
- (b) We may reject or return any Waste that is not disclosed, not compliant with Our permit conditions, or is different to what You have disclosed in Your Order (either in quantity, description, representative sample, waste code or type). We may charge You Additional Expenses that We incur as a result of returning or rejecting such Waste.
- (c) The Services are provided to You with all due skill and care in accordance with Our professional standards.
- (d) The method of delivery of the Services and/or Equipment is at Our sole discretion. At any time, We may appoint an agent to perform Our delivery obligations of these Terms.
- (e) Delivery of Equipment may attract Additional Expenses and You agree to those Additional Expenses.
- (f) You authorise Us to:
 - i) supply Services at the Site nominated by You; and
 - ii) deliver and leave Our Equipment at the Site nominated by You, whether or not any person is there to accept delivery.
- (g) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Services and Equipment being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Services or Equipment delivered.
- (h) All delivery times indicated by Us are estimates only. Delivery times are subject to Equipment being available, Our reasonable ability to deliver on that date, and Us receiving the required co-operation from You and other organisations to supply the Services. We will endeavour to deliver Services at the time you need, but if We fail to deliver Services within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Services.
- (i) You must provide a suitable and safe area for Us to deliver the Services, including a Site that is compliant with all applicable occupational health and safety legislation for Our (or Our agents, employees or contractors) safe use.
- (j) If You do not provide, or delay in providing any co-operation that We reasonably require of You, We may charge Additional Expenses that are incurred as a result (in addition to any other rights We may have).
- (k) Delivery of the Services is deemed to occur when the Services are completed at the Site nominated by You, or appearing on Your invoice. We are not obliged to obtain an EPA record of Waste, but if You request an EPA record of the Waste Services or We provide one to You, the EPA record is conclusive evidence that Our Services have been completed.
- (l) When delivery occurs Our obligation to supply is discharged.
- (m) You agree to inspect and examine Equipment immediately on delivery.
- (n) We are not liable for any Loss suffered by You whatsoever after delivery of the Services to You.
- (o) You must pay all Additional Expenses We incur due to:
 - i) Any delay in delivery of the Services which is caused by You,

the conditions of the Site or the nature of the Services being delivered;

- ii) Any unexpected labour, occupational health and safety requirements, permits, licences or additional costs in connection with delivery.

6. YOUR OBLIGATIONS FOR THE SERVICES

Waste Services

- a) You acknowledge and agree that the performance of the Services and proper treatment of Your Waste is dependent upon the disclosure, accuracy and completeness of Waste information by You.
- b) You must provide Us with information in relation to the Waste that is accurate and complete, and You warrant that You have done so.
- c) You must disclose any Prohibited Waste to Us, and You warrant that You have done so.
- d) You must identify and provide Us with an accurate waste code for all Waste included in Your Order.
- e) If You are unable to identify a waste code, You must contact an accredited consigner to identify the Waste type and its corresponding waste code for the Services. We cannot accept any Order until You provide us with the correct waste code for all Waste.
- f) You must not assume that We have the correct and complete information regarding the Waste, and You acknowledge and agree that We bear no responsibility to verify the accuracy of the information You provide to Us in relation to the Waste.
- g) You must cooperate with Us and do anything that We reasonably request to enable Us to comply with:
 - i) Our general environmental duty; and
 - ii) Where Your Waste is involved in a notifiable incident that We must report to the EPA.
- h) You are responsible for identifying and obtaining all necessary permits for Our Equipment on Your Site.
- i) You must ensure that Our Equipment is accessible for collection. If We are unable to access Our Equipment at the time of collection, You may be charged Additional Expenses.
- j) You must not overfill Our Equipment with Waste, such as bulk bins. You acknowledge and agree that if You overfill a bulk bin, We are not legally permitted to remove it and We must supply an additional bulk bin to collect Your overflow Waste. You acknowledge and agree to be responsible for all Additional Expenses and Service charges that We incur as a result of overflow Waste.
- k) You agree that We are not liable for any default, Loss, return or rejection of Waste that arises because You do not fulfil Your obligations under this section.

Hire of Equipment

- a) Prior to the Hire period You must:
 - i) Determine the suitability of Equipment for the purpose that You require; and
 - ii) Inspect the Equipment for its condition.
- b) During the Hire period, You must:
 - i) Use the Equipment in a skilful and workman like manner and only for the purposes for which the Equipment is designed and hired;
 - ii) Ensure that the Equipment is operated or used by a suitably certified, trained or licensed operator (whether supplied by You or Us) and that the Equipment is operated in accordance with Our instructions;
 - iii) Keep the Equipment in good repair and condition at Your own expense, including but not limited to general servicing, regularly checking fluids (if applicable) and cleaning.
 - iv) Ensure the Equipment, and the people operating the Equipment, are kept safe at all times, including:
 - 1. Attaching any supplied occupational health and safety signs or operating instruction to the Equipment and ensuring that such signs are clearly legible by the operator of the Equipment;
 - 2. Maintaining the signs and ensuring that they are not

defaced or removed from the Equipment;

- 3. Ensuring that all occupational health and safety information supplied with the Equipment is conveyed to any person using the Equipment; and
- 4. Ensuring that all operators of the Equipment wear suitable clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by Us;
- v) Not remove the Equipment, or allow it to be removed, from the Site where it has been hired without Our prior written consent;
- vi) Not claim any lien over, sell, transfer, charge, part with possession of, assign, or encumber the Equipment in any way, without Our prior written consent; and
- vii) Not interfere with the Equipment, including altering, adding to, defacing, or erasing any identifying mark, plate or number on or in the Equipment.
- c) You are responsible for any damage to the Equipment that occurs during Hire and any other time that the Equipment is in Your possession, including the costs to replace or repair Equipment that is lost, stolen, not maintained or damaged during Hire or Your possession of it. We will charge You for Loss and damage that occurs in relation to Equipment during the Hire or Your possession of the Equipment.
- d) If You collect or receive Equipment that is broken, damaged or defective, You must notify Us in writing within 24 hours after You collect or receive the Equipment.
- e) If You do not notify Us in writing of any breakage, damage or defect in the Equipment within 24 hours of collecting or receiving it, We are entitled to assume the Equipment was in good condition prior to being collected or received by You.
- f) At the end of the Hire Period, You must:
 - a) Clean the Equipment thoroughly or pay a cleaning fee at a rate reasonably charged by Us;
 - b) Return all Equipment with a full tank of fuel (where applicable) or pay Us the applicable rate to fill the tank; and
 - c) Return all Equipment to Us.
- g) We may inspect the Equipment from time to time during the Hire Period, and You must permit and arrange access to the Equipment for Us and Our representatives.

Managing Risk

7. RISK AND OWNERSHIP

- a) Legal ownership of any Goods and Services does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- b) Until legal ownership of the Services passes to You, all Goods are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- c) You may resell any Goods before legal ownership passes to You, provided that You:
 - i) Resell the Goods to a third party in the ordinary course of business;
 - ii) Act in any transaction as Our fiduciary agent;
 - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
 - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
 - v) Allow us to inspect any records of any payments received for Goods.
- d) Unless agreed in writing between the parties, legal ownership of the Waste remains with You at all times.
- e) Risk in the Waste passes to Us when We collect the Waste (or the Equipment that the Waste is contained in) from Your Site, except all

risk in Waste remains with You where:

- i) that Waste contains Prohibited Waste not disclosed by You; or
 - ii) the Waste is materially different to the specifications of the Waste contained in Your Order or otherwise provided to Us.
- (f) All risk in the Services and Waste passes to You when the Services are delivered.
- (g) Legal ownership of any Equipment does not pass to You whatsoever. Even if You go into external administration during the Services, We retain title to Our Equipment at all times. Your rights to use any Equipment is only with Our prior written consent.
- (h) If We consent to Your use of Our Equipment, then Your rights to use Our Equipment are as bailee only and You are not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with Our ownership of the Equipment.
- (i) If You do not pay for Services by the Due Date or You suffer an Insolvency Event, then We may repossess Our Equipment wherever it is located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing Our Equipment. We reserve these repossession rights without being liable to You or any other third party in any way.

Payment for the Services

8. PAYMENT AND CREDIT

General Payment

- (a) Unless the parties agree differently in writing, You must pay for Services on or before the Due Date.
- (b) All amounts payable by You for Services are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Services made under these Terms. Payment of any GST must be made at the same time as payment for the Services.
- (c) At Our discretion, We may require payment (including part payment) for the Services before any Order or Quote is processed and fulfilled.
- (d) Payment must be made in a method approved by us. There may be Additional Expenses associated with Your chosen payment method.
- (e) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (f) If You do not pay for Services by the Due Date, We may:
 - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
 - ii) Require You to pay cash on delivery of any further Services, or suspend or cease supplying Services to You;
 - iii) Demand Your immediate payment of all outstanding monies;
 - iv) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
 - v) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
 - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.

Credit Accounts

- (g) You may apply for a Credit Account with Us to purchase Services. We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.

- (h) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (i) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.
- (j) You also authorise Us to debit Your Credit Account with the price of Services supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (k) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (l) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

Our Security for Payment

9. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the supply of Services and Equipment, You:
 - i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("**Charge**"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
 - ii) Authorise and consent to Us taking all actions necessary to give effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
 - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
 - iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

10. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Equipment supplied by Us from time to time and any proceeds of the supply of the Equipment to secure payment for the Equipment ("**Security Interest**").
- (b) Each supply of Equipment by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Equipment and the proceeds of supply of the Equipment, including as a purchase money security interest (as that term is defined in the PPSA ("**PMSI**")), pursuant to these Terms.

Assurances

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Equipment, including for the purposes of:

- i) Ensuring that any Security Interest created under, or provided for, by these Terms:
 - a. Attaches to the Equipment that is intended to be covered by that Security Interest; and
 - b. Is enforceable, perfected and otherwise effective; and
 - c. Has the priority required by Us.
 - ii) Enabling Us to prepare and register a financing statement or financing change statement;
 - iii) Enabling Us to register a PMSI pursuant to the PPSA; and
 - iv) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Equipment, You must:
- i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
 - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Equipment despite Your obligations under this section, You must:
- i) Ensure that You receive cash proceeds for the Equipment of at least equal to the market value of the Equipment; and
 - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

Exclusion of Notices and Other Obligations

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
- i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - ii) Sections 142 and 143 are excluded;
 - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
- i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
- i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

- (m) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

Other

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

Exclusions, Indemnity and Limitation of Liability

11. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) as amended from time to time ("**the Act**")), where to do so would contravene the Act or cause any provision of these Terms to be void. Nothing in these Terms modifies or excludes the conditions, warranties, undertakings and other legal rights under the Act and other laws.
- (b) If You are a consumer as that term is defined under the Australian Consumer Law, Our Services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Services repaired or replaced if the Services fail to be of acceptable quality and the failure does not amount to a major failure. The benefits provided to You under this part are in addition to other rights and remedies available to You under the law.
- (c) However, We only deal with commercial customers purchasing Services for business purposes and do not deal with consumers (as that term is defined in the Australian Consumer Law). The Australian Consumer Law will not apply to Services supplied by Us. When purchasing Services You acknowledge that You are not a Consumer (as that term is defined in the Australian Consumer Law).
- (d) Except as expressly set out in the Act, these Terms or a separate warranty document, We make no warranties or other representations under or in connection with these Terms, and Our liability in that respect is limited to the fullest extent permitted by law.
- (e) You acknowledge that We make no representations or warranties as to the fitness or suitability for any purpose of any of the Equipment or Services (whether express or implied and even if that purpose is made known to Us) and You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Services or hiring the Equipment. You are responsible for ensuring that the Services and Equipment are suitable for Your intended use.
- (f) To the extent permitted by law, all other implied conditions and warranties are excluded, including any sale by sample or description.

12. LIMITATION OF LIABILITY

- (a) If We are lawfully allowed to limit our liability to You in respect of the Services and Equipment, then Our liability to You is limited to Our choice of:
- i) re-supply of the Services and/or Equipment; or
 - ii) the cost to replace the Services and/or Equipment with equivalent Services and/or Equipment; or
 - iii) reimbursement of some or all of the price paid by You for the Services and/or Equipment.
- (b) In any other situation, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You will not exceed

the price of the Services supplied by Us (to the extent that is permitted by law).

- (c) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (d) We will not be liable to You if:-
 - i) Services have not been paid for;
 - ii) Equipment has been abused, misused or neglected by You;
 - iii) You have used the Equipment other than for the purposes for which they were designed, including for an illegal purpose;
 - iv) Equipment has been altered or modified by someone other than Us;
 - v) Equipment has been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress.
- (e) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Services and any Additional Expenses.

13. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us. This indemnity does not apply to Loss that occurs due to Our breach of these Terms or Our negligence.
- (b) Specifically, You must indemnify Us and hold Us harmless (or Our agents, employees or contractors) from:
 - i) Any Loss and damage incurred by Us as a result of Prohibited Waste that You did not disclose to Us as part of the Services;
 - ii) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Services and any action taken to secure any charge;
 - iii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account and supply of Services;
 - iv) Any loss and damage incurred by Us as a result of You cancelling your Order after 24 hours, including but not limited to any Additional Expenses;
 - v) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - vi) Any and all Loss arising out of damage to Our Equipment (including any loss of or damage to property and any damage caused by Prohibited Waste) except to the extent that such Loss is caused by Our negligence or breach;
 - vii) Any and all Loss arising out of Your (or Your agent, employee, contractor or other representative's) attendance at Our premises or the Site;
 - viii) Any and all Loss arising out of Your failure to provide a safe, suitable and compliant Site for Services (including any personal injury or death) except to the extent that We have committed an act of negligence, breach of the law or breach of the Terms;
 - ix) Any liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant, accurate and complete information.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.

Ending Our Agreement

14. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties, the following procedure applies:
 - i) Either party may give the other a notice of the dispute. This means that the dispute must be dealt with in accordance with this section;
 - ii) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this paragraph;
 - iii) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this paragraph;
 - iv) If a dispute is notified, each party must immediately refer the dispute to its senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);
 - v) At Our sole discretion, We may elect to resolve any dispute by mediation via the Australian Commercial Disputes Centre (ACDC) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The ACDC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
 - vi) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);
 - vii) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

15. TERMINATION

- (a) Our termination rights are:

What We can do

We can by written notice:

- Suspend or cancel supply of Services or any current Order(s) for Services;
- Suspend or terminate Your Credit Account;
- Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
- Register a default with any credit reporting agency, where applicable;
- Enforce Our rights under any Security Interest;
- Suspend or terminate the contract created by these Terms ("Our Termination Rights")

- (b) We can exercise Our Termination Rights immediately when:

When We can exercise Our Termination Rights

- You have not paid for Services by the Due Date;
- You exceed the limit of Your Credit Account;
- You breach a material term of these Terms;
- Either of the parties suffer a Force Majeure Event which delays or

When We can exercise Our Termination Rights

prevents performance of the whole or any part of these Terms;

- You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
 - You engage in illegal activity related to the Services;
 - You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
 - An Insolvency Event occurs.
- (c) Otherwise, either party may terminate these Terms:
- i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 14 days of the termination notice; or
 - ii) In all other circumstances, by giving the other party 30 days' written notice.
- (d) If a termination notice is given to a party for breach of these Terms, the terminating party may also:
- i) recover any of its equipment, property, goods, materials and all related data, documentation and records in the possession, custody or control of the party at fault;
 - ii) be regarded as discharged from any further obligations under these Terms, except for any clauses that are expressly or by their nature intended to survive termination; and
 - iii) pursue any additional or alternative remedies provided by law.

General Information

16. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

17. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012*, and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters by contacting Us in writing or by visiting Our Website.

18. ELECTRONIC COMMUNICATIONS

- (a) In addition to any other delivery method, You agree to receive Invoices via email.
- (b) You agree to accept service of notices under the Building and Construction Industry Fairness (Security of Payment) Act 2002 (Vic) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the Services were delivered to You, via e-mail (in addition to any and all other forms of service authorised under the legislation, or regulations made by the Act).
- (c) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the Electronic Transactions (Victoria) Act 2000 ("**the Act**").
- (d) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the Act.
- (e) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

Version: December 2021