

## GENERAL TERMS AND CONDITIONS OF SALE

Unless expressly otherwise agreed in writing by Australian Waste Management (hereunder expressed as “**AWM**”) with the customer, the following terms and conditions shall govern the supply of goods by AWM to the customer:

### 1. Terms of Payment

Unless otherwise agreed in writing, invoices issued by AWM for goods supplied by AWM to the customer, are payable by the customer without deduction, by the 14<sup>th</sup> day of the month following the month in which the invoice was created.

### 2. Suspension of supply

AWM reserves the right, in its absolute discretion and without reference to the customer, at any time and without giving notice to the customer, to cease delivery of further goods to the customer, for as long as any invoice remains unpaid by the customer past the due date. In this event, the stated dispatch or delivery date for any orders placed as at that date by the customer with AWM will automatically be extended by the period of the suspension.

### 3. Interest, Administration Fee and Finance Charges.

The customer must pay to AWM on demand interest at the rate of 10% per month on any amount overdue and owed by the customer to AWM (including any penalty interest and enforcement costs recoverable by AWM from the customer under clause 8) (“**Amounts Outstanding**”), with such interest to be calculated daily and compounded weekly until payment of the outstanding amount has been made by the customer to AWM in full.

### 4. Ownership

(a) It is hereby agreed and declared that title in the goods shall remain with AWM and will not pass to the customer or any third party until the customer has paid for any and all goods delivered by AWM to the customer from time to time and any Amounts Outstanding in full and without deduction. Although the customer may take possession of the goods in the interim, until the customer has paid to AWM all money owing by the customer to AWM from time to time in full, the customer shall retain such goods as the fiduciary agent and bailee of AWM and must:

- (i) store those goods separately and distinct from any other goods and in particular, must ensure that the goods are not mixed with any other goods; and
- (ii) ensure that the goods are readily identifiable as the property of AWM; and
- (iii) insure such goods against loss or damage whilst they are in the possession of the customer.

(b) In the event that the customer uses the goods to generate income of its own or some third party, the customer shall hold the income of such use as relates to the goods in trust for AWM. Such income equal in dollar terms to the amount owing by the customer to AWM at the time of receipt of such income shall be paid to AWM as payment for the goods.

(c) If the goods are purportedly sold by the customer, AWM has a right to trace the proceeds of that sale both under these General Terms and Conditions and at law or in equity, and any proceeds generated from the sale of the goods are held by the customer on trust for AWM and must forthwith be forwarded by the customer to AWM to be off set against any and all Amounts Outstanding by the customer to AWM from time to time.

(d) AWM may for the purpose of recovering goods owned by it, enter upon any premises where such goods are stored or where the goods are reasonably thought to be stored, and the customer hereby irrevocably grants to AWM a licence to enter into or upon any of those premises and to remove any of AWM's goods located or stored on those premises from them.

### 5. Delivery

(a) Notwithstanding any other representations made by AWM, its employees, agents or contractors, whilst AWM shall use its reasonable endeavours to keep to any agreed delivery schedule, AWM shall not be liable for any loss or damage resulting from any failure to supply or any delay in delivery, non-delivery or mis-delivery of the goods in whole or in part to the customer howsoever occasioned and whether due to any negligence or other act, default or omission of AWM or its servants, agents, carriers or contractors.

(b) If the customer requires AWM to deliver the goods to a nominated location, the customer must pay for all handling, packaging, transport and insurance costs in respect of the delivery.

### 6. Risk

Risk for loss of, or damage to, the goods shall pass to the customer upon the earlier of:

- (a) the making available of the goods for delivery to the customer at AWM's premises; or
- (b) if the goods are to be delivered by AWM or any other party to a location nominated by the customer, then immediately upon the goods leaving AWM's premises, whether under the control of a person nominated by the customer or any of AWM's agents, employees, contractors, or carriers, and the customer shall indemnify AWM and keep AWM indemnified against all claims, demands, actions, costs and expenses incurred or suffered by AWM arising out of or incidental to the goods being in transit and in the possession and control of the customer. The customer acknowledges and agrees to insuring the goods immediately upon the goods leaving AWM's premises.

### 7. Return of goods once accepted

The customer acknowledges that unless the customer at the time of delivery identifies the delivered goods as not conforming with the customer's order or otherwise as defective, once the goods have been delivered to the customer, the customer shall be deemed to have accepted those goods in the state and condition in which they were delivered and shall not be entitled to return the goods to AWM for any reason whatsoever. In the event that AWM agree to accept return of goods, a restocking fee and freight both ways as determined by AWM will be applicable. The goods must be in a saleable, new condition and be un-altered.

## 8. Default

In the event the customer fails to make any payment due under these General Terms and Conditions on a timely basis or is otherwise in default of these General Terms and Conditions, and without prejudice to any other rights AWM may have:

- (a) the customer shall indemnify AWM for any loss incurred by AWM as a consequence of the customer's breach of contract or cancellation of any order or part thereof after acceptance by AWM; and
- (b) AWM shall have the right to immediately require payment of any and all monies owing by the customer to AWM as at the date on which the customer defaults under these General Terms and Conditions, cease future deliveries of goods, and re-take immediate possession of goods in the customer's possession or control for which it has not been paid in full pursuant to clause 4(d), and the customer must pay to AWM all actual costs, expenses or disbursements incurred by AWM on a full indemnity basis, including debt collection agency fees, solicitor's costs (on a solicitor own client or full indemnity basis, whichever is the greater) and any other costs, expenses or disbursements incurred in relation to the collection or attempted collection of overdue amounts from the customer by AWM. All goods reposed must be in a saleable, new condition and be un-altered and a restocking fee and freight both ways as determined by AWM will be applicable.

## 9. Claims

The customer shall have no claim against AWM for any loss or damage whatsoever where the goods are used by the customer otherwise than in accordance with AWM's instructions or have been improperly utilised or used for a purpose outside the specified purpose.

## 10. Conditions, Warranties and Undertakings

- (a) Notwithstanding any other representations made by AWM, its employees, agents or contractors, the customer agrees that it does not rely on the skill or judgment of AWM in relation to the suitability of any goods for a particular purpose unless it has indicated that purpose in writing to AWM and AWM has acknowledged that the goods will be fit for that purpose.
- (b) All representations, warranties and undertakings by AWM are, unless otherwise expressly stated in these General Terms and Conditions, excluded and the customer acknowledges it has not relied on any such representations, warranties or undertakings provided by AWM but has instead relied entirely upon its own inquiries and inspection.
- (c) If AWM is liable for breach of a condition or warranty implied by virtue of the Trade Practices Act 1974 (as amended), then its liability for such breach shall be solely limited, at its option, to replacement of the goods or the supply of equivalent goods, or reimbursement to the customer of the purchase price paid by the customer for those goods.

## 11. GST

- (a) In this clause: "GST" and any other terms defined in A New Tax System (Goods and Services Tax) Act 1999 ("GST Law") shall have the same meanings in these General Terms and Conditions as those terms have been given in the GST Law.
- (b) If GST is lawfully imposed on any Supply made under or in accordance with these General Terms and Conditions, then upon AWM giving to the Recipient a Tax Invoice, the customer must pay an additional amount to AWM on account of any GST payable in respect of the Supply, with such amount to be paid at the same time and in the same manner as payment for the Supply.
- (c) Unless otherwise expressly stated, all amounts stated as being payable to AWM by the Customer pursuant to these General Terms and Conditions are exclusive of GST.

## 12. Governing Law

Any contract for the supply of goods between the customer and AWM, including these General Terms and Conditions, shall be governed in all respects by the laws of the State of Victoria, Australia and where applicable, the laws of the Commonwealth of Australia, and the parties submit to the exclusive jurisdiction of the courts of the State of Victoria and waive any objection they may otherwise have had to the jurisdiction of these courts on the basis that these courts are an inconvenient forum.

## 13. Acceptance

Any and all purchase orders placed by the customer with AWM including but not limited to purchase orders given by phone, fax, email or online, are to subject to these General Terms and Conditions and will be accepted upon execution by a duly authorised representative of AWM. If there is any inconsistency between the Terms and Conditions incorporated in a purchase order and these General Terms and Conditions, these General Terms and Conditions shall prevail.

## 14. Joint and several liability

Where a customer comprises more than one person, then the terms, covenants and agreements under these General Terms and Conditions on their part bind and must be observed and performed by them jointly and each of them severally.

## 15. Entire agreement

These General Terms and Conditions set forth the entire agreement and understanding between the parties as to the subject matter of this agreement and merges all prior discussions between them, and neither of the parties is bound by any conditions, definitions, warranties or representations with respect to the subject matter of this agreement other than as expressly provided in these General Terms and Conditions, or as subsequently agreed between the parties in writing and signed by a proper and duly authorised representative of each of the parties to be bound.

## 16. Special conditions

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