

Waste Treatment Terms and Conditions

BETWEEN the party listed as the Customer in the Services Order (“**Customer**”) and Enviropacific Services Limited (ACN 111 372 064) of Level 5, 123 Epping Road, Macquarie Park NSW 2113 (“**EPS**”).

General terms and conditions

1 Definitions and interpretation

1.1 In the Contract, the following words and expressions have these meanings unless a contrary intention appears:

Business Day means a day on which banks are open for general banking business in Melbourne (other than a Saturday, Sunday or public holiday).

Compliant Waste Products means Waste Products that:

- (a) meet the Specifications; and
- (b) are not affected by Unanticipated Contamination.

Contamination has the same meaning as "contamination" as defined in any applicable Law and "**Contaminate**" and "**Contaminant**" have a corresponding meaning.

Contract means this contract between the parties comprising the Services Order and the General Conditions.

Contract Date means the date of this Contract.

Contract Price means the amount payable by the Customer in respect of the Services Order.

Customer Default Event means any failure by the Customer to:

- (a) pay an amount that is payable to EPS on the date the amount is payable; or
- (b) ensure the Customer's Personnel act in accordance with the Contract.

Customer's Personnel means any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of Customer.

Delivery Schedule means the schedule for delivery of Waste Products notified by EPS to the Customer in accordance with clause 2.4(a).

EPS' Personnel means any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of EPS.

Facility means the waste treatment facility operated by EPS at 541-583 Kororoit Creek Rd, Altona VIC 3018.

Force Majeure Event means any cause outside the reasonable control of EPS and which could not have been prevented or avoided by EPS taking all reasonable steps.

General Conditions means these general terms and conditions of contract.

Government Approval means any authorisation, consent, approval, licence, ruling, permit, condition, determination, certificate, exemption, filing, order, judgment or publication of any Government Authority.

Government Authority means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, government or regulatory department, commission, body, instrumentality, minister, tribunal or court, agency or other authority.

Liability Limit means 100% of the Contract Price.

Law means:

- (a) any statute, regulation, code, standards, award or other subordinate legislation or legislative

instrument of the State or the Commonwealth, any rule of common law or equity, and any legally binding or enforceable requirement of a government or government body, authority or agency of the State or the Commonwealth;

- (b) any authorisation, consent, approval, licence or permit from any Government Authority; and
- (c) fees and charges payable in connection with the foregoing.

Relief Event means the following:

- (a) any negligent act or omission of the Customer or the Customer's Personnel or breach of this Contract by the Customer;
- (b) any loss or damage to the Facility caused by the Customer or the Customer's Personnel;
- (c) any industrial action caused by the Customer or directed solely at the Customer; or
- (d) any non-compliance of Waste Products with the Specification.

Schedule of Rates means the schedule of rates and prices set out in the Services Order.

Services means all things and tasks which EPS is required to carry out to take Waste Products at the Facility and process and dispose of those Waste Products in accordance with all applicable Laws.

Services Order means a services order issued by the Customer to EPS in accordance with clause 2.

Specification means the specification for Waste Products provided by the Customer to EPS under clause 2.3(a).

Unanticipated Contamination means any Contamination which is not disclosed by the Customer in the Services Order.

Waste Products means waste products that are generally of the type described in the Services Proposal, Services Response and Services Order that are to be delivered to the Facility by the Customer for treatment and disposal by EPS.

WH&S Legislation means all applicable work health and safety Laws, including any applicable standards or codes of practice in respect of workplace safety and health.

1.2 Headings are for convenience only and do not affect interpretation.

1.3 Words such as includes, including or similar are not words of limitation.

2 Services Order

2.1 This Contract shall commence on the Contract Date and continue in full force and effect until the earlier of:

- (a) the Customer makes payment (in full) of the Contract Price in accordance with clause 6; or
- (b) the date this Contract is terminated in accordance with clause 10.

2.2 The rights and obligations of the parties in respect of the Services will be governed by the terms of this Contract.

2.3 Prior to issuing the Services Order, the Customer must provide to EPS a proposal which sets out:

- (a) full details of the Specification of the Waste Products which the Customer proposes to deliver to EPS;
 - (b) details of any Contaminants present in the Waste Products;
 - (c) the Customer's proposed Delivery Schedule for delivery of the Waste Products to the Facility; and
 - (d) any other information reasonably requested by EPS,
- ("Services Proposal").
- 2.4 EPS must, within 20 Business Days of receipt of a Services Proposal provide a response to the Customer, in the form of a draft Services Order, which sets out:
- (a) whether the Waste Products nominated by the Customer in the Services Proposal are able to be accepted and treated by EPS at the Facility; and
 - (b) if EPS is able to accept and treat the nominated Waste Products:
 - (i) EPS' confirmed Delivery Schedule;
 - (ii) a Schedule of Rates; and
 - (iii) the estimated price for the Services,
- ("Services Response")
- 2.5 If the Customer wishes to engage EPS to perform the Services, the Customer must issue to EPS a Services Order confirmation email within 20 Business Days of receipt of the Services Response. Upon receipt of the email by EPS, the Services Order shall be binding upon both parties.
- 2.6 No Services Order will have the effect of varying the terms of this Contract.

3 Performance of the Services

- 3.1 The Customer must deliver the Waste Products to the Facility in accordance with the Delivery Schedule and all directions and requirements of EPS and its personnel.
- 3.2 EPS will not be obliged to accept any Waste Products which are delivered by the Customer otherwise than in accordance with the Delivery Schedule.
- 3.3 Whilst accessing the Facility, the Customer must, and ensure that the Customer's Personnel:
 - (a) comply with all reasonable directions and procedures of EPS under the WH&S Legislation, including those relating to security, the environment and workplace health and safety; and
 - (b) so far as is reasonably practical, not interfere with or obstruct any other persons accessing the Facility.
- 3.4 Prior to any Customer Personnel entering the Facility, they must undertake and pass a compulsory Facility specific safety induction with EPS. The Customer must also ensure that the details of all vehicles entering the Facility have been provided to EPS and that all such vehicles are registered with EPS' registration system, details of which will be provided to the Customer.
- 3.5 The Customer indemnifies EPS against all liabilities to which EPS may be exposed or which may arise out of the enforcement of the WH&S Legislation and shall also indemnify EPS in respect of any liability incurred by EPS as a result of the Customer failing to comply with its health and safety obligations under this Contract.
- 3.6 Without limiting its other obligations under this Contract, the Customer must and must ensure that the Customer's Personnel allow EPS and its personnel to inspect any vehicles used in relation to the delivery of the Goods.

- 3.7 EPS must accept delivery of all Waste Products that are delivered in accordance with the Delivery Schedule and perform the Services in accordance with all applicable Laws.
- 3.8 The Customer acknowledges and agrees that EPS has agreed to accept and treat the Waste Products and has determined the Delivery Schedule and Contract Price on the basis that the Waste Products are **Compliant Waste Products**.
- 3.9 In the event that the Waste Products delivered by the Customer are not Compliant Waste Products, the Customer must:
 - (a) pay to EPS any additional charges which would have been charged by EPS to the Customer had the Customer disclosed the extent to which the Waste Products were not Compliant Waste Products; and
 - (b) indemnify EPS in respect of all costs incurred by EPS as a result of any damage to the Facility caused by the Waste Products not being Compliant Waste Products.

4 Relief Events

- 4.1 If a Relief Event has occurred, EPS may submit a notice to the Customer containing:
 - (a) details of the Relief Event;
 - (b) details of the consequences or the likely consequences of the Relief Event; and
 - (c) details of the actions to be undertaken by EPS to mitigate the effects of the Relief Event.
- 4.2 Where a Relief Event occurs:
 - (a) EPS may amend any Delivery Schedule or cancel any Services Order affected by the Relief Event;
 - (b) to the extent that the Relief Event prevents EPS from complying with any obligation under this Contract, EPS is relieved from compliance with that obligation; and
 - (c) to the extent that the Relief Event causes EPS to incur any cost that otherwise would not have been incurred, the Customer must pay that cost.

5 Laws

- 5.1 EPS must obtain and maintain all licences, accreditations, certificates or registrations EPS is required to possess by any Government Authority or Law in order to provide the Services.
- 5.2 The Customer must obtain any Government Approvals required for the delivery of the Waste Products and must comply with all applicable Laws in the delivery of the Waste Products.

6 Contract Price and payment

- 6.1 In consideration of EPS' performance of its obligations under the Contract, the Customer will pay EPS the Contract Price. The Contract Price for the Services Order will be calculated in accordance with the Schedule of Rates according to the actual quantity of Waste Products delivered under that Services Order as measured by the Facility's weighbridge (which will be conclusive evidence of such quantity).
- 6.2 EPS may submit to the Customer a payment claim ("**Payment Claim**") in the form of a valid tax invoice within thirty (30) days of receipt of the Waste Products for:
 - (a) the quantity of all Waste Products accepted by EPS; and
 - (b) any other amounts which EPS considers are due to it pursuant to the Contract.

- 6.3 Within 30 days of the date of a Payment Claim, the Customer must pay the amount of the Payment Claim, without deduction.
- 6.4 If the Customer disputes the amount of a Payment Claim, the Customer must nevertheless pay the undisputed amount of that Payment Claim but must notify EPS of the disputed amounts and any dispute regarding the Contract Price will be dealt with through legal proceedings.
- 6.5 If money due and payable to EPS remains unpaid after the date on which the money should have been paid, then the Customer must pay EPS interest on the overdue amount at the official cash rate set by the Reserve Bank of Australia plus 3% from the date after such payment is due until payment of the full amount is made.
- 6.6 Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*).

7 Insurance

- 7.1 The Customer must effect and maintain during the Term:
- (a) motor vehicle insurance covering loss or damage to property of third parties (including bodily injury or death) arising out of the use of a mechanically propelled vehicle (whether owned, rented or leased) for the delivery of any Waste Products;
 - (b) workers' compensation insurance in accordance with the relevant Law; and
 - (c) public and products liability insurance:
 - (i) covering liability resulting from any injury to, or death of, any person, or any loss or damage to (including resulting loss of use) any real or personal property including the property of EPS or any other third party howsoever caused;
 - (ii) with a limit of liability for general liability of \$20,000,000 for any one occurrence, and unlimited in the aggregate; and
 - (iii) with a limit of liability for products liability of \$20,000,000 for any one occurrence and in the aggregate for all occurrences.
- 7.2 The Customer must, within 5 Business Days of the Contract Date but in any event prior to the delivery of any Waste Products, and whenever reasonably requested by EPS, deliver to EPS certificates of currency for its insurances.

8 Liability and indemnities

- 8.1 The Customer indemnifies EPS against any loss or liability suffered or incurred by EPS in respect of:
- (a) physical damage to the Facility, any other property of EPS or any third-party property; or
 - (b) personal injury, disease, illness or death to any person,
- to the extent caused by the Customer or the Customer's Personnel.
- 8.2 The Customer's liability under the indemnity in clause 8.1 will be reduced proportionately to the extent that the act or omission of EPS or EPS' Personnel or a breach of this Contract by EPS has contributed to the loss or liability.
- 8.3 EPS must take reasonable steps to mitigate the loss or liability suffered or incurred by EPS which is the subject of the indemnity in clause 8.1.
- 8.4 Notwithstanding any other provision of the Contract and to the extent permitted by Law, the total aggregate liability of EPS to the Customer under or in connection with the Services Order

howsoever arising, whether in contract (including under the Contract), in tort (including negligence), under an indemnity, under statute, in equity or otherwise is limited to the Liability Limit.

9 Force Majeure Event

- 9.1 To the extent that EPS is prevented from or delayed in performing any of its obligations under the Contract by a Force Majeure Event, then the relevant obligations of EPS will be suspended from the time that the Force Majeure Event prevents or delays that performance until the effects of the Force Majeure Event end.
- 9.2 EPS must use reasonable endeavours to mitigate the consequences of the relevant Force Majeure Event and minimise any resulting delay in the performance of its obligations under the Contract.
- 9.3 Each party must bear its own costs in relation to a Force Majeure Event.

10 Termination

- 10.1 If the Customer commits a Customer Default Event, EPS may give a written notice to the Customer ("**Customer Default Notice**").
- 10.2 If the Customer Default Event has not been rectified within 10 Business Days after receipt by the Customer of the Customer Default Notice, EPS may, by written notice to the Customer, suspend performance of all or any of the Services.
- 10.3 If the Customer Default Event has not been rectified within 20 Business Days after receipt by the Customer of the Customer Default Notice, EPS may, by written notice to the Customer, immediately terminate the Contract.
- 10.4 Either party may, by written notice to the other party, immediately terminate the Contract in the event that the effects of a Force Majeure Event continue for:
- (a) a continuous and uninterrupted period of 90 days; or
 - (b) a cumulative period of 180 days during the Term.
- 10.5 Termination by either party under this clause 10:
- (a) is without prejudice to any other rights or remedies which may be exercised by that party under this Contract or at law; and
 - (b) does not affect the rights and obligations of the parties under this Contract which accrued prior to the date of termination.

11 Confidentiality

- 11.1 Each party agrees not to disclose information provided by any other party (including the existence or contents of the Contract) except:
- (a) information that is publicly available;
 - (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with the Contract;
 - (c) to officers, employees, agents, contractors, legal and other advisers and auditors of the Customer or EPS;
 - (d) to any party to the Contract or any related body corporate (as defined in the *Corporations Act 2001 (Cth)*) of any of them, provided the recipient agrees to act consistently with this clause;
 - (e) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
 - (f) any disclosure the disclosing party reasonably believes is required by any law, court order, securities exchange or rating agency.

11.2 Each party consents to disclosures made in accordance with this clause.

12 General

- 12.1 Neither party may assign or otherwise deal with its rights under the Contract or allow any interest in them to arise or be varied without the consent of the other party.
- 12.2 The law in force in Victoria governs the Contract and, to the extent the law permits, all matters in connection with the Contract including any non-contractual matters. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.
- 12.3 This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- 12.4 This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single

document and the date on which the last counterpart is executed is the date of the document.

- 12.5 If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.
- 12.6 Clauses 1, 8, 11 and 12 and any other provision that is expressed to, or by its nature that is intended to, survive termination or expiry of the Contract, shall survive the expiry or terminate of the Contract.