

Terms & Conditions



1 DEFINITIONS

In these terms and conditions:

"Additional Services" means any waste collection, disposal and/or management related services additional to those specified on the front page/s of this Agreement that the Customer may require from time to time

"Agreement" means the agreement between CWM and the Customer, comprising the front page/s of this document entitled Service Agreement and these Terms & Conditions of Supply.

"Customer" means the person or entity (jointly and severally if more than one) obtaining the Services (either for itself or on behalf of the Recipient), as identified on the front page/s of this Agreement.

"CWM" means Corio Waste Management Pty Ltd, or such other CWM entity as may be notified in writing to the Customer.

"Equipment" means containers, units and other equipment placed by CWM on the Premises.

"Essential Terms" means clauses 3.1, 4.1, 4.3, 6.2, 6.3, 7.2, 8.1, 12.2 and 12.6 of this Agreement.

"Fees" means any amount, rate, price, charge and/or fee for the provision of the Services, as specified on the front page/s and as may be varied only in accordance with this Agreement. Fees are exclusive of goods and services tax (GST) unless otherwise expressly stated.

"Leased Equipment" means any Equipment leased by CWM in order to provide the Services.

"PPSA" means:

(a) the *Personal Property Securities 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.

"Premises" means the service address/es specified on the front page/s of this Agreement, as varied from time to time in accordance with this Agreement.

"Recipient" means the recipient of the Services.

"Services" means CWM's provision of Equipment and collection and disposal of Waste as specified on the front page/s of this Agreement or as otherwise agreed between the parties.

"Special Waste" means any radioactive, volatile, flammable, explosive, biomedical, toxic or hazardous substances including asbestos or any other substance which is not explicitly described and agreed to on the front page/s of the Agreement, or which is otherwise reasonably excluded by written notice provided by CWM to the Customer.

"Waste" means all waste and recyclables generated by or in the possession of the Customer at the Premises, excluding Special Waste (unless CWM has expressly agreed in writing to provide services in respect of Special Waste).

2 TERM

2.1 The Initial Term of this Agreement is the period specified on the front page/s of this Agreement under the heading 'Term of Agreement' from the Commencement Date to: (a) the End Date; or

(b) the date that is 2 years from the Commencement Date (if no End Date is specified on the front page/s of this Agreement).

2.2 At least two weeks prior to the End Date or the date that is 2 years from the Commencement Date (if no End Date is specified), CWM will provide the Customer with written notice of: (a) the end of the Initial Term; and (b) the operation of clause 2.3 below.

2.3 The Agreement will continue after the Initial Term on a monthly basis on the same terms and conditions as the Initial Term until terminated by either party on the provision of 30 days' written notice.

3 SERVICES

3.1 CWM will provide Services in accordance with this Agreement. The Customer agrees to obtain all Services exclusively from CWM, except to the extent and for any period during which CWM is unable to provide the Services.

3.2 CWM will use all reasonable endeavours to perform the Services on the agreed days, but during such hours as CWM shall determine acting reasonably and having regard to its legitimate business and operational requirements.

3.3 Due to its operational requirements, CWM may from time to time need to vary the days upon which the Services are performed. In that event, CWM will provide prior notice of the variation to the Customer where reasonably practicable.

4 FEES AND PAYMENT

4.1 The Customer must pay CWM the Fees in consideration for the provision of the Services.

4.2 At least monthly, CWM will provide the Customer with a tax invoice for the Fees due for Services supplied by CWM and any amounts otherwise owing under this Agreement, plus goods and services tax (GST) (together **"the Invoiced Amount"**).

4.3 The Customer must pay CWM the Invoiced Amount in full within 14 days from the date of the relevant invoice (the **"Due Date"**).

4.4 CWM may acting reasonably and on the giving of [14 days] written notice to the Customer adjust the Fees proportionately to reflect a change in the: (a) nature, quantity, weight or density of the Waste;

(b) quantity, timing or frequency of the Services requested by the Customer and agreed to by CWM; and/or

(c) Premises or access to the Premises.

4.5 CWM may acting reasonably and on the giving of [14 days] written notice to the Customer adjust the Fees: (a) to reflect a change in the Consumer Price Index, being the All Groups index applicable to the State in which the majority of the Services are provided as published by the Australian Bureau of Statistics from time to time (or any nominated replacement); and

(b) to take account of any additional and incremental costs of providing the Services over and above the increase in costs caused by an increase in the Consumer Price Index the subject of clause 4.5(a);

(c) by reason of an increase in any of the following CWM costs: (i) waste disposal fees and costs;

(ii) labour costs;

(iii) cost of fuel and materials;

(iv) equipment maintenance costs;

(v) environmental and safety costs; and/or

(vi) the introduction of or change in any law or regulation, including an increase in levies, taxes, charges or schemes imposed by a relevant authority, provided that any such increase does not take effect before the date upon which the increase in CWM's costs takes effect.

4.6 In addition to clauses 4.4 and 4.5, if CWM incurs any material increased costs due to a reason outside CWM's reasonable control, CWM may, on the provision of [14 days] written notice to the Customer and acting reasonably, adjust the Fees to take account of such cost increases.

4.7 If the Customer does not agree to an adjustment in Fees the subject of clauses 4.4 to 4.6, it can within the 14-day notice period elect to terminate this Agreement. In that event, CWM may: (i) recover any amounts owing and not paid by the Customer up to the date of termination; and (ii) collect the Equipment. If the Customer does not terminate this Agreement within the 14-day notice period, it will be taken to have agreed to the adjustment in Fees the subject of clauses 4.4 to 4.6.

4.8 Where CWM offers the Customer a rebate in respect of products recovered from the Waste and such rebate is calculated by reference to the commodity prices, CWM may adjust the rebate on a quarterly basis (or such other basis agreed with the Customer in writing) to take account of any change in commodity prices.

4.9 If the Customer does not pay the Invoiced Amount by the Due Date, then in addition and without prejudice to any rights or remedies available to CWM: (a) CWM may require any future amounts invoiced to or owing by the Customer to be paid in advance of CWM's performance of the Services; and

(b) the Customer will be liable for all costs reasonably incurred by CWM in connection with any debt recovery actions taken by CWM to enforce payment.

5 TERMINATION AND SUSPENSION

5.1 The Customer may immediately terminate this agreement: (a) if CWM becomes insolvent or unable to pay its debts or becomes involved in any action or process (including a voluntary process) associated with insolvency such as external administration, or if it ceases carrying on all or part of its business or paying its debts; or (b) if CWM is in material breach of this Agreement and fails to remedy the material breach within 14 days of the date of receiving written notice from the Customer identifying and requiring remedy of that breach.

5.2 CWM may immediately suspend provision of the Services or terminate this Agreement (at its election): (a) if the Customer dies, becomes bankrupt, insolvent or unable to pay its debts or becomes involved in any action or process (including a voluntary process) associated with insolvency such as external administration;

(b) if the Customer ceases carrying on all or part of its business or paying its debts; or

(c) if the Customer materially breaches any Essential Term of this Agreement and that breach is not remedied within 14 days of the date of the Customer receiving written notice from CWM identifying and requiring remedy of that breach; or

(d) the Customer repudiates this Agreement.

5.3 On termination under clause 5.2, CWM may, in addition and without prejudice to any other rights or remedies available to it: (a) recover from the Customer as a debt due and payable: (i) all amounts owing to CWM and not paid by the Customer up to the date of termination;

(ii) where relevant, rental fees for Leased Equipment that would have otherwise been paid by the Customer under the Agreement only where CWM is unable to redeploy the Leased Equipment within 14 days of termination, capped at 3 months' rental fees, or (at CWM election) any break lease fee incurred by CWM in relation to Leased Equipment due to the termination; and

(b) collect the Equipment.

6 WASTE MATERIAL AND TITLE

6.1 Title to all Waste vests in CWM on deposit in the Equipment. Title to Special Waste remains with the Customer, unless otherwise agreed in writing between the parties.

6.2 Where applicable, the Customer appoints CWM as its agent to give prescribed information about trackable wastes to any relevant administering authority.

6.3 The Customer warrants to CWM that all Waste relating to the Services corresponds to the waste type specified on the front page/s of this Agreement and excludes Special Waste (unless expressly agreed between the parties in writing).

7 EQUIPMENT

7.1 The Equipment remains the property of CWM at all times.

7.2 From the time of delivery of the Equipment to the Premises until the Equipment is collected by or returned to CWM, the Customer: (a) must at its expense, use, store and operate the equipment in accordance with any instructions given by CWM and any applicable laws, codes of practice and standards;

(b) is responsible for any damage, theft, loss or destruction of the Equipment, excepting normal wear and tear; and (c) must provide CWM sufficient and safe access to the Premises to enable CWM to access the Equipment and provide the Services.

8 INDEMNITY

8.1 The Customer indemnifies CWM (except to the extent loss or damage is caused or contributed to by CWM's negligence or misconduct) against any loss or damage arising under or in connection with a breach by the Customer of: (a) clause 6.3 or clause 7.2 of this Agreement; and

(b) any duty of care owed to CWM and/or its representatives whilst on the Customer's Premises.

9 WARRANTIES AND LIABILITY

9.1 Except as expressly stated in this Agreement and to the maximum extent permitted by the law, any term, condition or warranty express or implied by statute or otherwise in relation to the Services and/or this Agreement is excluded.

9.2 Nothing in this Agreement excludes, restricts or modifies the application of the Competition and Consumer Act 2010 (Cth), including the consumer guarantees and associated remedies under the Australian Consumer Law.

9.3 To the fullest extent permitted by law and subject to clause 9.2, CWM's liability arising under or in connection with this Agreement is limited at CWM's option to the re-supply of Services or payment of the cost of re-supplying Services by a third party.

9.4 To the fullest extent permitted by law, CWM is not liable for any indirect or consequential losses.

10 FORCE MAJEURE

10.1 If CWM is prevented or delayed in performing any of its obligations under this Agreement because of any event beyond CWM's control (**"Force Majeure Circumstance"**): (a) CWM will not be in default under this Agreement or liable for any loss, cost, expense and/or damage suffered by the Customer;

(b) the performance of CWM's obligations under this Agreement will be suspended for the period in which the Force Majeure Circumstance subsists; and

(c) if the Force Majeure Circumstance continues for a period exceeding three (3) months, then either party may terminate this Agreement by providing [14 days] written notice to the other.

11 PPSA

Security for Equipment Supplied

11.1 The Customer acknowledges and agrees 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 CWM from time to time and any proceeds of the supply of the Equipment to secure payment for the Equipment supplied (**"Security Interest"**).

11.2 CWM 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 the 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

11.3 The Customer must do all things, provide all information and sign all documents that are necessary and reasonably required to enable CWM to acquire a perfected Security Interest in the Equipment including for the purposes of:

(a) Ensuring that any Security Interest created under, or provided for, by these Terms attaches to the Equipment, is enforceable, effective and has the priority required by CWM; and

(b) Enabling CWM to prepare and register a financing statement or financing change statement.

11.4 The Customer must never dispose of CWM's Equipment.

11.5 The Customer must notify CWM of any change to its name, structure, status or partnership, at least 30 days' prior to such any change and must provide any details of that change required by CWM.

Exclusion of Notices and Other Obligations

11.6 To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:

(a) CWM does not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and

(b) Sections 142 and 143 are excluded;

11.7 For the purposes of section 115(7) of the PPSA, CWM does not need to comply with sections 132 and 137(3).

11.8 To the extent permitted by law, the Customer agrees to waive its rights to receive any notice and any time period that must otherwise lapse that is required by any provision of the PPSA or any other law before a secured party or a receiver exercises a right, power or remedy.

11.9 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).

Other

11.10 If the Customer defaults in the timely performance of any obligation owed to CWM, CWM may enforce the Security Interest by exercising all or any of CWM's rights under these Terms, the general law and the PPSA.

11.11 Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

12 MISCELLANEOUS

12.1 Where the Customer commences operations at, or moves its operations to, premises other than the Premises and provided that the other premises is within the geographic boundaries in which CWM operates, then this Agreement will be varied to add to, or substitute (where applicable), the Premises with the other premises.

12.2 Neither party will assign any of its rights or obligations under this Agreement without the prior written consent of the other party (which will not be unreasonably withheld).

12.3 The Customer will provide CWM with reasonable opportunity to offer to provide any Additional Services for the Premises or premises other than the Premises. However, the Customer will not be obliged to accept CWM's offer to provide those Additional Services.

12.4 This Agreement will bind the successors and permitted assigns of the parties.

12.5 The laws of Victoria govern this Agreement and the parties agree to the exclusive jurisdiction of the courts in Victoria.

12.6 The Customer represents and warrants that the Customer's representative signing this Agreement has the authority to bind the Customer to the terms of this Agreement.

12.7 In the event that any provision of this Agreement or part thereof is held invalid or unenforceable, the remaining provisions of this Agreement or parts thereof will remain in full force and effect.

12.8 If any dispute or difference arises between the Customer and CWM, other than pursuant to clause 5, it shall be referred to their respective representatives (or contacts) for resolution. In the event that those representatives are unable to resolve the dispute within 14 days of meeting, the representatives' superiors will attempt to resolve the dispute by negotiation and in good faith within a further 14 days. The parties will not commence legal proceedings other than urgent interlocutory proceedings until the dispute resolution process under this clause has concluded. Pending the resolution of any dispute, the parties will continue to comply with their respective obligations under this Agreement (other than in respect of any disputed Fees and then only to the extent of the amount in dispute).

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