

Standard terms – CES

1 Background

You wish to engage us to provide you the Equipment, Products and/or Services. We have agreed to perform the Services for you and/or provide the Equipment and/or the Products to you on the terms and conditions set out in this agreement.

1. Appointment and relationship

- (a) You appoint us on an exclusive basis to provide the Services in accordance with this agreement during the Term and we accept that appointment.
- (b) Where relevant, in accordance with clause 2, you require us to provide you with the Equipment and/or the Products.
- (c) We are an independent contractor. Nothing in this agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture as between you and us.

2. Supply of Equipment

2.1 Trial of the Equipment

We may provide you with Equipment in order for you to trial it. The trial commencement date is set forth in the Agreement Specifics and the term of such trial period (the “trial period”) shall be advised by us at our discretion. You are not required to pay us anything for the trial period. The following provisions in these terms and conditions apply to the trial period.

2.2 Renting the Equipment

We may provide you with Equipment in order for you to rent it for the Term. The rent you shall pay us in consideration of us providing the Equipment to you is set forth in clause 4. If your usage or other factors require it, we may discuss and agree with you for additional or alternative Equipment and/or Products to be provided, and in that case there will be commensurate variations to the Fees.

2.3 Dealing with the Equipment if trialling or renting

If you are renting or trialling the Equipment:

- (a) once the Equipment has been delivered to you it must be properly cared for by you and used only for its intended purpose, as specified by us;
- (b) the Equipment must be stored out of the weather (ie, direct sunlight, wind, rain and moisture, for example) and away from any corrosive materials;
- (c) if your usage of the Equipment causes it to deteriorate beyond a reasonable level of wear and tear, having regard to the age and intended purpose of the Equipment, then we may terminate the agreement upon providing you 14 days' notice and collect the Equipment from you. As an alternative to terminating the agreement, we may discuss and agree with you variations to the Services required or the Fees;
- (d) you are not allowed to alter or amend the Equipment unless you have our written authorisation to do so;
- (e) you shall only use and store the Equipment at your premises as nominated in the Agreement Specifics (unless we otherwise agree with you in writing, to move it elsewhere);
- (f) at any time throughout the trial period we may call upon you for you to return the Equipment to us or we may collect it from your premises with 24 hours' notice;
- (g) at any time throughout the Term we may ask you to allow us to inspect the Equipment at your premises;
- (h) you must immediately report to us any damage or malfunction of the Equipment and ensure it is appropriately isolated from use until properly repaired and suitable for its intended purpose.
- (i) At the end of the trial period or Term (where relevant):
 - (i) we shall collect the Equipment from you in the same condition which we delivered it to you, save for fair wear and tear;
 - (ii) you do not have an option to buy the Equipment.

2.4 Sale and purchase of Equipment and/or Products

- (a) We may sell you Equipment and/or Products. If the parties agree to sell and buy, respectively, the Equipment and/or the Products that shall be set out in the Agreement Specifics.
- (b) If we have the Equipment and/or Products in stock we will endeavour to deliver it to you within 14 days from the date of this agreement or as otherwise nominated by us. If the Equipment and/or Products are not in stock we will advise you of the expected delivery date. This is an estimated delivery time and we shall not be liable to you if the Equipment and/or Products are delayed.
- (c) We will deliver the Products to you at the frequency as set forth in the Agreement Specifics or as otherwise agreed.
- (d) Upon delivery we will provide you with our operating and safety instructions (the “Operator’s Manual”).
- (e) You undertake to thoroughly read the Operator’s Manual and put all processes in place to ensure it is complied with. If you are unclear about anything in the Operator’s Manual you should call us on the contact numbers provided to you in this agreement.
- (f) You must ensure your representatives and anyone who uses the Equipment and/or the Products are provided with the Operator’s Manual and ensure they are adequately educated, supervised and instructed with respect to the Equipment and/or the Products and their respective uses.

- (g) Payment for the Equipment and/or Products is provided for in clause 4.

2.5 Title and risk

- (a) If you trial or rent the Equipment:
 - (i) title always rests with us; and
 - (ii) risk transfers to you upon delivery of the Equipment to you and transfers back to us after we have inspected the Equipment upon its return to us.
- (b) If you buy the Equipment and/or the Products:
 - (i) title transfers to you once you have paid for the Equipment and/or the Products in full; and
 - (ii) risk transfers to you upon delivery of the Equipment and/or the Products to you.

2.6 Insurance

- (a) Regardless of whether you trial or rent the Equipment whilst it is in your possession or control you are required to:
 - (i) insure the Equipment with a reputable insurer for its full replacement value; and
 - (ii) have public liability insurance with a reputable insurer to at least \$10M in cover.
- (b) If you rent or trial the Equipment you must notify your insurer that you do not own the Equipment and we must be noted on your policy.
- (c) If we request, you must provide us with a copy of your certificate/s of insurance.
- (d) If we determine that you have not insured the Equipment as required herein we reserve the right to take out appropriate insurance cover and demand payment from you of the costs incurred by us in that regard.

2.7 Security bond or bank guarantee

We may ask you to provide us with a security bond or bank guarantee if you trial or rent the Equipment from us. In the event that you are in breach of this agreement we may call upon such bond or guarantee without notice to you. In that event upon our acceptance of the Equipment after you have returned it to us we will pay you the bond or guarantee amount that has been accessed by us.

3. Services

- (a) We will perform the Services in accordance with this agreement and as specified in the Agreement Specifics.
- (b) If we are unable to access the Premises or complete the Services due to your act or omission, we are entitled to charge you the relevant Fees that would otherwise have been payable for rendering the Services.
- (c) If you trial or rent the Equipment from us we will be the only entity who shall perform the Services, maintenance or otherwise repair the Equipment for the Term.

4. Fees and payment

4.1 Fees

We shall perform the Services and/or provide the Equipment and Products for you or such further and other service as may be agreed to from time to time between the parties in consideration for payment of the Fees.

4.2 Consumables

During the term of this agreement you may require replacement consumables used in the servicing of your equipment, including but not limited to specialised cleaning chemicals, replacement globes, hoses, etc. Price and delivery details of such replacement consumables shall be agreed upon a request made by you.

4.3 Invoicing and payment

- (a) We will submit invoices to you on a monthly basis for the Service Fees and the Rental Fees and payment will be made by you within 30 days of the date of the invoice.
- (b) From time to time we may submit an invoice to you at the time the Services are completed. In that event, payment will be required from you within 30 days of the date of that invoice.
- (c) If you are buying the Equipment and/or Products we will submit an invoice to you upon sending us a purchase order or otherwise confirming in writing to us that you will buy the Equipment and/or Products from us as specified therein. You will pay this invoice prior to or upon delivery of the Equipment and/or Products by us. These terms and conditions apply to any purchase of Equipment and/or Products by you from us and supersedes any terms and conditions attached to any purchase order.
- (d) If you buy Equipment from us that is not in stock we may require a deposit from you in the sum of 25% of the total value of the Equipment as specified in the Agreement Specifics. Prior to or upon delivery of the Equipment you will be required to pay the balance outstanding to us. If you cannot complete the payment prior to or upon delivery, we are entitled to keep the deposit.
- (e) If you are late in payment we may charge you a late payment fee of \$30 on each unpaid invoice. If we have provided you with at least one written payment reminder, then we may suspend providing the Services while your account remains in arrears. For the first 60 days of any suspension you will continue to be liable for any Equipment hire charges. After that period you will not be liable for Equipment hire charges unless you do not permit us to collect the Equipment.

4.4 Variations to pricing

- (a) We may adjust the Fees at any time to pass on increases in disposal costs, fuel costs or in the event that a Change in Law results in an increased cost to us in providing the Services or Goods.
- (b) The Fees are based on the attached quotation/proposal. Therefore we may change the Fees or charge additional Fees if you exceed the allowed weights or volumes, or if you request a variation to the time of service or frequency of service.
- (c) We may adjust the Fees twice in any twelve month period if the adjustment is consistent with a fluctuation in the Consumer Price Index.
- (d) If we determine that exceptional circumstances exist, then we may adjust your fees otherwise than as described in clauses 4.4(a), 4.4(b) and 4.4(c) above, but only if we give written notice to you headed 'Out-of-Cycle price adjustment'. In the written notice we will explain the exceptional circumstances to you. If we send you a notice of a price adjustment that is headed 'Out-of-Cycle price adjustment' (but in no other case), then within 30 days of the date of the notice you may terminate this Agreement by giving written notice to us.
- (e) In all cases we will give you at least 30 days' notice of price adjustments.

4.5 GST

If goods and services tax or similar value added tax is or becomes payable on any supply under this agreement, you must pay the supplier the GST amount so levied or imposed at the same time as payment of the Fees.

5. Your obligations

- (a) You must ensure we (and our representatives) have access to those parts of your premises as we require for the purpose of performing the Services or to deliver the Equipment and/or the Products. You warrant to us that the ground surfaces traversed by our vehicles in order to perform the Services or attend to the Equipment are of suitable construction to prevent damage thereto.
- (b) You warrant the waste to be collected and disposed of by us is: waste generated by you; accurately described to us; and it excludes radioactive, highly flammable, explosive, biochemical or asbestos components. In the event that additional costs are incurred as a result of returning or disposing of material which does not comply with this description, you will be liable for these charges.
- (c) You must ensure that all containers containing the waste to be collected by us are stored in accordance with the law and best practice occupational, health and safety practices. For example but not limited to, drums must not have defects and shall store the waste securely.
- (d) You indemnify and hold us harmless against all claims, loss and damage (including costs) arising out of a breach of this clause 5.

6. Confidentiality and intellectual property

The parties agree to keep confidential the Confidential Information of the other. We will retain ownership of, and title to, all Intellectual Property Rights pertaining to the provision of the Equipment, Products and/or Services.

7. Liability

- (a) You indemnify us against any loss with respect to the Equipment (other than fair wear and tear) whilst it is in your possession or control. You also indemnify us against any claim, loss, liability, cost or expense (including legal costs) made against us or incurred by us in connection with the Equipment whilst that Equipment is in your possession or control. This indemnity is reduced to the extent that we have caused or contributed to such loss, damage, liability or claim.
- (b) Where we are engaged to provide any services in relation to equipment not supplied by us (including cleaning or maintenance related services):
 - (i) we will not be liable to you for any loss, damage, claim or injury relating to the equipment; and
 - (ii) we do not provide and shall not be deemed to have given any warranty, express or implied, in respect of the equipment or its condition, operation, durability, suitability of fitness for use or any purpose or merchantability.
- (c) All statutory or implied guarantees, conditions and warranties are excluded to the extent permitted by law.
- (d) We do not limit or exclude the application of any provision of any statute (including the Competition and Consumer Act 2010 (Cth) if you are a 'consumer' as that term is defined in such Act, or any similar law) where to do so would contravene that statute or cause any part of this clause to be void.
- (e) Our liability to you under this Agreement is limited, at our option, to the cost of:
 - (i) repairing the equipment or Products, or paying the cost of repair;
 - (ii) replacing the equipment or Products or of acquiring equivalent equipment or Products;
 - (iii) supplying the Services again; or
 - (iv) having the Services supplied again.
- (f) Neither party shall be liable to the other for any special, exemplary, punitive or consequential loss or damage (including without limitation, loss of profit, loss of opportunity and loss of goodwill) incurred by directly or indirectly in connection with this agreement.

8. Force Majeure

Notwithstanding any other provision of this agreement, neither party shall be

liable for any delay or failure to perform its obligations under this agreement (other than a failure to pay money) resulting from a Force Majeure Event. Each party shall as soon as the Force Majeure Event ceases to affect its performance or its obligations under this agreement, resume compliance with its obligations.

9. Term, default and termination

9.1 Term

The initial Term of the agreement is stated in the Agreement Specifics. Either party may give written notice of termination to the other party at any time during the initial Term, provided that the termination will not take effect before the end of the initial Term. Unless so terminated, this Agreement continues after the initial Term until terminated by either party giving 60 days' written notice of termination to the other party.

9.2 Default and termination

- (a) If a party (the **defaulting party**) has breached a material term of this Agreement then the other party (the **non-defaulting party**) may give a written notice to the defaulting party describing the breach. If the breach is not remedied by the defaulting party within 14 days after the notice was given, then the non-defaulting party may suspend or terminate this Agreement by written notice. A party may terminate this Agreement immediately if the other party dies, becomes insolvent or bankrupt, or any court action is threatened or commenced or resolution proposed or passed to place that party under any form of bankruptcy, insolvency, administration, receivership or liquidation.
- (b) We may otherwise terminate this agreement on giving written notice to you if:
 - (i) prior to commencement of the Services or delivery of the Equipment and/or Products it becomes apparent to us that you do not meet our credit worthiness requirements; or
 - (ii) in accordance with clause 2.3(c).

9.3 Upon termination

- (a) The parties reserve their respective rights to claim damages regardless of termination or the reasons thereto.
- (b) If you have rented or trialed Equipment and regardless of the reason for termination, you must immediately return the Equipment to us or allow us complete and uninterrupted access to your premises upon termination to facilitate removal of the Equipment. You shall pay all costs of removal of the Equipment from your premises.

10. General

10.1 Definitions

In this agreement unless the context otherwise indicates:

Agreement Specifics means those particulars of this agreement contained on the front page on the reverse of these terms and conditions.

Change in Law means the introduction of, a change in, or a change in the interpretation or administration of, a law. In this context, law means any law of Australia, including a statutory instrument of any kind, and any judgment, order, policy, or official directive or request of any government, government agency, or person charged with the administration of a law.

Commencement Date means the date upon which the Services are first performed by us or the date upon which the Equipment and/or Products are delivered to you. "Confidential Information" means all information (whether of a technical, industrial, engineering, scientific, business or financial nature or otherwise) whether written, oral or in electronic form which is disclosed by one party to the other in the course of this agreement and the provision of the Equipment, Products and/or Services thereto.

Consumer Price Index means the Consumer Price Index (All Groups - Transport) published by the Australian Bureau of Statistics, or if the index is replaced, the replacement, and if the index is discontinued, a reasonable equivalent selected by us acting reasonably.

Equipment means plant and equipment that is (or was, if you are hereby purchasing the Equipment) our property and is provided to your premises as specified in the Agreement Specifics. The Equipment includes but is not limited to parts washers, spray equipment cleaners, abrasive blasters, Turbowash™ parts washers, Three R programme equipment and vertical gravity separators, now and in the future.

Fees includes, where relevant to the context in this agreement, the purchase price for the Equipment and/or Products if being bought and sold, the Rental Fee and the Service Fee and as set out on the 'Fees and Charges' section of our website at <https://www.cleanaway.com.au/our-services/fees-charges/> and as adjusted in accordance with clause 4.

Force Majeure Event means any event affecting a person which is outside that person's reasonable control and includes failure any electrical power supply, electromagnetic interference, fire, storm, flood, earthquake, accident, act of God, war, act of terrorism, labour dispute (other than a dispute solely between the person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or an act or omission of any third party or any failure of any equipment owned or operated by any third party.

Intellectual Property Rights means any intellectual or industrial property rights (including any registered or unregistered trade marks, patents, designs or copyrights) and includes the right to have Confidential Information kept confidential.

Products means chemicals, spill kits, absorbent materials, cleaners and other products from time to time.

Rental Fee means the fees, rates and charges specified in the Agreement Specifics for the provision of our Equipment provided to your premises.

Services means the services to be provided to you by us pursuant to this agreement as set out in the Agreement Specifics. The frequency of the performance of the Services in the Agreement Specifics is indicative only in order for us to properly and adequately maintain the Equipment.

Service Fee means the fees, rates and charges specified in the Agreement Specifics for the performance of the Services.

Term has the meaning given in the Agreement Specifics as the Agreement Term. The Term commences on and from the Commencement Date.

We, us, our means ERS Australia Pty Ltd ABN 88 001 576 889.

You, Your means the person, firm or corporation named overleaf for whom we perform or are to perform the Services or provide the Equipment and/or Products. If there are two or more persons or entities referred to overleaf, then such persons or entities shall be bound by the provisions of this Contract jointly and severally. You or your also includes your employees, contractors, agents, representatives and workers.

10.2 Notices

Any notice required in this agreement must be in writing and delivered to the other party. Delivery includes by hand, email, facsimile or registered post. If a parties' address changes from that stated in the Agreement Specifics, they must notify the other party.

10.3 Subcontracting and assignment

We may subcontract the Services or assign this agreement. You cannot assign this agreement without our consent.

10.4 Counterparts

This agreement may be executed in original form and/or by facsimile transmission in any number of counterparts and all counterparts taken together shall constitute one and the same instrument.

10.5 Costs, duties and fees

Each party shall be responsible for all its own legal costs with respect to this agreement. You are required to pay any duty, fees or taxes in connection with this agreement.

10.6 Whole agreement

This agreement supersedes all prior representations, arrangements, understandings, purchase order terms and conditions, and agreements between the parties and represents the entire complete and exclusive understanding and agreement between the parties relating to the subject matter of this agreement. The parties acknowledge and agree that they have not relied on any written or oral representation, arrangement, understanding or agreement not expressly set out or referred to in this agreement. For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation or any other representations which cannot be excluded by law.

10.7 Severance

If any provision of this agreement shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of this agreement will not be affected and will continue in full force and effect.

10.8 Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State in which the Services are primarily performed or the Equipment and/or Products are delivered to. Any court proceedings shall be filed and heard in that State. If the Services, Equipment or Products are delivered or performed in more than one State in accordance with this agreement, the laws of Victoria shall prevail and any court proceedings shall be held in Victoria.

10.9 PPSA

If we determine that this agreement (or any transaction in connection with it) gives rise to a Security Interest for the purposes of the PPSA, you acknowledge that we will be entitled to perfect such Security Interest by registration on the Register. You waive any entitlements under the PPSA regarding notices. You agree, at our request, to do all acts, matters and things necessary to ensure we hold a valid and Perfected Security Interest. Non-compliance by you of this clause will constitute a breach of this Contract. Any cost associated with the enforcement of our rights under the PPSA shall be payable by you. In this clause: **PPSA** means the Personal Property Securities Act 2009 (Cth); **Security Interest, Perfected** and **Register** have the meanings given to those terms in the PPSA.