

## Standard Terms – Ongoing

### 1. Interpretation

In this Agreement:

**Agreement** means the following documents which will be read and construed together: (a) these Terms and Conditions; and (b) the Agreement Specifics.

**Agreement Specifics** means the document entitled "service agreement", "quotation" or "proposal" or similar document which details the Services, Goods and/or Rental Equipment, fees, duration and other terms which apply to those Services, Goods and/or Rental Equipment.

**Average Monthly Value** means the average of the Fees invoiced to you in each of the most recent six (6) months (excluding any rebates and non-Service related charges such one-off delivery fees) or a pro-rated average if the Agreement has been in effect for less than six (6) months.

**Break Fee** means  $0.30 \times (\text{number of months remaining in the Initial Term}) \times (\text{Average Monthly Value})$ . Where there are no months remaining in the Initial Term, the Break Fee will be \$60 or as set out on our Website.

**Change in Law** means the introduction of, a change in, or a change in the interpretation or administration of, a Law. For the avoidance of doubt, any new charge or levy payable under any Law relating to waste disposal or landfill usage will be considered a Change in Law.

**Confidential Information** means all information that is by its nature is confidential, or a party knows or ought to know is confidential, which includes this Agreement and the Fees.

**Consumer Price Index** means the Consumer Price Index (All Groups) 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, unless otherwise indicated on our Website.

**Disposal Rates** means the rates charged by the relevant facility or third party provider collecting, transporting, sorting, treating, processing and/or disposing of the waste collected by or provided to us under this Agreement.

**Dispute** means any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its validity, existence or termination.

**Equipment** means either the Services Equipment or Rental Equipment as the context requires.

**Equipment Collection Fee** has the meaning set out on our Website.

**Fees** means (as applicable):

- (a) the Service fees and charges (including any rebates) contained in the Agreement Specifics;
- (b) the purchase price for the Goods contained in the Agreement Specifics;
- (c) the Rental Fee; and
- (d) any additional fees, charges, levies or surcharges applicable to the Services as set out in this Agreement or otherwise notified to you (including on our Website),

in each case, as adjusted from time to time in accordance with this Agreement.

**Fuel Surcharge** has the meaning set out on our Website.

**Goods** means the Purchased Equipment and/or the Products.

**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.

**Late Payment Fee** has the meaning set out on our Website.

**Law** includes any law of Australia (whether Commonwealth, State or local law) or any other applicable jurisdiction, 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.

**On-Call Fee** has the meaning set out on our Website.

**Premises** means the premises that we agree to provide the Services, Goods and/or Rental Equipment.

**Products** means the products described in the Agreement Specifics purchased by you under this Agreement, which may include chemicals, spill kits, absorbent materials, cleaners and/or other products.

**Purchased Equipment** means the equipment described in the Agreement Specifics purchased by you under this Agreement.

**Rental Equipment** means the equipment described in the Agreement Specifics that we rent to you (including on a trial basis if applicable) and any other equipment we rent to you under this Agreement.

**Rental Fee** means the fees, rates and charges specified in the Agreement Specifics for the rental of our Rental Equipment to you at your premises (including any rebates).

**Services** means the services described in the Agreement Specifics and any other services we provide you under this Agreement.

**Services Equipment** means equipment such as bins, tanks, containers and/or balers specified in the Agreement Specifics that is our property and is provided to your Premises in conjunction with the Services or such other plant or equipment (including any additional or replacement equipment) supplied by us but does not include any Purchased Equipment or Rental Equipment.

**Terms and Conditions** means this document entitled "Standard Terms - Ongoing" including any schedules or annexures to it.

**Waste Plus Fee and Waste Tracker Fee** have the meaning set out on our Website.

**Waste** means any substance or material that is placed into bins, tanks, containers and/or balers (including Services Equipment) for collection, transfer, disposal and/or processing.

**Waste Type** means the waste categories below, as specified in the Agreement Specifics and further defined on our Website:

- |                      |                   |                     |
|----------------------|-------------------|---------------------|
| (a) General Waste    | (d) Organic Waste | (g) Regulated Waste |
| (b) C&D Waste        | (e) Medical Waste |                     |
| (c) Recyclable Waste | (f) Liquid Waste  |                     |

**We, us, our** means Cleanaway Operations Pty Ltd or any related bodies corporate of it which provides the Services, Services Equipment, Rental Equipment and/or Goods to you. Cleanaway Operations Pty Ltd or any of its related bodies corporate may act on our behalf in fulfilling our obligations under this Agreement, including issuing invoices.

**Website** means [www.cleanaway.com.au/customer-terms](http://www.cleanaway.com.au/customer-terms), including the webpage hosted on it titled 'Fees & Charges' at [www.cleanaway.com.au/about-us/our-customers/fees-and-charges/](http://www.cleanaway.com.au/about-us/our-customers/fees-and-charges/).

**Written Down Value** means the value of the Services Equipment after accounting for depreciation or amortisation (as determined by us acting reasonably) as at the date of termination of this Agreement.

**You, your** means the person, firm or corporation named in the Agreement Specifics for whom we perform or are to perform the Services, supply the Goods and/or provide the Rental Equipment. If there are two or more persons or entities referred to in the Agreement Specifics, then such persons or entities will be bound by the provisions of this Agreement jointly and severally. You or your also includes your employees, contractors, agents, representatives, workers and any permitted assigns.

### 2. Supply of Services

- (a) We will perform the Services for you or such further or other service as may be agreed to from time to time between the parties in consideration for payment of the Fees.
- (b) The Services will be performed by us on the days as indicated in this Agreement but during such hours as we determine. Subject to providing you reasonable notice, we may vary the days upon which the Services are performed.
- (c) If a schedule for performance of the Services is included in the Agreement Specifics, that schedule is indicative only. The actual schedule may vary depending on our reasonable availability.

### 3. Fees

- (a) We will charge you the Fees based on the Services, Goods and/or Rental Equipment set out in the Agreement Specifics.
- (b) We will offer you updated Fees where you request:
  - (i) different or additional Services, Goods and/or Rental Equipment;
  - (ii) additional parts or upgrades to the Goods and/or Rental Equipment;
  - (iii) a different or additional delivery method for the Services, Goods and/or Rental Equipment;
  - (iv) replacement consumables used in the servicing of your Rental Equipment (including, but not limited to, specialised cleaning chemicals, replacement globes, hoses); or
  - (v) a variation to the time, frequency, location or method of us providing you the Services, Goods and/or Rental Equipment, including where an On-Call Fee or a weekend/public holiday surcharge (as set out on our Website) may apply,
 where such requests differ from those set out in the Agreement Specifics. If you accept, or continue to accept, the Services, the supply of Goods and/or Rental Equipment and/or replacement consumables from us following such an update, you will be deemed to have agreed to the updated Fees as a variation to this Agreement.
- (c) Where Services, Goods and/or Rental Equipment are provided to you on a weekend or public holiday, a surcharge may apply, as specified in the Agreement Specifics or the Website or as otherwise notified to you in advance.
- (d) Where you exceed the allowed weights or volumes set out on our Website (as varied by the Agreement Specifics), you may be required to pay the Waste Plus Fee described on our Website.
- (e) Where weighing of a Waste container or other receptacle does not occur because weighing is impractical or otherwise presents an unacceptable health and safety risk to our staff, you will be charged based on a nominal weight.
- (f) It is your responsibility to ensure that the Waste we collect, transport, sort, treat, process, and/or dispose of is the same as the Waste Type specified in the Agreement Specifics, as set out in clause 13 and does not exceed the allowed weights or volumes set out for that Waste Type on the Website. You must notify us in advance if any Waste for which we are providing Services does not comply with this.
- (g) If you notify us under clause 3(f), and we agree to provide Services in respect of that Waste, we may charge updated Fees. We will notify you of this in advance, and you will be deemed to accept the updated Fees as a variation of the Agreement if you accept our Services in respect of that Waste.
- (h) If you do not notify us under clause 3(f), and we incur additional costs for servicing that Waste, we may pass those costs on to you.

### 4. Fee variations

- (a) We may adjust the Fees at any time to pass on increases to Disposal Rates, fuel costs (including calculating the Fuel Surcharge described on our Website) or in the event that a Change in Law results in an increased cost to us in providing the Services, Goods and/or Rental Equipment. We will provide you with at least 30 days' written notice of any Fee adjustment, and will provide you with further information in relation to the Fee adjustment upon request. If you dispute a Fee adjustment under clause 4(a) you must notify us of such dispute within 30 days of receiving the notice setting out the Fee adjustment under clause 4(a). Any such dispute will be resolved in accordance with clause 25.
- (b) Not used.
- (c) We may adjust the Fees twice in any twelve month period if the adjustment is in line with the Consumer Price Index, provided we provide you with at least 30 days' notice.
- (d) We may adjust your Fees for reasons other than those covered in clauses 4(a) to 4(c) (inclusive), but only if we give written notice explaining the Fee adjustment at least 30 days in advance of the adjustment taking effect.

If you receive such a notice and the change results in an increase in your Fees, and you do not agree to the revised Fees, you may terminate this Agreement in respect of any affected Services, Goods and/or Rental Equipment within 30 days of the date of the notice from us.

If our notice applies to:

- (i) all Services, Goods and/or Rental Equipment under this Agreement, and you choose to terminate, the entire Agreement will end; or
- (ii) only some of the Services, Goods, and/or Rental Equipment under this Agreement, and you choose to terminate, then only that part of the Agreement will terminate. We reserve the right to adjust your Fees to reflect any loss of efficiencies or changes resulting from the partial termination. If you do not agree to the revised Fees, the parties will work in good faith to reach an agreement within 30 days. If no agreement is reached within this period, either party may terminate the remainder of the Agreement by providing 30 days' written notice to the other party. The increased Fees will not apply during this notice period.

Where either party terminates under this clause 4(d), you will not be charged the Break Fee, but may be charged the Equipment Collection Fee for the collection of the relevant Services Equipment and/or Rental Equipment.

- (e) For the purposes of this clause 4, where reasonably practicable we will provide our written notice to you via your billing email address which you are taken to have received unless you have otherwise notified us in writing of another email address for service.
- (f) Subject to this clause 4, if you have existing Services, Goods and/or Rental Equipment with us, and the Agreement Specifics only amend the Fees charged, any Fee change will take effect from the start of the next billing cycle, unless otherwise agreed.

## 5. Payment

- (a) You must pay us the Fees (including GST) as specified in an invoice issued by us. Unless otherwise stated in the invoice or the Agreement Specifics:
  - (i) Services and Services Equipment: Payment is due within 14 days from the invoice date;
  - (ii) Rental Equipment: Payment is due within 30 days from the invoice date; and
  - (iii) Goods: Payment is due before or upon delivery. If not in stock, a 25% deposit may be required, with the balance due before or upon delivery.
- (b) **For Services, Services Equipment and/or Rental Equipment:** If you do not pay the invoice within the payment terms:
  - (i) we may charge you the Late Payment Fee on each unpaid invoice; and
  - (ii) where we have provided you with at least one written payment reminder, then we may suspend providing the Services, the supply of Services Equipment and/or Rental Equipment while your account remains in arrears. Where this relates to Rental Equipment, we may choose to collect the Rental Equipment immediately and you may be charged the Equipment Collection Fee.
- (c) **For Goods:** Where you fail to complete payment for Goods prior to the delivery date, provided we have sent a written reminder of the outstanding amount, this may result in forfeiture of the deposit. In these circumstances, we will not deliver the Goods on the delivery date.
- (d) We may charge you a reasonable administration fee if you request an additional copy of an invoice or other document that has previously been provided to you. If you elect to receive invoices by mail, the Paper Invoicing Fee (set out on our Website) will apply.
- (e) You agree (and must ensure that anyone whose personal information you provide to us also agrees) that we may conduct a credit check on you (including your directors) and any guarantor(s) of you. This may include exchanging credit information with credit reporting agencies, other credit providers, and guarantors to assess your creditworthiness. If, based on this assessment, we determine that you or any guarantor do not meet our credit requirements, we may take steps as reasonably necessary as specified in this Agreement or the relevant credit application with us, including adjust payment terms, require upfront payment or decline to provide the Services, Goods and/or Rental Equipment in accordance with clause 18(c). Any action we take will be fair and proportionate to the level of risk identified, and we will consider any relevant information you provide regarding your credit status.
- (f) If you choose to pay any Fees by credit card, a Credit Card Surcharge (outlined on our Website) may apply.

## 6. GST

If goods and services tax or similar value added tax (**GST**) is or becomes payable on any supply under this Agreement, you must pay us the GST amount imposed at the same time as payment of the Fees. The Fees are expressed exclusive of GST.

## 7. Exclusivity, term and termination

- (a) **Exclusivity:** You grant us the exclusive right to provide you the Services, Goods and/or Rental Equipment (as applicable) as set out in the Agreement Specifics at the Premises during the term of this Agreement.
- (b) **Initial Term:** Unless otherwise specified in the Agreement Specifics, the initial term (**Initial Term**) of this Agreement is from the earlier of:
  - (i) the date when the Services are first performed by us or the date upon which the Goods and/or Rental Equipment is delivered to you; or
  - (ii) the date of this Agreement, and continues until the later of:
    - (iii) the date when the last Services, Goods and/or Rental Equipment are to be supplied pursuant to this Agreement; or
    - (iv) the date upon which the final invoice rendered by us in respect of this Agreement is paid,
 unless terminated earlier in accordance with this Agreement.
- (c) **Termination:**
  - (i) **Termination before the Initial Term ends:** Either party may terminate this Agreement by giving at least 14 days' written notice before the end of the Initial Term. If notice is given, the Agreement will terminate at the end of the Initial Term. The Break Fee will not apply, but an Equipment Collection Fee may be charged.
  - (ii) **Late notice before the Initial Term ends:** If notice is given less than 14 days before the end of the Initial Term, the Agreement will automatically continue, and termination will take effect 60 days from the notice date. The Break Fee will not apply, but an Equipment Collection Fee may be charged.

- (iii) **Termination after the Initial Term:** If no notice is given before the Initial Term ends, the Agreement will continue until either party provides 60 days' written notice, with termination taking effect at the end of that period. The Break Fee will not apply, but an Equipment Collection Fee may be charged.

## (d) Unlawful termination and consequences: If, during the Initial Term you:

- (i) attempt to terminate this Agreement without a valid right to do so under this Agreement; or
- (ii) wrongfully terminate, or act in a way (including through your words or behaviour) that clearly shows you do not intend, or are unable, to meet your obligations under this Agreement (repudiation),

such action will be deemed to be an unlawful termination of this Agreement.

If this occurs, we may, at our discretion:

- (iii) **Accept the unlawful termination:** Accept the unlawful termination by notice in writing and terminate this Agreement, in which case we may charge you the Break Fee (in addition to the Equipment Collection Fee). Unless otherwise stated in this Agreement, our termination in these circumstances will take effect on a date determined by us (acting reasonably), but no later than 90 days after we notify you in writing that the Agreement is terminated; or
- (iv) **Not accept the unlawful termination:** Not accept the unlawful termination, in which case we will continue to perform our obligations under this Agreement and seek to enforce your obligations, including payment of any invoices issued in accordance with this Agreement. If we do not accept the unlawful termination, and you continue to act in a way that shows you do not intend, or are unable, to perform your obligations under this Agreement, fail to pay our invoices, or otherwise breach this Agreement, we may exercise our rights under clause 18, including the right to claim a Break Fee.

- (e) Where you are charged a Break Fee or Equipment Collection Fee under this Agreement, it will be included on your final invoice.

## (f) In the event:

- (i) this Agreement is terminated by us in accordance with a valid right under this Agreement; and
- (ii) we have procured, designed, manufactured and/or implemented the Services Equipment specifically to perform the Services pursuant to this Agreement (or any other arrangement with you),

we will be entitled to recover from you, as a debt due and payable, the Written Down Value of the Services Equipment. This is in addition to any Break Fee and Equipment Collection Fee payable by you under this Agreement. If you dispute the amount of the Written Down Value you must notify us of such dispute within 30 days of receiving notification setting out the Written Down Value.

- (g) Any Dispute in relation to this clause 7 will be resolved in accordance with clause 25.
- (h) Nothing in this clause prevents us from claiming against you damages at Law in the event that you breach or unlawfully terminate this Agreement.

## 8. Premises and access

- (a) You must provide us with complete and uninterrupted access to those parts of the Premises as we require to enable the Services to be performed by us and/or for us to supply the Goods and/or supply or attend to the Services Equipment or Rental Equipment. If we are unable to perform the Services and/or supply the Goods and/or supply or attend to the Services Equipment or Rental Equipment due to your acts or omissions, we may still charge you the Fees. You warrant to us that the ground surfaces on your Premises used by our vehicles in order to provide the Services and/or Goods, and/or attend to the Services Equipment and/or Rental Equipment are suitable to prevent damage.
- (b) Both parties must comply with all applicable Laws when providing or receiving the Services, Goods, or Rental Equipment. You must follow our reasonable directions while on our premises or interacting with our operations.
- (c) If we reasonably believe there is a real risk of harm to people, the environment, or property, we may, with reasonable notice where possible, suspend the provision of Services, Goods, and/or Rental Equipment until the risk is resolved and/or require you to leave our premises. If you reasonably believe such a risk exists, you must promptly notify us as soon as reasonably practicable and may suspend your receipt of Services, Goods and/or Rental Equipment until the risk is resolved.

## 9. Maintenance, Use, and Risk of Equipment

In this clause, unless otherwise stated "Equipment" refers to both Services Equipment and Rental Equipment provided under this Agreement.

### (a) Proper Use and Protection:

- (i) When using and maintaining the Equipment, you must ensure:
  - A. you comply with all relevant Laws, standards and codes as notified to you.
  - B. the Equipment is properly cared for and use it as intended or as we have explained to you.
  - C. that Waste is properly disposed of in the Equipment.
  - D. that the Equipment remains on the Premises and is not removed without our prior written consent, which will not be unreasonably withheld.
  - E. that the Equipment is not damaged in any way, except for fair wear and tear, or is used in a manner that may cause fire or other hazards.
  - F. where the Equipment is Rental Equipment, it is stored away from weather elements and corrosive materials.
- (ii) You must:
  - A. not fill the Equipment beyond the maximum height, weight, or volume limits as advised by us from time to time (including on our Website). If you exceed these limits, then clause 3(d) may apply.
  - B. report any damage (beyond fair wear and tear) to, or malfunction of, the Equipment to us immediately.
  - C. not alter, modify, or make any changes to the Equipment without our prior written consent.

- D. not allow anyone, apart from us, to perform the Services in respect of, maintain, or otherwise repair, the Equipment for the Term.
- E. allow us to inspect the Equipment upon reasonable notice to you.
- (b) **Affixing and Return of Equipment:** You must:
- (i) Pay all reasonable costs of affixing the Equipment to the Premises where required for proper operation;
  - (ii) Pay all reasonable costs of removing the Equipment when it is required to be returned to us, being the Equipment Collection Fee;
  - (iii) Provide us with complete and uninterrupted access to the Premises upon termination of this Agreement to facilitate removal; and
  - (iv) If you fail to return the Equipment by the due date, continue paying the Rental Fee until it is returned.
- (c) **Risk and Liability:**
- (i) Title to the Equipment remains with us at all times. Risk transfers to you upon delivery to your Premises and transfers back to us after we have inspected and received the returned Equipment.
  - (ii) If, due to your act or omission, the Equipment is (A) damaged, lost, or destroyed; or (B) otherwise sustains faults or defects, we may, at our discretion, repair or replace the affected Equipment to restore it to its original condition and invoice you for the reasonable costs of the repair or replacement in accordance with clause 9(c)(iii) below.
  - (iii) Except for fair wear and tear, you are responsible for all reasonable costs associated with the repair or replacement of the Equipment.
  - (iv) You indemnify us against any costs, expenses, or liabilities arising from the repair, replacement, or restoration of the Equipment beyond fair wear and tear, except to the extent caused by our negligence or breach of this Agreement.
- (d) **Rental Equipment only:** The following clauses apply to Rental Equipment only:
- (i) We may provide such equipment for trial purposes, with the trial commencement date and period determined by us at our discretion. During the trial period, you are not required to pay any Rental Fees. The clauses in this clause 9 which apply to 'Rental Equipment' also apply equally to our supply of Rental Equipment during any trial period.
  - (ii) For Rental Equipment valued at \$150,000 or more, you must: (i) insure it for full replacement value with a reputable insurer, (ii) have public liability insurance of at least \$10M, and (iii) notify your insurer that you do not own the Equipment and note our interest on your policy. If requested, you must provide us with a copy of your certificate(s) of insurance in respect of this. If you have not insured the Equipment as required, we may either arrange insurance and charge you the costs or terminate the Agreement and collect the equipment with 14 days' notice. Where we terminate on this basis, you may be charged the Break Fee and the Equipment Collection Fee.
  - (iii) We may request a security bond or bank guarantee in respect of the value of the Rental Equipment. If you breach this Agreement, and fail to remedy the breach as contemplated in clause 18(a), we may use the bond or guarantee after giving written notice to you.
- 10. Sale and Purchase of Goods**
- (a) **Delivery:** (i) We aim to deliver in-stock items of Goods within 14 days from the date set out in the Agreement Specifics or as otherwise nominated by us (acting reasonably); (ii) If not in stock, we will provide you with an expected delivery date, which is an estimate only. We are not liable if the Goods are delayed. However if the delay is unreasonable, you may either terminate the Agreement in respect of the relevant Goods by giving 14 days written notice or negotiate with us to amend the delivery schedule. (iii) Delivery frequency follows Agreement Specifics or as agreed; and (iv) We will provide operating and safety instructions (**Operator's Manual**) upon delivery.
- (b) **Obligations:** You agree to: (i) thoroughly read and comply with the Operator's Manual, contacting us for clarification if needed; and (ii) provide the Operator's Manual to your users, ensuring they are educated, supervised, and instructed on the Goods and their uses.
- (c) **Title and risk:** Title to the Goods transfers to you upon receipt of full payment by us. Risk transfers to you upon delivery of the Goods to your Premises.
- (d) **Second hand Goods:** If we agree to sell you second-hand Goods, you acknowledge that: (i) the Goods are second hand and sold 'as is'; (ii) it lacks support (including manufacturer's support), operating manuals, and associated documentation and any applicable licence; (iii) you made your own enquiries about its condition and suitability (including working condition); and (v) we are not a dealer in second-hand goods. To the fullest extent possible, but without intending to exclude the application of any consumer guarantee or other non-excludable right under the *Competition and Consumer Act 2010* (Cth) or any other applicable Law: (i) we provide no express or implied warranties regarding the Goods' condition, state, quality, operation, durability, suitability, fitness for use or any purpose or merchantability; and (ii) you release us from any related claims and liabilities.
11. Not used
12. Not used
- 13. Waste**
- (a) If required by Law, we are your agent with respect to collecting, transporting, sorting, treating, processing, and/or disposing of the Waste. Where the Services include the handling of Waste subject to Waste transport or tracking requirements under environmental laws, you agree to do all things reasonably necessary, including accurately completing forms and declarations, to allow us to comply with those requirements. Where you have not completed all necessary forms and declarations, or we are required to do so by Law, we may complete these for you for the Waste Tracker Fee. In all circumstances we rely on the information provided by you and any generators of the Waste you provide to us to determine our pricing, classification and acceptability under this Agreement. You warrant to us that the Waste materials to be collected, transported, sorted, treated, processed, and/or disposed of by us: corresponds to the Waste Type and/or description set out in the Agreement Specifics; is Waste generated by you; is what you tell us it is; where it is packaged Waste, is in appropriately labelled sealed containers; is compliant with all transport regulations and guidelines including applicable Australian or equivalent jurisdictional Dangerous Goods Codes; excludes radioactive Waste; and unless we have expressly agreed otherwise in writing, excludes highly flammable, explosive, biochemical, asbestos or other substances which we have specified to you in writing.
- (b) Title to all Waste material in your possession and control which is collected, transported, sorted, treated, processed, and/or disposed of, other than the excluded Waste referred to in this clause, will vest with us from the earliest of when loaded into our vehicles and when delivered to our site. Title to and liability for Waste materials excluded from or not compliant with this Agreement will remain with you and you agree to indemnify, defend and hold us harmless against all liabilities, loss, damage and claims arising out of the breach of this clause 13.
- (c) **Specific services:**
- (i) **Liquid Waste services:** You must label and package Waste according to the applicable Australian or equivalent jurisdictional Dangerous Goods Codes as at the date of the Services being performed. We may assist you with this for an agreed fee. Fees are based on the selected disposal pathway being available and operational within 30 days (or any other period specified in the Agreement Specifics). If such pathway is unavailable for reasons outside our reasonable control, you must cover storage costs until an alternative disposal arrangement is agreed, or failing agreement, the Waste is returned to you or collected by you. Where we return the Waste to you, we will return the Waste in the same condition we received it and charge you transport fees if we did not charge transport fees to originally collect the Waste.
  - (ii) **Hydrocarbons Services:** Liquid Waste or other specified Waste must meet the applicable acceptance criteria. Waste with a flashpoint below 62 degrees may not be accepted unless the site is licensed and equipped to handle Class 3 materials, in which case additional charges apply. Solvents such as kerosene, petrol, and thinners must not be added to the Waste oil tank. Water-contaminated oil may be accepted, subject to additional charges based on contamination levels. Oil containing Polychlorinated Biphenyls (PCBs) above 2 ppm will not be accepted, and you must arrange testing by a NATA-registered laboratory to confirm PCB-free status, including for oil from capacitors and transformers.
  - (iii) **Medical Waste services:** You must comply with our Waste management requirements advised to you to ensure safe, legal, and efficient disposal, set out on our Website. Unless we otherwise agree with you, certain items, including but not limited to batteries, chemicals, dangerous goods, gases, gas bottles, flammable liquids/solids, corrosives, acids, radioactive Waste (except approved isotopes below 100 Bq), heavy metals, mercury, amalgam, explosives, large unshreddable metal objects (except in Anatomical/Laparoscopic bins), foetuses, products of conception, and corpses or cadavers, must not be part of the Waste materials collected, transported, sorted, treated, processed, and/or disposed of by us as they require special handling.
- (d) Any Waste that does not comply with this clause 13 may incur additional Fees as set out in clause 3. We reserve the right to refuse to handle, collect, transport, process, or dispose of the Waste where we reasonably believe that the requirements under this clause 13 have not been met.
- 14. Force majeure**
- (a) In the event that any circumstances beyond a party's reasonable control (including without limitation, climatic conditions, floods, fires, explosions, epidemics, a strike, lockout, industrial dispute or substantial and prolonged shortage of materials, or Change in Law) prevent a party from being able to perform an obligation under this Agreement, the affected party must notify the other party promptly and such affected obligations are suspended while the circumstances exist.
- (b) If we are the party affected by the circumstances set out in this clause 14 but can continue to provide some or all of the Services, Goods and/or Rental Equipment at an additional cost, we may elect to do so. In such cases, we will pass on the additional cost to you as a new or amended Fee, subject to providing you with at least 3 business days' prior written notice. If you notify us that you do not accept the additional cost, our affected obligations will remain suspended until the relevant circumstances no longer exist.
- 15. Indemnity**
- You indemnify us from and in respect of all loss, damage, liabilities or claims caused directly or indirectly by you or your employees, subcontractors or agents, to any person or property by, through or in connection with, the Services, the Rental Equipment and/or the Goods, or any breach by you of this Agreement. This indemnity is reduced to the extent that we have caused or contributed to such loss, damage, liability or claim.
- 16. No representations**
- You acknowledge we have not made any representations to you with respect to the Services, the Services Equipment, the Rental Equipment and/or the Goods or their supply unless those representations are expressly stated in this Agreement.
- 17. Limitation of liability**
- (a) All statutory or implied guarantees, conditions and warranties are excluded to the fullest extent permitted by Law.
- (b) 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.
- (c) Our liability to you under this Agreement is limited to an amount equal to the Fees under this Agreement in 12 months preceding the loss, damage or claim (or an estimate of the first 12 months of the Fees, if less than 12 months has elapsed), except to the extent that the loss, damage or claim is caused by our fraud, criminal conduct or deliberate or intentional breach of this Agreement.
- (d) Neither party shall be liable to the other for any special, exemplary, punitive or consequential loss or damage (including without limitation, any loss of profit, loss of opportunity and loss of goodwill) incurred directly or indirectly in connection with the Services, the supply of Rental Equipment and/or the Goods.

- (e) 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, except to the extent that our negligent act or omission has caused the loss, damage, claim or injury; 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 or fitness for use or any purpose or merchantability.

#### 18. Default and termination

- (a) If a party (the **Defaulting Party**) has breached a term of this Agreement (including by you seeking to unlawfully terminate the Agreement as set out in clause 7(d)) 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 terminate this Agreement by written notice.
- (b) A party may terminate this Agreement immediately if the other party dies, becomes insolvent or bankrupt, or any court action is commenced (or resolution proposed or passed) to place that party under any form of bankruptcy, insolvency, administration, receivership or liquidation.
- (c) We may otherwise terminate this Agreement on giving written notice to you if prior to commencement of the Services or delivery of the Rental Equipment and/or Goods it becomes apparent to us, acting reasonably, that you do not meet our credit worthiness requirements. If we terminate under this clause, we will refund to you any amount you have paid for the Services, the Rental Equipment and/or the Goods Services that have not been provided.
- (d) For the purposes of clause 18:
  - (i) Where we validly terminate under this clause 18, you may be charged the Break Fee and the Equipment Collection Fee for us to collect the relevant Services Equipment and/or Rental Equipment. The parties acknowledge that the Break Fee is a genuine pre-estimate of our loss and is in addition to any Equipment Collection Fee payable.
  - (ii) Where you validly terminate under this clause 18, you will not be charged the Break Fee but may be charged the Equipment Collection Fee for us to collect the relevant Services Equipment and/or Rental Equipment.
- (e) Nothing in this clause 18 limits our right to claim damages at Law for any other breach of this Agreement (other than our termination covered by this clause 18).

#### 19. Relocating Premises

If you relocate to a new premise(s) during the term of this Agreement, unless we, acting reasonably, decide otherwise, we will continue to perform the Services, or supply the Rental Equipment and/or Goods under this Agreement at the new premise(s) and we may adjust the Fees to reflect the reasonable costs of performing our obligations under this Agreement due to the change in location of the Premises. You will be taken to have agreed to these Fees as a variation of the Agreement if you continue to accept Services from us.

#### 20. Subcontracting and assignment

- (a) You agree that we may sub-contract all or part of the Services or the performance of our obligations under this Agreement at any time. Where we request in writing, you must do all the things reasonably required to give effect to any sub-contracting.
- (b) You agree for us to assign or novate this Agreement or any rights we have under this Agreement at any time and we will give you notice if we assign or wish to novate under this clause. Where we request in writing, you must do all the things reasonably required to give effect to any assignment or novation that we undertake.
- (c) You cannot assign, novate or otherwise transfer this Agreement without our prior written consent (which we will not unreasonably withhold). A change in beneficial owner or control of you will be an assignment for the purposes of this Agreement. Where you do not obtain our written consent, or if it is reasonable for us to withhold our consent, we may terminate this Agreement upon reasonable notice and you may be charged the Break Fee and the Equipment Collection Fee for us to collect the relevant Services Equipment and/or Rental Equipment.

#### 21. PPSA

- (a) If we determine that this Agreement (or any related transaction) creates a Security Interest under the PPSA, including where we provide you with Services Equipment and/or Rental Equipment, then (i) you acknowledge our right to Perfect that interest by registering it on the Register; and (ii) you agree to take all necessary steps, at our request, to ensure our Security Interest is valid and Perfected.
- (b) You must not create or allow any encumbrance, lien, or Security Interest over our property, including any Services Equipment and/or Rental Equipment in your possession or located at your property, worksite, or Premises.
- (c) Where you do not comply with clauses 21(a) or 21(b):
  - (i) we may terminate this Agreement with reasonable notice, remove our affected property (including the Services Equipment and/or Rental Equipment) and you may be charged the Break Fee and the Equipment Collection Fee; and
  - (ii) you must pay any reasonable costs we incur in enforcing our rights under this clause 21 or the PPSA.
- (d) For the purposes of this clause 21, 'PPSA' means the *Personal Property Securities Act 2009* (Cth), and 'Security Interest', 'Perfected', and 'Register' have the meanings under the PPSA.

#### 22. Authority

You warrant that the person signing this Agreement on your behalf is authorised to sign this Agreement (and any documents issued in connection with this Agreement) and bind you to the terms of them. You indemnify us from and in respect of all loss, damage, liabilities or claims arising from breach of this warranty.

#### 23. Confidentiality

Unless disclosure is required by Law, the parties agree to keep confidential the Confidential Information of the other. We will retain ownership of, and title to, all Intellectual Property Rights relating to the provision of Services, Rental Equipment and/or Goods.

#### 24. Governing Law

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

#### 25. Disputes

- (a) If a Dispute arises between you and us, a party to the Dispute (**Referring Party**) must give notice to the other party to the Dispute (**Dispute Notice**). The Dispute Notice must:
  - (i) be in writing;
  - (ii) state that it is given pursuant to this clause 25;
  - (iii) include a brief description of the circumstances in which the Dispute arose; and
  - (iv) where applicable, identify the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 30 days of the provision of the Dispute Notice, the parties must discuss in good faith to resolve the Dispute (the **Resolution Date**).
- (c) With respect to disputes in relation to a Fee adjustment under clause 4(a), or the amount of the Written Down Value under clause 7(f), in the event that the parties are not able to agree a resolution before the Resolution Date, either party may terminate this Agreement, with such termination taking effect 90 days after the Resolution Date. Regardless of who terminates the Agreement on this basis, you will not be charged the Break Fee, but you may be charged the Equipment Collection Fee for us to collect the relevant Services Equipment and/or Rental Equipment.
- (d) With respect to all other Disputes other than provided for in clause 25(c), a party must not commence legal proceedings in respect of a Dispute unless a Dispute Notice has been given and the Resolution Date has expired.
- (e) Despite the existence of a Dispute, you and us must continue to perform our respective obligations under this Agreement.

#### 26. Amendment

- (a) Unless clause 26(b) applies, we may from time to time amend these Terms and Conditions and notify you of such amendments in writing. If you do not accept the Terms and Conditions as amended, or cannot comply with them, you may terminate the Agreement by providing written notice within 30 days of receiving them, otherwise they are deemed to be accepted. If you terminate the Agreement under this clause 26, you will not be charged the Break Fee but may be charged the Equipment Collection Fee for us to collect the relevant Services Equipment and/or Rental Equipment.
- (b) Despite clause 26(a), we may by written notice to you vary this Agreement: (i) to accommodate any Change in Law or permitted by a Change in Law; (ii) to make a change that you have requested or expressly consented to; or (iii) to make a change to this Agreement which is more favourable to you or not reasonably considered to be materially detrimental to you. We may make administrative or typographical changes (which are not materially detrimental to you) by publication on the Website.

#### 27. Inconsistencies

To the extent of any inconsistencies between the Agreement Specifics or these Terms and Conditions (including the schedules or annexures to it), the following order will prevail to the extent of any inconsistency: (a) Agreement Specifics; (b) Schedules or annexures to the Terms and Conditions; and (c) Remaining provisions in the Terms and Conditions.

#### 28. Whole agreement

- (a) This Agreement supersedes all prior arrangements, understandings 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.
- (b) Any terms included in your invoice, purchase order, or similar document will not apply unless we have expressly agreed to them in writing.
- (c) For the avoidance of doubt, nothing in this Agreement is intended to exclude liability for fraud or fraudulent misrepresentation or any other representations which cannot be excluded by Law.

#### 29. Severability

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.

#### 30. Counterparts

This Agreement may be executed in several counterparts which together form one agreement.

#### 31. Acceptance of Agreement Specifics and Purchase Orders

- (a) By signing the Agreement Specifics or issuing a purchase order in respect of Services, Services Equipment, Rental Equipment and/or Goods under them, you expressly agree to the terms of this Agreement. Issuing a purchase order constitutes your acceptance of our terms, and any terms in your purchase order do not apply unless we expressly agree in writing.
- (b) If the Agreement Specifics include a quotation or proposal, it remains open for acceptance for 30 days from the issue date unless extended by us in writing. We may vary or withdraw it at any time before acceptance.
- (c) We may adjust prices specified in the Agreement Specifics before accepting a purchase order by reasonable notice to you if (i) material costs fluctuate between issuance and acceptance; or (ii) the information on which the Agreement Specifics are based is materially incorrect.

#### 32. Survival

Clauses 8(b) (Premises and Access), 9(b) and 9(c) (Equipment), 13 (Waste), 15 (Indemnity), 17 (Limitation of Liability), 21 (PPSA), 22 (Authority), 23 (Confidentiality), 24 (Governing Law), 25 (Disputes), 27 (Inconsistencies), 28 (Whole Agreement), 29 (Severability) and 30 (Counterparts), together with any other provisions which by their nature are intended to survive termination or expiry, including in respect of payment of any Break Fee and Equipment Collection Fee, will continue to apply after the termination or expiry of this Agreement.