

Standard terms – Small SME

1. Interpretation

In this Agreement:

Agreement means these terms and conditions and the provisions in this quotation/proposal which will be read and construed together. Should there be any inconsistency between these terms and conditions and the provisions in the quotation/proposal, these terms and conditions will prevail.

Average Monthly Value means (a) the average monthly Fees (excluding any applicable rebates) plus (b) if oil was collected under the Agreement, then the average monthly volume of oil collected (measured in litres) multiplied by the Oil Price Benchmark on the day of termination (or if the Oil Price Benchmark is not published on the day of termination, then the Oil Price Benchmark most recently published prior to that date). Average monthly Fees and average monthly volumes are calculated over the term of the Agreement until termination.

Break Fee means the reasonable costs incurred by us in collecting our Equipment from the Premises on termination, plus an account closing fee as more particularly described as 'Break Fees' on the 'Fees and Charges' section of our website at <https://www.cleanaway.com.au/our-services/fees-charges/>

Change in Law means the introduction of, a change in, or a change in the interpretation or administration of, a Law.

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.

Disposal Rates means the gate rates charged by the relevant facility treating and/or disposing of the waste collected by us under this Agreement

Equipment means the tank/container specified in this quotation/proposal or such other container or equipment (including any additional or replacement equipment) supplied by us.

Fees means the Service and/or Equipment rental fees and charges including any rebates payable under this Agreement and as adjusted in accordance with clause 4. **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.

Oil Price Benchmark means the mid-point FO 180CST 3.5% price published by Platts Singapore (or if the index is replaced, the replacement, and if the index is discontinued, a reasonable equivalent selected by us acting reasonably), converted from tonnes to litres (i.e. divided by 0.89), and converted from USD to AUD at the exchange rate published by the Reserve Bank of Australia.

Premises means the premises to be serviced by us as noted in this quotation/proposal or any new premise(s) to which you have relocated.

Services means the services described in the quotation/proposal.

Waste Type means:

- (a) Recyclable Waste – waste we say may be beneficially reused or recycled.
- (b) General Waste – solid wastes which do not undergo environmentally significant physical, chemical or biological transformations once landfilled and which do not include the following waste types (c) to (g).
- (c) Putrescible Waste – degradable wastes including food wastes, garden wastes and household wastes and which do not include the following waste types (d) to (g).
- (d) Medical/Sanitary Waste – waste (excluding radioactive waste) produced by a hospital, clinic, medical, or related practice or waste collected from designated sanitary hygiene units.
- (e) Hazardous Waste – solid, liquid or gaseous wastes other than waste described in paragraph (d) which (through toxicity, carcinogenicity, mutagenicity, teratogenicity, flammability, explosivity, chemical reactivity, corrosivity, infectiousness or other biologically damages properties) may present danger to the life or health of living organisms when released into the environment, and which do not include the following waste types (f) and (g).
- (f) Prescribed or Other Waste – any waste which does not fit within paragraphs (a) to (e) or which requires special treatment or handling, the type and manner of treatment being prescribed in the Agreement.
- (g) Liquid Waste – liquid or semi-liquid wastes which do not include waste types described in paragraphs (a) to (f).

We, us, our means Cleanaway Pty Ltd or such other entity (or entities) selected with an "X" beside its name overleaf which is (or are) the supplier of the Service and/or Equipment indicated overleaf.

Written Down Value means the value of the 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 this quotation/proposal for whom we perform or are to perform the Services for. If there are two or more persons or entities referred to in this quotation/proposal, 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

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.

3. Service days and times

The Services will be performed by us on the days as indicated in this quotation/proposal but during such hours as we determine. Subject to providing you reasonable notice, we may vary the days upon which the Services are performed.

4. Fees and variations

- (a) We may adjust the Fees at any time to pass on increases to Disposal Rates, fuel costs or in the event that a Change in Law results in an increased cost to us in providing the Services. We will provide you written notice of any Fee adjustment. We 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 invoice setting out the Fee adjustment under clause 4(a). Any such dispute will be resolved in accordance with clause 25
- (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) We may adjust your Fees otherwise than as described in clauses 4(a), 4(b) and 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 Fee adjustment to you. If we send you a notice of a Fee adjustment that is headed 'Out-of-Cycle price adjustment' (but in no other case), then within 30 days of the date of the invoice setting out the Fee adjustment 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.

5. Payment

You must pay us the Fees (including GST) as specified in an invoice issued by us within 14 days of the date of that invoice or on such other terms as may be specified on the invoice. If you do not pay the invoice within the payment terms, 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. We may charge you a reasonable administration fee if you ask us provide you with an additional copy of an invoice or other document that has previously been provided to you.

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) You grant us the exclusive right to provide you the Services at the Premises during the term of this Agreement.
- (b) The initial term is 5 years from the date of this Agreement, or such different period as may be set in the quotation/proposal (the **Initial Term**).
- (c) 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.
- (d) If, during the Initial Term:
 - (i) we terminate this Agreement for your default pursuant to clause 18; or
 - (ii) you wrongfully terminate or repudiate this Agreement and we accept such repudiation and elect to terminate this Agreement,
 you agree that we will be entitled to receive from you the Break Fee. Termination under this clause 7(d) will take effect at a date determined by us acting reasonably but must not be longer than 90 days after the date we advise you in writing that the Agreement is terminated.
- (e) The Break Fee will be included on your final invoice.
- (f) If, during the Initial Term you validly terminate this Agreement in accordance with clause 4(d) or clause 18, you will not be charged the Break Fee
- (g) Nothing in this clause prevents us from claiming against you, damages at law in the event that you breach or repudiate this Agreement
- (h) In the event:
 - (i) this Agreement is terminated pursuant to clause 7(d)(i) or 7(d)(ii) above, and
 - (ii) we have procured, designed, manufactured and/or implemented the

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 Equipment. This is in addition to any Break Fee payable by you under clause 7

8. Premises and access

You must provide us with complete and uninterrupted access to the Premises to enable the Services to be performed by us and/or for us to attend to the Equipment. If we are unable to access the Premises or complete the Services, we are entitled to charge you the relevant Fees. 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.

9. Equipment and disposal of waste and recyclables

- We will deliver Equipment to the Premises and collect it if required by this Agreement. If delivery or collection fees apply, these will be disclosed to you in advance.
- At all times throughout the term of this Agreement you will use your best endeavours to ensure the waste and recyclable materials are disposed in the proper Equipment as directed by us from time to time.
- Title to the Equipment at all times remains with us.
- You must not use any mechanical means to compact material in the Equipment or alter or amend the Equipment without our consent in writing.
- You must not allow any person to be inside the Equipment at any time.

10. Affixing and removal of Equipment

You must pay all costs of affixing any of the Equipment to the Premises where required for the proper operation of such Equipment and you must pay all costs of the removal of the Equipment from the Premises. You must provide us complete and uninterrupted access to the Premises upon termination of this Agreement to facilitate such removal.

11. Maintenance of Equipment

You will maintain the Equipment in a clean and sanitary condition in compliance with all laws; not use the Equipment for any purpose other than the designated purpose; must at all times ensure that the Equipment is not removed from the Premises or damaged in any way or the materials contained therein set on fire; and immediately report to us any Equipment damage or malfunction. The Equipment will at all times be at your risk once we have delivered it to you. If, as a result of your act or omission, the Equipment is damaged, lost, destroyed, not maintained in a clean and sanitary manner, or sustains other faults or defects, we may repair and/or replace the Equipment and/or any faults and/or defects in the Equipment in order to restore the Equipment to its original condition. Except in relation to fair wear and tear, you will pay us and indemnify us in respect of any costs associated with such repair and/or replacement of the Equipment.

12. Limits

You must not fill the Equipment beyond the maximum height, weight or volume as advised by us from time to time.

13. Waste

If required by law, we are your agent with respect to collecting, transporting and disposing of the waste. You warrant to us that the waste materials to be collected and/or disposed of by us: corresponds to the Waste Type and/or description indicated overleaf; is waste generated by you; is what you tell us it is; it excludes radioactive waste; and unless we have expressly agreed otherwise in writing, it excludes highly flammable, explosive, biochemical, asbestos or other substances which we have specified or may hereafter specify to you. Title to all waste material in your possession and control which is collected and/or disposed of, other than the excluded waste referred to in this clause, will vest with us when loaded into our vehicles. 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. Any waste that does not comply with this clause 13 may incur additional Fees and we may refuse to handle or remove the material at our discretion.

14. Force Majeure

In the event that any circumstances beyond our reasonable control (including without limitation climatic conditions, a strike, lockout, industrial dispute or shortage of materials) prevent us from being able to perform an obligation under this Agreement, this Agreement may be suspended by us. In such circumstances you are precluded from making a claim against us.

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 any breach by you of this Agreement, the Services or the Equipment. 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 or the supply thereof unless those representations are expressly stated 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.

17. Limitation of liability

- All statutory or implied guarantees, conditions and warranties are excluded to the extent permitted by law.
- 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.
- Our liability to you under this Agreement is limited, at our option, to:
 - supplying the Services again; or
 - paying the cost of having the Services supplied again.
- Except as provided in clause 15, 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.

18. Default and termination

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 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.

19. Relocating Premises

If you relocate to a new premise(s) during the term of this Agreement, unless we decide otherwise, the Services under this Agreement will continue to apply at the new premise(s).

20. Subcontracting and Assignment

You agree for us to sub-contract, assign, novate or transfer all or part of the Services or this Agreement (as the case may be) at any time and if so, we are not required to give you written notice and you must do all the things required to give effect to same. Any subcontractors will have the same rights as us in this Agreement. You cannot assign, novate or transfer this Agreement without our written consent (which we will not unreasonably withhold).

21. PPSA

If we determine that this Agreement (or any transaction in connection with it) contains 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 with this clause will constitute a breach of this Agreement. Any cost associated with the enforcement of our rights under the PPSA will be payable by you. In this clause PPSA means the *Personal Property and Securities Act 2009* (Cth), and **Security Interest**, **Perfected** and **Register** have the meanings given to those terms in the PPSA.

22. Authority

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

23. Confidentiality

Unless otherwise required by law, you must not disclose any information in respect of this Agreement to third parties without our prior written consent which can be withheld at our absolute discretion.

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 Equipment is delivered to. Any court proceedings shall be filed and heard in that state or territory. If the Services or Equipment 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. Pricing Disputes

If a dispute arises between you and us in relation to a Fee adjustment under clause 4(a), the parties must discuss in good faith to resolve to the dispute. In the event that the parties are not able to agree a resolution within 30 days of you notifying us of the dispute in accordance with clause 4(a) (the **Resolution Date**), you may terminate this Agreement, with such termination taking effect 90 days after the Resolution Date. The Break Fee will be payable by you in the event the Agreement is terminated under this clause 25.