

1. Definitions

- 1.1 “Company” shall mean Environmental Landfill Management Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Environmental Landfill Management Pty Ltd.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Company to the Customer.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Services” shall mean all Services supplied by the Company to the Customer and includes any advice or recommendations.
- 1.5 “Price” shall mean the price payable for the Services as agreed between the Company and the Customer in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by the Company from the Customer for the supply of Services and/or the Customer’s acceptance of Services supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Company.
- 3.4 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer’s failure to comply with this clause.
- 3.5 Services are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

- 4.1 At the Company’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Customer in respect of Services supplied; or
 - (b) the Company’s quoted Price (subject to clause 4.2) which shall be binding upon the Company provided that the Customer shall accept the Company’s quotation in writing within thirty (30) days.
- 4.2 The Company reserves the right to change the Price in the event of a variation to the Company’s quotation.
- 4.3 At the Company’s sole discretion payment for approved Customers shall be due thirty (30) days following the end of the month in which the invoice is dated.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card – excluding Diners and Amex (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Services

- 5.1 At the Company’s sole discretion delivery of the Services shall take place when the Customer takes possession of the Services at the Customer’s nominated address (in the event that the Services are delivered by the Company or the Company’s nominated carrier).
- 5.2 At the Company’s sole discretion the costs of Delivery are included in the Price.
- 5.3 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.4 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of the Company.

6. Access

- 6.1 The Customer shall ensure that the Company has clear and free access to the nominated site at all times to enable them to supply the Services. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.

6.2 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation. The Company reserves the right to refuse to enter the site to undertake the Services in the event that the Company believes the site to be unsafe and the Company shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.

7. Risk

7.1 If the Company retains ownership of the Services nonetheless, all risk for the Services passes to the Customer on delivery.

8. Company Not Common Carrier

8.1 The Company is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other Services are performed by the Company subject only to these conditions and the Company reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

9. Dangerous Goods

9.1 Dangerous goods are articles which are or may become of a dangerous, noxious, explosive, inflammable, radioactive or damaging nature and include article likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.

9.2 If the Customer is in breach of clause 9.1:

(a) the Customer, and any person delivering the goods to the Company, or causing the Company to handle or deal with the goods, shall be liable for any loss or damage caused to, or by the goods, or by their nature, and shall indemnify and keep indemnified the Company against all loss, damages, claims and costs (howsoever arising) incurred by the Company in connection therewith; and

(b) the goods may be destroyed or otherwise dealt with as determined by the Company in its absolute discretion at the expense of the Customer (or by any other person in whose custody they may be at the relevant time also at the expense of the Customer), and neither the Company nor any such other person shall incur any liability whatsoever to the Customer in relation to any action taken by them concerning the goods.

9.3 If the Company agrees to accept Dangerous Goods and then during the provision of the Services the Company, its employees (or any other suitably qualified person or authority) reasonably forms the view that those goods constitute a risk to other goods, property, life or health, then the provisions of clauses 9.2(a) & 9.2(b) shall apply.

10. Title

10.1 The Company and the Customer agree that ownership of the Services shall not pass until:

(a) the Customer has paid the Company all amounts owing for the particular Services; and

(b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.

10.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Services shall continue.

11. Errors and Omissions

11.1 The Customer shall inspect the Services on completion and shall within forty-eight (48) hours of completion (time being of the essence) notify the Company of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Services within a reasonable time following completion if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Services or rectifying the Services, except where the Customer has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase Price of the Services, or rectification of the Services, or replacement of the Services.

12. Default & Consequences of Default

12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Company.

12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.

- 12.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. Security And Charge

- 13.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

- 14.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of Services the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

- 15.1 The Customer and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.
- 15.2 The Customer and/or the Guarantor/s agree that the Company may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the credit worthiness of Customer and/or Guarantor/s.
- 15.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:
- provision of Services; and/or
 - marketing of Services by the Company, its agents or distributors in relation to the Services; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or

- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 15.5 The Company may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

16. Building and Construction Industry Security of Payment Act 2002

- 16.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 16.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

17. General

- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 17.3 The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 17.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.