

GENERAL CONDITIONS OF SERVICE AND EQUIPMENT

1. INTERPRETATION

1.1. For the purposes of this Agreement:

- "Agreement" means this document including the schedules and terms on the front page, these general conditions of service and equipment, and any schedules or documents annexed hereto;
- "the Contractor" means Reclaim Limited, and shall include any of its agents, employees, successors and assigns;
- "the Customer" means the party specified on the front page as the customer or where there is more than one party then those parties both jointly and severally;
- "the Equipment" means all items supplied by the Contractor to the Customer from time to time including those bins/containers/cages specified on the front page and all ancillary items associated therewith, and all items supplied by the Contractor in replacement of or substitution for the bins specified on the front page, and all additional items supplied by the Contractor;
- "PPSA" means the Personal Property Securities Act 1999;
- "Premises" means the service site(s) specified on the front page, and/or any subsequent or further location(s) where the Equipment is used or stored or otherwise located as may be agreed to from time to time in writing by the Contractor and the Customer;
- "Services" means the collection from the Equipment of the types of Recyclable Resources and/or Waste specified in the Recyclable Resources or Waste column on the front page, and the disposal of any Waste collected (if applicable);
- "Recyclable Resources" means those types of recyclable or reclaimable material(s) to be collected by the Contractor from the Customer as recorded in the Recyclable Resources or Waste column on the front page, and any other material that the parties subsequently agree will be collected by the Contractor as Recyclable Resources, but does not include Excluded Material;
- "Waste" means any waste material that is unable to be recycled, to be collected by the Contractor from the Customer as recorded in the Recyclable Resources or Waste column on the front page, and any other waste matter that the parties subsequently agree will be collected by the Contractor as Waste, but does not include Excluded Material; and
- "Excluded Material" means any material or substance or item which is illegal or hazardous or noxious or dangerous or which cannot be legally or safely handled or stored or transported or disposed of by the Contractor, and includes any material or substance or item which the Contractor from time to time advises the Customer cannot be deposited into the Equipment.

2. TERM

2.1. The term of this Agreement shall be:

- (a) an initial period of 36 months from the date set out on the front page; and
- (b) thence will be renewed automatically for further terms of 36 months each from the triennial anniversary of the date set out on the front page, or further triennial anniversaries thereafter (as applicable), unless notice of termination has been given in writing by either party to the other party at least 30 days prior to the expiry date of the initial period or any subsequent automatically renewed term, provided that if the Contractor has not given notice to the Customer either in writing or orally of the expiry of the term not less than 45 days prior to the expiry of the term or the renewed term, the period for notice of termination will be extended to the date 45 days after the notice by the Contractor to the Customer.

3. RENTAL, COLLECTION CHARGES AND PAYMENTS

3.1. The Customer will pay to the Contractor the rental and collection charges for the Equipment and/or the Services set out on the front page (or as adjusted pursuant to clause 3.4) along with Goods and Services Tax thereon, on or by the 20th of the month following the date of the Contractor's invoice.

3.2. In addition to the rental and collection charges for the Equipment and/or the Services set out on the front page, the Contractor is also entitled to charge for the delivery, installation, maintenance and removal of the Equipment and any items supplied by the Contractor in replacement of or substitution for or in addition to the Equipment, including any One-Off Charges as detailed on the front page of this Agreement. The Contractor may at any time require the payment of a deposit for the Equipment (or any part of it) which shall become due and payable by the Customer upon demand by the Contractor.

3.3. Without prejudice to the Contractor's other rights, the Contractor may charge interest to the Customer at the rate of 15 percent per annum calculated on a daily basis on any outstanding sums due by the Customer.

3.4. The Contractor may increase the rental rates and collection charges for the Equipment and/or Services at any time during the term of this Agreement. Unless the increase has been imposed by a third party at short notice, the Contractor shall endeavour to give the Customer 20 working days written notice of any such price increase before the same is effective. If requested in writing the Contractor shall provide a reasonable explanation of the price increase.

3.5. Where the Contractor agrees to make any payment to the Customer in respect of the Recyclable Resources (or any of them) collected, such payment will be made by the Contractor on or by the final working day of the month following the collection of the Recyclable Resources. The Contractor may vary the amount of the payments at any time during the term of this Agreement.

4. DEPOSITS

4.1. The Customer will make available for collection by the Contractor all types of Recyclable Resources and/or Waste it produces by depositing the same into the appropriate Equipment (or the appropriate part of the Equipment). The Customer will deposit all Recyclable Resources and/or

Waste in accordance with the Contractor's guidelines and in a safe and careful manner.

4.2. During the term of this Agreement the Customer will not supply any type of Recyclable Resources and/or Waste to any third party without the prior written consent of the Contractor.

4.3. The Customer will ensure that all Recyclable Resources and/or Waste are deposited into the Equipment and are free of Excluded Material and rubbish, and that all Recyclable Resources are also dry and free of Waste, rubbish and other contaminants.

4.4. Should any Recyclable Resources contain excessive water or other contaminants, or should any of the Recyclable Resources and/or Waste contain Excluded Material and/or rubbish, the Contractor may at its sole discretion either reject those Recyclable Resources and/or Waste or alternatively remove the Excluded Material, rubbish, water, or contaminants (as applicable). If the Contractor accepts such Recyclable Resources and/or Waste then the Customer agrees to meet the Contractor's cost of removal of the Excluded Material, rubbish, water or contaminants. The property and the risk in the Excluded Material, rubbish and/or contaminants shall remain with the Customer at all times.

4.5. Property in all Recyclable Resources and/or Waste shall pass to the Contractor upon the deposit of the Recyclable Resources and/or Waste into the Equipment. The risk in the Recyclable Resources shall remain with the Customer until the Recyclable Resources are collected by the Contractor. The risk in the Waste shall remain with "the Customer at all times.

4.6. The Customer shall ensure that no Recyclable Resources and/or Waste are removed or interfered with, once deposited into the Equipment.

5. HEALTH AND SAFETY OBLIGATIONS

5.1. The parties shall discharge their obligations under this Agreement in a manner which shall not compromise the safety of either party's agents, contractors, employees, customers or the public.

5.2. If the Contractor supplies information and/or written instructions concerning the proper use of the Equipment, then the Customer shall provide such information and instructions to all of its employees, agents, contractors, and customers as may use the Equipment, and ensure strict compliance with such information and instructions.

6. SERVICING

6.1. The Contractor will use all its reasonable efforts to perform the Services at the rate and frequency set out on the front page or otherwise within an agreed timeframe, but no liability shall lie when it is unable to perform the Services at such times. The Contractor shall be entitled to alter the nature and timing of the Services at any time, and to cancel all or any part of the Services at any time if the Contractor determines it is unable to complete the same.

6.2. The Customer will not be entitled to rescind this Agreement if the Contractor is delayed or unable to perform the Services, unless such delay or inability persists for over 30 days and is caused by the Contractor solely. The Contractor will endeavour to meet with the Customer within the 30 days and reach an agreement as to a variation of the terms of the services.

6.3. The Services may be performed by the Contractor, or by a subcontractor or independent contractor of the Contractor. If the Services (or any of them) are performed by a subcontractor ("Subcontracted Services") then the Contractor and the Customer agree that (without limiting clause 6.1) the Contractor may at any time change the subcontractor performing the Subcontracted Services or remove those Subcontracted Services from this Agreement (such that the Subcontracted Services are deemed to no longer form part of the Services provided under this Agreement).

7. CHANGES

7.1. This Agreement will remain in full force and effect notwithstanding any replacement of or substitution of or addition to or change to the Equipment or the Premises or location of the Premises (provided the new Premises are within the area serviced by the Contractor) or the Recyclable Resources and/or Waste to be collected or the Services or the frequency or times of collection.

8. EQUIPMENT

8.1. The Customer will provide the Contractor and its subcontractors and independent contractors and their vehicles suitable and clear access at all reasonable times to the Equipment to service the same and/or collect the Recyclable Resources and/or Waste from the same.

8.2. The Equipment may be replaced or substituted or added to by the Contractor (at its sole discretion) at any time during the term of this Agreement.

8.3. The Customer shall not agree, offer or purport to sell, assign, sublet, lend, pledge, mortgage, bail, or otherwise part with or attempt to encumber the Equipment or otherwise deal with the Equipment.

8.4. If the Equipment (or any part) is removed, seized or taken out of the possession of the Customer, the Customer shall within 24 hours give written notice to the Contractor of the removal, seizing or taking and also give to the Contractor the address of the place to which the Equipment has been removed.

8.5. Unless the Contractor is the cause of such damage, defacing to or loss of the Equipment, the Customer shall be responsible for all damage, defacing to or loss of the Equipment, and in such event the Customer shall forthwith advise the Contractor and shall be liable to the Contractor for the cost of repairs and all incidental costs, or (in the event of loss or substantial damage) the replacement value of the Equipment.

8.6. The Customer will use the Equipment strictly in accordance with the Contractor's instructions (if any) and in any event will maintain it in a clean and sanitary condition, comply with all regulations, statutes and legal restrictions and

guidelines (both those set out in law and those provided by the manufacturer of the Equipment) in respect of its use and care, supply all electricity and consumables required to operate the Equipment, and use the Equipment for the purpose for which it is designed.

8.7. Upon the termination of this Agreement the Customer shall immediately return or make the Equipment available to the Contractor in good repair, order and condition (reasonable wear and tear excepted). The Customer shall be responsible for and hereby covenants to indemnify the Contractor against the cost of replacing any and all Equipment not returned to the Contractor or repossessed by the Contractor.

8.8. The Equipment shall be at the risk of the Customer upon delivery to the Premises, and shall remain at the risk of the Customer until the Equipment is returned to the Contractor.

6.9. The Customer shall insure (at its expense) and keep the Equipment insured for such amount and against such risks as shall from time to time be specified by the Contractor.

9. PERSONAL PROPERTY SECURITIES ACT

9.1. The Equipment is, and at all times will remain, the absolute property of the Contractor. The Customer acknowledges that the Equipment is and shall remain personal or moveable property, notwithstanding the possession and use of the Equipment by the Customer. The Contractor's interest in the Equipment shall have priority over any other claim to the Equipment however arising, and whether of the Customer or any third party.

9.2. The Customer grants the Contractor a security interest (as that term is defined in the PPSA) in the Equipment for the full term of this Agreement and until all Equipment has been returned to the Contractor and all sums due to the Contractor by the Customer have been paid in full.

9.3. The Customer agrees that the Contractor may register a financing statement over the Customer under the provisions of the PPSA, and the Customer shall pay on demand the costs of and incidental to such registration. The Customer agrees to execute any documents and provide any information and cooperate fully with the Contractor so that the Contractor can perfect the security interest granted under clause 9.2.

9.4. Where Equipment is repossessed by the Contractor pursuant to clause 10.2 the Customer waives the right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA.

9.5. Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement. The Customer waives its rights pursuant to sections 121, 125, 129, 131 and 132 of the PPSA and its rights to receive any verification statement relating to the security interests in the Equipment.

10. DEFAULT

10.1. The Contractor and the Customer agree that each of the following events shall constitute a default by the Customer under this Agreement:

- (a) Non-payment of any sum owing by the Customer to the Contractor under this Agreement by the due date for that payment;
- (b) The Equipment is seized by any creditor of the Customer or any creditor intimates that it intends to seize the Equipment;
- (c) The Equipment is materially damaged (other than by the Contractor);
- (d) The Contractor considers the Equipment is "at risk" (as that term is construed in section 109(2) of the PPSA);
- (e) Any legal process is levied or enforced against the Customer or its assets, or a resolution is passed or an order made for the appointment of a liquidator to the Customer, or a receiver, administrator, liquidator, provisional liquidator or statutory manager or other similar functionary is appointed in respect of the Customer or any of its assets or the Customer makes an assignment to or composition with its creditors or, if the Customer is a body corporate, a resolution is passed or a petition filed for the winding up of the Customer other than for the purpose of reconstruction or amalgamation;
- (f) The Customer makes or has made any false, inaccurate or misleading statement to the Contractor with regard to the entering into this Agreement by the parties, or any statement made by the Customer in connection with this Agreement is not complied with when made or repeated; and/or
- (g) Any other breach by the Customer of the terms of this Agreement.

10.2. Notwithstanding any prior failure or waiver of enforcement of the provisions or rights under this Agreement, if an event of default occurs the Contractor may immediately, or at any time thereafter, without giving any notice to the Customer enter upon the Premises and/or any land or premises where the Equipment may be situated and:

- (a) retake possession of the Equipment; and
- (b) terminate this Agreement; but
- (c) without releasing the Customer from any liability in respect of any breach or nonobservance of any of the provisions contained or implied in this Agreement; and
- (d) without prejudice to:
 - (i) the Contractor's right to retain all money paid to the Contractor pursuant to this Agreement; and
 - (ii) the Contractor's right to demand any payment pursuant to clause 10.4 of this Agreement.

10.3. The Customer hereby gives irrevocable authority to the Contractor to enter the Premises and/or any premises or onto any land on which Equipment is situated at any time after default by the Customer or before default if the Contractor believes a default is likely and to remove and repossess any Equipment and any other property to which the Equipment is attached or in which the Equipment is incorporated. The Contractor shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded.

10.4. Notwithstanding any prior failure or waiver of enforcement of the provisions or rights under this Agreement, if this Agreement is terminated then

without prejudice to its other rights at law or in equity, the Contractor may, at any time thereafter, demand immediate payment of all or any of the following:

(a) all arrears of rental and collection charges and other money due and payable by the

Customer under this Agreement;

(b) the costs of repossession of the Equipment;

(c) all sums expended by the Contractor in the exercise of the Contractor's rights and powers or in exercising or enforcing or attempting to exercise or enforce any power right or remedy contained or implied in this Agreement including legal expenses on a solicitor/client basis; and

(d) interest on all money payable under this provision from the date of termination to the date of payment at the interest rate provided in clause 3.3.

10.5. The Customer shall be liable to pay the Contractor the full costs of any enforcement through the Courts (on a solicitor/client basis), including the costs of applying to obtain immediate injunctive relief and any ancillary order(s) from the Court in the case of any breach or default or expected breach or default of this Agreement by the Customer.

10.6. A certificate by the Contractor of any amount payable under this Agreement will be prima facie evidence that the sum is due for all purposes, including legal proceedings.

11. DAMAGE AND INDEMNITY

11.1. The Customer has an obligation to provide clear access to the collection equipment over surfaces that can sustain the weight and operation of the Contractor's vehicles or the vehicles of its subcontractors and independent contractors.

11.2. The Customer shall be responsible and indemnifies the Contractor, its subcontractors and independent contractors from and in respect of all liabilities, claims, damages, costs and expenses which the Contractor, its subcontractors and independent contractors may incur as a result of any action or omission by the Customer, its employees, agents, contractors or invitees.

12. EXCLUSIONS

12.1. No provision, other than those that are mandatory, shall be implied by statute or at common law or otherwise under this Agreement against the Contractor. The Customer acknowledges that the Equipment is provided for business purposes in terms of the Consumer Guarantees Act 1993, and that the provisions of that Act shall not apply to any aspect of this Agreement.

12.2. No representation or express condition or warranty shall be binding upon the Contractor unless it is in writing and executed by the Contractor.

12.3. The Customer agrees that it shall inspect all Equipment upon delivery to the Premises, and unless the Customer has notified the Contractor within 7 days of delivery (or promptly after the Equipment is first used by the Customer, whichever is earlier) of any fault with the Equipment delivered, all Equipment shall be deemed to be in proper condition and fit for the purpose(s) for which it is intended.

13. COUNTERPARTS

13.1. This Agreement may be executed in counterparts, each of which will be deemed to be an original but all of which will constitute one and the same instrument. Executed counterparts transmitted by email or pdf or facsimile shall be effective as originals.

13.2. This Agreement is executed when the Customer and the Contractor have both signed in the appropriate space on the front page. The Customer may sign a copy of this Agreement and send it by email or facsimile to the Contractor or the Contractor's subcontractors or independent contractors and this method of execution will be sufficient to constitute acceptance by the Customer of this Agreement's terms and conditions, and any signature on the copy of this Agreement so sent shall be deemed to be proof of an authorised signature by the Customer.

14. GENERAL

14.1. The failure of the Contractor to enforce at any time any of the provisions of this Agreement or any of its rights in respect thereto shall in no way be considered a waiver of such provisions or rights, nor a waiver of any subsequent obligations of the Customer. A right granted or reserved may be exercised from time to time and at all times.

14.2. If any provision or part of a provision of this Agreement on strict interpretation is found to be illegal, invalid or unenforceable then that provision or part of a provision shall be deemed to be void and severable and the remaining provisions or part provision shall not in any way be affected or impaired.

14.3. References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

14.4. All notices must be given by mailing by registered mail or by hand delivery to the main postal address of the Customer on the front page or to the Contractor at its offices at 222 Station Road, Penrose, and shall be deemed to have been received 3 days after mailing in the case of forwarding by registered mail or on the date of delivery, when hand delivered.