

CUSTOMER SERVICE AGREEMENT – TERMS AND CONDITIONS

It's important to us that you understand and agree to the service we are providing, the price you are paying and the other responsibilities you have when using our equipment. Please read this Agreement and let us know if you have any questions before signing.

Customer initial

1. DEFINITIONS

- 1.1 "**Agreement**" means the front page, any initialed schedule, the following terms and conditions and any notice or other document they refer to.
- 1.2 "**Equipment**" is any bins, machinery or other items of equipment supplied by us or on our behalf from time to time (including any replacement) and for use by you to allow us to perform the Services.
- 1.3 "**Excluded Material**" is any item, substance, or liquid which: **(a)** is not within the scope of the Services; **(b)** cannot be safely and compliantly handled by us or our contractors; **(c)** is prohibited from being collected, stored, conveyed, or disposed of from time to time pursuant to any law or regulation; or **(d)** does not comply with relevant disposal, processing or treatment facility consents or criteria.
- 1.4 "**Material**" is all waste, Recyclables and other materials at the Site, which is specified on the front page of this Agreement, other than Excluded Material.
- 1.5 "**Price**" means fees, rates and charges for Services and Equipment or which are otherwise payable, as set out on the front page of this Agreement, and which may be adjusted pursuant to this Agreement.
- 1.6 "**Recyclables**" is material capable of recycling on commercially reasonable terms.
- 1.7 "**Services**" is the provision of Equipment and collection of Materials from Equipment at the Site, as described in this Agreement (including all frequencies, times, weights, volumes, assumptions and allowances) and which may be varied pursuant to this Agreement.
- 1.8 "**Site**" is each and every address where Services are performed, as set out in this Agreement and any address you relocate to pursuant to clause 5.2.
- 1.9 "**Term**" is the Fixed Term and the Rolling Term.
- 1.10 "**we**", "**us**" or "**our**" is Enviro NZ Services Limited.
- 1.11 "**you**" or "**your**" is the legal entity named as customer on the front page.
- 1.12 Words after "**including**" are examples only and not an exhaustive list.

2. SERVICES

- 2.1 Providing quality services is important to us. We will perform the Services in accordance with this Agreement and in compliance with all applicable laws.
- 2.2 You agree we are the exclusive provider of the Services at the Site for the Term.
- 2.3 Subject to clause 2.4, if we fail to perform the Services, we can (acting reasonably) elect to either perform the Services again or pay the reasonable cost of having the Services performed by a third party. This is your only remedy for our failure to perform Services.
- 2.4 Where circumstances beyond our reasonable control mean we are unable to perform the Services, we will notify you of the impact on the Services and (if applicable, excluding any breach by you) the Price will be reduced by an amount to reflect Services not performed. We will not be liable for any delay or failure to perform Services to the extent caused by a matter or event beyond our reasonable control.
- 2.5 Changes to the Equipment and/or Services may be agreed orally or in writing.

3. TERM

- 3.1 This Agreement commences on the date specified on the front page (if no date is specified then on the date that this Agreement is signed by both parties) and will be for a term of 3 years or such other term which has been specified on the front of this Agreement (the "**Fixed Term**").
- 3.2 Upon expiry of the Fixed Term, the Agreement will remain in effect until terminated by either party giving at least 60 days' written notice to the other party ("**Rolling Term**"). If you don't want the Agreement to continue after the Fixed Term, you must provide us at least 60 days' notice prior to the expiry of the Fixed Term.

4. PRICE

- 4.1 You agree to pay us the Price (plus GST), as specified in an invoice from us, on or before the 20th of the month following the date of invoice.
- 4.2 The Price is based on the Service and Equipment as set out in this Agreement (or as later varied). If you exceed the included weights or volumes or if we agree to vary the type, time, frequency or other part of the Service or Equipment, we may adjust the Price or charge additional Prices as set out on the front page or to reflect any additional cost in performing the Service.

- 4.3 Over the duration of the Term, our cost to provide you with the Services, and the associated treating, processing and/or disposing of Materials, may increase. You agree that no more than twice per year, on 30 days' written notice we may adjust the Price to pass on costs resulting from: **(a)** new or increased taxes, duties, charges (including road user charges) or levies (including the national waste disposal levy); **(b)** increased gate rates of the relevant facility treating, processing and/or disposing of the Material, fuel costs or carbon scheme costs (including the cost of emissions trading scheme carbon credits); **(c)** the amendment or introduction of a law, regulation, bylaw, standard or policy; and/or **(d)** inflation as measured against the RTFNZ/ Grant Thornton Transport Cost Index (or if the index is replaced or discontinued, a reasonable equivalent). Price adjustments under this clause 4.3 do not require your consent.

- 4.4 There may be other reasons why we need to adjust the Price which are not covered in clauses 4.2 or 4.3. We will give you at least 30 days' written notice which explains such other Price adjustment and provides you with the option to terminate the Agreement if you are not happy. If you don't let us know in writing that you wish to terminate before the proposed effective date, it will be taken that you agree to the adjusted Price. Clause 8.2 will not apply if you terminate under clause 4.4.

- 4.5 If you do not pay an invoice on time, we may charge you interest at a rate of 2% above our bank's lending rate from the date the payment was due, calculated on a daily basis. If you remain in default for a period of 10 or more days after we notify you in writing of your failure to pay, we may: **(a)** suspend the Services until payment of the overdue amount has been received; and/or **(b)** require payment in advance before any Services are performed. If Services remain suspended for 30 or more days, your failure to pay shall be considered a "material breach" under clause 8.1.

5. SITES

- 5.1 For us to perform the Services, collect and inspect Equipment, you must allow us unobstructed and safe access to (and exit from) the Site and Equipment.
- 5.2 If you relocate all or part of your business at the Site to a new address which can be serviced by us, the Agreement will continue to apply to Services at the new Site unless we notify you otherwise (acting reasonably).
- 5.3 We will cover the reasonable costs of property damage at the Site where we have been negligent, but in all other circumstances we are not responsible for damage resulting from performance of the Services. You will ensure ground surfaces traversed by our vehicles at the Site are of suitable construction and condition to allow access by our vehicles.

6. EQUIPMENT

- 6.1 We will deliver Equipment to the Site at the beginning of the Term, and remove it from the Site after termination of the Agreement. You agree that we are, and will remain in all circumstances, the owner of the Equipment.
- 6.2 You will, at your cost: **(a)** properly maintain and prevent damage to the Equipment to ensure it remains in the same condition for the duration of the Term (fair wear and tear exempted); **(b)** ensure Equipment is not used for any purpose other than the disposal and storage of Material; **(c)** ensure the Equipment remains at an agreed location at the Site for the duration of the Term; **(d)** supply all electricity and other utilities and services needed to install, operate, remove and maintain the Equipment; **(e)** ensure that any employee or contractor operating the Equipment is properly trained to do so; and **(f)** comply with all of our reasonable instructions and directions relating to use of the Equipment.
- 6.3 We ask that you immediately notify us in the event of damage being caused by or to, or loss of, the Equipment. In the event of damage or loss of Equipment, we may repair or replace any Equipment with items of a similar kind. To the extent damage or loss of Equipment is caused by your improper use, negligence or breach of this Agreement, you will be responsible for the cost of repair or replacement.
- 6.4 You will comply with all laws and regulations including the Health and Safety at Work Act 2015 and any resource consents and conditions, applying to your use of Equipment and storage, handling and disposal of Material at the Site.
- 6.5 You must not overfill the Equipment, or fill it beyond the maximum weight limits advised by us.

7. MATERIAL

- 7.1 We will own the Material collected from the Site. You will remain responsible for Excluded Material at all times, including after collection by us.
- 7.2 You are responsible for screening, examining and inspecting all material deposited in the Equipment. In particular, you will ensure: **(a)** Material is put in the correct Equipment and in accordance with our reasonable instructions and

directions; and **(b)** no Excluded Material is put in any Equipment; and if you do not, we may (acting reasonably) decide not to perform the Services until the issue is resolved.

- 7.3 We may recover from you the cost of all action taken reasonably by us to safely separate, store, handle, process, treat, transport and dispose of any Excluded Material deposited in the Equipment (as well as material or property belonging to us or third parties contaminated by the Excluded Material).

8. TERMINATION

- 8.1 If a party commits a material breach of the Agreement, the other party may give it written notice which details the breach and request it to be remedied. If the breach is not remedied within 10 days from the date of such notice, the Agreement may be terminated immediately upon further written notice.
- 8.2 If we terminate the Agreement under clause 8.1 during the Fixed Term, you agree that we will be entitled to receive from you: **(a)** an admin fee of \$60; and **(b)** the Price which would have been payable over a 90 day period (based on the normal trade or contracted amount over the preceding 90 days), together with any other amounts due to us under this Agreement. The amount in (b) above will be adjusted by any period of notice for termination which was given (e.g. if parties agree to a notice period of 10 days, the Price for 80 days will be payable).
- 8.3 If we discontinue a service within our operations which includes the Service, we may terminate this Agreement (without liability) upon giving at least 30 days' written notice.

9. LIMITATION OF LIABILITY

- Nothing in this clause will exclude or limit liability where that is not allowed by law.
- 9.1 Unless stated otherwise, neither party will be liable for any consequential or indirect loss or damage, loss of profit, revenue, business or savings, loss of goodwill or loss of production.
 - 9.2 Unless stated otherwise, exercise by a party of a right or remedy given to it under this Agreement or by law is without liability and without limitation or prejudice to any other right or remedy it may have under this Agreement or at law.
 - 9.3 You will be responsible for all reasonable costs, including legal fees and collection agency fees, incurred by us in enforcement of this Agreement.
 - 9.4 You represent you are acquiring the Services for business purposes, and agree the Consumer Guarantees Act 1993 will not apply to the Services.

10. PRIVACY AND CONFIDENTIALITY

- 10.1 We will only use and disclose personal information collected by us in accordance with our Privacy Policy (as set out at www.environz.co.nz). You agree to such use and disclosure, including for the purpose of administering, enforcing and performing obligations under this Agreement, as well as assessing your creditworthiness.
- 10.2 Both parties agree that the contents of this Agreement and any information in respect of this Agreement, Prices, Services and the parties' business is confidential.

11. SUB-CONTRACTING AND SALE OF BUSINESS

- 11.1 If we need to sub-contract all or part of the Services to a third party, we will give you written notice. We will always remain responsible to you for performance of subcontracted Services.
- 11.2 You agree to use reasonable endeavours to procure a third party purchaser of your business to acquire your rights and obligations under the Agreement.

12. APPLICATION OF AGREEMENT

- 12.1 This Agreement replaces all earlier written agreements relating to the provision of Services between you and us.
- 12.2 If any provision or part of a provision of this Agreement is invalid, void, illegal or unenforceable, the validity, existence, legality, and enforceability of the remaining provisions or parts of a provision will remain in force unaffected.
- 12.3 Any failure or delay by a party to enforce any clause of this Agreement will not be considered a waiver of that party's rights under this Agreement.
- 12.4 All notices under this Agreement must be delivered by hand, mail or email. A notice will be deemed to be received: **(a)** for delivery by hand, upon delivery; **(b)** for posting, three days after posting; **(c)** for email, same day as sending.