

**SUPERIOR WASTE MANAGEMENT PTY LTD**  
**TERMS AND CONDITIONS**

**1. Definitions**

**ACL** means the Australian Consumer Law at Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Client** means the person engaging Superior.

**Collection Address** includes any site from which Waste is agreed to be removed.

**Consumer** means a person who acquires Services where the amount paid or payable does not exceed \$40,000 or were of a kind ordinarily acquired for personal, domestic or household use or consumption.

**Contract** means these Terms, together with any document expressly incorporated into these Terms.

**Disposal Facility Locations** means the physical location of disposal facilities used to dispose of the Waste, and which may vary resulting in a change in the cost of disposal, as a result of permanent or temporary facility closures or issues relating to operational efficiency.

**Disposal Fees** means the net cost of the disposal of Waste collected including charges incurred or received from landfills, transfer stations and recycling facilities, which are varied by the operators of these facilities from time and may be impacted by changes in commodity prices for recycled materials, and any government tax, levy, fee or charge that applies to waste removal.

**Equipment** means all equipment including waste receptacles ("Containers") and other property supplied by Superior.

**Fees** means the fees charged by Superior to the Client for the provision of the Services calculated in accordance with clause 4.1.

**frequency of collection** means the number of times per week Waste is agreed, for the time being, to be removed from the Collection Address.

**Further Terms** has the meaning in clause 3.3.

**Government Charges or Levies** means any government tax, levy, fee or charge, that applies to Waste removal, and may be varied by government from time to time resulting in an increase in disposal costs, including Environmental Protection Authority landfill levies.

**GST** means the goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Initial Term** has the meaning in clause 3.1.

**Operating Costs** means the costs of operation and administration of waste collection vehicles including capital costs of the fleet, repairs and maintenance, fuel, road tolls, salary and wage costs, all of which may vary from time to time.

**Prescribed Waste** means prescribed waste or "Prescribed Industrial Waste" as defined in the *Environmental Protection Act 1970* (Vic).

**Services** means any services provided by Superior to the Client.

**Superior** means Superior Waste Management Pty Ltd ABN 55 341 098 103.

**Small Business Contract** means a Contract for Services to a business which at the time the contract is entered into employs fewer than 20 persons and either:

- (a) The upfront price payable under the contract does not exceed \$300,000; or
- (b) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000.

**Term** means the Initial Term and any Further Terms.

**Terms** means these terms and conditions.

**Waste** means waste and recyclables agreed to be collected by Superior under the Contract, excluding Prescribed Waste.

**2. Application and Variation**

2.1 The Contract governs the relationship between Superior and the Client and applies to all Services provided. This contract is intended for use in all Small Business Contracts.

2.2 The Contract is accepted by Superior when it confirms its acceptance or provides the Client with the Services.

2.3 Superior may refuse to provide the Services, or suspend the provision of the Services, if the Client fails to comply with any of its obligations under this Contract.

2.4 The Contract applies and is deemed incorporated in all agreements for the supply of Services, and prevails over any exchanges between the parties, any terms and conditions of the Client or implied by trade custom, practice or course of dealing.

2.5 The Contract may be varied from time to time by written agreement between the parties.

**3. Term**

3.1 The Contract commences on the date of signing and continues for an initial period of three years or such other period as is agreed between the parties in writing ("Initial Term"), unless terminated earlier pursuant to clause 7.

3.2 The Contract will terminate upon expiry of the Initial Term if a party provides the other with written notice of termination not less than 30 days prior to the end of the Initial Term.

3.3 **If neither party provides the other with a termination notice under clause 3.2, the Contract will remain in effect for one term of one year ("Further Term") until terminated in accordance with clause 7, except that Superior will allow the Client to terminate the Contract during the Further Term on 60 days' notice to Superior.**

**4. Fees, Invoicing and Payment**

4.1 Except as amended in accordance with this clause 4 or as otherwise agreed by the parties, the Fees payable each month will be calculated based on the Bin Pricing and Service Details set out on Page 1 of this Contract, and include the relevant amount for any agreed additional Services provided and any additional applicable charges specified in this Contract, including under clauses 4.7, 5.3, 5.6, 7.6 and 9, and including GST on any of those amounts. The Client acknowledges that the Bin Pricing agreed by the parties and set out on Page 1 of this Contract is based on various factors, including the volume, frequency and type of Services agreed by the parties. Accordingly, if the Client repeatedly uses less Services than as agreed and set out in the Bin Pricing and Service Details on Page 1 of this Contract, Superior may invoice the Client as if the Client had used all Services set out in the Bin Pricing and Service Details on page 1 of this Contract.

4.2 The Client acknowledges that:

- (a) the Fees are subject to change upon written notice by Superior (with such Fee adjustment applicable to invoices rendered following the date of notice); and
- (b) Superior may adjust the Fees during the Term in response to increases in costs involved in the collection and disposal of the Client's Waste from the Collection Address including Operating Costs, Disposal Fees, changes to Disposal Facility Locations, Government Charges and Levies and/or any changes to the Services requested or effected by the Client.

4.3 **The Client may request a review of an adjustment to Fees under clause 4.2 within 30 days of being given notice of the adjustment. If Superior and the Client cannot agree on the adjustment within 30 days of the Client requesting a review of the adjustment, Superior may:**

- (a) **increase the Fees by no more than 5% per annum plus \$1.00 per cubic metre based on the Waste Equipment installed at the Collection Address; or**
- (b) **increase the Fees by more than 5% per annum plus \$1.00 per cubic metre and allow the Client to terminate the Contract within 30 days of the adjustment on 60 days' notice to Superior.**

4.4 The Client must pay the amount (including any applicable GST) invoiced by Superior within 14 days of the date of invoice.

4.5 Payment by the Client to Superior must be made in Australian dollars as directed by Superior. Time for payment is of the essence.

4.6 Payments are taken to discharge the Client's oldest debt and shall first reduce any costs or interest outstanding before reducing the principal debt. Except in the case of manifest error, the date of Superior's invoice is the sole indication of the date of the provision of the Services.

4.7 If payment is not made by the due date, Superior may, at its discretion:

- (a) charge interest on the outstanding sum at the rate of 2% per month, calculated daily, from the due date until the date of payment; and
- (b) suspend all further supply of the Services, in which case the Client is not released from its obligations to Superior pursuant to the Contract.

4.8 Any mistake on quotation, order, invoice, delivery docket or other document issued by Superior is not binding on Superior and Superior may issue such document as is required to rectify such mistake. The Client shall comply with Superior's amended document.

4.9 Payment is not deemed received until Superior receives payment in cleared funds. The Client must reimburse Superior for any charges made by Superior's bank for any negotiable instrument not met on presentation.

**5. Services**

5.1 Without prejudice to Superior's rights under the Contract, the Client must not dispose of any business conducted from the Collection Address, or cease to occupy the Collection Address, without providing 30 days prior notice of its intention to Superior.

5.2 The Client grants to Superior the exclusive right to collect and dispose of all Waste from the Collection Address, to facilitate the collection of Waste and to recover Equipment in accordance with the Contract.

5.3 The Client must ensure that the weight of the Waste deposited in the Containers does not exceed 100kgs per cubic metre. Excessive weight may be invoiced as an extra charge.

5.4 The Client must not place (or permit to be placed) any Prescribed Waste in any Container and agrees to indemnify Superior from any liability imposed as a result of the dumping, storage, transportation or treatment of any Prescribed Waste removed from the Collection Address. Prescribed Waste includes animal effluent, detergents, dyes, grease interceptor trap effluent and residue, inks, oils, paint sludges and residues, pesticides, pharmaceutical substances and any other waste posing an environmental hazard.

5.5 Superior may refuse the carriage or transportation of any class of Waste for any person at its discretion.

5.6 Superior may replace the Containers at its discretion. The Client agrees:

- (a) to use the Containers only for the disposing and storage of Waste;
  - (b) not without Superior's written consent, to compact Waste by any mechanical means;
  - (c) to compensate Superior for any loss or damage (except fair wear and tear) to the Equipment whilst it remains at the Client's Collection Address or is moved from there by the Client regardless of how such loss or damage arises; and
  - (d) to clean the Equipment.
- 5.7 The frequency of collection may be varied by agreement in writing at any time during the Term. Superior will issue receipts for removal of Waste only upon the Client's request at the time of removal.
- 5.8 Superior may without liability suspend the Services due to circumstances beyond its reasonable control by written notice to the Client.
- 5.9 Any period or date for the supply of the Services is an estimate only. Superior will use reasonable endeavours to meet any estimated period or date for the supply of the Services.
- 5.10 If Superior cannot supply the Services by any estimated period or date, Superior will complete the Services within a reasonable period of time.
- 5.11 Full legal title to the Equipment remains with Superior. If payment is not made by the Client to Superior in accordance with clause 4, the Client authorises Superior to enter onto the Client's premises to do all such things necessary to take possession of and remove the Containers and Equipment from the Collection Address.
- 6. Termination and Liquidated Damages**
- 6.1 **Except in the case of termination of the Contract by the Client giving notice under either clause 3.2 or 4.3(b), if the Client repudiates the Contract or if the Contract is terminated due to any default by the Client ("Termination"), Superior will be entitled to exercise all remedies available to it and the Client will be liable to Superior for liquidated damages (which the Client agrees are a genuine pre-estimate of Superior's cost and losses) calculated in accordance with the following formula:**

**Where:**  $LD = Q \times T \times \$9.00$

**LD** means the liquidated damages amount payable.

**Q** means the average total monthly cubic metres collected by Superior for the Client in the 12 months immediately before Termination.

**T** means the number of full months remaining in the Contract on the day prior to Termination.

6.2 The Client acknowledges that the formula set out above is a fair and reasonable calculation of the damages that are likely to be incurred by Superior by reason of Termination of the Contract.

**7. Termination**

7.1 Superior may, at its discretion, terminate the Contract or suspend the provision of the Services, immediately by notice in writing if:

- (a) any payment due from the Client remains unpaid for a period of 14 days of the date of invoice;
- (b) the Client breaches any clause of the Contract and such breach is not remedied within 21 days of written notice to the Client;
- (c) the Client materially breaches the Contract and the breach is incapable of remedy;
- (d) the Client becomes bankrupt or insolvent or subject to any winding up proceedings or enters into any scheme of arrangement with or for the benefit of its creditors.

7.2 The Client may terminate the Contract by notice in writing if Superior breaches any clause of the Contract and such breach is not remedied within 21 days of written notice to Superior.

7.3 Termination of the Contract does not relieve the Client from:

- (a) its obligation to pay all money owed by it to Superior on any account whatsoever. All monies shall be payable immediately notwithstanding the date for payment of the money may not have arrived, and liability arising from any antecedent breach of the Contract.

7.4 Upon termination of the Contract for any reason:

- (a) Superior may retain all monies previously paid by the Client;
- (b) the Contract ends as to its future operation except for the enforcement of any indemnity or claim that arises on or before termination;
- (c) Superior may charge a reasonable sum for Services supplied in respect of which no such amount has previously been charged;
- (d) Superior may retake possession of all property of Superior in the possession of the Client; and
- (e) Superior may pursue any additional remedies provided by law.

7.5 The termination of the Contract is without prejudice to any rights which have accrued to a party before Termination.

7.6 An account reactivation fee of \$25 plus GST applies where a Client requests Superior to recommence providing the Services after the provision of the Services has been suspended.

**8. Limitation of Liability**

8.1 To the maximum extent permitted by law, the Terms do not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Equipment or Services or any contractual remedy for their failure.

8.2 Other than as stated in the Terms, Superior is not liable to the Client in any way arising under or in connection with the use of, storage or any other dealings with the Equipment or receipt of the Services by the Client or any third party.

8.3 The Client warrants that it has not relied on any term, condition, warranty, undertaking, inducement or representation made by or on behalf of Superior which has not been stated expressly in the Contract or upon any descriptions, illustrations or specifications contained in any document including any catalogues or publicity material produced by Superior.

8.4 Superior is not liable for any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

8.5 Subject to the ACL, Superior will not be liable for any loss or damage suffered by the Client where Superior has failed to provide the Services by any estimated date or cancels or suspends the supply of the Services.

8.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any mandatory State or Federal legislation.

8.7 To the extent permitted by law, the Client agrees to release Superior, its successors, assigns, officers and agents from all actions, claims, demands and causes of actions whatsoever which they may have in respect of, arising out of or resulting from the supply of the Services.

8.8 It is the Client's responsibility to notify Superior of any changes or modifications to the collection site. Superior will not accept liability for any injury or damage arising from the client not specifying any hazards or changes that Superior personnel cannot reasonably foresee.

**9. Enforcement Expenses**

The Client must pay to Superior immediately on demand all costs, charges and expenses (on a full indemnity basis) incurred by Superior in enforcing or attempting to enforce all or any of its rights, powers or remedies under the Contract or at law or otherwise in connection with collecting or recovering any money owing by the Client to Superior.

**10. Consumers**

10.1 If the Client is a Consumer nothing in these Terms restricts, limits or modifies the Client's rights or remedies against Superior for failure of a statutory guarantee under the ACL.

**11. General**

11.1 The Client warrants that the person signing this Contract is duly authorised to sign it and bind the Client to the Contract.

11.2 The Contract may only be varied in writing by agreement between the parties. The Contract remains in force notwithstanding any variation to the type, frequency, pricing, Collection Address or any other changes to the Services.

11.3 The rights and obligations of Superior under the Contract are assignable upon notice to the Client.

11.4 The indemnities and releases in the Contract are continuing obligations independent from the other obligations of the parties and will continue after the Contract ends.

11.5 The Client must advise Superior in writing 1 month in advance of any intended change in ownership or control of the Client's business. The Client acknowledges that it remains liable for any Services received during periods of change.

11.6 The Contract is governed by the laws of Victoria.

11.7 Clauses which are capable of having effect after the Contract is terminated will continue to have effect after termination.

11.8 If any clause or part of a clause is held to be invalid, unenforceable or illegal for any reason, the Contract will continue to have effect apart from that clause or part of that clause which shall be deemed deleted.

11.9 The Contract is the entire agreement between Superior and the Client and supersedes all previous agreements and understandings.

11.10 Any notice, request, demand, consent or approval sent pursuant to the Contract is deemed received:

- (a) where posted, 3 business days from and including the date of postage;
- (b) where delivered by hand, when delivered to the addressee; or
- (c) where faxed, when received by the addressee or if receipt is on a non-business day or after 4.00pm (addressee time) then at 9.00am the following business day.

11.11 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

11.12 Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to the Contract (including the execution of documents).