

# TERMS AND CONDITIONS

## Interpretation

'**Agreement**' means the Agreement constituted by the 'Service Contract' and/or 'Quote' and the 'Terms and Conditions'.

'**Bins**' means bins as set out in the 'Service Details' section of the Agreement.

'**Client**' means the Client as set out in the 'Client Details' section of the Agreement.

'**Equipment**' means all containers and other plant and equipment supplied by The Austrans Group Pty Ltd for or under this Agreement, all of which remain the property of The Austrans Group Pty Ltd.

'**Site**' means those of the Client's premises at which the Services are carried out.

'**Services Fee**' means the specified rate, price or lump sum amount for the performance of each item of the Services as set out in the 'Service Details' section of this Agreement, as adjusted in accordance with this Agreement.

'**Services**' means all services of the type and nature as described in the 'Service Details' section and clause 2 of the Terms and Conditions.

'**Waste**' means any material requested by 'Client' via submitted manifest.

'**Manifest**' means the list of 'Waste' provided by Client to 'Austrans' requiring removal and/or disposal.

## **1. Contracted Services**

At the Client's request and in consideration for payment of the Services Fee, The Austrans Group Pty Ltd will perform the Services and supply the equipment as is necessary.

The Services will be as set out in the Service Details section of this Agreement and include without limitation:

- a) the supply of Equipment/Bins to the Site;
- b) the collection of Waste from the Site and the disposal of the Waste during the period of the term.

## **2. Client Responsibilities**

The Client agrees:

### **Service**

- a) That The Austrans Group Pty Ltd has the exclusive right to supply all Services to the Site;
- b) To provide The Austrans Group Pty Ltd with reasonable opportunity to offer to provide Services to the Client at premises other than the Site;
- c) Promptly to inform The Austrans Group Pty Ltd of any change in the Client's Services requirements;
- d) To disclose to The Austrans Group Pty Ltd all information in the Client's possession relevant to the provision of the Services;
- e) To comply with all legal requirements and the requirements of all relevant regulatory authorities relating to the Services;

### **Equipment**

- a) To use the equipment only for its proper and intended purpose;
- b) To provide The Austrans Group Pty Ltd such access to the Equipment and the Site as is reasonably required to enable The Austrans Group Pty Ltd to provide the Services safely;
- c) To maintain the cleanliness of the equipment;
- d) Not to damage, deface or remove identifying marks from the equipment;

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## Waste

- a) To ensure that all Waste supplied for collection is of the type or nature specified in this Agreement and unless otherwise agreed by The Austrans Group Pty Ltd, uncompacted;
- b) Not to overload the equipment (either by weight or volume);
- c) All waste products must be packaged and labelled in accordance with the Australian Dangerous Goods Code.
- d) All packaged Waste must be in containers suitable for transportation of hazardous materials and securely strapped to pallets of good condition. The waste producer is responsible for any spills that occur in transit as a result of inadequate packaging;

## Payment

- l) To pay The Austrans Group Pty Ltd:
  - a) The total of the Service Fees multiplied by the corresponding quantities of the Services supplied plus all adjustments made by The Austrans Group Pty Ltd in accordance with this Agreement;
  - b) All amounts invoiced within 30 days from the date of the invoice (Approved Credit Facility Clients Only). Unless otherwise agreed upon in writing by Client and The Austrans Group;
  - c) Should the Client not have an approved credit facility with The Austrans Group, COD terms will apply;
  - d) Any credit claims must be made within 30 days from the invoice date.
  - e) Interest at the rate of 18% per annum on daily balances will be charged on overdue payments between the due date and the date of payment.

## Assignment

- a) Not to assign its interest under this Agreement without the prior written consent of The Austrans Group Pty Ltd, which consent will be at the absolute discretion of The Austrans Group Pty Ltd.

## Conditions

- a) All pricing excludes GST;
- b) All pricing is Commercial in Confidence;
- c) Rates quoted are valid for 30 days from the issue date unless otherwise stated;
- d) Price may vary, as estimated quantities and weights only;
- e) Price may vary should the waste product, description and/or scope of works differ from the Agreement;
- f) All waste products received by The Austrans Group remains in the title and responsibility of the Client until it is accepted by the disposal facility and paid for in full.

### 3. The Austrans Group Pty Ltd Responsibilities

The Austrans Group Pty Ltd shall perform the Services in accordance with this Agreement.

### 4. Liabilities

#### Additional Charges and Fee Increases

The Client acknowledges that amounts payable by it to The Austrans Group Pty Ltd under this Agreement may be adjusted from time to time by The Austrans Group Pty Ltd, acting reasonably, as a result of:

- a) A change in the nature, density, quantity or timing of the Services (including any change in the type, density or quantity of the Waste the subject of the Services);
- b) Any delays experienced loading and unloading;
- c) Where tolls are utilized in transit. Unless otherwise agreed upon in writing by Client and The Austrans Group;

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- d) Any increase in the cost in the performance of The Austrans Group Pty Ltd' obligations under this Agreement (including labour costs, fuel, government taxes or charges, tipping fees); or
- e) Any other relevant circumstance materially impacting on the Services or Equipment provided.

The Austrans Group Pty Ltd undertakes to provide notice to the Client of any such increases, where reasonably practicable.

## **Client Indemnity**

The Client indemnifies The Austrans Group Pty Ltd against loss or damage to The Austrans Group Pty Ltd as a result of a breach by the Client of its responsibilities under this Agreement.

The Client further indemnifies The Austrans Group Pty Ltd against loss or damage to 'The Austrans Group Pty Ltd' property and against any claim or action which may be brought or made by any person against The Austrans Group Pty Ltd, its employees or agents in respect of personal injury or death of any person or loss of or damage to property caused by a negligent or wrongful act or omission of the Client, its employees, other contractors or agents.

The Client's liability to indemnify The Austrans Group Pty Ltd is reduced proportionally to the extent that The Austrans Group Pty Ltd, its employees, subcontractors or agents have contributed to the injury, death, loss or damage.

## **The Austrans Group Pty Ltd Liability**

To the maximum extent permitted by law, The Austrans Group Pty Ltd's liability is limited to:

- a) The resupply of the Services; or
- b) At The Austrans Group Pty Ltd's option, the payment of the cost of resupply of those Services.

Except for this and to the maximum extent permitted by law, The Austrans Group Pty Ltd accepts no liability whatsoever for any claim for loss or damage of any kind without limitation. The Austrans Group Pty Ltd will not be liable for the non-performance of the Services caused by any act, omission or event beyond its control.

## **5. Term and Termination**

- The operation of the Agreement is subject to The Austrans Group Pty Ltd having first obtained a satisfactory credit check of the Client.
- The term of this Agreement:
  - a) Is for two (2) years from the date of this Agreement and thereafter successive periods of one year; or
  - b) Where the services comprise a one-off project, expires upon its completion.
- Either party may terminate the Agreement:
  - a) Immediately by written notice to the other where that other:
    - i. Becomes bankrupt, or insolvent, or becomes subject to external administration; or
    - ii. Commits a substantial breach or default under the Agreement and does not rectify such breach or default within 14 days of a written notice requiring its rectification; or
  - b) Sixty (60) days from the date of a written notice to that effect to the other.
- Upon termination, the Client must pay The Austrans Group Pty Ltd the sum of:

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- a) All monies due and payable but unpaid up to the date of termination; and
- b) As liquidated damages, the average net monthly revenue for the number of months from termination until the expiry of the then-current term of the Agreement.

('Average net monthly revenue' is the average monthly gross amount paid or payable by the Client to The Austrans Group Pty Ltd under the Agreement less the average monthly external disposal costs regarding the Services.)

## 6. Disputes

If any dispute or difference arises between The Austrans Group Pty Ltd and the Client, it shall be referred to their respective representatives for resolution. In the event that the representatives are themselves unable to resolve the dispute, the representatives' superiors will attempt to resolve it speedily by negotiation and in good faith.

## 7. Further Assurance

Each party shall sign, execute and do all deeds, acts, documents and things as may reasonably be required by the other parties to effectively carry out and give effect to the terms and intentions of this Agreement.

## 8. Entire Agreement

This Agreement contains the entire Agreement between the parties and supersedes and replaces any oral or written communication between them relating to the subject matter of this Agreement.