

## **Terms and Conditions – Tipping and Recycling**

### **1 Acceptance of Conditions and Quotations**

- (a) All quotations, dockets or credit applications issued, and any order for the Services which is accepted, by Bingo are subject to these Terms and any other terms which are agreed to in writing by the parties.
- (b) The Terms are to the exclusion of any previous dealings between Bingo and the Customer or the imposition of additional or alternative terms and conditions by the Customer. Any terms and conditions proposed, published or sent by the Customer to Bingo or otherwise referred to in any document or material provided by the Customer to Bingo (including any terms and conditions published on any website or contained in any online ordering process, whether or not acknowledged by Bingo):
- (i) do not form part of (and are expressly excluded from) these Terms;
  - (ii) do not apply to or bind Bingo; and
  - (iii) are, as between Bingo and the Customer, void and unenforceable,
- irrespective of whether and whenever such terms and conditions were proposed, published or sent (or referred to in any document or material provided) by the Customer.
- (c) To the extent of any inconsistency between these Terms and:
- (i) any quotations, dockets or credit applications issued, or any order for Services which is accepted, by Bingo; or
  - (ii) any documentation or terms and conditions issued by the Customer which purport to apply to the Services,
- these Terms will prevail.
- (d) A quotation issued by Bingo is not a binding offer to sell. Bingo may withdraw, revoke or vary a written quotation at any time prior to Bingo accepting an order in response to that quotation.
- (e) Bingo reserves the right to accept or decline, in whole or in part, any order for the Services placed by the Customer.

### **2 Charge and Payment**

- (a) Subject to these Terms, the Charges for the Services will be as agreed between Bingo and the Customer at the time of Bingo's acceptance of the Customer's order.
- (b) The Charges for the Services specified by Bingo in any quotation:
- (i) will remain valid for a period of 30 days unless otherwise specified; and
  - (ii) is subject to any other conditions specified in the quotation.
- (c) The Customer must pay Bingo the Charges for the Services (including any additional or other charges charged to the Customer in accordance with the Terms) by the due date specified in the relevant invoice. Bingo reserves the right to charge a Customer's nominated credit card or directly debit the Customer's nominated bank account in relation to any additional or other charges invoiced to the Customer.
- (d) The Charges for the Services include all taxes and levies other than GST. The Charges for the Services and all other amounts payable in accordance with the Terms are expressed exclusive of GST. Where Bingo makes a taxable supply to the Customer and the consideration for that supply does not expressly include GST, the Customer must also pay Bingo an amount equal to the GST payable by Bingo. The Customer must pay the GST amount when the Customer is liable to provide Bingo with consideration.
- (e) Subject to clauses 2(f) and 2(g), Bingo may increase its Charges during the term of the Terms in its absolute discretion (for such reasons including, but not limited to, increased operation costs, changes in disposal fees, changes to disposal facility locations, increased government charges, taxes and/or levies, the introduction of new taxes, government charges and/or levies, changes in the Customer's address or any Change in Law), by providing the Customer with 30 days' written notice of such increase to its Charges (**Charge Notice**).

- (f) If Charges are increased under clause 2(e), the new Charges (as set out in the Charge Notice) will be deemed to have been accepted by the Customer and will become effective thirty (30) days after the date that Bingo delivers the Charge Notice to the Customer, unless the Customer elects to terminate the Terms by delivering written notice to Bingo (**Charge Termination Notice**) before the increased Charges become effective.
- (g) If a Charge Termination Notice is delivered Bingo in accordance with clause 2(f), the increase in Charges contemplated by the Charge Notice will not take effect in relation to the Terms and the Terms will terminate on the earlier of:

- (i) 30 days after the date that the Charge Termination Notice was delivered to Bingo; or
- (ii) any other date prescribed by Bingo (acting reasonably).

- (h) The Customer acknowledges that:

- (i) If the Customer fails to pay amounts invoiced on the due date, then Bingo will have the right to charge interest which shall accrue daily at the Prescribed Rate; and
- (ii) the Services may be suspended by Bingo if payment is not received or the Customer is otherwise in arrears of its payment obligations under the Terms.

### **3 Performance of Services by Bingo**

- (a) Subject to the Terms, Bingo will provide the Services contemplated in the quotation issued by Bingo or any order accepted by Bingo.
- (b) The Customer acknowledges that:
- (i) Bingo shall use its reasonable endeavours to provide the Services at the Bingo Disposal Sites during the Bingo Disposal Site Opening Hours;
  - (ii) Bingo may inspect, sample, test and analyse any Waste which the Customer intends to dispose or disposes and Bingo is not obliged to accept, transport and/or dispose of that Waste if that Waste:
    - (A) is not Waste and/or constitutes Excluded Waste; or
    - (B) is not delivered in accordance with the Terms.
  - (iii) if the Customer wishes to dispose of Excluded Waste, Bingo may offer to accept receipt of the Excluded Waste or part of the Excluded Waste at a Bingo Disposal Site nominated by Bingo and at a separate rate advised by Bingo to the Customer.
- (c) Bingo is not obliged to perform the Services in the event that:
- (i) a Bingo Disposal Site is closed or ceases or limits operations (whether temporarily or permanently) to:
    - (A) comply with any Law, including without limitation and for the avoidance of doubt) any condition of any applicable environment protection licence or development approval;
    - (B) undertake any building, development or remedial works or other improvements; or
    - (C) do any other thing that Bingo considers reasonably necessary; or
  - (ii) Bingo or a Related Body Corporate of Bingo ceases to have possession or effective control of the relevant Bingo Disposal Site.
- (d) Title in the Waste passes from the Customer to Bingo from (but not prior to) the time the Waste is unloaded and accepted by Bingo at a Bingo Disposal Site in accordance with Bingo's usual procedures for acceptance of waste.

### **4 Customer Obligations**

- The Customer agrees to:
- (a) incur the cost of the transport of Waste to the Bingo Disposal Sites;
  - (b) deliver Waste in accordance with the Waste Acceptance Criteria for each Bingo Disposal Site, and if the Customer does not comply with this clause, then Bingo may charge the Customer its reasonable costs for the reloading and removal of the Non-Compliant Waste;

- (c) promptly provide to Bingo all information and documents requested by Bingo relating to the Waste, including the source of the Waste, weight of the Waste, confirmation of compliance with applicable laws and a waste classification report (if required) (in the form required by Bingo);
- (d) when on a Bingo Disposal Site, comply with all directions, requirements and instructions of Bingo, its agents, employees and subcontractors;
- (e) abide by all applicable Law in respect of the Waste; and
- (f) comply with all reasonable directions of Bingo in respect of the Waste (including in relation to the loading, transporting and delivery of the Waste).

## 5 Processing, Ownership and Delivery of Waste

### 5.1 Weighing Dockets

Bingo shall ensure that each load of Waste delivered to and accepted by Bingo at a Bingo Disposal Site is weighed at the weighbridge and a Weighbridge Docket is provided to the driver who delivered the load of Waste (or to the Customer within a reasonable time after the driver delivers the load of Waste).

### 5.2 Determining weight of Waste

- (a) The Net Weight of the Waste delivered and disposed of at a Bingo Disposal Site shall be determined in accordance with the weighbridge procedures of each applicable Bingo Disposal Site.
- (b) Bingo shall within a reasonable time inform the driver or Customer of the Gross Weight, Tare Weight, Net Weight and cubic metres (if applicable) of the load and hand to the driver or provide to the Customer a docket (**Weighbridge Docket**) evidencing each of the Gross Weight, Tare Weight, Net Weight and cubic metres (if applicable) of the load.

## 6 Liability and Indemnity

- (a) To the maximum extent permitted by law:
  - (i) the Customer will indemnify Bingo for:
    - (A) all liabilities, claims, damages, actions, costs and expenses which may be incurred by Bingo as a result of or arising out of any breach by the Customer of any of the terms, warranties, covenants or conditions contained in the Terms;
    - (B) any loss or damage to Bingo's property occasioned as a result of an act or omission of the Customer or its Personnel,

although the Customer's liability to indemnify Bingo is reduced proportionally to the extent that an act or omission of Bingo caused or contributed to the claim, damage, loss, liability, cost or expense.
  - (ii) Bingo will not be liable to the Customer (whether in contract, statute, tort (including negligence) or otherwise) for any consequential loss (including loss of use, opportunity, profit or anticipated profit, revenue or anticipated revenue, investment return, interruption to the business, business opportunities and damage to goodwill, reputation or share price or failure to realise anticipated savings (whether the loss is direct or indirect)), or loss caused by (or to the extent contributed to by) the Customer or people associated with the Customer such as employees, contractors or the Customer's clients.
  - (iii) any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with the Terms by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
  - (iv) notwithstanding the other provisions of this clause, Bingo does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including *the Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of the Terms to be void (**Non-excludable Condition**).

- (v) the maximum aggregate liability of Bingo for all proven losses, damages and claims arising out of the Terms including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to Bingo under the Terms.
- (vi) the liability of Bingo (if any) to the Customer for a breach of any Non-excludable Condition will be limited at Bingo's option, to either:
  - (A) Bingo re-supplying the Services; or
  - (B) Bingo paying the Customer the cost of the Services being supplied again to the Customer.

## 7 Cancellation and Termination

Bingo may terminate the Terms immediately by giving notice to the Customer if:

- (i) the Customer is in breach of the Terms, and such breach is either incapable of being remedied or has not been remedied within fourteen (14) days of Bingo giving the Customer written notice of that breach;
- (ii) the Customer fails to make the required payments or the Customer is otherwise in arrears of its payment obligations in accordance with the Terms after Bingo has requested payment of such outstanding amounts within fourteen (14) days; or
- (iii) an Insolvency Event has occurred in respect of the Customer.

The Customer may terminate the Terms:

- (i) immediately by giving written notice to Bingo if Bingo is in breach of a fundamental term of the Terms and such breach is either incapable of being remedied or has not been remedied within fourteen (14) days of the Customer giving Bingo written notice of that breach;
- (ii) if permitted by clauses 2(f) or 10(g) of the Terms; or
- (iii) immediately an Insolvency Event has occurred in respect of Bingo.

If:

- (i) the Customer attempts to terminate the Terms other than in accordance with the provisions of clause 7(b) of the Terms or otherwise repudiates the Terms; or
- (ii) Bingo terminates the Terms for any of the reasons contemplated by clause 7 of the Terms,

Bingo will be entitled to early termination fees calculated, in addition to any outstanding amounts, on the account for (to the extent applicable):

- (A) incremental administrative cost in the early closure of the account; and
  - (B) an amount equal to the Average Monthly Amount.
- (d) The early termination fees in clause 7(c) are agreed by both parties to be a genuine pre-estimate of Bingo's damages and are therefore not a penalty at law.
- (e) On termination of these Terms by either party:
- (i) all Charges that are outstanding and have not yet been paid by the Customer to Bingo will become immediately due and payable; and
  - (ii) such termination will not adversely affect any rights or obligations that may have accrued to either party before the date of termination

(f) Clauses 1 (Acceptance of Conditions and Quotations), 6 (Liability and Indemnity), 7 (Cancellation and Termination), 8 (Confidentiality and Privacy), 9 (Dispute Resolution), 10 (Miscellaneous) and 11 (Definitions) will survive termination or expiration of these Terms.

## 8 Confidentiality and Privacy

Each party must:

- (i) strictly maintain the confidentiality of the other party's Confidential Information and only use it for the purposes of this agreement; and
- (ii) only disclose Confidential Information of the other party to its Personnel (including those of its Related Bodies Corporate)

who need to know for the purpose of exercising rights and obligations in relation to an Order and who are subject to confidentiality obligations in relation to that information. These confidentiality obligations do not apply to information that is required to be disclosed by law or the rules of a publicly recognised stock exchange.

- (b) Bingo and its related entities are committed to the protection of personal information in accordance with the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth). Information collected as part of entering into, and the performance of, the Terms will be collected, used and disclosed in accordance with Bingo's privacy policy available at <https://www.bingoindustries.com.au/who-we-are/regulations-compliance>.

## 9 Dispute Resolution

- (a) A party claiming that a dispute has arisen may give the other party a written notice identifying and providing details of the nature of the dispute (**Dispute Notice**).
- (b) On receipt of a Dispute Notice, the parties must engage in good faith discussions to resolve the matters the subject of the Dispute Notice.
- (c) Despite anything else contained in the Terms, a party may at any time apply to a court of competent jurisdiction to seek any legal or equitable remedy or relief.

## 10 Miscellaneous

- (a) (**Assignment**) Bingo may assign or novate its rights and obligations under the Terms to a Related Body Corporate or related entity of Bingo without the consent of the Customer. The Customer may not assign or novate its rights and obligations under the Terms without the prior written consent of Bingo (such consent not to be unreasonably withheld).
- (b) (**Laws**) The Terms is governed the laws of the State where the Services are provided and the parties submit to the jurisdiction of the courts of that State.
- (c) (**Entire Agreement**) The Terms, together with any documents referred to in the Terms or executed under or in connection with the Terms, contain the entire understanding and conditions of the parties about the subject matter of the Terms and supersede, terminate and replace all prior representations, negotiations, conditions, arrangements, understandings and other communications between or involving some or all of the parties.
- (d) (**Invalidity**) Any provision of the Terms which is void, illegal or otherwise unenforceable will be severed to the extent permitted by law without affecting any other provision of the Terms.
- (e) (**Public Announcements**) The Customer must not make press or other announcements or releases relating in any way to the Terms, the Services and/or the dealings the subject of the Terms without the prior written approval of Bingo, which may be withheld at Bingo's discretion.
- (f) (**Capacity**) If the person signing the Terms is doing so on behalf of the Customer which is a corporation or other entity, that person hereby warrants that he/she is duly and legally authorised to execute and enter into the Terms on behalf of the Customer.
- (g) (**Variation**) The Customer acknowledges and agrees that the Terms may be amended from time to time at Bingo's discretion and the amended Terms will have full force and effect between the parties on the thirtieth (30th) day following the provision of written notice of the amended Terms to the Customer (**Amendment Notice**), unless the Customer terminates the Terms within thirty (30) days of being provided an Amendment Notice. The Customer must comply with the amended Terms. The amendments to the Terms contemplated by this clause 10(g) to not include changes to the Charges, which are the subject of clause 2.
- (h) (**Waiver**) The failure of a party to require performance of any obligation under the Terms is not a waiver of that party's rights.
- (i) (**Notices & Interpretation**) Any notices given under this agreement must be provided to each party using the contact details provided. Words importing the singular include the plural (and vice versa), and "including" means "including, without limitation". To the extent

permitted by law, nothing in the Terms is to be interpreted against a party solely because it drafted the Terms.

## Definitions

In the Terms, unless the context otherwise requires, the following words have the following meaning:

- (i) **Average Monthly Amount** is the Total Amount divided by:
- (A) 12 (where paragraph (A) of the definition of "Total Amount" applies); or
- (B) The number of months between the date of commencement of the Services and the date on which the Terms are terminated under clause 7 (where paragraph (B) of the definition of "Total Amount" applies);
- (ii) **Bingo** means Bingo Recycling Pty Ltd (ABN 82 163 894 362), Bingo Waste Services Pty Ltd (ABN 43 162 988 623), United Hire Group Pty Ltd (ABN 83 606 852 144) and/or any Related Body Corporate or related entity which provides the Services to the Customer;
- (iii) **Bingo Disposal Site** means the sites as notified by Bingo to the Customer which can accept the Waste.
- (iv) **Bingo Disposal Site Opening Hours** means the ordinary hours of operation of each Bingo Disposal Site as advised by Bingo to Customer from time to time.
- (v) **Confidential Information** means information of a party that is by its nature confidential, including information about a party's pricing, processes, product design, customers and strategy.
- (vi) **Charges** means the fees, charges and additional charges that are paid to, or are due to Bingo in accordance with the Terms;
- (vii) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (viii) **Customer** means the party named on the quotation, delivery docket or credit application issued by Bingo or, if no party is named, the party to whom the Services are supplied to;
- (ix) **Excluded Waste** means combustible, corrosive, contaminated, toxic, reactive, radioactive, volatile, highly flammable, explosive, hazardous or other waste not approved by Bingo for disposal at a Bingo Disposal Site.
- (x) **Gross Weight** means the gross weight of the truck or other vehicle prior to it disposing of the Waste at a Bingo Disposal Site;
- (xi) **Insolvency Event** means, in relation to a party, any one or more of the following events or circumstances:
- (A) being in liquidation or provisional liquidation or under administration;
- (B) having a controller, receiver, receiver and manager, administrator, liquidator or analogous person appointed to it or any of its property;
- (C) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (D) being unable to pay its debts or being otherwise insolvent;
- (E) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (F) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (G) any analogous event or circumstance under the laws of any jurisdiction as it relates to an individual (including any event of bankruptcy),

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party (which approval is not to be unreasonably withheld);

- (xii) **Law** means:
- (A) Acts, ordinances, regulations, by-laws, orders, awards, proclamations and statutory instruments of the Commonwealth and the State or Territory applicable to the Services;
  - (B) any written instrument which constitutes an approval or requirement of an organisation which has jurisdiction in connection with the supply of the Services;
  - (C) the codes of practice of the State or Territory and other appropriate codes applicable to the Services; and
  - (D) principles of common law and equity established by decisions of the courts,
- and a “**Change in Law**” means the introduction of any new Law, a change in any existing Law or a change in the interpretation or administration of a Law.
- (xiii) **Net Weight** means the weight of waste (in tonnes) in the truck or other vehicle delivered and disposed of at a Bingo Disposal Site as calculated in accordance with the following formula:
- Where:
- A = the Gross Weight
- B = the Tare Weight
- C = the Net Weight
- (Net Weight) C = A – B.
- (xiv) **Non-Compliant Waste** means Waste which does not meet the applicable Waste Acceptance Criteria.
- (xv) **Personnel** means the employees, representatives, agents, officers, contractors and subcontractors of a party.
- (xvi) **Prescribed Rate** means 2% above the interest rate published by the Reserve Bank of Australia from time to time.
- (xvii) **Related Body Corporate** has the meaning set out in the Corporations Act.
- (xviii) **Services** means the receipt of the Customer’s Waste at Bingo Disposal Sites and its disposal by Bingo.
- (xix) **Tare Weight** means the tare weight of the truck or other vehicle, being its weight after having disposed of the Waste at a Bingo Disposal Site;
- (xx) **Terms** means these terms and conditions and the provisions in the quotation, proposal, docket and/or any credit application provided by Bingo to the Customer, which will be read and construed together;
- (xxi) **Total Amount** is the total amount paid by the Customer to Bingo for the Services under these Terms for:
- (A) the 12 month period immediately prior to the date on which the Terms are terminated under clause 7; or
  - (B) if a full 12 month period has not occurred at the date on which the Terms are terminated under clause 7, the period between the date of the commencement of the Services and the date of termination;
- (xxii) **Waste** means the waste types (excluding Excluded Waste) approved by Bingo for disposal by the Customer at Bingo Disposal Sites.
- (xxiii) **Waste Acceptance Criteria** means the waste acceptance criteria as issued or notified by Bingo in respect of each Bingo Disposal Site.