Terms and Conditions – Bin/Container Hire and On-Site Processing

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) 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 in the quotation; 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, including for any excess weight or excess waiting time) without set-off, deduction or counterclaim by the due date specified in the relevant invoice or, if no due date is specified, within 14 days of the date of the invoice. The Customer authorises Bingo to charge the Customer's nominated credit card or debit the Customer's nominated bank account for any amount payable by the Customer under the Terms (including the Charges and any additional or other charges) on or after the due date for payment, in accordance with any direct debit request or authority provided by the Customer.

(d) 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.

(e) The Charges for the Services include all taxes and levies other than:

(iii) GST; and

(iv) (where applicable) a non-refundable card payment surcharge on card payments which may be amended from time to time on the provision of 30 days' notice to the Customer. The surcharge that apply as at the date of this agreement are as below:

(A) American Express: 1.50% of the transaction value;

(B) Visa and MasterCard: 0.75% of the transaction value.

For example, a $1,000 payment would be $1,007.50 with Visa/MasterCard and $1,015.00 with American Express.

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.

(f) Subject to clause 2(g), where Bingo has provided the Customer with a quotation specifying rates for the Services, Bingo will honour those rates for any order placed by the Customer and accepted by Bingo within the validity period specified in that quotation (or, if no validity period is specified, the period referred to in clause 2(b)(i)). After that validity period expires, the rates applicable to any further order will be the rates then published on the Website or most recently notified to the Customer.

(g) Bingo may change its rates for the Services from time to time to reflect changes in its costs of providing the Services or in the regulatory environment, including (but not limited to) increased operating costs including but not limited to fuel, 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. The rates published on the Website or through the contact centre may be changed by Bingo at any time and the rates applicable to an order placed through or by reference to the Website or contact centre are the rates published at the time the Customer places that order. Where rates have been quoted or notified to the Customer, Bingo will give the Customer not less than fourteen (14) days' written notice of any change to those rates, and the changed rates apply only to orders placed by the Customer and accepted by Bingo after the end of that notice period. Bingo may increase the rates specified in a quotation before the end of its validity period where the increase is reasonably necessary to reflect a change of a kind referred to in this clause 2(g), and only on not less than fourteen (14) days' written notice. For the avoidance of doubt, the Customer is not obliged to place any further order at the increased rates, and the quotation ceases to apply to any order not already accepted by Bingo. No change or increase in rates under this clause affects any order already accepted by Bingo or any Container already delivered to the Site.

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. Where the Services include On-Site Processing Services, Schedule 1 applies to those On-Site Processing Services. Schedule 1 prevails over the balance of the Terms to the extent of any inconsistency in respect of the On-Site Processing Services.

(b) (**Bingo's Obligations**) Bingo will provide the Services with due care, skill and judgment, in compliance with all laws applicable to Bingo's performance of the Services, and will use reasonable endeavours to ensure the Services are provided as agreed with the Customer. Bingo will deliver each Container and perform each collection on any date or within any period agreed with the Customer at the time the order is accepted or, where no date or period is agreed, within a reasonable time. If Bingo becomes aware that a delivery or collection will be materially delayed, Bingo will notify the Customer as soon as reasonably practicable. Nothing in this clause limits clauses 3(c)(i) or 3(c)(iii).

(c) The Customer acknowledges that:

(i) Bingo will use all reasonable endeavours to perform the Services on the frequency agreed in accordance with the Terms but accepts no liability where such performance is prevented,

hindered by a cause that is beyond the reasonable control of Bingo;

(ii) The Customer or its representative may be requested to sign a delivery docket evidencing receipt of the Containers and/or collection of the Waste;

(iii) Bingo will, in its discretion, not have to perform the Services on weekends or public holidays or for any of the following reasons:

(A) if Bingo cannot access the Site safely;

(B) if Bingo does not provide Services to the area in which the Customer's Site is located;

(C) if the Container appears overweight or, in the case of a Cage, loaded beyond its rated capacity;

(D) if the Container appears damaged or broken;

(E) if the Container has been filled unevenly or its contents protrude beyond the top or sides of the Container in which case Bingo may require the Customer to rectify the issue before it completes the Service;

(F) if the Container contains material of a type or condition not approved by Bingo (including, in the case of a Cage, Tyres or Mattresses contaminated with liquid, soil or other waste);

(G) if the Customer has not paid the Charges; if the Customer is in breach of the Terms;

(H) for any operational or safety reasons which affect the provision of the Services; or

(I) if Bingo is prevented from performing the Services by circumstances beyond Bingo's reasonable control (including, but not limited to, natural disaster or industrial action);

(iv) 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 or disposed in accordance with the Terms.

(v) if the Customer needs Excluded Waste collected, the Customer must contact Bingo in advance to request a special collection. Bingo will advise the Customer of the pricing applicable to the special collection under this clause.

(vi) if any Waste or other material is refused or rejected by Bingo under clause 3(c)(iv), or Excluded Waste is placed in a Container without having been notified to and approved by Bingo in advance, then:

(A) if Bingo has not collected that Waste, Bingo will charge for the cost of attending the Site and inspecting the Waste reflecting its reasonable transport and labour time costs; or

(B) if that Waste has been collected by Bingo, then Bingo is under no obligation to return the Waste to the Customer or to the Site (the parties acknowledging that return is impractical and gives rise to safety risks once the Waste has been collected), and Bingo may handle, transport, store, treat and dispose of the Waste as it considers appropriate in its absolute discretion and in accordance with all applicable Laws, and the Customer must pay all costs and expenses incurred by Bingo in doing so. Bingo will notify the Customer of any additional charges payable under this clause 3(c)(vi)(B);

(C) in the case of Excluded Waste, the Customer must pay Bingo, in addition to the Charges otherwise payable for the Services, all reasonable additional costs incurred by Bingo in handling, transporting, storing, treating and disposing of that Excluded Waste (including any additional gate, landfill, levy, decontamination, sorting or specialist disposal costs, and any costs of cleaning or repairing a Container or vehicle), whether the Excluded Waste is identified before collection, after collection, or on or after tipping or processing of the Container's contents at a disposal facility. Bingo will, on request, provide the Customer with reasonable evidence of the costs charged under this clause 3(c)(vi)(C);

(D) where Waste is refused or rejected, or Excluded Waste is identified, on inspection of the Container at the time of pick up and before the Container's contents have been collected, Bingo will not collect that Waste or Excluded Waste and will notify the Customer of the refusal or rejection and of any additional charges payable, and the Customer must rectify the matter (including by removing the Waste or Excluded Waste from the Container or ensuring it is in a condition suitable for collection by Bingo) at its own cost before Bingo is obliged to attend again. If the Customer, within a reasonable period of time as notified by Bingo, nominates a lawful and reasonable alternative means of removing or disposing of it, Bingo will use reasonable endeavours to follow that nomination at the Customer's cost, but is not obliged to do so where following it would be inconsistent with any Law, delay removal or disposal, or increase the risk, cost or liability to Bingo; or

(E) where Excluded Waste is not reasonably identifiable on inspection of the Container and has been collected by Bingo, Bingo may handle, transport, store, treat and dispose of that Excluded Waste as it considers appropriate in its absolute discretion and in accordance with all applicable Laws, without any obligation to return it to the Customer or the Site (the parties acknowledging that return is impractical and gives rise to safety risks once the Waste has been collected). Bingo will notify the Customer that Excluded Waste has been found and of the additional charges payable, and the Customer must pay all costs and expenses incurred by Bingo in doing so.

(d) Other than with respect to Excluded Waste, title in the Waste shall vest in Bingo once the Waste has been collected by Bingo. Title in Excluded Waste which the Customer has notified to Bingo in advance and which Bingo has approved for collection (including by special collection under clause 3(c)(v)) vests in Bingo once it has been collected by Bingo. Title and risk in any other Excluded Waste remains with the Customer until it is deposited to a waste facility that is legally authorised to accept the Excluded Waste.

4 Customer Obligations

(a) The Customer agrees to:

(i) comply with all applicable laws;

(ii) comply (and ensure that its Personnel and contractors will comply) with all directions and instructions of Bingo and any of its employees in respect of the Waste (including in relation to the loading, transporting and delivery of that Waste) and the Equipment;

(iii) take utmost care of the Equipment and only use it for its proper purpose in a safe and correct manner;

(iv) take all reasonably necessary and proper measures to protect the Equipment from theft, damage and/or other risks and return the Equipment in good working condition;

(v) not misuse the Containers or any good, property or services owned or used by Bingo, or allow such misuse by other persons, including by not compacting Waste in the Containers and failing to maintain the Containers in a sanitary condition;

(vi) make the Containers and/or Waste available to Bingo at the time and location agreed with Bingo;

(vii) 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, the Site, confirmation of compliance with applicable laws and a waste classification report (if required) in the form required by Bingo;

(viii) not place, and ensure that its Personnel, contractors and any other person do not place, any Excluded Waste in a Container, and notify Bingo in writing before any Excluded Waste is placed in a Container or presented for collection;

(ix) where the Services involve the collection of Tyres or Mattresses, position each Cage on a firm, level surface at the location agreed with Bingo and maintain the clearances from buildings, boundaries, ignition sources and other combustible material required by Law or reasonably directed by Bingo;

(x) not stack, store or accumulate Tyres or Mattresses outside a Cage, above the height of a Cage, or in quantities exceeding the limits permitted by Law or notified by Bingo;

(xi) obtain and maintain all licences, approvals and exemptions required under Law for the storage of Tyres or Mattresses at the Site, and provide evidence of them to Bingo on request;

(xii) not place in a Cage any material other than Tyres or Mattresses, or any Tyre or Mattress contaminated with liquid, soil or other waste, unless Bingo has agreed otherwise in writing; and

(xiii) maintain appropriate fire prevention, detection and suppression measures at the Site in respect of Tyres or Mattresses stored at the Site.

(b) The Customer acknowledges that:

(i) the Containers remain the property of Bingo at all times and agrees that it will not sell, lend, lease, transfer, modify or otherwise deal with the Containers, or create or allow to be created, a security interest over the Containers, without the prior written consent of Bingo; and

(ii) Bingo may at any time in its discretion replace the Containers with equivalent Containers.

(c) The Customer represents and warrants that:

(i) the ground surfaces traversed by Bingo vehicles on and at the Site are suitable for the purpose of the delivery and collection of Container(s);

(ii) there is unobstructed, sufficient and safe access for Bingo to perform the Services.

(iii) it is solely responsible for obtaining permission from the relevant person, entity or authority (i.e. Council, Body Corporate/Strata Manager) if the Container(s) is to be placed on a communal or public site or other location which in the circumstances requires the permission of a third party. Bingo may refuse to complete delivery of Containers if it is not satisfied that the Customer has permission to place that Container at that site or location.

(d) Where a Container is to be placed on a road, footpath, nature strip, council land or other public land, or on any other location for which a permit, licence, consent or approval is required, the Customer is responsible for obtaining and maintaining that permit at its own cost, unless Bingo has expressly notified the Customer in writing that Bingo will obtain it.

(i) The Customer must provide Bingo with evidence of each permit required under clause 4(d) before the Container is delivered, and on request at any time while the Container remains at the location. If that evidence is not provided, Bingo may decline to deliver the Container or to perform the Services, and the Customer must pay Bingo's reasonable costs of doing so (including transport, fuel and labour costs).

(ii) The Customer is responsible for, and must pay or reimburse Bingo on demand for, all infringement notices, fines, penalties, charges and other amounts imposed by any Council, roads or transport authority or other authority arising out of or in connection with the placement, presence or removal of a Container on any location referred to in clause 4(d), except to the extent the notice, fine, penalty, charge or amount arises because Bingo failed to obtain a permit that Bingo expressly notified the Customer in writing it would obtain.

5 Liability and Indemnity

(a) To the maximum extent permitted by law:

(i) the Customer will indemnify Bingo for:

(A) any loss or damage, or theft or destruction, to Bingo's property or Equipment caused as a result of an act or omission of the Customer or its Personnel;

(B) all fines, penalties, statutory charges, clean-up, remediation, decontamination and disposal costs, and all third party claims, incurred or suffered by Bingo and arising out of or in connection with:

(1) any Excluded Waste placed in a Container or presented for collection without having been notified to and approved by Bingo in advance, or

(2) the Customer's storage, stacking or accumulation of Tyres or Mattresses at the Site,

in each case including any regulatory or statutory liability incurred by Bingo, whether or not Bingo was aware of the matters referred to in paragraphs (1) and (2),

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, and Bingo will take reasonable steps to mitigate its loss the subject of this indemnity.

(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 the Customer or people associated with the Customer such as employees, contractors or the Customer's clients. Where the Customer or any person associated with the Customer has contributed to a loss without having caused it, Bingo's liability for that loss is reduced proportionally to the extent of that contribution.

(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) subject to clause 5(a)(vi), 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 greater of $20,000 and the sum of the amounts paid by the Customer to Bingo under the Terms in the 12 months preceding the loss, damage or claim arising, except that this limitation does not apply to liability resulting from fraud,

fraudulent misrepresentation or a criminal act by Bingo, or to liability which may not be limited at law;

(vi) where and to the extent that section 64A of the Australian Consumer Law permits Bingo to limit its liability in this way, 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.

(vii) Nothing in the Terms excludes, restricts or modifies any right or remedy the Customer has under the Australian Consumer Law or any other law that cannot lawfully be excluded, restricted or modified, and if the Customer is a consumer for the purposes of the Australian Consumer Law, the Customer has rights under the consumer guarantees that apply in addition to the Terms.

6 Cancellation and Termination

(a) The Terms apply to each order for the Services accepted by Bingo. In respect of each order, the Terms commence when Bingo accepts the order and continue until the Services under that order are complete, the Container has been removed from the Site and all Charges for that order have been paid. The Customer is not obliged to place any further order, and nothing in the Terms requires the Customer to acquire any minimum quantity or value of the Services or to acquire the Services exclusively from Bingo.

(b) 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.

(c) If any Charges are not paid by the due date, Bingo may, without terminating the Terms and without prejudice to any of its other rights, suspend the Services immediately and, if the outstanding amount is not paid within seven (7) days after Bingo gives the Customer written notice requiring payment, remove any Container from the Site. The Customer must make each Container available for collection and must allow Bingo and its Personnel to enter the Site at any reasonable time to remove it. The Customer must pay Bingo, in addition to the outstanding Charges, the reasonable costs of collecting and removing each Container (including transport, fuel and labour costs) and the reasonable costs of transporting and disposing of any Waste in the Container at the time of removal, together with any additional costs recoverable under clause 3(c)(vi) in respect of any Excluded Waste. Removal of a Container under this clause is not a termination of the Terms, does not affect any amount owing to Bingo, and does not relieve the Customer of any obligation under the Terms. In the event of termination of the Terms in accordance with clause 6(b), Bingo may retrieve its Equipment at any time from the Customer's Site. On termination or expiry of the Terms for any reason, or on completion of the Services, the Customer must make the Equipment available for collection and must allow Bingo and its Personnel to enter the Site at any reasonable time to retrieve it.

(d) The Customer may terminate the Terms:

(i) immediately by giving written notice to Bingo if Bingo 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 the Customer giving Bingo written notice of that breach; or

(ii) immediately an Insolvency Event has occurred in respect of Bingo

(e) If:

(i) the Customer attempts to terminate the Terms other than in accordance with the provisions of clause 6(d) of the Terms or otherwise repudiates the Terms; or

(ii) Bingo terminates the Terms for any of the reasons contemplated by clause 6(b) of the Terms,

Bingo will be entitled to early termination fees, in addition to any outstanding amounts, equal to the reasonable costs actually incurred by Bingo on account of (to the extent applicable):

(A) the cost of picking up the Containers, especially on short notice (e.g. transport, fuel, driver cost);

(B) cost of disposing of any Waste or Excluded Waste in the Containers at the time of pick up;

(C) the cost of cleaning, service and regular maintenance of Bin(s) resulting from the misuse of the Containers by the Customer for safe use by another customer;

(f) The Customer may cancel an order for the Services at any time before Bingo dispatches a vehicle to the Site, at no charge. If the Customer cancels an order after a vehicle has been dispatched, or is unable to accept delivery of a Container on the agreed date, Bingo may charge a call-out fee reflecting its reasonable transport and labour costs. Cancellation of an individual order is not a termination of the Terms.

(g) 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.

(h) Clauses 1 (Acceptance of Conditions and Quotations), 5 (Liability and Indemnity), 6 (Cancellation and Termination), 7 (Confidentiality and Privacy), 8 (Dispute Resolution), 9 (Miscellaneous) and 11 (Definitions) will survive termination or expiration of these Terms.

7 Confidentiality and Privacy

(a) 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/privacy.

8 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.

9 Personal Property Securities Act

(a) These Terms constitute a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth) (PPSA), and the Customer acknowledges that Bingo has, or may have, a security interest in the Bins and other Equipment in the Customer's possession and in the proceeds of any of them.

(b) The Customer must, at its own cost, promptly do anything Bingo reasonably requires to enable Bingo to register, maintain and enforce that security interest, must not do or omit to do anything that would result in it becoming unperfected or reduced in priority, and must give Bingo not less than 14 days' prior written notice of any change to the Customer's name, ACN, ABN or registered business name.

(c) To the extent section 115 of the PPSA permits, the parties agree that each provision of the PPSA listed in section 115(1) does not apply. The Customer waives its right under section 157(3) of the PPSA to receive a verification statement, and agrees for the purposes of section 275(6)(a) of the PPSA that it will not authorise the disclosure of information under section 275(1). This sub-clause does not apply to the extent the relevant collateral is used predominantly for personal, domestic or household purposes.

(d) The Customer must reimburse Bingo on demand for Bingo's reasonable costs of registering, maintaining, amending, releasing and enforcing the security interest. Those amounts are Charges.

(e) This clause 9 does not limit Bingo's rights as owner of the Equipment or its other rights under these Terms.

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) (**Governing Law and Jurisdiction)** The Terms are governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them, and must not object to the exercise of jurisdiction by those courts on any basis. Nothing in this clause limits the operation of any Law that applies to the Services by reason of the State or Territory in which the Services are performed, including any legislation relating to security of payment, waste and environmental regulation, and work health and safety.

(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**) Bingo may amend the Terms from time to time. The amended Terms published on the Website or notified through the contact centre may be changed by Bingo at any time, and the Terms applicable to an order placed through or by reference to the Website or contact centre are the Terms published at the time the Customer places that order. Where the Terms have been quoted or notified to the Customer, Bingo will give the Customer not less than thirty (30) days' written notice of any amendment (**Amendment Notice**), and the amended Terms apply only to orders placed by the Customer and accepted by Bingo after the end of that notice period. The Customer is not obliged to place any further order under the amended Terms. No amendment to the Terms affects any order already accepted by Bingo or any Container already delivered to the Site, and the Terms as they stood when that order was accepted continue to apply to that order. The amendments contemplated by this clause do 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.

11 Definitions

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

(i) **Bingo** means any of Bingo Bins Pty Ltd (ABN 20 162 984 027), Bingo Waste Services Pty Ltd (ABN 43 162 988 623), Dial a Dump Industries Pty Ltd (ABN 75 131 565 583), United Hire Group Pty Ltd (ABN 83 606 852 144) and/or any related entity or Related Body Corporate which provides the Services to the Customer (as the case may be);

(ii) **Bin or Bin(s)** means the waste bins Bingo provides to the Customer;

(iii) **Cage or Cage(s)** means the cages or other receptacles for the storage and collection of Tyres or Mattresses that Bingo provides to the Customer;

(iv) **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;

(v) **Charges** means the fees, charges and additional charges that are paid to or are due to Bingo in accordance with the Terms;

(vi) **Container or Container(s)** means a Bin or a Cage, as applicable;

(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) **Equipment** means any equipment supplied or utilised by Bingo in performing the services and includes Container(s) and vehicles;

(x) **Excluded Waste** means combustible, corrosive, contaminated, toxic, reactive, radioactive, volatile, highly flammable, explosive, hazardous or other waste not approved by Bingo for disposal in the Container(s), but does not include Tyres or Mattresses approved by Bingo for collection in a Cage. Waste of a type referred to in this definition remains Excluded Waste even where Bingo has agreed to collect or dispose of it, whether by special collection under clause 3(c)(v) or otherwise;

(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) **Mattress** means used, waste or end-of-life mattress approved by Bingo for collection under the Terms;

(xiv) **Personnel** means the employees, representatives, agents, officers, contractors and subcontractors of a party;

(xv) **Prescribed Rate** means 2% above the interest rate published by the Reserve Bank of Australia from time to time.

(xvi) **Related Body Corporate** has the meaning set out in the Corporations Act;

(xvii) **Services** means the collection, transport and disposal (including any shredding, processing or recycling) of the Waste placed in the Container(s), the On-Site Processing Services, and any other services described in Bingo's quotation or invoice;

(xviii) **Site** means the location specified by the Customer for the location of the Container(s), the location of the Stockpile and the Plant, and the performance of the Services;

(xix) **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;

(xx) **Tyre** means a used, waste or end-of-life tyre approved by Bingo for collection under the Terms, and includes tyre casings, shredded tyre and tyre-derived material**;**

(xxi) **Waste** means the waste types (excluding Excluded Waste) approved by Bingo for disposal by the Customer in the Container(s).

Schedule 1 – On-Site Processing Services

(a) This Schedule applies where the quotation states that Bingo will perform On-Site Processing Services. Where there is any inconsistency between this Schedule and any other provision of the Terms, this Schedule prevails in respect of the On-Site Processing Services.

(b) Capitalised terms used in this Schedule which are not defined in this Schedule have the meaning given to them in the Terms.

(c) In this Schedule:

(i) **"Approved Material"** means the material types specified in the quotation as approved by Bingo for processing as part of the On-Site Processing Services and, where the quotation does not specify those material types, Tyres or Mattresses only;

(ii) **"Contaminant"** means any material in or adjacent to the Stockpile which is not Approved Material, including asbestos or any asbestos-containing material, batteries, gas cylinders, fuel or oil containers, explosives or ordnance, aerosols, chemicals, liquids, sludges, medical or clinical waste, contaminated soil, steel or metal other than tyre bead wire, rock, concrete and any other material which is capable of causing damage to the Plant or injury or illness to any person

(iii) "**On-Site Processing Services"** means the shredding, sizing or other processing of a Stockpile at the Site by Bingo using the Plant and the Operator on a wet hire basis, as described in Bingo's quotation, and (where the quotation expressly so states) the collection and disposal of the Processed Material;

(iv) **"Operator"** means the person or persons supplied by Bingo to operate the Plant in performing the On-Site Processing Services;

(v) "**Overnight Storage Period"** has the meaning given in paragraph (n) of this Schedule;

(vi) **Plant** means the shredder, excavator, vehicles, screens, conveyors, ancillary equipment, tools and consumables brought onto the Site by Bingo for the purpose of performing the On-Site Processing Services, and Plant is Equipment for the purposes of the Terms;

(vii) **"Processed Material"** means the Stockpile after it has been processed by Bingo as part of the On-Site Processing Services;

(viii) **"Stockpile"** means the accumulation of Approved Material at the Site which is the subject of the On-Site Processing Services, as identified in the quotation.

(d) Bingo will perform the On-Site Processing Services during the period, and using the Plant, specified in the quotation. The On-Site Processing Services are supplied on a wet hire basis: Bingo will supply the Operator and Bingo retains sole direction and control of the operation of the Plant at all times. The Customer must not direct, instruct or interfere with the Operator in relation to the manner of operation of the Plant, and no direction given by the Customer relieves Bingo of responsibility for the manner in which the Plant is operated.

(e) Bingo may substitute equivalent Plant and a different Operator, and may vary the sequence and method of processing, in its discretion acting reasonably. Bingo will ensure that each Operator is competent, appropriately licensed or ticketed for the Plant they operate, and inducted to the Site.

(f) The Plant is not hired to the Customer. The Customer has no right to possess or operate the Plant, and nothing in the Terms constitutes a bailment or lease of the Plant to the Customer, except during any Overnight Storage Period to the extent provided in paragraph (n)(i) of this Schedule.

(g) (Site access and site condition) The Customer must, at its cost and before and throughout the performance of the On-Site Processing Services:

(i) provide unobstructed, sufficient and safe access to and from the Site and to the Stockpile for the Plant and for Bingo's Personnel, including hardstand, laydown and turning areas of sufficient dimension and load-bearing capacity for the Plant;

(ii) ensure the Site and the ground surfaces traversed or occupied by the Plant are stable, level, compacted and otherwise suitable for the mobilisation, positioning, operation and demobilisation of the Plant;

(iii) identify and notify Bingo of all underground and overhead services, structures and hazards on or adjacent to the Site;

(iv) obtain and maintain all permits, licences, approvals and consents required for the performance of the On-Site Processing Services at the Site, including any development, environmental, noise, dust or planning approval; and

(v) provide, or procure the provision of, a safe place of work, site inductions, traffic management and exclusion zones around the Plant, and ensure that no person other than Bingo's Personnel enters any exclusion zone while the Plant is operating.

(h) Bingo is responsible for the safe operation of the Plant and for the safety of its own Personnel in performing the On-Site Processing Services. The Customer remains responsible for the Site, for the condition and composition of the Stockpile, and for the acts and omissions of its own Personnel, contractors and visitors. To the extent that the Customer and Bingo each have duties in respect of the same matter under any work health and safety Law, the parties must consult, co-operate and co-ordinate as required by that Law.

(i) Bingo may suspend or cease the On-Site Processing Services, demobilise the Plant and leave the Site at any time if, in Bingo's opinion, safe access is not available or the Site or the Stockpile is unsafe or unsuitable, and the Customer must pay Bingo's standing time, remobilisation and demobilisation costs.

(j) (Stockpile contamination) The Customer represents and warrants that the Stockpile consists only of Approved Material and does not contain any Excluded Waste or Contaminant. The Customer must:

(i) inspect the Stockpile and disclose to Bingo in writing, before mobilisation, all information known to it or which it ought reasonably to know regarding the composition, origin and history of the Stockpile; and

(ii) provide any waste classification report, asbestos clearance or other test result requested by Bingo, in the form required by Bingo.

(k) If Bingo identifies or suspects any Contaminant or Excluded Waste in or adjacent to the Stockpile, Bingo may immediately stop work, isolate the material and demobilise, and is not obliged to resume the On-Site Processing Services until the Customer has, at its cost, removed and lawfully disposed of that material and demonstrated to Bingo's satisfaction that the balance of the Stockpile is free of Contaminant. The Customer must pay Bingo's standing time, cleaning, decontamination, repair, remobilisation and demobilisation costs, and any additional Charges, arising from any Contaminant or Excluded Waste in the Stockpile.

(l) The Customer indemnifies Bingo for all liabilities, claims, damages, actions, costs and expenses incurred by Bingo as a result of or arising out of the presence of any Contaminant or Excluded Waste in or adjacent to the Stockpile, including damage to or destruction of the Plant, personal injury to or illness of any person, clean-up, decontamination and disposal costs, statutory penalties and loss of use of the Plant, although that indemnity is reduced proportionally to the extent that an act or omission of Bingo caused or contributed to the liability, claim, damage, action, cost or expense.

(m) (Security of Plant on Site) Bingo will ordinarily demobilise and remove the Plant from the Site at the end of each day on which the On-Site Processing Services are performed. Risk in the Plant remains with Bingo at all times while the Plant is attended by the Operator or other Bingo Personnel.

(n) Where Bingo and the Customer agree that the Plant is to remain on the Site outside working hours (including over a weekend, public holiday or other break in the works), each such period from the time Bingo's Personnel leave the Site until the time Bingo's Personnel next return to the Site is an "**Overnight Storage Period**", and during each Overnight Storage Period:

(i) risk in the Plant passes to the Customer for the duration of that Overnight Storage Period, and the Customer holds the Plant as bailee;

(ii) the Customer must provide a secure, fenced and (where reasonably available) lit and monitored area for the Plant, and must take all reasonably necessary and proper measures to protect the Plant from theft, vandalism, arson, unauthorised use, damage and other risks;

(iii) the Customer must not, and must ensure that no other person does, move, operate, interfere with, refuel or attempt to repair the Plant; and

(iv) the Customer must notify Bingo immediately on becoming aware of any loss of, damage to, or unauthorised access to or use of the Plant.

(o) The Customer is liable for, and indemnifies Bingo against, all loss of or damage to the Plant occurring during an Overnight Storage Period (including theft, vandalism, arson, destruction and fire damage) and for Bingo's loss of use of the Plant during the resulting period of repair or replacement, except to the extent caused by an act or omission of Bingo or its Personnel or by a latent defect in the Plant.

(p) (Fire controls) The Customer acknowledges that the processing of tyres or mattresses and similar materials presents a fire risk. The Customer must, at its cost and for the duration of the On-Site Processing Services:

(i) provide and maintain on the Site an adequate and continuously available water supply of sufficient pressure, volume and proximity to the Stockpile and the Plant to suppress a fire, together with the hoses, fittings, pumps and standpipes required to use it;

(ii) provide and maintain such other fire detection, prevention and suppression measures as are required by Law, by the Customer's insurers or by any relevant fire authority, including firebreaks, stockpile separation distances and serviced fire extinguishers;

(iii) maintain and implement an emergency response and evacuation plan for the Site, brief Bingo's Personnel on it, and nominate a person responsible for emergency response who is contactable at all times; and

(iv) notify the relevant fire authority of the On-Site Processing Services where required by Law.

(q) Bingo may suspend or cease the On-Site Processing Services and demobilise the Plant if the fire controls required by this clause are not in place, are not maintained, or are in Bingo's opinion inadequate, and the Customer must pay Bingo's standing time, remobilisation and demobilisation costs. Bingo has no responsibility for fire detection, prevention or suppression at the Site.

(r) (Processed Material and disposal) Unless the quotation expressly states that Bingo will dispose of the Processed Material:

(i) Bingo will leave the Processed Material on the Site in a stockpile at a location reasonably nominated by the Customer;

(ii) title to and risk in the Processed Material remains with the Customer at all times; and

(iii) the Customer is solely responsible, at its cost, for the storage, handling, transport and lawful disposal of the Processed Material and for compliance with all Laws in relation to it.

(s) Where the quotation expressly states that Bingo will dispose of the Processed Material, Bingo will collect and dispose of the Processed Material for the additional Charges specified in the quotation, and:

(i) the provisions of clause 3 relating to the inspection, rejection and disposal of Waste apply to the Processed Material as if it were Waste;

(ii) title to the Processed Material vests in Bingo once it has been collected by Bingo, other than any Processed Material which constitutes Excluded Waste or contains a Contaminant and which has not been notified to and approved by Bingo in advance, title to and risk in which remains with the Customer at all times; and

(iii) the Charges for disposal are estimated on the tonnages, volumes and material composition notified by the Customer, and Bingo may adjust the Charges to reflect the actual tonnage, volume and composition of the Processed Material and the actual disposal outlet used.