

Terms and Conditions - Commercial Waste Services

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; 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 or charges for the disposal of Excluded Waste or rejected Waste in accordance with clause 3(b)(iv) and 3(b)(v) 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 are quoted on the basis of a regular scheduled run. If the Customer requires a pickup at a time that does not fit a run scheduled with Bingo under the Terms, additional charges may be charged to the Customer subject to Bingo providing prior notice to the Customer of such additional Charges.
- (e) The Charges for the Services include all taxes and levies other than:
 - (i) GST; and
 - (ii) 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 clauses 2(g) and 2(h), 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**).
 - (g) If Charges are increased under clause 2(f), 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.
 - (h) If a Charge Termination Notice is delivered Bingo in accordance with clause 2(g), 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).
- 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.
- 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 or for some other reason does not occur 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 Bins 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: if Bingo cannot access the Site safely; if Bingo does not provide Services to the area in which the Customer's Site is located; if there is insufficient space on Site for Bingo to perform the Services; if the Bin(s) appears overweight; if the Bin(s) appears damaged or broken; if the Bin(s) has been filled unevenly; if the Customer has not paid the Charges; if the Customer is in breach of the Terms; for any operational or safety reasons which affect the provision of the Services; or 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 any Waste is refused or rejected by Bingo, 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 may dispose of the Waste to another operator capable of accepting the Waste and the Customer must pay for any costs or expenses incurred by Bingo in relation to the disposal of the Customer's Waste;
- (vi) if the Customer needs Excluded Waste collected, the Customer must contact Bingo to request a special collection
- (c) Other than with respect to Excluded Waste, title in the Waste shall vest in Bingo once the Waste has been collected by Bingo. Title and risk in any 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 Bins 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 Bins and failing to maintain the Bins in a sanitary condition;
 - (vi) make the Bins and/or Waste available to Bingo at the time and location agreed with Bingo; and
 - (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.
- (b) The Customer acknowledges that:
- (i) the Bins remain the property of Bingo at all times and agrees that it will not sell, lend, lease, transfer, modify or otherwise deal with the Bins, or create or allow to be created, a security interest over the Bins, without the prior written consent of Bingo; and
 - (ii) Bingo may at any time in its discretion replace the Bins with equivalent sized Bins.
- (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 Bin(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 Bin(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 Bins if it is not satisfied that the Customer has permission to place that Bins at that site or location.

5 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, or theft or destruction, to Bingo's property, Equipment or Bin(s) caused 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.

6 Cancellation and Termination

- (a) 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.

- (b) In the event of termination of the Terms in accordance with clause 6(a), Bingo may retrieve its Equipment at any time from the Customer's Site.
- (c) 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(g) or 9(g) of the Terms; or
 - (iii) immediately an Insolvency Event has occurred in respect of Bingo.
- (d) If:
 - (i) the Customer attempts to terminate the Terms other than in accordance with the provisions of clause 6(c) of the Terms or otherwise repudiates the Terms; or
 - (ii) Bingo terminates the Terms for any of the reasons contemplated by clause 6 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) the cost of picking up the Bins, especially on short notice (e.g. transport, fuel, driver cost);
 - (B) the cost of cleaning, service and regular maintenance of Bin(s) for safe use by another customer;
 - (C) incremental administrative cost in the early closure of the account; and
 - (D) an amount equal to the Average Monthly Amount.
- (e) The early termination fees in clause 6(d) are agreed by both parties to be a genuine pre-estimate of Bingo's damages and are therefore not a penalty at law.
- (f) 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.
- (g) 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 10 (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 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 9(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.
- ## 10 Definitions
- (a) 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 6 (where paragraph (B) of the definition of "Total Amount" applies);

- (ii) **Bingo** means any of Bingo Commercial Pty Ltd (ABN 89 163 883 421), Bingo Waste Services Pty Ltd (ABN 43 162 988 623) and/or any related entity or Related Body Corporate which provides the Services to the Customer (as the case may be);
- (iii) **Bin or Bin(s)** means the waste bins 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) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (vii) **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;
- (viii) **Equipment** means any equipment supplied or utilised by Bingo in performing the services and includes Bin(s) and vehicles;
- (ix) **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 Bin(s) which may be communicated through the contact centre for phone orders, the website (<https://www.bingoindustries.com.au/>) for online orders and in quotations (if a quotation is provided);
- (x) **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);
- (xi) **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;
- (xii) **Personnel** means the employees, representatives, agents, officers, contractors and subcontractors of a party;
- (xiii) **Prescribed Rate** means 2% above the interest rate published by the Reserve Bank of Australia from time to time.
- (xiv) **Related Body Corporate** has the meaning set out in the Corporations Act;
- (xv) **Services** means the collection and disposal of the Waste placed in the Bin(s), and any other services described in Bingo's quotation or invoice;
- (xvi) **Site** means the location specified by the Customer for the location of the Bin(s) and the performance of the Services;
- (xvii) **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;
- (xviii) **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 6; or
 - (B) if a full 12 month period has not occurred at the date on which the Terms are terminated under clause 6, the period between the date of the commencement of the Services and the date of termination;
- (xix) **Waste** means the waste types (excluding Excluded Waste) approved by Bingo for disposal by the Customer in the Bin(s).