

Terms and Conditions – Supply of Eco Product

1 Supply of Eco Product by BINGO

- (a) BINGO agrees to supply Eco Product to the Customer in accordance with these Terms.
- (b) BINGO will use reasonable endeavours to:
 - (i) ensure that the requirements of the relevant Resource Recovery Order in respect of the supply of Eco Product have been met; and
 - (ii) supply the Eco Product in accordance with the Terms but accepts no liability where such supply is prevented, hindered or for some other reason does not occur by a cause that is beyond the reasonable control of BINGO.
- (c) Where required by a Resource Recovery Order, BINGO will provide:
 - (i) a Statement of Compliance to the Customer on or before each transaction; and
 - (ii) the results of characterisation and sampling required by the relevant Resource Recovery Order to the Customer:
 - (A) within the time specified under the Resource Recovery Order; or
 - (B) within 7 days of a request from the Customer.

2 Acknowledgement of Risk and Customer Obligations

- (a) The Customer acknowledges that:
 - (i) Resource Recovery Waste is supplied to the Customer pursuant to Resource Recovery Orders. The requirements of the Resource Recovery Orders are designed to minimise the risk of potential harm to the environment, human health or agriculture, but BINGO does not guarantee that Eco Product is free from any risk of harm;
 - (ii) it is voluntarily purchasing Eco Product at its own risk (which is an environmentally beneficial and cost effective alternative to natural products) and in doing so, the Customer assumes any and all dangers, risks and hazards associated with the Eco Product and will, except to the extent expressly stated in these Terms or as required by Law, release BINGO from any and all liability, costs (including, without limitation, legal costs), claims, damages, demands, and actions arising from or in connection with the Customer's purchase of the ECO Product;
 - (iii) The Customer is responsible for satisfying itself that the Eco Product is suitable for its intended use;
 - (iv) The application of Eco Product to land must comply with the requirements of the relevant Resource Recovery Exemption, and additional permits and approvals may be required, including permission from the owner and occupier of the place where the Eco Product will be re-used;
 - (v) Processed Waste is produced using recovered waste materials and will generally be similar to products made from original materials, however, BINGO makes no warranty as to how the Customer may use Processed Waste;
 - (vi) VENM is not supplied to the Customer under a Resource Recovery Order, but its use may be subject to other requirements including development consent.
- (b) Other than expressly provided for in these Terms, the Customer acknowledges that it has not relied upon any statement or representation by BINGO in respect of the Eco Product or the use of the Eco Product by the Customer irrespective of whether or not the Customer's purpose for the use of the Eco Product is known to BINGO. The Customer acknowledges that under no circumstances is BINGO responsible or liable for any failure or unsuitability of the Eco Product to perform the purpose or use required by the Customer and the Customer is responsible for satisfying itself that the Eco Product is suitable for the Customer's intended use.
- (c) It is the responsibility of the Customer to inform BINGO of any Additional Specifications and undertake, at the Customer's cost, any sampling to confirm compliance with Additional Specifications.

Supply of Eco Product with Additional Specifications will be reflected in the Price and is subject to:

- (i) BINGO's express agreement to the Additional Specifications at the time of BINGO's acceptance of the Customer's order; and
- (ii) the Customer undertaking sampling and confirming to BINGO in writing that the sampling has confirmed compliance with the Additional Specification prior to Delivery;
- (iii) Subject to each of the requirements in clause 2(b) being satisfied, the liability of BINGO (if any) in relation to Eco Product which does not meet Additional Specifications will be limited, at BINGO's option, to either:
 - (A) BINGO re-supplying the Amount of Eco Product; or
 - (B) BINGO refunding the Customer the Invoiced Amount;
- (d) Any sample of Eco Product indicates only the general nature of the Eco Product and the Customer acknowledges that the ECO Product may vary as to the uniformity of grading of material, size, shape moisture content, degradation factor, hardness, texture and other characteristics and, subject to clause 2(e), the Company expressly disclaims any liability with respect to such variations. To the extent permissible by law, BINGO provides no warranty or guarantee that the Eco Product supplied will correspond with any sample or any previous or future Eco Product supplied.
- (e) It is the responsibility of the Customer to verify for itself at the time of supply that the quantity, quality and type of Eco Product is supplied in accordance with the Customer's order. For any claim in relation to the quantity, quality and type of Eco Product supplied the Customer must:
 - (i) notify BINGO at the time of supply of the Eco Product; and
 - (ii) provide full particulars and substantiation of the claim in writing to BINGO within 14 days thereafter;
- (f) Any claim in relation to 2(e) above which the Customer does not notify or substantiate within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
- (g) Title and risk in the Eco Product shall pass to the Customer on Delivery.
- (h) In the event that a Recall Notice is issued to the Customer, the Customer acknowledges that, to the extent permitted by law, any costs incurred by the Customer complying with the requirements of Notice will be borne by the Customer and liability of BINGO (if any) in relation to a Recall Notice be limited, at the Customer's option, to either:
 - (i) BINGO re-supplying the Amount of Eco Product; or
 - (ii) BINGO refunding the Customer the Invoiced Amount.
- (i) After Delivery and to the extent permitted by Law, the Customer is responsible for any disposal costs associated with:
 - (i) compliance with a Recall Notice issued to any Supply Chain Participant; or
 - (ii) a voluntary recall initiated by the Customer or the End User under s94O of the POEO Act.
- (j) The Customer agrees to:
 - (i) abide by all Applicable Laws in relation to the transport, storage, handling and use of the Eco Product, including the POEO Act, the Waste Regulation and the relevant Resource Recovery Exemption;
 - (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 supply of Eco Product from the Premises (including in relation to the loading, transporting and delivery of Eco Product);
 - (iii) keep a written record of the quantity of Eco Product supplied by BINGO following for a period of six (6) years;
 - (iv) make any records required to be kept under the relevant Resource Recovery Exemption to authorised officers of the EPA on request;

- (v) ensure that any application of Eco Product to land occurs within a reasonable period of time after its receipt.

3 Acceptance of Conditions and Quotations

- (a) All quotations, invoices, weighbridge dockets or credit applications issued, and any order for Eco Product 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 or purchase order, 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, weighbridge dockets, invoices or credit applications issued, or any order for Eco Product which is accepted, by BINGO; or
 - (ii) any documentation or terms and conditions issued by the Customer which purport to apply to the Eco Product,
 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 Eco Product placed by the Customer.

4 Price and Payment

- (a) Subject to these Terms, the Price and Amount of Eco Product to be supplied will be as agreed between BINGO and the Customer at the time of BINGO's acceptance of the Customer's order.
- (b) The amount of Eco Product to be supplied is subject to a minimum charge, which will be advised to the Customer prior to acceptance of the order;
- (c) The Price for the Eco Product 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.
- (d) The Amount of Eco Product to be supplied is an estimate only and the Customer must pay BINGO the Invoiced Amount.
- (e) The Invoiced Amount will be determined by the Net Weight of each delivery truck as it leaves the Premises, as recorded on the weighbridge docket provided to the Customer.
- (f) The Customer must pay BINGO the Invoiced Amount (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.
- (g) The Invoiced Amount include all taxes and levies other than GST. The Invoiced Amount 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.

- (h) The Customer acknowledges that:
 - (i) If the Customer fails to pay the Invoiced Amount on the due date, then BINGO will have the right to charge interest which shall accrue daily at the Prescribed Rate; and
 - (ii) BINGO may refuse any further order requests by the Customer for Eco Product if payment is not received or the Customer is otherwise in arrears of its payment obligations under the Terms.

5 Liability and Indemnity

To the maximum extent permitted by law:

- (a) the Customer will indemnify BINGO for:
 - (i) 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;
 - (ii) 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;
- (b) 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;
- (c) 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;
- (d) 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**).
- (e) 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:
 - (i) BINGO re-supplying the Amount of Eco Product; or
 - (ii) BINGO refunding the Customer the Invoiced Amount.
- (f) Where the Customer makes a claim under or in connection with these Terms, subject to clause 5(g), 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 Invoiced Amount.
- (g) The limitation in clause 5(f) does not apply to:
 - (i) a claim resulting from fraudulent or criminal acts;
 - (ii) a claim in circumstances covered by clause 5(e), or where it would otherwise not be permissible at law to limit liability; or
 - (iii) a claim in circumstances where clause 5(h) applies.
- (h) In respect of any Loss suffered or incurred by the Customer under or in connection with the Terms which is or arises from property damage or personal injury caused or contributed to by an act or omission of BINGO for which it would have liability at law, BINGO's

aggregate liability shall not exceed per event or series of related events the lesser of \$5 million or the amount BINGO recovers from its insurances which it is required to maintain under this agreement.

6 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) 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; or
 - (ii) immediately if an Insolvency Event has occurred in respect of BINGO.
- (c) On termination of these Terms by either party:
- (i) all invoices 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.
- (d) Clauses 2 (Acknowledgement of Risk and Customer Obligations), 3 (Acceptance of Conditions and Quotations), 5 (Liability and Indemnity), 6 (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.
 - (iii) 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 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) (**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.
- (c) (**Laws**) The Terms are governed the laws of the State of New South Wales, and the parties submit to the jurisdiction of the courts of that State.
- (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 Eco Product 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) (**Waiver**) The failure of a party to require performance of any obligation under the Terms is not a waiver of that party's rights.
- (g) (**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

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

- (a) **Additional Specifications** means any additional sampling, testing, specifications or requirements requested by a Customer in relation to Eco Product beyond the requirements of the relevant Resource Recovery Order.
- (b) **Amount** means the quantity of Eco Product agreed to be sold or supplied by BINGO to the Customer under any agreement or arrangement between BINGO and the Customer.
- (c) **Applicable Law** means:
- (i) Acts, ordinances, regulations, by-laws, orders, awards, proclamations and statutory instruments of the Commonwealth and the State or Territory applicable to the supply of Eco Product;
 - (ii) any written instrument which constitutes an approval or requirement of an organisation which has jurisdiction in connection with the supply of Eco Product;
 - (iii) the codes of practice of the State or Territory and other appropriate codes applicable to Eco Product; and
 - (iv) 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.

- (d) **BINGO** means Bingo Recycling Pty Ltd (ABN 82 163 894 362 and/or any Related Body Corporate or related entity which supplies Eco Product to the Customer.
- (e) **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.

- (f) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (g) **Customer** means the party named on the quotation, weighbridge docket, invoice or credit application issued by BINGO or, if no party is named, the party to whom the Eco Product is supplied to.
- (h) **Delivery** means:
- (i) at the time the Eco Product is collected by the Customer or its Personnel from the Premises; or
 - (ii) if BINGO has agreed to deliver the Eco Product, at the time the Eco Product is delivered to the address nominated by the Customer.
- (i) **Eco Product** means any recovered waste products supplied by BINGO, including:
- (i) the following Processed Waste:
 - (A) Aggregate (10mm, 20mm, 40-70mm);
 - (B) Bedding Sand;
 - (C) DBG20;
 - (D) DGS20;
 - (E) Engineered Wood Product;
 - (F) Stabilised Bedding Sand;
 - (G) Stabilised DGS20;
 - (H) Refuse Derived Fuels (RDF);
 - (I) Solid Recovered Fuels (SRF);
 - (J) Urban Wood Residues;
 - (ii) the following unprocessed waste:
 - (A) Green Waste;
 - (B) Plasterboard;
 - (C) VENM;
 - (iii) Other waste products, as agreed with the Customer.
- (j) **End User** means any person to whom the Customer provides the Eco Product, including the owner or occupier of the land where any Eco Product is applied or intended to be applied.
- (k) **Gross Weight** means the gross weight of the truck or other vehicle after collecting the Eco Product from the Premises;
- (l) **Insolvency Event** means, in relation to a party, any one or more of the following events or circumstances:
- (i) being in liquidation or provisional liquidation or under administration;
 - (ii) having a controller, receiver, receiver and manager, administrator, liquidator or analogous person appointed to it or any of its property;
 - (iii) being taken under section 459F (1) of the Corporations Act to have failed to comply with a statutory demand;
 - (iv) being unable to pay its debts or being otherwise insolvent;
 - (v) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
 - (vi) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
 - (vii) 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);
- (m) **Invoiced Amount** means the actual cost of the Eco Product that is paid to, or is due to BINGO, in accordance with the Terms, calculated as:

Net Weight x Price.

- (n) **Net Weight** means the weight of Eco Product (in tonnes) in the truck or other vehicle supplied to the Customer 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.
- (o) **Personnel** means the employees, representatives, agents, officers, contractors and subcontractors of a party.
- (p) **POEO Act** means the *Protection of the Environment Operations Act 1997* (NSW).
- (q) **Premises** means the following BINGO Resource Recovery Facilities:
 - (i) Eastern Creek Recycling and Ecology Park;
 - (ii) Kembla Grange Recycling Centre; and
 - (iii) Patons Lane Resource Recovery Centre.
- (r) **Prescribed Rate** means 2% above the interest rate published by the Reserve Bank of Australia from time to time.
- (s) **Price** means the price per tonne of a particular supply of Eco Product.
- (t) **Processed Waste** means waste processed at the Premises and includes Resource Recovery Waste.
- (u) **Recall Notice** means a recall notice issued by the EPA under s94B of the POEO Act.
- (v) **Related Body Corporate** has the meaning set out in the Corporations Act.
- (w) **Resource Recovery Exemption** means a current exemption made pursuant to section 286 of the POEO Act in relation to Resource Recovery Waste which is:
 - (i) applied, or intended to be applied to land;
 - (ii) used, or intended to be used:
 - (A) as a fuel; or
 - (B) in connection with a process of thermal treatment,
 copies of which are available on the EPA website at epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework/current-orders-and-exemption
- (x) **Resource Recovery Order** means a current order made pursuant to section 286A of the POEO Act in relation to the supply of Resource Recovery Waste, copies of which are available on the EPA website at epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework/current-orders-and-exemption
- (y) **Resource Recovery Waste** means waste which is a waste to which a Resource Recovery Order and Exemption applies.
- (z) **Statement of Compliance** means a written statement of compliance certifying that the requirements set out in a Resource Recovery Order have been met.
- (aa) **Supply Chain Participant** includes BINGO, the Customer and the End User.
- (bb) **Tare Weight** means the tare weight of the truck or other vehicle, being its weight before collecting the Eco Product from the Premises;
- (cc) **Terms** means these terms and conditions and the provisions in the quotation, invoice, weighbridge docket and/or any credit application provided by BINGO to the Customer, which will be read and construed together;
- (dd) **Waste Regulation** means the Protection of the Environment Operations (Waste) Regulation 2014.