

1 DEFINITIONS

In this Agreement:

"Agreement" means these Terms & Conditions of Supply and the attached Schedule:

- (a) as varied by King Bins from time to time; and
- (b) if applicable, renewed pursuant to clause 2.3.

"Clinical Waste" includes sharps, potentially infectious waste, pathological waste, pharmaceuticals, records and other types of waste generated from medical facilities.

"Commencement" means the Scheduled commencement date of the Services.

"Contract Sum" means the total of all amounts payable under this Agreement, which total has been:

- (a) calculated by multiplying the sum of each of the Services supplied by the relevant Fees; and
- (b) adjusted by any additions or deductions made pursuant to this Agreement.

"Credit Reporting Body or CRB" means Dun & Bradstreet (Australia) Pty Ltd (ACN 006 399 677)

"Customer" means a person, firm or corporation (jointly and severally if more than one), obtaining the Services, including that named as such in the Schedule.

"Equipment" means containers, units and other equipment placed by King Bins on the Customer's premises or other premises directed by the Customer.

"Essential Terms" means all or any of the provisions of clauses 4.1, 4.3, 4.4, 7.5, 8.2, 8.4, 8.5, 9.1, 10.5, 13.2, 13.4, 13.6, 13.10, 13.13 and 13.14.

"Expiry" means:

- (a) the Scheduled end date of the Services; or
- (b) if this Agreement is renewed pursuant to clause 2.3, the end of the Further Term.

"Fee" means any Scheduled amount, rate, price, charge and/or fee for the provision of the Services, as varied in accordance with this Agreement. Fees are exclusive of GST (unless otherwise stated). For any Services provided On Call, additional charges may apply.

"GST" has the meaning in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Insolvent" means where the Customer is bankrupt, insolvent or unable to pay its debts or becomes involved in any action or process (including a voluntary process) normally associated with insolvency, including, without limitation, receivership, liquidation or voluntary administration, or if it ceases or threatens to cease carrying on all or part of its business or paying its debts.

"Interest Rate" means a rate which is 2% greater than the average cash rate published on the relevant date.

"King Bins" means the Scheduled King Bins entity, its successors and assigns.

"Notification Period" means the period of not more than 120 days and not less than 60 days before Expiry.

"On Call" means Services provided irregularly as requested from time to time by the Customer.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Premises" means the Scheduled service address/es as varied from time to time.

"Schedule" means the 'Service Agreement' which is attached to these Terms & Conditions of Supply;

"Scheduled" means as specified in the Schedule.

"Services" means King Bin's provision of Equipment and collection and disposal of Waste under this Agreement as specified in the Schedule or as otherwise agreed between the parties.

"Special Waste" means any, radioactive, volatile, flammable, explosive, toxic, prescribed, hazardous or dangerous goods or substances including asbestos, or any other goods or substances excluded from Waste by King Bin's written notice to the Customer.

"Waste" means all waste and recyclables (including Clinical Waste if applicable) generated by or in the possession of the Customer at the Premises, excluding Special Waste.

2 INITIAL TERM AND AUTOMATIC RENEWAL

2.1 Unless terminated earlier in accordance with clause 5, the initial term of this Agreement is the period from Commencement until the Scheduled end date of the Services ("**Initial Term**").

2.2 If one party notifies the other party in writing during the Notification Period that it does not wish to renew this Agreement, then this Agreement will end on the Expiry.

2.3 If notice is not given pursuant to clause 2.2, this Agreement will automatically renew on the same terms (including this automatic renewal clause) for a period of the same duration as the Initial Term ("**Further Term**"). The Initial Term and any Further Terms shall together form the term of this Agreement ("**Term**").

3 SERVICES

3.1 King Bins will provide Services in accordance with this Agreement and the Customer agrees to obtain all Services exclusively from King Bins.

3.2 Time will not be of the essence.

4 PAYMENT

4.1 The Customer must pay King Bins the Contract Sum in consideration for the provision of the Services.

4.2 At least monthly, King Bins will provide the Customer with a tax invoice for that portion of the Contract Sum referable to those Services supplied by King Bins prior to the date of the invoice or otherwise owing under this Agreement, plus GST (together '**the Invoiced Amount**').

4.3 The Customer must pay King Bins the Invoiced Amount in full within 7 days from the date of the relevant invoice ('the Due Date'). King Bins may, acting reasonably, increase the Fees and/or the Contract Sum:

- (a) immediately on written notice to the Customer if there is a variation in the:
 - (i) nature, quantity or weight of the Waste and/or the Scheduled maximum density of the Waste is exceeded;
 - (ii) quantity, timing or frequency of the Services; and/or
 - (iii) Premises or access to the Premises; and

(b) on 30 days' written notice to the Customer to reflect:

- (i) increased operation or administration costs for King Bins;
- (ii) increased costs to King Bins for a reason beyond King Bin's control, such as, but not limited to, increases in disposal fees, cost of fuel or consumables, levies, taxes or other charges imposed by a relevant authority or the introduction of, or change in, any law, by-law or regulation at any level of government; and/or
- (iii) a change in the Consumer Price Index (but not more than once in a year).

4.4 If the Customer does not pay the Invoiced Amount by the Due Date, then in addition and without prejudice to any rights or remedies available to King Bins:

- (a) the Customer will be liable to pay default interest on the Invoiced Amount for the period from the Due Date to the date of payment calculated at the Interest Rate;
- (b) the clause 4.4(a) interest together with the Invoiced Amount will be immediately due and payable;
- (c) King Bins may require any future amounts invoiced to or owing by the Customer to be paid by cash in advance of King Bin's performance of the Services;
- (d) King Bins reserves the right to suspend any Services under this Agreement; and
- (e) the Customer will be liable for all costs reasonably incurred by King Bins in connection with any debt recovery, legal proceedings and/or other action taken by King Bins to enforce payment.

5 TERMINATION AND SUSPENSION

5.1 King Bins may immediately:

- (a) terminate this Agreement if the Customer is Insolvent: or
- (b) terminate this Agreement, or terminate or suspend any or all Services if the Customer breaches any Essential Term or notifies under clause 2.2 outside the Notification Period and that breach is not remedied or that notice is not withdrawn within 7 days of the date of the Customer receiving written notice from King Bins identifying and requiring remedy of that breach or withdrawal of that notice.

5.2 On termination under clause 5.1 King Bins may, in addition and without prejudice to any other rights or remedies available to it:

- (a) recover from the Customer:
 - (i) all amounts owing to King Bins and not paid by the Customer up to the date of termination;
 - (ii) reasonable legal costs incurred by King Bins on an indemnity basis;
 - (iii) liquidated damages under clause 6; and
 - (iv) default interest calculated at the Interest Rate on the total of the clause 5.2(a)(i), (ii) and (iii) amounts from the date of termination until the date of payment by the Customer of the total of all amounts recoverable under clause 5.2.; and
- (b) collect the Equipment.

6 LIQUIDATED DAMAGES

6.1 The liquidated damages recoverable by King Bins if this Agreement is terminated pursuant to clause 5.1 are:

- (a) an amount equal to 30% of total Fees that would have been payable by the Customer under the Agreement for the period from the date of termination until the date that the Agreement would have expired but for the termination; or
- (b) where King Bins agrees to provide Services On Call, an amount equal to 30% of the average monthly amount invoiced to the Customer by King Bins during the 12 month period prior to the date of termination (or such shorter period prior to the date of termination as the Agreement may have been in place) for the period from date of termination until the Expiry.

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6.2 The Customer acknowledges that amounts calculated under clause 6.1 are reasonable and represent a genuine pre-estimate of King Bin's loss resulting from clause 5.1 termination.

6.3 If clause 6.1 is invalid or unenforceable in any jurisdiction, King Bins reserves its rights in full to claim general damages from the Customer.

6.4 In the event of a partial termination of the Services or suspension of some or all of the Services by King Bins under clause 5.1, the Customer will indemnify King Bins against any loss or damage incurred by King Bins arising out of or in connection with such partial termination or suspension of the Services.

7 WASTE MATERIAL AND TITLE

7.1 King Bins may agree to provide Services for Special Waste if the Customer fully and completely discloses the type and amount of Special Waste. If King Bins does so agree, the obligations of the Customer under this Agreement in respect of Waste also apply to Special Waste.

7.2 Title to all Waste vests in King Bins on deposit in the Equipment.

7.3 Title to all Special Waste, and liability for risk in all Special Waste, remain with the Customer unless otherwise agreed in writing by an authorised representative of King Bins.

7.4 King Bins will dispose of Waste and, if applicable, Special Waste, lawfully at licensed facilities.

7.5 The Customer must accept return, at the Customer's expense, of any Special Waste.

8 EQUIPMENT

8.1 The Equipment remains the property of King Bins at all times.

8.2 From the time of delivery of the Equipment to the Premises until the Equipment is collected by King Bins, the Customer must, at its expense:

- (a) maintain the Equipment in a clean and sanitary condition;
- (b) comply with any laws governing the storage of waste;
- (c) instruct its personnel in the safe and proper use of the Equipment;
- (d) provide safe, suitable storage for the Equipment;
- (e) use, store and operate the Equipment at the Premises in accordance with any instructions given by King Bins and any applicable laws, codes of practice and standards;
- (f) notify King Bins if the Equipment is damaged, is in a dangerous condition or requires repair or replacement; and
- (g) supply any electricity needed to use the Equipment.

8.3 The Customer is responsible for any damage, theft, loss or destruction of the Equipment while on the Premises or in its possession or control, excepting normal wear and tear.

8.4 The Customer must not:

- (a) remove the Equipment from the premises to which it was delivered without the prior consent of King Bins;
- (b) use the Equipment for purposes other than depositing and storing Waste for collection and disposal by King Bins;
- (c) compact Waste placed in the Equipment unless the relevant item of Equipment is a compaction unit or unless otherwise agreed by King Bins in writing. Clinical Waste must never be compacted under any circumstance;
- (d) deposit any waste in the Equipment other than the Waste specified in this Agreement;
- (e) in any way damage or deface the Equipment or remove, obscure, deface nor cover up any labels or identifying marks on the Equipment;
- (f) overfill the Equipment with Waste or place Waste beside or on top of the Equipment; or
- (g) use the Equipment for any purpose other than in accordance with this Agreement.

8.5 The Customer must provide King Bins access to the Premises (including any locked areas if necessary) in order to enable King Bins to access the Equipment and provide the Services. If the Equipment or the Premises are inaccessible, the Customer must pay the Fees plus any additional costs incurred by King Bins in performing, or attempting to perform, the Services.

8.6 If any of the Equipment requires replacement, repair or servicing as a result of the Customer's breach of clauses 8.2 or 8.4, the Customer must, in addition to King Bin's other rights and remedies under this Agreement, pay to King Bins (at King Bin's option) the cost of replacing, servicing, repairing or restoring the Equipment to its original condition.

9 INDEMNITY

9.1 The Customer indemnifies King Bins (except to the extent loss or damage is caused by King Bin's negligence or misconduct) against any loss or damage arising under or in connection with:

(a) breach by the Customer of:

(i) any warranty or other term of this Agreement;

(ii) any duty of care owed to King Bins whilst on the Premises; and/or

(iii) any law or regulation;

(b) injury or death to persons, loss or damage to property or the environment caused by or in connection with use, storage or operation of the Equipment by the Customer; and

(c) damage to or loss of any Equipment while in the possession or control of the Customer or on the Premises.

10 WARRANTIES AND LIABILITY

10.1 Except as expressly stated in this Agreement, any term, condition or warranty express or implied by statute or otherwise in relation to the Services and/or this Agreement is excluded to the full extent permitted by law.

10.2 Nothing in this Agreement excludes, restricts or modifies the application of the *Competition and Consumer Act 2010* (Cth), as amended, consolidated, supplemented or replaced.

10.3 To the full extent permitted by law, King Bin's liability arising under or in connection with this Agreement is limited at King Bin's option to the re-supply of Services or payment of the cost