

HANDYBIN WASTE SERVICES' TERMS AND CONDITIONS OF TRADE

August 2006

1. INTRODUCTION

1.1 Application of these Terms and Conditions

The Hirer agrees that prior to placing an order with the Supplier, the Hirer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this contract, "Supplier" is ROBERT M GROSS A.B.N. 35 560 202 284 t/a HANDYBIN WASTE SERVICES and the "Hirer" is the applicant named on the account with the Supplier or where no account exists then on the Agreement provided by the Supplier to the Hirer. In these Conditions "Agreement" means Work Authorisation Agreement and "bins" means bin/s and services provided by the Supplier for waste removal.

2. RENTAL AGREEMENT

2.1 Supplier Work Authorisation Agreement - The Supplier shall give the Hirer an Agreement specifying the work required to be done in order to fulfill the Hirer's instructions.

2.2 Acceptance by the Hirer - Where the Supplier has given the Hirer an Agreement:

(a) The Supplier need not commence work until the Agreement has been accepted by the Hirer;

(b) Acceptance by the Hirer of the Agreement will constitute acceptance by the Hirer of these Terms and Conditions.

In acceptance of the Agreement, the Hirer warrants that it has not relied on any representation by the Supplier and its employees and agents other than as supplied in writing in the Agreement.

2.3 Supplier May Revise Agreement - The Supplier may amend the Agreement before the Order has been completed to take into account any rise or fall in the cost of performing the Order and the Supplier shall notify the Hirer of such amendment as soon as practicable thereafter. Upon the Supplier giving the Hirer notification of such amendment the amended Agreement shall be deemed to be the Agreement for the purposes of the Terms and Conditions.

2.4 Verbal Confirmation - In the absence of a written Agreement and for practical purposes it is agreed that verbal confirmation shall also be binding.

3. DELIVERY

3.1 Bins - Delivery of the bins shall be made to the Hirer's nominated address. The Hirer shall make all arrangements necessary to take delivery of the bins whenever they are tendered for delivery. Delivery of bins to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purpose of this agreement. The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated. The Supplier shall not be liable for any loss or damage whatever due to the failure by the Supplier to deliver the bins (or any part of them) promptly or at all.

4. PAYMENT

4.1 Time for Payment - The Hirer will receive the Supplier's invoice from delivery date of the bins and must pay the Supplier the total amount set out in the invoice at the time the Supplier has specified in the Agreement.

4.2 Interest - The Supplier may charge interest at 2.5% per calendar month on amounts not paid within the time specified in the Agreement.

4.3 Credit Card Payment - Credit card payments may incur a 3% surcharge.

4.4 Dishonoured Cheques - Dishonoured cheques will attract an administration fee including, but not limited to charges levied by banks and other financial institutions.

4.5 Damages - The Hirer must pay to the Supplier any costs, expenses or losses incurred by the Supplier as a result of the Hirer's failure to pay to the Supplier all sums outstanding as owed by the Hirer to the Supplier including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a Solicitor and own client basis.

4.6 In the event of non payment, bankruptcy or insolvency all waste is deemed to belong to the Hirer until payment is made and the Supplier reserves the right to unload their bins at the Hirer's site prior to removal and remove their bins from the Hirer's site.

5. DISPUTES

5.1 Queries/disputes relating to invoices and/or statements received by the Account Holder should be reported to the Supplier's office within 7 (seven) days of receipt of said invoice and/or statement.

5.2 The Hirer shall contact the Supplier, within 24 (twenty four) hours of delivery to site, should the bins not match the specifications confirmed on the order.

6. SUBCONTRACTORS DISPUTE RESOLUTION

Without prejudice to either party's rights under the Building and Construction Industry Payments Act 2005 and the Subcontractors' Charges Act 1974, either party may refer any dispute under, or arising out of, this contract to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Construction Industry Dispute Resolution Scheme. Each case will first be referred to a Conciliator appointed by the Institute unless each party wishes to proceed directly to arbitration. If the conciliation is not satisfactorily concluded within six weeks or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

7. RETENTION OF TITLE

7.1 The Suppliers' bins remain the property of the Supplier at all times.

7.2 The Hirer shall indemnify the Supplier from any loss or damage to the Suppliers' bins while in the Hirer's care.

7.3 The Hirer shall not remove, deface or cover up identifying marks, nor shall the Hirer cause to remove the bins from their initial location without prior approval from the Supplier.

8. LIABILITY

8.1 Indirect Losses - Notwithstanding any other provision of these Terms and Conditions, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Hirer for:

(a) any increased costs or expenses;

(b) any loss of profit, revenue, business, contracts or anticipated savings;

(c) any loss or expense resulting from a claim by a third party; or

(d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in completing the Order or to deliver the bins.

8.2 Exclusion of Consequential Liability - The Supplier shall not be responsible or liable for damage, personal injury or loss of any kind whatsoever, to any property or person howsoever caused arising from the delivery, pickup or use of the bins at the Hirer's site, unless such loss or damage was caused by the negligence of the Supplier, its agents, sub-suppliers or employees.

9. PRIVACY

9.1 The Hirer hereby authorises the Supplier to collect, retain, record, use and disclose consumer and/or commercial information about the Hirer's credit worthiness, credit standing, credit history or credit capacity, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Supplier, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.

9.2 The Hirer also authorises the Supplier to make enquiries with respect to the Hirer's consumer and commercial credit worthiness and to exchange information with other Credit Providers in respect to previous consumer and/or commercial defaults of the Hirer.

10. ADDITIONAL CHARGES

10.1 Over filled bins may require sorting and/or unloading to ensure they comply with transport requirements. Any action will be at the sole discretion of the Supplier's driver and may incur a fee.

10.2 The Hirer shall indemnify the Supplier from costs should bins be ordered and delivered and subsequently not be required by the Hirer or the specific drop off location offered by the Hirer in the opinion of the Supplier's driver be deemed to be unsafe or inaccessible. The Supplier may claim the portion of the service already provided to the Hirer.

10.3 The Supplier reserves the right to charge a cleaning fee for excessive amounts of paint, plaster, granosite and other such products disfiguring the exterior of the bins.

10.4 In the event of a non-approved use and/or relocation of bins by the Hirer, the Supplier reserves the right at all times to access the site to remove or recover the bins and charge the Hirer for:

(a) any damage to the Supplier's bins;

(b) any expense incurred in recovering and/or removing the bins.

10.5 Traveling time may be charged when the time and distance exceeds those normally allowed for in the Agreement. The Supplier will notify the Hirer when confirming the hire.

10.6 An additional charge may be incurred when clear and/or safe access is not available to the Supplier's driver when delivering or removing bins, resulting in the Supplier's driver needing to wait until the access problem is rectified.

10.7 The Hirer shall indemnify the Supplier from any damage to property caused in the execution of the delivery or removal of bins when clear access has not been made available by the Hirer.

10.8 A longer rental period may be incurred if the location selected by the Hirer subsequently proves to be inaccessible due to weather conditions.

10.9 The Hirer shall indemnify the Supplier from damage caused to truck tyres should the Hirer or their representative instruct the Supplier's driver to drive over objects that may reasonably be considered to have contributed to such damage.

11. GENERAL MATTERS

11.1 If the Supplier has to obtain bins and/or services from a third party in order to carry out the Hirer's instructions then the Hirer agrees to pay for the bins and/or services.

11.2 (a) No regulated waste types including but not limited to tyres, asbestos or liquids are to be placed in the bins.

11.2 (b) Removal of regulated waste types as specified in 11.2 or any other toxic materials is **not** a service provided by the Supplier. The Hirer shall indemnify the Supplier from any costs, expenses or losses incurred should the Hirer not comply with clause 11.2 (a)

11.3 Wet concrete cannot be placed in bins unless a suitable liner is first put in place.

11.4 Burning rubbish in bins is **not** permitted. The Hirer shall indemnify the Supplier from any costs involved in the cleaning and repairing of bins affected in this way.

11.5 When placement of bins on a footpath is required a permit may be issued by the Supplier. This would be subject to compliance with B.C.C. restrictions or those of any other Shire.

11.6 If the Hirer needs to place solid materials including but not limited to soils, clay, rocks, stones, concrete and masonry in 7, 8 and 9 cubic metre bins, this should not exceed the level indicated on the bins. If there is no level indicated on a bin, then do not exceed ½ (half) the bin's cubic metre capacity. If for any reason the Hirer is unsure the Hirer should contact the Supplier's office to ensure that the safe working capacity of the bin is not exceeded.

11.7 Not all the Supplier's bins have been constructed or approved for crane use. Therefore before crane use the Hirer must contact the Supplier to confirm the bins supplied to the Hirer have been crane approved.

11.8 Governing Law and Jurisdiction - These Terms and Conditions are governed by the law in force in the State or Territory in which the Supplier's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.