

HANDYBIN WASTE SERVICES and BIG BINS - TERMS AND CONDITIONS OF HIRE

1. INTRODUCTION

In these terms and conditions, "Agreement" means any agreement between the Owner and the Hirer whether signed or not and include these terms and conditions and the general guidelines published on the Owner's website, updated from time to time; "Bins" means bins and skips provided to the Hirer by the Owner for waste removal; "Hire Contract" means a specific contract that includes these terms and conditions, raised by the Owner pertaining to a particular job and agreed to by both parties; "the Owner" is Skip Bins Brisbane Group Pty Ltd A.B.N. 47 169 913 704 trading as Handybin Waste Services and also trading as Big Bins, its successors and assigns or any person acting on behalf of and with the authority of the Owner; and "the Hirer/s" means the applicant named on the Owner's credit account application form or hirer/s named on the Owner's Hire Contract.

2. BIN REQUEST/ORDER

The Hirer's request/order for the delivery of Bin/s and their subsequent pick up may be made by telephone, email, fax or text to the Owner's office. Such requests/orders will be considered binding and subject to these terms and conditions, whether signed off by the Hirer or not. To expedite the requests/orders promptly the Hirer agrees to this assertion.

3. HIRE CONTRACT

3.1 The Owner may issue a Hire Contract to the Hirer that includes these terms and conditions.

3.2 Both parties may terminate the Hire Contract with twenty four (24) hours' notice. The Hirer shall indemnify the Owner from any costs, losses or expenses incurred by the Owner should the Hirer terminate the Hire Contract.

3.3 The Owner's right of termination is in addition to any other rights under the Hire Contract and does not exclude any right or remedy under law or equity or the survival of other terms under the Hire Contract or in these Terms and Conditions of Hire.

4. DELIVERY

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 Owner shall not be liable for any loss or damage whatever due to the failure by the Owner to promptly deliver the Bins.

5. PAYMENT

5.1 Time for Payment

5.1.1 Credit account holders shall pay the total amount set out in the Owner's invoice thirty (30) days from end of month.

5.1.2 Non-account Hirers are strictly Cash on Delivery (COD).

5.2 Credit Card Payment

Credit card payments may incur a three percent (3%) surcharge.

5.3 Dishonoured Cheques

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

6. DEFAULT AND CONSEQUENCES OF DEFAULT

Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation relating to these terms and conditions, including but not limited to the Owner's payment terms, then the Owner reserves the right to charge:

- a) interest at a rate of fifteen percent (15%) per annum calculated on a daily basis from the date of the Owner's tax invoice. Should payment be made within the Owner's payment terms then the Owner shall have no claim for the corresponding interest;
- b) a monthly administration fee of twenty five dollars (\$25) on accounts that exceed the agreed payment terms; and
- c) for any costs, expenses or losses incurred by the Owner as a result of the Hirer's failure to pay to the Owner all sums outstanding as owed by the Hirer to the Owner 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.

7. ARBITRATION AND MEDIATION

Without prejudice to either party's rights under the *Building and Construction Industry Payments Act 2004 (Qld)*, either party may refer any dispute under, or arising out of, the Agreement 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 thirty (30) days or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

8. RETENTION OF TITLE

8.1 Title

The Bins shall remain the property of the Owner at all times. The Hirer is not entitled to sell, transfer, mortgage, charge or encumber in any way the Bins nor part with possession of the Bins or assign the benefit of the Agreement.

8.2 Repossession

If the Hirer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this Agreement, then the Owner may remove or repossess any Bins and may, without prejudice to any other remedies it may have, commence proceedings to recover the balance of any monies owing to the Owner by the Hirer.

9. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

9.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.

9.2 The Hirer acknowledges and agrees:

- a) that these Terms & Conditions constitute a Security Agreement that creates a Security Interest in all Bins (and Proceeds):
 - (i) previously supplied by the Owner to the Hirer; and
 - (ii) to be supplied in the future by the Owner to the Hirer;
- b) that the Security Interest created by these Terms & Conditions is a continuing Security Interest in all Bins (supplied now or in the future by the Owner to the Hirer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Owner has signed a release;
- c) to waive its rights under section 157 of the PPSA and the following subsections of section 115 of the PPSA, which will not apply to the Security Agreement created by these Terms and Conditions: 95, 117, 118, 121(4), 130, 132(4), 135, 143.

9.3 The Hirer undertakes to:

- a) keep all Bins free of any charge, lien or Security Interest except as created under these Terms & Conditions and not otherwise deal with the Bins in a way that may prejudice any rights of the Owner under these Terms & Conditions or the PPSA;
- b) sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that the Owner may require to:
 - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(b) (i) or 9.3(b) (ii);
- c) indemnify, and upon demand reimburse, the Owner for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:
 - (i) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Bins charged thereby; and
 - (ii) enforcing or attempting to enforce the Security Interest created by these Terms & Conditions.
- d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Bins or Proceeds in favour of a third party, without the prior written consent of the Owner; and
- e) immediately advise the Owner of any material change in its business details (including, but not limited to, its trading name, address, facsimile number) or business practices.

10. DAMAGE AND RELOCATION OF BINS

10.1 The Hirer shall indemnify the Owner from any loss or damage to the Owner's Bins caused by the Hirer or another trade while in the Hirer's care.

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10.2 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 Owner.

11. LIABILITY

11.1 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Owner 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 Owner's failure to deliver the Bins promptly.

11.2 Exclusion of Consequential Liability

The Owner 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 Owner.

12. PRIVACY

12.1 The Hirer hereby authorises the Owner to collect, retain, record, use and disclose consumer and/or commercial information about the Hirer, in accordance with the Privacy Act 1988 and the Privacy Principles outlined in the Privacy Amendment Act 2012, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Owner, a debt collector, credit reporting body and/or any other individual or organisation which maintains credit references and/or default listings.

12.2 Subject to the Privacy Principles outlined in the Privacy Amendment Act 2012, the Hirer further authorises the Owner to collect, retain, record, use and disclose personal information about the Hirer for the marketing of the goods and services provided by the Owner.

13. ADDITIONAL CHARGES

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

13.2 The Hirer shall indemnify the Owner 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 Owner's driver be deemed to be unsafe or inaccessible. The Owner may claim the portion of the service already provided to the Hirer.

13.3 The Owner reserves the right to charge a cleaning fee for excessive amounts of paint, plaster, gransite and other such products disfiguring the exterior of the Bins.

13.4 In the event of a non-approved use and/or relocation of Bins by the Hirer, the Owner reserves the right at all times to access the site to remove or recover the Bins and charge the Hirer for any damage to the Owner's Bins and/or any expense incurred in recovering and/or removing the Bins.

13.5 Traveling time for delivery/pick up of Bins may be charged when the time and distance exceeds those normally allowed for in the Agreement. The Owner will notify the Hirer when confirming the hire.

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

13.7 The Owner shall take reasonable care at all times when delivering or collecting Bins, but the Hirer shall indemnify the Owner 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.

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

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

14. GENERAL MATTERS

14.1 If the Owner has to obtain Bins and/or services from a third party in order to carry out the Hirer's instructions then the Hirer agrees such hire shall be subject to these terms and conditions.

14.2 No regulated waste types including but not limited to tyres, asbestos or liquids are to be placed in the Bins.

14.3 Removal of waste types (as specified in 14.2, or any other toxic materials) is not a service provided by the Owner. The Hirer shall indemnify the Owner from any costs, expenses or losses incurred should the Hirer not comply with clause 14.2.

14.4 Wet concrete cannot be placed in Bins unless a suitable liner is first put in place.

14.5 Burning rubbish in Bins is not permitted. The Hirer shall indemnify the Owner from any costs involved in the cleaning and repairing of Bins affected in this way.

14.6 If the Hirer needs to place solid materials including but not limited to soils, clay, rocks, stones, concrete and masonry in 12, 15 and 20 cubic metre bins, this should not exceed 10 cubic metres of solid material and/or 15 tonne (exclusive of bin weight) total mass.

14.7 Not all the Owners' bins have been constructed or approved for crane use. Therefore before crane use the Hirer must contact the Owner to confirm the Bins supplied to the Hirer have been crane approved.

14.8 When placement of Bins on a footpath is required a permit may be issued by the Owner; this would be subject to compliance with any local council conditions.

14.9 In the event of non-payment, bankruptcy or insolvency, all waste is deemed to belong to the Hirer until payment is made and the Owner reserves the right to unload the Bins at the Hirer's site prior to removal of the Bins from the Hirer's site.

15. SEVERABILITY

Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

16. NON WAIVER

Failure by the Owner to enforce or delay in enforcing any right or provision of these terms and conditions will not constitute a waiver of such right or provision unless acknowledged and agreed by the Owner in writing.

17. ENTIRE CONTRACT

No additional terms and conditions proposed by the Hirer (including any terms contained in any purchase order provided by the Hirer) apply to the hire of the Bins unless agreed in writing by the Owner.

18. TERMINATION

The Owner may terminate the Hire Contract or any other Agreement immediately by notice to the Hirer, if the Hirer breaches any term of the Hire Contract or these terms and conditions herein, or the Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

19. GOVERNING LAW AND JURISDICTION

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Hirer and the Owner will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.

HIRER/S AGREEMENT TO THESE TERMS & CONDITIONS

The director/s or business owner/s must sign this agreement section on behalf of a business.

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Signature

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Date

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Full Name

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Signature

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Date

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Full Name