

TERMS AND CONDITIONS



COMMERCIAL SERVICE AGREEMENT TERMS AND CONDITIONS

1 DEFINITIONS

- “Agreement” means this agreement, including these Terms and Conditions, the Schedule and (where applicable) the Annexure;
- “Annexure” means the document titled “Clinical and Related Waste”, which is supplied with this Agreement where Clinical Waste is included in the Services;
- “Claim” includes a liability, claim, action, suit, demand, penalty, fine, cost and expense, whether present, future or contingent;
- “Clinical Waste” includes all waste types defined in the Annexure;
- “CPI” means the Consumer Price (All Groups) Index for the capital city of the State or Territory in which the Premises are located;
- “Equipment” means equipment provided by Us in connection with the Services, including the containers, compactors and any other equipment listed in the Schedule and any other equipment provided by Us to You during the Term;
- “Excluded Waste” means any free-flowing liquid or viscous material or biomedical waste not explicitly referred to and agreed to in the Schedule, any hazardous material or dangerous goods, including without limitation, asbestos, radioactive, volatile, reactive, flammable, explosive, corrosive, toxic or otherwise hazardous substances or any Waste that has been incorrectly identified, labelled or segregated;
- “Fees” means the fees and charges listed in the Schedule, varied from time to time pursuant to this Agreement;
- “GST” means Goods and Services Tax as defined in the A New Tax System (Goods and Services Tax) Act 1999;
- “Schedule” means the form titled “Commercial Service Agreement” to which these Terms and Conditions are attached;
- “Services” means the waste collection services detailed in the Schedule and any additional services provided by Us to You during the Term;
- “Site” means the premises specified in the Schedule or any other premises at which We, at Your request, agree to perform Services;
- “Term” means the time period specified in the Schedule under the heading “Period of Service” or, if none is specified then 3 years, from the date You enter into this Agreement, and any extension to the Term pursuant to this Agreement;
- “Waste” means all industrial and commercial waste and any Clinical Waste at the Site other than Excluded Waste;
- “We/Our/Us” means Tox Free Solutions Ltd (ABN 27 058 596 124), Tox Free Australia Pty Ltd (ABN 31 127 853 561) or Daniels Health Services Pty Ltd (ABN 15 093 315 014), whichever is referred to in the Schedule, and their respective subsidiaries;
- “You/Your” means the “Customer” named in the Schedule.

Customer Signature

Date

Toxfree Signature

Date

2 TERM AND SCOPE

- 2.1 You hereby request Us, and We agree, to provide the Services for the Term, in consideration for which You agree to pay Us the Fees.
- 2.2 A “one-off” Term expires upon the provision of the specified Service.
- 2.3 The Term of this Agreement (other than a “one-off” Term) shall automatically be extended for a further period equal in length to the expiring Term, unless either party gives written notice of termination to the other at any time prior to the expiry of the Term.
- 2.4 Notwithstanding clause 2.3, You may terminate this Agreement without penalty at any time within the first 60 days of the extended Term, by giving Us notice in writing.

3 EQUIPMENT

- 3.1 We will deliver the Equipment to, and collect it from, the Site upon termination or expiry of this Agreement or at such other times as may be agreed. You must pay all costs of and incidental to its delivery, installation and removal including the cost of repairing any damage caused to the Site in the process, except to the extent that the damage is caused by Our negligence or Our wilful misconduct.
- 3.2 The Equipment shall at all times remain Our property, but will be at Your risk and You shall be liable for all loss, damage or destruction, howsoever caused to the Equipment from the time of its delivery to the Site until the time We remove it from the Site, except for reasonable wear and tear or to the extent such loss or damage is caused by Our negligence or Our wilful misconduct.
- 3.3 You may only use the Equipment for depositing and storing Waste for collection by Us.
- 3.4 The Equipment may not be moved except by Us or with Our consent and You will be liable for any cost or expense that We incur as a consequence of any unauthorised movement of the Equipment including, where it is reasonably necessary for Us to relocate the Equipment, the cost of doing so.
- 3.5 You must maintain the Equipment at Your cost in a clean and safe condition and shall comply with all laws concerning its cleanliness, state and use.
- 3.6 You must not fill the Equipment beyond the maximum height, density, weight or volume as advised by Us from time to time.

4 WASTE

- 4.1 We may agree, at our discretion, to provide Services for Excluded Waste if You fully and completely disclose the type and amount of Excluded Waste.
- 4.2 Waste becomes Our property as soon as We collect it.
- 4.3 Title to all Excluded Waste and all risk associated with all Waste and Excluded Waste remains with You, unless otherwise agreed in writing with Us.
- 4.4 To the extent permitted by law, You must accept return, at your expense, of any Excluded Waste at our discretion.

5 SERVICES

- 5.1 We shall use reasonable endeavours to provide the Services at the frequency and on the days specified in the Schedule or as otherwise agreed, however We may perform the Services at any time on an agreed day. If You request Us to perform the Services at a particular time, We may agree to Your request and may levy an additional charge to cover any additional cost to Us for doing so.
- 5.2 We shall not be liable for delays in performance of the Services where performance is not reasonably possible due to circumstances not caused by Us and which are beyond Our reasonable control.
- 5.3 A delay of a kind referred to in Clause 5.2 shall not entitle You to terminate this Agreement or make a Claim against Us and You shall remain liable for any charges relating to the Equipment, however, subject to clause 5.4, You will not be liable for any charges for Services not performed.
- 5.4 If We comply with Your request not to perform a Service or are prevented from performing a Service because of any act or omission on Your part, We shall still be entitled to charge the usual Fee for that Service (but not including any disposal fee component), unless You requested Us, at least three clear days prior to the scheduled day for that Service, not to perform that Service, in which case no Fee will be charged for it.

Customer Signature

Date

Toxfree Signature

Date

6 FEES AND VARIATIONS TO FEES

- 6.1 We may vary the Fees at any time by notifying You in writing of the variation, which may be by way of an invoice stating an amount representing a varied Fee. If We increase the Fees by more than 5% in any 12-month period, You may give Us written notice, within 60 days after being notified of the increase, that You object to it ("Objection Notice"), in response to which We may:
- (a) Cap the increase such that the Fees will not have increased by more than 5% in the preceding 12 months, in which case You will be bound by the new Fees; or
 - (b) Notify You that We wish to negotiate a Fee increase, in which case You must negotiate with Us in good faith. If You and We are unable to agree on the amount of the increase within 60 days after We request a negotiation, we shall both have 14 days within which either of us may terminate the Agreement by giving 30 days written notice to the other.
- 6.2 If You do not exercise Your right (if any) to give an Objection Notice within the time specified, You shall be deemed to have accepted the Fee increase.
- 6.3 If any clause of this Agreement regarding Fee increases is found to be void or unenforceable or is severed from this Agreement for any reason, We shall instead be entitled to adjust the Fees at any time in line with CPI movements. Where increases in disposal costs payable by Us exceed CPI increases, We shall be entitled to adjust the Fees by more than CPI to the extent necessary to pass on any such increases over and above CPI.
- 6.4 You must pay each of Our invoices within 30 days from the invoice date.
- 6.5 Interest will be payable on all overdue amounts at the rate of 10% per annum. Amounts in this Agreement are expressed exclusive of GST, except as otherwise specified. If GST is payable by Us on Fees invoiced, You must pay Us an amount equal to that GST in addition to the Fees.

7 ACCESS

- 7.1 You shall ensure that We have appropriate access to the Site and the Equipment at all times to deliver, place, affix, repair, maintain or remove Equipment and perform Services.
- 7.2 You shall inform Us of any matters regarding the Site that may affect Our performance of the Services.

8 WARRANTIES

- 8.1 You warrant to Us that:
- (a) You have the right to give Us access to the Site and possession of and title to the Waste;
 - (b) The conditions at, and access to, the Site and Equipment are such that no harm will be caused to the Site, Equipment or property or persons located at or near the Site as a result Our performance of this Agreement;
 - (c) The contents of the Equipment:
 - (i) Corresponds to the Waste types referred to in the Schedule;
 - (ii) Are appropriate Waste types for that Equipment and, in the case of Clinical Waste, the contents of each piece of Equipment complies with the specifications for that Equipment in the Annexure;
 - (iii) Is Waste generated by You; and
 - (iv) Do not include Excluded Waste and do not exceed the maximum density or weight specified in the Schedule.
- 8.2 We shall be entitled to charge an additional fee if waste deposited in the Equipment exceeds the maximum density or weight specified in the Schedule.

Customer Signature

Date

Toxfree Signature

Date

9 WAIVER OF LIABILITY AND INDEMNITY

- 9.1 To the maximum extent permitted by law, You release, discharge and indemnify Us and Our officers, directors, employees, contractors and agents from and against any and all Claims in connection with:
- (a) Our performance of the Services (except to the extent that such Claims are caused or contributed to by Our breach of this Agreement or some negligent, malicious or unlawful act or omission by Us or Our officers, directors, employees, contractors or agents);
 - (b) any breach by You of this Agreement; or
 - (c) any other act or omission by You or Your officers, directors, employees, contractors, agents or invitees.
- 9.2 Our liability to You is limited to the resupply or the cost of resupply of the Services.

10 VARIATION AND AMENDMENT

- 10.1 If We agree to a change of Site, You shall pay the costs of relocating any Equipment, including the costs of removing the Equipment from the old Site and the costs of its delivery to and installation at the new Site.
- 10.2 Subject to any express right of termination, this Agreement shall remain in force notwithstanding any variation or any changes in Fees referred to in Clause 6.

11 TERMINATION AND SUSPENSION OF SERVICES

- 11.1 We may suspend the Services if We reasonably consider that performance of the Services may be illegal or may cause a risk of injury, illness or damage to people or property, until such time as the circumstances have been remedied (at Your cost) to Our reasonable satisfaction. Suspension of Services in accordance with this clause shall not entitle You to terminate the Agreement or make any Claim against Us.
- 11.2 You shall be deemed to have repudiated this Agreement if You:
- (a) fail to pay any invoice by its due date or breach any other term of this Agreement and You fail to remedy your default within 30 days after We ask You to do so;
 - (b) enter into a scheme of arrangement with any of Your creditors, become bankrupt, insolvent, fail to comply with or set aside a statutory demand or have a liquidator, provisional liquidator, receiver or administrator appointed to You; or
 - (c) express or evidence, other than pursuant to Clause 2.3 or clause 2.4, an intention to no longer be bound by this Agreement.
- 11.3 If You repudiate this Agreement We may:
- (a) treat the Agreement as remaining on foot, continue to provide the Services and insist that You comply with Your obligations under this Agreement;
 - (b) treat the Agreement as remaining on foot, but suspend the Services until such time as You are no longer in default under the Agreement; or
 - (c) accept Your repudiation, terminate the Agreement, remove the Equipment from the Site and demand immediate payment of any unpaid invoices, amounts payable for services rendered but not invoiced as at the date of termination, costs payable by You for delivery, installation or removal of Equipment and any liquidated damages or other amounts that We are entitled to claim.
- 11.4 Where this Agreement is terminated pursuant to Clause 11.3(c), You must pay Us, in addition to any other amounts payable, liquidated damages calculated as follows:
- $\text{Liquidated Damages} = (\text{average monthly invoice amount during the 6 months preceding the month of termination}) \times 12 / 365 \times (\text{number of days remaining in the Term immediately prior to termination}) \times 30\%$

12 MISCELLANEOUS

- 12.1 Neither party may assign or attempt to assign its rights or obligations under this Agreement without the other party's prior written consent.
- 12.2 The parties agree to submit to the non-exclusive jurisdiction of the Courts in any district in which We have premises from which Services are provided.
- 12.3 You acknowledge that We have not made any representations to You with respect to the Services except to the extent expressly stated in this Agreement or in the included attached Schedules.

Customer Signature

Date

Toxfree Signature

Date