

These are the entire Terms and Conditions of Supply of all goods and services supplied by Bottlecyclers Australia Pty Ltd ACN 116 500 746 and any associated, related, subsidiary and parent companies, successors and assigns who supply Goods and Services to You (“the Supplier”).

**Clause 1 sets out a glossary to help the parties read and understand the Terms**

## 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any duties, fees, taxes (including GST), including but not limited to delivery charges, merchant fees, installation fees, storage fees, bin collection fees, bin cleaning costs, contamination disposal charge, repair charges, surcharges and levies imposed by these Terms.

**Bond** means the payment of an amount equivalent to 2 months’ rental of Goods.

**COD Customer** means a Customer who does not have a Credit Account and who purchases Goods and/or Services on a pre-paid or cash-on-delivery basis only.

**Cooling Off Period** means the 30 day period commencing on the date of delivery of the Goods.

**Credit Account** means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms.

**Customer** means any person, firm or company placing an Order with Us for the purchase of Goods and Services pursuant to these Terms and includes Your agents and permitted assigns (all of which are referred to as “**You**” and “**Your**”).

**Deposit** means the payment of fifty (50) percent of each Order price in respect of Goods and Services.

**Due Date** means the date listed on Our invoice for Your payment of Goods and Services.

**Goods** means any goods, equipment and merchandise supplied by Us to You pursuant to any Quote, Order and/or the contract created by these Terms, including purchase or hire of glass crushing equipment.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means an order for the hire or purchase of Goods and Services placed by You.

**PPS Law** means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods and Services to be provided by Us to You.

**Rental Period** means the fixed period for supply of Goods and/or Services beginning on the start date and ending on the end date, as listed on Your Credit Account application or other documentation.

**Services** means services provided by Us to You pursuant to any Quote, Order and/or these Terms, including but not limited to maintenance and servicing of Goods, waste or glass collection and provision of CO<sub>2</sub> reports.

**Site** means any place at which You request Goods and Services to be supplied or installed.

**Supplier** means the entity or entities specified in these Terms as supplying Goods and Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns who supply Goods to You (all of which are referred to as “**Us**”, “**We**” and “**Our**”).

**Terms** means the contract between You and Us created by these terms and conditions of supply.

**Total Minimum Cost** means the minimum payment You must make for hiring Goods and/or Services during the Rental Period.

**Website** means [www.bottlecyclers.com](http://www.bottlecyclers.com) as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and Services are being supplied;
- (b) a reference to writing includes email and any communication through Our website or notes on invoices and statements;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party’s executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms; and
- (g) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

**Clauses 2 – 4 outline how these Terms are set up, our relationship under these Terms, and how these Terms can be changed.**

## 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) Unless otherwise agreed between the parties in writing, You agree to hire the Goods and/or Services for the Rental Period and pay the Total Minimum Cost.
- (b) On expiry of the Rental Period, We may:
  - i) Continue supply of Goods and/or Services for any extension or

Duly signed and accepted in full on behalf of \_\_\_\_\_

Signature \_\_\_\_\_ Name \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

renewal Rental Period that is listed on Your Credit Account application, which will be subject to all terms and conditions under these Terms; or

- ii) Ask You to enter into a new agreement for supply of Goods and/or Services.
- (c) If We ask You to enter into a new agreement for supply of Goods and/or Services, We may:
  - i) Allow You to hold and use any Goods on a monthly 'holding over' basis until the parties enter a new agreement. Your rights over the Goods during any holding over period will be subject to all terms and conditions applicable under these Terms, including payment of all charges invoiced to You during the 'holding over' period. Either party can terminate the 'holding over' period by giving 30 days' written notice to the other party; and
  - ii) Suspend supply of any Services until the parties enter a new agreement.
- (d) These are the entire terms and conditions of supply of all Goods and Services supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing), these Terms apply notwithstanding any provisions to the contrary which may appear on any other document, including a Quote, Order or invoice.
- (e) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms.
- (f) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order for supply of Goods, or by instructing Us to commence or continue Services.
- (g) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.

### 3. APPLICABLE LAW

- (a) These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria applying the laws of that State.

### 4. CHANGES AND UPDATES TO THE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms. Any updated or altered Terms will apply from the date of alteration. A copy of current Terms can be found on Our Website or by requesting a copy from Us.
- (b) We will notify You in writing of any updated or altered Terms and any updated Terms will apply to orders from the date of Our written notification..
- (c) You must notify Us in writing of any material change to Your organisation, including a change of director or other authorised person, bank account details or change of address.
- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent. You agree that You shall be liable to Us for all Goods and Services supplied until the date that We receive written notice of such change from You.

**Clauses 5 & 6 set out how to purchase Goods and Services from Us, and how Our Goods and Services are delivered**

### 5. PRICES, QUOTATIONS AND ORDERS

- (a) You may hire or purchase Goods and Services by placing an Order with Us in writing. You warrant that the person who places the Order is authorised by You to do so.
- (b) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods and Services to You. All Quotes expire on the date stated on the Quote or otherwise 30 days after the date the Quote is issued by Us.
- (c) We may vary or cancel any Quote before an Order is accepted.
- (d) We may accept or decline any Order by notifying You in writing, by delivering the Goods to You or by supplying the Services. The parties agree that these Terms apply to all Orders for the supply of Goods and Services.
- (e) If You are a COD Customer:
  - i) We may ask you to pay a Deposit upon receipt of a Quote from Us;
  - ii) We will not be deemed to have accepted Your Order until payment of the Deposit has been made; and
  - iii) The balance price of the Order must be paid no later than three (3) days prior to delivery of the Goods or supply of the Services.
- (f) If You are hiring Goods from Us:
  - i) We may ask you to pay a Bond upon signing these Terms, irrespective of whether or not We have issued You an invoice for the Bond; and
  - ii) Provided that You have paid all outstanding amounts due under these Terms, and returned the Goods in accordance with, We will return the Bond to You at the end of the Rental Period (or Cooling Off Period, if applicable).
- (g) You may cancel an Order within twenty-four (24) hours of placing the Order without incurring any cancellation fees. If you cancel an Order after twenty-four (24) hours:
  - i) We may require You to make full payment of Your Order in the case of Goods, or full payment of the Deposit in the case of Services if that Deposit has not already been paid; and
  - ii) You agree that we will be entitled to retain any Deposit paid by You and apply the payment at Our discretion towards any sum owed to Us.
- (h) Unless the parties agree differently in writing, the price You must pay for Goods and Services is specified in Our invoice and may include Additional Expenses.
- (i) We have the right to change the prices of Goods and Services supplied under these Terms by giving You 30 days' written notice. Any price increase will not be more than 5% and will not occur more than once in any calendar year.
- (j) If You do not agree with any price increase, You must notify Us in writing within 14 days of receiving written notice of the price increase and You must follow the dispute resolution procedure outlined in Section 12 of these Terms. If We do not receive notice of Your dispute of any price increase in accordance with these Terms, You will be deemed to accept the price increase.
- (k) All amounts payable by You for Goods and Services are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of GST must be made at the same time as payment for the Goods and Services.

### 6. SUPPLY AND DELIVERY

- (a) The specifications for the Goods and Services to be supplied under these Terms are contained in the Order/s You submit from time-to-time.
- (b) At any time, We may appoint an agent to perform Our obligations of supply and delivery under these Terms.
- (c) You must satisfy Yourself as to the suitability, condition, and fitness for purpose of the Goods without relying on Our skills or judgment. To the extent permitted by law, You acknowledge that We have not made any representation or warranty as to the suitability, condition

and fitness for purpose of the Goods.

#### **Cooling Off Period (if applicable)**

- (d) We may grant You a Cooling Off Period in respect of Our supply of the Goods, so that You can assess the suitability of the Goods. Granting a Cooling Off Period is at Our discretion.
- (e) Any Goods supplied within a Cooling Off Period are subject to all the rights and obligations of these Terms, including Your obligation to maintain the Goods and keep the Goods free from damage.
- (f) If the Cooling Off Period applies and You determine within the Cooling Off Period that the Goods are not suitable, You may elect to return the Goods free of charge (except for any Services charges such as glass collection) by notifying us in writing within the Cooling off Period and in accordance with the returns procedure in section 10.
- (g) If You elect to return the Goods within the Cooling Off Period, You will not be obligated to continue with the Rental Period and We will not charge You for supply of the Goods (except for glass collection Services or where the Goods are not returned in original or resaleable condition, in which case We are entitled to charge You reasonable Additional Expenses to repair or restock the Goods).
- (h) The full Rental Period and all associated rights and obligations of these Terms will apply (including payment) where no election is made to return the Goods within the Cooling Off Period.

#### **Supply and Delivery of Goods**

- (i) To supply Goods to You, we may make the Goods available for Your collection or deliver the Goods. Delivery may be by a third-party carrier and delivery by instalments.
- (j) You authorise Us to deliver the Goods to the Site nominated by You and You must be present for delivery at the Site.
- (k) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence that you have accepted delivery of the Goods.
- (l) We may install the Goods at the Site at a mutually agreed time and at Your cost of Additional Expenses, including any safety measures necessary or electricity required to power the Goods.
- (m) Prior to any installation of the Goods, You must obtain and provide Us with proof of all necessary permits for electrical water plumbing and disposal of waste required to install and operate the Goods.
- (n) You must provide a suitable and safe Site for Us to deliver the Goods, including a Site that is compliant with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use.
- (o) All delivery and installation times indicated by Us are estimates only. Delivery times are subject to the Goods being available and subject to Our reasonable ability to make the delivery on that date. We will endeavour to deliver Goods at the time You need, but if We fail to deliver Goods within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods.
- (p) Delivery of the Goods is deemed to occur when the Goods are:
  - i) Handed to You or Your representative; or
  - ii) Delivered to the site nominated by You or appearing on Your invoice for the Goods.
- (q) When delivery occurs Our delivery obligation is discharged.
- (r) You agree to examine the Goods immediately on delivery.
- (s) We are not liable for any Loss suffered by You whatsoever after delivery of the Goods to You.
- (t) You must pay all Additional Expenses We incur due to:
  - i) Any delay in delivery of the Goods which is caused by You, the conditions of the nominated delivery site or the nature of the Goods being delivered; or
  - ii) Any unexpected labour, permit, licence or additional costs in connection with the delivery.
- (u) In respect of Goods that You hire, You must:

- i) At all times transport, load, erect, install, operate and use the Goods safely, strictly in accordance with all laws, only for the intended purpose of the Goods and in accordance with Ours and manufacturer instructions;
- ii) Place and maintain a visible notice on the Goods that We are the owner of the Goods;
- iii) Ensure that all operators (including your employees, servants and agents) are properly trained and instructed in the safe and proper use of the Goods;
- iv) Clean and maintain all Goods in good condition and at Your cost;
- v) Comply at Your cost with all relevant electrical safety standards, legislation and regulations applicable in any jurisdiction where the Goods are located and used, including but not limited to AS/NZS 3760:2010 as amended or replaced;
- vi) Comply at Your cost with any legislation, regulations or directives related to testing and tagging of the Goods by a licensed electrician at intervals required by regulation or as recommended by Our user instructions and manuals;
- vii) Keep records of Your compliance with all standards, legislation and regulations related to testing and tagging of the Goods, and make a copy of those records available to Us at any time;
- viii) Not in any way alter, modify, tamper with or damage the Goods without Our prior written consent;
- ix) Store the Goods safely and securely to ensure that they are protected from theft, vandalism, seizure, damage and adverse weather conditions that may damage the Goods (for example, corrosion or flooding);
- x) Not remove the Goods from the Site/s for which the Goods were hired, without Our prior written consent;
- xi) Not expose the Goods to any hazardous substance (for example, asbestos) without Our prior written consent. You must immediately advise Us if the hired Goods have, or are at risk of, contact with a hazardous substance;
- xii) Allow Us to inspect the Goods with reasonable notice during the Rental Period; and
- xiii) Return the Goods to Us at the end of the Rental Period (or any earlier or later date of termination, Cooling Off Period or expiry of these Terms) in the same good and clean condition the Goods were in when You hired them, except for fair wear and tear.

#### **Supply and Delivery of Services**

- (v) The Services are provided to You with all due skill and care in accordance with Our professional standards.
- (w) Our staff may carry out work at Your premises when providing the Services. When Our staff are working at Your premises, You must provide them with a working environment which is safe, healthy and complies with any relevant work health and safety legislation and government regulation.
- (x) Provision of Services is dependent on Your timely co-operation and performing Your obligations under this Contract, including promptly providing Us with all accurate and complete instructions, access to premises, facilities and people, permissions, resources and anything else that we reasonably require;
- (y) Estimates of time for completion of the Services are made in good faith and given on the assumption that We receive the required co-operation from You. If You do not provide, or delay in providing that co-operation, We may charge Additional Expenses that are incurred as a result (in addition to any other rights We may have); and
- (z) Our Services are limited to the particular scope of work that We have agreed to carry out.

**Clauses 7 - 10 outline how we get paid including making payment, credit accounts and security**

#### **7. PAYMENT AND CREDIT**

- (a) Unless the parties agree differently in writing, You must pay for

Goods and Services on or before the Due Date.

- (b) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (c) If You do not pay for Goods and Services by the Due Date, We may:
  - i) Charge You a reasonable surcharge for processing payments made by credit card, at an amount advised by us from time to time;
  - ii) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
  - iii) Require You to pay cash on delivery of any further Goods and Services, or suspend any further deliveries of Goods, or cease supplying Goods and Services to You;
  - iv) Demand Your immediate payment of all outstanding monies;
  - v) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
  - vi) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
  - vii) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- (d) You may apply for a Credit Account with Us to hire or purchase Goods and Services. We have no obligation to provide or continue to provide credit facilities to You. You are entitled to credit facilities only after You receive an approved Credit Account with Us.
- (e) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (f) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.
- (g) You authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You to Us (including Additional Expenses and interest payable under the Terms).
- (h) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (i) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

## 8. RISK AND OWNERSHIP

- (a) Unless the parties agree differently in writing, all risk in Goods and Services passes to You when:
  - i) Goods are delivered to You (or Your agent, representative or nominated carrier) or when the Goods are collected by You (or Your agent or nominated carrier); and
  - ii) Services are delivered to You.
- (b) Legal ownership of Goods that You hire does not pass to You whatsoever and you must allow us to retake possession of hired Goods upon the expiration of the Rental Period (or the date of termination of these Terms). Even if You suffer an Insolvency Event during the Rental Period, We retain title to the hired Goods at all times. Your rights to use hired Goods are as bailee only and You are not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with hired Goods in any way which is inconsistent with

Our ownership of the hired Goods.

- (c) Legal ownership of Goods that You buy does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- (d) Until legal ownership of Goods passes to You, Goods sold are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (e) You may resell any Goods sold before legal ownership passes to You, provided that You:
  - i) Resell the Goods to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of any payments received for Goods.
- (f) If You do not pay for any Goods by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods. We reserve these repossession rights without being liable to You or any other third party in any way.
- (g) You must insure all Goods at Your own cost and expense. Insurance must be to the full extent of the price paid or payable for those Goods and remain valid at all times. This includes, but is not limited to, between the time that risk in the Goods passes to You and the date that any title in the Goods passes to You.

## 9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods supplied by Us from time to time and any proceeds of the hire or sale of Goods to secure payment for the Goods ("**Security Interest**").
- (b) Each supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of the hire or sale of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

### Assurances

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, including for the purposes of:
  - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - a. Attaches to the collateral that is intended to be covered by that Security Interest; and
    - b. Is enforceable, perfected and otherwise effective; and
    - c. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI under the PPSA; and
  - iv) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts

owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and

- ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods despite Your obligations under this section, You must:
- i) Ensure that You receive cash proceeds for the Goods of at least equal to the market value of the Goods; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

#### **Exclusion of Notices and Other Obligations**

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
- i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
- i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured part or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

#### **Provision of Information**

- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
- i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (m) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

#### **Other**

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our

rights under these Terms, the general law and the PPSA.

- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

**Clauses 10 & 11 deal with issues that may arise, including returns and loss or damage of hired goods**

#### **10. RETURNS AND EXCHANGES**

- (a) To the extent permitted by law, We give no warranties beyond the manufacturers or supplier's warranties for Goods. Goods which are not manufactured by Us are subject solely to the warranties (if any) specified by the manufacturers or the third-party suppliers to Us.
- (b) If You think any Goods supplied are defective, damaged, missing or misdelivered, You must notify Us in writing and within 7 days of delivery of those Goods. You must take all steps necessary to mitigate any Loss arising from any defect in the Goods supplied. You will be deemed to accept the Goods (including any responsibility for any defects) if You do not notify Us in accordance with these Terms.
- (c) All notifications under this section must be accompanied by:-
- i) Proof of purchase or hire;
  - ii) Written details of the alleged defect including photographs;
  - iii) Appropriate documentation (such as installation and maintenance records); and
  - iv) You must allow Us or Our authorised representatives access to the Goods for inspection.
- (a) Unless the Goods are subject to a Cooling Off Period and You have elected within the Cooling Off Period to return the Goods, then We have the discretion to determine whether Goods can be returned or exchanged. We may refuse to provide a return or exchange for any Goods not in original or resaleable condition.
- (b) You are responsible for Additional Expenses associated with any return or exchange of Goods, including reasonable restocking, disposal, repair, replacement or repacking charges which We incur from the Goods being returned or exchanged.

#### **11. LOST, STOLEN OR DAMAGED RENTAL GOODS**

- (a) Unless provided by this section or agreed between the parties in writing, You are responsible for any loss, theft, damage or breakdown of hired Goods during the Rental Period.
- (b) If the hired Goods are lost, stolen or damaged, you are responsible for:
- i) Immediately notifying Us and (if applicable) the Police;
  - ii) The cost of repairs or, if the Goods cannot be repaired, replacement of the Goods (which will be determined at Our reasonable discretion); and
  - iii) Continuing hire charges until the hired Goods are repaired or replaced, unless otherwise determined by Us;
  - iv) Other Additional Expenses associated with the repair and/or replacement of the hired Goods.
- (c) If the hired Goods break down or become unsafe to use during the Rental Period then:
- i) You must:
    - a. Immediately stop using the hired Goods and notify Us;
    - b. Take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the hired Goods;
    - c. Take all steps necessary to prevent further damage to the hired Goods; and
    - d. Not repair or attempt to repair the hired Goods without Our prior written consent.
  - ii) If the hired Goods break down or become unsafe through no act or omission by You, including normal wear and tear, We will repair the hired Goods or provide suitable substitute Goods as soon as is practicable.
  - iii) If the hired Goods break down or become unsafe to use due to

an act or omission by You, including Your misuse, recklessness or negligence of the hired Goods, then You are liable for all costs for the repair or replacement and continuing hire charges while the Goods are being repaired and/or replaced.

**Clauses 12 & 13 outline how to resolve any disputes and terminate these Terms, if necessary**

## 12. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties, the following procedure applies:
- i) Either party may give the other a written notice of the dispute. This means that the dispute must be dealt with in accordance with this section;
  - ii) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this section;
  - iii) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this paragraph;
  - iv) If a dispute is notified, each party must immediately refer the dispute to its senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);
  - v) At Our sole discretion, We may elect to resolve any dispute by mediation via the Australian Commercial Disputes Centre (ACDC) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The ACDC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
  - vi) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);
  - vii) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

## 13. TERMINATION

- (a) Our termination rights are:

### Our termination rights

We can:

- Suspend or cancel delivery of Goods and Services or any current Order(s) for the supply of Goods and Services; and/or
- Suspend or terminate Your Credit Account; and/or
- Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired; and/or
- Register a default with any credit reporting agency, where applicable; and/or
- Enforce Our rights under any Security Interest; and/or
- Suspend or terminate the contract created by these Terms

- (b) When We can exercise Our termination rights:

### When We can exercise Our termination rights

We can exercise our termination rights immediately by written notice, when:

- You have not paid for Goods and Services by the Due Date; and/or
- You exceed the limit of Your Credit Account; and/or
- You breach a material term of these Terms; and/or
- Either of the parties suffer a force majeure event which delays or prevents performance of the whole or any part of these Terms; and/or
- You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA; and/or
- An Insolvency Event occurs.

- (c) If We breach a material term of these Terms and We do not rectify the breach within 14 days' written notice from You, then You may terminate these Terms immediately by giving Us written notice.
- (d) On termination of these Terms, We may:
- i) recover any Goods, property, data, documentation and records in Your possession, custody or control;
  - ii) ask You to pay all amounts payable for the Rental Period, including any invoices outstanding and any balance of the Total Minimum Cost;
  - iii) subject to any limitation on liability applicable to You, recover from You the amount of any loss or damage sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred on Us;
  - iv) be regarded as discharged from any further obligations under these Terms; and
  - v) pursue any additional or alternative remedies provided by law.

**Clauses 14 & 15 outline the exclusions, limitations of liability and indemnities applicable to each party under these Terms**

## 14. LIMITS AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) as amended from time to time ("the Act")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies, restricts or excludes the conditions, warranties, and undertakings and other legal rights under the Act and any other law applicable to the supply of Goods and Services which cannot be modified, restricted or excluded. Except as expressly set out in the Act, these Terms or a separate warranty document, We make no warranties or other representations under or in connection with these Terms, and in that regard Our liability is limited to the fullest extent permitted by law.
- (b) To the extent permitted by law, all implied terms, guarantees, conditions and warranties are excluded from these Terms, including:
- i) All conditions and warranties as to the quality or merchantability of Goods and Services or their fitness for any particular purpose (whether express or implied and even if that purpose is made known to Us). You are responsible for ensuring that Goods and Services are suitable for Your intended use; and
  - ii) No sale under these Terms constitutes a sale by sample or description. You acknowledge that a sample Good may vary from the Goods supplied and that any description of Goods is for identification purposes only.
- (c) You agree that You have not relied on any inducement, representation or statement made by Us or on Our behalf in purchasing or hiring Goods and Services.
- (d) To the extent permitted by law, Our liability arising from breach of guarantee or warranty will be limited to Our choice of:
- i) re-supply of the Goods and/or Services; or

- ii) the cost to replace the Goods and/or Services with equivalent Goods and/or Services; or
  - iii) repair of the Goods, or cost to repair the Goods; or
  - iv) reimbursement of some or all of the price paid by You for the Goods and/or Services.
- (e) In any other situation, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You will not exceed the price of the Goods and Services supplied by Us (to the extent that is permitted by law).
- (f) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (g) We are not liable to You if:-
- i) Goods and Services have not been paid for;
  - ii) Goods have been abused, misused or neglected by you;
  - iii) We cannot establish any defect in Goods after inspection;
  - iv) You have used Goods and/or Services other than for the purposes for which they were designed or intended, including an illegal purpose;
  - v) Goods have been repaired, altered or modified by someone other than Us without our consent;
  - vi) Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure, or other stress;
  - vii) A defect in Goods has arisen due to Your failure to install, use, assemble, handle and maintain the Goods in accordance with Our care and maintenance recommendations or industry-accepted standards;
  - viii) Your claim is for general wear and tear;
  - ix) The Services are incorrect due to Your failure to comply with information and access obligations in these Terms.
- (h) Neither party will be liable for any breach of these Terms which is wholly or partly caused by something outside the party's reasonable control, including war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, shortage of supplies or labour, pandemics, epidemics, storm or tempest, theft, vandalism, civil commotions or accidents of any kind. This exclusion does not apply to Your obligation to pay for Goods and Services.
- (i) This section survives expiry or termination of these Terms.

## 15. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against, and You must pay Us for, any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us.
- (b) You must indemnify Us for and hold Us harmless (or Our directors, agents, employees or contractors) from:
- i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and Services and any action taken to secure any charge;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account, supply of Goods and Services, and any deed of guarantee, indemnity and charge;
  - iii) Any Loss incurred by Us where You cancel your Order after 24 hours, including but not limited to any Additional Expenses;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any Loss arising out of delivery of Goods (including any loss or

damage caused by delivering the Goods to an unattended site, any loss and damage suffered as a result of third party carriers nominated by You and any loss or damage suffered by Us as a result of any property damage or personal injury caused by the delivery and unloading the Goods);

- vi) Any Loss associated with a warranty claim where no defect is found;
  - vii) Any and all Loss arising out of Your failure to provide a safe, suitable and compliant Site for Goods and Services, except to the extent that We (or Our agents, employees or contractors) have committed an act of negligence, breach of the law or breach of the Terms;
  - viii) Any Loss occasioned to Goods between the time that risk in the Goods passes to You and the time that the full price of the Goods is paid by You to Us;
  - ix) Any liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant information.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

## Clause 16 outlines how We deal with the personal information

### 16. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with the Privacy Policy of Our parent company, TOMRA, pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012*, and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of the Privacy Policy by contacting Us in writing or by visiting Our Website or TOMRA's website at [www.tomra.com/en/privacy](http://www.tomra.com/en/privacy) as redirected from time to time.

## Clause 17 outlines general information applicable to the Terms

### 17. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.