

## 1. Definitions

"**ACL**" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;

"**Agreement**" means any agreement or contract entered into for the provision of Goods and/or Services by Panus Oceania to the Customer;

"**Consumer**" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

"**Customer**" means a person, firm or corporation, jointly and severally if there is more than one, acquiring Goods or Services from Panus Oceania and its permitted successors and assigns;

"**Goods**" means Goods supplied by Panus Oceania to the Customer;

"**GST**" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"**Intellectual Property**" means all copyright, patents, trade marks, designs, names, formulae, specifications, confidential information and all modifications, improvements and enhancements owned or licensed by Panus Oceania in respect of the Goods or Services;

"**PPSA**" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended;

"**Price**" means the price stated in Panus Oceania's tender, quote, price list or letter attached to these Terms which is subject to clause 3;

"**Panus Oceania**" means Panus Oceania Pty Ltd (ABN 52 30 600 173 439) and its successors and assigns;

"**Services**" means Services supplied by the Panus Oceania to the Customer.

"**Terms**" means these Terms and Conditions of Trade.

## 2. Basis of Agreement

2.1 Unless otherwise agreed by Panus Oceania in writing, the Terms apply exclusively to every Agreement and cannot be varied or supplanted by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any written quotation provided by Panus Oceania to the Customer concerning the proposed supply of Goods or Services is:

(a) valid for 30 days unless otherwise advised by Panus Oceania;

(b) not transferable to a third party;

(c) an invitation to treat only;

(d) subject to the Customer offering to enter into an Agreement and accepting these Terms.

2.3 The Terms may include additional terms in Panus Oceania's quotation, tender or letter and where inconsistent with the Terms, the details in the quotation, tender or letter will prevail.

2.4 The Agreement is accepted by Panus Oceania when Panus Oceania confirms its acceptance of an offer from the Customer in writing or electronic means or provides the Customer with the Goods or Services.

2.5 Panus Oceania has absolute discretion to refuse to accept any offer.

2.6 It is the Customer's responsibility to provide Panus Oceania with its specific requirements in relation to the Goods and Services.

2.7 Panus Oceania may amend these Terms by notice in writing to the Customer at any time and the amended Terms will apply to orders made by the Customer after the date of notice. A latest version the Terms will be available at [www.panusoceania.com.au](http://www.panusoceania.com.au).

## 3. Pricing

3.1 Prices quoted for the supply of Goods and Services exclude GST and any other taxes or duties imposed on or in relation to the Goods and Services. In addition to payment of the Price of Goods and Services, the Customer must pay any GST and any other taxes or duties imposed on the Goods and Services.

3.2 Panus Oceania may increase the Price for the Goods or Services by giving written notice to the Customer where:

(a) the Customer requests any variation, alteration or additions to the Agreement or specifications; or

(b) there is any change in the costs incurred by Panus Oceania in relation to the Goods or Services after the date of order, including any variation due to exchange rate variation, change in labour rates and conditions and costs of production, materials and transport.

3.3 All requests for variation must be made in writing to Panus Oceania. Panus Oceania may refuse to accept any variation in its absolute discretion.

## 4. Payment

4.1 Unless otherwise agreed in writing, terms of payment are strictly cash on delivery, except for account customers where credit is provided, where payment for the Goods or Services must be made within:

(a) 7 days from the date of invoice for any capital expenditure items (including but not limited to compactors, bins, skips, trucks, major refurbishment and repairs); or

(b) for all other Goods/Services, 30 days from the end of the month of invoice.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the sole discretion of Panus Oceania immediately upon giving written notice to the Customer.

## 5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to Panus Oceania, then all money which would become payable by the Customer to Panus Oceania at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Panus Oceania may, without prejudice to any other remedy available to it:

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify Panus Oceania from, all costs and expenses (including without limitation all legal costs and expenses on a full indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any Goods;

(c) cease or suspend for such period as Panus Oceania thinks fit, supply of any further Goods or Services to the Customer;

(d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Panus Oceania; without effect on the accrued rights of Panus Oceania under any contract.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of Panus Oceania:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

## **6. Passing of Property**

6.1 Until full payment in cleared funds is received by Panus Oceania for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to Panus Oceania by the Customer:

- (a) title and property in all Goods remain vested in Panus Oceania and do not pass to the Customer;
- (b) the Customer must hold the Goods as fiduciary bailee and agent for Panus Oceania;
- (c) where practicable, the Customer must keep the Goods separate from its goods and maintain the labelling and packaging of Panus Oceania;
- (d) the Customer is required to hold the proceeds of any sale of the Goods in trust for Panus Oceania in a separate account with a bank to whom the Customer has not given security (however, failure to do so will not affect the Customer's obligation as trustee) and if the Customer uses the Goods for itself or a third party in some manufacturing or other processing, the Customer shall hold such part of the proceeds of such manufacturing or other processing as it relates to the Goods, in trust for Panus Oceania and pay such monies to Panus Oceania on demand;
- (e) in addition to its rights under the PPS, Panus Oceania may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Panus Oceania and for this purpose the Customer irrevocably licences Panus Oceania to enter such premises and also indemnifies Panus Oceania from and against all costs, claims, demands or actions by any party arising from such action.

## **7 Risk and Insurance**

7.1 Goods for which Panus Oceania arranges delivery shall be insured during transit and risk shall pass to the Customer at the point of delivery.

7.2 Goods for which the Customer arranges delivery will not be insured by Panus Oceania during transit. In this event, risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately on the Goods being dispatched or taken from Panus Oceania's premises.

7.3 The Goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods and Services.

7.4 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the Goods sold by Panus Oceania or in Panus Oceania's possession, whether such Goods are used singularly, or in combination with other substances, or any process.

7.5 All Customers' property at any time in possession of Panus Oceania for service, repair or installation works shall be entirely at the Customer's risk in all aspects and Panus Oceania accepts no responsibility for any loss or damage thereto. Furthermore, the Customer warrants that they are the true and absolute owner of the goods supplied to Panus Oceania or has the full authority and consent of the true owner and/or person whose consent or authority may be required.

## **8 Personal Property Securities Act**

8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

8.2 For the purposes of the PPSA:

- (a) terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and Panus Oceania has a Purchase Money Security Interest in all present and future goods supplied by Panus Oceania to the Customer and the proceeds of the goods;
- (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Panus Oceania on the Personal Property Securities Register.

8.3 The security interest arising under this clause 8 attaches to the goods when the goods are collected or dispatched from Panus Oceania's premises and not at any later time.

8.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

8.5 Panus Oceania and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

8.6 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Panus Oceania will apply only to the extent that they are mandatory or Panus Oceania agrees to their application in writing; and
- (b) where Panus Oceania has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

8.7 The Customer must immediately upon Panus Oceania's request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by Panus Oceania to be

relevant to its security position such agreements and waivers (including as equivalent to those above) as Panus Oceania may at any time require.

8.8 Panus Oceania may allocate amounts received from the Customer in any manner Panus Oceania determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Panus Oceania.

8.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.

## **9. Performance of Agreement**

9.1 Any period or date for delivery of Goods or provision of Services stated by Panus Oceania is intended as an estimate only and is not a contractual commitment. Panus Oceania will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services but will, in no circumstances whatsoever, be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

9.2 A completed delivery docket signed by the driver, the Customer or its employee or agent will be proof of delivery of the Goods invoiced.

### 10. Delivery

10.1 Subject to 10.2, the Customer must arrange for collection of the Goods from Panus Oceania's premises within 14 days of notification that the Goods are ready.

10.2 Panus Oceania may, at the Customer's request and in Panus Oceania's absolute discretion, arrange for the delivery of the Goods to the Customer and shall designate the route and the means of transportation for the delivery of Goods or Services.

10.3 Unless otherwise stated on Panus Oceania's quotation, the Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Customer to the point of delivery.

10.4 The Customer must provide reasonable and proper access to the location specified for delivery to allow the unloading of Goods.

10.5 The Customer authorises Panus Oceania to subcontract delivery in its absolute discretion.

10.6 Panus Oceania may make part delivery of Goods or provision of Services and Panus Oceania may invoice the Customer for the Goods or Services provided.

10.7 The Customer indemnifies Panus Oceania against any loss or damage suffered by Panus Oceania, its sub-contractors or employees as a result of delivery, except where the Customer is a Consumer and Panus Oceania have not used due care and skill.

10.8 The Customer shall be deemed to have taken delivery of the Goods and the Customer must pay all costs associated with delivery, storage and insurance of the Goods and any other costs incurred while making further attempts to deliver the Goods where:

(a) the delivery of Goods is delayed or prevented by circumstances caused by the Customer, including that the Customer is not able to accept delivery; or

(b) Panus Oceania does not receive forwarding instructions sufficient to enable it to dispatch the Goods or the Goods are not picked up by the Customer within 14 days of notification that the Goods are ready.

### 11. Liability

11.1 Except as specifically set out herein, or contained in any express warranty statement provided in relation to the Goods or Services, the Agreement does not include by implication, any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual remedy for their failure.

11.2 If the Customer is a Consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Panus Oceania for failure of a statutory guarantee under the ACL.

11.3 If the Customer on-supplies the goods to a Consumer and:

(a) the goods or services are not of a kind ordinarily

acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Panus Oceania's liability to the Customer;

(b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Panus Oceania's liability to the Customer; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

11.4 If clause 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement Panus Oceania is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

11.5 Panus Oceania is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

11.6 The Customer acknowledges that:

(a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Panus Oceania in relation to the goods or services or their use or application.

(b) it has not made known, either expressly or by implication, to Panus Oceania any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer;

(c) any specification that accompanies a quotation or any specification implied in the description of the Goods is subject to minor change as Panus Oceania continually improves the Goods (however Panus Oceania will notify the Customer where there is a material change that will significantly alter the integrity, functionality or worth of the Goods).

11.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Services which cannot be excluded, restricted or modified.

### 12. Cancellation

12.1 If, through circumstances beyond the control of Panus Oceania, Panus Oceania is unable to effect delivery or provision of Goods or Services, then Panus Oceania may cancel or suspend the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

12.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Panus Oceania after that order has been accepted.

12.3 Panus Oceania, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

### 13. Returns and Exchanges

13.1 Panus Oceania will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies Panus Oceania in writing with full details within 14 days of delivery, installation or receipt of the invoice rendered in respect of the Goods.

13.2 If the Customer fails to give the notice as required in clause 13.1, it is deemed to have accepted the Goods.

13.3 When any defects, shortages, claim for damage or noncompliance with the Agreement specifications is accepted by Panus Oceania, Panus Oceania may, at its option, repair or replace the Goods.

13.4 Panus Oceania will not under any circumstances accept Goods for return that:

(a) have been specifically produced or acquired to fulfil any contract;

(b) have been altered or used in any way; or

(c) are not in their original condition and packaging.

13.5 The Customer must obtain Panus Oceania's prior written approval for the return of Goods and pay all freight charges associated with the return of Goods unless Panus Oceania accepts the reasons stated for the return is due to its fault.

13.6 If the Customer is a Consumer, nothing in this clause 13 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

#### **14. Force Majeure**

14.1 Panus Oceania shall have no liability whatsoever under or in any way related to the sale and purchase of the Goods or Services or otherwise for any failure to fulfil any obligation hereunder to the extent that such fulfilment is prevented by circumstances beyond its reasonable control including but without limitation to industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts of terrorism or acts of war.

#### **15. Intellectual Property**

15.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.

15.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof or anything derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.

15.3 The Customer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.

15.4 Any Intellectual Property provided to the Customer by Panus Oceania in connection with the Goods remains the exclusive property of Panus Oceania and must not be copied or communicated to any third party without the express prior written consent of Panus Oceania.

#### **16. Privacy**

16.1 Panus Oceania is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. A copy of Panus Oceania's latest privacy policy may be accessed at [www.panusoceania.com.au](http://www.panusoceania.com.au).

#### **17. Miscellaneous**

17.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

17.2 Failure by Panus Oceania to enforce any of these Terms shall not be construed as a waiver of any of Panus Oceania's rights.

17.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.

17.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee.

Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

17.5 The Customer must comply with the National Privacy Principles in connection with any personal information supplied to it in connection with this Agreement