

# Wastech Engineering Pty Ltd – Terms & Conditions of Trade

## 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Wastech" means Wastech Engineering Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Wastech Engineering Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Wastech to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Wastech to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Site" means the address nominated by the Customer at which the Services are to be undertaken (or where the Equipment is to be located) by Wastech.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular customer and website, and can be accessed either by the web server or the customer's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.8 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Wastech and the Customer in accordance with clause 6 below.
- 1.9 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

## 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 Where Wastech gives advice or recommendations to the Customer in regards to repairs, or the Customer's agent, with specific instructions regarding the repair or use of the Services and such advice or recommendations are not acted upon then Wastech shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the repairs. These repairs will be completed at the risk and liability of the Customer.
- 2.5 The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Wastech and it has been approved with a credit limit established for the account;
  - (b) in the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Wastech reserves the right to refuse delivery; and
  - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Wastech reserves the right to vary the Price with alternative Goods as per clause 6.2 to prior confirmation and agreement of both parties. Wastech also reserves the right to halt all Services until such time as Wastech and the Customer agree to such changes. Wastech shall not be liable to the Customer for any loss or damage the Customer suffers due to Wastech exercising its rights under this clause.

## 3. Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), Section 226 of the Contract Commercial Law Act 2017 (NZ) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that Wastech shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Wastech in the formation and/or administration of this Contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Wastech in respect of the Services.

- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of Wastech; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

## 5. Change in Control

- 5.1 The Customer shall give Wastech not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Wastech as a result of the Customer's failure to comply with this clause.

## 6. Price and Payment

- 6.1 At Wastech's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Wastech to the Customer; or
  - (b) Wastech's quoted price (subject to clause 6.2 which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days).
- 6.2 Wastech reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) if during the course of the Services, the Goods are not or cease to be available from Wastech's third party suppliers, then Wastech reserves the right to provide alternative Goods; or
  - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work health hazards and safety considerations (such as the discovery of asbestos), availability of machinery, prerequisite work by any third party not being completed, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring/cabling, etc.) which are only discovered on commencement of the Services; or
  - (e) in the event of increases to Wastech in the cost of labour or materials which are beyond Wastech's control.
- 6.3 Variations will be charged for on the basis of Wastech's quotation, and will be detailed in writing, and shown as variations on Wastech's invoice. The Customer shall be required to respond to any variation submitted by Wastech within ten (10) working days. Failure to do so will entitle Wastech to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Wastech's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Wastech, which may be:
- (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Wastech's payment schedule;
  - (c) for certain approved Customers:
    - (i) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or
    - (ii) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Wastech.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge will apply per transaction of up to 2%), or by any other method as agreed to between the Customer and Wastech.
- 6.7 Wastech may in its discretion allocate any payment received from the Customer towards any invoice that Wastech determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Wastech may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Wastech, payment will be deemed to be allocated in such manner as preserves the maximum value of Wastech's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Wastech nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Wastech an amount equal to any GST Wastech must pay for any supply by Wastech under this or any other Contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- ## 7. Delivery of Goods
- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Wastech's address; or
  - (b) Wastech (or Wastech's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At Wastech's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 Wastech may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

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- 7.4 Any time specified by Wastech for delivery of the Goods is an estimate only and Wastech will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Wastech is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Wastech shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Wastech is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Wastech is sufficient evidence of Wastech's rights to receive the insurance proceeds without the need for any person dealing with Wastech to make further enquiries.
- 8.3 If the Customer requests Wastech to leave Goods outside Wastech's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 Where Wastech is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Wastech shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.5 Wastech shall be entitled to rely on the accuracy of any plans, specifications (including, but not limited to CAD drawings etc.) and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Wastech accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 Where the Customer has supplied materials for Wastech to complete the Services, or existing materials are in place, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Wastech shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 8.7 Wastech is only responsible for parts that are replaced by Wastech and that in the event that other parts/materials, subsequently fail, the Customer agrees to indemnify Wastech against any loss or damage to the materials.
- 8.8 Stainless steel is a textured material and can be of a porous nature. The Customer accepts that products made from this material can rust and mark easily and that care should be taken to maintain the finish of and longevity of stainless steel products.
- 8.9 Where an anodised surface finish has been selected, slight colour variation may occur between the main unit and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.
- 8.10 Where the Customer has left a vehicle with Wastech for repair, restoration, or modification or for Wastech to perform any other Service in relation to the item, it shall be at the sole risk of the Customer. Wastech shall not be liable for any loss or damage to any vehicle whilst in the care of Wastech, it shall be the responsibility of the Customer to ensure the vehicle is adequately insured, or at all (including but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on Wastech premises.
- 8.11 The Customer acknowledges and accepts that Goods (including but not limited to, steel and/or metal, etc.) supplied may:
- exhibit variations in shade tone, colour, texture, markings, surface and finish, and may contain natural fissures, occlusions, and indentations. Wastech will make every effort to match batches/samples of the Goods supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur; and
  - fade or change colour over time; and
  - expand, contract or distort as a result of exposure to heat, cold, weather; and
  - mark or stain if exposed to certain substances; and
  - be damaged or disfigured by impact or scratching.
- 8.12 The Customer also acknowledges and accepts where Wastech has performed temporary repairs that:
- Wastech offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - Wastech will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 8.13 Wastech shall not be liable for any defect, deterioration and/or damage to the Goods:
- if the Customer does not follow Wastech's recommendations;
  - where Goods are stored off site for extended periods of time as a result of any action/inaction by the Customer;
  - resulting from incorrect use and/or installation of the Goods by the Customer or any other third party.
  - where welding, galvanising (or any other heat related process) has caused distortion or any other damage.
- 9. Access**
- 9.1 The Customer shall ensure that Wastech has clear and free access to the site at all times to enable them to undertake the Services. Wastech shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Wastech.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify Wastech against all costs incurred by Wastech in recovering such vehicles in the event they become bogged or otherwise immovable.
- 10. Compliance with Laws**
- 10.1 The Customer and Wastech shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11. Title**
- 11.1 Wastech and the Customer agree that ownership of the Goods shall not pass until:
- the Customer has paid Wastech all amounts owing to Wastech; and
  - the Customer has met all of its other obligations to Wastech.
- 11.2 Receipt by Wastech of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 11.1:
- the Customer is only a bailee of the Goods and must return the Goods to Wastech on request;
  - the Customer holds the benefit of the Customer's insurance of the Goods on trust for Wastech and must pay to Wastech the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Wastech and must pay or deliver the proceeds to Wastech on demand;
  - the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Wastech and must sell, dispose of or return the resulting product to Wastech as it so directs;
  - the Customer irrevocably authorises Wastech to enter any premises where Wastech believes the Goods are kept and recover possession of the Goods;
  - Wastech may recover possession of any Goods in transit whether or not delivery has occurred;
  - the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Wastech;
  - Wastech may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 12. Personal Property Securities Act 2009 ("PPSA")**
- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Wastech for Services – that have previously been supplied and that will be supplied in the future by Wastech to the Customer.
- 12.3 The Customer undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Wastech may reasonably require to;
    - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - register any other document required to be registered by the PPSA; or
    - correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
  - indemnify, and upon demand reimburse, Wastech for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - not register a financing change statement in respect of a security interest without the prior written consent of Wastech;
  - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Wastech;
  - immediately advise Wastech of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 Wastech and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Wastech, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by Wastech under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

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### 13. Security and Charge

13.1 In consideration of Wastech agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

13.2 The Customer indemnifies Wastech from and against all Wastech's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Wastech's rights under this clause.

13.3 The Customer irrevocably appoints Wastech and each director of Wastech as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

### 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

14.1 The Customer must inspect the Goods immediately on delivery and/or installation and must within seven (7) days of delivery notify Wastech in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Wastech to inspect the Goods.

14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

14.3 Wastech acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Wastech makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Wastech's liability in respect of these warranties is limited to the fullest extent permitted by law.

14.5 If the Customer is a consumer within the meaning of the CCA, Wastech's liability is limited to the extent permitted by section 64A of Schedule 2.

14.6 If Wastech is required to replace the Goods under this clause or the CCA, but is unable to do so, Wastech may refund any money the Customer has paid for the Goods.

14.7 If the Customer is not a consumer within the meaning of the CCA, Wastech's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Customer by Wastech at Wastech's sole discretion;
- (b) limited to any warranty to which Wastech is entitled, if Wastech did not manufacture the Goods;
- (c) otherwise negated absolutely.

14.8 Subject to this clause 14, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 14.1; and
- (b) Wastech has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Wastech shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by Wastech;
- (e) fair wear and tear, any accident, or act of God.

14.10 Overdue and/or outstanding monies owed to Wastech for Goods and/or Services under this Contract will render any warranty and guarantee null and void.

14.11 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Wastech as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Wastech has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 14.10.

14.12 Notwithstanding anything contained in this clause if Wastech is required by a law to accept a return then Wastech will only accept a return on the conditions imposed by that law.

14.13 Subject to clause 14.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

### 15. Intellectual Property

15.1 Where Wastech has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Wastech. Under no circumstances may such designs, drawings and documents be used without the express written approval of Wastech.

15.2 The Customer warrants that all designs, specifications or instructions given to Wastech will not cause Wastech to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Wastech

against any action taken by a third party against Wastech in respect of any such infringement.

15.3 The Customer agrees that Wastech may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Wastech has created for the Customer.

### 16. Default and Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Wastech's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Customer owes Wastech any money the Customer shall indemnify Wastech from and against all costs and disbursements incurred by Wastech in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Wastech's contract default fee, and bank dishonour fees).

16.3 Further to any other rights or remedies Wastech may have under this Contract, if a Customer has made payment to Wastech, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Wastech under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

16.4 Without prejudice to Wastech's other remedies at law Wastech shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Wastech shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Wastech becomes overdue, or in Wastech's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by Wastech;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 17. Cancellation

17.1 Without prejudice to any other remedies Wastech may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Wastech may suspend or terminate the supply of Goods to the Customer. Wastech will not be liable to the Customer for any loss or damage the Customer suffers because Wastech has exercised its rights under this clause.

17.2 Wastech may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Wastech shall repay to the Customer any money paid by the Customer for the Goods. Wastech shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Wastech as a direct result of the cancellation (including, but not limited to, any loss of profits).

17.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 18. Privacy Policy

18.1 All emails, documents, images or other recorded information held or used by Wastech is Personal Information, as defined and referred to in clause 18.3 and therefore considered Confidential Information. Wastech acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Wastech acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Wastech that may result in serious harm to the Customer, Wastech will notify the Customer in accordance with the Act and/or the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to Wastech in respect of Cookies where transactions for purchases/orders transpire directly from Wastech's website. Wastech agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Wastech when Wastech sends an email to the Customer, so Wastech may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Wastech's website.

18.3 The Customer agrees for Wastech to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Wastech.

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- 18.4 The Customer agrees that Wastech may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.5 The Customer consents to Wastech being given a consumer credit report to collect overdue payment on commercial credit.
- 18.6 The Customer agrees that personal credit information provided may be used and retained by Wastech for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.
- 18.7 Wastech may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.8 The information given to the CRB may include:
- personal information as outlined in 18.1 above;
  - name of the credit provider and that Wastech is a current credit provider to the Customer;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Wastech has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - information that, in the opinion of Wastech, the Customer has committed a serious credit infringement;
  - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Customer shall have the right to request (by e-mail) from Wastech:
- a copy of the information about the Customer retained by Wastech and the right to request that Wastech correct any incorrect information; and
  - that Wastech does not disclose any personal information about the Customer for the purpose of direct marketing.
- 18.10 Wastech will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.11 The Customer can make a privacy complaint by contacting Wastech via e-mail. Wastech will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- ### 19. Dispute Resolution
- 19.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- ### 20. Trusts
- 20.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Wastech may have notice of the Trust, the Customer covenants with Wastech as follows:
- the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not without consent in writing of Wastech (Wastech will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- the removal, replacement or retirement of the Customer as trustee of the Trust;
  - any alteration to or variation of the terms of the Trust;
  - any advancement or distribution of capital of the Trust; or
  - any resettlement of the trust property.
- ### 21. Unpaid Seller's Rights
- 21.1 Where the Client has left any item with Wastech for repair, modification, exchange or for Wastech to perform any other service in relation to the item and Wastech has not received or been tendered the whole of any monies owing to it by the Client, Wastech shall have, until all monies owing to Wastech are paid:
- a lien on the item; and
  - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of Wastech shall continue despite the commencement of proceedings, or judgment for any monies owing to Wastech having been obtained against the Client.
- ### 22. Other Applicable Legislation
- 22.1 At Wastech's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 22.1 (each as applicable), except to the extent permitted by the Act where applicable.
- ### 23. General
- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of state in which the Goods and/or Services were provided by Wastech to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction of the courts will be subject to the state in which Wastech has its principal place of business.
- 23.3 Subject to clause 14, Wastech shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Wastech of these terms and conditions (alternatively Wastech's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 Wastech may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 23.5 The Customer cannot licence or assign without the written approval of Wastech.
- 23.6 Wastech may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Wastech's sub-contractors without the authority of Wastech.
- 23.7 The Customer agrees that Wastech may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Wastech to provide Goods to the Customer.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.