



Southern Waste Solutions

ABN 87 928 486 460

Terms and Conditions of Trade

COPPING REFUSE DISPOSAL SITE JOINT AUTHORITY trading as SOUTHERN WASTE SOLUTIONS ABN 87 928 486 460 ("SWS")
PO Box 216, New Town, TAS 7008, phone +613 6273 9712 fax +613 8669 4064 email finance.sws@bigpond.com

1. Definitions

In these Terms:

"Agreement" means any agreement for SWS' acceptance of Waste deposited by or on behalf of the Customer at the Facility;

"Controlled Waste" means controlled waste as defined in the *Environmental Management and Pollution Control Act 1994* (Tas);

"Copping Landfill" means the landfill at Arthur Highway, Copping;

"Customer" means the person, jointly and severally if more than one, acquiring Services from SWS;

"Customer's Representative" means the person notified by the Customer to SWS in writing from time to time, as a contact person for day to day operations under this Agreement;

"Direction" means any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which SWS may make, give, serve or issue to the Customer to require the Customer to fulfill to the satisfaction of SWS, the Customer's obligations under this Agreement;

"DPIWE" means the Department of Primary Industries Water and Environment, or Department of Primary Industries, Parks, Water and Environment as the context requires;

"DPIWE permit" means the permit issued to SWS by DPIWE to operate the applicable Facility;

"Environmental Law" means a provision of law, or a law which at any time relates to any aspect of the environment or health;

"Environmental Requirements" means the requirements of the *Environmental Management Pollution and Control Act 1994* and its regulations, any relevant State Policies, National Environmental Protection Measures, Codes of Practice, or standards which apply to the Waste, Facility and/or the Agreement;

"EPA" means the Environmental Protection Authority, Tasmania;

"Facility" means the Copping Landfill and/or Lutana Waste Transfer Station;

"Government Body" means any government (federal, state or local) or any governmental, administrative or judicial body, department, authority, commission, tribunal, delegate, instrumentality or agency;

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

"Hazardous Substance" means a substance which:

(a) from 1 January 2013 until SWS notifies the Customer that the requirements in paragraph (b) applies:

- (i) is listed on the List of Designated Hazardous Substances issued by Worksafe Australia; or
- (ii) satisfies the criteria of the Approved Criteria for Classifying Hazardous Substances issued by Worksafe Australia;

(b) from no later than 1 January 2017 is classified as a hazardous substance based on the Globally Harmonised

System of Classification and Labelling of Chemicals adopted by the *Work Health and Safety Regulations 2012* (Tas);

"Hazardous Waste" means any of the following materials:

(a) waste that consists of or contains arsenic and/or cyanide;

(b) any water soluble toxic compound of any of the following elements:

- (i) barium;
- (ii) boron;
- (iii) cadmium;
- (iv) chromium;
- (v) copper;
- (vi) lead;
- (vii) mercury;
- (viii) selenium;
- (ix) zinc;

(c) waste that consists of or contains acids or alkaline materials;

(d) waste that consists of or contains flammable material derived from grease, coal, tar, petroleum, oil or shale;

(e) waste which may either by itself or in combination with other material be infectious, explosive, poisonous, toxic, or otherwise dangerous or injurious to human, animal or plant life;

(f) sewerage sludge (whether mixed with water or not), that contains suspended or settleable solids that have not decomposed or have only partially decomposed; or septic waste;

(g) any Controlled Waste; and

(h) any other waste or refuse which SWS notifies the Customer in writing is Hazardous Waste for the purposes of this Agreement;

"Interest" means the Commonwealth Bank overdraft index rate plus 2% charged monthly;

"Law" means any legislative enactment and any subordinate legislation as amended or replaced, any rule of common law, customary law or equity and any constitution, decree, judgment, legislation, code, treaty, convention or other legislative provision, of any relevant jurisdiction (and "lawful" and "unlawful" shall be construed accordingly);

"Lutana Waste Transfer Station" means the waste transfer station operated by SWS at 129 Derwent Park Road Lutana;

"SWS" means Copping Refuse Disposal Site Joint Authority trading as Southern Waste Solutions ABN 87 928 486 460;

"Services" means the acceptance of Waste delivered by or on behalf of the Customer at the Facility;

"Terms" means these Terms and Conditions of Trade;

"Waste" means:

(a) clean fill, non contaminated building rubble and putrescible waste approved by DPIWE to be disposed of at the applicable Facility in accordance with the DPIWE permit; and/or

(b) Controlled Waste if the disposal of the Customer's particular Controlled Waste has been approved by the EPA in writing to be disposed of at the applicable Facility;

“Work Health Safety Law” means the *Work Health and Safety Act 2012 (Tas)*, *Work Health and Safety Regulations 2012 (Tas)*, *Work Health and Safety (Transitional and Consequential Provisions) Act 2012 (Tas)*, *Work Health and Safety (Transitional) Regulations 2012 (Tas)* and any relevant Codes of Practice approved in accordance with such legislation which apply to SWS, the Facility, the Waste and/or the Agreement.

2. Basis of Agreement

- 2.1 Unless otherwise agreed by SWS in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms. To access the Services the Customer must establish a credit account with SWS and be issued with a gate tag for the Copping Landfill and/or Lutana Waste Transfer Station. Subject to the Customer satisfying SWS requirements for the grant of a credit account and gate tag, SWS will provide the Customer with a gate tag to enable the Customer to access the Services.
- 2.2 The Customer indemnifies SWS, its agents, employees and contractors for any costs, fees, damages, loss, claims and liabilities arising for any use or misuse of any gate tag issued to it by SWS.
- 2.3 An Agreement is accepted by SWS when SWS accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the Services.
- 2.4 SWS in its absolute discretion may refuse to accept any Waste.
- 2.5 SWS may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to any Waste delivered at a Facility after the notice date.

3. Pricing

- 3.1 The Customer shall pay SWS:
- (a) the fees as set out on SWS's website calculated per tonne of Waste accepted at a Facility for the Services which include GST;
 - (b) a fee for the gate tag as set out on SWS's website which includes GST; and
 - (c) any other taxes, levies or duties imposed on or in relation to the Waste or Services, which may be amended from time to time.
- 3.2 If SWS gives written notice of a variation of its fees for the Services set out on SWS's website the Customer is deemed to have accepted such fee variation if it continues to use any Services.
- 3.3 Volume discounts per tonne of Waste accepted at a Facility as set out on SWS's website may be available from time to time.

4. Payment

- 4.1 Unless otherwise agreed in writing:
- (a) Subject to clause 4.1(b), payment for the Services must be made in full within 30 days of the date of SWS's invoice.
 - (b) SWS reserves the right to require payment in full on or completion of the Services.
- 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 SWS's sole discretion immediately upon giving the Customer written notice.
- 4.4 The time for payment is of the essence.

5. Default

- 5.1 If the Customer defaults in payment by the due date of any amount payable to SWS or breaches any term of the Agreement, then all money which would become payable by the Customer to SWS at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and SWS may, without prejudice to any of its other accrued or contingent right:
- (a) charge the Customer Interest on any sum due for the period from the due date until the date of payment in full;
 - (b) charge the Customer for, and the Customer must indemnify SWS from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it

resulting from the default or in taking action to enforce compliance with the Agreement;

- (c) cease or suspend supply of any further Services to the Customer;
 - (d) cancel any gate tag issued to the Customer which enabled the Customer to access a Facility; and
 - (e) by written notice to the Customer, terminate any uncompleted contract with the Customer.
- 5.2 Clauses 5.1(c) and (d) may also be relied upon, at SWS's option:
- (a) where the Customer is a natural person 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, administrator, receiver or 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. Conditions on Delivery of Waste
- 6.1 The Customer will take all necessary steps to ensure the Customer, its officers, employees, agents and contractors:
- (a) only deliver the category of Waste applied for by the Customer (in the credit application or thereafter) and approved by SWS for disposal at the applicable Facility (as notified by SWS), which subject to clause 6.1(b) will not be Hazardous Waste;
 - (b) only deliver Controlled Waste to the Facility, if the disposal of the particular category of Controlled Waste has been approved by the EPA, a copy of the EPA approval permit has been provided to SWS and the delivery of the Controlled Waste complies with all the EPA permit conditions;
 - (c) comply with all Environmental Requirements which apply to the Customer's Waste including transport and disposal of that Waste at the Facility; and
 - (d) comply with SWS' conditions of entry to the Facility, including without limitation signage, as varied from time to time.
- 6.2 (a) The Customer agrees:
- (i) to comply with the work health and safety duties and obligations under the Work Health Safety Law including without limitation to ensure the good repair and appropriateness of the vehicles used to transport Waste to the Facility whether such vehicles are owned and/or operated by the Customer, its officers, employees, agents or contractors, whilst at the Facility and the health and safety of the drivers and operators of those vehicles and any passengers whether they are the Customer's or its agents or contractors' employees, subcontractors or agents; and
 - (ii) that SWS can refuse to accept any Waste delivered to the Facility including on work health or safety grounds;
- (b) The Customer will ensure its officers, employees, agents and contractors delivering Waste to the Facility comply with the Work Health Safety Law including without limitation:
- (i) only bringing onto the Facility vehicles in good repair and appropriate for the transport of the type of Waste being delivered, and are driven and operated by persons fully trained in the safe operation of those vehicles in accordance with the Work Health Safety Law and any other applicable law;
 - (ii) the immediate compliance with any Direction issued by SWS or on its behalf:
 - A. regarding work, health and/or safety at the Facility including without limitation the safe disposal of the

- Waste;
- B. to not deliver or to cease unloading of any Waste at the Facility for work, health or safety reasons;
- C. to leave the Facility; and
- (c) The Customer will institute processes to ensure all persons employed or engaged by the Customer to transport and dispose of Waste at the Facility are immediately notified in writing of any Directions issued by the Customer or on its behalf relevant to the disposal of Waste at the Facility.
- 6.3 The Customer will immediately notify SWS in writing on becoming aware of any breach or likely breach of clause 6 including a full incident report of any breach.
- 7. Indemnity**
- 7.1 The Customer will keep SWS indemnified and hold SWS harmless against all claims, demands, remedies, suits, injury, damage, loss, costs, liabilities, actions, proceedings, rights of action and claims for compensation of any nature which SWS may suffer or incur or for which it may become liable in respect of, or arising out of:
- (a) a failure to comply with a Direction given by SWS or on its behalf;
- (b) a breach of clause 6 or any of SWS, its officers, employees, agents or contractors being held responsible for an activity instead of the Customer involving breach of the Work Health Safety Law or Environmental Requirements;
- (c) any failure by the Customer or its officers, employees, agents, or contractors or that contractor's officers, employees, agents or contractors to comply with Work Health Safety Law duties or obligations in accordance with the Work Health Safety Law;
- (d) any of SWS, its officers, employees, agents or contractors being deemed responsible for an activity instead of the Customer involving breach of any Environmental Law or Environmental Requirements; and/or
- (e) a breach by the Customer of any of the Terms.
- 7.2 Any indemnity given by the Customer to SWS may be enforced before SWS incurs a loss or makes a payment.
- 8. Insurance**
- 8.1 The Customer must:
- (a) take out and keep current at all times during the period these Terms are in force, policies with a reputable insurer lawfully carrying on insurance business in Australia indemnifying the Customer's liability for:
- (i) A personal injury to, or death of a third party;
B loss of and/or damage to the property of a third party,
for not less than \$20 million for each individual claim or series of claims arising out of a single occurrence; and
- (ii) worker's compensation;
- (b) give SWS evidence of the terms of, and payment of, the insurance policies on SWS' request; and
- (c) ensure any subcontractor engaged by it to deliver Waste to the Facility has in place, and keeps current the same insurances as the Customer is required to have in place under this clause 8.1.
- 9. Liability**
- 9.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the 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 Services or any contractual remedy for their failure.
- 9.2 If the Customer is a consumer (as defined in the ACL) nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against SWS for failure of a statutory guarantee under the Australian Consumer Law of the Competition and Consumer Act 2010 ("ACL").
- 9.3 SWS 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, other than, if the Customer is a consumer, then to the extent the loss was reasonably foreseeable.
- 9.4 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 SWS in relation to the Services or their use or application; and
- (b) it has not made known, either expressly or by implication, to SWS any purpose for which it requires the Services and it has the sole responsibility of satisfying itself that the Services are suitable for the use of the Customer.
- 9.5 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 supply of Services which cannot be excluded, restricted or modified.
- 10. Force Majeure**
- 10.1 SWS is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war, vandalism or other form of disruption whatsoever. If an event of force majeure occurs, SWS may suspend or terminate the Agreement by written notice to the Customer.
- 11. Miscellaneous**
- 11.1 The law of Tasmania from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Tasmania, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 11.2 SWS's failure to enforce any of these Terms shall not be construed as a waiver of any of SWS's rights.
- 11.3 If any Term is unenforceable it shall be read down to be enforceable or, if it cannot be read down, the term shall be severed from the Terms without affecting the enforceability of the remaining terms.
- 11.4 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.
- 11.5 The Customer may not assign or novate the benefit of the Terms to any person.