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## Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Purple Patch Services" or "PPS" means the Purple Patch Services Trust, its successors and assigns or any person acting on behalf of and with the authority of the Purple Patch Services Trust.
- 1.2 "Customer" means the person/s requesting PPS to provide the Services/Equipment as specified in any invoice, document or order, and if there more than one person requesting the Services/Equipment is a reference to each person jointly and severally.
- 1.3 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by PPS in the course of it conducting, or supplying to the Customer, any Services.
- 1.4 "Equipment" means all Equipment including any bins, skips, garden bags, and/or accessories supplied on hire by PPS to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by PPS to the Customer.
- 1.5 "Services" means all Services supplied by PPS to the Customer at the Customer's request from time to time.
- 1.6 "Price" means the price payable (plus any GST where applicable) for the Services and/or Equipment hire as agreed between PPS and the Customer in accordance with clause 4 of this contract.
- 1.7 "GST" means Goods and Services Tax (GST) 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 Services/Equipment provided by PPS.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and PPS.
- 2.3 These terms and conditions may be meant to be read in conjunction with PPS's Hire Form, and:
  - (a) where the context so permits, the terms 'Services' and shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.4 Where the Customer is responsible for the provision of any products (including, but not limited to, fertilizer, top dressing products) from a third party, PPS shall be consulted as to a preferred location at the site for any such delivery to be left.
- 2.5 The Customer accepts and acknowledges that in the event PPS acts as an agent on behalf of the Customer with a third party, the Customer agrees to honour their obligation for payment for such transactions invoiced by PPS and shall ensure payment is made by the due date, thereby not limiting PPS in their obligations for payment as agents acting on behalf of the Customer to third parties.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Change in Control

- 3.1 The Customer shall give PPS 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, or business practice). The Customer shall be liable for any loss incurred by PPS as a result of the Customer's failure to comply with this clause.

### 4. Price and Payment

- 4.1 At PPS's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by PPS to the Customer; or
  - (b) the Price as at the date of delivery of the Services/Equipment according to PPS's current price schedules; or
  - (c) PPS's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 PPS reserves the right to change the Price:
  - (a) if a variation to the Services originally scheduled is requested (including any Equipment, applicable plans or specifications); or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to clear and free access to undertake the Services, inclement weather or the non-completion of pre-requisite work which is to be completed by other parties, obscured site defects, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Services; or
  - (c) hard rock barriers below the surface (hard rock meaning any hole that takes more than ten (10) minutes to dig with a mechanical auger, any hold that has to be relocated due to the auger hitting rock and moving off centre and any hole which must have floating rocks dug out by hand so that the auger can proceed which takes more than ten (10) minutes to dig; or
  - (d) in the event of increases to PPS in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond PPS's control.
- 4.3 Variations will be charged for on the basis of PPS's quotation, and will be detailed in writing, and shown as variations on PPS's invoice. The Customer shall be required to respond to any variation submitted by PPS within ten (10) working days. Failure to do so will entitle PPS 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
- 4.4 The Price is estimated and shall not be finally determined until all disposable waste have been separated and the weight of the same (where applicable) can be established by weighing on a weighbridge or other scales.
- 4.5 At PPS's sole discretion a non-refundable deposit may be required.
- 4.6 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by PPS, which may be:
  - (a) on delivery of the Services/Equipment;
  - (b) by way of instalments/progress payments in accordance with PPS's payment schedule;
  - (c) for approved credit account holders either fourteen (14) or thirty (30) days following the date of the invoice;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by PPS.
- 4.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and PPS.

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- 4.8 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 PPS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to PPS an amount equal to any GST PPS must pay for any supply by PPS under this or any other agreement for providing PPS's Services/Equipment. 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.

### 5. Provision of the Services

- 5.1 At PPS's sole discretion delivery of the Services/Equipment shall take place when:
- (a) the Services/Equipment are supplied to the Customer at PPS's address; or
  - (b) the Services/Equipment are supplied to the Customer at the Customer's nominated address.
- 5.2 Subject to clause 5.3, it is PPS's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.3 The commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that PPS claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond PPS's control, including but not limited to any event as per clause 5.3, or any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services (including any delay caused by the non-completion of prerequisite work performed by third parties); or
  - (c) notify PPS that the site is ready.
- 5.4 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 PPS may deliver the Services/Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.6 Any time specified by PPS for delivery of the Services/Equipment is an estimate only and PPS 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 Services/Equipment to be supplied at the time and place as was arranged between both parties. In the event that PPS is unable to supply the Services/Equipment as agreed solely due to any action or inaction of the Customer then PPS shall be entitled to charge a reasonable fee for re-supplying the Services/Equipment at a later time and date.
- 5.7 The Customer shall ensure that PPS has clear and free access to the site at all times to enable them to provide the Services and/or delivery or collect Equipment. PPS 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 PPS.

### 6. Risk

- 6.1 Irrespective of whether PPS retains ownership of any Incidental Items all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as PPS may repossess the Incidental Items in accordance with clause 8. The Customer must insure all Incidental Items on or before delivery.
- 6.2 PPS reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Customer's failure to insure in accordance with clause 6.1.
- 6.3 Notwithstanding the provisions of clause 6.1, where PPS requires that plant and tools required for the Services be stored at the site, the Customer shall supply PPS a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 6.4 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where PPS is requested to merely clear such blockages, PPS can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, PPS will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.
- 6.5 The Customer accepts that PPS shall not be held liable for any loss or damage from plants that fail to grow due to environmental factors beyond PPS's control, or by the Customer failing to follow any care or maintenance instructions provided by PPS.
- 6.6 Where PPS gives advice or recommendations to the Customer, or the Customer's agent, regarding the care and maintenance of surfaces and such advice or recommendations are not acted upon then PPS shall not be liable in any way whatsoever for any damages or losses that occur as a result of failure to comply with this clause.

### 7. Underground Locations

- 7.1 Prior to PPS commencing any Services the Customer must advise PPS of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst PPS will take all care to avoid damage to any underground services the Customer agrees to indemnify PPS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 7.1.

### 8. Title to Incidental Items

- 8.1 PPS and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
- (a) the Customer has paid PPS all amounts owing for the Services/Equipment; and
  - (b) the Customer has met all other obligations due by the Customer to PPS in respect of all contracts between PPS and the Customer.
- 8.2 Receipt by PPS 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 and until then PPS's ownership or rights in respect of the Incidental Items shall continue.

### 9. Personal Property Securities Act 2009 ("PPSA")

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- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 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:
- (a) all Incidental Items/Equipment previously supplied by PPS to the Customer;
  - (b) all Incidental Items/Equipment will be supplied in the future by PPS to the Customer; and
  - (c) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to PPS for Services – that have previously been provided and that will be provided in the future by PPS to the Customer.
- 9.3 The Customer undertakes to:
- (a) 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 PPS may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 9.2(a)(i) or 9.2(a)(ii);
  - (b) indemnify, and upon demand reimburse, PPS 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 Incidental Items/Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of PPS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items/Equipment in favour of a third party without the prior written consent of PPS;
  - (e) immediately advise PPS of any material change in its business practices of selling Incidental Items which would result in a change in the nature of proceeds derived from such sales.
- 9.4 PPS 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.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by PPS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by PPS under clauses 9.2 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 9.10 Only to the extent that the hire of the Equipment exceeds a ninety (90) day hire period (with the right of renewal) shall this clause 9 apply, and this contract a security agreement for the purposes of PPSA generally, and in particular Section 20.
- 10. Security and Charge**
- 10.1 In consideration of PPS agreeing to supply Services/Equipment, 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).
- 10.2 The Customer indemnifies PPS from and against all PPS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PPS's rights under this clause.
- 10.3 The Customer irrevocably appoints PPS and each director of PPS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
- 11. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 11.1 The Customer must inspect PPS's Services on completion, and the Equipment on delivery and must within three (3) days notify PPS in writing of any evident defect in the Services/Equipment (including PPS's workmanship), or any Incidental Items provided, or of any other failure by PPS to comply with the description of, or quote for, the Services/Equipment which PPS was to supply. The Customer must notify any other alleged defect in PPS's Services, Equipment or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow PPS to review the Services, Equipment or Incidental Items that were provided.
- 11.2 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**).
- 11.3 PPS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, PPS makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services/Equipment. PPS's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, PPS's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If PPS is required to rectify, re-supply, or pay the cost of re-supplying the Services/Equipment under this clause or the CCA, but is unable to do so, then PPS may refund any money the Customer has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of Services/Equipment and Incidental Items which have been provided to the Customer which were not defective.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, PPS's liability for any defective Services/Equipment or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by PPS at PPS's sole discretion;
  - (b) otherwise negated absolutely.
- 11.8 Notwithstanding clauses 11.1 to 11.7 but subject to the CCA, PPS 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 Incidental Items;
  - (b) the Customer using the Incidental Items for any purpose other than that for which they were designed;

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- (c) the Customer continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Services/Equipment by the Customer or any third party without PPS's prior approval;
  - (e) the Customer failing to follow any instructions or guidelines provided by PPS;
  - (f) fair wear and tear, any accident, or act of God.
- 11.9 PPS may in its absolute discretion accept non-defective goods for return in which case PPS may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned goods plus any freight costs.
- 11.10 Notwithstanding anything contained in this clause if PPS is required by a law to accept a return then PPS will only accept a return on the conditions imposed by that law.

### 12. Intellectual Property

- 12.1 Where PPS has designed, drawn or developed Incidental Items for the Customer, then the copyright in any Incidental Items shall remain the property of PPS. Under no circumstances may such designs, drawings and documents be used without the express written approval of PPS.
- 12.2 The Customer warrants that all designs, specifications or instructions given to PPS will not cause PPS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify PPS against any action taken by a third party against PPS in respect of any such infringement.
- 12.3 The Customer agrees that PPS may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which PPS has created for the Customer.

### 13. Default and Consequences of Default

- 13.1 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 PPS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes PPS any money the Customer shall indemnify PPS from and against all costs and disbursements incurred by PPS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PPS's contract default fees, and bank dishonour fees).
- 13.3 Further to any other rights or remedies PPS may have under this contract, if a Customer has made payment to PPS, 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 PPS under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 13.4 Without prejudice to PPS's other remedies at law PPS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PPS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to PPS becomes overdue, or in PPS'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 PPS;
  - (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.

### 14. Cancellation

- 14.1 Without prejudice to any other remedies PPS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions PPS may suspend or terminate the supply of Services/Equipment to the Customer. PPS will not be liable to the Customer for any loss or damage the Customer suffers because PPS has exercised its rights under this clause.
- 14.2 PPS may cancel any contract to which these terms and conditions apply or cancel delivery of Services/Equipment at any time before the Services are commenced or Equipment provided by giving written notice to the Customer. On giving such notice PPS shall repay to the Customer any money paid by the Customer for the provision of the Services/Equipment. PPS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Customer cancels delivery of the Services/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PPS as a direct result of the cancellation (including, but not limited to, any loss of profits).

### 15. Dispute Resolution

- 15.1 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:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 16. Compliance with Laws

- 16.1 Both the Customer and PPS agree that they will at all times ensure that they comply with the provisions of all statutes (Environment Protection Act 1986 (EPA) and subsequent amendments), regulations, safety standards and bylaws of government, local and other public authorities that may be applicable to the Services, including work health and safety laws (WHS) and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.
- 16.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

### 17. Privacy Act 1988

- 17.1 The Customer agrees for PPS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by PPS.

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- 17.2 The Customer agrees that PPS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) 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
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 17.3 The Customer consents to PPS being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Customer agrees that personal credit information provided may be used and retained by PPS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services/Equipment; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services/Equipment; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services/Equipment.
- 17.5 PPS may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
  - (b) name of the credit provider and that PPS is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) 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);
  - (f) 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 PPS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of PPS, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Customer shall have the right to request (by e-mail) from PPS:
- (a) a copy of the information about the Customer retained by PPS and the right to request that PPS correct any incorrect information; and
  - (b) that PPS does not disclose any personal information about the Customer for the purpose of direct marketing.
- 17.8 PPS 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Customer can make a privacy complaint by contacting PPS via e-mail. PPS 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).
- 18. Service of Notices**
- 18.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 19. General**
- 19.1 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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland the state in which PPS has its principal place of business, and are subject to the jurisdiction of the Rockhampton Courts in that state.
- 19.3 Subject to clause 11 PPS 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 PPS of these terms and conditions (alternatively PPS's liability shall be limited to damages which under no circumstances shall exceed the Price paid for the Services/Equipment).
- 19.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 19.5 The Customer agrees that PPS may amend these terms and conditions by notifying 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 PPS to provide Goods to the Customer.
- 19.6 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.
- 19.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

**Additional Terms applicable to Equipment Hire**

**20. Hire Period**

- 20.1 Hire Charges shall commence from the time the Equipment is delivered to the Customer's premises and will continue until the return of the Equipment to PPS's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. The off-hire receipt will be issued when the Equipment is returned to PPS's premises.
- 20.2 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 20.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless PPS confirms special prior arrangements in writing.

**21. Risk**

- 21.1 PPS shall retain property in the Equipment at all times nonetheless all risk for the Equipment passes to the Customer on delivery.
- 21.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies PPS for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- 21.3 The Customer will insure, or self-insure, PPS's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 21.4 The Customer accepts full responsibility for and shall keep PPS's indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

**22. Placement & Access**

- 22.1 Equipment shall be placed where directed by the Customer and in the absence of the Customer's directions PPS shall place the Equipment at the delivery address at the nearest clear area to the roadside. The Customer agrees to indemnify PPS against any claims whatsoever made against PPS that arise out of the placement of the Equipment.
- 22.2 The Customer agrees that the Customer shall not move Equipment once placed in position by PPS, except with the express approval of PPS.
- 22.3 In the event that either party to this agreement is ordered to remove Equipment by any statutory authority, they shall immediately notify the other party of the requirement to do so and organise the removal of the Equipment. The Customer agrees to indemnify PPS against all additional costs incurred by PPS in complying with any such order, or through the Customers failure to comply with any such order, or through the Customers failure to comply with the provisions of this clause.
- 22.4 The Customer shall ensure that it has prior to delivery of a Equipment all approvals required from any local authority where the Equipment is to be located on the roadside or any footpath adjacent thereto.
- 22.5 The Customer shall be responsible at all times for ensuring PPS has clear and free access to the site at which the Equipment is to be (or is) located. PPS shall not be liable for any loss or damage caused (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) when delivering or collecting any Equipment unless due to the negligence of PPS.
- 22.6 If there are any delays due to clear or free access not being available when PPS arrives to deliver or collect Equipment then the Customer shall reimburse PPS for all additional costs incurred by PPS as a result of such delay (including, in the case of Equipment collection, any hire fees lost due to the Equipment being unavailable).

**23. Title to Equipment**

- 23.1 Equipment is and will at all times remain the absolute property of PPS.
- 23.2 If at any time the Customer fails to return an Equipment to PPS when requested then PPS or PPS's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

**24. Contaminated/Dangerous Waste**

- 24.1 The Customer shall not use an Equipment to store or dispose of any explosive, flammable or otherwise dangerous goods, furthermore the Customer agrees to indemnify PPS against any costs, loss or damage which PPS might incur, or claims of any nature made against PPS as a result of the Customers failure to comply with this clause.
- 24.2 The Customer acknowledges that:
  - (a) an Equipment shall not be used to dispose of asbestos, car batteries, gas bottles, bullets, fuel cans containing fuel, toxic chemicals or liquids;
  - (b) wet paint is under no circumstances accepted for disposal. Paint tins must be empty and dry before being placed in an Equipment;
  - (c) household waste must be placed in garbage bags prior to being stored in an Equipment under no circumstances may food scraps be disposed of in a Equipment.
- 24.3 PPS operates within the guidelines as set down in the Environmental Protection Interim Regulated Act 1998 (including but not limited to, the correct disposal of dangerous goods, asbestos waste, and/or vehicle tyres). The Customer agrees to indemnify PPS against all additional costs for disposal and/or fines that PPS may incur in the event that the Customer fails to notify PPS of any such items, or substances and that the Equipment supplied are then used to dispose of.
- 24.4 Special Equipment to dispose of contaminated waste are available on request and the Customer acknowledges that such Equipment are subject to additional costs.

**25. Overloading**

- 25.1 If when PPS arrives to collect an Equipment to facilitate the disposal of its contents and finds that the Equipment is overloaded, then PPS shall (at its sole discretion) either:
  - (a) refuse the carriage of the Equipment until the Customer has reduced the load to an acceptable level; or

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- (b) leave behind the overloaded portion; or
  - (c) provide the Services in which case, the Customer shall be liable to PPS for all additional costs then incurred by PPS (including, but not limited to, any fines, penalties, or additional dumping fees).
- 25.2 The Customer shall ensure that the area and/or surfaces PPS's high pressure hoses or other equipment that can be damaged from sharp objects are to run across is free from any objects that could cause damage. The Customer's failure to adhere to this clause and where PPS's hoses and/or equipment does get damaged, the Customer is responsible for the repair costs incurred by PPS and shall be invoiced to the Customer as a variance under clause 4.2.
- 25.3 The Customer accepts that whilst PPS will take all due care, PPS or shall not be held responsible or liable for any costs, losses or damage to the Customer's property

### **26. Customer's Responsibilities**

26.1 It is the Customer's responsibility to:

- (a) advise PPS of any noxious gases, biohazard, other hazardous or toxic waste at the collection point. PPS shall reserve the right to charge for any associated costs incurred in working with or disposal of such noxious gases, biohazard, other hazardous or toxic waste, with all charges being a variation as per clause 4.2;
- (b) follow all procedural requirements where necessary in relation to the substances mentioned in clause 26.1(a)1.1(a);
- (c) provide PPS with a free water source where required for washing out and/or for carrying out decontamination processes; and
- (d) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by PPS in this regard.