



## TERMS & CONDITIONS

Version 1.0 Effective 8th November 2021

These Terms and Conditions apply to the RECYCLEPAK™ service supplied by **Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584)**.

### 1. AGREEMENT

- 1.1 An agreement is formed when you apply to acquire the Service from Veolia (**Order**) and Veolia accepts your Order. The Order may be made by completing the online ordering process or a manual order form. You warrant that you are over 18 years of age and legally entitled to enter into this Agreement.
- 1.2 This Agreement will be made up of:
  - (a) your Order; and
  - (b) these Terms and Conditions.
- 1.3 If there is inconsistency between any part of this Agreement, the inconsistency will be resolved according to the following order of priority:
  - (a) the Order; and then
  - (b) these Terms and Conditions.

### 2. TERM

- 2.1 This Agreement commences when your Order is accepted by Veolia. This Agreement will continue for the Term or until it is terminated in accordance with clause 3.5 or 18.

### 3. CHANGES TO THE AGREEMENT

- 3.1 Veolia may make changes to this Agreement in the following circumstances:
  - (a) where you agree to the change;
  - (b) where the change will not adversely affect you, and before the changes take effect, Veolia has given you written notice of the change; or
  - (c) if the change is adverse to you, and Veolia provides you with not less than 21 days notice of the change.
- 3.2 Changes to these Terms and Conditions will be made available online and you are encouraged to check our website regularly. The effective date at the top of this document indicates when these Terms and Conditions were last changed.
- 3.3 Veolia will give you notice of material changes:
  - (a) by email to your nominated email address; or
  - (b) otherwise in writing, including by mail or an in-service pop-up message.
- 3.4 Your use of the Service following any changes to this Agreement will constitute your acceptance of such changes.
- 3.5 If you do not wish to continue using the Service under the updated terms, you may terminate this Agreement by contacting Veolia. If we change this Agreement under clause 3.1(c), you may terminate this Agreement within 21 days of the date of the notice.

- 3.6 Your ongoing use of the Service after the date of a variation, alteration or revocation or expiry of the 42 day period is deemed acceptance of the variation, alteration, replacement or revocation.

### 4. SERVICE

- 4.1 You appoint Veolia, and Veolia agrees to provide the Service to you for the Term, as set out in this Agreement.
- 4.2 Following notice to you, Veolia may suspend the Service if:
  - (a) Veolia reasonably determines that it cannot access the Site safely;
  - (b) you have not paid the Charges by the due date for payment; or
  - (c) Veolia reasonably determines that the Equipment has not been used or stored in accordance with this Agreement.

### 5. SITE

- 5.1 Veolia will not commence or continue performing the Service until and unless Veolia is satisfied that it will have unobstructed and safe access to the Site.
- 5.2 You must notify Veolia immediately if access to the Site changes during the Term.

### 6. WASTE

- 6.1 In the event that you notice that the Waste or the Equipment is contaminated with Other Waste, you must notify Veolia of the contamination (and of the nature of the Other Waste). Following such notification:
  - (a) Veolia may decline to collect the contaminated Waste and direct you to remove the Other Waste from the Equipment; or
  - (b) collect the contaminated Waste and Other Waste and, in its discretion, charge you a Contaminated Waste Fee. Veolia will provide you with prior notice of such charge.
- 6.2 Title to and risk in the Waste and the Other Waste remains with you until it is received at Veolia's nominated processing facility.
- 6.3 You must store all Waste securely inside the Equipment.
- 6.4 You must not overfill the Equipment or place Waste or Other Waste beside, around or on top of the Equipment.
- 6.5 If you breach clause 6.4, Veolia may, at its discretion, charge you the Contaminated Waste Fee (if applicable), and will provide you with prior notice of such charge.

### 7. PROHIBITED AND DANGEROUS GOODS

- 7.1 For the avoidance of doubt, you must not place in the Equipment any:
  - (a) Dangerous Goods;
  - (b) illegal or prohibited goods (contraband);
  - (c) live creatures;
  - (d) poison, drugs or medicine;
  - (e) money or coins of any description; or
  - (f) batteries that are more than 100 Watt hours or contain more than 2 grams of lithium content.
- 7.2 You agree that you will complete and sign a consignment note at the point of collection of the

Equipment to certify that the Equipment does not contain dangerous or prohibited goods, explosive or incendiary devices, or batteries that are more than 100 Watt hours or contain more than 2 grams of lithium content.

- 7.3 Whether or not you were aware of the nature of the items, you shall indemnify Veolia against all claims, demands, losses, damages, costs, expenses, penalties, taxes and duties arising in connection with any breach of this clause 7.

## 8. EQUIPMENT

Veolia will provide the Equipment. The Equipment will be at your risk from the date that the Equipment is delivered to the Site. Subject to clause 10.6, the Equipment will remain Veolia's property until it is received at Veolia's nominated processing facility.

## 9. DELIVERY

- 9.1 Veolia will deliver the Equipment to the Site.
- 9.2 Veolia will provide you with at least 7 days' notice of the week and approximate day at which it anticipates it will deliver the Equipment to the Site, and notify you of any changes to that date and/or time.
- 9.3 If you fail to take delivery of the Equipment at the Site on the day and during the time agreed between the parties, Veolia reserves the right to arrange storage of the Equipment and recover out-of-pocket expenses and costs from you.
- 9.4 Where the Equipment is damaged other than where such damage is due to the actions or omissions by you, Veolia will provide replacement Equipment and deliver it free of charge to the Site. In all other circumstances, any delivery costs associated with any replacement Equipment are your responsibility.

## 10. COLLECTION

- 10.1 Subject to clause 12, Veolia will collect the Equipment from the Site.
- 10.2 You can request a collection of the Equipment via Veolia's online booking tool at any time during the Term.
- 10.3 You will make the Equipment available to Veolia at the requested time for collection.
- 10.4 You may request a change to a scheduled collection in relation to any Equipment for no additional charge, provided that you give Veolia not less than 48 business hours' written notice of the requested change of collection date. If you give Veolia less than 48 business hours' written notice of a requested change to the scheduled collection, Veolia may, in its discretion, charge you an additional amount for the unscheduled collection (**Unscheduled Collection Fee**), as set out in the Order.
- 10.5 You will:
- allow Veolia unobstructed and safe access to the Site and the Equipment to enable Veolia to carry out its obligations under this Agreement;
  - disclose to Veolia all information in your possession relevant to the provision of the Service and ensure that all information provided to Veolia is accurate insofar as you are, or ought to be, aware; and
  - provide any necessary site inductions as may be necessary for Veolia's Personnel to perform the Service at the Site.

## 11. CARE AND USE OF EQUIPMENT

- 11.1 You agree that you will:
- use the Equipment for the nominated Waste only;
  - assemble and use the Equipment strictly in accordance with the Instructions;
  - not remove, damage, or deface the Equipment, or remove any labels or other notations from the Equipment;
  - store the Equipment in a dry location;
  - maintain the cleanliness of the Equipment;
  - promptly notify Veolia if the Equipment is damaged or stolen, and pay for the replacement of any damaged or stolen Equipment (excepting fair wear and tear); and
  - ensure that no person relocates or attempts to relocate the Equipment to another site that is not the Site.

## 12. RECYCLING OF EQUIPMENT

- 12.1 Veolia will use all reasonable endeavours to recycle the Equipment following collection from the Site.
- 12.2 You acknowledge and agree that if:
- you do not request a collection during the Term pursuant to clause 10.2;
  - you do not make the Equipment available for collection in accordance with clause 10.3; or
  - this Agreement is terminated pursuant to clauses 3.5 or 18,

Veolia will not collect the Equipment from the Site, and you will use all reasonable endeavours to ensure the Equipment is recycled.

## 13. HEALTH, SAFETY and ENVIRONMENT

- 13.1 You warrant that your activities related to generation of the Waste are lawful.
- 13.2 You must act, and use the Equipment, in accordance with the Instructions.
- 13.3 You must at all times identify and exercise all reasonable precautions to ensure that no person is exposed to risks to their health or safety in relation to the Equipment or the provision of the Service.
- 13.4 You must provide Veolia with complete and accurate information upon request:
- about the type, nature and amount of the Waste; and
  - which is known or becomes known to you at any point during the Term which could impact on the environment or health and safety arising from the provision of the Service, or could impact on Veolia's obligations under relevant laws in respect of the handling of the Waste.
- 13.5 You and Veolia must comply with all legal and regulatory requirements relating to the Service, including any applicable COR Laws.
- 13.6 You must promptly notify Veolia of any incident, injury, property damage or environmental damage which occurs in relation to the Equipment or the provision of the Service.
- 13.7 If Veolia agrees to handle or collect any Other Waste from you, the provisions relating to the Waste in this clause 13 will also (to the extent applicable) apply to the Other Waste.

## 14. CHARGES AND PAYMENT

- 14.1 You must pay the Charges to Veolia, in consideration for the provision of the Service.
- 14.2 In addition to the Charges, Veolia may charge you the following Additional Charges, as set out in the Order:
- (a) the Futile Fee if Veolia attends the Site but is unable to collect the Equipment:
    - (i) pursuant to clause 4.2(a); or
    - (ii) because its Personnel reasonably determines that the Equipment is physically inaccessible and cannot be made physically accessible within 10 minutes;
  - (b) the Credit Card Surcharge;
  - (c) the Administration Charge; and
  - (d) the Contaminated Waste Fee.
- 14.3 Veolia will invoice you for the Charges in the next billing cycle following acceptance of your Order. Veolia will invoice you for any Additional Charges in the next billing cycle in arrears.
- 14.4 You must pay the full amount of each invoice to Veolia within 14 days of the date of the invoice in accordance with the Credit Terms and Conditions, or as otherwise indicated on the invoice, without set-off.
- 14.5 If you do not pay the invoice when due, then without prejudice to any other remedies Veolia may have, Veolia may enforce any relevant rights under the Credit Terms and Conditions, including charging the Administration Charge.

## 15. GST

Unless otherwise indicated, all consideration provided for a supply under this Agreement is expressed exclusive of any GST. If for any reason GST is imposed on a supply under this Agreement, the recipient of the supply on receipt of a tax invoice must pay to Veolia an additional amount equal to the GST imposed on the supply.

## 16. LIABILITY AND INDEMNITY

- 16.1 Veolia will be liable to you for any property damage or personal injury or death suffered by you as a direct result of Veolia's negligence.
- 16.2 Veolia will not be liable to you for loss caused or contributed to by you or any of your Personnel, clients, tenants or invitees to the Site or due to normal wear and tear of the Equipment.
- 16.3 You indemnify Veolia and its Personnel against all loss, damage or liability suffered or incurred by Veolia arising from or as a consequence of:
- (a) property damage or any personal injury, illness or death of any person, to the extent that such loss, damage or liability is caused or contributed to by any act or omission by you, or any of your Personnel, clients, tenants or invitees to the Site;
  - (b) breach of this Agreement by you, including any use of the Service or the Equipment in a manner contrary to the terms of this Agreement;
  - (c) fraudulent or negligent conduct by you;
  - (d) conduct that is misleading or deceptive or is likely to mislead or deceive, by you or your Personnel in connection with this Agreement, your use of Service or your products and services.

## 17. LIMITATION OF LIABILITY

- 17.1 Veolia's liability to you for any loss arising from this Agreement, other than for personal injury or death, and

regardless of whether or not Schedule 2 of the Competition and Consumer Law 2010 (Cth) or any law of similar effect applies, will be limited to:

- (a) resupply of the Service; or
- (b) a payment which will not exceed the value of the Charges paid during the Term.

- 17.2 Each party must mitigate its loss.

- 17.3 To the extent permitted by law, other than as expressly set out in clause 7.3, neither party will be liable to the other party for any Consequential Loss.

## 18. TERMINATION OR EXPIRY

- 18.1 You may terminate this Agreement immediately by written notice to Veolia at any time:
- (a) if Veolia becomes bankrupt, insolvent or subject to any external administration; or
  - (b) if Veolia is in material breach of any term of this Agreement provided that:
    - (i) you have notified Veolia of the material breach; and
    - (ii) the material breach has not been remedied within 7 days of receipt of notification in clause 18.1(b)(i).
- 18.2 You may terminate this Agreement at any time by notice to Veolia, in which case you must pay Veolia any outstanding amounts under this Agreement.
- 18.3 This Agreement will automatically terminate if you relocate your Site, and the provisions of clause 18.2 shall apply.
- 18.4 If you terminate this Agreement, or any part of it (other than in accordance with clause 18.1 or 18.2), you will be deemed to have terminated this Agreement in accordance with clause 18.2, and the provisions of clause 18.2 shall apply.
- 18.5 If Veolia terminates this Agreement in accordance with clause 19.6, you must pay Veolia any outstanding amounts under this Agreement.
- 18.6 Veolia may terminate this Agreement immediately on written notice to you if you:
- (a) fail to pay the Charges for 30 days from the date that payment is due;
  - (b) become bankrupt, insolvent or subject to any external administration;
  - (c) are in material breach of any term of this Agreement, provided that:
    - (i) Veolia has notified you of the material breach; and
    - (ii) the material breach has not been remedied within 7 days of receipt of notification in clause 18.6(c)(i); or
    - (iii) pursuant to clause 4(b) of the Credit Terms and Conditions, in the event a "Default Event" (as defined in the Credit Terms and Conditions) occurs.
- 18.7 If Veolia terminates this Agreement in accordance with clause 18.6, you must pay Veolia any outstanding amounts under this Agreement.

## 19. YOUR WARRANTIES

- 19.1 You warrant and agree that:
- (a) you have agreed to and will comply with the terms and conditions of this Agreement;
  - (b) you are authorised to enter into this Agreement;
  - (c) the person who signs the consignment note at the time of collection of the Equipment is authorised sign the consignment note on your behalf to declare the contents of the Equipment;

- (d) the description and particulars provided in the consignment note that is signed on your behalf at the point of collection includes full and accurate details relating to the nature of the contents of the Equipment;
- (e) the Equipment does not and will not at any time contain any prohibited or Dangerous Goods;
- (f) you are responsible for all acts and omissions of your Personnel as if they were your acts and omissions;
- (g) all information which you have given Veolia is correct and not misleading;
- (h) the Equipment will be used solely for the purpose of carrying on your business and not for any other purpose;
- (i) you have satisfied yourself that the Equipment complies with its description, is in good working order and condition, is of merchantable quality and suitable for your purposes and that have relied on your own skill and judgement in choosing the Equipment;
- (j) so far as the law permits all conditions and warranties which might be implied (whether by statute or otherwise) in relation to this Agreement or the Equipment are excluded; and
- (k) you are not insolvent and will not become insolvent during the Term.

19.2 You acknowledge that this Agreement sets out the whole of the agreement between the parties in respect of the Equipment, and that:

- (a) other than and expressly set out in this Agreement neither Veolia nor anyone on your behalf has given any warranty or made any representation to you as to the quality, fitness for any particular purpose, suitability or condition of the Equipment;
- (b) you have not relied on any representation or warranty from any person in deciding to enter into this Agreement, other than any representation or warranty expressly set out in this Agreement; and
- (c) you are not entitled to any compensation or remedy in connection with the performance or servicing of the Equipment, warranties or the use or other benefits which you may or may not obtain from the Equipment or any related services which are not expressly provided for in this Agreement.

## 20. PERSONAL PROPERTY AND SECURITIES ACT

- 20.1 Veolia shall be entitled to register any Security Interest on the Personal Property Securities Register for the purposes of the PPSA in respect of the Equipment.
- 20.2 You shall do all things necessary in order for Veolia to affect any perfected, enforceable registration of a Security Interest in accordance with this clause 20, including obtaining relevant signatures and consents from third parties, providing any documents and information.
- 20.3 Veolia shall be entitled to exercise any of its rights in connection with any Security Interest.
- 20.4 You shall not create any Security Interest, lien or similar right over the Equipment which may interfere with, or affect Veolia's Security interest in the Equipment.
- 20.5 You shall not permit any of the Equipment to become an accession, or commingled with any other equipment.

20.6 You shall provide Veolia with 21 days' notice of any change of company name, change of your directors or change of your registered address.

20.7 Unless contrary to law, you waive any right to receive notifications required under the PPSA, and in particular you waive your right to receive notices as set out in s.144 and 157 (or successive sections of any amended form of the PPSA) of the PPSA.

## 21. INTELLECTUAL PROPERTY

21.1 As between you and Veolia, you agree that Veolia at all times remains the owner of all copyright, trademark rights, patent rights, design rights, whether registered or unregistered, and all other rights to intellectual property relating to the Equipment, including all present and future rights to intellectual property of every kind and that this agreement does not, limit or restrict Veolia from using or exploiting the intellectual property in any other way.

21.2 Other than as expressly set forth in this Agreement, Veolia does not grant to you any other rights or licences of any kind and all implied rights and licenses are hereby expressly excluded.

21.3 The rights granted to you under this Agreement are personal and non-exclusive, and nothing will prevent Veolia from providing similar Equipment and Services to any third party.

21.4 You will not infringe or interfere with the intellectual property rights of any person, including any patent, copyright, circuit layout rights, registered designs, trademarks, business names, moral rights existing in the Equipment.

## 22. INFORMATION AND PRIVACY

22.1 The information that Veolia collects, receives or obtains under this Agreement may include Personal Information about you and/or you Personnel or other third parties.

22.2 In performing this Agreement, each party must comply, and must make sure that its Personnel comply, with all Privacy Laws in respect of all Personal Information collected, held, used, disclosed and otherwise handled by them under or in connection with this Agreement.

22.3 By accepting this Agreement, you consent (including on behalf of your Personnel) to Veolia collecting, holding, using and disclosing Personal Information as set out in this Agreement.

## 23. SET-OFF

23.1 Veolia may set-off any liability to you in connection with this Agreement against any liability of you to Veolia under this Agreement. Any exercise by Veolia of its rights pursuant to this Agreement are without prejudice to any other rights or remedies available to it under this Agreement or at law.

## 24. GENERAL

24.1 If a party is prevented from or delayed in complying with an obligation (other than a payment of money under this Agreement) by an event beyond its reasonable control (other than as a result of its fault or negligence) (**Force Majeure Event**), performance by it of that obligation is suspended during that time, but only to the extent that compliance is prevented or delayed. A party so affected must notify the non-affected party as soon as practicable if it seeks to rely on this clause, and must provide details of the cause and extent of the Force Majeure Event and the expected delay.

24.2 Notices required to be in writing may be given by letter, email, or in writing on an invoice, addressed using the party's contact details set out in this Agreement or as otherwise notified by that party.

24.3 This Agreement is confidential.

24.4 Each party must notify the other of any dispute as soon as possible, which will if necessary be escalated through management in an effort to resolve the dispute in good faith. Despite the existence of a dispute, each party must continue to perform its obligations under this Agreement that are unaffected by the dispute.

24.5 This Agreement is subject to the laws of the State or Territory where the Site is located and both parties submit to the jurisdiction of the courts of that State or Territory.

24.6 You may not assign this Agreement without Veolia's prior written consent, which will not be unreasonably withheld. Veolia may assign, transfer, charge or otherwise deal with the Agreement without your consent.

24.7 The parties' relationship is one of supplier and customer and nothing in this Agreement infers or allows you to represent that it has any other relationship with Veolia.

24.8 You acknowledge and agree that Veolia has entered into this Agreement in reliance on your covenants and acknowledgements contained in this Agreement.

24.9 Any provision of this Agreement which is void, illegal or otherwise unenforceable will be severed to the extent permitted by law without affecting any other provision of this Agreement.

24.10 In this Agreement, any reference to "including" shall not limit any preceding words and the singular includes the plural.

24.11 This Agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, negotiations and conduct in respect of its subject matter.

24.12 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement.

24.13 A reference to a party includes that party's officers, employees, agents and subcontractors.

24.14 In this Agreement, the following words have the following meaning:

**Additional Charges** means the additional charges which may apply to the provision of the Services under this Agreement in the relevant month pursuant to clause 14.2, as set out in the Order;

**Administration Fee** means an administration charge in the amount set out in the Order that Veolia will charge you if it has had to stop Service due to non-payment or late payment of the Charges;

**Agreement** means these terms and conditions, your application, the Order, the Credit Application and the Instructions;

**Charges** means the amount set out in your Order and any costs, prices, fees or charges relating to the Service that Veolia includes in an invoice to you;

**Commencement Date** means the date Veolia confirms acceptance of your Order;

**Consequential Loss** means loss of actual or anticipated profits, loss of actual or anticipated revenue, and damage to, or loss of, goodwill;

**Contaminated Waste Fee** means an additional fee for the collection and disposal of contaminated Waste and Other Waste, in the amount set out in Order;

**COR Laws** means the *Heavy Vehicle National Law* or its equivalent as enacted in each relevant state and territory of Australia in so far as they relate to "Chain of Responsibility";

**Credit Application** means the credit application submitted by you to Veolia;

**Credit Card Surcharge** means a surcharge of 1.5% applied to any payments made by you using a credit card, or such amount as may be notified to you from time to time following a revision in the charges Veolia incurs in connection with offering credit card payment facilities to you;

**Credit Terms and Conditions** means the duly executed terms and conditions attached to the Credit Application;

**Dangerous Goods** means the whole and any part of any chattels, articles or things placed in, around, on or near the Equipment which are or may become, in fact or at law, noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to the Equipment, other goods or to any, person, plant, animal or property. This shall include goods likely to harbour or encourage vermin or other pests and all such goods which fall within the definition of hazardous and dangerous goods in the legislation governing carriage by rail or road in the States and Territories of Australia.

**Equipment** means the boxes or any other containers or equipment Veolia provides to you as set out in the Order;

**Expiry Date** means the date set out in the Order;

**Futile Fee** means the amount set out in the Order, to be charged in accordance with clause 14.2;

**GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any replacement or other legislation and regulations;

**Instructions** means any documents and manuals for the assembly, care and use of the Equipment provided to you by Veolia from time to time;

**Order** has the meaning given in clause 1.1 and sets out details of the Service to be provided under this Agreement;

**Other Waste** means any waste other than the Waste, including without limitation Dangerous Goods;

**Personal Information** has the meaning given in the Privacy Act;

**Personnel** means, in relation to a party, the directors, officers, agents, employees and subcontractors of that party;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**Privacy Act** means the Privacy Act 1988 (Cth);

**Privacy Laws** means the Privacy Act, together with any applicable State or Territory health privacy legislation;

**Security Interest** means a security interest as defined in the PPSA;

**Service** means the services to be provided for you by Veolia, as set out in the Order;

**Site** means your site location(s) as set out in the Order;

**Term** means the 12-month period set out in the Order commencing on the Commencement Date and ending on the Expiry Date;

**Waste** means the waste stream set out in the Order; and

**You** means the party named in the Order.