888 Waste - Terms of trade

1. Definitions

In these conditions unless the context otherwise requires:

- "888 Waste" means Sell it Ready Pty Ltd trading as 888 Waste ABN 56 605 510 209.
- "Client" means the person, or company buying the Services from 888 Waste.
- "Contract" means any accepted quotation, agreement, arrangement, agreement or contract (written or oral), tender, job sheet, order, specifications and project scope between 888 Waste and the Client for the purchase of the Services.
- Date of the Contract - means where the Contract is entered into including (i) the date of acceptance of the order by the Client or (ii) the date upon which the Client orders the Services.
- "Contract Price" means the price of the Services contained in any Contract.
- "Person" includes a corporation, association, firm, company, partnership or individual.
- "quotation" means any quotation supplied by 888 Waste and which is valid for 30 days only.
- "Services" means services or products supplied by 888 Waste.
- "Manager" means any person appointed or appearing as decision maker.
- **"**PPS Law**"** means:

(a) the Personal Property Security Act 2009 (Cth) **(**PPS Act**)** and any regulation made at any time under the PPS Act (each as amended from time to time); and

(b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

2. Acceptance

2.1 These terms and conditions constitute the Terms of Trade agreed between the parties and should be read in association with any Contract. Any Contract includes these Terms of Trade for the Services which are supplied by 888 Waste to the Client from time to time and/or published by 888 Waste on its website. If any instruction is received by 888 Waste from the Client to obtain the supply of Services, it constitutes acceptance by the Client of the terms and conditions contained herein and the Contract.

2.2 888 Waste reserves the right to amend any quotation before it has been accepted to take into account any rise or fall in the cost of completing the provision of Services. 888 Waste will notify the Client of any amendment as soon as practicable, at which point the amended quotation will be the quotation for the purposes of these Terms of Trade. Notwithstanding the provision of a quotation, 888 Waste may refuse to provide the Services at any time.

2.3 An indication in a quotation of the time frame for the provision of the Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon 888 Waste.

2.4 888 Waste may in its absolute discretion refuse to provide Services including but not limited to where:

(i) Services are unavailable for any reason whatsoever;

(ii) credit limits cannot be agreed upon or have been exceeded; or

(iii) payment for the Services previously provided to the Client or any related corporation of the Client or to any other party who is, in the reasonable opinion of 888 Waste, associated with the Client under the same or another Contract, has not been received by 888 Waste or where satisfactory financing arrangements are not entered into.

2.5 The Contract may be terminated by the giving of 14 days notice.

2.6 The Client authorises 888 Waste to charge to any credit card supplied to 888 Waste, for the purposes of the provision of the Services and compliance with these terms, including moneys forfeited due to cancellation.

2.7 Where specific terms are included in any Contract and they are inconsistent with these Terms of Trade, then the terms in the Contract prevail over these Terms of Trade.

2.8 The Services to be provided are done on as "as needs basis" meaning that not all Services are delivered at every attendance.

2.9 All quotations are valid for a period of 30 days.

2.10 Where cleaning forms part of the Services, it is agreed that there is no guarantee of the end results of such cleaning and that stains may remain and that there may be some water splashing as a result.

2.11 The Client must remove all property, at their risk, to enable the provision of the Services to proceed.

2.12 888 Waste may use sub-contractors for the purpose of providing the Services. The Client agrees that it may not hire sub-contractors or employees and agents of 888 Waste directly.

2.13 Pricing may increase at the discretion of 888 Waste and the Client will be advised of any such increase should it occur.

2.14 Any variation to a Contract or the Services must be in writing.

2.15 The Client agrees that any methods or intellectual property of 888 Waste is the sold property of 888 Waste and that (i) the Client may not use or publish such methods or intellectual property and (ii) indemnify 888 Waste for any loss in regard to such use or publishing.

3. Terms and Conditions

3.1 888 Waste may update these Terms of Trade at any time.

3.2 These Terms of Trade and any subsequent terms or conditions issued by 888 Waste apply to all Contracts and orders for the Services made by the Client after the date and time at which these Terms of Trade are provided to the Client or published by 888 Waste on its website.

3.3 These Terms of Trade and any quotations and Contracts and written variations of any of them agreed to in writing by 888 Waste represent the whole agreement between the parties relating to the subject matter of the provision of the Services.

3.4 These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.

3.5 In entering into these Terms of Trade, the Client has not relied on any warranty, representation or statement, whether oral or written, made by 888 Waste or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.

3.6 The scope of works is set out in the Contract. Further fees may be payable where conditions make the works more time consuming or difficult.

3.10 888 Waste may leave any site and cancel the provision of any Services if there is any bullying, harassment or an unsafe work environment and the Client must provide a sale work environment and declares that he she or it has authority to provide such a safe work environment.

3.11 888 Waste will use its best endeavours to keep keys and remote access equipment as secure as possible. No claim may be made by the Client for the loss by 888 Waste for such keys and remote access equipment.

4. Price

4.1. The price for the Services is as provided in the Contract or the quotation and subsequent invoices provided by 888 Waste to the Client in respect of Services supplied.

4.2. Time for payment for the Services shall be of the essence and is as stated in any Contract. The earliest time for payment in these Terms of Trade or the Contract will apply.

4.3. Unless otherwise stated in any other documentation, payment for the price must be made as follows:

24 hours from invoice or as set out in the Contract and/or associated documents if a different payment term is stated.

4.4 Additional work for components over and above the scope of work will be charged as agreed from time to time including where work is requested on the day of the provision of the Services.

4.5 Variation to any scope of work will mean a re-assessment of the price.

4.6 Any timing counts only after the Client has provided all resources required for the Contract to proceed.

4.7 A Client may opt for a financing arrangement with a finance company approved by 888 Waste. Any terms of the financing arrangement must include a provision that the finance provider will directly pay 888 Waste all moneys due from the Client to 888 Waste.

5. Payment, Late Payment, Default of Payment and Consequences of Default of Payment

5.1. The method of payment is by bank transfer or other method as advised by 888 Waste or a financing arrangement as approved by 888 Waste.

5.2. Late payment will, at the option of 888 Waste, incur interest at the rate of 8% per annum calculated on a daily basis. This is payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by 888 Waste, but without prejudice to 888 Waste's other rights or remedies in respect of the Client's default in failing to make payment on the due date.

5.3. 888 Waste may charge for any collection related costs in addition to the interest provided for herein.

5.4. Without prejudice to any other remedies 888 Waste may have, if at any time the Client is in breach of any obligation (including those relating to payment), 888 Waste may suspend or terminate the supply of the Services to the Client and suspend or terminate any of its other obligations. 888 Waste will not be liable to the Client for any loss or damage the Client suffers because 888 Waste exercised its rights under this paragraph.

5.5. All costs incurred by 888 Waste in recovery of any outstanding debt will be payable in full by the Client.

5.6. 888 Waste may in its complete discretion apply any payment received from the Client to any amount owing by the Client to 888 Waste.

5.7. The Client is not entitled to retain any money owing to 888 Waste notwithstanding any default or alleged default by 888 Waste of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Services to an inadequate standard or a delay in the provision of Services.

5.8. Nothing in this paragraph affects the Client's rights for any alleged failure of a guarantee under the Australian Consumer Law.

5.9. In the event that:

a. any money payable to 888 Waste becomes overdue, or in 888 Waste's opinion the Client will be unable to meet its payments as they fall due; or

b. the Client 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

c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;

then without prejudice to 888 Waste's other remedies at law, 888 Waste is entitled to cancel all or any part of any Contract with a Client that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to 888 Waste shall, whether or not due for payment, immediately become payable.

5.9 The Client agrees that in the event that the Client breaches any of these Terms and Conditions or the Contract or fails to make any payment required then in addition to all of its other rights, 888 Waste may at its option, retain the Client's property or return such property to the original pick up location until such breach is rectified.

5.10 If the Client has (i) not pre-prepared property (ii) has not or cannot provide reasonable access to the property (iii) makes the provision of the Services more complex, time consuming or difficult or (iv) cannot provide parking near to the property for collection, then 888 Waste may (a) refuse to provide the Services and/or (b) charge extra for the provision of additional services at the rate set out in any communication to the Client. The Client authorises 888 Waste to charge any credit card with such extra payment.

5.11 Where the Services are cancelled by the Client within 14 days of the commencement date of provision of the services then 30% of the Contract price will become immediately payable.

5.12 Where a Client needs to reschedule the Services or defer the provision of Services already commenced, then a further 20% will be added in addition to the price for the Services.

6. Governing laws

6.1 These Terms of Trade will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the Services or these Terms of Trade.

6.2 These Terms of Trade are governed by the laws of the State of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such State.

7. Dispute resolution

7.1 If a dispute arises between the Client and 888 Waste, the following procedure applies:

(i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this paragraph.

(ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.

(iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.

7.2 If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 5 Business Days (or other period as agreed).

7.3 Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms of Trade. This paragraph survives termination of these Terms of Trade.

7.4 Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms of Trade.

7.5 The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

8. Reservation of Title and Risk

8.1 Risk in any property remains with the Client.

8.2 Where products are supplied by 888 Waste to the Client without payment in full of all moneys payable in respect of the products provided by 888 Waste in respect of those products, the Client:

(i) is a bailee of the products until property in them passes to the Client;

(ii) irrevocably appoints 888 Waste as his or her or its attorney to do all acts and things necessary to ensure the retention of title to products including the registration of any security interest in favour of 888 Waste with respect to the products under applicable law;

(iii) must be able upon demand by 888 Waste to separate and identify as belonging to 888 Waste products supplied by 888 Waste from other products which are held by the Client;

(iv) must not allow any person to have or acquire any security interest in the products;

(v) agrees that 888 Waste may repossess the products if payment is not made within 14 days (or such longer time as 888 Waste may, in its complete discretion, approve in writing) of the supply of the products; and

(vi) the Client grants an irrevocable licence to 888 Waste or its agent to enter the Client's premises in order to recover possession of products pursuant to this paragraph. The Client indemnifies 888 Waste in respect of any damage to property or personal injury which occurs as a result of 888 Waste entering the Client's premises.

8.4 Where products are supplied by 888 Waste to the Client without payment in full of all moneys payable in respect of the products provided by 888 Waste in respect of those products, and the Client makes a new object from the products, whether finished or not, or the Client mixes the products with other products or the products become part of other products, the Client agrees with 888 Waste that the ownership of the products immediately passes to 888 Waste. The Client will hold the products on trust for 888 Waste until payment of all sums owing to 888 Waste whether under these Terms of Trade or any Contract have been made and 888 Waste may require the Client to store the products in a manner that clearly shows the ownership of 888 Waste.

8.5 For the avoidance of doubt, under this paragraph, the ownership of the products passes to 888 Waste at the beginning of the operation or event by which the products are converted into, are mixed with or become part of other products.

8.6 Notwithstanding this paragraph the Client may transfer, sell or dispose of products, including new products, to a third party in the ordinary course of business provided that:

(i) where the Client is paid by a third party in respect of products, the Client holds the whole of the proceeds of sale less any GST on trust for 888 Waste - in a separate account - until all amounts owned by the Client to 888 Waste have been paid; or

(ii) where the Client is not paid by a third party, the Client agrees to assign all of its rights against the third party to 888 Waste upon 888 Waste giving the Client notice in writing to that effect and for the purpose of giving effect to that assignment the Client irrevocably appoints 888 Waste as its attorney.

9.7 Where products are supplied by 888 Waste to the Client without payment in full of all moneys payable in respect of the products and any Services provided by 888 Waste in respect of those products, the Client acknowledges that 888 Waste has a right to register and perfect a personal property security interest.

8.8 If:

(i) a PPS Law applies or commences to apply to these Terms of Trade or any transaction contemplated by them, or 888 Waste determines (based on legal advice) that this is the case; and

(ii) in 888 Waste's opinion, the PPS Law:

(A) does or will adversely affect 888 Waste's security position or obligations; or

(B) enables or would enable 888 Waste's security position to be improved without adversely affecting the Client, THEN -

888 Waste may give notice to the Client requiring the Client to do anything (including amending these Terms of Trade or execute any new Terms and Conditions) that in 888 Waste's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph (ii)(A) or improve the security position as contemplated in paragraph (ii)(B). The Client must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in 888 Waste's opinion 888 Waste’s security position or obligations under or in connection with these Terms of Trade have been or will be materially adversely affected, 888 Waste may by further notice to the Client cancel the Contract, in which case the Client must pay to 888 Waste any money owed to 888 Waste by the Client immediately.

8.9 In this paragraph, financing statement, financing charge statement, security agreement and security interest has the meaning given to it by the PPSA.

8.10 The Client agrees that these Terms of Trade constitute a security agreement for the purposes of the PPSA and creates a security interest in a product supplied or to be supplied by 888 Waste.

8.11 The Client agrees to sign any documents or provide any further information to enable 888 Waste to register a financing statement or financing change statement, or any other document under the PPSA.

8.12 The Client agrees to cover the cost of any registration or release under the PPSA.

8.13 The Client may not enter into security arrangements for the products to third parties, including but not limited to the PPSA.

8.14 The Client waives their rights to obtain notices under sections 95, 188, 121 130 and 132 of the PPSA and agrees that sections 96, 115 and125 of the PPSA do not apply to the Contract. The Client waives all rights under Sections 142, 143 and 157 of the PPSA.

9. Warranty

9.1 888 Waste warrants that it will repair or make good any defects in the, if written notice of the claim is received by 888 Waste within seven (7) days from the date the Services were delivered.

9.2 No claim shall be accepted under such warranty if any attempt to repair the defective Services is made by any person not authorised by 888 Waste, or if the defective Services have been modified or incorrectly stored, maintained or used.

9.3 888 Waste's liability is limited to the Non-Excluded Guarantees contained in State and Commonwealth law.

10. Liability

10.1 888 Waste shall not be liable for any loss of any kind whatsoever suffered by the Client as a result of any breach of any of 888 Waste's obligations under the Contract, including any cancellation of the Contract or any negligence on the part of 888 Waste, its servants, agents or contractors, nor shall 888 Waste be liable for any loss, damage or injury caused to the Client's servants, agents, contractors, Clients, visitors, tenants, trespassers or other persons -where the loss is caused by the Client's negligence, error, omission or acts, including but not limited to existing or installed electricity supply and existing of installed electrical services.

10.2 888 Waste shall not be liable for any loss of any kind whatsoever suffered by the Client as a result of any property damage on the part of 888 Waste - where the loss is caused by the Client's negligence, error, omission or acts, including but not limited to existing or installed electricity supply and existing of installed electrical services.

10.3 The Client indemnifies and keeps indemnified 888 Waste, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Client) against 888 Waste or, for which 888 Waste is liable, in connection with any loss arising from or incidental to the provision of Products or Services, including in the circumstances referred to in paragraph 10.1.

10.4 The Client and 888 Waste agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

11. Exclusions and Limitation of Liability

11.1 The Client expressly agrees that use of the Services is at the Client's risk. To the full extent allowed by law, 888 Waste's liability for breach of any term implied into these Terms of Trade by any law is excluded.

11.2 All information, specifications and samples provided by 888 Waste in relation to the Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Client's use of the Services will not entitle the Client to reject the Services upon delivery, or to make any claim in respect of them.

11.3 888 Waste gives no warranty in relation to the Services provided or supplied. Under no circumstances is 888 Waste or any of its suppliers liable or responsible in any way to the Client or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:

(i) any Services supplied to the Client;

(ii) any delay in supply of the Services;

(iii) any failure to supply the Services; or

(iv) services provided by sub-contractors..

11.4 Any advice, recommendation, information, assistance or service given by 888 Waste in relation to Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. 888 Waste

does not accept any liability or responsibility for any loss suffered as a result of the Client's reliance on such advice, recommendation, information, assistance or service.

11.5 To the fullest extent permissible at law, 888 Waste is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Services, or otherwise arising out of the provision of the Services, whether based on Terms of Trade, negligence, strict liability or otherwise, even if 888 Waste has been advised of the possibility of damages.

11.7 The Australian Consumer Law may give to the Client certain guarantees. Where liability for breach of any such guarantee can be limited, 888 Waste's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of products, to the replacement or repair of the products or the costs of resupply or replacement of the products or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

11.8 The Services provided by 888 Waste are essentially project management of preparing properties for sale and presentation to the market. 888 Waste will in no way be liable for any work done by sub-contractors.

12. Force Majeur

12.1 If circumstances beyond 888 Waste's control prevent or hinder its provision of the Services, 888 Waste is free from any obligation to provide the Services while those circumstances continue. 888 Waste may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

12.2 Circumstances beyond 888 Waste's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

13. Confidentiality and Privacy

13.1 All parties will keep these terms and conditions and all correspondence and communication between them as confidential and private, excepting for obtaining accounting and legal advice and for compliance purposes.

13.2 All parties must comply with the Privacy Policy issued by 888 Waste, as published on its website or provided to the Client.