**Walker Environmental Australia Pty Ltd – Terms of trade**

### Definitions and interpretation

* 1. **Definitions**

**Additional Charge** means:

* + 1. fees or charges for additional work performed at your request or reasonably required as a result of your conduct, calculated in accordance with our then current prices; and
    2. expenses incurred by us, at your request or reasonably required as a result of your conduct.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided. **Customer** means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

**Goods** means any goods supplied by the Supplier including those supplied in the course of providing Services.

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

**Loss** includes, but is not limited to, costs (including party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

**Order** means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

### Oral Quote means a quote as defined under these definitions that has not been reduced to writing.

**PPS Law** means:

1. 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
2. any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

**Services** means the services to be provided by the Supplier to the Customer in accordance with a Quote or Order and these terms of trade.

**Supplier** means Walker Environmental Australia Pty Ltd ABN 92 132 349 734 specified as the supplier of Goods or Services on the Quote and includes the Supplier's agents and permitted assigns.

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| **2** | **General** |  |
|  | (a)  (b)  (c) | These terms of trade apply to all transactions between us and you relating to the provision of Goods and Services.  The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.  We may amend any details in a Quote by notice in writing to you. Such amended details supersede any relevant prior detail in dealings between the parties. |
| **3** | **Quotes** |  |
|  | (a)  (b)  (c)  (d)  (e)  (f) | We may provide you with a Quote. Any Quote issued by us is valid for 30 days from the date of issue.  Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.  Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by you of necessary material and instructions to us.  We are not obliged to commence work until the Quote has been accepted by you. This occurs by you completing an Order form and returning the form to us.  We reserve the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. We will notify you of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms of trade.  An indication in a Quote of the time frame for the provision of the Goods or 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 us. |
| **4** | **Orders** |  |
|  | (a)  (b)  (c)  (d) | Every Order for the provision of Goods or Services must be submitted in writing on our standard Order form (unless otherwise agreed).  Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.  Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Supplier relating to that Order.  We may in our absolute discretion refuse to provide Goods or Services where: |

* 1. Goods are unavailable for any reason whatsoever;
  2. credit limits cannot be agreed upon or have been exceeded; or
  3. payment for Goods or Services previously provided to you or any related corporation of you or to any other party who is, in our reasonable opinion, associated with you under the same or another supply contract, has not been received by the Supplier.

(e) An Order cannot be cancelled without our prior written consent. Where an Order is cancelled, you indemnify us against any Losses we may incur as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

### Variations

* 1. You may request that the Order be varied by providing a request in writing to us. A request for a variation must be agreed to in writing by us in order to take effect.
  2. If you wish to vary your requirements after we have prepared a Quote or after the placement of an Order, we reserve the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with our current charge rate from time to time. A revised Quote issued by us in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.
  3. We are given an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

### Invoicing and payment and Interest

* 1. We may in our absolute discretion, issue an invoice to you in any one or more of the following ways:
     1. prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges;
     2. at periodic intervals before the Order is completed, we may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at our discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
     3. upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.
  2. The amount payable by you will be the amount set out in the invoice. This will be calculated as:
     1. the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
     2. where no Quote has been provided our usual charges for the goods or services (or both) as described in the Order.
  3. You must pay our invoice within 7 days of the date of issue.
  4. If any invoice is due but unpaid, we may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
  5. We may in our complete discretion apply any payment received from you to any amount you owe us.
  6. You are not entitled to retain any money owing to us notwithstanding any default, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects your rights for any alleged failure of a guarantee under the Australian Consumer Law.
  7. You shall pay, on demand, interest at the rate of 10% per year on all overdue amounts owed to us, calculated daily.
  8. All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees, internal costs and expenses of us are to be paid by you as a debt due and payable under these terms of trade.

### Additional Charges

* 1. We may require you to pay Additional Charges in respect of Costs incurred by us as a result of reliance on inadequate or incorrect information or material provided by you or information or material supplied later than required by us in order for it to provide the Goods or Services within the specified time frame (if any).
  2. We charge a call-out fee beginning at $90 exclusive of GST, where we are required to attend your or other premises to undertake diagnosis or minor maintenance on your behalf. Where we are required to attend outside ordinary business hours, we may charge a higher fee.
  3. Additional Charges may also occur if:
     1. You cancel an Order where cancellation results in Loss to us;
     2. storage costs for Goods not collected by you within 4 weeks of the date on which the Goods are manufactured, fabricated, created or formed;
     3. Office and administration expenses not included in the Quote;
     4. additional work required by you or any other occurrence which causes us to incur costs in respect of your Order additional to the quoted cost.

### Acceptance of Goods

Unless you advise us in writing of any fault in Goods or failure of Goods to accord with your Order within 72 hours of delivery, you are deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the your Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

### Title and risk

* 1. Risk in Goods passes to you immediately upon delivery.
  2. Property and title in Goods supplied under these terms of trade do not pass to you until all money you owe us (including money owing in respect of other transactions) have been fully paid.
  3. If Goods are supplied by us to you without payment in full, then:
     1. You act as a bailee of the Goods until property in them passes to you;
     2. You irrevocably appoint us to be your attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in our favour with respect to the Goods;
     3. You must be able, upon demand by us, to separate and identify as belonging to us, Goods supplied from other goods which are held by you;
     4. You must not allow any person to have or acquire any security interest in the Goods;
     5. You agree that we may repossess the Goods if payment is not made within 14 days (or such longer time as we may, in its complete discretion, approve in writing) of the supply of the Goods; and
     6. You grant an irrevocable licence to us (or our agent) to enter your premises in order to recover possession of Goods pursuant to this paragraph. You indemnify us for any damage to property or personal injury which occurs as a result of us (or our agent) entering your premises.
  4. If Goods are supplied by us to you without payment in full of all moneys payable in respect of the Goods and any Services provided by us in respect of those Goods, and:
     1. You make a new object from the Goods, whether finished or not;
     2. You mix the Goods with other goods; or
     3. the Goods become part of other goods (**New Goods**),

Then you agree with us that the ownership of the New Goods immediately passes to us. You will hold the New Goods on trust for us until payment of all sums owing to us whether under these terms of trade or any other contract have been made. We may require you to store the New Goods in a manner that clearly shows our ownership.

* 1. For the avoidance of doubt, under paragraph [99.1(d)](#_bookmark0), the ownership of the New Goods passes to us at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
  2. Where Goods are supplied without payment in full of all moneys payable in respect of the Goods and any Services provided by us in respect of those Goods, you acknowledge we have a right to register and perfect a personal property security interest.

### Exclusions and limitation of liability

* 1. You expressly agree that use of the Goods and Services is at your own risk. To the full extent allowed by law, our liability for breach of any term implied into these terms of trade by any law is excluded.
  2. All information, specifications and samples provided by us in relation to the Goods or 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 your use of the Goods or Services will not entitle you to reject the Goods upon delivery, or to make any claim in respect of them.
  3. We give no warranty in relation to the Services provided or supplied. Under no circumstances shall we (or any of our suppliers) be liable or responsible in any way to you (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 Goods or Services. This includes 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:
     1. any Goods or Services supplied;
     2. any delay in supply of the Goods or Services; or
     3. any failure to supply the Goods or Services.
  4. Any advice, recommendation, information, assistance or service given by us in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness, or reliability. We do not accept any liability or responsibility for any Loss suffered as a result of your reliance on such advice, recommendation, information, assistance or service.
  5. To the fullest extent permissible at law, we shall not be 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 Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if we have been advised of the possibility of damages.
  6. You acknowledge that the Goods or Services are not for personal, domestic or household purposes.
  7. The Australian Consumer Law may give to you certain guarantees. Where liability for breach of any such guarantee can be limited, our liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

### Indemnity

* 1. You indemnify and keep us indemnified (and our servants and agents) in respect of any claim, demand made, or action commenced by any person against us or in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade.
  2. This includes, but is not limited to, any legal costs incurred by us in relation to meeting any claim or demand or any party/party legal costs for which we are liable in connection with any such claim or demand.
  3. This provision remains in force after the termination of these terms of trade.

### Force majeure

* 1. If circumstances beyond our control prevent or hinder the provision of the Goods or Services, then we are free from any obligation to provide the Goods or Services while those circumstances continue. We may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
  2. Circumstances beyond our 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.

### Dispute resolution

* 1. If a dispute arises between us and you, the following procedure applies:
     1. 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 clause.
     2. 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.
     3. 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.
  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 7 Business Days (or other period as agreed).
  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 operate 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.
  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.
  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.

### Miscellaneous

* 1. These terms of trade are governed by the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
  2. These terms of trade and any Quotes and written variations agreed to in writing by us represent the whole agreement between the parties relating to the subject matter of these terms.
  3. These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
  4. In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by us or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
  5. If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
  6. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
  7. A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
  8. A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
  9. A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.