

# Super Mobile Skip Bins T&Cs

## 1. Introduction

We are the owner of the Equipment and will remain so at all times, including while the Equipment is supplied for hire. At no time do these terms and conditions transfer You any title or interest in the Equipment.

We agree to supply the Equipment for hire to You for the Price in accordance with these terms and conditions and any Rental Agreement arising under these terms and conditions.

Should You have any questions please do not hesitate to contact Us on **1300 459 164**.

## 2. Definitions and Interpretation

### 2.1 Definitions

**Additional Charges** has the meaning given to it in clause 4.2.

**Australian Consumer Law** has the meaning given to that term in section 4 of the *Competition and Consumer Act 2010* (Cth).

**Business Day** means a day that is not a public holiday, bank holiday or during the period between 24 December and 3 January in New South Wales, Australia.

**Commencement Date** means the date You take possession of the Equipment.

**Consumer Guarantees** means the statutory guarantees conferred in relation to the supply of goods or services to a Consumer under the Australian Consumer Law and other similar legislation of Australian states and territories.

**Consumer** has the meaning given to that term in section 3 of the Australian Consumer Law.

**Delivery Date** means the date and time stated in a Hire Confirmation.

**Delivery** or **Delivered** means leaving the Equipment in Your possession or Your nominee at the Delivery Location.

**Delivery Location** means the delivery address specified by You in a Hire Request and accepted by Us in a Hire Confirmation or as otherwise directed and agreed between the parties.

**Equipment** means the items specified in a Hire Confirmation to be Delivered to You by Us.

**Hire Confirmation** means Our acceptance of Your Hire Request made in writing and which We may require You to sign, or otherwise accept in accordance with Our direction and including, among other things, details of the Equipment, Waste Type, Delivery Location, Hire Period, payment details and any other information We may require.

**Hire Period** means from the Commencement Date until the later of the Hire Return Date or when the Equipment is back in Our possession. The Hire Period includes weekends and public holidays.

**Hire Request** means an offer made by You to hire the Equipment from Us on these terms and conditions and including, among other things, details of the Equipment, Waste Type, Delivery Location, Hire Period and any other information We may require.

**Hire Return Date** means the date the Equipment is to be returned to Us as agreed between the parties and specified in a Hire Confirmation.

**Insolvency Event** in respect of a party means:

- (a) there is any change in the direct or indirect beneficial ownership or control of that party;

- (b) that party disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (c) that party ceases to carry on business;
- (d) that party ceases to be able to pay its debts as they become due;
- (e) proceedings are initiated with a view to obtaining an order for the winding up of that party, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of that party; or
- (f) anything analogous to an event in paragraphs (a) to (e) of this definition occurs in relation to that party.

**Law** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction and includes any industry codes of conduct.

**Losses** means all liabilities, losses, damages, costs and expenses suffered or incurred by any person in connection with these terms and conditions whether arising in contract or tort (including negligence) or under any statute or under any other cause of action, and **Loss** has a corresponding meaning.

**PPSR Act** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the rates and charges payable by You for the hire of the Equipment.

**Prohibited Materials** means and includes:

- (a) any liquids;
- (b) any explosive materials or combinations of materials or substances which creates explosive materials by chemical reactions including empty chemical containers;
- (c) dangerous, toxic, hazardous or noxious materials including but not limited to asbestos, acids, solvents, chemicals, paints, oils and medical waste;
- (d) car tyres;
- (e) mattresses;
- (f) radioactive waste;
- (g) food waste;
- (h) sand, clay, soil/ landfill, contaminated soil and plants with large amounts of soil attached to roots;
- (i) tiles (except for roofing tiles); and
- (j) wet concrete and concrete washout water.

**Rental Agreement** means a contract for the hire of Equipment formed between You and Us, following Hire Confirmation, comprising:

- (a) these terms and conditions; and
- (b) the terms of the Hire Confirmation.

**Waste Type** means the type of waste agreed between the parties for disposal in a skip bin and includes:

- (a) mixed household and building waste;
- (b) clean brick and concrete waste specifically excluding all tiles except roofing tiles; and
- (c) green waste,

**We/Us/Our** means Brandon Reece Toomey trading as Super Mobile Skips Bins (ABN 21 238 305 203).

**You/Your** means the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us. The reference to “You/Your” includes any of your employees, agents and contractors.

## **2.2 Interpretation**

In these terms and conditions, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these terms and conditions, as amended from time to time in accordance with these terms and conditions;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to New South Wales, Australia time;
- (g) a reference to a party is to a party to the Rental Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these terms and conditions or any part of it.

## **3. Hire**

### **3.1 Hire Request**

You may at any time send Us a Hire Request and agree that:

- (a) We are under no obligation to accept Your Hire Request;
- (b) We will use Our best endeavours to provide You with Our acceptance or denial of Your Hire Request within 24 hours of receipt, but otherwise in a reasonable timeframe; and
- (c) upon Our acceptance of Your Hire Request by way of providing Hire Confirmation, a Rental Agreement is automatically entered into and You are bound by these terms and conditions.

### **3.2 Our general hire obligations**

Subject to clause 6, following Hire Confirmation, We agree to:

- (a) hire the Equipment to You for the Hire Period in consideration for payment of the Price;
- (b) Deliver the Equipment to You on the Delivery Date and at the Delivery Location in good working order;
- (c) use best endeavours to Deliver the Equipment to You within 2 hours of the nominated Delivery time agreed between the parties; and
- (d) allow You to exclusively use the Equipment during the Hire Period.

### **3.3 Your general hire obligations**

Subject to clause 6, following Hire Confirmation, You agree to:

- (a) satisfy Yourself at the Commencement Date of the suitability and condition of the Equipment;
- (b) pay the Price set out in the Hire Confirmation, and any Additional Charges, in accordance with clause 4;
- (c) provide a valid driver's license upon hire of any Equipment that requires a valid driver's licence to operate including an Equipment trailer;
- (d) only use the Equipment safely, strictly in accordance with all Laws and only for the intended use for which it was designed by the manufacturer;
- (e) not load or use the Equipment with an excavator or any other plant machinery;
- (f) not operate, or allow anyone else to operate, the Equipment's hydraulic tipping mechanism at any time;
- (g) not carry out any works, repairs or adjustments and not allow any other third party to carry out these works or repairs on the Equipment;
- (h) at all times during the Hire Period, store the Equipment in a safe and secure location protected from theft, damage and vandalism;
- (i) ensure that the Equipment is not contaminated with any Prohibited Materials and only filled with the applicable Waste Type set out in a Hire Confirmation;
- (j) not overload the Equipment including not exceeding the nominated weight loads for the Equipment and for the following Waste Types:
  - (i) 500 kilograms of mixed household and building waste – maximum of 2 wheelbarrows of heavy materials (ie brick and concrete);
  - (ii) 1 tonne of mixed rubbish – maximum of 5 wheelbarrows of heavy materials (ie brick and concrete);
  - (iii) 1 tonne of green waste – no logs, branches or tree stumps exceeding 20 centimetres in diameter; and
  - (iv) 1 tonne clean brick and concrete waste – maximum of 20 wheelbarrows and no individual piece of brick and/or concrete exceeding 15 kilograms.
- (k) ensure that the Equipment can be properly closed and secured for transport; and
- (l) return the Equipment to Us by leaving it at the Delivery Location or other agreed place on the Hire Return Date in good working order, ordinary fair wear and tear excluded.

### **3.4 Claim on waste**

You agree that upon the Equipment being collected by Us and removed from the Delivery Location, You will have no claim to the waste from that time onwards.

## **4. Fees and Charges**

### **4.1 Price**

- (a) Unless otherwise agreed in writing between the parties, You must pay the quoted Price set out in the Hire Confirmation or otherwise notified to you in writing by cash, credit card, debit or electronic payment upon or before the Commencement Date. The Price will be set out in the Hire Confirmation in accordance with the Pricing Options outlined in clause 4.2.
- (b) Notwithstanding clause 4.2(a), in relation to the Pricing Option outlined in clause 4.2(b), the applicable tipping fees will be calculated in accordance with clause 4.2(b)(ii) and will be payable once the waste has been disposed.

## 4.2 Pricing Options

This clause outlines the Pricing Options currently offered by Us, which may be amended from time to time.

- (a) Equipment hire and set waste disposal:
  - (i) Three day hire of Equipment and Our disposal of mixed household and building waste at the cost to You of \$419 up to 500 kilograms and \$559 up to 1000 kilograms.
  - (ii) Three day hire of Equipment and Our disposal of clean brick and concrete waste at the cost to You of \$329 up to 1000 kilograms.
  - (iii) Three day hire of Equipment and Our disposal of green waste at the cost to You of \$349 up to 1000 kilograms.
- (b) Equipment hire and variable waste disposal:
  - (i) Two day hire of Equipment at the cost to You of \$219 plus Our disposal of the waste at the cost to You of the applicable tipping fees.
  - (ii) Tipping fees will be calculated after the waste has been disposed, in the following manner:
    - (A) \$36 per 100 kilogram of mixed household and building waste;
    - (B) \$15 per 100 kilogram of clean brick and concrete waste; and
    - (C) \$15 per 100 kilogram of green waste.
- (c) Additional service:
  - (i) If You hire the Equipment, We can break up Your waste and fill the Equipment with the waste on Your behalf, at a rate of \$75 per hour (in addition to any Price quoted in accordance with clauses 4.2(a) and 4.2(b)).

## 4.3 Additional Charges

In addition to the Price, You may be required to pay Us the following charges (**Additional Charges**) within a reasonable period of receiving a request:

- (a) if You have combined different Waste Types, any adjustments in Price so that the Price is reflective of the price for mixed household and building waste and any associated fees passed on by third parties to Us to sort the waste;
- (b) the cost of any non-standard cleaning that is required including the continuation of the hire charge Price for the portion of the Hire Period during which the Equipment is being cleaned by Us and unavailable for hire by another party;
- (c) if the Equipment is contaminated with Prohibited Materials, additional charges at the rate of specialist disposal at the time of dumping;
- (d) in relation to the Pricing Option at clause 4.2(a), for overloading of the Equipment, with trailers weighed upon return to our recycling facility and overloading charged at the following rate, once the 500 kilogram or 1000 kilogram limit, as applicable, is exceeded:
  - (i) \$40 per 100 kilogram of mixed household and building waste;
  - (ii) \$20 per 100 kilogram of clean brick and concrete waste; and
  - (iii) \$20 per 100 kilogram of green waste,or as otherwise updated from time to time.
- (e) any repairs or replacement parts for the Equipment due to damage or theft in accordance with clause 9 including full replacement cost of any Equipment not returned to Us; and the continuation of the hire charge Price for the portion of the Hire Period during which the Equipment is unavailable for hire by another party;

- (f) a cancellation fee of \$78 if You do not provide Us with at least 48 hours prior notice of cancellation before the Delivery Date;
- (g) a variation fee of \$65 if You do not provide Us with at least 24 hours prior notice of the variation of the Delivery Date and the Equipment is already in transit to the Delivery Location;
- (h) if You have not returned the Equipment to Us on the Hire Return Date:
  - (i) the continuation of the hire charge for the portion of the Hire Period which has not been pre-paid as part of the Price; and
  - (ii) if We arrive at the Delivery Location to pick up the Equipment on the Hire Return Date and You inform Us that You want to extend the Hire Period, a \$65 call out fee.
- (i) any taxes or duties and all tolls, fines, penalties, levies or charges payable in respect of this Rental Agreement and incurred in connection with Your use or possession of the Equipment; and
- (j) any reasonable costs (including legal costs) incurred by Us in enforcing these terms and conditions and Rental Agreement including in recovering possession of the Equipment and commission paid to a commercial agent.

#### **4.4 Reasonable belief**

Any Additional Charges You are required to pay in accordance with clauses 4.2(a) – 4.2(e) are subject to Us having the reasonable belief that the events which trigger Your liability to pay the Additional Charges have occurred.

#### **4.5 Recovery**

Without limiting Our ability to recover all amounts owing:

- (a) You irrevocably authorise Us to charge the Price to a debit or credit card which You have provided Us; and
- (b) if the Price is outstanding at the Hire Return Date, You agree that We are under no obligation to arrive at the Delivery Location and pick up the Equipment on the Hire Return Date. For the avoidance of doubt, in the event that the Price is outstanding at the Hire Return Date and We exercise our right not to pick up the Equipment on the Hire Return Date, We may charge You Additional Charges under clause 4.2(g)(i).

#### **4.6 Interest**

We reserve the right to charge and You agree to pay Us on demand interest at a rate equivalent to 5% of the total amount of monies outstanding by You under the Rental Agreement and remaining unpaid for at least 30 days following a written demand by Us. Interest will be computed from the date on which payment became due. If We demand payment of the interest under this clause 4.4, an additional administration fee of \$50 will be payable by You.

## **5. GST**

### **5.1 Definitions**

Unless the context otherwise requires, words or expressions used in this clause 5 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

### **5.2 GST inclusive amounts**

For the purposes of this Rental Agreement all amounts payable or other consideration to be provided for a supply under this Rental Agreement are inclusive of GST, if any, and the amount or consideration will not be increased for any GST payable on that supply.

### **5.3 Change in rate**

If there is a change in the rate of GST applying to a supply made under this Rental Agreement, the consideration for that supply will be adjusted by increasing or decreasing the consideration so that the consideration received by the supplier after accounting for GST payable by it on the supply after the change in rate (**GST exclusive consideration**) equals the GST exclusive consideration that would have been received by the supplier prior to the change in rate.

### **5.4 Tax invoices**

If requested by You, We will issue a tax invoice for any taxable supply we make under or in connection with this Rental Agreement.

## **6. Cancellation and Variation**

### **6.1 Cancellation by Us**

We may cancel the Rental Agreement not less than 24 hours prior to the scheduled Delivery Date in circumstances where We are incapable or unable to supply or Deliver the Equipment on the date or time required by You. In these circumstances, We agree to refund You any amounts already paid to Us.

### **6.2 Cancellation by You**

You may cancel the Rental Agreement by providing Us with written notice of the cancellation not less than 48 hours prior to the scheduled Delivery Date. We will send You an email confirming Your cancellation. If You provide Us with less than 24 hours' notice of a cancellation, You must pay a cancellation fee of \$78.

### **6.3 Variation of Hire Request by You**

You may vary Your Hire Request by providing us with written notice of the variation not less than 24 hours prior to the scheduled Delivery Date. We will send You an email confirming Your variation. If You provide Us with less than 24 hours' notice of a variation to the Delivery Date and the Equipment is already in transit to the Delivery Location, You must pay a variation fee of \$65.

## **7. Safety**

You acknowledge that the use of the Equipment carries with it dangers and risks of injury and You agree to accept all dangers and risks.

## **8. Site Access**

- (a) You will be responsible for ensuring reasonable access to the Delivery Location and ensuring that the Delivery point for the Equipment is freely accessible for the Delivery and collection including access heights.
- (b) You will obtain all necessary consents for the Delivery, placement, storage and removal of the Equipment at the Delivery Location prior to the Delivery.
- (c) We accept no responsibility for any damage caused to the ground, surface, road or path at the Delivery Location or surrounding area in close proximity to the Delivery Location resulting from the Delivery or placement of the Equipment, except to the extent that Our reckless act, omission or negligence caused the damage.

## 9. Loss, theft or damage

### 9.1 Notification

If:

- (a) You collect or receive the Equipment and find that it is damaged and/or defective, You must notify Us within 24 hours after You become aware of the damage and/or defect. If you do not notify Us of any damage or defect within this time, You be deemed to have accepted the Equipment's condition; and
- (b) during the Hire Period, the Equipment is lost, stolen, impounded, damaged or breaks down, You will notify Us as soon as possible.

### 9.2 Responsibility

You agree that if the Equipment breaks down or becomes unsafe as a result of Your acts or omissions (or the acts and omissions of any other persons using the Equipment with Your consent or approval) or if the Equipment is lost, stolen, impounded or damaged (fair wear and tear excepted), You will be liable for:

- (a) any costs incurred by Us to recover, replace and/or repair the Equipment; and
- (b) the continuation of the hire charge Price for the portion of the Hire Period during which the Equipment is unavailable for hire by another party.

### 9.3 Theft

If the Equipment is stolen, You agree to:

- (c) provide all reasonable assistance to Us and any authority; and
- (d) Us providing Your identification onto authorities to assist with any investigation.

## 10. Indemnity

To the full extent permitted by Law, You release, discharge and indemnify Us from all claims and demands in respect of:

- (a) personal injury and death;
- (b) any loss of or damage to property; or
- (c) a claim by a third party,

which We may suffer or incur arising out of, or as a consequence of, Your hire or use or misuse of the Equipment and any other persons using the Equipment with Your consent or approval.

## 11. Liability

### 11.1 Limitation and exclusion

To the maximum extent permitted by law and subject to clause 11.2, We:

- (a) exclude liability for:
  - (i) Loss of all actual or anticipated profit, revenue, capital, goodwill, savings, data, customers, use and benefits;
  - (ii) downtime costs, loss of or damage to reputation, Losses under or in relation to any other contract and Losses suffered or incurred by any third party;
  - (iii) all indirect, special, exemplary or punitive or consequential Losses; and



- (iv) any other Loss that does not arise naturally (that is according to the usual course of things) from an event giving rise to the Loss,

except to the extent that the Loss, damage or costs arise due to Our reckless act, omission or negligence in performing Our obligations under the Rental Agreement.

- (b) limit Our liability to (at Our option):

- (i) in relation to goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced; and
- (ii) in relation to services, re-supplying the services or paying the cost of having the services re-supplied; and

## **11.2 Australian Consumer Law**

Where You acquire as a Consumer:

- (a) goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, the operation of the Consumer Guarantees cannot be, and are not in the Contract, excluded, restricted or modified; and
- (b) other goods and services, We limit our liability for a failure to comply with any Consumer Guarantee (other than: (i) a Consumer Guarantee as to title, encumbrances or undisturbed possession of goods conferred by the Australian Consumer Law; or (ii) where to do so would otherwise cause all or part of this clause to be void) as described in clause 11.1(b),

and We do not exclude or limit the operation of the Consumer Guarantees under any other provision of these terms and conditions or in any other manner and the parties agree it is fair and reasonable in all the circumstances for Our liability to be so limited.

## **11.3 Implied terms**

To the extent permitted by law and subject to clause 11.2, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from these terms and conditions and Rental Agreement.

## **12. Breach**

- (a) If You materially breach these terms and conditions and do not remedy the breach within a reasonable period of time (having regard to the nature of the breach), or suffer an Insolvency Event, then We are entitled to:
  - (i) terminate a Rental Agreement without repayment of any pre-paid amount including the Price;
  - (ii) pursue recovery of all outstanding amounts; and
  - (iii) repossess the Equipment (and are authorised to enter any premises where the Equipment is located to do so).
- (b) You indemnify Us in respect of any damages, costs or loss, to the extent caused or contributed to by You as a result of Your breach of any provision of these terms and conditions.

## **13. General**

### **13.1 Personal Property Securities Register**

To the extent that these terms and conditions create a security interest under the PPSR Act, we retain the right to register and maintain our interest on the Personal Property Securities Register in accordance with the PPSR Act.

### **13.2 Disputes**

If You have any issue in relation to these terms and conditions, a Rental Agreement or Us, You agree to notify Us in writing and use reasonable endeavours to resolve the matter through discussions with Us before commencing any court proceedings.

### **13.3 Assignment**

You must not assign, transfer, novate or otherwise dispose of any of Your rights or obligations under a Rental Agreement, in whole or part, without first obtaining Our prior written approval.

### **13.4 Entire agreement**

A Rental Agreement, including these terms and conditions, constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with their subject matter.

### **13.5 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

### **13.6 Variation**

- (a) From time to time, We may vary these terms and conditions. If We intend to do so, We will provide written notice of our varied terms by way of notice on Our website.
- (b) To the extent that a variation to a Rental Agreement:
  - (i) is not detrimental to Your rights, you agree that prior written notice of the variation is satisfactory; and
  - (ii) may be detrimental to Your rights, You may terminate a Rental Agreement without penalty following receiving our written notice.

### **13.7 Governing law**

These terms and conditions and any Rental Agreement are governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them.

### **13.8 Survival**

Any provision of these terms and conditions or Rental Agreement which expressly, or by implication from its nature, is intended to survive the expiry or termination of, survives the expiry or termination of these terms and conditions or Rental Agreement (including clauses 1 (Defined Terms and Interpretation), 3.4 (Claim on waste), 4.3 (Recovery), 9 (Loss, theft or damage), 10 (Indemnity), 11 (Liability) 13 (Survival)).