

# Terms and Conditions



**Innovate Enviro**

Innovative Solutions for Environmental Outcomes

## 1. Definitions and Interpretations

<b>Consultant/Supplier</b>	Innovate Enviro Pty Ltd (ABN 99 639 723 210)
<b>Customer</b>	Receiver of Innovate Enviro Pty Ltd services, equipment, or products
<b>Proposal</b>	Letter or report outlining the understanding of the project, proposed scope and methodology and fees associated with the project, and these standard terms and conditions. The proposal constitutes an offer for services.
<b>Agreement</b>	The agreement includes the proposal, the standard terms and conditions, and the credit application.
<b>Equipment</b>	Any Innovate Enviro equipment available for lease.
<b>Product</b>	Any product that is provided for sale.
<b>Project</b>	As defined in the proposal by the proposed solution.
<b>Lease Period</b>	Refer to Clause 2.1
<b>Minimum Lease Period</b>	Minimum <i>lease period</i> for any equipment as stipulated in the <i>proposal</i> .
<b>Variations</b>	Changes to proposed scope, fees or timing to a project after commissioning and before completion.
<b>DT Waiver</b>	Damage Theft Waiver is defined in clause 10.

Reference to:

- a) The singular includes the plural and vice versa.
- b) "including" and similar expressions are not words of limitations.
- c) Reference to you, yours, their or other variations refer to the **Customer**.
- d) Reference to we, our, us or other variations refer to Innovate Enviro Pty Ltd.
- e) Reference to days are calendar days and include public holidays and weekends unless otherwise specified.
- f) Headings and italicised definitions are for convenience only and do not form part of this agreement or its interpretation.
- g) All fees listed exclude GST except in those instances where GST is explicitly included in the fee.

## 2. Lease Period

- 2.1. The *lease period* starts when you take possession of the equipment.
- 2.2. The *lease period* is for an indefinite term, but may be no less than the minimum period specified in the *proposal*.
- 2.3. Unless terminated by us earlier pursuant to these terms and conditions, the *lease period* concludes when we have received the equipment from site after you have given us appropriate notice as per clause 12.

## 3. Lease Charges

- 3.1. The fees associated with installation, lease, maintenance and consumables are described in the *proposal*.
- 3.2. Should you terminate the *agreement* prior to the *Minimum Lease Period* expiring, you will be charged a fee equal to the remaining hire of *equipment* for the *minimum lease period* specified in the *proposal* at termination.
- 3.3. *Lease charges* will be invoiced monthly in advance over the *lease period*. Should the *lease period* terminate during an invoicing cycle, we will reimburse the unused component on a daily pro-rata basis.

## 4. Commissioning

- 4.1. Acceptance of the *proposal* and formation of an agreement may be made by any one of the following ways:
  - a) You can fax, email or post a completed copy of Attachment 1 (order confirmation) to us.
  - b) Providing us with verbal written or email instructions after receiving the proposal.
  - c) Contacting us (verbally or otherwise) and advising of your acceptance of the proposal.
- 4.2. Without derogating from the above, we prefer that you accept in the way set out in 4.1a to ensure all appropriate contract and account details are accurately captured, and a full written record can be maintained.
- 4.3. This proposal is valid for 14 days from the issue date and then subject to confirmation.

## 5. Payment for Services

- 5.1. You agree to pay all fees invoiced under this *agreement* within 14 days of the date of invoice.
- 5.2. Disbursements (including, but not limited to laboratory fees, equipment hire, travel costs and sub consultant fees) will attract a surcharge of 15%.
- 5.3. Moneys not received within the agreed payment terms shall incur a fee to cover finance costs and additional administrative costs associated with this debt. This fee shall be calculated as 3% of the outstanding money owed at the end of each calendar month. It will be levied initially on the first day after payment was due, and monthly thereafter until your account is fully settled.
- 5.4. You agree you will be liable for third party or legal costs be incurred by us in recovering outstanding monies.
- 5.5. If you dispute the whole or any portion of the claim amount in an account, you agree to pay the portion of the amount stated that is not in dispute, and then notify us in writing of the reasons for disputing the outstanding amount within 7 days of receipt of invoice, else invoice is deemed accepted.
- 5.6. Any claim shall then be dealt with as per Section 7 of the Standard Conditions.
- 5.7. You agree to complete and return our Application for Commercial Credit as reasonably required by us or upon any material change in your circumstances.

## 6. Our Obligation to You

- 6.1. We will
- a) lease the *equipment*, and provide services specified in the proposal,
  - b) provide advice on the use of the equipment, and
  - c) provide the *equipment* in clean working order.

## 7. Your Obligations to Us

- 7.1. This agreement is with you, you must not re-hire or devolve possession of the *equipment* to third parties.
- 7.2. You warrant that you are familiar with the limitations of the *equipment* and their fitness for purpose
- 7.3. You must take good care of the *equipment* during the lease period and not alter, modify, tamper with, damage or repair the *equipment* or remove, add, obstruct or deface any labels or notices on the *equipment*.
- 7.4. At all times during the *lease period* you must maintain adequate site security to protect *equipment* from theft, seizure, loss or damage.
- 7.5. You will allow us and authorise us to enter your premises and inspect the *equipment* from time to time during the *lease period*.
- 7.6. You warrant that you will comply with all Environmental Laws and will immediately rectify any breach of an Environmental Law caused by the use of the *equipment*.
- 7.7. You are responsible for the *equipment* during the lease period and the equipment passes to you upon delivery to you or as directed by you.
- 7.8. Equipment must be returned to us in the same condition it was provided to you – ordinary fair wear and tear excluded.
- 7.9. Specific obligations relating to use and operation of the *equipment*
  - a) Only suitably qualified staff of yours that have been trained by Innovate Enviro shall operate the equipment. Untrained modification of input parameters may lead to overdosing and potentially cause environmental harm.
  - b) Only operate the equipment using the proposed treatment product.
- 7.10. Your safety is important to us. When you, your employees, agents and contractors use the *equipment* you agree to take all appropriate safety precautions, including but not limited to:
  - a) Ensure no persons operating the *equipment* are under the influence of drugs or alcohol.
  - b) Wear suitable personal protective equipment as recommended or required by US or the manufacturer.
  - c) Operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with our or the manufactures instructions.
  - d) Conduct a JSA before using or interacting with the *equipment*.
  - e) Display all safety signs and instructions required by law and ensure instructions and signs are observed by operators of the *equipment*.

## 8. Equipment Failure

- 8.1. In the unlikely event that the *equipment* breaks down or becomes unsafe to use during the *lease period* You must:
  - a) Immediately stop using the *equipment* and notify us.
  - b) Take all steps necessary to prevent injury or environmental harm occurring as a result of the condition of the *equipment*.
  - c) Take all steps necessary to prevent any further damage to the *equipment* itself; and
  - d) Not repair or attempt to repair the *equipment* without our written consent.
- 8.2. Except if clause 9 applies, upon receiving notice from you, we will:
  - a) Take all steps necessary to repair the *equipment* or provide suitable substitute *equipment* as soon as reasonably possible after being notified by you; and
  - b) Not impose a hire charge for that portion of the *lease period* for which the *equipment* was broken down or unsafe, nor the costs associated with any repair or replacement of the *equipment*.
- 8.3. Should it be identified that *equipment* failure is a result of your error and we incur costs associated with repair or replacement, you will be liable for these costs.

## 9. What to do if Equipment is Lost, Stolen or Damaged

- 9.1. If the *equipment* has broken down or become unsafe to use as a result of your negligence or if the *equipment* is lost, stolen or damaged beyond fair wear and tear during the *lease period*, you will be liable for:
  - a) Any costs incurred by us to recover and repair or replace the *equipment*; and
  - b) The hire charges for that portion of the *lease period* during which the *equipment* is being recovered and repaired or replaced, except where You have paid a *damage theft waiver fee*, in which case Your liability is subject to clause 10 below.

## 10. Damage Theft Waiver (DT Waiver)

- 10.1. *DT Waiver* is not insurance. It is an agreement by us to limit Your liability in certain circumstances for theft or damage to our *equipment* to an amount called the DT Waiver Excess.
- 10.2. You are not required to pay the *DT waiver fee* if you produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the equipment during the lease period for an amount not less than the replacement value of equipment.
- 10.3. Where you have paid the *DT Waiver*, we will waive our right to claim against you for damage or theft to the *equipment* if:
  - a) You have reported any damage or theft to the Police within 48 hours of becoming aware of the damage or theft, and provided us with a police report.

- b) The theft or damage does not fall into one of the categories described in clause 10.4
  - 10.4. Even if You have paid the *DT Waiver*, we will not waive our rights to claim against you for damage or theft of the *equipment* and the *DT Waiver* will not apply if the damage or theft:
    - c) Has arisen out of your breach of a clause in this hire agreement.
    - d) Is due to your negligent omission or act.
    - e) Has been caused by your failure to use the Equipment other than for its intended purpose or in violation of our or the manufacturer's instructions.
    - f) Is caused by exposure to any corrosive or caustic substance.
    - g) Is caused by vandalism.
  - 10.5. The *DT Waiver* excess for each item of equipment is the amount equal to 20% of the cost of repair or replacement or 10% of the lease fee, whichever is the lesser.
- 11. Dispute Resolutions**
- 11.1. In the unlikely event that a dispute between you and us, the parties agree that they will proceed in the following manner;
    - a) In the first instance the parties (or representatives) shall attempt to resolve the dispute by negotiation.
    - b) If, in the opinion of either party, the offending party has not carried out its obligations to correct the dispute in seven (7) days, the offended party shall, by notice in writing to the offending party, provide details of the specific obligations that have not been carried out.
    - c) If, after seven (7) days from the date of such notice, the offending party fails to remedy such default the matter shall be referred to the Brisbane Dispute Resolution Branch.
    - d) The cost of arbitration proceedings pursuant to this *agreement* shall be borne by the parties as the arbitrator may direct.
  - 11.2. Clause 11.1 shall not affect our rights to deal with delinquent payments as per condition of the standard terms and conditions.
- 12. Termination of this Agreement**
- 12.1. Either party may terminate this agreement immediately and without penalty by giving notice to the other party if:
    - a) That other party fails to remedy a breach of the agreement within 5 days of written notification of that breach under clause 10.5.
    - b) The other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters liquidation, administration, receivership or ceases to carry on business.
  - 12.2. You may terminate this agreement at any time by giving us 14 days written notice. If a minimum lease period has been specified, you will be liable for payment of an early termination fee equal to the remaining value of the lease.
  - 12.3. We may terminate this agreement at any time for any reason by giving you 14 days written notice.
- 13. Recovery of the Equipment**
- 13.1. You acknowledge that we own the *equipment*, and in all circumstances, we retain title to the *equipment* (even if you go into liquidation or become bankrupt during the lease period).
  - 13.2. If you are in breach of the *agreement* or if the *agreement* has been terminated under clause 12.1, we may take all steps necessary (including legal action) to recover the *equipment*, including entering your premises to do so. Upon receiving written notice from us, you expressly consent to us entering your premises for the purposes of recovering our *equipment*.
- 14. Intellectual Property and Privacy**
- 14.1. We retain copyright and all intellectual property rights in all documents and material we produce, or data generated in relation to this agreement. Subject to your compliance with the agreement, we grant you a licence to use this material for the purposes of the project.
  - 14.2. You agree to allow us to use your company logo and company name for marketing purposes.
- 15. Limits to Liability**
- 15.1. We do not provide any warranty nor accept any liability in relation to the performance or non-performance of the equipment except to the extent, if any, required by law or specifically provided for in the proposal. If apart from this Clause any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded.
  - 15.2. Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.
  - 15.3. Subject to Our obligations under 10.1 and 10.2, our maximum aggregate liability for all claims arising from this agreement is limited to an amount equal to the lease fees paid by you under this agreement. In calculating our aggregate liability, any amount paid or value of goods serviced, replaced repaired or supplied by us for a breach must be considered by the parties.
  - 15.4. You are liable for and indemnify us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against us and any environmental loss, cost, damage or expense) in respect of:
    - a) Personal injury;
    - b) Damage to tangible property;
    - c) Environmental harm; or
    - d) A claim by a third party.

In respect of your use of the *equipment* or your breach of the *agreement*. Your liability under this indemnity is diminished to the extent that our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

- 15.5 You agree regardless of any negligence on our part, to release and hold harmless and indemnify us from and against all liabilities, claims, damages, losses consequential losses (including loss of profit), costs and expenses of whatever nature, however occurring which may accrue against or be suffered by us arising out of or in any way connected with the goods unless caused by wilful misconduct on the part of us or any of our servants or agents acting within the scope of their employment.
- 15.6 Pursuant to Section 64A of the Australian Consumer Law, this condition applies in respect of any of the goods or services supplied to you which are not of a kind or ordinarily acquired for personal, domestic or household use or consumption provided this clause will not apply if you establish the reliance and would not be fair and reasonable.
- 15.7 Liability for breach of guarantee implied into this Agreement by the Australian Consumer Law other than a condition applied by Sections 51 to 53 is limited in the case of any of the following as determined by us:
  - a) the supplying of goods and services again; or
  - b) the payment of the costs of having the goods and services supplied again.

**16. Severance and Acknowledgements**

- 16.1. In the event that any part of this agreement is found to be void or unenforceable for any reason, the remaining parts shall remain in force.
- 16.2. By commissioning us, you acknowledge that you have read and understood the agreement (including standard terms and conditions), and that you accept the payment terms and relevant fees associated with late payment.

**17. General**

- 17.1. This Agreement is a claim for payment under the Building and Construction Industry Payments Act 2004.
- 17.2. The Consultant and the Customer agree that pursuant to this Agreement, to provide credit and for the provision of equipment provided by the Consultant, the Consultant has a security interest in the equipment provided which is capable of registration on the Personal Property Securities Register. The Customer authorises and agrees for the Company to register its security interest as soon as possible having regard to the equipment supplied by the Consultant to the Customer from time to time.
- 17.3. Each Customer has a separate agreement and a further security for payment of all monies which the Customer may become liable to the Consultant to pay and agree to a charge (as beneficial owner on freehold and leasehold interest in land) but present and future and wheresoever situated with respect to the amount, the Customer is indebted to the Consultant under this Agreement and whether or not any demand has been made on the Customer to pay the security.
- 17.4. The Customer undertakes and agrees as a separate obligation under these terms and conditions, to execute a reasonable mortgage over any such real property now held or acquired by it in the future upon the request of the Consultant.