

# Terms & Conditions

## 1. Definitions

**1.1 “360” shall mean Distribution 360 Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Distribution 360 Pty Ltd.**

**1.2 “Client” shall mean the Client or any person acting on behalf of and with the authority of the Client.**

1.3 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.

1.4 “Skip Bin” shall mean any Skip Bin supplied on hire by 360 to the Client (and where the context so permits shall include any provision of Services are hereinafter defined), as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by 360 to the Client.

1.5 “Services” shall mean all Services provided by 360 to the Client, including any advice or recommendations (and where the context permits shall include the supply on hire of any Skip Bin, as defined below).

1.6 “Contract Term” shall mean the hire period of the Skip Bin (and associated Services) as described on the quotation, invoices, authority to hire, or any other forms as provided by 360 to the Client.

1.7 “Price” shall mean the cost of the Services as agreed between 360 and the Client subject to clause 4.2 of this contract.

## 2. The Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Where the Customer hires Skip Bins as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

## 3. Acceptance

3.1 Any instructions received by 360 from the Client for the hire of Skip Bins and/or the Client’s acceptance of Skip Bins provided on hire by 360 shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of 360.

3.4 The Client shall give 360 not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, email address, or business practice). The Client shall be liable for any loss incurred by 360 as a result of the Client’s failure to comply with this clause.

3.5 Skip Bins are provided on hire by 360 only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.

3.6 The Client expressly agrees that 360 shall have exclusivity regarding the disposal of the contents in the Skip Bin, and that the Client will not enter into any agreement with any other party to perform the Services which the Client has contracted 360 to perform.

## 4. Price and Payment

4.1 At 360’s sole discretion the Price shall be either;

(a) as indicated on invoices provided by 360 to the Client in respect of Skip Bins provided on hire; or

(b) 360’s quoted Price (subject to clause 4.2) which shall be binding upon 360 provided that the Client shall accept in writing 360’s quotation within thirty (30) days.

**4.2 360 reserves the right to change the Price in the event of a variation to 360’s quotation.** Any variation from the plan of scheduled Services or specifications of the Skip Bin (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances, the Client’s failure to adhere to clause 14, or as a result of increases to 360 in the cost of the Services) will be charged for on the basis of 360’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At 360’s sole discretion:

(a) a non-refundable deposit may be required; and/or

(b) payment shall be due on delivery of the Skip Bin; or

(c) payment shall be due before delivery of the Skip Bin; or

(d) detailed progress payment claims may be submitted by 360:

(i) at intervals not less than weekly for Services provided; or

(ii) in accordance with 360’s specified payment schedule. Such payment claims may include the reasonable value of authorised variations; or

(e) payment for certain approved Client’s shall be due seven (7) days following the date of the invoice (such payment terms will be granted at 360’s sole discretion based upon the completion and approval of a Credit Application and whether or not a Personal Guarantee is held) .

4.4 Payment will be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to five percent (5.0%) of the Price), direct credit, or by any other method as agreed to between the Client and 360.

4.5 GST, waste levies and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 5. Hire Period

5.1 Charges shall commence from the time the Skip Bin is delivered to the Client's premises and shall continue until the expiry of the Contract Term. On expiry of the Contract Term, hire charges shall continue on a monthly basis unless terminated by way of the Client providing 360 with three months written notification.

5.2 If the Client wishes to terminate the contract during the term stipulated, the Client must pay to 360 the remaining charges which would otherwise have been payable to 360 during the Contract Term.

5.3 360 may adjust charges from time to time (as per clause 4.2) upon one (1) months written notice to the Client.

5.4 No allowance whatever can be made for time during which the Skip Bin is not in use for any reason, unless 360 confirms special prior arrangements in writing.

## 6. Delivery

6.1 Delivery of the Skip Bin shall be deemed to have taken place when the Skip Bin is delivered to the Client's nominated address (whether or not the Client is present at the time of delivery).

6.2 The costs of delivering or collecting the Skip Bin are included in the Price.

6.3 The Client shall make all arrangements necessary to take delivery of the Skip Bin whenever it is tendered for delivery. In the event that the Client is unable to take delivery of the Skip Bin as arranged then 360 shall be entitled to charge a reasonable fee for redelivery.

6.4 360 may deliver Skip Bins by separate instalments as arranged. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

6.5 Delivery of the Skip Bin to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

6.6 The failure of 360 to deliver shall not entitle either party to treat this contract as repudiated.

6.7 360 shall not be liable for any loss or damage whatever due to failure by 360 to deliver the Skip Bin promptly, or at all, where due to circumstances beyond the control of 360.

## 7. Risk

7.1 360 shall retain property in the Skip Bin at all times nonetheless all risk for the Skip Bin passes to the Client on delivery.

7.2 The Client accepts full responsibility for the safekeeping of the Skip Bin and indemnifies 360 for all loss, theft, or damage to the Skip Bin howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.

7.3 The Client will insure, or self insure, 360's interest in the Skip Bin against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the use of the Skip Bin. Further the Client will not use the Skip Bin nor permit it to be used in such a manner as would permit an insurer to decline any claim.

7.4 The Client accepts full responsibility for and shall keep 360 indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Skip Bin during the Hire Period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

## 8. Placement and Access

8.1 Skip bins shall be placed where directed by the Client and, in the absence of the Client's directions, 360 shall place the Skip Bin at the delivery address at the nearest clear area to the roadside. The Client agrees to indemnify 360 against any claims whatsoever made against 360 that arise out of the placement of the Skip Bin.

8.2 The Client agrees that the Client shall not move a Skip Bin once placed in position by 360, except with the express approval of 360.

8.3 In the event that either party to this agreement is ordered to remove a Skip Bin by any statutory authority, they shall immediately notify the other party of the requirement to do so and organise the removal of the Skip Bin. The Client agrees to indemnify 360 against all additional costs incurred by 360 in complying with any such order, or through the Client's failure to comply with any such order, or through the Client's failure to comply with the provisions of this clause.

8.4 The Client shall ensure that it has prior to delivery of a Skip Bin all approvals required from any local authority where the Skip Bin is to be located on the roadside or any footpath adjacent thereto.

8.5 The Client shall be responsible at all times for ensuring 360 has clear and free access to the site at which the Skip Bin is to be (or is) located. 360 shall not be liable for any loss or damage caused (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) when delivering or collecting any Skip Bin unless due to the negligence of 360.

8.6 If there are any delays due to clear or free access not being available when 360 arrives to deliver or collect a Skip Bin then the Client shall reimburse 360 for all additional costs incurred by 360 as a result of such delay (including, in the case of Skip Bin collection, any hire fees lost due to the Skip Bin being unavailable).

## 9. Title

9.1 Skip Bins are and will at all times remain the absolute property of 360.

**9.2 If at any time the Client fails to return a Skip Bin to 360 when requested then 360 or 360's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Skip Bin is situated and take possession of the Skip Bin, without being responsible for any damage thereby caused.**

10. Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause:

(a) financing statement has the meaning given to it by the PPSA;

(b) financing change statement has the meaning given to it by the PPSA;

(c) security agreement means the security agreement under the PPSA created between the Client and 360 by these terms and conditions; and  
(d) security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
  - (i) all Skip Bins previously supplied by 360 to the Client (if any);
  - (ii) all Skip Bins that will be supplied in the future by 360 to the Client.

**10.3 The Client undertakes to:**

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which 360 may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, 360 for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Skip Bin charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of 360;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to any Skip Bin in favour of a third party without the prior written consent of 360.

10.4 360 and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

**10.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.**

10.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by 360, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Client shall unconditionally ratify any actions taken by 360 under clauses 10.3 to 10.5.

#### 11. Security and Charge

**11.1 Despite anything to the contrary contained herein or any other rights which 360 may have howsoever:**

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to 360 or 360's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that 360 (or 360's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should 360 elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify 360 from and against all 360's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint 360 or 360's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

#### 12. Defects

12.1 The Client shall inspect the Skip Bin on delivery and shall within seven (7) days notify 360 of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford 360 an opportunity to inspect the Skip Bin within a reasonable time following delivery if the Client believes the Skip Bin is defective in any way. If the Client shall fail to comply with these provisions the Skip Bin shall be presumed to be free from any defect or damage. For a defective Skip Bin, which 360 has agreed in writing that the Client is entitled to reject, 360's liability is limited to either repairing or replacing the Skip Bin, except where the Client has hired the Skip Bin as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the hire price of the Skip Bin, or repair of the Skip Bin, or replacement of the Skip Bin.

#### 13. Contaminated or Dangerous Waste

13.1 The Client shall not use a Skip Bin to store or dispose of any explosive, flammable or otherwise dangerous goods, furthermore the Client agrees to indemnify 360 against any costs, loss or damage which 360 might incur, or claims of any nature made against 360 as a result of the Client's failure to comply with this clause.

13.2 The Client acknowledges that:

- (a) a Skip Bin shall not be used to dispose of asbestos, car batteries, gas bottles, tyres, mattresses, TV monitors, bullets, fuel cans containing fuel, toxic chemicals or liquids;
- (b) wet paint is under no circumstances accepted for disposal. Paint tins must be empty and dry before being placed in a Skip Bin;
- (c) household waste must be placed in garbage bags prior to being stored in a Skip Bin, under no circumstances may food scraps be disposed of in a Skip Bin.

13.3 360 operates within the guidelines as set down in the South Australian Environment Protection Act 1993 (including but not limited to, the correct disposal of dangerous goods, asbestos waste, and/or vehicle tyres). The Client agrees to indemnify 360 against all additional costs for

disposal and/or fines that 360 may incur in the event that the Client fails to notify 360 of any such items, or substances and that the Skip Bins supplied are then used to dispose of.

13.4 Special Skip Bins to dispose of contaminated waste are available on request and the Client acknowledges that such Skip Bins are subject to additional costs.

#### 14. Overloading

14.1 If when 360 arrives to collect a Skip Bin to facilitate the disposal of its contents and finds that the Skip Bin is overloaded (by volume or weight), then 360 shall, at its sole discretion, either:

- (a) refuse the carriage of the Skip Bin until the Client has reduced the load to an acceptable level; or
- (b) leave behind the overloaded portion; or
- (c) provide the Services in which case, the Client shall be liable to 360 for all additional costs then incurred by 360 (including, but not limited to, any fines, penalties, or additional dumping fees).

#### 15. Warranty

15.1 No Warranty is provided by 360 in respect of the condition of the Skip Bin or its fitness for any particular purpose. The Client shall indemnify and hold harmless 360 in respect of all claims arising out of use of the Skip Bin.

#### 16. Client's Responsibilities

16.1 The Client shall:

- (a) notify 360 immediately by email of the full circumstances of any accident. The Client is not absolved from the requirements to safeguard the Skip Bin by giving such notification;
- (b) satisfy itself at commencement that the Skip Bin is suitable for its purposes;
- (c) use the Skip Bin in a safe manner, strictly in accordance with the law and only for its intended use;
- (d) comply with all occupational health and safety laws relating to the Skip Bins use;
- (e) on termination of the hire, deliver the Skip Bin, clean and in good order as delivered, fair wear and tear accepted, to 360;
- (f) keep the Skip Bin in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to a lien over the Skip Bin;
- (g) not alter or make any additions to the Skip Bin including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Skip Bin or in any other manner interfere with the Skip Bin;
- (h) employ the Skip Bin solely in its own work and shall not permit the Skip Bin or any part thereof to be used by any other party for any other work;
- (i) not exceed the recommended or legal load (weight) and capacity (volume) limits of the Skip Bin;
- (j) not pledge 360's credit for repairs to the Skip Bin or to create a lien over the Skip Bin in respect of any repairs;
- (k) not affix the Skip Bin in such a manner as to make it legally a fixture forming part of any freehold;
- (l) not perform, or allow the performance of, any mechanical compaction of the contents of the Skip Bin.

16.2 Immediately on request by 360 the Client will pay:

- (a) the new list price of any Skip Bin that is for whatever reason destroyed, written off or not returned to 360;
- (b) all costs incurred in cleaning the Skip Bin;
- (c) all costs of repairing any damage caused by the ordinary use of the Skip Bin up to an amount equal to 10% of the new list price of the Skip Bin;
- (d) the cost of repairing any damage to the Skip Bin caused by any negligent act (or breach of this contract) by the Client or the Client's agent;
- (e) the cost of repairing any damage to the Skip Bin caused by vandalism, or (in 360's reasonable opinion) in any way whatsoever other than by the ordinary use of the Skip Bin by the Client;

#### 17. Cancellation

17.1 360 may cancel these terms and conditions or cancel delivery of Skip Bin at any time before the Skip Bin is delivered by giving written notice. On giving such notice 360 shall repay to the Client any sums paid in respect of the Price. 360 shall not be liable for any loss or damage whatever arising from such cancellation.

17.2 For contracts of less than six (6) months in duration the Client shall be liable for any costs or losses which are incurred by 360 (including, but not limited to, any loss of profits) up to the time of, or as a direct result of, the cancellation.

17.3 For contracts of six (6) months or greater the Client is required to give not less than sixty (60) days notice of cancellation. In addition a cancellation fee equivalent to fifty percent (50%) of the Price which would have been payable for the remaining term of the contract (i.e. subsequent to the notice period) shall become immediately due and payable at the end of the sixty (60) days notice period.

#### 18. Default and Consequences of Default

18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Client's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

18.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by 360.

18.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify 360 from and against all costs and disbursements incurred by 360 in pursuing the debt including legal costs on a solicitor and own client basis and 360's collection agency costs.

18.4 Without prejudice to any other remedies 360 may have, if at any time the Client is in breach of any obligation (including those relating to payment) 360 may repossess the Skip Bin as per clause 9.2, or suspend or terminate the supply of Skip Bin to the Client and any of its other

obligations under the terms and conditions. 360 will not be liable to the Client for any loss or damage the Client suffers because 360 has exercised its rights under this clause.

18.5 If any account remains overdue one (1) day after the date of due payment then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

18.6 Without prejudice to 360's other remedies at law 360 shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies 360 may have and all amounts owing to 360 shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to 360 becomes overdue, or in 360'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.

#### 19. Privacy Act 1988

19.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for 360 to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by 360.

19.2 The Client agrees that 360 may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

19.3 The Client consents to 360 being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

19.4 The Client agrees that personal credit information provided may be used and retained by 360 for the following purposes (and for other purposes as shall be agreed between the Client and 360 or required by law from time to time):

- (a) the provision of Skip Bins on Hire; and/or
- (b) the marketing of its Services by 360, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Skip Bins on hire; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the hire of Skip Bins.

19.5 360 may give information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

19.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that 360 is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of 360, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by 360 has been paid or otherwise discharged.

#### 20. General

20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.

20.3 360 shall be under no liability whatever to the Client for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by 360 of these terms and conditions.

20.4 In the event of any breach of this contract by 360 the remedies of the Client shall be limited to damages which under no circumstances shall exceed the actual Price paid by the Client for the individual Services to which the breach relates.

20.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by 360.

20.6 360 may license or sub-contract all or any part of its rights and obligations without the Client's consent.

20.7 360 reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which 360 notifies the Client of such change. Except where 360 supplies further Skip Bins to the Client and the Client accepts such Skip Bins, the Client shall be under no obligation to accept such changes.

20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.9 The failure by the Client to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Client's right to subsequently enforce that provision.