

## TIPPING & EARTHWORKS TERMS AND CONDITIONS

### 1. General

- 1.1. In this agreement, unless the context otherwise requires:
  - a. *we, us, our* and Dirtworks refers to Dirtworks Limited;
  - b. *you and your* means you, the Customer, and includes any person who has guaranteed the Customer's obligations;
  - c. *cleanfill* means cleanfill in the terms of *A Guide to the Management of Cleanfills* published by the Ministry for the Environment (2002);
  - d. *managed fill* is fill with low level contaminated soils e.g. soils with heavy metal, TPH, ΣDDT, or organic compounds (expressed as BaP equivalents) that exceeds the maximum naturally occurring background concentrations for non-volcanic soils (refer to our *Acceptance Criteria* for further detail);
  - e. *fill* means any material tipped at our sites, whether it is cleanfill, managed fill or landfill;
  - f. *site* means any site managed by us and includes any site no longer managed by us but you are using as a consequence of your dealings with us, refers to any location at which we performs any work for or requested by the customer;
  - g. With respect to this document the terms "work", "works" and "worked" refer to any earthworks, goods or services provided by us for, or at the request of, the Customer;
  - h. "Base Contract" is a Quote, Estimate, Contractor Engagement or similar document, together with any attachment, cover letter or similar, which is supplied by us to the Customer and accepted by the Customer. By accepting a base contract, you agree to us carrying out the work specified for the remuneration detailed in that document. Acceptance may be written, verbal or implied.
- 1.2. These terms and conditions apply to all goods and services provided by us to you.
- 1.3. By engaging with us, you agree to be bound by these terms and conditions. Engagement may be verbal, written or implied, for example, by applying for a credit account with us, requesting or receiving any good or service from us, tipping or collecting any fill at any site managed by us.

### 2. Tipping

- 2.1. You may not tip fill at any site without our written *Pre-approval*. No loads will be accepted at a site unless a load has our *Pre-approval*. *Pre-approval* will only be issued by us once all of the information requirements in our *Pre-Approval Application Form* have been completed to our satisfaction.
- 2.2. It is your responsibility to only dispose of fill that complies with the chemical parameters set out in our *Acceptance Criteria* notwithstanding any acceptance, approval or testing of the fill by us. You may request a copy of our *Acceptance Criteria* from us at any time. Please be aware that our sites may have different *Acceptance Criteria* and these change from time to time and strict adherence to the specific site *Acceptance Criteria* will be enforced by us.
- 2.3. All jobs bringing in fill originating from any site where there is evidence to suggest that an activity outlined on the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) has been or is currently being carried out will need to be sampled, tested, and approved appropriately by a suitably qualified and experienced contaminated land professional at your cost. It is your responsibility to tell us if the origin of the material is from a HAIL site.
- 2.4. We, at our sole discretion, reserve the right to refuse any load.
- 2.5. The location for tipping shall be specified by us and may vary both within the site or between sites.
- 2.6. Fill is to be tipped at a location on the site as directed by us. We may require you to move fill that has been tipped at the wrong place at your cost provided adequate instructions were given to you before tipping.
- 2.7. You warrant that all fill tipped by you is cleanfill, unless you have expressly stated otherwise.

### 3. Soil testing

- 3.1. All jobs placing more than 1000m<sup>3</sup> (solid) or 1,750 tonnes of fill at any of our sites will be required to provide soil testing results for contamination as part of the pre-approval information requirements, unless otherwise authorised by us.
- 3.2. All fill tipped at our sites is subject to random additional analytical testing at a rate of 1 test per 500m<sup>3</sup>. Jobs may be stockpiled on site and sampled. The samples are sent to a laboratory with IANZ accreditation for testing.
- 3.3. The test results will assess whether fill is:
  - a. entirely cleanfill;
  - b. not entirely cleanfill but is within our managed fill *Acceptance Criteria*. In this case managed fill prices will apply;
  - c. outside our cleanfill or managed fill *Acceptance Criteria*. In this case we may quote to take it to an appropriate facility; or
  - d. a combination of the above. In this case we may, if viable, be able to quote to separate the fill into distinct areas, and deal with each area within the categories above.

### 4. Non-complying fill as determined by us

- 4.1. At our sole discretion following non-complying test results of any analytical or screen testing undertaken by us on any fill, it is determined that fill tipped by you does not comply with the terms of either our cleanfill or managed fill *Acceptance Criteria* as applicable to the fill tipped by you, you may be required by us to remove such fill from the site at your cost.
- 4.2. If non-complying fill has been mixed on-site then you will be liable for the costs of the excavation, removal and disposal of the mixed fill where the non-complying fill cannot be reasonably separated with an excavator.
- 4.3. If we are unsatisfied, for any reason, with the arrangement made for the removal of fill from our site by you, or you do not remove the fill within 5 days of notification by us that you are required to remove it, then we will undertake this work directly and you will be liable for all costs associated with the removal and remediation of the tip site, including but not limited to the costs of investigation, testing, excavation, transport, project management fees, and tip fees at an alternative fill site.

### 5. Fees

- 5.1. You will pay us for all fill tipped or collected by you and your agents at or from any site whether or not we were present at the time.
- 5.2. We shall determine which price category applies to each load of fill unless a fixed type has been agreed in writing before tipping, based on our *Price List*, which we will update from time to time.
- 5.3. Each vehicle disposing of fill is to be weighed on entry and exit to Wood Valley Managed Fill using our weighbridge facilities and a disposal docket will be provided to the driver of the vehicle. Except for manifest error, our weighbridge records will be conclusive evidence of the weight of the fill disposed.
- 5.4. If a vehicle does not or cannot use the weighbridge then the following listed payload (tonnes) below for the vehicle size will be charged (unless otherwise agreed in writing):

| Truck type | Payload (T) |
|------------|-------------|
| 4 Wheeler  | 7           |
| 6 Wheeler  | 10          |
| 8 Wheeler  | 13.5        |
| Artic      | 19          |

| Truck type                 | Payload (T) |
|----------------------------|-------------|
| 6 Whlr & 3AT, 8 Whlr & 2AT | 24          |
| 6 Whlr & 4AT, 8 Whlr & 3AT | 26.5        |
| 8 Whlr & 4AT               | 28          |
| H-Plated Truck and Trailer | 33          |

- 5.5. If the material is not being tipped at Wood Valley Managed Fill then each delivery driver will fill out our docket book for each load as soon as is practicable to provide a written record of loads tipped/collected. If the truck driver forgets or cannot find the docket book, then you or the driver must call our dispatch as soon as practicable.
- 5.6. If a docket is required, failure by you to ensure that the docket book is correctly filled out shall not defeat a proper claim for payment. Deliberate or repeated failure to record loads will be considered attempted theft.

- 5.7. Any prices quoted shall be valid for 30 days, and shall exclude GST, unless otherwise stated in writing. If works have not commenced within that time then the quote shall be considered an estimate only.
- 5.8. Any discounts given verbally must be confirmed in writing. In the event of a dispute the prices on our (then) current price sheet may be charged.
- 5.9. When we provide a written quote for work then you shall pay the fixed price on the quote in full for the work on the quote. Any work additional to that Specifically written on the quote (even if implied by the quote) shall be charged separately, at an hourly rate, according to our current price list.
- 5.10. We may purchase incidental goods and/or services as are reasonably required for us to perform the work. The costs of such goods and services shall be payable by you.
- 5.11. We shall maintain records which identify time and expenses incurred.
- 5.12. Dirtworks will on charge any Government Levies introduced on Tipping from 01 January 2023

## **6. Earthworks**

- 6.1. Unless otherwise specified, the cost of transporting each of the Contractors machines to each site shall be payable by the Client.
- 6.2. The Client shall accept all responsibility for informing the Contractor of the location of any underground cables, services or similar, and for any damage caused by the Contractor to any such items if the Client failed to accurately identify them to the Contractor.
- 6.3. If, prior to commencement of works, the Client provides written instruction to the Contractor to check the plans for services then the Contractor shall assume all responsibility for any damage caused by the Contractor to any underground cables, services or similar on the site. In this case the Contractor shall charge a fee for checking plans for services.
- 6.4. Unless a timeframe is agreed to in writing the Contractor shall carry out the work when it sees fit. This may be in multiple non-continuous stages.
- 6.5. We shall have unlimited access to machinery and equipment belonging to us or our agents on any site on which works for you are performed.
- 6.6. After completion of the work, you must allow us reasonable time to remove machinery and equipment from site. You may request that we remove our machinery and equipment from your land by giving one week's notice.
- 6.7. We may use photos and plans of the site in promotional material as we see fit.

## **7. Payment**

- 7.1. If you have a credit account with us, then we will invoice you and payment is due on the 20<sup>th</sup> day of the month following the invoice date. You accept responsibility for all fees charged to your account.
- 7.2. If you do not have a credit account with us, then either:
  - a. payment is due the day of tipping and must be arranged before tipping; or
  - b. not specified on the Base Contract, then full payment is due within 7 days of completion of the job, and for jobs longer than 7 days part payment shall be required weekly.
- 7.3. If you do not pay money when due:
  - a. all costs incurred by us in recovery of any overdue monies will be paid by you. These may include, but are not limited to, solicitor and debt collection agency fees, and fees for time spent by our staff at their standard charge out rate; and
  - b. interest shall be charged on overdue amounts at 15% per month or part month, this is in addition to any other rights or remedies we may have, and in no way implies the granting of, or extension of, credit.
- 7.4. We reserve the right to limit and/or withdraw any credit account at any time, for any reason.
- 7.5. You may not deduct or withhold any amount, whether by way of set-off, counterclaim or otherwise, from any money owing to us.
- 7.6. Any dispute relating to fees must be initially made in writing within ten working days of the date of invoice. Otherwise the invoice shall be payable in full, and no claim relating to it may be raised by you.
- 7.7. In the event of a dispute regarding what work is and isn't in the quote, or what work was or was not requested by you then, if this dispute is not resolved within 10 working days of the completion of works, then we may, at our discretion, cancel the quote (if any) and charge you for all hours worked rather than the quoted amount. In this case you must pay in full for all hours worked.
- 7.8. We have no responsibility for any damage in relation to trucks, vehicles or other equipment belonging to you or your agent.
- 7.9. You accept liability for and indemnify us for (as a debt due on demand by us) all losses and/or costs (including consequential or indirect losses) and/or claims liability that we may incur arising from of any breach of these terms and conditions by you or negligence on your part including, without limitation, costs of removal of any non-complying fill and/or any other fill contaminated as the result of your actions.

## **8. Liability**

- 8.1. We currently hold Public Liability insurance to the value of not less than \$5,000,000.
- 8.2. If this agreement is entered into by an agent, or person claiming to be your agent, then both you and the agent will be jointly and severally liable for all monies owed to us by you.
- 8.3. All parties referred to as "the Customer" and or "you" are jointly and severally liable for all monies owed to us by you.
- 8.4. Your personnel, agents, drivers and any other person coming onto our site shall:
  - a. comply with all reasonable instructions given by us;
  - b. comply with all signage (including speed restrictions);
  - c. comply with all Health and Safety requirements;
  - d. respect the hours of operation (which may vary);
  - e. abide by all applicable laws; and
  - f. ensure they do not unreasonably track dirt onto any public road; and
  - g. ensure they do not cause excessive noise.
- 8.5. We have no responsibility for any damage in relation to trucks, vehicles or other equipment belonging to you or your agent.
- 8.6. You accept liability for and indemnify us for (as a debt due on demand by us) all losses and/or costs (including consequential or indirect losses) and/or claims liability that we may incur arising from of any breach of these terms and conditions by you or negligence on your part including, without limitation, costs of removal of any non-complying fill and/or any other fill contaminated as the result of your actions.
- 8.7. Unless otherwise specified in writing, the Client guarantees that all necessary permits, authorisation and consents have been obtained for the work, and fully indemnifies the Contractor against any consequences arising from this not being the case, or from any other misinformation provided by the Client.

## **9. Legal**

- 9.1. All of our rights, powers, exemptions and remedies will remain in force notwithstanding any neglect, forbearance of delay in the enforcement on our part.
- 9.2. Where you are a business within the meaning of the Consumer Guarantees Act 1991 you agree you are acquiring our goods and/or services for the purposes of your business and such act does not apply.
- 9.3. Any exercise of a right, power, exemption or remedy by us will be without prejudice to any other right, power, exemption or remedy that we may have.
- 9.4. If any provision of these terms and conditions is invalid or unenforceable, the remaining provisions will continue in full force and effect.
- 9.5. These terms and conditions replace any previous understanding or agreement, written or verbal, between us.
- 9.6. We may update the provisions of these terms and conditions from time to time.
- 9.7. Our agreement is governed by New Zealand law.
- 9.8. You have full authority to agree to these terms and conditions.