

GreenCycle Limited – Standard Terms & Conditions of Contract

GreenCycle Limited is in the business of removing, storing and recycling greenwaste into a range of landscaping products for residential and commercial property owners and landscaping clients.

1. Definitions

- 1.1. **“GreenCycle”, “we”, “our” and “us”** means GreenCycle Limited (company number 6257692), its successors and assigns or any person acting on behalf of and with the authority of GreenCycle Limited.
- 1.2. **“The Client”, “you” and “your”** means the person/s ordering the Goods or Services, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3. **“The Party” or “the Parties”** in this Agreement shall mean, depending on the context, either the Client or GreenCycle, or the Client and GreenCycle together.
- 1.4. **“Goods and/or Services”** means all goods and/or services as set out on our Website and provided to you or performed by us at your request from time to time.
- 1.5. **“Goods”** means all goods as set out on our Website and provided to you at your request from time to time and include, without limitation, mulch and other landscaping products generated from our green waste collection service.
- 1.6. **“Services”** means all services as set out on our Website and performed by us at your request from time to time and include, without limitation, the collection of greenwaste from residential and commercial property owners and the acceptance of greenwaste at GreenCycle collection site(s).
- 1.7. **“Force Majeure Event”** means an event, or a series of related events, that is outside the reasonable control of the party affected (including Government orders, pandemic, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks, vehicle and/or mechanical breakdowns, and wars).
- 1.8. **“Price”** means the Price payable for the Goods and/or Services as agreed between the parties in accordance with clause 4 below.
- 1.9. **“Pricing Page”** means the page or pages on our Website setting out our standard range of prices.
- 1.10. **“Rate Card”** means a card provided by GreenCycle setting out specific pricing for the client.
- 1.11. **“Website”** means our website at www.greencycle.co.nz setting out our offer to provide Goods and/or Services.
- 1.12. **“Worksite”** means the location where the Goods and/or Services are provided by us to you, as nominated by you.

2. Acceptance

- 2.1. You are taken to have accepted and be immediately bound, jointly and severally, by these terms and conditions if you drop-off greenwaste to our collection site(s), place an order via our Website or by telephone or email for any Goods and/or Services, or accept provision of any Goods and/or Services.
- 2.2. These terms and conditions shall be read in conjunction with our Website, and to the extent that there are any inconsistencies between the two documents then the terms and conditions contained herein shall prevail.

3. Change in Control

- 3.1. You shall give us not less than fourteen (14) days prior written notice of:
 - 3.1.1. any proposed change of ownership or effective control where you are a non-natural person; and/or
 - 3.1.2. any other change in your details, including but not limited to changes in your name, address, contact phone or fax number/s.
- 3.2. You shall be liable for any loss incurred by us as a result of your failure to comply with this clause 3.

4. Price and Payment

- 4.1. At our sole discretion the Price shall be either:
 - 4.1.1. as indicated via email in respect of Goods and/or Services; or
 - 4.1.2. as indicated on our Pricing Page or Rate Card in respect of Goods and/or Services; or
 - 4.1.3. the Price we agree with you based on variation of our Pricing Page or Rate Card; and subject to clause 4.2.
- 4.2. We reserve the right to change the Price:
 - 4.2.1. if a variation to the Goods and/or Services which are to be supplied is requested; or
 - 4.2.2. in the event of increases to us in the cost of labour, Goods and/or Services, insurance, or handling costs, which are beyond our reasonable control.
- 4.3. Time for payment for the Goods and/or Services being of the essence, the Price will be payable by you on the date/s determined by us at our sole discretion, which may be:
 - 4.3.1. at the time of ordering Goods and/or Services on our Website or at the time of drop-off at our collection site ("Cash Sale");
 - 4.3.2. by initial part payment at the time of ordering Goods and/or Services on our Website ("Deposit"), with the balance payable seven (7) days following the date of our invoice to you; or
 - 4.3.3. for on account clients either, twenty (20) days following the end of the month in which we provide our invoice to you or, the date which is seven (7) days following the date of our invoice to you;
 - 4.3.4. the date specified on our invoice as being the date for payment; or
 - 4.3.5. failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to you by us.
- 4.4. Payment must be made in cleared funds by direct debit, on-line banking or by any other method stipulated or approved by us.
- 4.5. Unless otherwise stated the Price includes GST. You must pay GST at the relevant rate (as that term is defined in the Goods and Services Tax Act 1985), without deduction or set off of any other amounts, at the same time and on the same basis as you pay the Price. In addition you must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Provision of the Goods and/or Services

- 5.1. We will always endeavour to provide the Goods and/or Services within the agreed timeframe.
- 5.2. Any time specified by us for provision of the Goods and/or Services is an estimate only and we will not be liable for any loss or damage incurred by you as a result of any delay.
- 5.3. We agree that we shall make every endeavour to enable the Goods and/or Services to be provided at the time any place as stipulated by us. In the event that we are unable to provide the Goods and/or Services as agreed solely due to any action or inaction of yours then we shall be entitled to charge a reasonable fee for re-providing the Goods and/or Services at a later time and date.

6. Access

- 6.1. Our access requirements are set out on our Website and/or our Rate Card.
- 6.2. You shall ensure that we have clear and free access to the Worksite at all times to enable us to provide the Goods and/or Services.
- 6.3. We shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) caused by us having access to the Worksite.

7. Exclusions

- 7.1. Our Services, as set out on our Website from time to time, shall exclude the collection and acceptance at our collection site(s) of certain contaminants, types of waste and/or goods which are unsuitable for recycling and we will refuse to collect in provision of the Services.
- 7.2. If material collected or dropped-off to our site(s) is found to be contaminated, you are liable for the cost of correct disposal.

8. Forfeit

- 8.1. You agree that if you fail:
 - 8.1.1. to provide suitable access as set out in clause 6, and/or
 - 8.1.2. if your goods for collection include those items we specifically exclude as set out in clause 7; then we will refuse to perform the Services and in consideration of our having incurred administration and establishment costs in advance, you will forfeit any Cash Sale payment or Deposit paid for those Services.

9. Risk

- 9.1. Notwithstanding that we may retain ownership of the Goods under clause 10:
 - 9.1.1. Where we are supplying Goods, all risk in respect of the Goods shall immediately pass to you on delivery.
 - 9.1.2. At our sole discretion the cost of delivery is included in the Price.
 - 9.1.3. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by us to your nominated delivery address (even if you are not present at the address).
- 9.2. You must take delivery by receipt or collection of the Goods and/or Services whenever they are tendered for delivery. In the event that you are unable to take delivery of the Goods and/or Services as arranged then we shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9.3. To the extent that any liability can be attributed to us it shall be limited to an amount the sum of which is equivalent to the value of the Goods and/or Services.

10. Title

- 10.1. You acknowledge and agree that ownership of the Goods shall not pass, until you have paid us all amounts owing for the Goods.
- 10.2. Receipt by us of any form of payment other than cleared funds in our bank account, shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then our ownership or rights in respect of the Goods, and this agreement, shall continue.
- 10.3. It is further agreed that:
 - 10.3.1. until ownership of the Goods passes to you in accordance with clause 10.1 that you are only a bailee of the Goods and unless the Goods have become fixtures you must return the Goods to us on request;
 - 10.3.2. You must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If you sell, dispose or part with possession of the Goods then you must hold the proceeds of any such disposition on trust for us and must pay or deliver the proceeds to us on demand;
 - 10.3.3. You should not convert or process the Goods or intermix them with other goods but if you do so then you hold the resulting product on trust for the benefit of us and must sell, dispose of, or return the resulting product to us, as we so direct;
 - 10.3.4. unless the Goods have become fixtures you irrevocably authorise us to enter any premises where we believe the Goods are kept and recover possession of the Goods;
 - 10.3.5. We may recover possession of any Goods in transit whether or not delivery has occurred;

- 10.3.6. You shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain our property;
- 10.3.7. We may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to you.

11. Your Disclaimer

- 11.1. You hereby disclaim any right to rescind, or cancel any contract with us or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to you by us and you acknowledge that the Goods and/or Services are contracted for and purchased relying solely upon your skill and judgment.

12. Default and Consequences of Default

- 12.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2. If you owe us any money you shall indemnify us from and against all costs and disbursements incurred by us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, collection agency costs, and bank dishonour fees).
- 12.3. Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) under these terms and conditions we may suspend or terminate the provision of Goods and/or Services to you. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause.

13. Termination

- 13.1. Without prejudice to our other remedies at law we shall be entitled to cancel all or any part of any order of yours which remains unfulfilled and all amounts owing to us shall, whether or not due for payment, become immediately payable if:
- 13.1.1. any money payable to us becomes overdue, or in our opinion you will be unable to make a payment when it falls due;
- 13.1.2. You become insolvent or bankrupt, convene a meeting with your creditors or propose to or enter into an arrangement with creditors, or make an assignment for the benefit of your creditors; or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of you or any asset of yours.
- 13.2. We may cancel any contract to which these terms and conditions apply or cancel the provision of the Goods and/or Services at any time before the Goods and/or Services have commenced by giving written notice to you. On giving such notice we shall repay to you any sums paid in respect of the Price. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3. You must provide at least 48 hours' notice to us in writing of your wish to cancel an order for Goods and/or Services. On receipt of such notice we shall repay to you any sums paid in respect of the Price minus our reasonable administration costs.
- 13.4. If you cancel an order for Goods and/or Services within 48 hours of the agreed time for provision of the Goods and/or Services you will forfeit any Cash Sale payment or Deposit paid for those Goods and/or Services.

14. Effects of termination

- 14.1. Upon termination of this Agreement, all the provisions of these Terms and Conditions will cease to have effect, save for those provisions intended to and which by their terms will survive and continue to have effect or otherwise indefinitely.

- 14.2. Termination of this Agreement will not affect either party's accrued liabilities and rights (including accrued rights to be paid) as at the date of termination.

15. Notices

- 15.1. Any notice given under these terms and conditions must be in writing (whether or not described as "written notice" in these terms and conditions) and must be delivered personally, sent by courier, or sent by email, for the attention of the relevant person, and to the relevant address, email address given below (or as notified by one party to the other in accordance with this clause).

15.1.1. GreenCycle Limited
53 Anzac Valley Road, Waitakere, Auckland, 0816
office@greencycle.co.nz

- 15.2. A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- 15.2.1. where the notice is delivered personally, at the time of delivery;
15.2.2. where the notice is sent by courier, 48 hours after sending; and
15.2.3. where the notice is sent by email, at the time of the transmission (providing that the sending party retains written evidence of the transmission).

16. Dispute Resolution

- 16.1. We will endeavour, but will not be required to resolve all disputes between you and us amicably provided that if we cannot resolve a dispute, then no proceedings will be issued in Court in respect of the dispute without the dispute first being mediated by a single mediator appointed by agreement between the parties and failing agreement and on the application of one of them, by the Chief Executive Officer for the time being of the Resolution Institute of New Zealand.

17. Compliance with Laws

- 17.1. The parties shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and/or Services — including where relevant the Health and Safety at Work Act 2015.

18. Consumer Guarantees Act 1993

- 18.1. Except to the extent permitted by law, nothing in these Terms and Conditions has the effect of contracting out of the Consumer Guarantees Act 1993 or any other consumer protection law that cannot be excluded. To the extent our liability cannot be excluded but can be limited, our liability is limited to an amount the sum of which is equivalent to the value of the Goods and/or Services.

19. Privacy Act 1993

- 19.1. You authorise us or our agent to:
- 19.1.1. Access, collect, retain and use any information about you;
19.1.1.1. (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing your creditworthiness; or
19.1.1.2. for the purpose of marketing products and services to you.
- 19.1.2. disclose information about you, whether collected by us from you directly or obtained by us from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining, a credit reference, debt collection or notifying a default by you.
- 19.2. Where you are a natural person the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.

- 19.3. You shall have the right to request a copy of any information about you retained by us and the right to request us to correct any incorrect information about you held by us.

20. General

- 20.1. Our failure to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision. 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. Nothing in these terms and conditions shall be construed to constitute a partnership, agency relationship or contract of employment between the parties.
- 20.3. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the non-exclusive jurisdiction of the courts of New Zealand.
- 20.4. We shall be under no liability whatsoever to you for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by you arising out of a breach by us of these terms and conditions.
- 20.5. In the event of any breach of this contract by us your remedies shall be limited to damages. Under no circumstances shall our liability exceed the Price of the Goods and/or Services.
- 20.6. Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 20.7. You shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to you by us nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.8. We reserve the right to change these terms and conditions at any time by updating them on the Website. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest terms and conditions. By continuing to access and use the Website, you agree to be bound by the changed terms and conditions. You will be taken to have accepted such changes if you make a further request for us to provide any Goods and/or Services to you.
- 20.9. You warrant that you have the power to enter into this agreement and have obtained all necessary authorisations to allow you to do so, you are not insolvent and that this agreement creates binding and valid legal obligations on you.
- 20.10. We may freely assign our rights and obligations under this agreement without your consent. You may not, without our prior written consent, assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under this agreement.
- 20.11. This agreement is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to this agreement are not subject to the consent of any third party.