

TIPPING TERMS AND CONDITIONS

1. General

- 1.1. In this agreement, unless the context otherwise requires:
 - a. we, us and our means EQGL;
 - b. you and your means you, the Co, Client or the Customer, and includes any person who has guaranteed the Customers obligations;
 - c. *landfill* 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 concentrates for non-volcanic soils (refer to our *Acceptance Criteria* for further detail);
 - e. *fill* means any material tipped on our site, whether it is cleanfill, managed fill or landfill
 - f. *site* means Earthquip Group Ltd site.
- 1.2. These terms and conditions apply to all goods and services provided by EQGL 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.

2. Tipping

- 2.1. You may not tip fill at EQGL site without our written *Pre-approval*. No loads will be accepted at EQGL facility unless a load has our *Pre-approval*. *Pre-approval* will only be issued by us once all the information requirements in our *Pre-approval Application Form* have been completed to The Company's 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 EQGL at any time.
- 2.3. We, at EQHL sole discretion, reserve the right to refuse any load.
- 2.4. You warrant that all fill tipped by you is cleanfill, unless you have expressly stated otherwise on the *Pre-Approval Application Form*.

3. Soil Testing

- 3.1. All jobs placing more than 200m³ (solid) of fill at our facility will be required to provide soil testing results for contamination as part of the pre-approval information requirements.
- 3.2. All jobs placing less than 200m³ (solid) of fill at our site are also subject to additional analytical testing at a rate of 1 test per 500m³. Such jobs will 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 EQGL

- 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 EQHL are unsatisfied, for any reason, with the arrangement made for the removal of fill from our facility 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 facility, including but not limited to the costs of investigation, testing, excavation, transport, project management fees and all other 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. EQHL shall determine which price category applies to each load of fill, based on our *Price List*, which we will update from time to time.
- 5.3. Each delivery driver will fill out a Tipping Sheet for each load as soon as it is delivered to provide a written record of loads tipped/collected. If the truck driver forgets or there are no Tipping Sheets available, then you or the driver must notify EQHL as soon as possible.
- 5.4. Failure by you to ensure that the Tipping Sheet is correctly filled out shall not defeat a proper claim for payment. Deliberate or repeated failure to record loads will be considered attempted theft.
- 5.5. Any prices quoted shall be valid for 30 days, and shall exclude GST, unless otherwise stated in writing.

6. Payment

- 6.1. If you have a credit account with us, then we will invoice you and payment is due on the 20th day of the month following the invoice date. You accept responsibility for all fees charged to your account.
- 6.2. If you do not have a credit account with us, then payment is due the day of tipping and must be arranged prior to tipping.
- 6.3. If you do not pay money when due:
 - a. all costs incurred by EQHL in recovery of any overdue monies will be paid by you. These may include, but are not limited to, solicitor and debt collection 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 2% 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.
- 6.4. We reserve the right to limit and/or withdraw any credit account at any time, for any reason.
- 6.5. You may not deduct or withhold any amount, whether by way of set-off, counterclaim or otherwise, from any money owing to us.
- 6.6. Any dispute relating to fees must be initially made in writing within 10 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. Liability

- 7.1. EQHL currently hold Public Liability insurance to the value of not less than \$5,000,000.00
- 7.2. 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 EQHL by you.
- 7.3. All parties referred to as "the Customer" and or "you" are jointly and severally liable for all monies owed to EQHL by you.
- 7.4. 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. respect the hours of operation (which may vary);
 - d. abide by all applicable laws;
 - e. ensure they do not track dirt onto any public road; and
 - f. ensure they do not cause excessive noise.
- 7.5. We have no responsibility for any damage in relation to trucks, vehicles or other equipment belonging to you or your agent.
- 7.6. 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 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. Legal

- 8.1. All of EQHL rights, powers, exemptions and remedies will remain in force notwithstanding any neglect, forbearance of delay in the enforcement on our part.
- 8.2. 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.
- 8.3. Any exercise of a right, power, exemption or remedy by us will be without prejudice to any other right, power, exemption or remedy that EQGL may have.
- 8.4. If any provision of these terms and conditions is invalid or unenforceable, the remaining provisions will continue in full force and effect.
- 8.5. These terms and conditions replace any previous understanding or agreement, written or verbal or otherwise by EQHL.
- 8.6. We may update the provisions of these terms and conditions from time to time.
- 8.7. Our agreement is governed by New Zealand law.
- 8.8. You have full authority to agree to these terms and conditions.