

Major Trade Waste Agreement

Westernport Water

and

“Trade Waste Customer”



WESTERNPORT
WATER™

AGREEMENT TO DISCHARGE MAJOR TRADE WASTE TO WESTERNPORT WATER'S SEWER

THIS AGREEMENT is made on.....

BETWEEN

WESTERNPORT REGION WATER CORPORATION (Westernport Water) ABN 63 759 106755 of 2 Boys Home Road Newhaven, Victoria (“the Corporation”)

and

The Trade Waste Customer whose details appear in the Schedule (“the Occupier”)

Background

- A. The Occupier wishes to discharge Major Trade Waste into the Corporation's sewers.
- B. The Corporation is willing to permit Major Trade Waste being discharged into its sewers.
- C. This Agreement records the terms on which the Occupier may discharge Major Trade Waste into the sewers of the Corporation, and is entered into by the Corporation and the Occupier under the *Water Act 1989*.

1. Interpretation and Scope

1.1 Definitions

The following definitions apply in this Agreement

“Act” means the *Water Act 1989*.

“Agreement” means this Agreement, and includes the Schedules and any annexures or documents incorporated by reference.

“Authorised Officer” means any employee the Corporation nominates from time to time.

“Corporation” means Westernport Water Corporation.

“CPI” means the Consumer Price Index (All Groups Melbourne).

“Customer Interface” means the Occupier’s side of the shut-off valve flange but excludes the flow meter.

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Major Trade Waste” means waste over 1,000 kL per year discharged and/or exceeding specified water quality parameters

“notice” means any notice capable of being given or served under this Agreement.

“Occupier” means the person who occupies or is in control of the land whether or not that person owns the land.

“Tax Invoice” has the same meaning as in the GST Act.

“sewers” means sewers belonging to or under the control of the Corporation.

1.2 The Schedule and Annexures form part of this Agreement.

1.3 If a party to this Agreement consists of more than one person those persons will be jointly and severally bound under this Agreement.

1.4 The scope of this Agreement is limited to trade wastes generated:

- (a) within the boundary of the land specified in the Site Plan annexed to this Agreement; and
- (b) at facilities connected with the operation of the Occupier’s business on that land.

2. Term

This Agreement commences on the start date set out in the Schedule and, unless terminated earlier, continues until the end date set out in the Schedule.

3. Occupier Rights

The Occupier may discharge trade wastes into the Corporation’s sewers in accordance with this Agreement.

4. Maximum Discharge Rate

The Occupier must manage the rate of discharge of trade wastes into the Corporation's sewers to ensure that they do not at any time exceed 40 litres per second or 2.1 megalitres per day.

5. Pre-Treatment

The Occupier must subject all trade wastes to such pre-treatment as may be necessary to ensure that the wastes conform to the requirements of this Agreement prior to discharge into the Corporation's sewers.

6. Cleaning and Maintenance

The Occupier must, at its own expense, clean and maintain all apparatus, machinery and appliances used for pre-treatment of trade wastes, up to the Customer Interface, to ensure that the Customer Interface operates efficiently.

7. Quality of Discharge

Trade wastes must not be discharged into the Corporation's sewers unless they comply with the following general properties and the approved acceptance criteria:

- 7.1 the temperature must not exceed 40 degrees Celsius;
- 7.2 gross solids must not be discharged unless first passed through a bar screen with maximum 10mm openings;
- 7.3 the Occupier must not discharge any fibrous material reasonably likely to cause obstructions into a sewer nor discharge any abrasive material reasonably likely to cause damage to the Corporation's sewerage pumping mechanisms; and
- 7.4 the Occupier must not discharge trade wastes that are reasonably likely to cause odour problems within the Corporation's sewerage system or treatment facility.

8. Discharges Prohibited by this Agreement

8.1 The following trade wastes must not be discharged by the Occupier into the Corporation's sewers:

- (a) roof, rain, surface, flood, seepage or sub-soil water;
- (b) flammable or explosive substances including organic solvents and mineral oil;
- (c) medical and Infectious wastes eg pathological, infectious or cytotoxic waste material, hypodermic needles, syringes, instruments, utensils, swabs, dressings, bandages, paper and plastic items of a disposable nature;
- (d) non-biodegradable detergents;
- (e) organochlorins, weedicides, fungicides, pesticides, herbicides and/or wastes arising from the preparation of these substances;
- (f) natural or synthetic resins, plastic monomers, synthetic adhesives and rubber plastic emulsions;
- (g) radioactive substances;

- (h) oils and Greases;
- (i) organic Liquids;
- (j) genetically Engineered Organisms;
- (k) surfactants;
- (l) corrosive or toxic substances;
- (m) any trade wastes the discharge or release of which to any element of the environment is restricted or prohibited by any legislation applying in Victoria; and
- (n) trade wastes in quantities or of a quality that, in the reasonable opinion of the Corporation, would, or would be likely to, endanger human life, compromise the safety of a person or of works, or significantly adversely affect the operation of a sewage treatment plant or any part of the environment.

9. Measurement of Quality

- 9.1 The Corporation may undertake random sampling to monitor compliance with this Agreement and with the provisions of the Act.
- 9.2 A sampling point must be installed and maintained by the Occupier to the reasonable satisfaction of the Corporation.
- 9.3 The Occupier must pay to the Corporation any sampling (testing) costs levied by the Corporation in accordance with Annexure 1.

10. Sampling Points

The following points (adjusted for each case) marked on the Site Plan annexed to this Agreement are sampling points for the purposes of this Agreement:

Sampling Point
"Sampling Point" 1
"Sampling Point" 2
"Sampling Point" 3

11. Measurement of Quantity

- 11.1 For the purposes of this Agreement, the volume of trade wastes admitted into the Corporation's sewers during any period will be that determined by installation of a suitable meter to measure the quantity discharged.
- 11.2 If, in the reasonable opinion of an Authorised Officer, any metering device installed for the purposes of this Agreement is for any period registering incorrectly, the Authorised Officer may estimate the quantity of trade wastes discharged during such period by any means reasonably available.
- 11.3 Any dispute as to the estimate is to be determined in accordance with clause 27 of this Agreement.

12. Variation of Acceptable Discharge Parameters

- 12.1 The Corporation may from time to time impose, as a result of a regulatory change, additional, varied or restricted parameters applicable to discharges accepted into its sewers and impose additional fees related to any such parameters.
- 12.2 In the event that the Corporation intends to vary the applicable parameters it must give the Occupier 90 days' written notice of its intention to apply the varied parameters. If the Occupier claims that it cannot reasonably comply with the varied parameters, it may discuss the Corporation's proposal with the Corporation, or utilise the dispute resolution procedures available pursuant to clause 27 of this Agreement.
- 12.3 If the Occupier has not invoked the provisions of clause 27 of this Agreement within the 90 day period, the additional or varied parameters apply immediately and the Occupier must ensure that its discharge conforms to the new parameters and pay any additional charges applicable.

13. Variation of Discharge

- 13.1 The Occupier may apply to the Corporation if at any time it finds that the rate or rates of discharge permissible by this Agreement proves or prove insufficient for its requirements, and the Corporation will, acting reasonably, consider the request and advise the Occupier in writing whether the request is acceptable and, if it is, what variations will be required to this Agreement.
- 13.2 If the Corporation rejects the Occupier's request, or if the Corporation's proposal is unacceptable to the Occupier, the Occupier may refer the matter to dispute resolution in accordance with clause 27 of this Agreement.

14. Exclusion during Repairs

- 14.1 The Corporation may, in an emergency or when otherwise reasonably considered necessary by an Authorised Officer, exclude all trade wastes from the Occupier's land from its sewers during the repair, examination or maintenance of the sewers, without liability for payment of any compensation to the Occupier.
- 14.2 Where reasonably possible, the Corporation will notify the Occupier in advance of its intention to repair, examine or maintain the sewers. The Corporation will endeavour to avoid carrying out such work during periods when the Occupier is conducting major events.
- 14.3 The Occupier must not resume discharging trade waste into the Corporation's sewers until the Corporation notifies the Occupier that it may resume discharging. Until this notification has been made, the Occupier may tanker waste to the Cowes Waste Water Treatment Plant attracting the fee detailed in Annexure 1 of this Agreement.

15. Payment

- 15.1 In return for the Corporation permitting the Occupier to discharge trade wastes into the Corporation's sewers, the Occupier must pay to the Corporation any charges levied by the Corporation.
- 15.2 Charges will be levied by the Corporation to the Occupier four times per annum.
- 15.3 Payment of charges must be made by the Occupier within 28 days of the date of issue of a Tax Invoice.
- 15.4 In the event that any amount payable pursuant to this Agreement remains unpaid in excess of 28 days from the date of the Tax Invoice, the Occupier must pay interest on such amount calculated from the date of the Tax Invoice until the date of actual payment at the rate for the time being fixed by the Penalty Interest Rates Act 1983.

- 15.5 The Corporation may close, cut off, or restrict any means by or through which the discharge of trade wastes is effected for so long as such any sum remains unpaid in excess of 28 days from the date of the Tax Invoice unless the Occupier has reasonably disputed the Occupier's liability for the sum in question.

16. Other Charges

Nothing in this Agreement limits the right of the Corporation to require the Occupier to pay any other fees, charges or other imposts which may be imposed by the Corporation at law, including but without limiting any fees, charges or imposts pursuant to the Act.

17. Breach of Agreement

- 17.1 If the Occupier has failed to comply with any term of this Agreement, the Corporation may serve upon the Occupier a Compliance Notice stating:

- (a) particulars of the Occupier's failure to comply; and
- (b) a reasonable date by which the Occupier must take such action as is reasonably necessary to comply with the Agreement.

- 17.2 If a Compliance Notice has been served in accordance with clause 17.1 of this Agreement then this Agreement terminates on the date specified in the Compliance Notice unless the Occupier has:

- (a) rectified any breach notified by the Corporation, by the date specified in the Compliance Notice, to the reasonable satisfaction of the Corporation; or
- (b) given notice that the Occupier requires the dispute resolution procedure in clause 27 of this Agreement to apply in respect of the Compliance Notice or the circumstances referred to in the Compliance Notice.

18. Notice of Dangerous Events

The Occupier must notify the Corporation as soon as the Occupier becomes aware of any event relating to trade wastes which:

- 18.1 does or may give rise to a breach of this Agreement; or
- 18.2 is reasonably likely to endanger human life, compromise the safety of a person or the works of the Corporation, or significantly and adversely affect the operation of a sewerage treatment plant or any part of the environment.

19. Changes to be Notified

- 19.1 The Occupier must give a minimum of 30 days' written notice to the Corporation of its intention to make any material change in any process of trade or manufacture which may in any way affect the quality, quantity or rate of the trade waste discharge from any such process of trade or manufacture.

- 19.2 For the purposes of clause 19.1, a:

- (a) material change in quality is defined as any ongoing breach of the parameters defined in clause 7;
- (b) material change in quantity is defined as flows in excess of 5ML per annum;

- (c) material change in pump rate (if pumping is used) is defined as any increase in the pump capacity above 30 litres per second; and
- (d) notification does not preclude the issue by the Corporation of a Compliance Notice.

20. Indemnity

The Occupier indemnifies the Corporation against any damage, loss or penalty, cost or expense incurred by the Corporation as a result of the Occupier failing to comply with any provision of this Agreement, except to the extent that the damage, loss, penalty, cost or expense is caused by an act or omission of the Corporation. The Corporation will act reasonably to mitigate any damage, loss, penalty, cost or expense.

21. Change of Occupancy

- 21.1 The Occupier must notify the Corporation in writing not less than 30 days prior to any proposed change of occupancy.
- 21.2 This Agreement is incapable of being assigned and is not transferable.

22. Entry to Land

An Authorised Officer may, in accordance with section 133 of the Act:

- 22.1 at any reasonable time and after giving the appropriate notice enter land to which this Agreement relates;
- 22.2 inspect the land and any buildings or treatment apparatus thereon; and
- 22.3 take measurements and samples of trade waste on or discharging from the land for any purpose relating to the Act or this Agreement.

23. Occupier Liable for Damage

- 23.1 Notwithstanding any permission or approval of the Corporation or its Authorised Officer, the Occupier remains solely liable for all damage, loss, or injury arising directly from the discharge of trade wastes by the Occupier except to the extent that the damage, loss, or injury is caused by an act or omission of the Corporation.
- 23.2 The Occupier must do all things necessary to remedy, repair and make good all damage to any sewers of the Corporation to the extent contributed by the Occupier's negligence or breach of this Agreement. Where necessary the Corporation may perform such repairs itself at the expense of the Occupier. In any such case an Authorised Officer may certify the reasonable cost and expense thereof and such certification will be final and conclusive as to the amount, which must forthwith be paid to the Corporation on demand.
- 23.3 The Corporation may each year request proof that the Occupier has current and suitable Public Liability insurance cover with a minimum cover of \$10,000,000.00.

24. Termination of Agreement

- 24.1 The Occupier may terminate this Agreement by providing 30 days' written notice to the Corporation.

- 24.2 The Corporation may terminate this Agreement after 30 days' written notice to the Occupier should the Occupier cease to occupy the land from which trade waste is being discharged in accordance with this Agreement.
- 24.3 The Corporation may terminate this Agreement after 30 days' written notice to the Occupier should the Occupier persistently fail to comply with any provision of this Agreement.
- 24.4 Before any termination under the preceding sub-clause, the dispute resolution process provided in clause 27 of this Agreement must be followed if requested by either party.
- 24.5 This Agreement may also be terminated by the Corporation upon the Occupier's failure to comply with a Compliance Notice given under clause 17 of this Agreement.

25. Disconnection on Termination or Expiry of Agreement

- 25.1 Upon termination of this Agreement, the Occupier must at its own expense and to the reasonable satisfaction of an Authorised Officer disconnect all means of discharge of trade wastes into the sewers of the Corporation.
- 25.2 In default of the Occupier complying with clause 25.1 the Corporation by its agents or staff may, within seven days from the date of termination or expiry of this Agreement, or within such further period as the Corporation may allow, enter the land, and at the reasonable cost and expense of the Occupier disconnect such means and put an end to the further discharge of trade wastes to its sewers.

26. Service of Notices

A notice given or served under this Agreement:

- 26.1 must be in writing and signed by a person duly authorised by the sender;
- 26.2 must be delivered to the intended recipient by hand or by prepaid post, to the address specified in the Agreement or the address last notified by the intended recipient to the sender; and
- 26.3 will be taken to be duly given or made in the case of delivery in person, when delivered; or in the case of delivery by post, five Business Days after the date of posting.

27. Dispute Resolution and Arbitration

- 27.1 If any dispute, question or difference, arises between the parties as to the meaning, operation or effect of any of the provisions of this Agreement or as to the rights or liabilities of any party, the parties must negotiate in good faith with one another in an attempt to reach agreement.
- 27.2 If agreement cannot be reached, the matter will be referred to a resolution panel consisting of:
- (a) the Chief Executive Officer/Managing Director/any other nominated representative of the Occupier; and
 - (b) the Managing Director of the Corporation.
- 27.3 The resolution panel must meet to consider the dispute within 21 days of the matter being referred to it.
- 27.4 Any decision of the panel must be unanimous.
- 27.5 If the panel cannot agree within 30 days, the dispute, question or difference may be referred to an Arbitrator to be appointed by the Institute of Arbitrators Australia at the request of either party. The Arbitrator may

conduct such inquiry as he deems appropriate pursuant to the *Commercial Arbitration Act 2011*, and his or her decision or award will be conclusive and binding on the parties. The Arbitrator will have power to award costs. Counsel and/or solicitors may represent either party before the Arbitrator.

Schedule

1. Name, address and other Details of the Occupier:

2. Start Date of this Agreement:

3. End Date of this Agreement:

Annexure 1 – Major Trade Waste Discharge Fees

The charges below and reflect the standard charges at the date of signing this Agreement. Future amendments to charges will commence effective 1 July each year and will be indexed by CPI (March quarter results). The Discharge Fees will be subject to review for any extension of the term of this Agreement.

- (1) Annual Access Charge
Per Annum As agreed
- (2) Volumetric
Volume per kilolitre (kL) As agreed
This rate also applies when the Corporation's system is unavailable.
- (3) Tankered Waste
Volume per kilolitre (kL) Standard Fess and Charges
This rate applies when the Occupier' system is unavailable..
In a case to which section 28(3) of the Act applies, labour costs reasonably and properly incurred by the Corporation receiving tankered waste at Cowes Waste Water Treatment Plant will also be charged.
- (4) Sampling Costs
Analysis and freight costs reasonably and properly incurred by the Corporation
Actual Cost

Annexure 2 – Site Plan

Provided by Occupier

EXECUTED on behalf of **WESTERNPORT**
REGION WATER CORPORATION by its duly
authorised officer.

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Name (printed):
Position:

EXECUTED on behalf of **Trade Waste**
Customer (Occupier) by its duly authorised
officer.

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Name (printed): Name of Authorised
Person
Position
