

# HILLS WASTE SOLUTIONS LIMITED – WASTE CONTRACT TERMS AND CONDITIONS

## 1. DEFINITIONS

**Agreement** means the agreement between the Company and the Customer for supply of Services comprising the terms overleaf, and these Terms and Conditions, which may be amended from time to time in accordance with these Terms and Conditions.

**the Company** means Hills Waste Solutions Ltd (company number 00571289) registered office Wiltshire House, County Park Business Centre, Shrivenham Road, Swindon SN1 2NR.

**Duty of Care** means the duty of care under section 34 of the Environmental Protection Act 1990.

**Equipment** means the container(s) or Specialist Equipment specified to be provided by the Company to the Customer under this Agreement and any replacement(s) or additions(s) provided by the Company from time to time.

**Excluded Waste** means any waste of any kind, which does not comply, with the terms of the applicable Waste Description. Any Waste Including Hazardous, which is not specifically described in the Waste Description, shall be Excluded Waste.

**Initial Term** means the initial term of this Agreement from the Effective Date.

**Services** means the waste collection and (if applicable) Equipment provided by the Company to the Customer under this Agreement.

**Specialist Equipment** means any static compactor or Shredder, or any Equipment especially suited or adapted for the Customer's purposes.

**Term** means the duration of this Agreement comprising the Initial Term and any Renewal Term.

**Waste Description** means the description of Waste Material in the Waste Transfer Note or any subsequent description established during or after disposal.

**Waste Material** means the Customers Waste Material complying with the terms of the applicable Waste Description, for collection and disposal by the Company pursuant to this Agreement.

**Waste Transfer Note(s)** means the Waste Transfer Note detailing movement of waste by the Company for the Customer.

## 2. SERVICES RENDERED/AGREEMENT

The Company shall provide the Services to the Customer as laid out in this Agreement. No Agreement between the Company and the Customer shall come into effect until this Agreement, including any applicable Waste Transfer Notes, have been signed by both the Customer and an authorized representative of the Company. The Customer shall make available a duly authorized person to sign this Agreement and any required Waste Transfer Notes.

## 3. TERM

This Agreement shall remain in force, subject to earlier termination as provided for herein, for the Initial Term and shall automatically renew and remain in force for successive one-year terms (the 'Renewal Term') thereafter unless either party shall give notice of termination by written notice to the other at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.

## 4. WASTE MATERIAL

The Customer undertakes to the Company that -

**4.1** The Waste Transfer Note will contain an accurate and adequate description of the nature and characteristics of the Waste Material to enable the Company to safely and lawfully manage the same and that the Customer shall notify the Company in advance of any change in the composition of the Waste Material.

**4.2** It controls the deposit of Waste Materials in the Equipment, and it shall at no time deposit in any Equipment or place for collection by the Company any Excluded Waste and that it shall prevent such deposit or placement of Excluded Waste by third parties.

**4.3** The Company shall acquire title to Waste Material as described by the Waste Transfer Note when it is loaded into the Company's or agent's collection vehicles.

**4.4** The Customer shall ensure that the Waste Material is lawfully and properly labelled and packaged to enable it to reach its final destination/disposal point without escape where the Waste Material is collected in containers other than the Equipment or Specialist Equipment (e.g. drums, bates, bags, and other containers).

## 5. EXCLUDED WASTE

Notwithstanding 4 (above), title to, risk of and liability for any Excluded Waste shall remain with the Customer and the Customer shall indemnify and hold harmless the Company from and against any and all claims, losses, damages, penalties, fines, and liabilities resulting from or arising out of the deposit of Excluded Waste in a company or agents collection vehicle. Equipment or any subsequent handling of such Excluded Waste by or on behalf of the Company.

## 6. PERMITTED WASTE FACILITIES

The Company confirms that the final destination of the Waste Material shall be a properly permitted or exempted facility for disposal, recovery, recycling, treatment, transfer, etc. of such Waste Material. For the avoidance of doubt the Company shall not be responsible for Excluded Waste that remains with the Customer.

## 7. CONDITIONS WARRANTIES AND EXCLUSION

**7.1** The Company has not inspected the Equipment which has been selected by the Customer using their own skill and judgement. All terms, conditions and warranties (whether express of implied by statute or otherwise) as to description, merchantability and fitness for purpose of the Equipment are excluded.

**7.2** The Customer shall keep the Company indemnified at all times in respect of the Equipment and its use.

**7.3** The Company agrees upon request and at the cost and expense of the Customer to assign to the Customer the benefit of all express warranties granted in favour of the Company by the supplier of the Equipment or the manufacturer of them.

**7.4** The Customer shall maintain and service the Equipment and keep it in good order and condition at all times be responsible for making good, any damage or loss to the Equipment which may occur for any reason whatsoever.

## 8. RETURN OF EQUIPMENT

Forthwith upon expiry or termination of this Agreement (for whatever reason) the Customer shall return the Equipment to the premises nominated by the Company in the United Kingdom at the Customer's expense. In the event that the Customer shall fail to return the Equipment to the premises nominated by the Company within 7 days the Company shall be at liberty to collect the Equipment from the premises where it is situated and to charge the Customer for the cost of such collection.

## 9. PAYMENTS

**9.1** A Customer with an approved credit account with the Company shall pay the Company on a monthly basis as agreed for the Services supplied by the Company in accordance with the charges and rates agreed upon. The Customer shall make payment to the Company within 30 days from the date of the invoice from the Company. The Company may charge and the Customer pay interest on all overdue payments due from the Customer hereunder accruing from day to day at the rate of 4% per annum above the base.

**9.2** A Customer without an approved credit account with the Company shall pay for the Services to be supplied by the Company in advance. Where payment of cleared funds is received by the Company more than 15 days in advance then the Customer may cancel the Services and have the payment refunded if the Customer gives and the Company receives written notice not less than 1 days prior to the start date of the first Services to be supplied by the Company.

## 10. RATE ADJUSTMENTS

**10.1** As disposal and fuel costs constitute a significant portion of the cost to the Company of providing the Services, the Company shall have the right to increase the charges and rates provided for proportionately to adjust for any increase in such costs or increases in transportation costs due to changes in location of the disposal facility which the Company uses for the purpose of providing Services, provided such changes are outside the reasonable control of the Company.

**10.2** The Company shall also have the right to increase such charges and rates from time to time to proportionately pass through to the Customer: increases. In the average weight or volume of Customers Waste Material; increases in the Company's costs due to local, national, or international legislation, rules, ordinances, or regulations applicable to the Company's operations or the Service; and or increases in taxes, duties, fees, or other governmental charges assessed against or suffered by the Company.

**10.3** The Company reserves the right to make an annual nominal charge for the administration cost of maintaining compliance with section 34 of the Environmental Protection Act 1990 and Environmental Protection (Duty of Care) Regulations 1991 (as amended).

## 11. SERVICE CHANGES

Changes to the type, size, and amount of the Equipment or the type or frequency of the Waste Collection Service shall require Agreement between the parties evidenced in writing and may be accompanied by corresponding increases to the Company's charges and rates. Such agreed changes shall not affect the validity of this Agreement and this Agreement shall be deemed amended accordingly. This Agreement shall continue in effect during the Term in respect of and apply to any agreed new service address location of Customer within the area in which the Company provides the Waste Collection Service, subject to appropriate increases to the charges and rates of the Company in accordance with the Company's standard scale of charges for the area concerned.

## 12. RESPONSIBILITY FOR EQUIPMENT

**12.1** The Equipment shall remain the property of the Company at all times. However, the Customer acknowledges that it has care, custody and control of the Equipment and shall take reasonable care of it while at the Customer's location and accepts responsibility for all loss, damage, or defacement to the Equipment (except for normal wear and tear or damage resulting from the Company's negligent handling of the Equipment.) and for its contents while in its custody and control

**12.2** The Customer shall inform the Company immediately (by telephone and then confirmed in writing) if any of the Equipment is lost, damaged or defaced in any way. The Customer shall keep all Equipment safely secured or sealed at its cost and expense prior to collection.

**12.3** The Customer shall not overload (by weight or volume) move or alter the Equipment and shall use the Equipment only for its proper and intended purpose. Equipment must not be loaded above its volume capacity.

**12.4** The Customer shall ensure that any items of Equipment placed in a street, highway, or public thoroughfare is adequately lit and coned at all necessary times.

**12.5** The Customer shall not create or purport to create or permit to subsist over the Equipment any mortgage, pledge, lien, charge, assignment, adverse title, or security interest, or trust arrangement, or acknowledge any claim by any person or entity, and shall take all necessary action to protect the Company's ownership of the Equipment.

**12.6** The Customer shall not, unless with the Company written consent, place or fix on the Equipment any name sign, marking, advertising, or other device and shall not remove, cover or deface any name, sign, marking, advertising, or other device placed by the Company.

**12.7** The Customer shall indemnify and hold harmless the Company against all claims, damages, suits, penalties, fines, losses and liabilities for injury or death to persons or loss or damage to property (including but not limited to, fire damaged Equipment and damage to third party property arising out of the Customer's use, location, operation, or possession of the Equipment in so far that it is not caused by the negligent act or omission of the Company, its employees or agents.

**12.8** The Customer hereby gives irrevocable right and license to the Company, its employees and agents to enter any premises at any time with or without vehicles and with or without notice for the purpose of accessing and/or removing the Equipment.

**12.9** The Customer shall provide unobstructed and safe access to the Equipment on any scheduled, or other collection day. If the Equipment is inaccessible so that any scheduled service or pick up cannot be completed the Company will notify the Customer to provide access within a limited period, otherwise the Company may charge the Customer any additional collection charge costs incurred due to the Customer's failure to provide such access.

## 13. INSURANCE

**13.1** The Customer shall at all times during the Term maintain with a reputable insurance company approved by the Company (and shall do nothing to make void or inapplicable) insurance cover in respect of the Equipment in an amount not less than the full replacement value thereof against fire, theft, destruction and damage from whatever cause and other risks and third party liability ('Insurance') The Customer shall ensure that the interest of the Company in the Equipment is noted on the policy(ies) of insurance and that all proceeds of any claim thereon are nominated to be paid directly by the insurer to the Company. The Customer shall on demand from time to time produce to the Company such evidence of Insurance as the Company may reasonably require.

**13.2** If any of the Equipment is lost or damaged such as to be incapable of economic repair in the opinion of the Insurers, the Company shall have the opinion to elect either that the Insurance money be applied so far as possible in replacing the Equipment concerned with Equipment of similar type and description or to terminate the Agreement by giving at least 14 days' prior notice to the Customer and shall be obliged within such a 14-day period to pay to the Company: all Insurance money received; any shortfall between the full replacement value of the Equipment concerned and the Insurance money received; and to make available for collection by the Company any Equipment not so lost or damaged.

## 14. DAMAGE TO SURFACES AND THIRD PARTY PROPERTY

The Customer recognises that it is difficult for the Company to ensure that the Customer's pavement or driving surface is adequate to bear the weight of collection vehicles and Equipment. Therefore, the Customer accepts responsibility for assessing and ensuring such adequacy and obtaining appropriate insurance cover and takes responsibility for any damage to the Customer's pavement, curbing or other driving surfaces resulting from the weight of collection vehicles and Equipment used to provide the Services to the Customer.

## 15. DEFAULT AND TERMINATION

**15.1** If, during the Term, the Customer shall be more than 14 days late in payment required under this Agreement or shall be in breach of any other provision of this Agreement or the Customer becomes unable to pay its debts or otherwise becomes insolvent or if the Customer enters liquidation or any receiver, administrator, manager, or liquidator is appointed in respect of the Customer, the Company may treat this Agreement as repudiated by the Customer and either terminate this Agreement forthwith by written notice to the Customer, or at the Company discretion, allow the Customer a period of 14 days to remedy the breach before terminating this Agreement forthwith by written notice to the Customer, if the Customer fails to so remedy within the period allowed termination shall be without prejudice to other rights and remedies of the Company accrued at termination.

**15.2** In the event the Customer terminates this Agreement, the Customer shall forthwith pay to the Company: All sums already due to or invoiced by the Company under this Agreement at termination; and liquidated damages as follows: Services and/or Equipment other than Specialist Equipment the Customer's most recent monthly charge multiplied by the number of complete calendar months remaining until the contractual termination date of the contract, or 6 months, whichever is the sooner; and/or Specialist Equipment the Customer's most recent total monthly charge for providing the Specialist Equipment thereof multiplied by the number of months remaining in the Term.

**15.3** All costs and expenses incurred by the Company in locating, repossessing, or recovering the Equipment or collecting any payment due hereunder or otherwise in obtaining due performance of the Customer an obligations hereunder (including without limitation any legal costs).

**15.4** The Customer expressly acknowledges that in the event of termination of this Agreement under clause 15, the payment set forth in the sub clauses above constitutes a reasonable pre-estimate of the loss that the Company will incur in such event and is not imposed as a penalty.

## 16. ASSIGNMENT

**16.1** The Customer shall not assign this Agreement without the prior consent of the Company.

**16.2** The Company may assign both the benefit and the burden of this Agreement without consent of the Customer.

## 17. EXCUSED PERFORMANCE

Neither party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to strikes, riots, compliance with law, constitute a breach for the purposes of clause in 15.

## **18. ENTIRE AGREEMENT**

This Agreement represents the entire understanding and Agreement between the parties hereto and overrides and supersedes any and all prior Agreements, terms, conditions, warranties, and representations, whether written or oral, that may exist between the parties regarding some other than those made in accordance with the express provisions hereof. Except as may be expressly provided in this Agreement, any other terms and conditions and all warranties, terms, conditions, and representations, express or implied by law are and shall be hereby excluded.

## **19. LIMIT OF LIABILITY**

**19.1** The Company obligations shall be limited to damages (if adjudged to be payable) not exceeding £50,000. The Company shall not be liable to the Customer for any direct or indirect or consequential loss including, without limitation, loss of business, economic loss, loss of profit, depletion of goodwill, personal injury (so far as not caused by the Company's negligence) or for any damage or expense of any nature whatsoever, incurred or suffered by the Customer (whether arising in contract, negligence, tort or otherwise) arising out of or in connection with the provision of any Services by the Company, its employees or agents.

**19.2** Nothing in the Agreement limits or excludes the liability of the Company for the death or personal injury resulting from negligence; for fraud or fraudulent misrepresentation; or under Part 1 of the Consumer Protection Act 1987.

**19.3** The Customer expressly acknowledges being subject to provisions of the Environment Protection Act 1990 and Duty of Care and the Customer shall indemnify and hold harmless the Company from and against any and all claims, losses, damages, penalties, fees, fines, and liabilities resulting from or arising out of Customer's non-compliance with said Duty of Care.

## **20. DATA PROTECTION**

**20.1** Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including (without limitation) the Data Protection Legislation. This clause is in addition to, and does not reduce, remove or replace, a party's obligations arising from such requirements.

**20.2** The company will only use personal information provided to it as set out in its privacy policy (copy of which is available on the company's Web Site).

**20.3** For the purposes of this clause 20, Data Protection Legislation means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) (2016/679) and any other directly applicable European Union regulation relating to privacy.

## **21. MISCELLANEOUS**

**21.1** Time shall be of the essence in respect of compliance by the Customer with its obligations under this Agreement.

**21.2** Whenever under this Agreement one party is required or permitted to give notice to the other, such notice shall be deemed given if mailed by registered or recorded mail, return receipt requested, postage pre-paid and addressed as appears herein, and such notice shall be effective notwithstanding its return undelivered.

**21.3** No waiver of any provision or right under this Agreement shall be effective unless the waiver is in writing and signed by the waiving party.

**21.4** Any reference in this Agreement to a statute or statutory provision includes that statute or provision as re-enacted, modified or replaced from time-to-time.

**21.5** The section headings used are simply for ease of reference only and are not to be used as an interpretation hereof.

**21.6** This Agreement shall be governed by and construed in accordance with the laws of England, and the parties hereby submit to the exclusive jurisdiction of the English Courts in respect of any claim arising out of this Agreement.

**21.7** Provisions provided for under this Agreement, are in addition to standard terms and conditions of skip hire and conditions as detailed in all Waste Transfer Notes provided by the Company.