

# HILLS WASTE SOLUTIONS LIMITED - CONDITIONS OF BUSINESS

## 1. DEFINITIONS

"the Company" means Hills Waste Solutions Limited (company number 00571289); "the Customer" means the party with whom the Company contracts; "Goods" means the goods the Customer buys from the Company (including but not limited to clay, wood chippings, compost, cans, paper and glass); "Container(s)" means the containers the Company hires to the Customer; "Contract" means any contract between the Company and the Customer; "Services" means the services to be provided by the Supplier to the Customer (including but not limited to the hiring of Containers and provision of Tipping Facilities); "Tipping Facilities" means the facilities made available by the Company to the Customer for the disposal or recycling of waste.

## 2. GENERAL

- (a) These conditions shall apply to the exclusion of all terms and conditions issued by the Customer.
- (b) These conditions may not be varied except in writing by the Company's company secretary.
- (c) All descriptions and specifications of the Goods and Services given to the Customer and statements made by the Company with regard to the availability of Goods and Services are approximate and do not form part of the Contract.
- (d) Any quotation given by the Company to the Customer is an invitation to the Customer to make an offer to contract with the Company, within the period stated in the quotation (and, if no period is stated, within 30 days from the date of the quotation).
- (e) No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods, or begins to provide the Services, to the Customer.
- (f) Any reference to delivery of Goods and Containers, also refers to the collection of Goods and Containers.
- (g) The Customer shall co-operate with the Company in all matters relating to the Services and Goods.

## 3. PRICE

- (a) Unless otherwise agreed in writing by the Company, the prices for the Goods and Services shall be those in the Company's price list published on the date of the dispatch of the Goods or the commencement of the performance of the Services.
- (b) The Company may increase the prices in its price list at any time.
- (c) The Company's prices are exclusive of value added tax and landfill tax.
- (d) Except where stated by the Company in writing, prices do not include delivery.

## 4. PAYMENT

- (a) Payment for the Goods and Services is due by the last working day of the month following the month of delivery, unless agreed in writing by a Director of the Company.
- (b) Payment for the disposal or recycling of waste or other material is due by the last day of the month following the month during which the waste was collected from, or delivered by, the Customer.
- (c) Time for payment is of the essence. Payment must be made in full without any deduction or withholding of any kind. No payment shall be deemed to have been received until the Company has received cleared funds.
- (d) Late payment, for whatever reason, shall entitle the Company to charge interest on the full outstanding amount from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank Plc accruing on a daily basis until payment is made.
- (e) The Company reserves the right to suspend, withdraw or cancel Services, and suspend delivery of Goods, in the event of late payment by the Customer.

## 5. DELIVERY

- (a) Any dates specified by the Company for delivery of Goods and Containers are estimates. Failure by the Company to make delivery by any stated date shall not entitle the Customer to rescind or terminate the Contract.
- (b) The Company will notify the Customer of the estimated delivery date and the Customer must take delivery on such date or such other date as the Company shall indicate to the Customer. Failure to take delivery when notified by the Company will require the Customer to pay any storage charges incurred by the Company which shall be added to the agreed price. The Company may withhold delivery of the Goods until such storage charges have been paid.
- (c) When the Company delivers Goods or Containers, or makes arrangements for Goods or Containers to be delivered, the Customer shall ensure that delivery vehicles are not obstructed or delayed in any way. The Company and its agents may refuse to make delivery if access to the agreed place of delivery is unsuitable or unsafe for such delivery and to charge the Customer accordingly.
- (d) The delivery of Goods is made by the Company on the condition that adequate facilities and, if necessary, labour, will be made available by the Customer, at the Customer's expense, at the agreed place of delivery.
- (e) The Company may require the Customer to take delivery at the Company's depot, if the delivery of Goods or Containers to the agreed place of delivery is not reasonably accessible by road vehicles available to the Company.
- (f) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more instalment shall not entitle the Customer to treat the contract as a whole as repudiated.

## 6. RETURN OF GOODS

Goods returned for credit by the Customer will not be accepted by the Company unless by prior written agreement.

## 7. CONTAINERS

- (a) The Containers shall remain the sole property of the Company.
- (b) The Customer must not overfill Containers. The Company may refuse to collect an overfilled Container.
- (c) The Customer must at all times keep the Containers in its possession and control and must not remove the same from the agreed place of delivery.
- (d) The Customer must insure the value of the Containers in its possession and in the event of loss, damage or destruction, pay to the Company the replacement or repair costs thereof.
- (e) The Customer shall keep the Company indemnified against all loss and damage to the Containers, and against any claim arising from the use of the Containers by the Customer, whilst in the Customer's possession (except where the same is due to the proven negligence of the Company).
- (f) The Customer shall not pledge, mortgage, lend or otherwise deal with the Containers, or part with possession thereof other than to the Company or its agents.
- (g) Containers must not be placed upon a public highway, unless a licence is obtained from the local Highway Authority. The Customer must observe all conditions of any such licence.
- (h) When the Containers are placed on or near a public highway at night-time, the Customer must place four illuminated warning lamps at each corner of the Container at all appropriate times prior to the collection of the Container.
- (i) When collection arrangements for the Containers have not been made at the time of order, the Customer must give reasonable notice to the Company to make arrangements for collection. When Containers are placed on a public highway, the Customer must give reasonable notice to the Company to ensure that collection may occur prior to the expiry of any licence.
- (j) The Customer must ensure that waste put in the Containers is kept damped down to prevent nuisance from dust. The Customer must immediately clear any spillage. The Customer must ensure that all drop-end doors on the Containers are closed and securely bolted when the Container is unattended.

## 8. TIPPING FACILITIES

- (a) The Customer must indemnify the Company against all damage, loss and injury which arises from the Customer's use of the Tipping Facilities and from any act, omission or negligence on the part of the Customer, its employees or agents.
- (b) The Company may refuse to allow the Customer to use the Tipping Facilities and to withdraw any permission to use the Tipping Facilities for whatever reasons without notice.

- (c) The Customer, the Customer's employees and agents must abide by the Company's site regulations and obey all instructions of the Company's authorised employees and agents at the Tipping Facilities.
- (d) Title in the waste tipped at the Tipping Facilities shall pass to the Company when the waste is unloaded from the Customer's vehicle.
- (e) Upon or before placing an order for Tipping Facilities, the Customer must provide the Company with a description of the waste to be tipped. If that waste does not match that description, the Company may refuse to provide the Tipping Facilities.

## 9. RISK AND TITLE IN THE GOODS

- (a) Risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer.
- (b) Title in the Goods shall remain in the Company until payment of the price in full.
- (c) The Company and its agents, may at any time after the Customer's right to possession has terminated, enter the place where the Goods are stored to repossess them.
- (d) The Company may maintain an action against the Customer for payment of the price notwithstanding that title in the Goods has not passed to the Customer.
- (e) If any of the Goods are resold or otherwise disposed of by the Customer before payment has been made in full, the Company may trace the proceeds of such sale or disposal and recover the proceeds of sale.

## 10. CONDITIONS AND WARRANTIES RELATING TO GOODS

- (a) No representation or warranty given by the Company or its agents on its behalf shall be incorporated into any Contract unless expressly referred to in the Company's quotation.
- (b) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) to the fullest extent permitted by law are excluded from the Contract.
- (c) The Company does not warrant that the Goods are fit for any particular purpose, save insofar as written advice is given by an authorised employee of the Company as to the fitness of the Goods for a particular purpose made known to the Company by the Customer.
- (d) Any samples submitted by the Company are from current production at the time of submission of such sample. The Goods supplied in bulk may not conform to the original sample.
- (e) If the Customer is dealing as a consumer nothing in these Conditions shall exclude the provisions of sections 13 to 15 inclusive of the Sale of Goods Act 1979.

## 11. LIABILITY

- (a) This clause 11 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - (i) any breach of these conditions;
  - (ii) the Goods and Services, and any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- (b) Nothing in the Contract limits or excludes the liability of the Company (i) for death or personal injury resulting from negligence; (ii) for fraud or fraudulent misrepresentation; (iii) under Part 1 of the Consumer Protection Act 1987; or (iv) breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- (c) The Company shall not be liable for any damage, loss, act or omission caused as a result of any circumstances outside the Company's control.
- (d) The Company's obligations shall be limited to the repair or replacement (at the Company's discretion) of defective Goods, together with damages (if adjudged to be payable) not exceeding £500,000. The Company shall not be liable for any of the following types of loss (whether direct or indirect): (i) loss of profit; (ii) loss of business; (iii) depletion of goodwill; (iv) personal injury (so far as not caused by the Company's negligence); or (v) indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (e) The Customer must inspect the Goods upon receipt and must notify the Company in writing within three working days of any apparent defect becoming apparent to the Customer. No complaint or claim made after such period shall give the Customer any right to reject the Goods.
- (f) Samples of any Goods claimed to be defective must be returned to the Company forthwith.
- (g) The Customer must notify the Company in writing within ten business days of the anticipated delivery date of any claims for non-delivery of Goods or Containers.
- (h) The Customer shall indemnify the Company against all actions, claims or demands by third parties against the Company, whether arising directly or indirectly as a result of the Goods, the Containers or the Contract.

## 12. TERMINATION

On termination of the Contract for any reason:

- (a) The Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return any Goods for which payment in full has not been received and all of the Company's Containers. If the Customer fails to do so, then the Company and its agents may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## 13. BREACH AND INSOLVENCY

The Customer's right to possession of the Goods, and performance of the Services, shall terminate immediately, and the Company may terminate a Contract, if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

## 14. GENERAL

- (a) The Company may assign the Contract or any part of it to any person, firm or company.
- (b) The Customer shall not be entitled to assign the Contract or any part of it.
- (c) A waiver by the Company of any right under the Contract (i) is only effective if it is in writing and (ii) shall not be deemed a waiver of any subsequent breach.
- (d) If any provision of the Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable that provision shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (e) This Contract is governed by English Law. The parties submit to the exclusive jurisdiction of the English courts.