

TERMS AND CONDITIONS

1 Definitions

The following terms shall have the following meanings:

- 1.1 'Agreement' means these terms and conditions and the Agreement Schedule.
- 1.2 'Agreement Schedule' means the schedule attached to these terms and conditions entitled Waste Collection Service Contract Schedule.
- 1.3 'Annual Review Date' means 1st April each year or some other date as the Company may notify to the Customer in writing from time to time
- 1.4 'Authorised Officer of the Company' means the person stated at number 10 of the Agreement Schedule or such other person as notified to the Customer in writing by the Company
- 1.5 'Commencement Date' means the date stated at number 2 of the Agreement Schedule
- 1.6 'the Company' means Hills Waste Solutions Limited of Ailesbury Court, High Street, Marlborough SN8 1AA, Wiltshire
- 1.7 'Containers' means the number and size of containers stated at number 4 of the Agreement Schedule
- 1.8 'Customer's Premises' means the address stated at number 1 of the Agreement Schedule
- 1.9 'Customer' means the party to the Agreement stated at number 1 of the Agreement Schedule
- 1.10 'Invoice Address' means the address stated at number 1 of the Agreement Schedule
- 1.11 'Payments' means the amounts payable by the Customer to the Company stated at number 6, 8 and 9 of the Agreement Schedule and any other associated waste costs
- 1.12 'Scheduled Frequency' means the frequency stated at number 7 of the Agreement Schedule
- 1.13 'Services' means the provision and removal of the Containers of Waste from the Customer's Premises at the Scheduled Frequency for the Term
- 1.14 'Service Days' means the day or days of the week stated at number 5 of the Agreement Schedule
- 1.15 'Term' means the period from the Commencement Date up to and including 31st March and then every 12 month period thereafter until terminated in accordance with clause 6 of this Agreement
- 1.16 'Waste' means the waste described at number 3 of the Agreement Schedule.

2 Appointment and limit of liability

- 2.1 The Customer appoints the Company to provide the Services for the Term in return for the Payments.
- 2.2 This clause 2 sets out the entire 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 this Agreement, (ii) the Services and (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 2.3 The Company's obligations shall be limited to damages (if adjudged to be payable) not exceeding £50,000. 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.
- 2.4 Nothing in this Agreement limits or excludes the liability of the Company (i) for death or personal injury resulting from negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) under Part 1 of the Consumer Protection Act 1987.

3 The Company's Obligations

- 3.1 The Company shall provide the Customer with the Container(s) and remove the waste from the Customer's Premises on the Service Days at The Scheduled Frequency for the duration of the Term.
- 3.2 The Company shall use its reasonable endeavours to act in accordance with safe working practices specified in writing by the Customer and acknowledged in writing by an Authorised Officer of the Company before the date of this Agreement in accordance with the Health & Safety Act 1974.
- 3.3 The Company's obligations under this Agreement are subject to the following conditions:
 - 3.3.1.1 the Company may increase the Payments if costs rise due to legislation, or for any other reason beyond the Company's control, and undertakes to notify the Customer of such increase as soon as is reasonably practicable.
 - 3.3.1.2 In any event, the Payments referred to in the Agreement Schedule will be reviewed by the Company on the Annual Review Date irrespective of the Commencement Date, following which the Payments may be increased.
 - 3.3.2 The Company may change the days on which the Services are to be carried out in order to meet operational requirements which will be notified to the Customer in advance where possible.
 - 3.3.3 Where the Company cannot perform the Services in accordance with the Agreement Schedule the Company reserves the right to re-schedule the performance of the Services to the earliest possible opportunity without liability to the Customer.
 - 3.3.4 The Company shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or failure to perform if that delay or failure was due to any cause beyond the reasonable control of the Company. The following shall be regarded as, but shall not be limited to, causes beyond the reasonable control of the Company:
 - 3.3.4.1 strikes, other industrial action or trade disputes (whether involving the employees of the Company or employees of a third party),
 - 3.3.4.2 difficulties in obtaining labour, fuel, parts or machinery or failure or break down in machinery
 - 3.3.4.3 acts, bye-laws, or measures of any kind on the part of any governmental, parliamentary or local authority
 - 3.3.4.4 the events stated in clause 11.2
 - 3.3.5 The Company may alter the way in which it performs the Services including, but not limited to, altering the type of Container supplied.

4 The Customer's Obligations

The Customer shall:

- 4.1 make the Payments to the Company within 30 days of the invoice date. All sums which are not paid within this period (without prejudice to the rights of the Company under this Agreement) shall bear interest from day to day at the annual rate of 4% over the base lending rate of National Westminster Bank plc.
- 4.2 ensure that the Waste will not be subject to the Special Waste Regulations 1996 as amended or other special control regulations that may apply from time to time and will not contain highly flammable, explosive or toxic materials.
- 4.3 ensure that the duties contained in the Collection and Disposal of Waste Regulations 1988 as amended and modified and the Control of Pollution Act 1974 as amended or any statutory modification or other statutory or Local Authority requirements have been performed and complied with.
- 4.4 provide and maintain a suitable and safe means of access at the Customer's Premises for the performance of the Services.
- 4.5 be wholly responsible for the safety of all persons (including the employees and agents of the Company) entering the Customer's Premises
- 4.6 limit all risks involved in connection with the use of the Containers and other equipment.
- 4.7 indemnify the Company against all claims arising through any negligent act of, and any breach of this Agreement by, the Customer.
- 4.8 give 4 weeks' notice in writing to the Company of any change in Customer's Premises.
- 4.9 immediately inform the Company if it becomes aware that the Waste may cause environmental or human problems.

5 Additional Service

- 5.1 Where the Company agrees with the Customer to remove more than the scheduled Containers of Waste from the Customer's Premises a charge will be made to the Customer. This charge will be made in arrears at the end of the Company's invoicing period.
- 5.2 It is the Company's policy to only remove Waste stored in Containers. However the Company understands the need to leave the Customer's Premises in a clean and tidy condition avoiding any environmental problems associated with loose waste and will remove occasional loose waste provided the Customer has confirmed to the Company in writing that it will pay an

additional charge based on an on-site assessment by the Company operatives. If removal of loose waste occurs on a regular basis, the Company may terminate this arrangement with immediate effect.

6 Termination

- This Agreement may be terminated in the following circumstances and the rights and liabilities of the parties shall then be determined in accordance with clause 7:
- 6.1 at the end of each Term by written notice given by either party received by the other not less than 2 months before the end of such Term
 - 6.2 should the Customer and the Company fail to agree on the new Payments referred to in the Agreement Schedule within six weeks after the annual price review provided for in clause 3.3.1 above, by one month's written notice given by either party at the end of such six week period.
 - 6.3 by the Company at any time in the event of breach of the following conditions:
 - 6.3.1 Failure on the part of the Customer to make punctual payment of all sums due to the Company under the terms of this Agreement
 - 6.3.2 The levying of any distress or execution against the Customer or the making by him of any composition of arrangement with creditors or being a company liquidation or being the subject of an administration order or becoming bankrupt.
 - 6.4 upon the Company giving one month's notice to the Customer should the Company decide that the provision of the Services is no longer economically viable.
 - 6.5 immediately upon the Company giving notice to the Customer if there are items in the Containers or if the Company is asked or obliged to remove loose items of waste which are not Waste as described in clause 1.16 and number 3 of the Agreement Schedule.

7 Termination Consequences

- In the event of this Agreement being determined whether by effluxion of time notice breach or otherwise:
- 7.1 the Customer shall immediately pay to the Company all arrears of Payments and any other sums due under the terms of this Agreement
 - 7.2 the Customer shall immediately pay to the Company any and all additional costs to the Company in respect of the termination.

8 Alterations to Agreement

- 8.1 These terms and conditions shall to the exclusion of any other terms and conditions form the whole of the terms of the contract between the Company and the Customer and no variation thereof shall be of any affect whether prior to or subsequent to the Commencement Date unless acknowledged in writing and signed by the Authorised Officer of the Company and the Customer.
- 8.2 The employees of the Company or agents are not authorised to make any representations concerning the Services unless confirmed by the Authorised Officer of the Company in writing.
- 8.3 This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties.

9 Equipment

Any equipment supplied by the Company shall at all times remain the Company's property. The Customer shall provide adequate insurance cover for all equipment supplied by the Company. The Customer shall be responsible for its siting, for any loss or damage whilst outside the care or control of the Company and for ensuring that it is not overloaded (notwithstanding any inspection of the equipment by the Company). Under no circumstances must the equipment be sited on a public highway.

10 Notices

- 10.1 The Customer shall give notice to the Company of the change of the Invoice Address or telephone or similar number at the earliest possible opportunity but in any event within 48 hours of such change.
- 10.2 The Company shall give notice to the Customer of the change in their address or telephone or similar number at the earliest possible opportunity but in any event within 48 hours of such change.
- 10.3 Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant party shown at number 1 in the Agreement Schedule of this Agreement or by facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail to the correct facsimile number or electronic mail number of the addressee (with correct answerback)

11 Miscellaneous

- 11.1 Each party warrants it has power to enter into this Agreement and has obtained all necessary approvals to do so.
- 11.2 The parties shall be released from their obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Agreement impossible whereupon all money due under this Agreement shall be paid immediately and in particular:
 - 11.2.1 the Customer shall immediately pay to the Company all arrears of Payments and any other associated waste costs
 - 11.2.2 each party shall pay to the other damages for any breach of this Agreement and all reasonable expenses and costs incurred by that party in enforcing its rights under this Agreement
- 11.3 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Company it may be severed from this Agreement.
- 11.4 Any decision exercise of discretion judgment or opinion or approval of any matter mentioned in this Agreement or arising from it shall be binding on a party only if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement
- 11.5 Headings in this Agreement are for reference purposes only.
- 11.6 All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several.
 - 11.6.1 This Agreement shall be governed by English law, and subject to clause 11.6.3 the English courts will have exclusive jurisdiction over any disputes in connection with it.
 - 11.6.3 The Company may commence proceedings arising out of this Agreement in any jurisdiction it considers appropriate
 - 11.6.4 Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 10.3
 - 11.6.5 If the Customer is resident outside England its address for service in England shall be the address for such service nominated at the head of this Agreement and any time limits in any proceedings shall not be extended by virtue of the foreign residence of the Customer.
- 11.7 All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Agreement shall restrict or prejudice the exercise of any other right granted by this Agreement or otherwise available to it
- 11.8 No term shall survive expiry or termination of this Agreement unless expressly provided
- 11.9 The failure by either party to enforce at any time or for any period any of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time to enforce all terms and conditions of this Agreement
- 11.10 Each of the parties shall pay any costs and expenses incurred by it in connection with this Agreement
- 11.11 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 11.12 The Company may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights and obligations under this Agreement.