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## 1. Definitions

1.1. In these Terms and Conditions of Business ("**Terms and Conditions**"), the following words will have the following meanings:

"**Account Customer**" means a Customer with whom the Company has previously agreed deferred payment terms;

"**Company**" means Devon Contract Waste Limited;

"**Container**" means any container for Waste supplied and/or emptied by the Company including but not limited to waste sacks, wheelie bins, enclosed skips, compactors and dry waste skips;

"**Controlled Waste Transfer Note**" means a form provided by the Company for completion by each Account Customer prior to delivery of a Container by the Company;

"**Customer**" means the individual, firm or company for whom any Services are undertaken. If the Customer is more than one legal person then each person shall be jointly and severally liable for the Customer's obligations and liabilities arising under these Terms and Conditions;

"**Environmental Charge**" means the charge levied to cover the cost of managing and storing the documentation required by law, such as the Duty of Care records;

"**Environmental Law**" means law arising from or subordinate to the Environmental Protection Act 1990 or any other statute or statutory instrument relating to the carriage, collection, storage or disposal of waste;

"**Prohibited Waste**" means (but is not limited to) batteries, tyres, liquid waste (apart from milk), hazardous, contaminated or toxic waste, asbestos of any kind, hot ashes, refrigerators, fluorescent tubes, gas bottles, soil, bricks or rubble, tree stumps, monitors, television and electrical equipment, and paints or such other items as may be prohibited under Environmental Law;

"**Services**" means the collection, transportation, recycling, treatment and/or disposal of Waste by the Company on behalf of the Customer;

"**Site**" means the location from which the Waste is to be collected for or on behalf of the Customer;

"**Vehicle**" means any vehicle, plant or equipment used by or on behalf of the Company to deliver to or collect a Container or its contents from the Site;

"**Waste**" means the materials and substances:

☐ in the case of an Account Customer, as set out by the Account Customer in the relevant Controlled Waste Transfer Note; or

☐ in the case of a non-Account Customer, as described by the non-Account Customer when ordering the relevant Container; and

"**Working Day**" means any day, other than a Saturday or Sunday or public holiday in England.

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- 1.2. Clause headings shall not affect the interpretation of this agreement.
- 1.3. Words in the singular shall include the plural and vice versa.
- 1.4. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5. A reference to writing or written includes faxes but not e-mail.
- 1.6. Where the words **include(s)**, **Including** or **in particular** are used in this agreement, they are deemed to have the words 'without limitation' following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.7. Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8. You acknowledge that, in entering into the Agreement, you do not rely on any statement, representation, assurance or warranty of any person (whether a party to this agreement or not) other than as expressly set out in the Agreement.

### 2. Timing of Contract

#### 2.1. Non-Account Customers

Upon delivery of a Container to the Customer, the Terms and Conditions will be delivered to the Customer in person or left at their address. If the Customer is not satisfied with these Terms and Conditions, the Customer should contact the Company by close of business on the Working Day following delivery of the Container for a full refund of any upfront charges paid and arrange for free collection by the Company of the Container which the Customer shall leave empty.

- 2.2. If the Customer does not so contact the Company, a contract shall arise, the terms of which shall be governed by these Terms and Conditions.

#### 2.3. Account Customers

A contract for the Services shall arise once the Customer has placed an order.

- 2.4. Credit terms are subject to a successful completion and approval of the Company credit application process and until such time as such time as the Company has approved the credit application terms will be as a cash account.

### 3. Services

- 3.1. These Terms and Conditions shall regulate the provision of the Services by the Company to the Customer.
- 3.2. Time shall not be of the essence in the performance of the Company's obligations pursuant to these Terms and Conditions.
- 3.3. The Customer shall ensure that the Container is available and accessible for collection at the time agreed between the Customer and the Company when the order is placed. If the Container is not available and accessible for collection, the Customer will be charged an additional call-out fee of at least £65 plus VAT for the wasted cost of the Company attending the Site (depending on location).
- 3.4. Account Customers  
Where a Container is collected on a weekly basis, the usual collection charge will be made even if a Container is not available and accessible for collection.
- 3.5. The minimum contract period for an Account Customer is twelve months.

### 4. Customer's Site

- 4.1. The Customer must notify the Company in writing before the Company performs the Services of any requirements of the Customer in relation to any aspects of the Customer's health and safety policy and of any hazards, risks or dangers that may arise as a result of the Company performing the Services on the Site.
- 4.2. The Customer shall ensure and maintain that there is adequate and safe Vehicle access to the Site and that there are adequate and safe facilities for manoeuvring the Vehicle on or at the Site. Delivery of a Container to or at the Site is made subject to the directions and instructions of the Customer.

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- 4.3. The Customer will also ensure that delivery or collection of any Container to or from the Site is enabled to be carried out without risk of damage to the Vehicle, its driver or its load and without obstruction to the public highway.
- 4.4. If a Container is required by the Customer to be placed on the public highway, the Customer is responsible for having obtained the necessary licence from the appropriate authority.
- 4.5. If a Container fitted with lights is placed in the public highway, the Customer must ensure that the lights are switched on in the hours of darkness.

### 5. Containers

- 5.1. The Customer shall place the Waste in the Containers. If Waste is not placed within a Container, then only the Container and/or the Waste in it will be collected and the Customer must arrange a separate collection time for the surplus Waste.
- 5.2. The Container shall be deemed to be in satisfactory working order and condition unless the Customer notifies the Company to the contrary within 1 Working Day of its delivery to the Site.
- 5.3. At all times every Container remains the sole property of the Company.
- 5.4. The Customer must comply with all reasonable instructions of the Company relating to the use of the Container and must not:
  - alter, adapt or damage a Container or affix anything on or to a Container;
  - place anything in a Container which is likely to damage a Container;
  - light a fire in a Container;
  - move a Container to an alternative location or Site without the Company's prior written consent;
  - sublet, charge, lease, hire or part with possession of any Container;
  - deposit anything other than Waste in a Container;
  - compact the Waste in or overfill any Container; or
  - exceed weight loading restrictions.

The maximum loading weights are: 500Kgs per 10Yd FEL, 350Kgs per 8Yd FEL, 250Kgs per 6Yd FEL, 80kg per 1100 litre bin, 60 kg per 660 litre bin, 40kg per 360 litre bin, 30 kg per 240 litre bin and 3kg per sack.

- 5.5. All Containers shall be weighed by the Company via the Vehicle's on-board automatic weighing system. Additional weight will be charged at £0.12 per kilo. Any increased disposal costs due to the excess weight will be payable by the Customer.
- 5.6. If a Container has been overfilled, the Container will not be removed from the Site in such state and either of the following will apply:

The Customer will be liable to remove the excess Waste before collection of the Container and the Company will be entitled to charge a waiting fee of up to 15% of the hire charge; or  
The Company may elect not to wait but instead to return at a later time for an additional call-out fee of £65

and in each case the Customer will be required to hire an additional Container from the Company for the removal of the excess Waste.

- 5.7. If, while on hire to a Customer, a Container is slightly damaged (fair wear and tear excepted) the Customer shall indemnify the Company for the cost of repair to the Container and for any direct consequential cost arising from such damage.
- 5.8. If, while on hire to a Customer, a Container is stolen, lost, destroyed or damaged beyond economic repair (fair wear and tear excepted) the Customer shall indemnify the Company in respect of such loss and any direct consequential loss arising therefrom.

## 6. Waste

### 6.1. The Customer warrants that:

- it is the sole owner and controller of the Waste placed in each Container;
- it has complied with its obligations in respect of the Waste under law including (but not limited to) Environmental Law;
- the Waste does not contain any Prohibited Waste;
- in the case of an Account Customer, the Waste is as described in the Controlled Waste Transfer Note and the description is true, not misleading and complete in all material respects;
- in the case of a non-Account Customer, the Waste is as described by the Customer when ordering the relevant Container and the description is true, not misleading and complete in all material respects;
- depositing the Waste in any Container does not contravene any applicable law including, but not limited to, Environmental Law.

### 6.2. Property in the Waste placed in each Container shall pass to the Company only upon collection or emptying by the Company of that Container provided that the warranties in clause 6.1 are true.

### 6.3. If the Waste is not as described in the Controlled Waste Transfer Note (or, in the case of a non-Account Customer, is not as described by the Customer when ordering the relevant Container), the Company may (at its sole option and without prejudice to any other right or remedy):

Refuse to make collection of the waste placed in a Container or suspend performance of the Services;

Adjust the price to reflect any additional risk or cost;

### 6.4. If any Prohibited Waste is found in a Container, the Customer may be subject to an additional charge of at least £200 per tonne plus consignment fees and handling charges.

## 7. Price and Payment

### 7.1. All prices are exclusive of VAT charged at the applicable rate and payable by the Customer.

### 7.2. The cost per collection may be varied from time to time in line with international and national commodity prices.

### 7.3. The Company may at its discretion revise its charges at any time to reflect:

- Changes to Landfill Tax;
- Changes in the composition, weight and or volume of waste which the Company collects from the Customer;
- Changes in the cost to the Company of providing the Services (including changes to any tax, levies, fuel duties, wages, disposal charges, cost of materials);
- Changes in technology or to cover an improvement in the Services; or
- Any other factors which are outside the Company's reasonable control leading to an increase in the cost to the Company of providing the Services.

The Company will endeavour to give the Customer as much written notice as is possible of any such change where revision of the charge is required by the Company and the Agreement will be deemed to be amended to incorporate the revision to the charges. The revised charges will then be payable by the Customer.

### 7.4. Non Account Customers

The Customer shall pay in advance. The Company will not remove any Container without payment. The

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Customer shall be liable for an additional call out fee of £65 together with any further charges for a skip remaining in place on the Site at a daily rate of £1.

### 7.5. Account Customers

Unless otherwise agreed in writing with the Company, all payments shall be made by the Customer within 20 Working Days of the date of the Company's invoice. All invoices are due for payment in full and the Customer shall not be entitled to delay or withhold payment on account of any alleged set off or counter-claim.

There will be an **Environmental Charge** levied at the start of the contract, and thereafter on an annual basis, of £36.00 for Bags or £55.00 if wheeled containers are provided.

7.6. Time for payment shall be of the essence and the Company may in addition to the invoice value charge the Customer interest on any overdue payments whether before or after any judgment under the Late Payment of Commercial Debts (Interest) Act 1998.

7.7. Should any invoice remain unpaid after the due date for payment:

- all invoices, whether having fallen due for payment or not, shall become immediately due for payment by the Customer;
- collection/emptying of Containers by the Company shall cease until full payment is received; and
- any collections scheduled will still be charged.

## 8. **Indemnity**

8.1. The Customer will make good and indemnify the Company against any loss or damage including consequential loss which the Company may sustain and against any claims made by third parties against the Company (except as a result of negligence by the Company or its employees) arising directly or indirectly from the provision of the Services under the terms of this Agreement or the location or use of the Equipment or the breach by the Customer of any of the terms of this Agreement including early termination of the Agreement.

8.2. If the Customer requests that any Equipment be placed in a position which requires the Company's vehicles to leave the public highway, the Customer will indemnify the Company against any losses, costs, claims, damages, charges, or expenses which the Company thereby incurs or suffers, whether as a result are incurred or suffered as a result of the Company's negligence. of damage to the vehicle, the Equipment, the Customer's property or a third party's property or otherwise, including damage to the road margins and pavements, drains and drainage save where such losses, costs, claims, damages, charges or expenses are incurred as a result of the Company's negligence.

8.3. If the company finds it necessary to use professional parties to recover any amounts owing to it, or in dealing with any breaches of or under this Agreement by the Customer, the Customer will, in addition, be required to pay for all of the costs incurred and shall indemnify the Company in full in respect of the same.

## 9. **Limits of Liability**

9.1. All warranties and conditions are hereby excluded so far as permissible by law, with the exception of liability for fraud, death or personal injury.

9.2. Subject to clause 8.1, the Company shall not be liable for any claim, loss or damage (whether consequential, liquidated or unliquidated) arising under any legal liability for any defect in the Container or the Services whether due to any act, neglect, default of the Company or its employees or agents or otherwise:

- unless, in relation to the condition of a Container, the Customer shall have notified the Company under clause 5.2;
- unless, in relation to any other failure or defect in the performance of the Services, the Customer shall have notified the Company in writing within fourteen days after the date of the alleged failure or defect.

9.3. Subject to clause 8.1, the Company shall not be liable to the Customer for any claim, loss or damage resulting from:

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- Any circumstance arising outside the reasonable control of the Company;
- Any instruction given by or any act or omission of the Customer, its employees or agents;
- Any breach by the Customer of any of these Terms and Conditions; or
- Any breach by the Customer of applicable laws relating to the Waste.

### 10. Termination

10.1. The contract period is for a minimum of 12 months with three months' notice after the initial 12 month period.

- Where the customer has given notice of termination of the contract the customer may not change the schedule of Services without the written agreement of the Company

10.2. The Company shall be entitled forthwith to terminate the Agreement by notice in writing to the Customer at the address above in the event that the Customer does not satisfy the credit checks carried out by the Company in accordance with clause 3.2, in which case there shall be no further obligations on either party.

10.3. In addition, the Company may terminate this agreement and cease to further perform the Services immediately on written notice to the Customer if:

- The Customer has breached these Terms and Conditions and, if the breach was capable of remedy, has not remedied the breach to the satisfaction of the Company within 20 Working Days of that date of a notice from the Company identifying the breach and requiring its remedy by the Customer;
- The Customer appears to the Company to be unable or appears likely to become unable to pay its debts within the meaning of the Insolvency Act 1986;
- The Customer has an order made against it for its compulsory winding up or convenes a meeting of its creditors for the appointment of a liquidator (except in the case of a solvent amalgamation or reconstruction);
- The Customer, any director, any creditor, a qualifying floating charge holder or any other permitted persons seeks to appoint an administrator (whether by application to the Court or otherwise) or the appointment of a receiver (whether an administrative receiver or otherwise) is made over the Company's assets and property;
- The Customer enters into an arrangement with its creditors whereby they agree to accept less than full satisfaction of their debt or the Customer puts forward proposals to enter into a voluntary arrangement with its creditors within the meaning of the Insolvency Act 1986;
- Any proceedings are taken to enforce any judgment registered against the Company including (but not limited to) any levying of distress, execution or enforcement of any security given;
- A bankruptcy order is made in the name of the Customer;
- A debt relief order is made in the name of the Customer.

10.4. If the Company terminates the Services pursuant to clause 10.3, the Customer will pay the Company all costs, losses, claims, expenses and damages incurred by the Company as a result of the Customer's breach and the consequent termination and the Company shall not be liable to compensate the Customer for any loss or damage so occasioned except as may be provided for in clause 8.

### 11. Assignment

11.1. The company may assign, licence or sub-contract all or any parts of its rights and obligations under this Agreement without the customer's consent.

11.2. The customer may not assign, licence, delegate or sub-contract all or any parts of its rights and obligations under this Agreement without the Company's prior written consent in particular the right to serve notice of termination under clause 9.1.

### 12. Force Majeure

The Company shall not be liable to the Customer for any failure or delay in performance due of the Services to circumstances beyond its reasonable control including without limitation, acts of God, severe weather

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unforeseen staff shortages or vehicle breakdown. The Company will arrange for resumption of the Services within 48 hours of such circumstances ending.

### **13. Waiver**

Any waiver, including grant of extra time or failing to insist on its strict legal rights, given by the Company to the Customer in respect of a breach of any provision of these Terms and Conditions by the Customer shall not operate as or be construed as a waiver of any further or subsequent breach of any provision of these Terms and Conditions. The Terms and Conditions shall remain in full force and effect and the Company's rights are fully reserved.

### **14. Entire Agreement**

14.1. In the case of an Account Customer, these Terms and Conditions and the Controlled Waste Transfer Note constitute the entire agreement between the parties in respect of the Services.

14.2. In the case of a non-Account Customer, the Customer's order initiating the Services and these Terms and Conditions constitute the entire agreement between the parties in respect of the Services.

14.3. These Terms and Conditions may only be varied in writing, signed by the Company and the Customer.

### **15. Severability**

If any provisions of these Terms and Conditions are deemed to be void, invalid or unenforceable, the other provisions of these Terms and Conditions shall remain in full force and effect.

### **16. Notice**

16.1. Any notice to a party under these Terms and Conditions shall be in writing or electronic form and shall be delivered personally, be left at or sent by first class post or by fax or email to the address of the other party or as otherwise notified in writing from time to time.

16.2. Notices delivered to a party personally or left at their address shall be deemed received on delivery.

16.3. Notices sent by first class post shall be deemed to have been received on the Working Day following posting.

16.4. Notices sent by fax or e-mail shall be deemed delivered at the time of sending providing the sender shall (in the case of faxes) receive a transmission OK notice or (in the case of emails) the sender has a sent copy of the correctly addressed email.

### **17. Third Parties**

These Terms and Conditions of Business are for the benefit of the parties to them and are not intended to benefit, or be enforceable by any other person.

### **18. Governing Law**

These Terms and Conditions of Business shall be governed, construed and interpreted in accordance with the laws of England and Wales.