

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Additional Charge: the charges payable as set out on the Supplier's website.

Agreed Collection Day: the day or days agreed between the Supplier and the Customer for the provision of the Services or such other day in substitute thereof as notified by the Supplier to the Customer.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.4.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions titled Agreement for the removal of business waste and recycling.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 4.2

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)

Order: the Customer's order for Services as set out the Contract.

Services: the services supplied by the Supplier to the Customer as set out in the Contract.

Supplier: Spelthorne Direct Services Limited registered in England and Wales with company number 12700913

Supplier Bins: the containers provided by the Supplier to the Customer in the volumes set out in the Contract to be used solely for the purposes of the Services.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder)(DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

1.2 Interpretation:

(a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted.

A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when signed by both the Supplier and the Customer at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Contract and these terms and conditions.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) ensure access to the Customer's Premises for the Supplier's collection vehicle to empty the Supplier's Bin on the Agreed Collection Day. Access must be provided from 5.30am on the Agreed Collection Day. If access is not provided on the Agreed Collection Day and the Supplier has to return on that Agreed Collection Day or another day then the Supplier shall pay the Additional Charge;
- (d) ensure that only the waste as set out in the Contract is placed in the relevant Supplier Bin. If there is any contamination or other materials to those set out in the Contract in a Supplier Bin the Customer must either remove such contamination or other materials, if not removed and the Supplier reserves the right not to empty the Supplier Bin or to empty such Supplier Bin and charge the Additional Charge;
- (e) ensure that the lids of the Supplier Bins are properly closed if they are not then the Supplier can refuse to empty the Supplier Bin, the charge for collection will still be payable;

- (f) ensure that no black sacks are placed in Supplier Bins provided for dry mixed recyclables or food waste, if there are black sacks within Supplier Bins provided for those purposes the Supplier can refuse to empty the Supplier Bin the charge for collection will still be payable;
- (g) ensure that all food waste is enclosed in transparent sacks prior to being placed in the Supplier Bin supplied for food waste if there is loose food waste in the Supplier Bin the Supplier can refuse to empty the Supplier Bin;
- (h) ensure that the Supplier Bin is kept in a clean and tidy condition, without prejudice to any other rights under these terms and conditions the Supplier reserves the right to clean the Supplier Bin and charge an Additional Charge;
- (i) not mark or defaced by the Customer without the prior written consent of the Supplier;
- (j) co-operate with the Supplier in all matters relating to the Services; and
- (k) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier.

4.2 The Customer acknowledges that the Services only comprise of the emptying of the Supplier Bins, and any surplus side waste will only be taken if placed in trade waste refuse or recycling sacks for which there will be an Additional Charge.

4.3 The Customer must at the commencement of the Contract and annually thereafter complete a duty of care waste transfer notice and provide a copy thereof to the Supplier within 5 Business Days of the date of that notice. The Customer must complete a new duty of care waste notice if the Supplier moves premises or the nature of waste changes, every new notice must be provided to the Supplier within 5 Business Days of the date of such notice. The Supplier can provide this notice for an Additional Charge.

4.4 The Supplier Bins remain the property of the Supplier. The Customer must keep the Supplier Bins at the Customer's premises in safe custody at its own risk and must be maintained in good condition until returned to the Supplier. Any damage to the Supplier Bins (fair wear

- and tear accepted) will be charged to the Customer as an Additional Charge.
- 4.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
5. **Charges and payment**
- 5.1 The Charges for the Services shall be as set out in the Contract.
- 5.2 The charge for refuse is based on an allowance of 63g of waste per litre of capacity (for a large 1100litre Supplier Bin this equates to 70kg). If the Customer's refuse exceeds this amount the Supplier shall charge an Additional Charge.
- 5.3 The Supplier reserves the right to increase the Charges on an annual basis in line with the Company's published fees and charges for the Services.
- 5.4 The Supplier shall invoice the Customer monthly in arrears.
- 5.5 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 14 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
6. **Data protection**
- Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 6, **Applicable Laws** means UK GDPR;
7. **Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 7.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims.
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

7.3 Subject to clause 7.2, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

7.4 In clause 7.3:

- (a) **cap.** The cap is the greater of £250,000 and one hundred and twenty five per cent (125%) of the total charges in the contract year in which the breaches occurred;
- (b) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it;
- (c) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer; and
- (d) **total liability.** The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

7.5 This clause 7.5 sets out specific heads of excluded loss:

- (a) Subject to clause 7.2, the types of loss listed in clause 7.5(b) are wholly excluded by the parties are not excluded].
- (b) The following types of loss are wholly excluded:
 - (i) Loss of profits
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.

7.6 This clause 7 shall survive termination of the Contract.

8. Termination

8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 30 days' written notice.

8.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with

immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

9. Consequences of termination

9.1 On termination of the Contract the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect

- of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10. General**
- 10.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2 **Assignment and other dealings.**
- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 10.3 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 10.4 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 10.7 **Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Contract.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting or at the time recorded by the delivery service; and

(iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 10.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

10.8 **Third party rights.**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

10.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

10.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.