

## **Terms And Conditions**

### **1. INTERPRETATION**

In these conditions the following definitions apply:

**1st Waste:** means 1st Waste Management Consultants Limited whose details are more particularly set out in the Waste Service Agreement.

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

**Commencement Date:** has the meaning given to it in condition 2.3 below.

**Conditions:** means the terms and conditions set out in this document as amended from time to time.

**Confidential Information:** means any and all information, data and material of a technical or business nature or relating in any way to the business, products, services, customers and personnel of either the Customer or 1st Waste which the other may receive or obtain in connection with the operation of the Contract or otherwise.

**Container:** means including but not limited to euro bins, paladins, sacks, consoles, fels (front end loaders), rels (rear end loaders) and bundles.

**Contract:** means the contract between 1st Waste and the Customer for the supply of Services comprising the Waste Service Agreement and these Conditions.

**control:** shall be as defined in section 1124 of the Corporation Tax Act 2010.

**Controlled Waste Transfer Notice:** means a waste transfer note legally required to be completed by the Customer in respect of waste that leaves any Site.

**Costs:** the charges payable by the Customer for the supply of the Services in accordance with condition 4.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018 or any successor legislation and any other directly applicable

**European Union regulation relating to data protection and privacy.**

**Customer:** means the person, company or firm whose specific details are set out in the Waste Service Agreement and who purchases Services from 1st Waste.

**Equipment:** means any equipment provided by 1st Waste in connection with the provisions of the Services.

**Initial Period:** means 36 months from the Commencement Date.

**Services:** means the waste management services to be provided by 1st Waste to the Customer at the Sites as more particularly set out in the Waste Service Agreement.

**Service Amendment:** means an amendment to the Service such as a change to the frequency of the Service but excluding changes to times and access restrictions and Contract amendments.

**Shared Personal Data:** the personal data to be shared between the parties under condition 8.1. Shared Personal Data shall be confined to the business contact details of offices or employees of each party.

**Site:** means the Customer's premises where the Services are to be provided, the details of which are set out in the Waste Service Agreement.

**Transferring Employee:** an employee of the Customer or of any provider of services to the Customer (other than 1st Waste) whose employment transfers or is claimed to transfer to 1st Waste under the Transfer Regulations.

**Transfer Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

**Waste Service Agreement:** means the Waste Service Agreement of which these Conditions form part issued by 1st Waste to the Customer.

## **2. FORMATION OF CONTRACT**

2.1 A quotation for waste management services issued by 1st Waste to the Customer shall not constitute an offer. A quotation for waste management services shall only be valid for a period of 30 days from the date of issue.

2.2 The Customer returning a signed Waste Service Agreement to 1st Waste constitutes an offer by the Customer to purchase the Services in accordance with the Waste Service Agreement and these Conditions (Offer).

2.3 The Order shall only be deemed accepted and the Contract shall come into existence on the earlier of (a) 1st Waste receiving back from the Customer the signed Waste Service Agreement and confirming the date of commencement of the Services with the Customer; or (b) 1st Waste performing the Services in accordance with the signed Waste Service Agreement from the Customer or pursuant to condition 2.4 (Commencement Date).

2.4 Where the Customer fails to return a signed copy of the Waste Service Agreement, 1st

Waste will be under no obligation to provide the Services. If, however, 1st Waste begins to perform the Services in accordance with the Waste Service Agreement upon receiving instructions from the Customer to do so, the Customer's instructions shall amount to acceptance of the terms of the Waste Service Agreement and these Conditions even in circumstances where 1st Waste have not received a signed Waste Service Agreement back from the Customer.

2.5 The Customer is responsible for ensuring that the information contained in the Waste Service Agreement is complete and accurate in all respects, including but not limited to the correct legal identity of the Customer, particulars of the Services, Equipment and the Sites.

2.6 The Contract constitutes the entire agreement between 1st Waste and the Customer. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of 1st Waste which is not set out in the Contract.

2.7 Subject to condition 2.8, no amendment or variation to the Contract can be made unless specifically agreed to in writing by 1st Waste and silence on the part of 1st Waste shall not constitute valid agreement of any proposed amendments or variations.

2.8 In the event 1st Waste receives a written request from the Customer for a Service Amendment, it shall be deemed to accept the Service Amendment on the earlier of:

- (a) 1st Waste issuing acceptance of the written request; and
- (b) any act by 1st Waste consistent with acceptance of the written request.

2.9 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.

### **3. TERM**

3.1 The Contract shall commence on the Commencement Date and will automatically be renewed 36 months thereafter until terminated in accordance with the terms of this condition 3.

3.2 The Customer may terminate the Contract by giving not less than 2 calendar months but not more than 6 months written notice to 1st Waste, such notice to expire on the last day of the Initial Period or (if not served so as to expire on the last day of the Initial Period) on the calendar day immediately prior to any subsequent anniversary of the Commencement Date thereafter. By way of example:

- a) Example Commencement Date – 1st June
- b) Notice must be served no later than – 31st March in any one year
- c) Termination Date – 31st May in each year

3.3 1st Waste may terminate the Contract:

- a) by giving not less than 30 days written notice to the Customer at any time;
- b) immediately in circumstances where:
  - i. the Customer fails to pay any amount due under the Contract;
  - ii. there is a change of control of the Customer;
  - iii. the Customer commits a material breach of the Contract that is incapable of remedy;
  - iv. the Customer commits a material breach of the Contract and fails to remedy (if capable of remedy) the breach within 14 days of 1st Waste notifying the Customer of such breach;
  - v. the Customer fails to return any compliance documents to 1st Waste (including, without limitation, any Controlled Waste Transfer Notice); or
  - vi. the Customer has a receiver, liquidator or administrator appointed, an application is made to the court, or an order is made for the appointment of an administrator, the Customer is the subject of bankruptcy proceedings, ceases or threatens to cease to trade, passes a resolution for or is the subject of a winding up order (except for the purpose of a solvent amalgamation or reconstruction), makes any composition or arrangement with creditors or is unable to pay debts as and when they fall due, suspends or threatens to suspend payment of its debts, commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or a petition is filed, a notice is given or a resolution is passed in connection with its winding up or an application is made to the court, or an order is made for the appointment of an administrator.

3.4 On termination of the Contract for any reason:

- a) the Customer shall immediately pay to 1st Waste all of 1st Waste's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, 1st Waste may submit an invoice, which shall be payable immediately on receipt;
- b) the Customer shall (subject to condition 3.4(c)) immediately cease to use and shall arrange for the return of all the Equipment to 1st Waste. Where the Customer fails to return all Equipment to 1st Waste, 1st Waste reserves the right to enter any Site or any of the Customer's premises to take possession of the Equipment;
- c) any prepaid bags or stickers provided to the Customer by the Supplier during the term of the

Contract may be retained and/or used by the Customer. No refund will be given for these items.

3.5 In the event the Contract is terminated by 1st Waste in accordance with condition 3.3(b), without prejudice to any other rights or remedies of 1st Waste, the Customer shall pay to 1st Waste on demand a sum equal to the whole of the Costs that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the next anniversary date of the Commencement Date provided that where such date is less than two months from the date of termination the next following anniversary date shall instead be deemed to be the anniversary date for the purposes of this condition 3.5.

3.6 The sums payable pursuant to condition 3.5 shall be agreed compensation for 1st Waste's loss and shall be payable in addition to the sums payable pursuant to condition 3.4.

3.7 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.

3.8 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.

#### **4. CHARGES**

4.1 In consideration of the provision of the Services by 1st Waste, the Customer shall pay the Costs which shall be set out in the Waste Service Agreement.

Subject to the T&Cs the customer is entitled to a free month of collection on months 12, 24 and 36.

4.2 1st Waste shall invoice the Customer for the Costs at the intervals set out in the Waste Service Agreement or, where no interval is specified and/or where 1st Waste is providing scheduled Services, 1st Waste shall invoice the Customer for the Costs monthly in advance. The Customer may be required to make payment in advance of the commencement of the Services, and such requirement will be set out in the Waste Service Agreement.

4.3 The Customer shall pay each invoice submitted to it by 1st Waste within the payment terms set out in the Waste Service Agreement or, where no payment terms are specified, within 14 days of the date of the invoice. All payments made by the Customer shall be in pounds sterling, without set-off, counterclaim, deduction or withholding and shall either be made (a) by direct debit where 1st Waste has received a duly completed direct debit form from the Customer or (b) in all other cases by electronic transfer to such bank account as notified by 1st Waste from time to time.

4.4 All Costs under the Agreement are exclusive of VAT and the Customer shall, in addition to the Costs, pay an amount equal to any VAT due which shall be charged and added to each invoice raised by 1st Waste at the applicable rate in force from time to time.

4.5 1st Waste reserves the right:

- a) to increase any of the Costs at any time(s) by giving to the Customer not less than 30 days prior written notice of such price increases;
- b) to increase any of the Costs where the description and/or type of waste and materials that the Customer requires disposal of pursuant to the Services changes from that specified in the Waste Service Agreement and/or the Customer requests any changes to the nature and/or specification of the Services;
- c) to restructure the pricing method from volume to pay by weight on a pro rata basis. Any proposed changes of this nature will be notified to the customer in writing at least a month prior to implementation.
- d) to charge the Customer for the production of any compliance documents including, but not limited to, any Controlled Waste Transfer Note(s);
- e) to, at the sole discretion of 1st Waste, review and/or increase or decrease the threshold weights or all waste and/or the types of waste specified in the Waste Service Agreement as required from time to time;
- f) to charge the Customer for the production of paper invoices.
- g) to charge an administration fee should the Customer amend the service from that outlined in this Waste Service Agreement.

4.6 1st Waste will be entitled to charge an additional amount to the Customer for the collection of the contents of overweight bins or Containers, bins or Containers which contain materials and/or waste not specified in the Waste Service Agreement and/or bins or Containers that are contaminated in any way whatsoever.

4.7 If the Customer fails to make any payment due to 1st Waste by the due date for payment:

- a) the Customer shall pay interest on the overdue amount at the rate of 4% per month above the base rate of Barclays Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- b) 1st Waste reserves the right to suspend performance of the Services until

payment of any amounts outstanding from the Customer to 1st Waste have been received in full (including any accrued interest pursuant to condition 4.6(a) above).

## **5. 1ST WASTE OBLIGATIONS**

5.1 1st Waste shall use its reasonable endeavours to:

- a) perform the Services in accordance with the Contract;
- b) meet any performance dates for the Services specified in the Waste Service Agreement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services;
- c) observe all health and safety and security requirements that apply at the Sites;
- d) deliver all Equipment to the Customer on or before the Commencement Date (or such other date(s) as agreed) and such Equipment shall, at all times remain the property of 1st Waste.

5.3 1st Waste reserves the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, including but not limited to changing the days on which the Services are performed or temporarily rescheduling the days for performance of the Services.

5.4 1st Waste may at any time on giving to the Customer not less than 30 days' written notice, withdraw in whole or in part any of the Services provided for in the Waste Service Agreement.

5.5 1st Waste confirms to the Customer that the Services will be provided using reasonable care and skill.

5.6 1st Waste confirms to the Customer that it shall maintain all such necessary insurances to enable it to perform the Services.

## **6. CUSTOMER OBLIGATIONS**

6.1 The Customer shall at all times during the term of the Contract:

- a) co-operate with 1st Waste in all matters relating to the Services;
- b) provide 1st Waste, its agents, subcontractors, consultants, employees and their vehicles, in a timely manner and at no charge, with such rights and free and unrestricted access to any Sites, Equipment or other Containers required by 1st Waste, its agents, subcontractors, consultants and employees in order to perform the Services. 1st Waste shall have 24 hour, 7 day a week access to any Sites, Equipment or other Containers which are the subject of the Services unless otherwise agreed by 1st Waste in writing;
- c) provide 1st Waste, in a timely manner, with such information as 1st Waste may reasonably

require to perform the Services;

d) prepare, where necessary, any Sites for the performance of the Services, including but not limited to ensuring that any surfaces over which Containers and other Equipment will be pulled or carried by 1st Waste's agents, subcontractors, consultants and/or employees is of solid construction, free of obstruction, of a reasonable gradient, safe and well lit;

e) inform 1st Waste in writing of all health and safety and security requirements at each of the Sites;

f) keep all waste materials to be collected in accordance with the Waste Service Agreement in accordance with Environmental Agency requirements, securely and should ensure that such materials are consigned to the correct bins or Containers ready for collection;

g) ensure that no soil, bricks, large pieces of timber, rubble or solid large uncompactable items are disposed of in any Containers to be emptied by 1st Waste pursuant to the performance of the Services;

h) ensure that all items for disposal are suitable for compaction;

i) immediately notify 1st Waste in writing of any change in the description and/or type of waste and materials that the Customer requires to be disposed of pursuant to the Services;

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j) ensure that it promptly signs and returns to 1st Waste within 14 days of issue all and any Waste Transfer Notes as are issued by 1st Waste in compliance with the Environmental Agency Act 1990 (and/or any other applicable legislation or regulation in force from time to time), prior to any existing Waste Transfer Notes expiring; and

k) keep, maintain and insure all Equipment, documents and other property of 1st Waste in safe custody at its own risk, ensure that such Equipment and any other property is in good working order and remains suitable for the purposes for which it is used and keep the same in good condition until returned to 1st Waste.

6.2 If 1st Waste's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees either in breach of this condition 6 or otherwise then, without prejudice to any other right or remedy it may have;

a) 1st Waste shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer, its agents, subcontractors, consultants or employees; and



b) 1st Waste will be entitled to make a charge for any failed collection(s) made by it in such sum as 1st Waste shall reasonably decide.

6.3 The Customer hereby indemnifies 1st Waste from and against any loss or damage caused to the Equipment, including but not limited to theft, loss or damage caused by overloading or misuse.

## **7. LIMITATION OF LIABILITY**

7.1 Nothing in these Conditions shall limit or exclude 1st Waste's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b) fraud or fraudulent misrepresentation; or
- c) any matter in respect of which it would be unlawful for 1st Waste to exclude or restrict liability.

7.2 Subject to condition 7.1:

- a) 1st Waste shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- b) 1st Waste's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the average annual charges (calculated by reference to the Charges in successive 12-month periods from the Commencement Date) paid by the Customer under the Contract.

7.3 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

## **8. DATA PROTECTION**

8.1 Shared Personal Data. This condition sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the purposes of compliance by the parties of their obligations under the Contract.

8.2 Effect of non-compliance with Data Protection Legislation. Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of

written notice from the other party, give grounds to the other party to terminate the Contract with immediate effect.

8.3 Mutual assistance. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. The Customer shall indemnify the Supplier against all claims and proceedings and all liabilities, losses, costs and expenses incurred by the Supplier as a result of any breach by the Customer of its obligations under this condition 8.

## **9. FORCE MAJEURE**

### **9.1 1**

1st Waste shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of 1st Waste or any other third party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or the failure of any telecommunications providers or networks (Force Majeure Event).

9.2 The Customer will remain liable for all of their obligations pursuant to condition 6 despite 1st Waste suffering a Force Majeure Event.

## **10. SEVERANCE**

10.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

10.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **11. NOTICES**

11.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) and/or its principal place of business/normal trading address (in any other case) or such other address as that party may have specified to the other party in writing and shall be delivered

personally, sent by pre-paid first class post, recorded delivery, commercial courier or email.

11.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 11.1; if sent by pre-paid first class post or recorded delivery, at 09:00 on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent email, one Business Day after transmission.

11.3 The provisions of this condition 11 shall not apply to the service of any proceedings or other documents in any legal action.

## **12. CONFIDENTIALITY**

### **12.1 1**

1st Waste and the Customer each undertakes to the other that it will not disclose the terms of the Contract or divulge, cause or knowingly permit any third party to become aware of any Confidential Information provided that this condition 12 shall not restrict the disclosure of any Confidential Information to the extent that:

- (a) such disclosure is required by law or any judicial or regulatory authority;
- (b) such information is or becomes (otherwise than by reason of a breach of this undertaking) within the public domain;
- (c) subject to condition 12.2, such disclosure is necessary to enable either party to perform or enforce any of its rights under the Contract.

### **12.2 1**

1st Waste and the Customer shall each be entitled to use the information received from the other for the purposes of the Contract only and shall not disclose such Confidential Information or any part thereof to any other person, firm or corporation except to its employees, agents or third parties to whom it is necessary for them to have access to it in order to perform the disclosing party's contractual obligations provided that the entity to whom such disclosure is made receives and holds the Confidential Information on the same basis as it is held by the disclosing party under the terms of the Contract.

12.3 This condition 12 shall survive termination of the Contract.

## **13. ASSIGNMENT**

13.1 The Customer shall not, without the prior written consent of 1st Waste, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or

obligations under the Contract.

13.2 The Customer acknowledges that 1st Waste is in the business of procuring waste management services for its customers from third parties and agrees that 1st Waste may assign, transfer, charge, mortgage, sub-contract or delegate in any manner any or all of its obligations under this Contract to any third party or agent at any time without the requirement to obtain the consent of the Customer.

13.3 If requested by 1st Waste, the Customer shall enter into a Novation Agreement (in such form as produced by 1st Waste from time to time) to novate the Contract to any 3rd party nominated by 1st Waste from time to time.

#### **14. TUPE**

14.1 The parties do not regard the provision of the Services as giving rise to a relevant transfer for the purpose of the Transfer Regulations.

14.2 If there is a finding that the provision of the Services by 1st Waste pursuant to the Contract constitutes a relevant transfer for the purposes of the Transfer Regulations, the Customer will indemnify 1st Waste on demand from and against:

- (a) all employment claims incurred, suffered or paid by 1st Waste in relation to any employment rights or contract of employment (or the termination thereof) of any Transferring Employee that is claimed or deemed to have effect as between 1st Waste and the Transferring Employee under the Transfer Regulations; and
- (b) any claim arising from the failure by the Customer or the existing service provider of the services or activities substantially similar to the Services, to comply with its obligations under regulations 13 and 14 of the Transfer Regulations save to the extent that the claim arises by reason of 1st Waste's failure to comply with its own obligations under those regulations;
- (c) any costs or expenses incurred by 1st Waste in defending, settling or otherwise dealing with any such claim as described in condition 14.2.(a) and condition 14.2 (b) above or ordered to be paid by 1st Waste by any court or tribunal.

#### **15. OTHER SERVICES**

1ST Waste offer a number of it's Customers a container replacement service at an additional cost. Should you become eligible for this additional service, 1st Waste will contact you to confirm your eligibility and the applicable charges. This container replacement service is fully underwritten.

## **16. WAIVER**

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **17. THIRD PARTY RIGHTS**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## **18. CALL RECORDING**

The Customer acknowledges that calls made to 1st Waste will be recorded for training and monitoring purposes and that such recordings will be deleted when no longer needed for these purposes but in any event will not be retained by 1st Waste for longer than 3 years.

## **19. GOVERNING LAW AND JURISDICTION**

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual dispute or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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