

## Our Terms and Conditions

The following terms and conditions are the conditions of the Council in relation to the Service and any such Service is undertaken upon the following conditions unless specifically agreed in writing between the Council and the Customer.

### 1. Definitions

1. In these terms and conditions ("Conditions") the following definitions shall have effect unless the context otherwise dictates:

- i. **"Council"** shall mean City of Bradford MDC City Hall, Centenary Square, Bradford BD1 1HY.
- ii. **"Supplier"** shall mean any person firm or company authorized by the Council to act on its behalf in the provision of the Service.
- iii. **"Customer"** shall mean any person firm or company supplied with any Service by the Council in accordance with these Conditions.
- iv. **"Container"** shall mean any skip, container, drum, sack or other receptacle, supplied by the Council or the Supplier in connection with the provision of the Service.
- v. **"Service"** shall mean the collection transportation and/or disposal of waste materials or ancillary activity on site on behalf of the Customer as set out in the Contract.
- vi. **"Contract"** shall mean the contract between the Council and the Customer for the supply of the Service in accordance with these Conditions.
- vii. **"Waste"** shall mean any waste materials to be collected, disposed of or recycled by the Council as part of the Service
- viii. **"Waste Transfer Note"** shall mean any written waste transfer instructions provided by the Customer relating to all or any part of the Waste and which shall comply with Regulation 2 of The Environmental Protection (Duty of Care) Regulations 1991
- ix. **"Order"** shall mean the Customer's order for the Service as set out in the Customer's purchase order form or the Customer's written acceptance of a quotation by the Council as the case may be
- x. **"Quotation"** shall mean the description or specification of the Service provided in writing by the Council to the Customer
- xi. **"Equipment"** shall mean any Container and any tools and other property supplied by the Council in connection with the provision of the Service.
- xii. **"Written"** in the context of the operation of these terms and conditions shall include communicated by electronic text or the use of any proprietary software operated by the Council for the purpose of the provision of the Services

2. In these Conditions, the following rules apply:

- i. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- ii. a reference to a party includes its personal representatives, successors or permitted assigns;
- iii. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- iv. any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

## **2. Statutory obligations**

It is a condition of every Contract that the Customer warrants to the Council that the Customer shall obtain and maintain (and produce evidence thereof when requested by the Council) all necessary registrations, licenses and consents and shall comply with all relevant legislation and the requirements of government or any statutory local or public authority in relation to:

- i. the Customer's own trading or other activities in relation to which the Services are provided and
- ii. the use by the Customer of any Equipment including in particular the Environmental Protection Act 1990, the Environmental Protection (Duty of Care) Regulations 1991, the Environment Act 1995, the Highways Act 1971 and the Health & Safety at Work Act 1974.

## **3. Basis of contract**

- i. The Council shall arrange collection and disposal of or, in appropriate circumstances, recycle Waste subject to the Contract and these Conditions. The Council shall not accept toxic, dangerous, hazardous or special waste and the Customer shall not place such waste in any container provided to it by the Council.
- ii. The Order constitutes an offer by the Customer to purchase Service in accordance with these Conditions. The Order shall only be deemed to be accepted when the Council issues written acceptance of the Order or, if earlier, the Council starts to provide the Service, at which point and on which date the Contract shall come into existence.
- iii. The Contract constitutes the entire agreement between the parties and supersedes any previous agreement between them for the provision of the same Services.
- iv. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Council which is not set out in the Contract.
- v. 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.
- vi. Any conditions contained in an Order which conflict with any of these Conditions shall be deemed to be inapplicable to any Order unless expressly agreed by the Council in writing when acknowledging an Order.
- vii. Any quotation given by the Council shall not constitute an offer, and is only valid for a period of 28 days from its date of issue (unless previously withdrawn by the Council).
- viii. The Council shall have the right to make any changes to the Service which in its own absolute discretion are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Service, and the Council shall notify the Customer in any such event.
- ix. The Council's or Supplier's employees or agents shall not be required to undertake any Service outside the terms of the Contract and furthermore the Customer shall not request such employees, agents or contractors to do so without the Council's or Supplier's prior agreement in writing.

## **4. Nature of waste materials**

- i. The Customer warrants that the Waste shall subject to condition 3.i be non hazardous and of the type, character and quantities specified in any quotation or waste transfer note and the Customer shall ensure that no material change in the nature of the Waste shall take place during the Contract. Where the Waste differs from the quotation or any waste transfer note the Council reserves the right either to refuse to accept such Waste or to apply additional charges at the Council's then standard rates in relation to its collection, disposal or recycling. Such standard rates shall not be a penalty but an assessment of the reasonable costs incurred by the Council associated with the disposal of non-standard waste collected by it in the course of the provision of the Service generally and recovered on an averaged-out basis from all its customers.

- ii. The Customer shall sign a single or multiple consignment waste transfer note declaring the Waste type and shall ensure that the Waste is accurately described when completing the waste transfer note.
- iii. The Council reserves the right not to accept any waste which by reason of size or weight is difficult to collect or dispose or in respect of which a waste transfer note has not been properly completed and signed.

## **5. Customer's premises**

- i. The Customer must notify the Council before any supply of a Service is commenced of any particular requirement of the Customer relating to health and safety at work and of any security arrangements that may need to be observed or any hazards, risks or dangers that may arise during or as a result of the Council, Supplier or their employees, agents or contractors undertaking any Service on the premises of the Customer.
- ii. The Customer shall provide the Council, the Supplier, their employees, agents and contractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required for the provision of the Service;

## **6. Customer's obligations**

- i. The Customer shall be responsible for placing and shall only place the Waste referred to in Clause 4 in the Containers.
- ii. The Customer warrants that he has the right to place such Waste in the Containers and the property and all Waste shall pass to the Council upon the same being commenced to be removed under a valid and accurate waste transfer note. Provided there shall have been no breach of the Customers obligations in relation thereto risk in the Waste shall pass to the Council upon the same being commenced to be removed. The Customer shall remain liable at all times for (and shall indemnify the Council and the Supplier in respect of) any damage caused by the Waste in breach of these Conditions.
- iii. It shall be a condition that the Customer observes and performs the following:
  - a. All containers to be loaded safely and evenly and no sharp or hot materials are to be placed in any plastic Container or other Container likely to be damaged thereby.
  - b. Unless otherwise agreed in writing , no Container shall be placed on the highway,
  - c. No rubbish shall be burned in any container or any fire started or permitted therein by the Customer or any other person,
  - d. No Container shall be removed from the Customer's premises to which it was delivered without the Council's prior written consent,
  - e. No sign lettering insignia advertising or other device of the Customer shall be placed or fixed on any Container.
  - f. No sign lettering insignia advertising or other device of the Council or the Supplier on any Container shall be removed or defaced.
- iv. The Customer shall at all reasonable times allow the Council or Supplier and any person authorized by either of them to have access to the Equipment to inspect, test, adjust, repair or replace the same so far as possible at times convenient to the Customer.
- v. The Council shall not be responsible for any property including personal effects deposited by the Customer or any other person in any Container and shall not be bound to return the same nor be liable for any loss or damage thereto.
- vi. Title and property in the Equipment remain with the Council at all times and the Customer is responsible for (and shall indemnify the Council and the Supplier in respect of) any loss or damage to any Equipment whilst in the Customer's care, custody or control.
- vii. The Customer shall:-
  - a. co-operate with the Council and the Supplier in all matters relating to the Service, and
  - b. provide the Council and the Supplier with such information and materials as they may reasonably require in order to supply the Service, and ensure that such information is accurate in all material respects.

## 7. Time of collection

When the Supplier calls on the Customer to perform any part of the Service the Customer shall ensure that the equipment is ready and available at the time of collection by the Supplier. The Council and the Supplier shall not be under any obligation to carry out any Service nor be liable to the Customer where the Customer is in breach of this condition, but nevertheless the Council reserves the right to make **a wasted service charge**. The Council also reserves the right to charge for any failed collection caused by circumstances outside the control of the Council.

## 8. Changing circumstances

- i. If it becomes apparent for reasons not disclosed by the Customer or which could not have been foreseen by the Council at the time of entering the Contract or commencing the work that the Service to be undertaken differs from that originally envisaged and/or set out in any quotation, the Council shall notify the Customer accordingly giving particulars as soon as reasonably practicable after the circumstances become apparent and the Council shall be entitled either to terminate the Contract without any liability to the Customer or to payment for additional work at the Council's then standard rates which it shall reasonably assess at its own absolute discretion.
- ii. Should the Council elect to cease the provision of the Service due to the changed circumstances, the Contract shall be deemed to be terminated. Upon such termination the Council shall be entitled to charge for any work carried out up to the time of termination and to be reimbursed for the costs associated with commitments and liabilities entered into by it under the Contract and for any Equipment or other items provided or intended to be provided for the purpose of the Contract.
- iii. At its own absolute discretion but at all times acting reasonably the Council shall make additional charges at its then standard rates to the Customer in the event of:
  - a. any additional costs arising from changes to the agreed frequency or volumes of Service as notified by the Customer.
  - b. any delay caused by any act or omission of the Customer or its employees, agents or contractors.

## 9. Terms of payment

- i. The Council shall require the Customer to pay a deposit in full before it shall deliver any Equipment to the Customer's premises. The amount of the deposit will be such sum as is specified by the Council as payable in relation to such equipment as the Council considers at its own absolute discretion is suitable to meet the Customer's needs. The Council will hold the deposit during the period of this agreement and return it to the Customer at the end of the agreement after deduction of any outstanding costs, unpaid charges or interest. No VAT will be payable on the deposit. The Customer shall not be entitled to any interest or statement of account on the deposit during the period that it is held by the Council.
- ii. The Council shall be entitled to invoice the Customer at such times as are set out in the Contract or otherwise upon completion of the provision of the Service. All payments shall be made within 14 days of invoice. Other times of payment can only be made with the prior written approval of the Council. The Customer shall not be entitled to delay or withhold payment on account of any alleged set-off or counterclaim. Time for payment shall be of the essence of the Contract.
- iii. Where the charge for the Service is liable to VAT, the Customer shall pay an additional amount equivalent to the amount of VAT at the appropriate rate.
- iv. The Council reserves the right without liability to the Customer not to execute any Order and to remove any Equipment if arrangements for payment of the Customer's account are not in the Council's discretion satisfactory to the Council and to suspend the Service to any Customer whose account is overdue for payment or where the Customer is in breach of any of these conditions or where the Council considers that the Service required may place at risk any person, goods, vehicle, Equipment or property.

- v. If the Customer fails to make any payment due to the Council under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% plus the Bank of England base rate for business to business transactions 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.

#### **10. Time for provision of Service**

- i. The Council may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent
- ii. The date of delivery or performance of the Service shall not be of the essence and the Council shall have the right at its discretion to alter the day of performance of the Service.
- iii. Where the Council is unable due to Bank or Public Holidays, breakdown or circumstances outside its reasonable control to carry out any Service on the day notified to the Customer, the Council shall make all reasonable efforts to carry out such Service as soon as practicable thereafter

#### **11. Customer's further obligations**

- i. If a Service is required by the Customer involving vehicle movement otherwise than on the public highway then the Customer shall afford reasonable, safe and adequate access and space in which loading and unloading operations, delivery and collection may be carried out without risk of damage to the vehicle, its driver or its load and without obstruction to the public highway.
- ii. The driver of a vehicle providing such a Service shall be deemed to be under the control of the Customer whilst on or adjacent to the Customer's premises and the Customer shall be solely responsible for any accident or any damage by the weight of its vehicle or its load to any bridges, wires, cables, drains and other services, manholes, roads, paths or any surface or any other property on, above or below the surface of the land and shall indemnify the Council and the Supplier against all claims in respect of legal liability arising therefrom.
- iii. The Council and the Supplier reserve the right to refuse to carry out any Service if it considers that the Service required might place at risk any person, goods, vehicle or property.
- iv. The Customer must, as a condition of the provision of any Service that requires it, obtain the consent of the Local Authority to cross pavements or to site Equipment on a public highway.

#### **12. Limitation of Council's liability**

- i. Except for defects in the Service which shall have been notified by the Customer to the Council in writing within 14 days after the date of the provision of the Service the Council shall not be liable for any claim, loss or damage howsoever arising in respect of any defect in the Service whether due to any act, neglect, default of the Council, the Supplier or their employees, contractors or agents or otherwise, and all warranties and conditions express or implied are hereby excluded to the extent permitted by law.
- ii. In particular (without prejudice to generality of the foregoing) the Council shall not be liable for any such claim, loss or damage resulting from:
  - a. any circumstance arising outside the reasonable control of the Council or the Supplier,
  - b. any instruction given by or any act or omission of the Customer or his servants or agents,
  - c. any inherent or latent defect which the Council or the Supplier could not reasonably have discovered or rectified,
  - d. any material breach by the Customer of any of these Conditions required to be observed or performed by the Customer or,
  - e. any damage howsoever caused by any Equipment.

- iii. Nothing in these Conditions shall limit or exclude the Council's liability for
  - a. death or personal injury caused by its negligence, or the negligence of the Supplier or their respective its employees, agents or subcontractors;
  - b. fraud or fraudulent misrepresentation; or
  - c. breach of the terms implied by Part II of the Supply of Goods and Services Act 1982 in relation to the supply of services.
- iv. Subject to Condition 12.iii:
  - a. the Council 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. the Council'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 £50,000.

### **13. Indemnity by customer**

- i. The Customer shall indemnify the Council against any loss or any damage to any Equipment occurring or caused during the continuance of the Contract with the Customer.
- ii. The Customer shall indemnify the Council against claims, loss or damage which the Council suffers or incurs arising out of the use of any Equipment or the breach by the Customer or any of these Conditions required to be observed or performed by the Customer.

### **14. Assignment by Customer**

The Customer shall not, without the prior written consent of the Council, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### **15. Law of contract/Jurisdiction**

The Contract, these Conditions and any dispute or claim arising out of or in connection with it or them or subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

### **16. Effect of headings**

The headings to these conditions are for guidance only and are not to be construed as forming part of or in any way limiting the effect of the condition themselves.

### **17. Termination**

- i. Without limiting its other rights or remedies, either party may terminate a Contract by giving the other party one months' written notice.
- ii. Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Customer if:
  - a. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of the Customer being notified in writing to do so;
  - b. the Customer, being a company or limited liability partnership becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Customer (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Customer's assets or business, or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in

- consequence of debt which adversely prejudices the Council's ability to recover its debt from the Customer.
- c. the Customer (being an individual) is the subject of a bankruptcy petition or order, is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - d. the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - e. the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- iii. Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.
  - iv. Without limiting its other rights or remedies, the Council may suspend provision of the Services under the Contract or any other contract between the Customer and the Council if the Customer becomes subject to any of the events listed in clause 17.2 or the Council reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## **18. Consequences of termination**

On termination of the Contract for any reason:

- i. the Customer shall immediately pay to the Council all of the Council's outstanding unpaid invoices and interest and, in the event that Services have been supplied but no invoice has been submitted, the Council shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- ii. the Customer shall return or make available for collection all of the Equipment and in the event that the Customer fails to do so, the Council may enter the Customer's premises and take possession of them. Until such time they have been effectively returned to the possession and control of the Council (which shall be decided by the Council at its own discretion, acting reasonably), the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- iii. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- iv. any clauses which expressly or by implication survive termination shall continue in full force and effect.

## **19. Force majeure**

For the purposes of these Conditions, a "Force Majeure Event" means an event beyond the reasonable control of the Council including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Council or any other 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 default of suppliers or subcontractors. The Council shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Council from providing the Service for more than 4 weeks, the Council shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## 20. General

- i. **Notice:** 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 Council) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, A notice or other communication shall be deemed to have been received if it is:
  - a. delivered personally, when left at the address referred to above;
  - b. sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second day after posting;
  - c. delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or,
  - d. We will contact you in advance to renew your contract
  - e. We will contact you if for any reason, such as severe weather, collections are delayed.
  - f. We may also contact you occasionally with other information that could be of use to you with regard to your waste.
- ii. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- iii. **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. If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- iv. **Waiver:** A waiver of any right under the Contract, these Conditions or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract, these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- v. **No partnership or agency:** Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- vi. **Third parties:** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- vii. **Variation:** Except as set out in these Conditions, no variation of the Contract or these Conditions, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the, these Conditions.



## Customer Certification

### I declare that:-

- Each description of the Waste that I shall give (or which is given on my behalf) in the Waste Transfer Notes is and shall be complete and accurate.
- I undertake to notify the Council immediately if any of the details change and that hazardous waste will not be placed in the container(s).
- Any waste that shall be collected from me as the below named Customer and described in Waste Transfer Note has been treated in accordance with EU Directive implemented in the UK under Landfill (England and Wales) Regulations 2002.
- I have fulfilled my duty to apply the waste hierarchy as required by Regulation 12 of the Waste (England and Wales) Regulations 2011.

Number of Bins.....

Size of Bins.....

Cost per Bin.....

Total Cost.....

Payment Method & Term.....

Name and address of customer:.....

.....

.....

Signed by Customer.....

Date.....

Number of Receptacles and Size Allocated.....

Signed on behalf of City of Bradford Metropolitan District Council:

Signature: .....

Name: .....

Position: .....