

Terms and Conditions of Agreement

1. Definitions and Interpretations

1.1 These terms and conditions shall apply to all agreed regular collections of commercial waste and recycling in the form of Acceptable Waste made by the London Borough of Barnet ('the Council') ('the Services').

1.2 The agreement shall consist of the Commercial Waste and Recycling Collection/Hire Agreement, these terms and conditions and the prices as set out in the Council's current standard fees and charges ('Council's Fees') ('the Agreement').

1.3 This Agreement applies to all collections of a container, containers or sacks ('the Equipment') whether from commercial premises, charities or schools. The Council shall only provide collections directly to the Customer(s) under the terms of this Agreement and the Customer must notify the Council if this Service is being arranged on behalf of a third party so that alternatives can be discussed. Failure to notify the Council as set out in this clause will result in immediate contract termination as detailed at Clause 6.

1.4 Wherever referred to in this Agreement, the words 'the Customer' shall mean the party to this Commercial Waste and Recycling Collection/Hire Agreement other than the Council.

1.5 Acceptable Waste means paper and cardboard packaging, mixed packaging, paper and cardboard, glass, kitchen and canteen waste, mixed municipal waste, market waste, street cleaning residues, wood except chemically contaminated wood.

1.6 Excluded Waste means builders waste, bulky items, soil, charcoal, liquid waste, non-burnable construction material, demolition debris (especially plasterboard or gyproc board), gas cylinders, beer kegs or any other pressure cylinders, petrol, oils, greases, solvents or paints, animal or human remains or waste, acid or caustic substances, clinical, pathological and biological wastes, asbestos substances, tree trunks, electrical goods according to the Waste Electrical & Electronic Equipment (WEEE) Directive including telephones and fluorescent tubes, drugs or poisons, motor vehicle batteries, motor cycles, motor engines and other major parts of motor vehicles, trailers or similar items.

1.7 The Council reserves the right to add to and/or to remove a category of waste set out in clause 1.5 (Acceptable Waste) and/or clause 1.6 (Excluded Waste), the Customer shall be notified of any changes in writing, which shall be effective 28 days from the date of the notice.

2. Term

2.1 Save as set out in clause 2.2 Agreements shall commence on the signing of the Commercial Waste and Recycling Collection/Hire Agreement with subsequent annual invoices for payment of services being generated on or around the 1 April in each year until the agreement is terminated in accordance with Clause 6.

2.2 Agreements for recycling and refuse sacks operate on a pay-as-you-go basis and will be for an initial period of 12 months commencing on the purchase of refuse sacks. Each time additional sacks are purchased the end date extends by 12 months from the date of that purchase. Should there be no sack purchased for a period of 12 months the agreement automatically ends on the expiry date and collections cease.

3. Responsibility for Equipment and Waste Material

3.1 The Customer agrees that the Equipment provided shall only be used for the storage of waste for collection by the Council under the terms of this Agreement. The Equipment shall remain the property of the Council.

3.2 The Equipment shall not be removed from the Customer's premises. In the event of removal due to a change in the address as specified in the Commercial Waste and Recycling Collection/Hire Agreement, the Customer shall provide the Council with 28 days written notice in advance of the Equipment being moved to the new premises.

3.3 Any identification marks indicating that the Equipment is the property of the Council shall not be removed or interfered with. The Council retains the right to inspect such marks at random, and if found to

be removed or interfered with, the Council may replace such marks at the Customer's cost. The Customer shall not paint or otherwise mark the Equipment in any way and if the Customer does it will be liable for the repair or replacement of the Equipment.

3.4 Any microchips in the Equipment used by the Council to determine the weight of the Equipment upon collection are not to be removed or interfered with. The Council retains the right to inspect such weighing chips at random, and if found to be removed or interfered with, the Council may replace such weighing chips at the Customer's cost.

3.5 Should Equipment be damaged, lost, or stolen, the Council reserves the right to carry out any repairs it deems necessary or issue replacement Equipment in respect of which the Customer will be liable for the full cost of the repair or replacement Equipment, which will be charged at the current market rate as determined by the Council.

3.6 The Council reserves the right to refuse to collect uncontained waste, loose waste, unidentified waste, compacted waste and waste placed in the wrong equipment. Where the Council, at its sole discretion, collects these wastes, the Customer will be charged an additional collection rate subject to the Council's current standard fees and charges.

3.7 The Council shall be entitled to take test samples of the Customer's waste at any time during the term of the Agreement to satisfy itself that the Customer's description of the waste is true, accurate and complete.

3.8 The Customer agrees to:

a) Site the Equipment in a position which is unobstructed and safe to access at all times. If Equipment is inaccessible, the agreed collection will not be made, and the Council reserves the right to charge an additional collection fee, according to the Council's Fees, for any additional collection stemming from inaccessibility.

b) Not overload the Equipment by weight or volume, in accordance with the following maximum loads: Commercial sack: 6kg / Cardboard recycling tape: 5kg / 240 litre bin: 20kg / 360 litre bin: 30kg / 660 litre bin: 60kg / 940 litre bin: 85kg / 1100 litre bin: 100kg

The Council reserves the right not to collect any loads above the weights as set out above. Should overloading occur when the Equipment is collected as part of pre-defined waste collections, additional charges may be made at the Council's discretion in accordance with the Council's Fees which are updated and published annually on the Council's website.

c) Keep the Equipment lid closed other than when the Equipment is being loaded or unloaded and ensure that all sacks are securely tied closed.

d) Ensure that no items are burnt or are allowed to burn in the Equipment.

e) Ensure that the completed waste transfer note contains an accurate description of the nature and characteristics of the waste and to complete and return a copy of any updated service agreement and your annual Waste Transfer Note to the Council within 2 weeks of receipt and furthermore shall ensure you promptly inform the Council in writing of any alteration to particulars entered on the agreement including title of premises, full name of the company/partnership/sole trader and other relevant details. The Council may at its discretion suspend or delay waste collections until such time as the necessary paperwork has been completed and returned by the Customer

f) Ensure that the Equipment is clean and in good repair and immediately inform the Council of any defect affecting its operation. In accordance with clause 3.5 above the Customer will be held liable for the cost of any cleaning, repair or replacement of lids or any other part or the whole of the Equipment.

g) Only place for collection Acceptable Waste that is not of a size and nature likely to cause damage to the Council's mobile compaction equipment. The Customer will be liable for any damage caused to the Council's mobile compaction equipment as a result of disposing of waste which is Excluded Waste, not included in the listed categories of Acceptable Waste or of a size or weight which are reasonably likely to cause damage.

h) The Council and its agents entering the premises where the Equipment is kept at any time with or without vehicles and with or without notice for the purposes of assessing and/or removing the Equipment.

i) Ensure that the Council, its staff, agents and sub-contractors shall not suffer any abuse, whether physical or verbal in the provision of the Services to the Customer.

4. Excluded Waste

4.1 The Customer shall only place Acceptable Waste in the Equipment for collection by the Council.

4.2 The Customer shall not place Excluded Waste in the Equipment for collection. Excluded Waste left in the Equipment shall not be collected by the Council nor shall the Council collect the Equipment until such time as the Excluded Waste has been removed from it. In the event the Council does without knowledge collect Excluded Waste, the Customer shall be liable for the full cost of any additional charges incurred by the Council in disposing of the Excluded Waste.

4.3 The Council will not be liable for any costs incurred during any disposal of the Customer's Excluded Waste. Any additional charges incurred by the Council pursuant to clause 4.2 and generally under this agreement shall be payable by the Customer within 5 days of a demand for such payment.

5. Charges and Payment

5.1 The customer will be advised of the Council's Fees current as at the date of signing the agreement, the Council's Fees will only be valid up to and including the end of March after which time it will be subject to adjustment by the Council. The Council shall issue invoices for the charges for the Services based on the Council's Fees current at that time.

5.2 Payment shall either be made: -

(i) annually in advance. The first payment shall be paid within 14 days of the date of the invoice from the Borough Treasurer or as determined by the Council. Where appropriate, the invoice will include a proportion of the said annual amount calculated from the date of commencement of the service to the 31st March in each year of the Agreement; or

(ii) if agreeable to both Parties, payment can be made by way of direct debit, payable over either 10 monthly instalments or by quarterly payments made in advance.

5.3 Any changes made to the Services provided which are at the Customer's request shall be subject to the payment of a fixed fee to cover an administration cost, as detailed in the Council's Fees as current at the time of the adjustment to the Service. Service provision upgrades are excluded from charge.

5.4 The Council's Fees for the Services can be obtained on request from the Commercial Waste Team as can details of additional charges which may be applicable in certain circumstances for contract amendments, cancellations and other matters individually covered within the terms and conditions of this agreement.

5.5 The Council reserves the right to adjust the published Council's Fees for the Services to reflect any increase in market conditions or additional costs incurred to the Council for the Services and shall give the Customer 28 days notice of any increase and the date when the said increase shall come into effect.

6. Default in Payment and Termination

6.1 In the event that the Customer is in arrears with any payments under this Agreement for a period of 14 days or more the Council may, in its absolute discretion cease to carry out its obligations under the terms of this Agreement without further reference to the Customer. Interest shall be payable by the Customer on the late payment of any undisputed charge properly invoiced under this Agreement, interest shall be charged at the rate of 4% above the Bank of England base rate from time to time. Should the Customer fail to make such payment, the Services may also be suspended until any outstanding payment is received. Such arrears of payments shall be considered a debt due to the Council from the Customer, recoverable by action.

6.2 This Agreement may be terminated in the following circumstances:

a) the Customer giving 90 days written notice of termination to: London Borough of Barnet, Commercial Services Team, Oakleigh Depot, Oakleigh Road South, London, N11 1HJ, or

b) the Council giving 90 days written notice of termination to the Customer at the address specified in the Agreement and/or the Customer's last known private registered or business address.

c) the Council giving written notice to the Customer if the Customer's interest becomes vested in another person or body without the Council's consent, or

(d) the Council giving immediate notice to terminate if the Customer commits a material breach of any of the terms of this agreement, or

(e) the Council gives notice to the Customer to remedy a breach and the Customer fails to remedy that breach within 30 days of being notified in writing of the breach by the Council, or

(f) the Customer becomes Insolvent (meaning:

(i) if the Customer is an individual, that individual or where the Customer is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors;

(ii) if the Customer is a company, the passing by the Customer of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Customer or the dissolution of the Customer, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Customer's assets, or if the Customer makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and

(iii) any event in any jurisdiction other than England and Wales which is analogous to any of the above);

6.3 Upon termination of this Agreement, the Customer shall immediately make available and the Council shall collect the Equipment from the Customer's premises for reuse. The Customer shall immediately pay all sums due under this Agreement including any additional costs of repair, replacement or cleansing of the Equipment deemed necessary by the Council following termination.

6.4 If this Agreement is terminated by the Council due to non-payment of charges under the Agreement and the Customer's Equipment is removed by the Council, before the Agreement is reinstated necessitating the supply of further Equipment, the Customer shall pay the Council an additional fixed fee to cover the costs of supplying the further Equipment as detailed in the Council's Fees current at the time of the reinstatement of the Service

6.5 Subject to any outstanding costs (including any applicable cancellation charges) due to the Council under this Agreement which shall be deducted first, upon termination of this Agreement, the Customer will be entitled to a refund of any overpayment in respect of any unexpired period of service which the Council did not supply as determined by the Council.

7. Damage to Surfaces and Third-Party Property

7.1 The Council shall not be held liable for any damage to the Customer's premises or other parties' premises resulting from the Council providing or attempting to provide the services.

8. Liability

8.1 If at any time during the continuance of this Agreement it shall become impossible by reason of operational difficulties to the fleet or services, for the Council to carry out their duties as contained under this Agreement on the scheduled day, the Council reserves the right to re-schedule collection to the earliest possible opportunity without prior notice to the Customer or cost to the Council. The frequency of the service may also be varied by the Council during Bank Holidays, other notified holidays, emergencies and at such other times as is considered appropriate giving such notice to the Customer as is reasonable in the circumstances.

8.2 If at any time during the continuance of this Agreement it shall become impossible by reason of any strike or employment dispute, or other occurrences whatsoever beyond the control of the Council, for the Council to carry out their duties as contained under this Agreement, the Customer shall not have a claim for any damages in respect of such omission by the Council to carry out such duties.

8.3 For the term of this Agreement, the Customer shall make good to the Council at full replacement cost all losses of or damage to the Equipment from whatever cause the same may arise, fair wear and tear expected, and shall also fully and completely indemnify the Council in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the Customer's use of the Equipment, and in respect of all costs and charges in connection therewith, whether arising under statute or common law.

8.4 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement

8.5 Nothing in this agreement limits or excludes the liability of the Council for death or personal injury resulting from negligence of the Council.

9. Indemnity in relation to Equipment

9.1 The Customer shall indemnify, and hold harmless the Council, against all claims, damages, losses and liabilities, whatsoever for injury or death to persons, or loss or damage to, property arising out of the Customer's use, location, operation or possession of Equipment except those caused by the negligence of the Council or its agents, servants or employees.

10. Indemnity in relation to acts, defaults and negligence of the Customer

10.1 The Customer shall be liable, and shall fully indemnify, and hold harmless, the Council, its officers, employees and agents against all liabilities, damages, costs, charges, expenses, losses, claims, demands and proceedings incurred or suffered whatsoever (including for the avoidance of doubt but without limitation), injury (including death) to any persons, loss, howsoever arising, be it directly, or indirectly, out of the act, default or negligence of the Customer, its employees or agents in connection with the Customer's rights under this Agreement.

11. Insurance

11.1 During the term of this Agreement and for a period of 6 years thereafter the Customer (but without limiting its obligations and responsibilities under the indemnity given by the Agreement herein) shall have in force with a reputable insurer public liability insurance for such sum and range of cover as the Council deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than £5 million for any one incident and unlimited.

11.2 The policy or policies of insurance referred to in Clause 11.1 shall include a term whereby in the event of any claim in respect of which the Customer would be entitled to receive indemnity under the policy being brought or made against the Council, the insurer will indemnify the Customer against such a claim and any costs, charges and expenses in respect thereof. The Customer shall whenever required produce to the Council the policy or policies of insurance and receipts for payment of the current premiums and in the event that there is evidence that any required insurance is not in force the Council may effect and keep in force any such insurance and the Customer shall pay to the Council any sums expended by it for such purposes.

12. Dispute Resolution Procedure

12.1 In the first instance the Account Manager or the Collection Services Manager shall meet with the Customer and try to resolve any disputes or issues between the Parties amicably. However, at all times the Customer has the right to follow the Council's complaints procedure and will be directed to this content on the Council's website by the Account Manager/Collection Services Manager should they be unable to resolve the matter.

13. Information

13.1 The Customer acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate

with the Council (at the Customer's expense) to enable the Council to comply with these Information disclosure requirements.

13.2 The Council shall be responsible for determining at its absolute discretion whether any information is exempt from the legislation set out in Clause 13.1.

13.3 In no event shall the Customer respond directly to a Request for Information unless expressly authorised to do so by the Council.

13.4 To the extent relevant to this Agreement the Parties agree to comply with (i) the Data Protection Act 1998 until and including 24 May 2018; and from 25 May 2018 onwards (ii) the General Data Protection Regulation 2016/659 (as amended or re-enacted from time to time) and any other applicable data protection legislation in relation to any Personal Data that is in their possession.

13.5 The Customer agrees to indemnify and keep indemnified the Council against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Council as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Customer's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data (as defined in the Data Protection Act 1998 and subsequently the relevant provisions under the General Data Protection Regulation 2016/659) processed by the Customer, its employees or agents in the Customer's performance of the Agreement or as otherwise agreed between the Parties.

13.6 Subject to clause 13.1, the Customer and the Council agree to keep strictly confidential all information that is commercially sensitive.

13.7 The Customer shall comply with the Duty of Care as respects waste in accordance with the Environmental Protection Act 1990 Section 34 and shall accurately complete, sign and return to the Council the Waste Transfer Notes and the Barnet Council Recycling & Waste Collection Agreement.

14. Entire Agreement

14.1 This Agreement constitutes the entire Agreement as to the subject matter thereof between the Parties and supersedes all previous Agreements and understandings (if any) between them with respect thereto.

15. Amendment/Variation

15.1 The Council can amend or vary this Agreement acting reasonably at any time by giving 28 days written notice of any amendments. Any amendments or variations will be at the Council's sole discretion acting reasonably and non-negotiable. The Customer will be deemed to have accepted any amendments or variations on receipt of the written notice.

16. Third Party Rights

16.1 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

17. Waiver

17.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

18. Severability

18.1 If any provision or part-provision of this agreement 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 this agreement

19. Notices

19.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing:

19.1.1 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

19.1.2 sent by email to its main email address.

19.2 Any notice or communication shall be deemed to have been received:

19.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service.

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

Governing Law

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

19. Jurisdiction

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 agreement or its subject matter or formation (including non-contractual disputes or claims).