



# TERMS AND CONDITIONS

## DEFINITIONS

In these Definitions (unless the context otherwise requires) the following expressions shall have the meaning herein ascribed to them.

- 1.1 "Contractor" means the Electrical Waste Recycling Group Limited T/A Waste Experts (Company No: SC208558) whose registered office is at Unit 1, Block B, 26 Kings Haugh, Prestonfield park Industrial Estate, Edinburgh EH16 5UY
  - 1.2 "Customer" means the person / Company specified as the Waste producer and includes where relevant its employees, agents and licensees.
  - 1.3 "Equipment" means the Equipment of the Contractor supplied to the Premises for the purpose of Service,
  - 1.4 "Order" means the order form for the Service.
  - 1.5 "Premises" means the site details of the Customer set out in the Order Form.
  - 1.6 "Service" means the collection from the Premises and disposal of Waste pursuant to this Agreement.
  - 1.7 "The Act" means the Environmental Protection Act 1990.
  - 1.8 "Waste" means Waste deposited for collection from the Premises under the Service and which is capable of being collected, processed, and/or disposed of by the Contractor.
  - 1.9 "Waste Description" means the description of the Waste described by the Customer.
- Words in the singular shall include the plural and visa versa, references to any gender shall include the others and references to legal persons shall include natural persons and visa versa.
- Reference to any Act shall include any amendment, re-enactment or replacement of the same and references to an Act shall include any regulations under the Act.

## GENERAL

- 2.1 This Agreement constituted by these Terms and Conditions and all Orders (to the exclusion of any other terms and conditions contained or referred to in any order, letter form of Agreement or other communication) shall become binding on the parties only when counter signed on the Contractor's behalf. Any variation must be in writing and signed by a duly authorised representative of the Contractor.
- 2.2 Any concession made or latitude allowed by the Contractor to the Customer shall not affect the strict rights of the Contractor under this Agreement.
- 2.3 If in any case these Terms and Conditions shall be or held to be invalid or shall not apply to this Agreement the remaining Terms of this Agreement shall continue in full force and effect.
- 2.4 Ownership of the responsibility for the Waste shall remain vested in the Customer so long as it shall remain on the Premises and shall pass to the Contractor as soon as it shall be removed from the Premises by the Contractor, but subject to due compliance by the Customer with its obligations under this Agreement.
- 2.5 The rights and obligations of the Customer under this Agreement shall be personal and shall not be assignable without the written consent of the Contractor.

## OBLIGATIONS OF THE CONTRACTOR

- 3.1 The Contractor shall provide the Service in a proper and efficient manner and endeavour to comply with the servicing programme set out in the Order. Time of performance shall not be of the essence of this Agreement.
- 3.2 Notwithstanding any times or dates given for the performance of the Service, the Contractor shall have the right to make such changes to the times or dates of performance of the Service due to its reasonable operational requirements as may be necessary.
- 3.3 The Contractor warrants that it shall in performing the Service comply with:
  - (a) all special site conditions and safe working procedures notified by the Customer, in accordance with the Health & Safety at work Act 1974.
  - (b) all laws relating to the performance of the Contractor's obligations.
- 3.4 The Contractor will dispose of the Waste in a manner which is in accordance with the statutory regulations prevailing at the time of the Service.

## WASTE

- 4.1 The Customer warrants that:
  - (a) the Waste Description set out in the Order is true, complete and accurate in all material respects, and the Customer remains responsible for an accurate description notwithstanding any Waste analysis undertaken by the Contractor.
  - (b) unless agreed with the Contractor the Waste does not contain any other Waste types unless agreed in writing with the Contractor prior to the Service.
  - (c) the constituents of the Waste are compatible and stable and will not give rise to any hazard on the mixing of such constituents. If the Customer has any doubts regarding the compatibility or stability of the Waste it shall consult the Contractor immediately.
- 4.2 If either party shall establish that there has been any material change in the composition of the Waste that party shall immediately inform the other party thereof in writing with full details.
- 4.3 The Customer shall not deposit or permit to be deposited for collection under the Service any Waste not in accord with the Waste Description without the prior written consent of the Contractor.
- 4.4 In the event of the Contractor receiving any notice under clause 4.2 above or becoming aware that any Waste no longer conforms with the Waste Description it shall be entitled to:
  - (a) suspend performance of the Service until such time as the Waste conforms to the Waste Description; and/or
  - (b) adjust the price as may be required as a consequence of any change to the Waste Description.
  - (c) return the Waste at the Customer's expense if the Waste does not conform with the Waste Description or any relevant waste disposal license; and/or
  - (d) require the Customer to be responsible for the removal of any Waste from the Equipment which does not conform with the Waste Description.
- 4.5 Any suspension of the Contractor's obligations to provide the Service as set out in this Agreement shall be without prejudice to the Contractor's right to receive payments under clause 9.
- 4.6 The Customer shall comply with the record-keeping obligations imposed by the Act and shall deliver immediately to the Contractor a true copy of each record. Where requested by the Contractor, the Customer shall provide the Contractor with accurate Waste transfer notices in relation to the Waste.
- 4.7 Unless otherwise agreed in writing by the Contractor nothing in this Agreement shall require it to collect any loose Waste from the Premises.

## SPECIAL WASTE

- 5.0 Where any Special Waste (as defined under Schedule 2 of the Special Waste Regulations 1996) is included in this Agreement the Customer must provide the Contractor with annual WAC tests and / or letter of conformation that processes causing Waste to arise have remained constant.

## EQUIPMENT

- 6.1 All Equipment delivered by the Contractor to the Premises shall at all times remain the property of the Contractor and the Contractor shall have the right at its discretion to move and remove any Equipment and to substitute for it equivalent Equipment.
- 6.2 The Customer shall:
  - (a) adequately insure the Equipment to its full replacement value; and
  - (b) be solely responsible for the safety and protection of the Equipment while it is on the Premises.
- 6.3 The Customer warrants that it shall not and that no other person shall:
  - (a) overload or improperly load the Equipment and for the purpose of this sub-clause 6.3 (a) the Equipment shall be deemed to be overloaded if its transportation by the Contractor breaches or is considered to breach the Road Traffic Act or regulation or if it causes or is likely to cause damage to any vehicle or if its contents extend beyond the Equipment's level load profile.
  - (b) deposit in the Equipment any Waste not conforming to the Waste Description;
  - (c) burn or allow to be burned any matter in the Equipment.
  - (d) unless otherwise agreed in writing by the Contractor, place any markings on the Equipment;
  - (e) purport to change or sublet or part possession of the Equipment;
  - (f) move the Equipment, unless otherwise agreed in writing by the Contractor.
- 6.4 The Customer shall be solely responsible for the proper supervision of loading and collection of the Waste and the Contractor reserves the right to refuse to provide the Service on any occasion if it reasonably considers that the provision of the Service may place at risk any person, vehicle, Equipment or other property.
- 6.5 In the event that the Equipment is lost or damaged (ordinary wear and tear accepted) due to the failure of the Customer to exercise all reasonable care, the Customer shall indemnify the Contractor in respect of such loss including cost of repairs and all other expenses resulting therefrom.
- 6.6 The Customer shall be responsible for the siting and use of Equipment. Nevertheless, the Contractor is prepared, on written request from the Customer, to advise the Customer on the siting of the Equipment without accepting responsibility in this respect.
- 6.7 Should the Customer require Equipment siting on a public highway, the Contractor will obtain a permission to do so only when notified in writing by the Customer and should the Customer not have the correct permissions or planning permissions the Customer shall indemnify the Contractor in respect of any claims or demands arising from a breach of this clause.

## CUSTOMERS PREMISES

- 7.1 The Customer warrants that all persons (including all employees and agents of the Contractor) entering upon the Premises shall be safe for the purpose of their visit and specifically (but without limitation) shall implement a safe system of work for the provision of the Service.
- 7.2 The Customer shall grant the Contractor's employees and agents such access to the Premises as may be required by the Contractor without notice (if necessary) for the purpose of moving or maintaining the Equipment, performing the Service, inspecting the Waste and taking samples.
- 7.3 The Contractor shall provide suitable and safe vehicular access for the purposes set out in clause 7.2 above.
- 7.4 If the Customer shall fail to provide access then pursuant to clause 7.2 or 7.3 the Contractor shall be entitled to suspend the Service until such time as proper access to the Equipment has been provided and the Customer shall reimburse the Contractor on demand the costs of any unsuccessful visit to the Premises.
- 7.5 The Customer shall notify the Contractor on or before the date of this Agreement (or immediately on the occurrence of the same, if later) of any special site conditions and safe working procedures in any way affecting the performance of the Contractor's obligations under this Agreement.

## PRICES

- 8.1 The price payable for the Service shall be the price set out at the start of the Agreement subject to variation as set out below.

- 8.2 Unless agreed by the Contractor to be fixed for a period the Contractor's prices are subject to variation from time to time during the life of the Agreement to take account of any variation in the Contractor's costs including (but not limiting to) variations in wages, disposal charges, the cost of materials, exchange rate fluctuations, alterations of duties and other costs (including cost of compliance with legislation) since the date of the Contractor's quotation or if no quotation is issued the Customer's Order. The Contractor accordingly reserves the right to adjust the sums specified from time to time by the amount of any increase or decrease in such costs and the sums so adjusted shall be payable thereafter.
- 8.3 Service made at the request of the Customer at times outside normal working periods or which at the Customer's request vary from the scheduled collection will be subject to a supplemental charge.
- 8.4 All prices are exclusive of Value Added Tax and this will be charged by the Contractor and will be payable by the Customer at the appropriate rate.

## TERMS OF PAYMENT

- 9.1 The Customer shall pay the Contractor not later than the 30<sup>th</sup> of the month following the date of invoice save that payment of all outstanding invoiced sums shall become due in any event forthwith upon the occurrence of any of the events referred to in clause 15 below.
- 9.2 Payments will be due in full to the Contractor in accordance with the terms of this Agreement and the Customer shall not be entitled to exercise any set-off, lien or any other similar right to claim.
  - (a) Where payment is not made by the due date, regardless of its other remedies, the Contractor shall:
    - (i) be entitled to charge interest on the outstanding amounts (both before and after any judgment) at a rate of 4% above the base rate of Barclays Bank Plc from time to time, from the due date until the amount is paid in full.
    - (ii) to suspend the Service until due payment has been made.
    - (iii) to instruct a third party to recover the debt on the Contractor's behalf, ultimately the third party will collect the debt through the courts.

## SERVICE TICKETS

- 10 Service tickets are provided by the Contractor (Trade Waste Service - Multi Compaction Vehicles) the Customer agrees that the records of the Contractor will be proof of the Service provided. Records are available through the online portal provided by the Contractor.

## INDEMNITY

- 11 Without prejudice to any other rights or remedies available to the Contractor the Customer shall at all times whether during the life of this Agreement or thereafter indemnify the Contractor and keep the Contractor indemnified against all losses, costs (on a full indemnity basis), claims, demands, awards and expenses arising as a result directly or indirectly:
  - (a) any breach by the Customer of its obligations under this Agreement; and / or
  - (b) the act, neglect or default of the Customer; and / or
  - (c) any breach by the Customer of any statute, regulation or requirement of central or local government having the force of law for which the Contractor is held responsible when providing the Service.

## INSURANCE

- 12 The Customer shall at all times during the life of this Agreement at its own expense obtain insurance adequate to provide cover in accordance with sound business practice in connection with its obligations under this Agreement and shall on request produce copies of such policies to the Contractor.

## CONDITION AND WARRANTIES

- 13.1 Save as provided elsewhere in these Terms and Conditions any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom and usage or otherwise whatsoever) as to the care or skill to be exercised in the performance of the Service or as to the time for performance of the Service by the Contractor are hereby expressly excluded.
- 13.2 In substitution for all rights which the Customer would or might have had but for the terms of this agreement the Contractor undertakes at its discretion that if within 7 days of performance of the Service it appears that such Service has been performed defectively or not performed at all the Contractor will either re-perform the Service or at its own discretion credit the Customer with such proportionate part of the price of the Service as relates to the subject of the claim.
- 13.3 In order to exercise its rights under this clause or clause 14 the Customer shall inform the Contractor within 48 hours of the date when such defect or right of claim appeared or ought reasonably to have been discoverable.

## LIABILITY OF THE CONTRACTOR

- 14.1 Subject to clause 14.4, the Contractor shall not be liable:
  - (a) for any costs, claims, damages or expenses arising out of any tortious act or omission (including negligence) or any breach of contract or statutory duty or otherwise howsoever calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis; and/or
  - (b) for loss of profits, loss of business, loss of contract, or loss of opportunity (whether direct or indirect), or any indirect or consequential losses and the Customer is strongly advised to seek insurance in respect of such matters not accepted by the Contractor.
- 14.2 The aggregate liability of the Contractor (whether in contract or for negligence or breach of statutory duty or otherwise whatsoever) to the Customer for any loss or damage of whatever nature and howsoever caused shall be limited to and in no circumstances shall exceed the sum of payments made by the Customer to the Contractor in the period of six calendar months immediately preceding the event giving rise to the claim concerned.
- 14.3 Nothing in this Agreement shall impose any liability upon the Contractor in respect of any defect in the Service or any other loss or damage arising out of the acts, omissions, negligence or default of the Customer, its servants or agents.
- 14.4 Nothing in this Agreement shall have the effect of excluding or restricting the liability of the Contractor for death, personal injury, fraud or fraudulent misrepresentation resulting from its negligence in so far as the same is prohibited by United Kingdom statute.
- 14.5 The price of Services to be provided by the Contractor is based on the allocation of risks as set out in these Conditions.

## DEFAULT OR SOLVENCY OF CUSTOMER OR CONTRACTOR

- 15.1 If either party shall be in breach of any of its obligations under this Agreement which is not remedied within 30 days after a notice in writing from the other party requesting remedy, or if any distress or execution shall be levied on either party's property or assets or if either party shall make or offer to make any arrangement or composition with its creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against it or (if the party is a company) a resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed the other party in its discretion and without prejudice to any right or claim may by notice in writing determine wholly or in part any and every Agreement between the Contractor and the Customer or may in respect of the Contractor (without prejudice to the Contractor's right subsequently to determine this Agreement for the same cause should it so decide) by notice in writing suspend any further performance of the Service until any default by the Customer is remedied.
- 15.2 The Contractor shall have the right to suspend performance of the Service if at any time it has reasonable cause to believe that the Customer will not be able to meet its obligations under this Agreement.

## REPRESENTATIONS

- 16 No statement, description, information, warranty, condition, or recommendation contained in any catalogue price list, advertisement or communication or made verbally by any of the Contractor's agents or employees shall be construed to enlarge, vary or override in any way any of the provisions of this Agreement.

## FORCE MAJEURE

- 17 The Contractor shall be entitled to delay or cancel performance of any Service if and to the extent that it is prevented from or hindered in performing the same or delayed through any circumstances beyond its reasonable control including (but not limited to) strikes, lockouts, accidents, acts of war or terrorism, fire, breakdown or unavailability of staff or Equipment.

## THE TERM

- 18 The Agreement shall commence on the date set out in the Order ("Commencement Date") and shall, unless the Order is for an 'ad hoc' or 'one off' Service and subject to earlier determination in accordance with this Agreement, continue thereafter (on a 'Rollover' basis) unless and until terminated by either party upon (not less than) three calendar months' written notice to expire on any anniversary of the Commencement Date.
- 19 Save as provided in clauses 15 and 17 hereof this Agreement may not be cancelled except by agreement in writing of both parties and upon the payment to the Contractor of such amounts as may be necessary to indemnify the Contractor against all loss resulting from the said cancellation.

## SUB-CONTRACTING / ASSIGNMENT

- 20 The Contractor may assign the Agreement or sub-contract the performance of the whole or any part or its obligation under this Agreement to any person, firm or company.

## NOTICE

- 21 All notices to be given hereunder must be delivered by hand or sent by Recorded Delivery to the addressee at its registered office or main place of business.

## PROPER LAW

22. This Agreement shall in all respects be governed by and construed in accordance with English Law and the Customer and the Contractor agree to submit to the non-exclusive jurisdiction of the English courts.