

WASTE MANAGEMENT SERVICE AGREEMENT

PART 2 - TERMS AND CONDITIONS

DEFINITIONS

- 1.1 The definitions contained in Part 1 ("Part 1") of the Agreement and the further definitions in this Part 2 shall apply.
- 1.2 "The Act" means the Environmental Protection Act 1990.
- 1.3 "The Agreement" constitutes Part 1 and Part 2 and any agreement between the Parties for the hire by the Customer from the Contractor of any Containers.
- 1.4 "The Contractor" means Recycling Management Limited (05572758) whose registered office is at Trevor Street Industrial Estate Birmingham, West Midlands, B7 5RG.
- 1.5 "The Customer" means the person / Company specified as the waste producer in Part 1 and includes where relevant it's employees, agents and licensees.
- 1.6 "The Equipment" means the equipment of the contractor supplied to the Premises for the purpose of the Service.
- 1.7 "The Parties" means the Contractor and the Customer.
- 1.8 "The Premises" means the site details of the Customer as set out in Part 1.
- 1.9 "The Service" means the collection from the Premises and disposal of Waste pursuant to this Agreement.
- 1.10 "The Service Commencement Date" means the date on which the Agreement is signed by both parties, or the start date of the existing service provided by the Contractor.
- 1.11 "Waste" means all waste detailed in Part 1 which is deposited for collection from the Premises.
- 1.12 "Waste Description" means the description of the Waste described by the Customer / producer.
- 1.13 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.
- 1.14 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.

GENERAL

- 2.1 This Agreement shall become binding on the parties only when counter signed on the Contractors behalf. Any variation must be in writing and signed by a duly authorised representative of the Contractor.
- 2.2 The Agreement constitutes the entire agreement between the parties and takes effect in the place of any previous contract between the Contractor and the Customer and any previous terms and conditions of the Contractor. The Customer acknowledges that it has not relied on any statement, promise or representation made or given to it on behalf of the Contractor which is not set out in the Agreement and the terms implied by Sections 3 to 5 of the Supply of Goods and Services Act 1982 are (to the fullest extent permitted by law) excluded from the Agreement.
- 2.3 Any concession made or latitude allowed by the Contractor to the Customer shall not affect the strict rights of the Contractor under this Agreement.
- 2.4 If any term of this Agreement is held to be invalid or unenforceable, it will not affect the validity of the remaining terms which will continue to be binding on the Parties.
- 2.5 The rights and obligations of the Customer under the Agreement shall be personal and shall not be assignable without the 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 Part 1. Time is not of the essence in performance of the Service.
- 3.2 Notwithstanding any times or dates agreed for the performance of the Service, the Contractor shall reserve the right to change times or dates for performance as reasonably required for the operation of the Contractor's business.
- 3.3 The Contractor warrants that it shall in performing the Service comply with:
- (a) All special site conditions and safe working procedures notified in writing by the Customer, in accordance with the Health & Safety at Work Act 1974 and any subsequent amendments to the legislation.
- (b) All laws, requirements and regulations of any central or local governmental body of authority relating to the performance of the Contractor's obligations and to the use of the Equipment at the Premises.
- 3.4 The Contractor will dispose of the Waste in a manner which is in accord with the statutory regulations prevailing at the time of the Service and subject to the Customer's compliance with these conditions will indemnify the Customer against any claim loss or damage in respect of the Waste or Equipment after it has been removed.

WASTE

- 4.1 The Customer shall retain responsibility for the Waste so long as it remains on the Premises and until it is removed by the contractor. This is subject to the Customer's compliance with it's obligations under the Agreement.
- 4.2 The Customer warrants that:
- (a) The Waste Description set out in Part 1 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) 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.
- 4.3 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.
- 4.4 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.
- 4.5 In the event of the Contractor receiving any notice under sub-clause 4.3 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 changes to the Waste Description prior to the recommencing of the Service; and/or
- (c) Return the Waste at the Customers expense if the Waste does not conform with the Waste Description or any relevant Waste Disposal licence; 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.
- 4.6 Any suspension of the Contractor's obligations to provide the Service as set out in clause 4.5 above shall be without prejudice to the Contractor's right to receive payments under clause 9.
- 4.7 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.
- 4.8 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 is included in this Agreement the Customer must provide the Contractor with annual WAC tests and / or letters of conformation that processes causing Waste to arise have remained consistent with the Agreement.

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 alone shall have the right at its discretion to move, remove and substitute any Equipment with its equivalent.
- 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.
- (c) Use the Equipment solely for the purpose of depositing materials to be removed by the Contractor pursuant to this Agreement.
- 6.3 The Customer warrants that neither it nor any other person shall:
- (a) Overload or improperly load the Equipment and for the purpose of this sub-clause, the Equipment shall be deemed to be overloaded if its transportation by the Contractor breaches or is considered to breach the Road Traffic Act 1988 or other regulations; 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) Burn or deposit in the Equipment any Waste not conforming to the Waste Description;
- (c) Dump 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) Unless otherwise agreed in writing by the Contractor move the Equipment.
- 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 particular 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 the cost of repairs and all other expenses resulting therefrom.
- 6.6 The Customer shall be responsible for the siting and use of the Equipment. Nevertheless, the Contractor is prepared on request to advise the Customer on the siting of the Equipment but without accepting responsibility in this respect.
- 6.7 Should the Customer require the Equipment to be sited on a public highway, it will provide the Contractor with written authority to do so on it's behalf. The Customer shall indemnify the Contractor in respect of any claims for any failure to obtain the correct licenses or planning permissions in breach of this clause.

OTHER CUSTOMER OBLIGATIONS

- 7.1 The Customer:-
- (a) Will not during the continuance of the Agreement obtain any of the Services described in Part 1 from any person, firm or company other than the Contractor;
- (b) Will cooperate with the Contractor in all matters relating to the Services;
- (c) 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.
- (d) 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.
- (e) Shall provide suitable and safe Vehicular access for the purposes set out in clause (c) above.

7.2 If the Customer shall fail to provide the access pursuant to clause 7.1 (d) or (e) above 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 of the costs of any unsuccessful visit to the premises.

7.3 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 in Part 1 subject to the variations as set out below.
- 8.2 Unless agreed by the Contractor to be fixed for a certain 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 limited 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 remit to the Contractor not later than 30 days from the date of each 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 condition 15 below.
- 9.2 Payments will be due in full to the Contractor in accordance with the terms of this Agreement and the Contractor shall not be entitled to exercise any set-off, lien or any other similar right to claim.
- 9.3 For the purposes of this Agreement the time of payment will not be of the essence. This shall not prejudice any other rights to which the Contractor is entitled:
- (a) To suspend the Service until due payment has been made.
- (b) To instruct a third party (Credit Protection Agency) CPA to recover the debt on our behalf, who ultimately will collect the debt through the courts.

SERVICE TICKETS

- 10 Where no 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. If the Customer requires Service tickets it will ensure that an authorised person is readily available at the Premises to sign for the Service.

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 of:
- (a) Any breach by the Customer of any obligations under this Agreement; and / or
- (b) Any 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 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 Contractor 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 The Contractor shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission 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.
- 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 whatsoever 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 one calendar month 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 affect of excluding or restricting the liability of the Contractor for death or personal injury, resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

DEFAULT OR SOLVENCY OF CUSTOMER

- 15.1 If the Customer shall be in breach of any of its obligations under this Agreement or if any distress or execution shall be levied on the Customer's property or assets or if the Customer 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 Customer is a company) if any 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 Contractor in its discretion and without prejudice to any right or claim may by notice in writing determine wholly or in part any and every contract between the Contractor and the Customer or may (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 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 control including (but not limited to) strikes, lock-outs, accidents, acts of war or terrorism, fire breakdown or unavailability of Staff or Equipment.

THE TERM

- 18.1 The Service shall commence on the Service Commencement Date set out in Part 1 and shall continue for the Initial Term. Thereafter the Agreement shall continue (Rollover) under the same terms as this Agreement.

TERMINATION

- 19.1 Either Party may terminate this Agreement by providing not less than three calendar months written notice to expire at the end of either the Initial Term or if rolled over on any anniversary of the Service Commencement Date.
- 19.2 If the Customer terminates the Agreement in default of condition 19.1 above then the Customer will be liable for a default termination payment to indemnify the Contractor for loss as a result of early termination. This will be calculated as follows:
- (a) In the case of Wastes and other materials for disposal a sum equivalent to 43% of the invoices raised by the Contractor to the Customer for that Service during the last 12 months of business between the Parties.
- (b) In the case of metals and other materials purchased by the Contractor from the Customer a sum equivalent to 20% of the purchase price for the waste metals and materials paid by the Contractor to the Customer during the last 12 months of business between the Parties or the predicted business (reasonably estimated by the Contractor) over a 12 month period should the Agreement be terminated within 12 months of the Service Commencement Date.

SUB-CONTRACTING / ASSIGNMENT

- 20 The Contractor may assign the Agreement or sub-contract the performance of the whole or any part of 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 shall be deemed to have been made in England and the Parties agree to submit to the jurisdiction of the English courts.