

SCOTTISH BORDERS COUNCIL – ENVIRONMENT & INFRASTRUCTURE (WASTE SERVICES)

TERMS AND CONDITIONS OF SERVICE

1. **GENERAL**
 - 1.1 These conditions of service apply to all agreements between the customer and the Council's Waste Services Section and supersede any previous terms and conditions.
 - 1.2 The Council may require a credit application from the customer and may, in processing the credit application, make enquiries of Credit Reference Agencies, and the Council may use the information obtained for the purposes of risk assessment, fraud prevention and debit tracing.
 - 1.3 The rights and obligations of the customer under the agreement shall be personal and shall not be assigned without the express consent of the Council.
2. **DURATION**
 - 2.1 The agreement Period shall be as stipulated, and the agreement shall continue, unless terminated in accordance with the agreement, until the end of that Period.
 - 2.2 The service shall commence with effect from the date agreed between the parties.
 - 2.3 Unless stated otherwise in this agreement, during the period of agreement the customer shall not obtain the service or services substantially similar to the agreed service from any third party.
3. **PAYMENT TERMS**
 - 3.1 The charge will be calculated as stated. The amounts stated are exclusive of VAT and the customer shall pay all sums due in respect of the VAT in accordance with the invoice for the service.
 - 3.2 All payments for the service shall be due and payable within 30 days of the invoice for the service. All payments for the service under this agreement shall be paid in full without any retentions, set-offs and counter claim, and the time of payment shall be of the essence of the agreement.
 - 3.3 Any sums which are not paid by the due date shall thereafter attract interest on a daily basis at a rate of 4% per annum above the base lending rate for the time being of the Royal Bank of Scotland. Without prejudice the Council shall be entitled to withhold further performance of this agreement until all arrears have been discharged by the Customer.
 - 3.4 In addition to withholding performance for sums which are not paid in terms of this agreement, the Council reserves the right to remove any equipment provided as a result of this agreement and, on payment of all sums due, to charge for the reinstatement of the equipment to the customer's site.
 - 3.4.1 For the avoidance of doubt, in the event that the Council withholds performance and/or removes equipment, this will apply in respect to all waste and recycling collection service/equipment.
 - 3.5 Without prejudice to any other rights of the Council if there is, or if there arises, any reason to doubt that amounts due from the customer will be paid in full then the Council reserves the right to require payment in advance before considering or continuing the service, or at the sole discretion the Council may terminate this agreement forthwith.
4. **PRICE**
 - 4.1 The Council shall fix the charge for the service on an annual basis based on its financial year, however, the Council reserves the right to increase or decrease its charge for the service to take account of any variation in its costs, including wages, disposal costs, administration costs, material costs, fuel costs, taxes, duties and cost of compliance with relevant legislation. The Council will endeavour to give the customer not less than one calendar months' notice of any variation of charge under this clause, but notwithstanding this the customer shall be liable to pay any increase from the date specified in the notice of variation.
 - 4.2 Where the charge per empty is based on an assumed weight the Council may vary the assumed weight and subsequent charges proportionately at any time if the Council believes that the actual average weight per empty is less than or greater than the assumed weight.
5. **DELIVERY, ACCESS, UNLOADING AND RETURN**
 - 5.1 The Council shall deliver the equipment to the customer's collection site in the quantity specified.
 - 5.2 The customer shall provide suitable access to the collection site, and suitable facilities for vehicle manoeuvring.
 - 5.3 The driver of the vehicle, at his absolute discretion, shall refuse to deliver the equipment if he believes that access to the collection site or the facilities for vehicle manoeuvring are deficient or are unsafe or likely to cause damage to the vehicle or if there is any reason to believe that the proposed collection area is unsuitable.
 - 5.4 Subject to clause 9.2 the customer shall be responsible for the safety of any person, including the employees or agents of the Council whilst on or about the collection site.
6. **PERFORMANCE, DATES AND FORCE MAJEURE**
 - 6.1 The Council will reasonably endeavour to meet the dates for collection, which shall be working days unless expressly agreed otherwise between the Council and the customer, set out, but the Council shall not be responsible for late performance or delay in the performance of the service and any delays shall not entitle the customer to rescind the agreement.
 - 6.2 Without prejudice to the generality of clause 6.1, the Council shall have no liability for any delay or default in the provision of the service caused directly or indirectly by weather conditions, unavailability of equipment, breakdowns of vehicles, inability to access the collection site or other causes beyond the Council's reasonable control.
7. **CHANGES IN CUSTOMER REQUIREMENTS**
 - 7.1 If the customer's requirements of the service shall at any time change, the Council subject to clauses 7.2 and 7.3 shall implement such changes as are agreed between the customer and the Council.
 - 7.2 The Council and the customer shall exchange written amendments to the agreement, which for the avoidance of doubt shall include the amended changes and any changes required to the waste transfer and duty of care agreed under clause 7.1.
 - 7.3 The Council shall be entitled to charge the customer an administration charge of £30.00 + VAT in respect of any change requested by the customer in terms of clause 7.1.
8. **RISK**
 - 8.1 Risk of any loss or damage to the equipment provided by the Council in execution of this agreement shall pass and remain with the customer from the time the equipment first arrives at the collection site, except where the loss or damage arises from the negligence or the wilful default of the Council, its agents, employees or sub-contractors.
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These clauses set out the customer's rights in respect of any loss or damage caused by the provision of the service or any statements made by the Council, its employees or agents. Customers are advised to read these provisions carefully and to check that they are covered by insurance against any loss or damage that they may sustain in respect of which the potential liability of the Council is or may be restricted or excluded hereunder.

 - 9.1 The equipment provided by the Council will be deemed to be in good working order and condition and fit for the customer's purpose, save for defects not discoverable by a reasonable examination except to the extent that the customer has notified the Council to the contrary within three working days of acceptance of the equipment at the collection site.
 - 9.2 The Council accepts liability for death or personal injury to the extent that it results from the negligence of the Council, its employees or agents and further accepts liability for any breach on the part of the Council of any condition or warranty as to the title and quiet possession which may be implied by section 7 of the Supply of Goods and Services Act 1982.
 - 9.3 Subject to clause 9.4 the Council also accepts liability for any other direct loss or damage (but not any indirect or consequential loss including, but not limited to, loss of profits, production, business or reputation in relation to the equipment, the service or items belonging to the customer, its employees or agents, including personal effects) to the extent that it results from:
 - 9.3.1 A breach by the Council of any of the express provisions of these standard terms and conditions of service, or
 - 9.3.2 The negligence of the Council, its employees or agents, and does not result from, and to the extent that it is not contributed to by, the act, omission or negligence of the customer, its employees or agents, and so that the Council shall not otherwise be liable for any other defect in the equipment or loss, damage, nuisance or interference whatsoever caused by, or in relation to, the equipment, the service or items belonging to the customer, its employees or agents, including personal effects and the same shall be the liability of the customer.
 - 9.4 The Council's total liability including for related costs, fees and expressed in respect of any one transgressor, except one giving rise to the liability referred to in clause 9.2, shall be limited to £50,000.
 - 9.5 In any exclusion or limitation of liability or any other provision contained in this clause 9 or otherwise contained in the agreement is held invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if the Council thereby becomes liable for any defect or loss, damage or nuisance which would have otherwise been excluded, such liability shall be subject to the other exclusions, limitations or provisions set out in the agreement.
 - 9.6 The provisions of this clause 9 shall remain in full force and effect notwithstanding any breach of this agreement by the Council and shall apply to such breach whether or not this agreement is terminated in consequence of such breach.
10. **EMPTYING, REPLACEMENT AND REMOVAL**
 - 10.1 The customer shall at all times permit the Council, its employees or agents access to the equipment to empty or replace it, and on the termination of the agreement to remove the equipment from the collection site.
 - 10.2 All waste deposited in the equipment shall become the property of the Council from the time when the Council empties or replaces the equipment, provided that the clause shall not absolve the customer from any liability or responsibility in relation to the waste.
11. **EQUIPMENT**
 - 11.1 The customer will conform to any statutory enactments and regulations and by-laws and regulations of local or other statutory authorities which apply to the equipment.
 - 11.1.1 It shall be the responsibility of the customer to ensure that the equipment remains in a sufficiently clean state to avoid nuisance by odour or vermin.
 - 11.2 The customer shall not:
 - 11.2.1 Overload or overfill the equipment, or
 - 11.2.2 Set fire to the contents of the equipment, or
 - 11.2.3 Interfere with any mechanism on the equipment, or
 - 11.2.4 Add or attach to the equipment any sign, painting, writing, lettering or advertising, or
 - 11.2.5 Utilise any bin liner or bags/sacks in food waste containers without first having been authorised by the Council, to use that particular type of bin liner.
 - 11.3 All equipment provided shall remain the property of the Council and the customer will have no rights in the equipment other than as a mere hirer. The equipment must only be used by the customer and must be kept at the collection site. The customer will have no right of lien over the equipment. The Council will provide replacement equipment where this has been lost or damaged as a result of the Council's actions.
 - 11.4 The customer has agreed that the equipment is suitable to contain and transport the waste in the quantities specified. The Council relies on the customer's advice as to the quantity of waste involved in the provision of the service.
 - 11.5 Equipment that is damaged or lost through the negligence of the customer will be charged for (replacement or repair where possible).
 - 11.6 The Council recommends equipment is rented as part of the Trade Waste Contracts. Customers using their own equipment must ensure the following -
 - 11.6.1 Meets the Council Specification
 - 11.6.2 Is well maintained- easily movable/body is not damaged
 - 11.6.3 Can safely be attached to our lifting gear

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- 11.6.4 Unlocked and accessible by 7am on collection day
- 11.7 The Council will not be responsible for loss or damage to customer's own equipment.
- 11.8 It is the responsibility of the customer to provide replacement equipment. Whilst customers are awaiting delivery of new equipment, they must contact the Council to agree alternative collection methods.
- 12. WASTE**
- 12.1 The customer and the Council shall each sign a new waste transfer note and duty of care:
- 12.1.1 Without prejudice to clause 12.3 at any time when there is a change in any of the details set out or on any waste transfer note or duty of care, and/or
- 12.1.2 Before the expiration of any current waste transfer note and duty of care.
- 12.2 The customer warrants that the details relating to the waste, including for the avoidance of doubt, those relating to weight and compactability, contained in any transfer note or duty of care are and will be true and complete. The Council relies on those details in the provision of the service. The Council shall be entitled to take samples of the waste placed in the equipment to satisfy itself that the description of the waste is accurate, prior to the collection and disposal of the waste. Such right shall not relieve the customer of its obligations to describe the waste accurately.
- 12.3 The customer may not place or cause to be placed in the equipment any material other than waste described or, if such has been signed the waste transfer note or duty of care.
- 12.3.1 The customer may not place general waste in recycling containers; nor recycling in general waste containers.
- 12.3.2 In an area where a food waste collection service is available, the customer may not place food waste in general waste or recycling waste containers; nor general waste in food waste or recycling containers; nor recycling in general or food waste containers.
- 12.4 Without prejudice to the generality of clause 12, the Council will be entitled to refuse to deal with any material:
- 12.4.1 Which it has reason to believe is toxic, poisonous, explosive, inflammable or otherwise dangerous, or
- 12.4.2 The handling of which may cause the Council to incur civil or criminal liability, or
- 12.4.3 Which it has reason to believe is or may be a "special waste", (as described in the Special Waste Regulation 1996) or
- 12.4.4 The disposal of which may involve the Council in additional expense or an unreasonable amount of work.
- 13. NAME PLATES AND MARKER BOARDS**
- 13.1 The customer shall not remove, deface or conceal any name plate or mark indicating that the equipment is the property of the Council, and the Council shall, at all reasonable times, have access to inspect or repair any such name plate or marker boards.
- 14. DISPOSAL**
- 14.1 The Council shall use all reasonable endeavours to satisfy itself that any disposal site at which its customer's waste is disposed of is operated in accordance with statutory requirements where such disposal site is not operated by the Council. However, the Council accepts no liability whatsoever for any third party's failure so to operate.
- 15. LIABILITY OF THE CUSTOMER**
- 15.1 During the agreement the customer shall make good any damage to the equipment, fair wear and tear accepted.
- 15.2 Subject to clause 9, the customer shall indemnify and hold the Council harmless against any injury demands, actions, costs, charges, expenses, loss, damage or liability to any person or property arising from:
- 15.2.1 Any act, omission or negligence of the customer, its employees or agents, or
- 15.2.2 The provision of the service,
- 15.3 Should the customer request that the equipment is placed in a position where the vehicle has to leave the public highway to reach the collection point, the customer shall indemnify the Council and hold the Council harmless against any loss, costs, claims, damages or expenses which the Council thereby incur whether as a result of damage to the vehicle, the equipment, the property of the customer or a third party, including damage to the road margin or pavements.
- 15.4 The customer shall maintain insurance cover in respect of the indemnity and shall at the request of the Council provide a copy of the insurance policy which maintains such cover.
- 16. TERMINATION**
- 16.1 If the customer commits any breach of the agreement the Council may, in addition to its other rights in respect thereof, give notice to the customer to terminate this agreement immediately or, at the option of the Council after 21 days from the date of such notice if the customer has not remedied the breach to the Council's satisfaction during that time.
- 16.2 If the customer shall have a receiver, an administrator or an administrative receiver appointed for the whole or any part of its assets or if any order shall be made or a resolution passed for its winding up, unless this is for the purpose of its reconstruction or amalgamation, then this agreement shall be terminated forthwith.
- 16.3 Either party may terminate this agreement during the Agreement Period by the service of a notice, which must be of not less than two months duration and must be given in the manner set out in clause 18.
- 16.4 If the Council elects to terminate this agreement under clause 16.1, or the customer elects to terminate this agreement under clause 16.3, or the agreement is terminated under clause 16.2, the customer shall be liable to the Council for all charges accrued and due, and, in addition, shall pay to the Council an amount equivalent to one month's Total Charge, as stipulated, which sum is acknowledged by the customer to be a genuine pre-estimate of the loss which the Council shall incur by reason of such early termination.
- 16.5 Termination of this agreement shall be without prejudice to any rights or liabilities of either party which may have accrued to that date.
- 17. AMENDMENT**
- 17.1 The Council reserves the right to amend the agreement whether to comply with statutory requirements from time to time or any change in the legislation governing the collection, transport and disposal of waste, or if it otherwise considers necessary, and will notify any such amendment to the customer as soon as is practicable.
- 18. NOTICES**
- 18.1 Any proposal, acceptance, agreement, authority, permission or notice referred to in the agreements shall be:
- 18.1.1 In writing, and
- 18.1.2 Given to the party for whom it is intended at the address for that party as set out in this agreement, or such address as notified to the other party for that purpose, and
- 18.1.3 Given by post, facsimile or e-mail and shall be deemed to have been received two working days after the date of posting, or one working day after the date of facsimile or e-mail transmission as the case may be.
- 19. GOVERNING LAW**
- 19.1 This agreement shall be governed by and construed in accordance with the Laws of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts.
- 19.2 Any reference to any Act of Parliament, Regulation or Order shall include any re-enactment, amendment, replacement or modification thereof.
- 20. FORBEARANCE**
- 20.1 No true indulgence or relaxation on the part of the Council shown or granted in respect of any provisions of this agreement shall in any way affect diminish or prejudice the rights or powers of the Council under the agreement or operate as or be a waiver of any breach by the customers in terms of this agreement.
- 21. DEFINITIONS**
- 21.1 In these terms and conditions of supply the following words and expressions shall have the following meanings:
- (a) "assumed weight" means the assumed weight of waste as described in the transfer note and duty of care
- (b) "charge" means the total amount payable for the service in respect of the collection charge, daily rental and disposal charge.
- (c) "charge per supply" means the amount of charge per empty or collection of waste as amended from time to time pursuant to clause 4.
- (d) "charge per tonne" means the charge per tonne of waste collected in any empty, as amended from time to time pursuant to clause 4.
- (e) "collection charge" means the charge for the emptying of the equipment, as amended from time to time pursuant to clause 4.
- (f) "collection site" means the site or sites as identified by the customer.
- (g) "commencement date" means the date on which both parties sign this agreement, or the last date of signature thereof.
- (h) "Council" means The Scottish Borders Council, its employees or agents.
- (i) "customer" means the customer as detailed.
- (j) "daily rental" means the daily amount for the rental of the equipment.
- (k) "delivery charge" means the amount for the delivery of the equipment.
- (l) "disposal site" means the site or sites where the waste is disposed of.
- (m) "equipment" means each and every item of waste disposal equipment hired from the Council by the customer and includes containers.
- (n) "expected frequency" means the frequency of waste collection requested by the customer.
- (o) "relevant legislation" means any statute, EC directive or other requirements of any government, local authority or other public or competent authority and any guidelines, codes of practice and papers issued which are relevant to the parties' obligations under this agreement.
- (p) "service" means the provision of equipment, transfer note, duty of care or any other document required for the lawful storage, collection, transportation and disposal of waste as agreed between the Council and the customer.
- (q) "special waste" means special waste as defined by the Special Wastes Regulations 1996.
- (r) "transfer note" means the current controlled waste description and transfer note completed by the customer and the Council pursuant to the provisions of the Environmental Protection Act 1990.
- (s) "transgression" means any single breach, delict, or other act of default or omission or statement of the Council, its employees or agents in respect of which the Council is held liable to the customer.
- (t) "vehicle" means each and every vehicle operated by the Council, its employees or agents, which visits any collection site to deliver, empty, replace or remove equipment.
- (u) "waste" means the waste described in the transfer note and in the duty of care.
- (v) "working day" means any day excluding Saturdays and Sundays and Public Holidays designated by the Council.