

## Standard conditions of supply

### 1. **Definitions**

- 1.1 "Agreement" shall mean the Service Agreement & Waste Transfer Note incorporating these conditions and reference to a section shall be a reference to a Section of the Agreement.
- 1.2 "Assumed Weight" shall mean the assumed weight as specified in the Agreement.
- 1.3 "Business Contact Data" means the business contact information of personnel engaged by either party to this Agreement, specifically the name, business telephone number, business email address, business postal address and/or the job title of such personnel;
- 1.4 "Charge" shall mean the total amount payable for the Service in respect of the Collection Charge, Daily Rental, Delivery Charge, Waste Transfer Note Compliance Charge and Wasted Journey Charge.
- 1.5 "Charge Per Lift" shall mean the amount per lift (or collection) of Waste as specified in the Agreement as increased from time to time pursuant to clause 6.
- 1.6 "Charge Per Tonne" shall mean the amount per tonne of Waste collected in any lift as specified in the Agreement as increased from time to time pursuant to clause 6.
- 1.7 "Collection Site" shall mean the site or sites as specified in the Agreement.
- 1.8 "Commencement Date" shall mean the date on which both parties sign this Agreement.
- 1.9 "Controller" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.
- 1.10 "Customer" shall mean the customer, as specified in the Agreement.
- 1.11 "Daily Rental" shall mean the daily amount as specified in the Agreement as increased from time to time pursuant to clause 6.
- 1.12 "Data Protection Laws" means all Applicable Laws in relation to privacy and protect of Personal Data;
- 1.13 "Data Subject" means a natural person to whom Personal Data belongs to;
- 1.14 "Delivery Charge" shall mean the amount as specified in the Agreement.
- 1.15 "Equipment" shall mean each and every item of waste disposal equipment hired out by Serco to the Customer, including but limited to containers.
- 1.16 "Excess Weight Charge" shall mean the amount charged for each additional weight of Waste above the Assumed Weight or Weight Allowance, measured in kilogrammes (KGs) as specified in the Agreement.
- 1.17 "Expected Frequency" shall mean the frequency as specified in the Agreement being (in the case where the number of scheduled collections is not specified in the Agreement) the Customer's and Serco's expectation of the frequency at which it will require the collection of Waste.
- 1.18 "Expiry Date" shall mean the date which is three months after expiry of the Initial Period or any subsequent anniversary of the Commencement Date.
- 1.19 "Good Industry Practice" shall mean the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be exercised by a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions.
- 1.20 "Hazardous" shall mean Waste defined as hazardous in the revised Waste Framework Directive (2008/98/EC) and listed as being hazardous waste in the European Waste Catalogue (Commission Decision 2000/532/EC as amended and Commission Decision 2001/118/EC) as may be amended by Law.
- 1.21 "Initial Period" shall mean the period from the Commencement Date as specified in the Special Conditions which, if none is stated, will be 12 months.



- 1.22 "Law" shall mean any applicable legislation, EU regulation or directive having direct effect, provision of common law or the requirements of any government department, local authority or other public competent authority and guidelines contained in government waste management papers and codes of practice issued by the government for the waste disposal industry and which are relevant to the parties obligations under this Agreement in which case having the force of law and any change to it then in force. In this Agreement a reference to a statute or statutory provision includes any subordinate legislation made under it, any repeated statute or statutory provision which it re-enacts (with or without modification) and statute or statutory provision which modifies, consolidates, re-enacts or supersedes it.
- 1.23 "Personal Data" means information relating to natural persons who:
- (a) can be identified or who are identifiable, directly from the information in question; or
  - (b) who can be indirectly identified from that information in combination with other information;
- 1.24 "Service" shall mean the provision of Equipment and a Transfer Note (or any other document required for the lawful storage, collection, transportation and disposal of waste), collection of Waste, transport of Waste and disposal of Waste or any part thereof as agreed between Serco and the Customer.
- 1.25 "Special Conditions" shall mean any special conditions specified in the Agreement.
- 1.26 "Transfer Note" shall mean the current controlled waste description and transfer note, also known as the Duty of Care certificate, completed by the Customer and Serco pursuant to the provisions of the Environmental Protection Act 1990 and regulations made thereunder which relates to the Waste covered by this Agreement.
- 1.27 "Transgression" shall mean any single breach of this Agreement, tort or other act default omission or statement of Serco its employees, agents or subcontractors in respect of which Serco is held liable to the Customer.
- 1.28 "Vehicle" shall mean each and every vehicle owned or operated by Serco, its agents or subcontractors which visits any Collection Site to deliver, empty, replace or remove Equipment.
- 1.29 "Waste" shall mean the waste further as specified in the Agreement or in any current Transfer Note applicable to this Agreement.
- 1.30 "Waste Transfer Note Compliance Charge" shall mean the amount as specified in the Agreement as a charge for the administration of Transfer Note(s) which may be made on a monthly or annual basis and may be increased from time to time pursuant to clause 6 (and which may also be known as the EPA charge or EA Charge).
- 1.31 "Wasted Journey" shall mean where Serco is unable to provide this Service due to a breach by the Customer of any of its obligations in the Agreement or is otherwise unable to access the Equipment in order to provide the Service for reasons beyond its reasonable control.
- 1.32 "Waste Journey Charge" shall mean the amount as specified in the Agreement (and if none is specified, the proportion shall be 50% of the Charge Per Lift which Serco may charge and the Customer shall pay in the event of a Wasted Journey).
- 1.33 "Weight Allowance" shall mean the maximum allowable weight of Waste placed within each item of Equipment as specified in the Agreement.
- 1.34 "Working Day" shall mean a day (excluding Saturday and days where local holidays do not coincide with public/bank holidays) on which banks in London are open for general business.

## **2. Data Protection**

- 2.1 The parties acknowledge and agree that for the purposes of this Agreement:
- (a) each party is a Controller for the Personal Data it processes in connection with this agreement;
  - (b) each party is responsible for its own compliance with its data protection obligations under Data Protection Laws with regard to its processing of Personal Data; and
  - (c) the only Personal Data to be transmitted between the parties is Business Contact Data.



### **3. General**

- 3.1 These conditions apply to all Agreements for the supply of services by Serco and supersedes any previous terms and conditions. No additions or modifications to our terms inconsistent with these Conditions shall be binding upon Serco unless specified in the Special Conditions or specifically confirmed in writing by Serco.
- 3.2 Serco may require a credit application from the Customer and in processing the credit application the Customer consents that Serco may make enquiries of credit reference agencies or other sources, who may keep a record of Serco's enquiry and that Serco may use any information obtained for the purposes of risk assessment, fraud prevention and for occasional debt tracing.
- 3.3 The rights and obligations of the Customer under this Agreement shall be personal and shall not be assignable without the prior written consent of Serco.
- 3.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

### **4. Duration**

- 4.1 The Agreement shall commence on the Commencement Date and shall continue unless terminated in accordance with this Agreement.
- 4.2 The Service shall commence with effect from the date agreed between the parties and Serco shall provide the Service in accordance with Law and Good Industry Practice.
- 4.3 Unless stated otherwise in this Agreement during the period of this Agreement the Customer shall not obtain the Service or services substantially similar to the Service from any third party.

### **5. Payment Terms**

- 5.1 The Charge will be calculated as specified in the Agreement. The amounts specified in the Agreement are exclusive of VAT and the Customer shall pay all sums due in respect of VAT in accordance with the invoice for the Service. Serco will ensure that each invoice for the Service contains adequate details of the VAT charged. Serco will issue or make invoices available to the Customers in electronic form and may make any administration charge if the Customer requires a paper invoice.
- 5.2 All payments for the Service shall be due and payable within 30 days of the date of the invoice for the Service. The Customer shall raise any invoice queries or disputes within 14 days of the date of the invoice and the Customer shall nonetheless pay all disputed parts of the invoice by the due date. All payments made by the Customer under this Agreement shall be made in full without any set-off or counterclaim whatever and the time of payment shall be of the essence of this Agreement. The Customer may only make payment by direct debit, electronic bank transfer or by debit/credit card. Serco may make an administration charge for any Customer not paying by direct debit.
- 5.3 Any sums which are not paid by the due date shall thereafter attract interest on a daily basis at a rate of 2% per annum above the base lending rate for the time being of Barclays Bank PLC. Without prejudice to Serco's other rights in respect thereof, if the Customer defaults in payment by the due date of any amount invoiced for the Service. Serco shall be entitled to withhold further performance of this Agreement until all arrears have been discharged by the Customer.
- 5.4 The Customer agrees that Serco's records will be proof of the service provided.
- 5.5 Without prejudice to any other rights of Serco, if there is or there arises reason to doubt that amounts due from the Customer will be paid in full the Serco reserves the right to require payment in advance before commencing or continuing the Service, or at its sole discretion Serco may terminate the Agreement forthwith.
- 5.6 If the Waste is made available for collection at less than the Expected Frequency, then the Customer may be charged and shall be liable to pay Serco an amount up to the Wasted Journey Charge.
- 5.7 If Serco has agreed to pay a rebate to the customer in respect of any waste, then it shall only be required to do so if the customer has entered into a self-billing agreement in a form specified by Serco. Any rebates shall be paid to the customer by



Serco within 60 days of receipt of a valid and proper invoice. The value of any given type of waste is subject to market fluctuations and consequently the payment or amount of rebate agreed is not guaranteed and may be varies or removed by Serco at any time.

## **6. Price**

- 6.1 Unless otherwise specified in the Special Conditions Serco shall have the right to increase the Charge at any time if there is any variation in Serco's costs including (but not limited to) variations in wages, disposal costs, administration costs, costs of materials and equipment, fuel costs, taxes, duties and cost of compliance with law. Serco shall endeavour to give the Customer not less than one calendar months' notice of any variation of the Charge under this agreement but notwithstanding this the Customer shall be liable to pay any increase from the date specified in the notice.
- 6.2 Where the Charge Per Lift is based on an Assumed Weight Serco may revise the Assumed Weight (and consequently and proportionately the Charge Per Lift) at any time if it reasonably believes that the actual average weight per collection is less than or greater that the Assumed Weight.
- 6.3 Serco may charge and the Customer shall pay to Serco the Excess Weight Charge per additional KG of waste above the Weight Allowance or Assumed Weight per collection or lift.
- 6.4 Serco may charge and the Customer shall pay to Serco the Waste Transfer Note Compliance Charge, the Wasted Journey Charge and any administration charges referred to in these Conditions.

## **7. Delivery, Access, Unloading & Return**

- 7.1 The Equipment shall be delivered to the Collection Site in the quantity specified in the Agreement.
- 7.2 The Customer shall provide suitable access to the Collection Site, a suitable area for sitting the Equipment and suitable facilities for turning the vehicle around.
- 7.3 The driver of the vehicle may in his absolute discretion refuse delivery if he believes that access to the Collection Site or turning facilities are unsafe or likely to cause damage to the vehicle or if there is any reason to believe that the proposed area for sitting the Equipment is unsuitable.
- 7.4 Subject to clause 7.2 the Customer shall be responsible for the safety of any person (including the employees, agents or sub-contractors of Serco) whilst on or about the Collection Site.
- 7.5 The Customer is responsible for the training of its staff in the safe operation of any Equipment.

## **8. Performance Date & Force Majeure**

- 8.1 Serco will use reasonable endeavours to meet the specified dates for collection (which shall always be Working Days unless expressly agreed otherwise between Serco and the Customer) as specified in the Agreement but shall not be liable for late performance or delay in performance of the Service and delays shall not entitle the Customer to terminate the agreement.
- 8.2 Without prejudice to the generality of clause 8.1 Serco shall have no liability for any delay or default in the provision of the Service caused directly or indirectly by breakdown of unavailability of Equipment or Vehicles inability to obtain labour or any other causes beyond Serco's reasonable control.

## **9. Changes in Customer Requirements**

- 9.1 If the Customer's requirements for the Service shall at any time change, Serco shall, subject to clause 9.2 implement such changes as are agreed in writing between the Customer and Serco.
- 9.2 Serco and the Customer shall join in making such written amendments to the Agreement (which, for the avoidance of doubt includes the Charge) and in executing such replacement Transfer Note as may be necessary to give effect to any changes agreed under this clause 9.



## **10. Risk**

- 10.1 Risk of any loss or damage to the Equipment shall pass to and remain with the Customer from the time when the Equipment first arrives at the Collection Site except where the loss or damage arises from the negligence of wilful default of Serco, its employees, agents or sub-contractors.

## **11. Terms & Representations**

THESE CLAUSES SET OUT THE CUSTOMER'S RIGHTS IN RESPECT OF ANY LOSS OR DAMAGE CAUSED BY THE PROVISION OF THE SERVICE OF ANY STATEMENTS MADE BY SERCO, 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 SERCO IS OR MAY BE RESTRICTED OR EXCLUDED HEREUNDER.

- 11.1 The Equipment shall 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 Serco to the contrary within three (3) working days of acceptance of the Equipment at the Collection Site.
- 11.2 Subject to clause 11.3 each party ("the Indemnifying Party") shall indemnify the other party against all claims, losses and expenses arising through any negligent act or omission of the Indemnifying Party, its employees or agents, or breach by the Indemnifying Party of the terms of this Agreement, and/or (in the case of the Customer only) arising because of any substance, article or thing placed in the Waste.
- 11.3 Subject to clause 11.7 Serco shall not be liable for any indirect claim, damage or loss (for the avoidance of doubt including but not limited to claim for loss of profits), and whether caused by the negligence of Serco, its agents or employees, or as a result of any representation or condition other term, or any duty at common law, or under the express terms of this Agreement, or otherwise.
- 11.4 Notwithstanding clause 11.2:
- 11.5 Serco accepts liability for death or personal injury to the extent that it has resulted solely from negligence of Serco, its employees or agents and further accepts liability for any breach on the part of Serco of any condition or warranty as to title and quiet possession which may be implied by section 7 of the Supply of Goods and Services Act 1982.
- 11.6 Serco 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:
- (a) a breach by Serco of any of the express provisions of these standard conditions of supply; or
  - (b) the negligence of Serco, its employees or agents.
- 11.7 Serco's total liability (including for related costs, fees and expenses) in respect of any one Transgression (except one giving rise to the liability referred to in clause 11.2) shall be limited to £50,000.
- 11.8 If any exclusion or limitation of liability or any other provision contained in this clause 11 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 Serco 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.

## **12. Emptying Replacement & Removal**

- 12.1 The customer shall at all times allow Serco, its employees, agents or subcontractors access to the Equipment to empty or replace it and on the termination of the Agreement to remove it from the Collection Site.





12.2 All Waste deposited in the Equipment shall become the property of Serco from the time when Serco empties or replaces the Equipment PROVIDED THAT this clause shall not absolve the Customer from any liability or responsibility in relation to the Waste.

### **13. Equipment**

13.1 The Customer will conform to any statutory enactments and regulations and byelaws and regulations of local or other statutory authorities which apply to the Equipment.

13.2 The Customer shall not:

- (a) overload or overfill the Equipment; or
- (b) set fire to the contents of the Equipment; or
- (c) interfere with the mechanism of the Equipment; or
- (d) add or attach to the Equipment any painting, sign, writing, lettering or advertising.

13.3 All Equipment provided shall remain the property of Serco and the Customer will have no rights in the Equipment other than as a mere bailer. The Equipment must only be used by the Customer and must be kept at the Collection Site. The Customer shall have no right of lien over the Equipment.

13.4 The Customer shall be responsible for any loss, theft or damage caused to the Equipment whilst it is at the Collection Site (or elsewhere) and is not in the care or control of Serco including all charges in connection with the provision by Serco of any replacement Equipment.

13.5 The Customer has agreed that the Equipment is suitable to contain and transport the Waste in the quantities specified. Serco relies on the Customer's advice as to the quantity and weight of Waste involved in the provision of the Service.

### **14. Waste**

14.1 The Customer and Serco shall each sign a new Transfer Note: -

- (a) without prejudice to clause 14.3 at any time when there is a change in any of the details set out in the Agreement or on any Transfer Note, and/or
- (b) before the expiration of twelve (12) months from the Commencement Date or any current Transfer Note

14.2 The Customer warrants that the details relating to the Waste (including, for the avoidance of doubt, those relating to weight and compatibility) contained in the Agreement or in any Transfer Note are and will be true and complete. Serco relies on those details in the provision of the Service. Serco shall be entitled to take samples of the material placed in the Equipment to satisfy itself that the description is accurate prior to collection and disposal. Such right shall under no circumstance relieve the Customer of its obligations to describe the Waste accurately.

14.3 The Customer may not place or cause to be placed in the Equipment any material other than Waste specified in the Agreement or, if such has been signed, in the current Transfer Note

14.4 Without prejudice to the generality of the provisions of this clause 14 Serco will be entitled to refuse to deal with any material which:

- (a) it has reason to believe is toxic, poisonous, explosive, inflammable or otherwise dangerous; or
- (b) the handling of which may cause Serco to incur civil or criminal liability; or
- (c) it has reason to believe is may be a Hazardous Waste; or
- (d) the disposal of which might involve Serco in additional expenses or an unreasonable amount of extra work.

14.5 Any Waste specified by the Customer as recyclable ("Recyclable Waste") must be capable of being reprocessed in a production process for the original purpose, for other purposes, but excluding energy recovery and composting.



- 14.6 If Serco determines that the Recyclable Waste does not comply with clause 14.5, it shall inform the Customer of this non-compliance and Serco shall be entitled to landfill or otherwise dispose of or return the Waste at its discretion. The Customer shall pay to Serco under separate invoice such reasonable additional fees for the services provided under this clause 14.6 and as set out in that invoice.
- 14.7 If the Recyclable Waste is, in Serco's reasonable opinion, contaminated, then Serco may, in addition to, and without prejudice to its right to, make a Wasted Journey Charge, if it does not collect the Waste on discovery of the contamination, make an administration charge and increase the Charge (temporarily or permanent) in respect of any future collection of the Waste, if Serco decides, at its discretion, that it is able to collect it and comply with the Law.

## **15. Names Plates**

- 15.1 The Customer may not remove, deface or conceal any name plate, label or mark indicating that the Equipment is the property of Serco and Serco shall at all reasonable times have access to inspect or repair such name plates, labels or marks.

## **16. Disposal**

- 16.1 Serco will use all reasonable endeavours to satisfy itself that any Disposal Site at which the Customer's Waste is disposed of is operated in accordance with statutory requirements where such Disposal Site is not operated by Serco. However, Serco accepts no liability whatsoever for any third party's failure so to operate.

## **17. Liabilities of the Customer**

- 17.1 During the Agreement the Customer shall make good to Serco all loss of or damage to the Equipment (fair wear and tear excepted)
- 17.2 Subject to clause 11 the Customer shall indemnify and hold Serco harmless against any injury demands actions costs charges expenses loss damage or liability to any person or property arising from:
- (a) any act omission or negligence of the Customer, its agents or employees; or
  - (b) the provision of the Service
- 17.3 If the Customer requests that the Equipment be placed in a position which requires the Vehicle to leave the public highway the Customer shall indemnify and hold Serco harmless against any loss, costs claims, damages or expenses which Serco may 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.
- 17.4 The Customer shall maintain insurance cover in respect of this indemnity and shall at the request of Serco provide a copy of the insurance policy as proof of maintaining such cover.

## **18. Termination**

- 18.1 If the Customer commits any breach of this agreement Serco 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 Serco, after 21 days from the date of such notice if the Customer shall not have remedied the breach to Serco's satisfaction during that time.
- 18.2 If the Customer shall have a receiver, an administrator or an administrative administrator appointed for the whole or any part of its assets or if an 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 terminate forthwith.
- 18.3 Either party may terminate this Agreement by the service of notice which must satisfy all the following requirements to be valid:
- (a) must be expressed to expire on the Expiry Date; and
  - (b) must be given no less than three months prior to said Expiry Date; and



- (c) must be given in the manner set out in clause 20.
- 18.4 If Serco elects to terminate this Agreement under clause 18 or the Agreement is terminated under clause 18.2, the Customer shall pay all Charges accrued due and in addition shall pay to Serco as liquidated damages (and the Customer acknowledges this to be a genuine pre-estimate of the likely loss which Serco would incur in such event) for the period (the "Damages Period") from the date of such termination to the earliest date on which this Agreement could validly be terminated by a notice given in accordance with clause 18.3, the following amount:
- I. in the case of Customers for which Serco collects Waste on a scheduled basis, an amount equal to 41% of the aggregate Daily Rental and Collection Charge which would have become payable in respect of the Service during the Damages Period;
  - II. in the case of Customers for which Serco collects Waste not on a scheduled basis but upon request, an amount equal to 41% of this aggregate Daily Rental and Collection Charge which would have become payable in respect of the Service during the Damages Period on the following assumptions:
    - (a) where the Service has been provided for less than three months, that collections would have been made during the Damages Period at the Expected Frequency set out in the Agreement; or
    - (b) where the Service has been provided for more than three months, that collections would have been made during the Damages Period at the greater of (1) the Expected Frequency or (2) at the same average rate as during the three months immediately preceding the termination date
- 18.5 Serco may terminate this Agreement or subsequent provision of the Service without liability to the Customer if Serco reasonably considers that it cannot provide the Service (or any part of the Service) safely or the Customer has not signed and returned a valid Transfer Note(s).
- 18.6 Termination of the Agreement shall be without prejudice to any rights of liabilities of either party which may have accrued to that date.





## **19. Amendment**

19.1 Serco reserves the right to amend this Agreement and any terms including the Conditions as it considers necessary to comply with Law or Good Industry Practice from time to time or any change in Law governing the Collection transport and disposal of Waste and will notify any such amendment to the Customer as soon as practicable.

## **20. Notices**

20.1 Any proposal, acceptance, agreement, authority, permission or notice referred to in the Agreement shall be:

- (a) in writing; and
- (b) 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 is notified to the other party for the purpose; and
- (c) 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 transmission or e-mail as the case may be.

## **21. Miscellaneous Provisions**

21.1 No terms or provision of this Agreement shall be considered as waived by a party unless a waiver is given in writing by that party.

## **22. Governing Law**

22.1 This Agreement shall be governed by and construed in accordance with the Laws of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

22.2 Any reference to any Act of Parliament Regulation of Order shall include any re-enactment, amendment, replacement or modification thereof.

## **23. Forbearance**

23.1 No time indulgence on the part of Serco shown or granted in respect of any of the provisions of this Agreement shall in any way affect diminish, restrict or preclude the rights of powers of Serco under this Agreement or operate as or be a waiver of any breach by the Customer of the terms of this Agreement.

