

Terms and Conditions for Business Waste Collections

1. Definitions

1.1. The words and phrases below have the following meaning:

“Agreement” means the Service Schedule and the following Terms and Conditions that set out the contract between the Customer and the Council for the provision of the Services.

“Container” means each Container provided by the Council to the Customer for the storage and collection of the Waste as set out in the Service Schedule.

“Council” means St Helens Borough Council.

“Customer” means the Person, Company or Corporation set out in the Service Schedule.

“Price” means the total monthly sum of Prices for the Services provided in accordance with the Service Schedule.

“Services” mean the supply of the type and number of Containers set out in the Service Schedule, the collection of Waste from those Containers from the agreed collection point at the stated Collection Frequency and the disposal of that Waste (in addition to any other task forming part of the Service Schedule).

“Service Schedule” means the document signed by both parties to which these Terms and Conditions apply that confirms and describes the full extent of the Services provided by the Council to the Customer under this Agreement.

“Waste” means anything that is Waste within the meaning of Article 3(1) of the Waste Framework Directive (Directive 2008/98/EC of the European Parliament) described in the Service Schedule with reference to the European Waste Catalogue (List of Wastes), as may be amended from time to time in accordance with these Terms and Conditions.

“Waste Transfer Note” means the written information forming part of the Service Schedule describing the Waste to be transferred under this Agreement to secure compliance with the Environmental Protection Act 1990 s34(c) or any such replacement Waste Transfer Note to be signed by the Customer and the Council from time to time.

2. Duration of Agreement

2.1. This Agreement shall commence on the date stated in the Service Schedule and shall continue thereafter until it is terminated by either party upon giving not less than 90 days’ notice in writing.

3. Hire of Containers

3.1. The Council will deliver the Container(s) described in the Service Schedule within 10 working days of the commencement of the Agreement. The collection Services shall commence on delivery.

3.2. The Container(s) shall remain in the ownership of the Council at all times. The Customer shall have no title to the Container(s), or right to withhold such Container(s) from the Council, under any circumstances.

3.3. The Container(s) shall remain on the Customer’s premises at the risk of the Customer and the Customer shall indemnify the Council from and against all actions, costs, charges, claims,

demands and expenses brought against the Council by reason of any injury or damage in respect of the Container(s) hired and in accordance with this Agreement.

- 3.4. The Customer shall examine the Container(s) at the time of delivery. The Container(s) will be deemed fit for purpose and in good condition unless the Council is informed of any defects within Two (2) Working Days of delivery.
- 3.5. The Customer is responsible for any damage to a Container other than for fair wear and tear or any damage caused by the Council during collections.
- 3.6. The Council reserves the right to change the type of Container provided to the Customer for operational reasons by replacing it with a reasonable alternative of the same or greater volume.
- 3.7. The Customer shall take full responsibility for the Container(s) from the time of delivery and shall:
 - 3.7.1. Ensure Container(s) are loaded properly, safely, and evenly such that the lid remains fully shut;
 - 3.7.2. Not use the Containers for the disposal of anything other than the waste outlined in the Duty of Care Waste Transfer Note. This includes, but is not limited to, hazardous waste as defined in the Hazardous Waste (England and Wales) Regulations 2005 (as amended), metals of any description, builder's materials (including asbestos and plasterboard), glass or liquids including engine and food oils;
 - 3.7.3. Only use the Containers for the disposal of Business Waste produced at the Customer's premises;
 - 3.7.4. Clean the Container(s) as required to maintain them in a sanitary condition;
 - 3.7.5. Report to the Council as soon as possible any faulty or damaged Container(s).
- 3.8. Upon termination of this Agreement, the Customer shall permit the Council reasonable access to remove the Container(s) and any other Council-owned property supplied in connection with the Services. In the event that the Customer prevents recovery of the Container(s), the Council will invoice the Customer for the reasonable replacement cost.

4. Council's Obligations

- 4.1. The Council shall deliver the Services described in the Service Schedule to the extent that the Customer complies with the terms of this Agreement.
- 4.2. Subject to the provisions of Clause 10, the Council will indemnify the Customer against any damage, loss or injury resulting from the negligence of its employees or agents whilst on the Customer's premises in the performance of the Services.
- 4.3. The Council will endeavour to provide regular and consistent collection Services on the day(s) of the week detailed in the Service Schedule, but the timing and day(s) of collections is not of the essence.
- 4.4. The provision of the Services may be varied by the Council during Bank Holidays, other holidays, during emergency or to meet other operational requirements including inclement weather or in other circumstances outside the control of the Council. The Council shall not be liable for any losses, damages or expenses incurred by the Customer resulting from a delay in

the provision of the Services and the Customer shall be liable to pay the Price of the Services insofar as the Council performs its obligations under the Agreement within a reasonable time.

5. Customer's Obligations

- 5.1. The Customer must complete, sign and return the Duty of Care Waste Transfer Note before the Services commence and thereafter on an annual basis within 14 days of request by the Council. Should the Customer fail to return a complete Waste Transfer Note, the Council shall suspend collections until such time as a completed Waste Transfer Note is received or the Agreement is terminated. The Customer shall continue to pay the Price during such period of suspension.
- 5.2. The Customer warrants that the Duty of Care Waste Transfer Note shall contain an accurate and adequate description of the nature and characteristics of the waste material. The written description of the waste material in the Duty of Care Waste Transfer Note must contain sufficient information to enable safe and legal handling, recovery or disposal.
- 5.3. The signed copy of each Duty of Care Waste Transfer Note must be retained by the Customer for two years after the date of the last collection specified in the Duty of Care Waste Transfer Note and must be shown, on request, to an authorised person.
- 5.4. The Customer agrees to present Waste in accordance with the written description provided in the Service Schedule or any replacement Waste Transfer Note agreed and signed by both parties on the day of collection.
- 5.5. Ownership of the Waste shall pass to the Council at the time of collection upon removal of the Waste from the Customer's premises under this Agreement. This shall not relieve the Customer of its obligations under this Agreement or applicable legislation.
- 5.6. The Customer shall provide suitable access for the Council to deliver, empty, inspect, repair or replace any Container at all reasonable times.

6. Missed and Refused Collections

- 6.1. The Council shall not be liable to the Customer for missed collections due to access issues, parked cars, highway maintenance, adverse weather conditions or other events outside of the Council's control.
- 6.2. In the event that the Council is unable to access the Container due to circumstances outside of either party's control, the Council will use reasonable endeavours to reschedule the collection.
- 6.3. If the Council is unable to access the Container due to a locked gate, inadequate access or other reason within the control of the Customer, the Council reserves the right to charge an additional fee for a rescheduled collection as outlined in the Service Schedule.
- 6.4. The Council may refuse to collect a Container presented by the Customer for collection where the Waste:
 - 6.4.1. Does not match the description provided in the Service Schedule and/or Waste Transfer Note;
 - 6.4.2. May be dangerous or injurious to the health or safety of Council employees in accordance with the Control of Substances Hazardous to Health Regulations 2002 (as may be amended or superseded), for example, oil, clinical waste, asbestos, chemicals, large car parts, gas bottles, tyres, soil, builder's waste (sand, bricks, large pieces of

wood) or any material not specified as the “description of waste” on the Waste Transfer Note;

- 6.4.3. Contains raw meats requiring rendering or incineration in accordance with The Animal By-Products (England) Regulations 2005;
 - 6.4.4. May cause the Council to incur civil or criminal liability;
 - 6.4.5. Is unsuitable for the Council’s collection vehicle;
 - 6.4.6. Is over-spilling the Container and the lid will not close and in the reasonable opinion of the Council cannot be emptied within safety guidelines;
 - 6.4.7. Is making the Container too heavy to move or lift safely.
- 6.5. If the Council refuses to collect Waste under this Clause 6, it shall not be in breach of the Agreement and the Customer will not be entitled to a refund. The Council will require the Customer to remove any non-compliant Waste from the Container before the next scheduled collection.
- 6.6. Where the Customer has excess Waste which will not fit within the Container(s), the Council may agree to collect such excess on receipt of payment of an excess waste charge as set out in the Service Schedule. Excess Waste will only be collected where this has been agreed in advance with the Council.

7. Variation of the Services

- 7.1. The Customer may request a change of Container size or number by providing 30 days’ written notice to the Council. Any such request will require a change to the Service Schedule and may lead to a change in Price. An updated Service Schedule must be signed by both parties before the service change is implemented. Where applicable, the Customer will also be required to complete a new Waste Transfer Note to which the provisions of Clause 5 apply.
- 7.2. The Council may, subject to reasonable written notice, change the day(s) on which the Customer’s Waste is collected and such change shall not be considered a material change capable of giving rise to a breach of the Agreement.

8. Price and Payment

- 8.1. The Price charged for the Services provided in accordance with the Service Schedule shall be the total sum of the itemised Prices as set out in the Council’s Fees and Charges Policy as amended from time to time in accordance with Clause 5.1.
- 8.2. The Price of the Services is not subject to Value Added Tax (VAT). If VAT becomes payable on the Services following the date of this Agreement, the VAT payable will be in addition to the Price and will be payable by the Customer. The Council will give the Customer 30 days’ notice in writing of any changes to the rules on VAT on the Services.
- 8.3. The Customer shall also pay the following additional charges as they arise during the period of the Agreement:
 - 8.3.1. Any costs reasonably incurred by the Council due to the Customer’s failure to comply with its obligations under this Agreement, including the costs incurred in recovering any outstanding sums due.

- 8.3.2. A copy charge of £10 per document if the Customer requests a copy of a Waste Transfer Note or other document provided to the Customer as evidence of the Council's provision of the Services.
- 8.3.3. Any costs reasonably incurred by the Council as a result of the Services being changed or cancelled by the Customer without reasonable or proper notice in accordance with these Terms and Conditions.
- 8.3.4. Any costs incurred by the Council in dealing with overloaded Container(s) that result in spillage and that the Customer requests the Council to remove.
- 8.3.5. Any costs for excess waste which the Council agrees to collect.
- 8.3.6. Any costs incurred by the Council as a result of loss or damage to Container(s) provided in connection with the Services.
- 8.4. The Council shall be entitled to review the Price annually, with any Price increase to apply from 1st April of the relevant year. The Council shall notify the Customer in advance of any such increase in the Price and the Customer shall be entitled to terminate the Contract on the service of 30 days' written notice.
- 8.5. The Customer shall pay the Council the Price for the Services monthly in arrears by Direct Debit unless otherwise agreed as stated in the Service Schedule.
- 8.6. If a Direct Debit payment request fails, the Council retains the right to suspend the Services from the end of the calendar month until the outstanding sums due are paid. If sums remain outstanding for more than 28 days, the Council reserves the right to recover the Container(s) from the Customer's premises.
- 8.7. Where any outstanding payment is subsequently made and Services are to recommence, a redelivery charge will apply in order to return the Container(s) to the Customer as set out in the Service Schedule.
- 8.8. Where the Customer requires additional ad-hoc Services over and above the Services described in the Service Schedule, the Customer shall make an immediate one-off payment for those additional services over the telephone or request an invoice.

9. Limitation of Liability and Indemnity

- 9.1. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
 - 9.1.1. Death or personal injury caused by negligence.
 - 9.1.2. Fraud or fraudulent misrepresentation.
 - 9.1.3. Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2. Subject to Clause 9.1, the Council's total liability to the Customer for all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the Charges paid by the Customer to Council in respect of the Services in the 12-month period prior to the event or events leading to the Customer's loss. The Council shall not be liable for any loss of profit, or any indirect or consequential loss arising under or in connection with this Agreement.

- 9.3. In relation to the provision of the Services, the Customer shall indemnify the Council against any:
- 9.3.1. Act, omission or negligence of the Customer or their agents;
 - 9.3.2. Costs or liabilities incurred from the placement of Waste in any Container(s) that does not conform to the description of Waste stated in the Service Schedule and/or current Waste Transfer Note;
 - 9.3.3. Breaches by the Customer or their agents of any law;
 - 9.3.4. Loss or damage to a Container occurring at any time after delivery, otherwise than that resulting from fair wear and tear or the Council's negligence.
- 9.4. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delay in performance, or any failure to perform, any of its obligations under this Agreement (and the time for performance shall be extended accordingly) if, and to the extent that, such delay or failure is due to circumstances beyond its reasonable control including, but not limited to, flood, fire, earthquake, riots, adverse weather, industrial disputes not involving employees of such party, or epidemic or pandemic.

10. Termination

- 10.1. Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving written notice to the other party if:
- 10.1.1. The other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified to do so in writing;
 - 10.1.2. The other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the Court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.
- 10.2. Additionally, the Council may terminate this Agreement immediately by giving written notice to the Customer if:
- 10.2.1. The Customer fails to return the Waste Transfer Note to the Council;
 - 10.2.2. The Customer fails to pay any amount due under the Agreement on the due date for payment;
 - 10.2.3. The Customer breaches any Health and Safety legislation or Waste legislation;
 - 10.2.4. The Customer or their agent offers, gives or agrees to anyone any inducement or reward in respect of this or any other Council contract, commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972, or commits any fraud in connection with this Agreement or any other Council contract.
- 10.3. Either party may terminate the Agreement without cause by giving the other party 90 days' written notice.

11. Consequences of Termination

- 11.1. Upon termination of the Agreement, the Customer shall pay to the Council any outstanding sums due in accordance with these Terms and Conditions.
- 11.2. The Council shall be entitled to enter onto the Customer's premises to recover the Container(s). If the Council is unable to recover the Container(s) or the Container(s) are recovered damaged (other than by fair wear and tear or negligence of the Council), the Customer will be invoiced for the cost of replacement Container(s).
- 11.3. If the Agreement is terminated by the Customer without providing 90 days' notice in advance (in accordance with Clause 10.3), the Council shall be entitled to invoice the Customer for the Price of the Service up to the expiry of the 90-day notice period.
- 11.4. Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 11.5. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement, shall remain in full force and effect.

12. Assignment and Sub-Contracting

- 12.1. The Customer shall not assign or transfer the Agreement to another party without the prior written consent of the Council.
- 12.2. The Council may assign or sub-contract its rights or obligations under this Agreement without the consent of the Customer.

13. Third Parties

- 13.1. No Term or Condition of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

14. Law and Jurisdiction

- 14.1. This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England.