

## Terms and Conditions for Commercial Waste Services:

### 1. Definitions and interpretations

In this Agreement the following words and expressions shall have the following meanings:

**'Agreement'** means the Application Form, the Waste Transfer Note and these Terms and Conditions;

**'Agreement Period'** means the period in clause 2;

**'Application Form'** means the application form for the provision of the Services;

**'Charges'** means the fee charged by the Council for the Services and as set out at our website [www.bournemouth.gov.uk/commercialwaste](http://www.bournemouth.gov.uk/commercialwaste);

**'Collection Day'** means the dedicated day the Waste is collected;

**'Collection Point'** means the point for collection of Waste as determined by the Council;

**'Commencement Date'** means the date on which the Services start. The Commencement Date cannot be earlier than the date that this Agreement is signed by the parties.

**'Container'** means the container(s) provided by the Council for the storage of Waste.;

**'Council'** means Bournemouth Borough Council and includes any agent appointed by the Council to deliver the Services;

**'Customer'** means the person or business stated on the Application Form;

**'Customer Container'** means a container for the storage of Waste not provided by the Council;

**'Excess Waste'** means Waste that exceeds Container capacity;

**'Presented'** means the presentation of the Container(s) for Collection including, but not limited to, access to Container(s) through locked gates and or entrances and or blocked access.

**'Services'** means the collection of Waste from the Collection Point and the supply of the Container(s) to the Customer;

**'Waste'** means the Customer's waste to be collected by the Council and as described in the Waste Transfer Note. **'Waste Transfer Note'** means the waste transfer note that describes the composition and nature of Waste to be collected.

### 2. Period of the Agreement

2.1. This Agreement shall start on the Commencement Date and shall continue for 12 calendar months and will, unless stated otherwise in the Application Form, be renewed automatically thereafter for successive terms of 12 calendar months unless terminated earlier in accordance with the provisions of this Agreement.

### 3. Provision of the Services

3.1. The Council agrees to provide the Services in accordance with the provisions of this Agreement making collections on the days, at the frequency and for the amounts set out in this Agreement.

3.2. The Services shall be limited to the number and volume of Container(s) in the Agreement and for which payment has been agreed. No refund will be made where the volume of Waste collected is less than that set out in this Agreement. No excess Waste will be collected unless by prior arrangement with the Council and will be charged for accordingly.

3.3. The frequency of the Services may be changed by the Council during Bank Holidays, other holidays, during a civic emergency, to meet other operational requirements including bad weather or in other circumstances which impact on the Council's ability to provide the Services and which are outside the control of the Council. Such changes will, where possible, be notified to the Customer in advance. If the Council is not able to provide the Services on the scheduled days, the Council agrees to reschedule the Services at the earliest possible opportunity without cost to the Customer. The Customer agrees to assist the Council where the need to reschedule the Services is required and accepts that circumstances may require the Customer to use a different method for storage of Waste (such as by the use of sealed bags) temporarily at the Customer's own risk and cost.

3.4. The Council may make operational changes during the Agreement Period to ensure that the Services are provided in an efficient and cost-effective manner. The Customer will be informed of such operational changes as soon as reasonably possible.

### 4. Customer's responsibilities

4.1. The Customer acknowledges that it has a duty of care under the Environmental Protection Act 1990 to take all reasonable steps to ensure that waste is managed in an authorised manner. As part of this duty, the Customer must ensure that a written description of the Waste is provided to the Council by way of a Waste Transfer Note before the collection of any Waste. The Waste Transfer Note must advise the nature and composition of the Waste, how it will be stored and contain sufficient information to enable safe and legal handling, recovery or disposal of the Waste. Where there are regular collections of the Waste and the description remains unchanged the Waste Transfer Note can be valid for up to one year. The Customer is required by law to keep the Waste Transfer Note(s) for at least two years after the date of the last collection. Failure to comply with these legal obligations could result in a £5000 maximum fine on summary conviction.

4.2. The Customer warrants that the Waste Transfer Note contains an accurate description of the nature and characteristics of the Waste and that they shall ensure that the Council at all times of the composition of the Waste prior to collection.

### 5. Storage and Collection

5.1. On Collection Day, the Council shall have clear access to the Container(s). If access to the Container(s) is blocked and prohibits collection, the Council shall make one additional attempt for collection within 48 hours of the Collection Day. Further attempts to collect will be classed as an 'extra service' and will incur an extra charge. If the Customer believes their collection has been missed they should notify the Council within 24 hours of the Collection Day.

5.2. Container(s) shall be Presented in a safe and secure manner for convenient collection by the Council. The Container lid must be closed and location of the Container(s) must be as agreed in the site visit undertaken by the Council.

5.3. The Waste must not contain any liquids, any material which is toxic, corrosive, flammable, explosive or hazardous or any waste that is or is likely to be a health and safety risk to any person, and the Council reserves the right at any time to refuse to collect, deal or handle any Waste which does not conform to the description provided in the Waste Transfer Note.

5.4. If collection has been refused on the grounds that the Waste does not conform to the description provided in the Waste Transfer Note the Customer will be responsible for the removal of Waste from the Container or held liable for the costs incurred by the Council for such removal and for damage caused to the vehicle or contamination of the vehicle load.

5.5. The Council shall be entitled to take test samples of the Waste at any time to satisfy itself that the Customer's description of the Waste is true, accurate and complete.

5.6. All Containers provided by the Council to the Customer under this Agreement remain the property of the Council and may only be used in accordance with this Agreement. The Customer shall have no right, title or interest in the Container(s) (and the same shall not be sold or otherwise disposed of). The Customer shall not use the Container for incineration or any other purpose other than the storage of non-hazardous Waste. The Customer shall bear all the risks involved in the siting, storage, loading, and use of the Container(s) and accepts responsibility for all loss, damage or defacement of the Container(s). The Customer shall take all reasonable care of the Container(s) keeping them in a clean and good condition at the cost of the Customer including the cost of cleansing. The Customer shall immediately inform the Council of any defect affecting the Container.

5.7. The Customer must not overload the Container(s) nor load the Container(s) in a way which makes emptying unsafe. The Council reserves the right to refuse to empty any Container(s) if in the reasonable opinion of the Council the Container and/or the Waste is unsafe.

5.8. No mechanical means will be used to compact the contents being placed in the Container(s) without the prior written consent of the Council.

5.9. The Customer shall ensure that the Waste intended for collection by the Council is in the Container(s) and is not put, stored or kept outside of the Container(s) in any other way. Any Waste stored or kept outside the Container(s) will be Excess Waste and incur an additional Charge.

5.10. The Customer shall not make any alterations or improvements to the Container(s) without the prior written consent of the Council.

5.11. The Council shall not be held responsible for any damage to access ways, road surfaces, parking areas, footways, kerbs etc belonging to the Customer or third parties resulting from the weight or size of the waste collection vehicles.

5.12. This Agreement does not give permission to deposit any Waste on the public highway except on the Collection Day as set out in this Agreement.

5.13. The Customer agrees that the Council will acquire full title to the Waste once it is collected and the Council will have the right to handle, deal with and dispose of the Waste in accordance with best practice.

5.14. The Customer will not, without the Council's prior written permission, place any name or sign, marking, advertising on the Container(s) and will not remove, cover, deface or conceal the name, sign, marking, advertising placed by the Council on the Container(s).

5.15. The Customer hereby grants the Council and its agents a licence to enter the premises to deliver the Services in accordance with this Agreement or to recover its property at any time with or without vehicles and with or without notice.

### 6. Charges

6.1. In consideration for the provision of Services, the Customer agrees to pay the Council the Charges. The Charges will be reviewed annually each April.

6.2. The Charges will be calculated in accordance with rates set by the Council and the frequency of the Services throughout the Agreement Period. The Charges do not include Value Added Tax which is not applicable to the Services.

6.3. The Council shall be permitted to either increase or decrease the Charges payable by the Customer during the Agreement Period and the Customer will be advised of any change as soon as reasonably practicable. The Customer shall have the option to terminate this Agreement within 14 days of receiving written notice of any change to the Charges by giving 30 days written notice.

6.4. Invoices for two wheeled bins (240 & 360 Litres) will be issued annually in April each year. The Charges shall be payable:

a. Annually in advance, with the first payment being made within 14 days of the Council issuing an invoice to the Customer; or

b. By direct debit in a maximum of 6 equal instalments over the first 6 months of the Agreement Period.

6.5. Invoices for four wheeled Eurobins (660, 940 & 1100 Litres) will be issued (in advance of the service) quarterly (April – June, July – September, October – December and January – March) from the first Monday in April each year. The Charges shall be payable:

a. Quarterly in advance, with the first payment being made within 14 days of the Council issuing an invoice to the Customer; or

b. By direct debit in a maximum of 3 equal instalments over 3 months. Invoice terms are strictly 14 days from the date of invoice.

6.6. The Customer shall pay the Council the Charges as specified in the invoice. In the event that any payment is not made when due, the Council may exercise its statutory right to claim interest and compensation for debt recovery costs.

6.7. If the Customer fails to make payment by the due date, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. This clause shall not apply to payments the Customer disputes in good faith.

6.8. The Customer shall have the right to request a change to the collection frequency, Container quantity and or size. Requests must be made in writing to the Council. Any change shall be confirmed in writing by the Council to the Customer. Any change may result in an increase or decrease in Charges and a revised invoice shall be issued accordingly.

6.9. The Council may terminate this Agreement if Charges remain unpaid. The Council reserves the right to remove the Container(s) from the Customer's premises and charge a removal fee. .

### 7. Termination.

7.1. The Agreement may be terminated at any time after the initial 12 month period by either party giving to the other 30 days' written notice.

7.2. Upon termination the Customer may receive a pro-rata refund of any Charges paid in advance. Refunds are subject to any cost to repair damage to the Container and/or to clean a Container in order to bring the Container back into a condition suitable for re-supply/re-hire.

7.3. Termination of this Agreement shall be made by either party without prejudice to any right or liabilities which may exist up to the date of termination.

7.4. If this Agreement is terminated the Customer will make the Container(s) immediately available for collection by the Council and will immediately pay all Charges due under this Agreement.

7.5. The Council reserves the right to terminate the Agreement for any breach or give notice to the Customer of its intention to terminate and allow a reasonable time for this breach to be remedied to the Council's satisfaction.

### 8. Indemnity and Liability

8.1. The Customer will be responsible for the Container(s) and for the safety of all people (including waste collection workers) entering the premises where the Customer keeps, stores or sites the Container(s) and the Customer will be liable and agrees to indemnify the Council against any such liability, losses and claims whatsoever for injury or death to persons or loss or damage to property including the Containers unless such loss or damage is caused by the negligence of the Council.

8.2. The Customer will indemnify the Council against all claims arising through any neglect, act or breach by the Customer in connection with this Agreement.

8.3. The Council will not be liable to the Customer by reason of any delay in performing or failing to perform any of the Council's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Council's reasonable control.

8.4. The Customer agrees to indemnify the Council against any loss or damage to the Container(s) and the Customer must keep the Container(s) insured against such loss or damage and for third party risks.

8.5. The Customer will compensate the Council for any damage caused to the refuse collection vehicle following misuse of the Container (s) or its incorrect contents. The method of assessing such compensation will be calculated at the sole discretion of the Council or the Council's insurers.

### 9. Assignment

9.1. The Customer shall not transfer, assign or sublet the whole or any part of this Agreement without the written consent of the Council.

9.2. The Council shall be entitled to transfer, assign or sublet this Agreement.

### 10. Severability

10.1. If any part of the Agreement is held to be invalid, illegal or unenforceable for any reason such part shall be removed and the remainder of the Agreement shall continue in full force and effect.

### 11. Waiver

11.1. Failure by a party to enforce the terms of the Agreement to require performance by the other party of any terms of the Agreement shall not be a waiver of such term and shall not affect the Agreement or the right of a party to enforce any such term.

### 12. Notices

12.1. Any notices referred to in this Agreement shall be made in writing and given to the intended party by hand, delivered by prepaid first class post or electronic transmission to the address set out in this Agreement. Any notice shall be deemed to be received two working days after posting, at the time of delivery by hand and at the time of transmission by email.

### 13. Entire Contract And Variations

13.1. This Agreement constitutes the entire agreement between the Customer and the Council in respect of the provision of the Services.

13.2. The Council shall be entitled to amend or vary this Agreement to comply with current legislation but shall advise the Customer of any such changes as soon as reasonably practicable. Any other variation to this Agreement shall be agreed in writing between the parties.

### 14. Third Party Rights

14.1. Except where expressly provided for in the Contract including clauses 15 and 18, the parties agree that a person who is not a party to the Contract may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

### 15. Law and Jurisdiction

15.1. This Agreement will be governed by and interpreted in accordance with English law and will be subject to the jurisdiction of the courts of England.

### 16. Data Protection Act 1998

16.1. Personal information provided by the Customer in this contract will be held and used in accordance with the requirements of the Data Protection Act 1998.

16.2. Detailed information is required for the purpose of administering trade refuse collection and may be used for the wider purposes of cleansing and waste in general, within Council policies.

16.3. Information provided by the Customer in the contract may be disclosed to relevant departments within the Council or to its agents. Information may also be disclosed outside of the Council to relevant Government Departments.

### 17. Freedom of Information

17.1. The Council has an obligation to comply with the Freedom of Information Act 2000. At its sole discretion and notwithstanding any other conditions of the contract, the Council shall be entitled to disclose to third parties any and all terms and conditions of the contract and the contents of any documents and information relating to the contract pursuant to the Freedom of Information Act 2000.

17.2. The Customer shall co-operate with the Council and supply to it, at no cost to the Council and within seven days of receipt of any request received by the Council pursuant to the Freedom of Information Act 2000, all necessary information and documentation required in connection with any such request.

### 18. Force Majeure

18.1. Neither party will be liable for breach of its obligations under this Agreement to the extent that any such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the party in default), lightning strike, earthquake, pandemic outbreak of an infectious illness, war, military operations, act of terrorism or riot, but nonetheless each party will use all reasonable endeavours to perform its obligations under the Contract.

18.2. Where an event specified in 18.1 occurs the affected party will notify the other in writing of the cause and likely duration of the non-performance. Where performance is affected for more than 30 days, the Customer will notify the Council whether it requires the Services to be recommended, varied or cancelled (without further liability to either party).

The following types of waste will be collected by the Council under the terms of this Agreement:

**Generally:** Commercial waste as defined by section 75 (7) of the Environmental Protection Act 1990 and Schedule 4 of the Controlled Waste Regulations 1992 and any replacements or amendments thereto. See [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk) or [www.netregs.gov.uk](http://www.netregs.gov.uk) for further guidance

**Exclusions:** The following types of waste are specifically excluded from this Agreement:

1. Any liquid wastes or wastes containing liquids
2. Hazardous wastes as defined by the Hazardous Waste (England and Wales) Regulations 2005 and identified as hazardous within The List of Wastes (England) Regulations 2005.
3. Waste derived from activities involving excavation, demolition or construction