

## Trade Waste Agreement - Terms and Conditions

Please read these Terms and Conditions before you sign your Trade Waste Agreement with the Council.

Please note the contract is between the Council and the person(s)/company named on the agreement - the contract is non-transferable

### 1 Definitions and Interpretations

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

**"Agreement"** means the Form of Agreement for the Collection of Waste signed by the Parties together with these Terms and Conditions;

**"Agreement Period"** means the period set out in clause 2;

**"Charges"** means the charges described in clause 10 and where applicable includes the separate and/or combined charges for the hire and provision of a Container or the collection of Material Waste;

**"Container"** means the container or containers provided or hired by the Council to the Customer forming part of the Services under this Agreement or additions provided by the Council from time to time;

**"Council"** means Castle Point Borough Council or any statutory Successor;

**"Customer"** means the legal person to whom the Council provides Services under this Agreement and referred to on the Form of Agreement;

**"Customer Container"** means a container not provided by the Council under this Agreement and referred to in clause 8;

**"Form of Agreement"** means the Form of Agreement signed by the Parties containing details and particulars of this Agreement and the Services

**"Hazardous Waste"** means the hazardous waste referred to in clause 5;

**"Location of Transfer"** means the collection address referred to in the Form of Agreement;

**"Services"** means the services set out in clause 3 and in the Form of Agreement;

**"Start Date"** means the last date that all of the following conditions have been fulfilled; i) the Parties signing this Agreement and ii) the parties signing the Waste Transfer Note (WTN); and iii) receipt of the waste container.

**"Waste Material"** means the Customer's waste material complying with the description contained within the Waste Transfer Note (WTN) and the terms of this Agreement;

**"Waste Transfer Note"** means the waste transfer note referred to in clause 4 and signed by the Parties from time to time;**2 Period of the Agreement**

2.1 This Agreement shall commence on the Start Date as stated in the Form of Agreement. The agreement will automatically be renewed for a period of one year on the 1<sup>st</sup> April each year, for each successive year unless terminated earlier as provided for by this agreement.

### **3 Services Provision**

3.1 The Council agrees to provide to the Customer the waste collection service and where applicable the use of the Container (the 'Services') at the Location of Transfer in accordance with this Agreement making collections at the frequency, places and for the amounts specified in this Agreement.

3.2 The Services shall be limited to the number and volume of Containers stated in the Agreement and for which payment has been made.

3.3 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 does not undertake to provide an alternative collection that week. Where possible the Council will endeavour to notify the Customer in advance. Any such variation will be without liability to the Council however the Council will endeavour to make arrangements for any uncollected Waste Material/Container to be collected.

3.4 The Council reserves the right to make operational changes as it deems necessary during the Agreement Period to ensure that the Services are provided to all customers in an efficient and cost-effective manner. The Customer will be notified of such operational changes, if not in advance, as soon as possible.

3.5 No later than the Start Date and thereafter throughout the Agreement Period the Customer shall have obtained and thereafter maintain a Duty of Care Controlled Waste Transfer Note for the purposes of all Waste Material collected under this Agreement.

3.6 Subject to the Customer obtaining and maintaining a Duty of Care Controlled Waste Transfer Note throughout the Agreement Period as stated in Condition 3.5 the Services shall commence on the Start Date and continue thereafter subject to and in accordance with the terms of this Agreement.

3.7 Should the Council fail to provide the Services on any day scheduled for the collection of the waste the Customer shall be under a duty to notify the Council within one working day of the said failure to collect. Notice by the Customer shall be communicated to the Council by the soonest most practicable means. The Customer shall be liable to pay for the missed collection. However the alternative or subsequent collection of the uncollected Waste Material/Container will be made without charge to the Customer.

### **4 Duty of Care Controlled Waste Transfer Note**

4.1 The Environmental Protection Act 1990 places a Duty of Care on the producer of waste. The law requires that Waste Producers take all reasonable steps to ensure that waste is managed in an authorised manner. The Waste Producer must ensure the waste is properly contained and does not escape from their control and is only transferred to an

authorised person with a written description of the waste on a Duty of Care Controlled Waste Transfer Note.

4.2 The Customer warrants that the Duty of Care Controlled Waste Transfer Note contains an accurate and adequate description of the nature and characteristics of the Waste Material and that the Council is advised at all times of the composition of the Waste Material prior to collection. The Customer must complete, sign and return the Duty of Care Controlled Waste Transfer Note before collections can commence. The Duty of Care Controlled Waste Transfer Note signed by the Council will be issued with the trade waste agreement and yearly thereafter.

4.3 The written description of the Waste Material in the Duty of Care Controlled Waste Transfer Note must contain sufficient information to enable safe and legal handling, recovery or disposal. It must also contain reference to the appropriate six-digit code in the European Waste Catalogue. The Duty of Care Controlled Waste Transfer Note must also show the quantity of the Waste Material and how it is contained.

4.4 Waste Material for collection through this Agreement shall not include any liquids, or any material which is toxic, corrosive, flammable, explosive or hazardous.

4.5 Where there are regular collections of the Waste Material and the description remains unchanged the Duty of Care Controlled Waste Transfer Note can be valid for up to one year.

4.6 The signed copy of the Duty of Care Controlled 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 Controlled Waste Transfer Note and must be shown, on request to an authorised person.

## **5 Hazardous Waste**

5.1 The Waste Material collected through this Agreement must not contain hazardous waste ('Hazardous Waste') as defined below.

5.2 Hazardous Waste must be managed in accordance with the Hazardous Waste Regulations introduced in 2005. The inclusion of Hazardous Waste with the Waste Material collected through this Agreement is prohibited and illegal.

5.3 Waste materials that contain hazardous properties harmful to human health or the environment are identified in the European Waste Catalogue available on the Environment Agency Web site and are deemed to be hazardous waste.

Examples of waste considered hazardous include:

Asbestos  
Lead acid batteries  
Cathode Ray Tube TV's and Computer Monitors  
Fridges and Freezers  
Fluorescent light tubes  
Chemical wastes  
Pesticides  
Oily sludge's

## **6 Animal By-Products (ABPs)**

6.1 The Waste Material collected through this Agreement must not contain Category 1 or 2 ABPs, which include items like dead pet, zoo, experimental & farm animals, manure and digestive tract content. Category 3 ABP is, however, accepted. For more information on meeting these requirements please visit: [www.gov.uk/dealing-with-animal-by-products](http://www.gov.uk/dealing-with-animal-by-products)

## **7 Storage and Collection**

7.1 Containers and bags shall be sited in a safe and secure position for convenient collection as agreed with the Council. Containers need to be collected from a position of stable, solid ground. The route that the container needs to be moved across must also be solid and stable without obstruction or kerbs etc. I.e. Container should not be stored on grass or have to be moved across a gravel path. The Container lid must be closed after use and bags securely tied closed. In addition to the prohibition of Animal by-products and Hazardous Waste and other forms of waste referred to in Conditions 3, 4 and 5 the Customer must not dispose of waste that constitutes or is likely to constitute a health and safety risk to any persons emptying or collecting or disposing of the waste or emptying the Container.

7.2 All Containers provided by the Council to the Customer under this Agreement shall remain the property of the Council and may only be used in accordance with the terms of this Agreement. The Customer shall bear all the risks involved in the siting, storage and use of the Containers and Waste Material and will therefore accept responsibility for all loss, damage or defacement of the Containers. The Customer shall take all reasonable care of the Containers keeping them in a clean and good condition entirely at the cost of the Customer including the cost of cleansing, repair or replacement as may be required. The Customer will not be responsible for normal wear and tear unless it is a Customer Container. The Customer shall immediately inform the Council of any defect affecting the Container

7.3 The Customer must not overload Containers either in terms of volume or weight nor load the Containers in a manner, which makes emptying unsafe. The Services will not be undertaken if in the reasonable opinion of the Council the Container and/or Material Waste has been left in any way described in this Condition.

7.4 The Customer shall ensure that the Waste Material intended for collection by the Council is deposited in the Containers and/or bags as agreed with the Council and is not deposited, stored or kept outside other than in such Containers and/or bags.

7.5 The Customer shall provide safe and unobstructed access to the Waste Material/Containers on the day of collection. If access to the Waste Material/Container continues to be obstructed the Council reserves the right to charge for any additional collection cost or to terminate the Agreement.

7.6 The customer shall inform the Council with 7 days notice if the waste receptacle needs to be relocated to another site. This will be charged at £50 for the first waste receptacle and £20 for each waste receptacle there after. Relocation of waste containers can only be undertaken by the Council.

7.7 The Council shall not be held liable 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. Details of the size and weight of the vehicle used can be obtained from the Council upon written request.

7.8 This Agreement does not give authority to deposit any waste on the public highway in advance of collection. The Services shall not apply to the collection of Waste

Material/Containers placed on the public highway except where a separate written approval has been obtained by the Customer from the Council. Any approval given will be subject to strict limitations on the time, day and manner of the deposit.

7.9 The Customer warrants that it has absolute title to the Waste Material and has a right to deposit the Waste Material in the Container or make it available for collection and disposal.7.10 The Customer acknowledges that the Council shall acquire full title to the Waste Material when it is loaded into the Council's collection vehicle.

7.11 Except for a Customer Container the Customer shall not without the Council's prior written permission place any name or sign, marking, advertising or other device and shall not remove, cover or deface the name, sign, marking, advertising or other device placed by the Council on the Containers.

7.12 The Customer hereby gives the irrevocable right and licence to enter the Location of Transfer or wherever premises the Containers are kept at any time with or without vehicles and with or without notice for the purposes of assessing and/or removing the Container.

## **8 Containers Owned By The Customer**

8.1 Customer Containers provided by the Customer shall be properly and regularly maintained in a good condition and cleansed by the Customer at its own expense to ensure that the Customer Container is clean and safe for collection and emptying by the Council.

8.2 All such Customer Containers shall be regularly inspected by a competent person to ensure that they can be safely handled by Council collection staff and safely emptied by the lifting equipment employed by the Council.

8.3 For the avoidance of doubt notwithstanding the provision by the Customer of a Customer Container the Customer shall otherwise comply with all the terms and conditions of this Agreement

## **9 Compliance with the Legislation and Guidance**

9.1 The Council and the Customer shall comply with all legislation and officially recognised guidance and codes of practice relating to the Services including the Environmental Protection Act 1990 and the Control of Pollution Act 1974.

## **10 Charges**

10.1 Collection charges including any variations (the 'Charges') for the Services shall be determined by the Council from time to time. The Charges are normally set on an annual basis from the 1st April each year but the Council reserves the right to determine Charges at any time.

10.2 The Charges payable shall be those calculated in accordance with the rates set by the Council and the frequency of the Services throughout the Agreement Period. Value Added Tax is not payable or charged for the Services provided by the Council.

10.3 The Council reserves the right to vary the Charges payable by the Customer during the Agreement Period (for example changes to overheads such as fuel, value added tax and landfill tax) and notice will be given to the Customer as soon as possible prior to the implementation of any variation to the Charges. The Customer shall pay any additional

Charges arising from a variation under this Condition within 7 days of receiving an invoice from the Council demanding payment. Alternatively the Customer may discharge the requirement to pay the Charges in full by setting up with a Bank, in advance of the First Date of Collection, a Direct Debit Mandate in favour of the Council obliging the Customer through its Bank to make payments to the Council by Direct Debit (on such terms to be agreed by the Council) for the Agreement Period and each Renewal Period.

10.3.1 The Council reserves the right to charge businesses administrative and handling charges where bins have been removed due to non-payment.

10.3.2 The Council reserves the right to charge an administrative fee where additional resource is required by The Council to process a customer request where deemed appropriate.

10.4 The Customer shall pay the Charges in full for the entire Agreement Period within 7 days of the invoice being sent and thereafter in advance of each successive Renewal Period. The invoice will be sent when the waste container has been delivered. Alternatively the Customer may discharge the requirement to pay the Charges in full by setting up with a Bank, in advance of the First Date of Collection, a Direct Debit Mandate in favour of the Council obliging the Customer through its Bank to make payments to the Council by Direct Debit (on such terms to be agreed by the Council) for the Agreement Period and each Renewal Period.

10.5 If payment of the Charges is not received whether formally demanded or not the Council may terminate the Services with immediate effect and the bin(s) removed. The Council reserve the right to charge for a 28 day notice period. The Council shall have the right to recover all outstanding and unpaid monies due and owing to the Council arising from this Agreement by whatever lawful means available.

10.6 Rebates shall not be made where the number of Containers made available for collection is less than the number stated in this Agreement.

10.7 Any changes to the type size and amount of Containers or the frequency of the collection in Services shall require written agreement between the parties and may result in an increase in charges.

10.8 Requests for variation in the level of Services shall be submitted in writing ten working days in advance.

10.9 Any agreed changes shall not affect the validity of this Agreement and this Agreement shall be amended accordingly, unless a new Agreement is required.

10.10 The Council reserves the right to make an additional charge, based on its published fees and charges, for waste it collects which is in excess of the amount specified in this Agreement. Only waste contained within the specified receptacle will be collected. Additional waste can only be cleared by prior arrangement and will be charged for.

10.11 Additional collections can be organised via prior arrangement and will be charged for, an admin charge may also be chargeable.

## **11 Termination**

11.1 If the Customer shall fail to comply with this Agreement, (excluding non payment – see 10.5) the Council may, in writing, on giving 7 days notice, terminate the Agreement.

11.2 The Agreement may be terminated at any time by either party giving to the other written notice of not less than 28 days to that effect.

11.3 Upon termination of the Agreement, the Customer may apply in writing for the refund of any unexpired portion of the Charges for the remainder of the Agreement Period on a pro rata basis. Refunds will be subject to a cancellation charge to cover administrative costs as determined by the Council from time to time and subject to the cost to repair any damage to the Container and/or to clean a Container required in order to bring the Container back into a condition suitable for re-hire accepting fair wear and tear to the Container. Refunds less than £25 in value will not be refunded due to administration costs.

11.4 Termination of this Agreement by effluxion of time or otherwise shall be without prejudice to any claim one party may have against the other arising from this Agreement either before or after its termination.

11.5 Upon termination of this Agreement by effluxion of time or otherwise the Customer shall forthwith make the Containers immediately available for collection by the Council and shall forthwith pay all sums due under this Agreement.

## **12 Indemnity and Liability**

12.1 The Customer shall be wholly responsible for the Containers and the safety of all persons (including waste collection workers) entering the Location of Transfer or wherever the Customer keeps, stores or sites the Waste Material/Container and the Customer shall 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 arising therefrom except where death or injury to a person or damage to property is caused by the negligence of the Council.

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

12.3 The Customer shall indemnify the Council against any damage its collection vehicle may cause to the road/drive, car park surface, or any other property (whether public or private areas) where the collection vehicle is required to enter to perform the Services including all apparatus or services located beneath the route taken by the collection vehicle subject to the Council's driver operating with normal care and attention.

12.5 The Customer is therefore advised to undertake whatever risk assessment it considers necessary arising from the above responsibilities/liabilities described in this Condition 12 (and throughout this Agreement) and to advise the Council in writing of any risks identified and the suggested action to deal with such risks. The Customer should also consider whether its insurance for such risks is adequate. Should the Customer take out insurance for any such risks the Customer shall ensure that the Council's interest is noted on the policy and that the policy is available for inspection by the Council upon request.

### **13. Force Majeure Clause**

13.1 For the purpose of this Condition, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the party concerned, including (but not limited to) governmental regulations, fire, flood or any disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractors organisation.

13.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations here under for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 6 months, either Party may terminate the Contract by notice in writing with immediate effect.

13.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor

13.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Condition 61.1. it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

13.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

### **14 Assignment**

14.1 The Customer shall not transfer, assign or sublet the whole or any part of this Agreement (and for the avoidance of doubt including a Container) without the written consent of the Council and any such transfer, assignment or sub-letting (without the consent of the Council) shall operate to terminate this Agreement automatically.

14.2 If the Customer is vacating the premises they must give 28 days' notice to cancel the agreement. If less than 28 days notice is given the full notice period will be charged for and the bins will be removed before the customer vacates the premises.

14.3 If the Customer has vacated the premises without formally terminating this waste agreement they will remain liable for all charges. If the Council become aware the premise has been vacated, and the waste agreement has not been terminated, the Council will terminate the waste agreement with immediate effect. The Customer will be liable for all charges up to and including the termination date. The Council reserve the right to charge for a 28 day notice period after the termination date.



14.4 If the Customer vacates the premises without terminating the waste agreement no refund of charges already paid will be made.

14.5 The Council reserves the right to transfer, assign or sublet the whole of benefits and burdens of this Agreement upon giving one month prior notice in writing to the Customer.

## **15 Confidentiality**

15.1 Unless having been placed under an obligation to do so by a court or other body or agency of competent authority or jurisdiction (including the Information Commissioner, Government Agency, the Council, WTN inspector and External Auditor) the Parties agree to keep confidential this Agreement.

## **16 Severability**

16.1 If any provision of the Agreement is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

## **17 Waiver**

17.1 Failure by a Party at any time to enforce the provisions of the Agreement to require performance by the other Party of any provisions of the Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Agreement or any part thereof or the right of a Party to enforce any provision in accordance with the Agreement.

## **18 Notices**

18.1 Except as otherwise expressly provided by the Agreement no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

18.2 Any written notice or other communication which is to be given to a Party, shall be delivered by post or by hand or sent by fax or electronic transmission to the relevant Party's address and/or fax/email address (as applicable) as set out above or as that Party shall notify to the other Party.

18.3 Properly addressed postal notices shall be deemed to have been served 2 working days after the date of posting; notices delivered by hand shall be deemed to be served at the time of delivery and notices sent by fax or email shall be deemed to be delivered at the time of sending provided that a confirmation report of successful transmission is obtained.

## **19 Whole Contract And Variations**

19.1 This Agreement constitutes the whole agreement between the Customer and the Council in respect of the provision of the Services and the Customer acknowledges that in entering into this Agreement no reliance has been placed upon any representation, act, omission except as set out in this Agreement.

19.2 Any variation to this Agreement shall be of no effect unless expressed in writing and signed by an Authorised Officer of the Council and the Customer

19.3 The Customer acknowledges that it can place no reliance on any representation, act or omission of the Council unless confirmed in writing by an Authorised Officer of the Council.

## **20 Third Party Rights**

20.1 For the avoidance of doubt nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement and the parties hereby agree to exclude the provisions of the Contract (Rights of Third Parties) Act 1999.

## **21 Law and Jurisdiction**

21.1 This Agreement shall be governed by and construed in accordance with the laws of England and to the exclusive jurisdiction of the English Courts.

## **22. Mediation in the event of dispute**

**22.1** Without prejudice to all other rights and remedies available to the parties, if any dispute arises in connection with this Agreement the Supervising Officer or Director or Directors or senior representatives of the Customer with authority to settle the dispute will within fourteen days of a written request from one party to the other meet in good faith to resolve the dispute. If the dispute is not resolved at that meeting the parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation procedure. Unless otherwise agreed between the parties the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute requesting mediation. The mediation will start not later than fourteen days after the date of the ADR Notice. If the dispute is not resolved following the CEDR Mediation Procedure within one calendar month of a written request to resolve the dispute by arbitration Clause below shall apply

## **23. Arbitration**

23.1 Subject to any detailed provisions otherwise herein contained any disputed matter under this Lease may be referred to arbitration under the Arbitration Act 1996 to a single arbitrator appointed by the parties to this Agreement. If they do not agree the appointment then the President of the Law Society or the person for the time being authorised on his behalf may appoint the arbitrator at the request of either party

## **24. Data Protection and Information Sharing**

24.1 Notice is hereby given to the Customer that pursuant to the General Data Protection Regulations and the Data Protection Act 2018 the Council may use the Customers data appearing in this Agreement for the purpose of the provision of its commercial waste collection service and to confirm and update the Council's records held for this purpose.

24.2 The Council works closely with a number of bodies and agencies to promote the social well-being of the community and protect those who live in the Community.

Sometimes, we may decide that it is necessary to share information with our partner agencies to:

- Check the accuracy of the data we hold
- Preserve or save life and reduce accidents

- Reduce crime and disorder
- Ensure we meet our statutory and regulatory legal obligations, including those related to diversity and equality of opportunity
- For law enforcement, regulation, licensing, criminal prosecution and court proceedings
- Protect public funds from false claims and overpayments
- Recover money owed to the Council

24.3 The Council will process your data in line with our Privacy Notices and our Policies and procedures. Full Details can be found on the Council's website at <https://www.castlepoint.gov.uk/info-governance>