

# Trade Effluent Services Ltd

## Terms and Conditions

### 1. Definitions

In these terms and conditions ("these Conditions") the following words have the following meanings:-

- 1.1 **"Analytical Service"** a service whereby the Company samples and identifies the Waste prior to its removal from the Premises for treatment or disposal;
- 1.2. **"Company"** Trade Effluent Services Limited;
- 1.3. **"Contract"** the contract between the Company and the Customer for the supply of the Service;
- 1.4. **"Customer"** the person, company, firm or organisation agreeing to purchase the Service;
- 1.5. **"Environmental Laws"** all directives, statutes, ordinances, byelaws, regulations and codes of practice for the protection of the environment or the regulation or control of environmental hazards or pollution having the force of law in the United Kingdom;
- 1.6. **"Equipment"** any plant or equipment supplied by the Company for use in connection with the Service;
- 1.7. **"Premises"** the premises from which the Waste is to be collected in the performance of the Service;
- 1.8. **"Quotation"** any quotation given to the Customer by the Company for servicing the Waste;
- 1.9. **"Service"** a service whereby the Company collects Waste from the Premises and transports it to a point for treatment or disposal and "service" and "serviced" are to be construed accordingly;
- 1.10. **"Waste"** the waste, by-product or other material (whether or not controlled waste) specified in the Waste Specification;
- 1.11. **"Waste Specification"** the specification of the Waste contained in the Quotation or (where no Quotation is issued) contained in the waste transfer note signed by the Customer.

### 2. Interpretation

- 2.1. References to a party's **"personnel"** are to that party's employees, agents and contractors.
- 2.2. Any notice or notification required by these conditions must be in writing.
- 2.3. The Contract is governed by the laws of England and Wales.

### 3. Application of these Conditions

- 3.1. These Conditions govern the Contract and prevail over any terms put forward by the Customer unless the Company agrees to the Customer's terms in writing. No conduct on the part of the Company is to constitute acceptance of any terms put forward by the Customer.
- 3.2. No addition to or variation of these Conditions is binding on the Company unless agreed to in writing by a director of the Company.
- 3.3. The Customer acknowledges that it has not relied upon any representation, recommendation or advice in entering into this Contract other than such as has been confirmed in writing by the Company and the Customer waives any claim in respect of any representation, recommendation or advice which has not been so confirmed.

### 4. The Company's obligations

- 4.1. The Company will service the Waste in a proper and efficient manner in accordance with the Contract and comply in the performance of the Service with all Environmental Laws except insofar as these are the Customer's responsibility under the Contract.
- 4.2. All terms, conditions and warranties relating to the Service or the quality or manner of its performance implied by common law, statute or otherwise are excluded to the fullest extent permitted by law.
- 4.3. Unless otherwise specifically agreed in writing all dates and times for collection of the Waste quoted by the Company are estimates only and the Company will not be liable to the Customer for any delay in the provision of the Service.

### 5. Customer's warranties

- that:-
- 5.1. Except as provided in clause 5.2, the Customer warrants
    - 5.1.1. It is the owner of the Waste and free to transfer it to the Company for servicing in accordance with the Contract;
    - 5.1.2. The Waste is accurately described in the Waste

Specification and will at all times correspond with that description;

5.1.3. The constituents of the Waste are compatible and stable and no hazard will arise from the mixing of the Waste with other Wastes;

5.1.4. Company personnel are authorised to enter the Premises with vehicles and Equipment for the purpose of dismantling, recovering, packaging, loading and removing the Waste and Equipment;

5.2. Where the Company has agreed to provide the Analytical Service to the Customer the warranties contained in clauses 5.1.2 and 5.1.3 are only given if and to the extent that responsibility for the subject matter thereof is not assumed by the Company as part of the Service to be provided

5.3. The warranties contained in clause 5.1 are fundamental terms and (except as provided in clause 5.2) they shall not be qualified or impaired by any inspection by the Company of the Waste or by any sample and subsequent analysis of the Waste by or on behalf of the Company.

### 6. Waste Specification

6.1. The Customer must permit Company personnel free and immediate access to the Premises from time to time upon request for the purpose of inspecting and sampling the Waste.

6.2. The Customer must supply to the Company such evidence of the origin and composition of the Waste as it may require:-

6.2.1. to verify that the Waste conforms to the Waste Specification; and/or

6.2.2. to comply with Environmental Laws.

6.3. If at any time the Waste does not conform with the Waste Specification the Company may without incurring any liability suspend the Service (wholly or in part) and refuse to accept or collect the Waste or any part of it until such time as the Waste conforms with the Waste Specification.

6.4. If the Company unknowingly accepts or collects Waste which does not conform with the Waste Specification the Customer must indemnify the Company against any additional costs incurred in its disposal.

6.5. The Customer must notify the Company immediately of any change or likely change in the Waste Specification with sufficient details thereof to enable the Company to decide whether or not the Customer's Waste is capable of being serviced under the Contract.

6.6. If by reason of any change in the Waste Specification the Company is or will be unable to service the Waste in accordance with Environmental Laws it may terminate the Contract immediately by notice to the Customer.

6.7. If by reason of any change in the Waste Specification the cost of servicing the Waste increases or will increase or the terms of the Contract are or will become otherwise detrimental to the Company, the Company may suspend the Service without incurring any liability whilst the parties negotiate revised terms. If the parties cannot agree revised terms within 14 days of the suspension of the Service the Company may terminate the Contract immediately by notice to the Customer.

6.8. Suspension of the Service pursuant to clauses 6.3 or 6.7 is without prejudice to the Company's right to payment of any Equipment rental or additional charges specified in the Contract until the Service is resumed or to recover any other loss or expense incurred by the Company consequent upon the suspension of the Service.

### 7. Customer's responsibilities

- 7.1. The Customer is responsible for:-
  - 7.1.1. providing a suitable and safe vehicular access to the collection point on the Premises;
  - 7.1.2. giving adequate notice to Company personnel of site regulations and safe working procedures insofar as they relate to the provision of the Service;
  - 7.1.3. the health and safety of all Company personnel on Site.

7.2. The Company may refuse to provide the Service if it reasonably considers that the work required might place at risk any person, vehicle, requirement or property.

7.3. If Customer changes or proposes to change the collection point on the Premises then the Company may increase its charges by such sum as reasonably reflects any increase in the cost of the Service in consequence of the change or proposed change.

7.4. Except where the Company is to package and label the Waste as part of the Service, the Customer must ensure that all drums, other sealed containers and packages are:-

- 7.4.1. sound;
- 7.4.2. suitable for the Waste; Continued Over page
- 7.4.3. labelled in accordance with Environmental

Laws; and

- 7.4.4. free of any other label or marking.

7.5. If the Service comprises or includes the Cleaning Service then (without prejudice to the generality of sub-clause 7.1.3) before the start of the Cleaning Service the Customer at its cost must provide the Company with:-

- 7.5.1. a written risk assessment of the method proposed for undertaking the Cleaning Service for agreement by the Company;
- 7.5.2. any special personal protection equipment reasonably required by the Company's employees to perform the Cleaning Service over and above that issued by the Company as standard to its employees;
- 7.5.3. written confirmation that all electrical equipment has been isolated, all potential hazards neutralised and all appropriate safety checks carried out in the area in which the Cleaning Service is to be undertaken.

## 8. Equipment

8.1. Any Equipment supplied by the Company is to remain the Company's property and the Customer must not sublet or otherwise part with possession of such Equipment.

8.2. The Company may at its discretion at any time replace any Equipment supplied with other Equipment.

8.3. The Customer must:-

- 8.3.1. not paint or mark the Equipment nor deface any marking upon the Equipment;
- 8.3.2. not overload, improperly load or otherwise misuse the Equipment;
- 8.3.3. secure the Equipment against damage, theft or vandalism.

8.4. The Equipment must not be sited on a highway (public or private). Subject to this the Customer is responsible for the placement of the Equipment

8.5. The Customer is responsible for and must indemnify the Company against any loss or damage to the Equipment (other than ordinary wear and tear) and the cost of repairs and expenses resulting from the Customer's failure to take reasonable care of the same.

## 9. Title to and risk in the Waste

Title to the Waste and responsibility for its disposal passes to the Company at the time that the Waste is conveyed off the Premises in the Company's vehicle provided that there has been no breach by the Customer of the warranties in clause 5.

## 10. Liability for breach

10.1. The Customer is to indemnify the Company its associated or subsidiary companies and personnel against all proceedings, claims, costs and losses (including any claim for economic loss), arising from any breach of the Customer's obligations under this Contract (except to the extent that these were caused or contributed to by the negligence of the Company or Company personnel).

10.2. The Company will not be liable to the Customer for:-

- 10.2.1. any consequential loss or damage (whether for economic loss or otherwise) or any other claims for consequential compensation whatsoever caused by the Company or its personnel arising from or in connection with the Service; and
- 10.2.2. any other loss or damage arising from or in connection with the supply of the Service unless written notification thereof is received by the Company within 28 days of the date upon which the Service is completed.

10.3. The Customer must afford the Company a reasonable opportunity of making good any defect in the Service. The liability of the Company for any defect in the Service provided is not to exceed the amount of the charges receivable by the Company for providing the Service under this Contract.

10.4. Nothing contained in this Contract is intended to affect nor will it affect the rights of the Customer under the Unfair Contract Terms Act 1977.

## 11. Payment terms

11.1. Unless otherwise stipulated in the Quotation, the Customer must pay the Company's charges for the Service together with value added tax thereon in full within 30 days of the date of the Company's invoice without deduction or set-off. Time for payment is of the essence.

11.2. If Customer fails to make any payment on the due date then without prejudice to any other right or remedy the Company may:-

11.2.1. charge interest on unpaid invoices at the rate of 4% above the base rate of National Westminster Bank plc in force at the due date from the due date to the date of payment (both before and after judgment); and/or

11.2.2. suspend the provision of the Service until all overdue invoices have been paid in full.

11.3. If the Company incurs any increase in the cost of the Service as a result of:-

11.3.1. compliance with changes in legislation (or applicable codes of practice or best working practices in the waste industry); or

11.3.2. any increase in the rate of landfill tax or any other environmental tax charge or levy imposed upon the collection, treatment or disposal of the

Waste; or

11.3.3. any increase in vehicle excise duty; or

11.3.4. any increase in fuel costs.

The Company may by not less than 14 days' notice in writing to the Customer increase the charges for the Service by such amount as fairly reflects any such increase in cost.

## 12. Termination

12.1. If:-

12.1.1. the Customer commits a breach of the terms of this Contract, or,

12.1.2. the Customer permits a supervisor, receiver, administrator, administrative receiver or other encumbrance to take possession of or be appointed over the whole or any part of the assets of the Customer, or,

12.1.3. the Customer ceases or threatens to cease to carry on business, or,

12.1.4. the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or,

12.1.5. an event occurs which is in the reasonable opinion of the Company so prejudicial to the interests of the Company as to justify termination of this Contract the Company may at any time thereafter determine this Contract immediately by notice to the Customer.

12.1.6. The rights of termination contained in these Conditions are without prejudice to the accrued rights of the parties at the date of termination which shall survive termination. Upon termination the Company may remove the Equipment and enter upon the Premises or other land on which the Equipment is sited for such purpose.

## 13. Force Majeure

The Company shall not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Service, if the delay or failure was due to any cause beyond the Company's reasonable control.