

SPINNAKER WASTE MANAGEMENT LIMITED TERMS AND CONDITIONS OF BUSINESS

1. DEFINITIONS:

1.1 In these terms and conditions ("conditions") the following words shall have the following meanings:-
"the Act" means the Environmental Protection Act 1990.

"the Carrier" means any person, firm or company (which may for the avoidance of doubt from the Company) as may from time to time be nominated by Company to collect the Contract Waste or any part thereof on behalf of the Company (where this is the responsibility of the Company).

"the Client" means the party for whom the Company agrees to collect, recycle and dispose of Contract Waste.

"the Company" means Spinnaker Waste Management Limited and its successors and assigns.

"Contract" means each agreement made between the Company and the Client for the Collection, Recycling and Disposal of Contract Waste.

"Contract Waste" means and includes any material intended or tendered for recycling or Disposal hereunder and detailed in the Company's quotation.

"Contract Waste Description" means and includes the description, details and information in relation to the Contract Waste set out in the Company's quotation and set out in any transfer note (in the case of Contract Waste which is "Controlled Waste" as defined in the Act) or in any consignment note (in the case of any Contract Waste which is "Hazardous Waste" as defined in the Regulations).

"Disposal" means the disposal of Contract Waste and where the Company accepts responsibility for such matters the collection, transport, provision of receptacles, treatment, recycling and any other handling method of Contract Waste.

"Ongoing Contract" means any Contract which is not either for a specified fixed term or a limited number of collections/disposals.

"Order Details" means and includes the Contract Waste Description and all details and information in the respect of the Contract Waste set out on the Company's quotation form including any special conditions.

"Permissible Tolerances" means any tolerances in respect of the constituent elements of Contract Waste which are acceptable to the Company and which have been detailed in the Order Details.

"the Transit Period" means the period commencing on arrival at the place of collection of any vehicle provided by Company or Carrier for transport of the Contract Waste and ending on completion of discharge of Contract Waste from such vehicle at Company's or Client's premises.

2. GENERAL:

2.1 These conditions shall be deemed to be incorporated into every Contract and shall notwithstanding any statement to the contrary contained in any of the Client's communications prevail over any conflicting or inconsistent terms and conditions contained in any order, letter or form of contract sent by the Client to the Company or any other communication between the Client and the Company whatsoever and whatever their respective dates unless or to the extent that any variation of these conditions shall be expressly agreed in writing and signed by one of the Company's directors.

2.2 These conditions and the relevant quotation of the Company comprise and represent the entire agreement between the Company and the Client and the Client agrees that it has not been induced to enter into any Contract on the basis of any representation made by the Company or its officers and agents.

2.3 No order placed with the Company shall be binding until the Company has received a completed and accepted quotation duly signed and dated by an authorised representative of the Client.

2.4 All dealing between the Company and the Client are confidential. The Client may not disclose information concerning contracts with the Company (unless required by law) to any third party without the consent of the Company.

2.5 Any reference in these conditions to any provisions of the statute or regulation/statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2.6 The headings in these conditions are for convenience only and shall not affect their interpretation.

2.7 All quotations issued by the Company shall be deemed to have lapsed if not accepted within 30 days of issue.

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3. DELIVERY/COLLECTION:

3.1 Where the Company has accepted responsibility in its quotation form for the collection of the Contract Waste then the Company or the Carrier shall endeavor to collect the Contract Waste on the date requested.

3.2 The Company shall not under any circumstances be liable to compensate the Client for any indirect or consequential loss whatsoever whether arising from the Company's failure or its Carrier's failure to collect the Contract Waste on any specified date or the Company's inability to accept waste being delivered by the client upon the date or at the time requested by the Client.

3.3 If in circumstance where it is the Company's responsibility to collect Contract Waste the Client fails to make the Contract Waste readily available for collection or to provide a safe means of access then the Company's obligations under the contract are suspended until such time as the Client provides a safe means of access.

3.4 The ownership of all products will pass to the Company at the time they are accepted and loaded onto out transport and any waste note is issued to the Client

4. STATUTORY NOTICES:

4.1 The Client is responsible for ensuring compliance with the provisions of Regulations, the Act or any re-enactment or amendment thereto, or any order, regulation or delegated legislation made thereunder or any like provision of statute or delegated legislation calling for the service upon the proper authorities of notices as to the removal and deposit of Contract Waste. Before either any collection of Contract Waste is due to be delivered to the Company's promises the Client shall provide the Company with a copy of any notice required to be served as aforesaid.

5. ON SITE CONTAINERS:

5.1 Blue Box supply and return:

- The blue box is designed to stay on a customer's site for a maximum of 6 months rental or earlier if filled
- The initial cost of the blue box will be invoiced to the client at the time the blue box has been deposited on the client site
- More than one blue box may be ordered and invoiced accordingly
- Payment is due 14 days from the date of the invoice
- The initial payment allows for the blue box to be left on site for a maximum of 6 months
- During the 6 month period, the blue box will be collected on request or at the end of the 6-month period, whichever is sooner
- A replacement blue box can be ordered and delivered at the time of the collection of the original blue box and will be invoiced accordingly. This will be provided under the same terms as the original box
- If collection or exchange has not been booked by the end of the 6 month period, then a maximum of a two week grace period may be allowed before Spinnaker Waste Management Limited collect the blue box or re-invoice a further 6 month period
- The blue box scheme allows for the storage of hazardous and non-hazardous WEEE. (Waste Electrical and Electronic Equipment), which is in scope of the WEEE regulations.

5.2 Blue box exclusions:

The following materials must NOT be placed inside the blue box:

- Waste consisting wholly or mainly of dusts
- Batteries (suitable containers available on request)
- Liquids of any sort
- Paints
- Lubricants
- Fluorescent tubes
- Fire alarms
- Smoke detectors
- Fire extinguishers

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5.3 Miss use charges:

- Spinnaker Waste Management Limited reserve the right to charge the client a sum equal to the full costs of cleaning or having treated in an environmentally sound manner, any unauthorised waste placed into the blue box and subsequently collected by the company.

5.4 Fluorescent Tube Holder

- Spinnaker Waste Management Limited, are able to provide a variety of tube holders in which fluorescent tubes may be safely stored
- Safety instructions for the safe storage of fluorescent tubes will be clearly displayed on the tube holder together with instructions on what to consider doing in the event of breakage of any such tube
- The tube holder is designed to stay on a customer's site for a maximum of 6 months but can be removed from site during the 6 month period for environmentally sound disposal
- If collection or exchange has not been booked by the end of the 6 month period, then a maximum of a two week grace period may be allowed before Spinnaker Waste Management Limited collect the tube holder or re-invoice a further 6 month period
- Delivery of and collection of the full tube holder will be undertaken by Spinnaker Waste Management Limited
- The initial cost of the tube holder will be invoiced to the client as soon as the tube holder has been deposited on the client's site along with the required waste note fee
- The initial payment allows for the tube holder to be left on site for a maximum of 6 months
- During the 6 month period, the tube holder will be collected on request or at the end of this period, whichever is sooner
- A replacement tube holder can be ordered and delivered at the time of the collection of the original tube holder and will be invoiced accordingly. (to be used for a maximum of 6 months)
- The tube holder allows for the storage of fluorescent tubes only
- No other material is allowed to be stored within the tube holder
- Spinnaker Waste Management Limited reserve the right to charge the client a sum equal to the full costs of cleaning or having treated in an environmentally sound manner, any unauthorised waste placed into the tube holder and subsequently collected by the company
- Spinnaker Waste Management Limited reserve the right to charge the client the full costs of repairing or replacing any tube holder which has been damaged, lost or stolen whilst left on the client site
- It is important that the client treats the storage of fluorescent tubes with 'due care'. This is because the tubes contain hazardous material in the form of Mercury (Hg). Spinnaker Waste Management Limited reserve the right to charge all costs in association with the environmentally sound disposal and cleaning of the tube holder where it is found that more than 5% of the overall number of fluorescent tubes have been broken prior to collection.

6. CLIENTS GENERAL OBLIGATIONS:

6.1 The Client warrants and undertakes to the Company that all Contract Waste tendered for Disposal shall conform in all respects with the Order Details.

6.2 You agree that your waste will follow the **Waste Hierarchy process**. The waste hierarchy is set out at Article 4 of the revised Waste Framework (Directive 2008/98/EC). The definitions of each of the stages can be found in Article 3 of the Directive. Non-exhaustive lists of disposal and recovery operations can be found in Annexes I and II of the Directive, respectively. It gives top priority to preventing waste in the first place. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (e.g. landfill).

The "**waste hierarchy**" ranks waste management options according to what is best for the environment. If your business or public body produces or handles waste materials or products, you need to apply the waste hierarchy to these wastes. Specific guidance is available for a wider range of waste products and materials.

The ranking of the various waste management options are based on *current scientific research* on how the options impact on the environment in terms of climate change, air quality, water quality and resource depletion.

6.3: What does my business or organisation have to do by law?

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(a) Does your business or public body (including local authorities on behalf of householders) *produce or handle waste*? This includes importing, producing, carrying, keeping, treating or disposing of waste; dealers or brokers who have control of waste, and anyone responsible for the transfer of waste.

To check whether something is waste see the 'draft' Definition of Waste 2010 guidance visit <http://webarchive.nationalarchives.gov.uk/20100505154859/http://www.defra.gov.uk/corporate/consult/waste-definition/index.htm>

This duty will also apply to those who operate under waste exemptions from the Environmental Permitting Regime.

If you are making decisions on waste management that do not comply with the waste hierarchy because of these other factors, *you must be able to justify them*. It is good practice to keep a record of your decisions.

6.4 Where Contract Waste is contained in any packages, it shall be the responsibility of the Client that the packaging and the method of packaging shall conform in all respects with all statutory requirements including without prejudice to the generality of the foregoing the Act and the all regulations made thereunder and Regulations or any re- enactment or amendment thereto. Without prejudice to the generality of the foregoing it shall be the responsibility of the Client to ensure that, where packaging of Contract Waste is in drums, the drums are palletted, in sound condition and marked with sufficient and accurate identification so that the Company and the Carrier can readily identify the contents.

6.5 Where it is the Company's responsibility to collect the Contract Waste the Client shall be responsible for making the Contract Waste readily available for collection and for providing a safe means of access to the place of collection. If a requested collection is not made available as agreed with the Client then the Client may be charged for a missed collection.

6.6 In the event of any explosion, fire, escape of noxious fumes or other harmful consequence of whatsoever kind occurring upon or by reason of the Disposal of Contract Waste at the Company's premises, the Client shall indemnify the company and the carrier in respect of all claims, demands, suits and liabilities suffered by them or either of them.

6.5 The Client shall be under no liability thereunder if the Client shall establish to the reasonable satisfaction of the Company that the relevant explosion, fire, escape or other consequence was attributable neither to lack of conformity of Contract Waste with Order Details nor to any other act, neglect or default of whatsoever kind of the Client its servant or agents or where the relevant explosion, fire, escape or other consequence was attributable to the default, willful act of negligence of the Company or Carrier.

6.6 The Client agrees to give notice in writing to the Company of any specialist conditions and/or safe working procedures in any way affecting the discharge by the Company or its Carrier of their obligations under the Contract. The Company and/or its Carrier reserve the right to refuse to make any collection or carry out any Disposal if they or either of them reasonably consider that the work required might place at risk any person, vehicle equipment or property and in such circumstances the Company's obligations under the agreement are suspended without liability until such time as the Client remove the source of the risk.

6.7 Where the Contract Waste is to be delivered by the Client to the Company's premises then the Client warrants that only properly trained and experienced drivers will be used in affecting delivery and agrees to accept responsibility in relation to any injury or accident occurring to any such person(s) in the delivery process whether such person(s) are employees of the Client or it agent(s). They must also hold and provide on request details of their Waste Carriers License and also provide the relevant Waste Notice duly signed.

7. CLIENTS OBLIGATIONS AND COMPANIES RIGHTS:

7.1 In event that the Client becomes aware of any change or potential change in the composition or constituent elements of any Contract Waste from that specified in the Order Details then the Client shall immediately so advise the Company via email. Without prejudice to the Company's right contained in condition 6.4 and if deemed necessary by the Company then the Client shall forthwith provide the Company with a fresh sample of the relevant Contract Waste and the Company shall be entitled to suspend further Disposal of such Contract Waste pending analysis of such fresh sample.

7.2 If, upon analysis the fresh sample is be found not to conform with the Order Details (subject to any Permissible Tolerances) then the Company shall be entitled to either suspend Disposal of any Contract Waste from which the sample was provided or to accept the same for Disposal but in the latter case only upon such additional special conditions and/or revised price (revised prices to be determined by mutual agreement between the Company and the Client) and the Company shall in any event be entitled further to require that it be provided with sample of any fresh Contract Waste which may thereafter be awaiting Disposal and to satisfy itself as to its conformity before arranging the Disposal of the same.

7.3 If upon analysis any fresh samples provided by the client pursuant to conditions 6.1 and 6.2 are on two or more occasions found not to conform with the Order Details are aforesaid then the Company shall be entitled to treat the Client as being in fundamental breach and thereby repudiation of the Contract and to claim damages for such repudiation.

7.4 In the event of either the Client notifying the Company that any Contract Waste has not conformed or does not any longer conform or will no longer conform with the Order Details or the Company notifying the Client that the Contract Waste has not or does not so conform then (without prejudice to the Company's other right and remedies in these conditions) the Company's obligations under the agreement are suspended without liability until such time as the Contract Waste conforms with the order details to the reasonable satisfaction of the Company.

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7.5 Without prejudice to any other right of the Company in the event that any Contract Waste does not conform with the Order Details then in the event of the Company terminating the Contract pursuant the condition 6.4 then the Client shall be obliged to forthwith remove any Contract Waste from the Company's premises at its cost and in accordance with the Company's requirements.

8. PRICES:

8.1 Subject to the provisions of this condition 7 and conditions 3, 5 and 6 the price for Disposal by the Company shall be as stated in the Company's quotation. All prices are exclusive of VAT unless otherwise stated in the Company's quotation.

8.2 In event of any of Contract Waste accepted for Disposal by the Company proving to be not in conformity with the Order Details, the Company shall, without prejudice to any other of its right hereunder, be entitled to recover from Client at reasonable costs and expenses of Disposal in excess of those which would be incurred in the Disposal of Contract Waste corresponding to that detailed or described in the Order Details.

8.3 The Company's invoices are payable within the timescale shown on the invoice.

8.4 Time of payment shall be of the essence of every Contract.

8.5 The Company shall be entitled to change interest at the rate of two and a half per cent over and above the base-lending rate from time to time of National Westminster Bank plc. on all overdue amounts until actual payment in full irrespective of whether payment has been formally demanded or judgment entered.

8.6 In the event that there shall occur any of the events detailed in the conditions 9.3.1 to 9.3.4 inclusive then the periods of credit afforded to the Client by the Company shall cease and all other amounts due under any Contract between the Company and the Client shall immediately become due and payable.

9. TERMINATION ON NOTICE (NO DEFAULT) PRICE REVIEW

9.1 Where any Contract is an Ongoing Contract then either party shall be entitled to terminate the Contract by giving three month's prior written notice to the other. In the event of the quotation provided by Spinnaker Waste Management Ltd to the Client for the service provision specifying a contractual period longer than three months, then it is the longer time period specified on the quotation that will apply.

10. TERMINATION AND SUSPENSION

10.1 Where the Company is unable to effect Disposal of the Contract Waste pursuant to any Contract owing to any of the following:

10.1.1 The Client's failure to supply any necessary information; or

10.1.2 Changes to the license of the site used by the Company for Disposal which have the effect that the site can no longer be used by Company for disposal; or

10.1.3 any other reason beyond the Company's reasonable control including (without prejudice to the generality of the foregoing expression) breakdown of plant (unless as a result of inadequate maintenance), strikes, lock-outs, act of Government, fire, flood, Queen's enemies, explosion, lightning, aircraft, civil commotion, acts of war, malicious mischief or theft. Then the Company shall have the right on giving written notice to the Client and without incurring any liability to the Client to suspend further performance of the Contract for a period (not exceeding 3 months) equal to the continuance of any such impediment preventing the Company from performing its obligations.

10.2 At the end of the any period of suspension without performance of the Contract under condition 9.1.1 the Company may terminate the Contract by notice in writing to the Client or under conditions 9.1.2 and 9.1.3 either party may terminate this Contract by notice in writing to the other.

10.3 In the event that:-

10.3.1 The Client is in arrears in making any payment due to the Company under any Contract with the Company; or

10.3.2 The Client's stated credit limit with the Company has been reached; or

10.3.3 The Company believes on reasonable grounds that any payment (whether or not any agreed credit limit has expired) will not be met by Client when due;

Then the Company may suspend further work and/or deliveries under any Contract with the Client and the require immediate payment of all amounts due to the Company and the further payment in advance such payment or any part of it remains in arrears for 7 days after the Company has demanded it in writing then the Company shall have the further right to terminate that and/or any other Contract without prejudice to any claim for damages it may have against the Client and without incurring any liability to the Client for failure to perform.

10.3.4 In the event that:

either party ceases to trade or threatens to cease to trade or calls a meeting to pass a resolution for winding up or if a receiver is appointed or if a winding up petition is issued against the Company; or

10.3.5 Either part commits any breach of the terms and conditions of the Contract and such breach is incapable of remedy or if capable of remedy fails to remedy that breach within 30 days after notice is received from the other party, giving full particulars of the breach and requiring it to be remedied.

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Then the other party may terminate the Contract forthwith by giving written notice to the other party.

10.4 When a Contract is terminated or suspended under this condition 9 or any other condition herein (except as a result of the Company's breach or the Company undergoing an insolvency event) then the Company shall be entitled to recover all reasonable costs from the Client in accordance with the following:-

10.4.1 the Company shall be entitled to charge the Client with all reasonable interest, insurance, transport, storage or other costs and changes arising from any such termination or suspension; and

10.4.2 The Client shall forthwith pay for the all services provided by the Company pursuant to the Contract up to the date of any such termination or suspension and shall pay other sums then due under the Contract, or a reasonable price for the work done, whichever is the greater.

11. INSURANCE:

11.1 The Company and the Client each agree at their own expense to maintain at all times during the continue of any Contract a valid policy or policies of insurance in respect of any Obligation or potential liabilities arising out of performance or purported performance of the Contract in question and each party shall if so required by the other produce evidence of any applicable policy for inspection together with the evidence of payment of any premium.

12. SUB-CONTRACTING AND ASSIGMENT:

12.1 The Company shall be entitled to sub-contract any element of the Disposal process.

12.2 The Company shall be entitled to assign its rights hereunder.

12.3 The Client shall be entitled to assign its rights hereunder only in the event that it has obtained the prior written consent of the Company, which will not be unreasonably withheld by the Company. The Client may by written notice assign or transfer any its rights, obligations or liabilities under the Contract to anybody corporate associated with its shareholders without the consent of the Company.

13. WARRANTIES:

13.1 The Company warranties to the Client that it will perform the Disposal of the Contract Waste with the reasonable care and skill, in accordance with generally recognised commercial practices and standards in the industry for similar services and in accordance with all applicable legislation, regulation and guidelines.

14. LIABILITIES:

14.1 The Company's liability (if any) to the Client in respect of its obligations hereunder shall in all circumstances be limited £100,000.

14.2 Neither party shall not under any circumstances whatsoever be liable to compensate the other party for any indirect or consequential loss.

15. SET-OFF:

15.1 The Client shall not be entitled to set-off any claim against payment of any amounts owing to the Company.

16. WAIVERS AND SEVERABILITY:

16.1 Any concession, latitude, or waiver allowed by the Company to the Client at any time shall not prevent the Company from subsequently exercising its full rights in all other respects.

16.2 Any provision of these conditions which is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provision hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

17. JURISDICTION AND COSTS:

17.1 The validity, construction and performance of these conditions and any contract between the Company and the Client shall be subject to and be construed in accordance with English Law and the Client shall submit to the non-exclusive jurisdiction of the English Courts.

18. NOTICES:

18.1 Any notice to be given by either party shall be sent by post to the address of the Client or the Company detailed in the Company's quotation form or by email.

18.2 Any notice which is posted in accordance with the condition 16.1 shall be deemed to be properly served two days after posting and any emailed notice shall be deemed to be served at time detailed upon any delivered receipt.