

# Hertsmer Borough Council



## Trade Refuse Collection Contract and Controlled Waste Description and Transfer Note Agreement

This is a legal document: You are obliged to keep your copy of this document

### Section 1 - The customer

Company name: ..... Limited Co. / Public Limited Company

Trading as: ..... Limited Liability Partnership

Or full name(s) of proprietor / partners: ..... Sole Trader

Invoice / notice address: ..... Partnership

..... Postcode: .....

Tel: ..... Fax: ..... Email: .....

Contact name(s): .....

Collection site address: .....

..... Postcode: .....

Tel: ..... Fax: ..... Email: .....

Contact name(s): .....

### Section 2 - Waste system

1.	Container size	4.	Frequency of collection (minimum once a week)	
2.	Number of containers	5.	Payment type	Annual in advance <input type="checkbox"/> Direct Debit <input type="checkbox"/>
3.	Collection day (see guidance notes for availability in your area)	6.	Invoicing	Annual in advance

### Section 3 - Controlled Waste Description and Transfer Note

#### Waste description

- 1(a). Is the waste you are transferring (tick one box only)  
 Inert  Non-hazardous  Hazardous
- 1(b). Is the waste also (tick if applicable)  
 Animal by product  Liquid waste  Special waste  Excluded waste
2. Please describe the waste you are transferring by reference to the European Waste catalogue (E.W.C.) Enter one E.W.C. code only
3. Please give any other additional information, including details of any problems your waste may present, that will affect containment, safe and lawful handling, transport, treatment or disposal of the waste by any subsequent holder:  
 .....
4. Please state the nature of your business (e.g. activity(ies) undertaken, goods or services provided):  
 .....
5. Subject to the waste description (in Section 3, questions 1 to 4) and the waste system (in Section 2) remain the same, this controlled waste description and transfer note shall apply for the 12 month period commencing on ..... (or such other date, which shall not be later than the date of the first collection/transfer, as agreed between the parties).
6. Current holder of the waste  
 (a). Name (if not the customer) .....
- (b). Are you the producer of the waste? Yes  No
- (c). Have you imported the waste? Yes  No
- (d). Are you the holder of a waste management licence? Yes  No   
 If yes state licence number and issuer: .....

**All subject to HBC standard conditions of supply (attached or which can be obtained from HBC)**

#### For customer completion

I warrant: That the description of the waste (given in Section 3, questions 1 to 4) is complete and accurate and undertake to notify HBC immediately if any of these details change.

Agreed by the customer: .....

Authorised signature(s): .....

Name (print): .....

Job title: ..... Date: .....

#### Office use only

Agreed by HBC: .....

Authorised signature(s): .....

Name (print): .....

Date: .....

## 1. GENERAL

- 1.1 In this agreement the meanings of words and expressions used as set out in the Schedule will have effect wherever such words or expressions appear unless otherwise stated to the contrary.
- 1.2 This agreement is between the customer and HBC.
- 1.3 These conditions apply to all agreements for the supply of services by HBC and supersede any previous terms and conditions. No additions or modifications to or terms inconsistent with these conditions shall be binding upon HBC unless specifically agreed in writing by HBC.
- 1.4 HBC may require a credit application from the customer and in processing the credit application the customer consents that HBC may make enquiries of credit reference agencies or other sources, who may keep a record of HBC's enquiry, and that HBC may use any information obtained for the purposes of risk assessment, fraud prevention and for occasional debt tracing.
- 1.5 The rights and obligations of the customer under this agreement shall be personal and shall not be assignable without the express consent of HBC.
- 1.6 The rights and obligations of the customer and of HBC under this agreement shall be subject at all times to the powers and duties of HBC as waste collection authority under the Environmental Protection Act 1990 or any other powers and duties under any other statutory provision.
- 1.7 The service shall be supplied by HBC or its duly authorised contractor. The description of the service is stated in the contract.

## 2. DURATION

- 2.1 The agreement shall begin on the commencement date and shall continue unless terminated in accordance with this agreement.
- 2.2 The service shall commence with effect from the date agreed between the parties.
- 2.3 Unless stated otherwise in this agreement during the period of this agreement the customer shall not obtain the service or services substantially similar to the service from any third party.

## 3. PAYMENT TERMS

- 3.1 The charge will be calculated as stated in the invoice which will be provided by HBC. The amounts stated in the invoice exclusive of VAT and the customer shall pay all sums due in respect of VAT in accordance with the invoice for the service. HBC will ensure that each invoice for the service contains adequate details of the VAT charged.
- 3.2 All payments for the service shall be due and payable within 14 days of the date of the invoice for the service. All payments made by the customer under this agreement shall be made in full without any set-off or counter-

claim whatever and the time of payment shall be of the essence of this agreement.

- 3.3 Any sums which are not paid by the due date shall thereafter attract interest on a daily basis at a rate of 4% per annum above the base lending rate for the time being of Barclays Bank plc. Without prejudice to HBC's other rights in respect thereof, if the customer defaults in payment by the due date of any amount invoiced for the service, HBC shall be entitled to withhold further performance of this agreement until all arrears have been discharged by the customer.
- 3.4 The customer shall not be entitled to dispute any payment made. The customer agrees that HBC records of collection made will be proof of the service provided.
- 3.5 Without prejudice to any other rights of HBC if there is or there arises reason to doubt that amounts due from the customer will be paid in full then HBC reserves the right to require payment in advance before commencing or continuing the service, or at its sole discretion HBC may terminate the agreement forthwith.

## 4. PRICE

- 4.1 HBC shall have the right to increase the charge at any time to take account of any variation in HBC's costs including (but not limited to) variations in wages, disposal costs, administration costs, cost of materials and equipment, fuel costs, taxes, duties and cost of compliance with relevant legislation. HBC shall endeavour to give the customer not less than one calendar month's notice of any variation of the charge under this clause but notwithstanding this the customer shall be liable to pay any increase from the date specified in the notice.
- 4.2 Where the charge per lift is based on an assumed weight HBC may revise the assumed weight (and consequently and proportionately the charge per lift) at any time if it reasonably believes that the actual average weight per collection is less than or greater than the assumed weight.
- 4.3 HBC may charge and the customer shall pay to HBC any administration cost incurred for providing the controlled waste description and transfer note.
- 4.4 Such charge for the transfer note will be included in the invoice as any administration cost becomes payable.

## 5. DELIVERY ACCESS UNLOADING AND RETURN

- 5.1 The equipment shall be delivered to the collection site in the quantity specified in the contract.
- 5.2 The customer shall provide suitable access to the collection site, a suitable area for siting the equipment and suitable facilities for turning the vehicle around.
- 5.3 The driver of the vehicle may in his absolute discretion refuse delivery if he believes that access to the collection

site or turning facilities are unsafe or likely to cause damage to the vehicle or if there is any reason to believe that the proposed area for siting the equipment is unsuitable.

- 5.4 Subject to clause 9.2 the customer shall be responsible for the safety of any person (including the employees and agents of HBC) whilst on or about the collection site.

## 6. PERFORMANCE DATES AND FORCE MAJEURE

- 6.1 HBC will use reasonable endeavours to meet the dates for collection (which shall always be working days unless expressly agreed otherwise between HBC and the customer) set out in the invoice but shall not be liable for late performance or delay in performance of the service and delays shall not entitle the customer to rescind the agreement.
- 6.2 Without prejudice to the generality of clause 6.1, HBC shall have no liability for any delay or default in the provision of the service caused directly or indirectly by breakdown or unavailability of equipment or vehicles inability to obtain labour or any other causes beyond HBC's control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the control of HBC:
- 6.2.1 Act of God, explosion, flood, tempest, fire or accident.
- 6.2.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition.
- 6.2.3 Reduction in financial resources, restrictions, regulations, prohibitions or measures of any kind on the part of HM Government.
- 6.2.4 Strikes, lockouts or other industrial action (whether involving employees of the council, its contractors or any other party).
- 6.3 If the customer's requirements for the service shall at any time change, HBC shall, subject to clause 7.2 implement such changes as are agreed between the customer and HBC.

## 7. CHANGES IN CUSTOMER REQUIREMENTS

- 7.1 If the customer's requirements for the service shall at any time change, HBC shall, subject to clause 7.2 implement such changes as are agreed between the customer and HBC.
- 7.2 HBC and the customer shall join in making such written amendments to this agreement or the invoice to it (which for the avoidance of doubt includes the charge) and in executing such replacement transfer note as may be necessary to give effect to any changes agreed under this clause 7.

## 8. RISK

- 8.1 Risk of any loss or damage to the equipment shall pass to and remain with the customer from the time when the equipment first arrives at the

collection site, except where the loss or damage arises from the negligence or willful default of HBC, its employees, agents or sub-contractors.

## 9. TERMS AND REPRESENTATIONS

**These clauses set out the customer's rights in respect of any loss or damage caused by the provision of the service or any statements made by HBC, its employees or agents, contractors or sub-contractors. Customers are advised to read these provisions carefully and to check that they are covered by insurance against any loss or damage that they may sustain in respect of which the potential liability of HBC is or may be restricted or excluded hereunder.**

- 9.1 The equipment shall be deemed to be in good working order and condition and fit for the customer's purpose (save for defects not discoverable by a reasonable examination) except to the extent that the customer has notified HBC to the contrary in writing within three working days of acceptance of the equipment at the collection site.
- 9.2 HBC accepts liability for death or personal injury to the extent that it results from negligence of HBC or its employees and further accepts liability for any breach on the part of HBC of any condition or warranty as to title and quiet possession which may be implied by Section 7 of the Supply of Goods and Services Act 1982.
- 9.3 Subject to clause 9.4 HBC also accepts liability for any other direct loss or damage (but not any indirect or consequential loss, including (but not limited to) loss of profits, production, business or reputation in relation to the equipment, the service or items belonging to the customer, its employees or agents (including personal effects) to the extent that it results from:
- 9.3.1 a breach by HBC of any of the conditions of this agreement or
- 9.3.2 the negligence of HBC or its employees and does not result from (and to the extent that it is not contributed to by) the act, omission or negligence of the customer, its employees or agents and so that HBC shall not otherwise be liable for any defect in the equipment or loss, damage, nuisance or interference whatsoever caused by or in relation to the equipment the service or items belonging to the customer, its employees or agents (including personal effects) and the same shall be the liability of the customer.
- 9.4 HBC's total liability (including related costs, fees and expenses) in respect of any one transgression (except one giving rise to the liability referred to in clause 9.2) shall be limited to £50,000.
- 9.5 If any exclusion or limitation of liability or any other provision contained in this clause 9 or otherwise contained in the agreement is held invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if HBC thereby becomes liable for any defect or loss, damage or nuisance which would have otherwise been

excluded such liability shall be subject to the other exclusions limitations or provisions set out in the agreement.

- 9.6 The provisions of this clause 9 shall remain in full force and effect notwithstanding any breach of this agreement by HBC and shall apply to such breach whether or not this agreement is terminated in consequence of such breach.

## 10. EMPTYING REPLACEMENT AND REMOVAL

- 10.1 The customer shall at all times allow HBC, its employees, contractors or agents access to the equipment to empty or replace it and on the termination of this agreement to remove it from the collection site.
- 10.2 All waste deposited in the equipment shall become the property of HBC from the time when HBC empties or replaces the equipment PROVIDED THAT this clause shall not absolve the customer from any prior and/or continuing liability or responsibility in relation to the waste.

## 11. EQUIPMENT

- 11.1 The customer will conform to any statutory enactments and regulations and bye-laws and regulations of local or other statutory authorities which apply to the equipment.
- 11.2 The customer shall not whether deliberately or through negligence:
- 11.2.1 overload or overfill the equipment or
- 11.2.2 set fire to the contents of the equipment, or
- 11.2.3 interfere with the mechanism of the equipment, or
- 11.2.4 add or attach to the equipment any painting, sign, writing, lettering or advertising.
- 11.3 Any rental equipment provided shall remain the property of HBC and the customer will have no rights in the equipment other than as a mere bailee. The equipment must only be used by the customer and must be kept at the collection site. The customer shall have no right of lien over the equipment.
- 11.4 The customer has agreed that the equipment is suitable to contain and transport the waste in the quantities specified. HBC relies on the customer's advice as to the quantity and weight of waste involved in the provision of the service.

## 12. WASTE

- 12.1 The customer and HBC shall each sign a new transfer note:
- 12.1.1 without prejudice to Clause 12.3 at any time when there is a change in any details set out in sections 2 and 3 in the contract or on any transfer note and/or
- 12.1.2 before the expiration of 12 months from the commencement date or any current transfer note.
- 12.2 The customer warrants that the details relating to the waste (including for the avoidance of doubt, those relating to

weight and compactability) contained in the contract or in any transfer note are and will be true and complete. HBC relies on those details in the provision of the service. HBC shall be entitled to take samples of the materials placed in the equipment to satisfy itself that the description is accurate prior to collection and disposal. Such right shall under no circumstances relieve the customer of its obligations to describe the waste accurately.

- 12.3 The customer may not place or cause to be placed in the equipment any material other than waste described in section 3 of the contract or, if such has been signed, in the current transfer note.
- 12.4 Without prejudice to the generality of the provisions of this clause 12 HBC will be entitled to refuse to deal with any material:
- 12.4.1 which it has reason to believe is toxic, poisonous, explosive, inflammable or otherwise dangerous; or
- 12.4.2 the handling of which may cause HBC to incur civil or criminal liability, or
- 12.4.3 which it has reason to believe is or may be a special waste, or
- 12.4.4 the disposal of which might involve HBC in additional expense or an unreasonable amount of extra work.

## 13. NAME PLATES

- 13.1 The customer shall not remove, deface or conceal any name plate or mark indicating that the equipment is the property of HBC and HBC shall at all reasonable times have access to the collection site or any other premises of the customer at which the equipment is located to inspect or repair such name plates or marks.

## 14. DISPOSAL

- 14.1 HBC will use all reasonable endeavours to satisfy itself that any disposal site at which the customer's waste is disposed of is operated in accordance with statutory requirements where such disposal site is not operated by HBC. However HBC accepts no liability whatsoever for any third party's failure so to operate.

## 15. FURTHER LIABILITIES OF THE CUSTOMER

- 15.1 During the agreement the customer shall make good to HBC all loss of or damage to the equipment (fair wear and tear excepted).
- 15.2 Subject to clause 9, the customer shall indemnify and hold HBC harmless against any injury demands, actions costs, charges expenses, loss damage or liability to any persons or property arising from:
- 15.2.1 any act omission or negligence of the customer its agents or employees: or
- 15.2.2 the provision of the service.
- 15.3 If the customer requests that the equipment be placed in a position which requires the vehicle to leave the public highway the customer shall indemnify and hold HBC harmless

against any loss costs claims damages or expenses which HBC may thereby incur whether as a result of damage to the vehicle, the equipment, the property of the customer or a third party including damage to the road margin or pavements.

- 15.4 The customer shall maintain insurance cover in respect of this indemnity and shall at the request of HBC provide a copy of the insurance policy as proof of maintaining such cover.

## 16. TERMINATION

- 16.1 If the customer commits any breach of this agreement HBC may, in addition to its other rights in respect thereof, give notice to the customer to terminate this agreement immediately or, at the option of HBC, after 21 days from the date of such notice if the customer shall not have remedied the breach to HBC's satisfaction during that time.
16. If the customer shall have a receiver, an administrator or an administrative receiver appointed for the whole or any part of its assets or if an order shall be made or a resolution passed for its winding-up (unless this is for the purpose of its reconstruction or amalgamation) then this agreement shall terminate forthwith.
- 16.3 Either party may terminate this agreement by the service of notice, which must be of not less than three months' duration and not more than six months duration, must be expressed to expire on the date which is three months after any anniversary of the commencement date and must be given in the manner set out in clause 18.
- 16.4 If HBC elects to terminate this agreement under clause 16.1 or the agreement is terminated under clause 16.2 the customer shall pay all charges accrued due and in addition shall pay to HBC, as liquidated damages (and the customer acknowledges this to be a genuine pre-estimate of the likely loss which HBC would incur in such event) for the period (the "Damages Period") from the date of such termination to the earliest date on which this agreement could validly be terminated by a notice given in accordance with clause 16.3 the following amount:

- 16.4.1 in the case of customers for which HBC collects waste on a scheduled collection day, an amount equal to 41% of the aggregate daily rental and collection charge which would have become payable in respect of the service during the damages period.
- 16.4.2 in the case of customers for which HBC collects waste not on a specific collection day but upon request, an amount equal to 41% of the aggregate daily rental and collection charge which would have become payable in respect of the service during the damages period on the following assumptions:
- 16.4.2.1 where the service has been provided for less than three months, that collections would have been made during the damages period at the expected frequency set out in the contract, or

16.4.2.2 where the service has been provided for more than three months, that collections would have been made during the damages period at the greater of (1) the expected frequency of (2) at the same average rate as during the three months immediately preceding the termination date.

- 16.5 Termination of this agreement shall be without prejudice to any rights or liabilities of either party which may have accrued to that date.

## 17. AMENDMENT

- 17.1 HBC reserves the right to amend this agreement as it considers necessary to comply with statutory requirements from time to time or any change in legislation governing the collection transport and disposal of waste and will notify any such amendment to the customer as soon as practicable.

## 18. NOTICES

- 18.1 Any proposal acceptance agreement authority permission or notice referred to in this agreement shall be
- 18.1.1 in writing and
- 18.1.2 given to the party for whom it is intended at the address for that party as set out in this agreement, or such address as is notified to the other party for that purpose and
- 18.1.3 given by post, facsimile or email and shall be deemed to have been received two working days after the date of posting or one working day after the date of facsimile transmission or email as the case may be.

## 19. OVERNING LAW

- 19.1 This agreement shall be governed by and construed in accordance with the Laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.
- 19.2 Any reference to any Act of Parliament Regulation or Order shall include any re-enactment, amendment, replacement or modification thereof.

## 20. FOREBEARANCE

- 20.1 No time indulgence or relaxation on the part of HBC shown or granted in respect of any of the provisions of this agreement shall in any way affect diminish restrict of prejudice the rights or powers of HBC under this agreement or operate as or be a waiver of any breach by the customer of the terms of this agreement.