

BLUE CASTLE BUSINESS SERVICES LIMITED

WASTE MANAGEMENT SERVICES TERMS & CONDITIONS (applying to Waste Transfer Note Agreement)

The Customer's attention is particularly drawn to the provisions of clause 10.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Additional Services: has the meaning given to it in clause 4.7.

Additional Charges: has the meaning given in clause 6.3.

Blue Castle: Blue Castle Business Services Limited (registered in England and Wales with company number 04591999).

Blue Castle Equipment: has the meaning set out in clause 5.4.

Blue Castle Transfer Note Agreement: refers to the signed **Controlled Waste Description Transfer Note and Agreement between Blue Castle and the Customer to which these Conditions apply, forming part of the Waste Management Services Agreement.**

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: refers to the various charges (or any of them) payable by the Customer under the Waste Management Services Agreement in accordance with clause 6 below (including the Services Charges, Termination Fee and any Additional Charges).

Commencement Date: means the date specified in the Blue Castle Transfer Note Agreement when the Term commences.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.8.

Customer: the person, firm or company who purchases Services from Blue Castle.

Environment Agency: the Environment Agency, the Scottish Environment Protection Agency or the Environment Heritage Service for Northern Ireland or successor body from time to time.

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.

Hazardous Waste: any waste with one or more hazardous properties that are hazardous to health or the environment as defined under Environmental Laws or as determined by the Secretary of State from time to time.

Premises: the Customer's collection site address named in the Blue Castle Transfer Note Agreement.

Quarter: the periods ending 31 March, 30 June, 30 September and 31 December in each Year.

Services: means the waste collection, disposal, recycling and associated services supplied by Blue Castle to the Customer as set out in the Blue Castle Transfer Note Agreement (and any Additional Services agreed from time to time).

Services Charge: has the meaning given in clause 6.1.

Term: means the term of the Waste Management Services Agreement beginning on the Commencement Date and ending upon termination of the Waste Management Services Agreement in accordance with these Conditions.

Vehicles: vehicles operated by or on behalf of Blue Castle.

Waste: the waste which Blue Castle is Servicing (including, where applicable, Hazardous Waste) as specified in the Waste Specifications.

Waste Container: refers to those waste containers supplied for use by Blue Castle (or on its behalf) to the Customer under the Waste Management Services Agreement, as specified in the Blue Castle Transfer Note Agreement.

Waste Management Services Agreement: Blue Castle's Waste Management Services Agreement with the Customer which incorporates (a) the Blue Castle Transfer Note Agreement; and (b) these Conditions; and any reference to the Waste Management Services Agreement includes these documents.

Waste Specification: the written description of the Waste, including in relevant waste transfer note(s).

Year: the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the Term.

1.2 Construction. In these Conditions, the following rules apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its personal representatives, successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Waste Management Services Agreement and all Services ordered by you, or supplied by us will be subject to these Conditions and any additional terms and conditions specified by us from time to time (as referred to in clause 2.2 and clause 4.7 below), and you agree to comply with all such terms and conditions. The aforementioned terms and conditions are considered by us to set out the whole agreement between you and us for the supply of the Services concerned to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 From time to time, we may give you notice of reasonable additional requirements or conditions relating to particular Services, or the Waste Management Services Agreement generally, in addition to those set out in these Conditions. You agree that you will comply with any such reasonable additional requirements or conditions or changes to these Conditions which we notify to you from time to time.

2.3 In circumstances where any of your Group companies will receive any Services, you acknowledge and agree that you accept all the relevant terms and conditions referred to in sub-clauses 2.1 and 2.2 both on behalf of you and all your Group companies, and that you will at all times procure compliance with these Conditions by your Group companies. You warrant to us that you have full power and authority to enable you to comply with the provisions of this clause 2.3.

2.4 You acknowledge that you have not relied on any statement, promise or representation made or given by us or on our behalf which is not set out in the Waste Management Services Agreement. Any samples, drawings, descriptive matter or advertising issued by us and any descriptions or illustrations contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Waste Management Services Agreement or any other contract between you and us for the supply of the Services.

2.5 Any quotation given by Blue Castle shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. TERM OF THE WASTE MANAGEMENT SERVICES AGREEMENT

Blue Castle shall supply the Services to the Customer, and the Customer shall purchase the Services from Blue Castle, during the Term upon the terms of the Waste Management Services Agreement.

4. SUPPLY OF SERVICES

4.1 Blue Castle shall supply the Services to the Customer in accordance with the Waste Management Services Agreement in all material respects, using reasonable care and skill.

4.2 Blue Castle shall comply in the performance of the Services with all Environmental Laws (save to the extent these are the Customer's responsibility under the Waste Management Services Agreement).

4.3 Blue Castle shall use reasonable endeavours to comply with any special site conditions and safe working procedures which apply at the Premises and which have been notified in writing by the Customer to Blue Castle from time to time.

4.4 Blue Castle shall use reasonable endeavours to meet any collection/performance dates and/or times agreed between the parties (which shall always be working days unless expressly agreed otherwise between Blue Castle and the Customer), but unless otherwise specifically agreed in writing all dates and times for collection of the Waste or performance of any other Services quoted by Blue Castle are estimates only and Blue Castle shall not be liable to the Customer for any delay in the provision of the Services. Time shall not be of the essence for performance of the Services.

4.5 Blue Castle shall have the right to make any changes to the Services, or to the Waste Management Services Agreement, which are necessary to comply with any applicable law or safety requirement (including any change in legislation governing the collection, transport and disposal of waste), or which do not materially affect the nature or quality of the Services, and Blue Castle shall notify the Customer in any such event.

4.6 Blue Castle reserves the right to change the service days/frequency of provision of the Services from time to time upon notice to the Customer. If for some reason (including Blue Castle's internal operational limitations) Blue Castle is unable to provide Services to meet the Customer's requirements on any scheduled day(s), Blue Castle reserves the right (acting reasonably) to re-schedule the Services to the next available date(s) without prior notice to the Customer and without liability to Blue Castle.

4.7 If Blue Castle provides any services in addition to the Services to the Customer (Additional Services), such Additional Services shall be supplied subject to the terms of the Waste Management Services Agreement and such other standard terms of Blue Castle applicable to those Additional Services from time to time, and the Customer shall pay Additional Charges applicable to those services as envisaged in clause 6.3.

4.8 If at any time the Customer proposes to change the location of the Premises (or any relevant collection point) or to make any other change to the Services then:

- the Customer shall notify Blue Castle providing full details of the proposed new collection point location or other change(s) concerned;
 - Blue Castle shall notify the Customer of any changes to the Charges, collection details and any other terms of the Waste Management Services Agreement which are necessary in light of such change(s); and
 - no change shall be made until the parties have agreed the proposed new collection point, revised Charges and any other necessary amendments to the Waste Management Services Agreement (following which the changes shall form part of the contract).
- 4.9 The Customer shall indemnify Blue Castle against all claims arising through any negligent act or omission by the Customer, its agents or employees. In the event that the Waste Management Services Agreement does not provide for the provision by

Blue Castle to the Customer of Waste Containers, Blue Castle reserves the right to supply (or procure the supply of) the appropriate Waste Containers (and charge the Customer accordingly at its then current rates):

- if in the reasonable opinion of Blue Castle any waste containers provided by the Customer are, or are likely to be unsatisfactory for the purpose for which they are used or designated; or
- to ensure compliance with Environmental Laws or any other relevant statutory provisions, and in such event Blue Castle shall give the Customer not less than 7 Business Days' notice of its intention to provide such Waste Containers and the Customer shall, from the expiry of such notice, ensure that only Waste Containers supplied by (or on behalf of) Blue Castle are utilised for the purposes of this Agreement (and the Waste Management Services Agreement shall be amended accordingly).

5. CUSTOMER'S WARRANTIES & OBLIGATIONS

5.1 The Customer warrants to Blue Castle that:

- in respect of Hazardous Waste:
 - it has notified the Environment Agency that it produces or removes Hazardous Waste from the Premises; and
 - it has the relevant registration or premises code from the Environment Agency ("EA Code") and that code represents Waste being produced and removed from the Premises (and the Customer shall provide a copy to Blue Castle upon request); and
 - in the event that the Customer fails to comply with the warranty in clause 5.1(a)(i) or (ii) then (without prejudice to any rights of Blue Castle for breach of such warranty by the Customer) Blue Castle shall be entitled to notify the Environment Agency and apply for the appropriate registration in the name (and on behalf of) the Customer accordingly, and the Customer shall indemnify and hold Blue Castle (and its agents, employees and or its sub-contractors) harmless against all resulting loss, costs, claims, damages and expenses incurred.
 - it is the owner of the Waste and is free to transfer it to Blue Castle for servicing in accordance with the Waste Management Services Agreement;
 - the Waste is accurately described in the Waste Specification and the correct European Waste Catalogue (EWC) code is used and will at all times correspond with that description and in particular that the Waste:
 - will not be subject to any special control regulations in force from time to time; and
 - will not contain explosive or radioactive materials;
 - the constituents of the Waste are compatible and stable and all Hazardous Waste is stored separately at the Premises and is not mixed and no hazard will arise from the mixing of the Waste with other Wastes;
 - the Customer has provided to Blue Castle (or its sub-contractors) accurate and complete information relating to each consignment of Waste in advance of collection or delivery thereof sufficient to enable a consignment note to be generated for that consignment of Waste at the time of collection or delivery; and
 - it shall conform to its duties under Environmental Laws, and all other applicable laws or governmental order, rule, regulation or direction (including local authority requirements).
- 5.2 Each of the warranties contained in sub-clauses 5.1(a) to (f) above are fundamental and absolute terms and they shall not be qualified or impaired (except as provided therein) nor shall any right or remedy of Blue Castle for any breach of any such warranty by the Customer be waived or prejudiced by any inspection of the Waste by or on behalf of Blue Castle or by any sample and subsequent analyses of any Waste by or on behalf of Blue Castle.

5.3 The Customer shall:

- ensure that the terms of the Waste Management Services Agreement and any information it provides to Blue Castle is complete and accurate;
 - co-operate with Blue Castle, its agents or sub-contractors in all matters relating to the Services;
 - at all reasonable times provide Blue Castle, its employees, agents, consultants and sub-contractors, with access to the collection points at the Premises with Vehicles and to Blue Castle Equipment for the purpose of dismantling, recovering, packaging, loading and removing the Waste and Blue Castle Equipment;
 - provide Blue Castle with access to such information, materials and facilities as Blue Castle may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - provide and maintain a suitable and safe means of access and egress at the Customer's Premises for performance of the Services at all times.
- 5.4 The Customer shall in relation to all Waste Containers, equipment and other property provided by Blue Castle, its agents or sub-contractors in connection with the Services (**Blue Castle Equipment**):
- provide a suitable area for siting the Blue Castle Equipment with sufficient space and facilities for turning vehicles around;
 - notify Blue Castle in writing within 10 working days of the acceptance of Blue Castle Equipment at the Customer's Premises if it is not in good working order and condition, or is not fit for the Customer's purposes (excluding defects not discoverable by a reasonable examination), failing which the Blue Castle Equipment shall be deemed to meet such requirements;
 - keep Blue Castle Equipment at the Customer's Premises in safe custody at its own risk until returned to Blue Castle, and not dispose of or use Blue Castle Equipment other than in accordance with Blue Castle's written instructions or authorisation;
 - maintain Blue Castle Equipment in good condition (including keeping the same clean internally and externally), not overloaded or improperly loaded (notwithstanding any inspection thereof by Blue Castle, its agents or sub-contractors) and not otherwise misuse the Blue Castle Equipment nor place any wastes other than the Waste therein and avoid any inappropriate mixing or dilution;
 - not paint or mark (which includes not applying any signage, lettering or advertising) Blue Castle Equipment, nor deface or remove any markings by Blue Castle, its agents or sub-contractors on Blue Castle Equipment;
 - not permit anything to be burned in the Blue Castle Equipment;
 - not to permit interference with the mechanism of the Blue Castle Equipment;
 - secure the Blue Castle Equipment and any Waste therein against damage, theft, vandalism or scavenging;
 - not site Blue Castle Equipment on a highway (public or private) or in any public place, save as may reasonably be required for the purposes of collection of Waste (or other Services) by Blue Castle;
 - conform to any statutory enactments and regulations and by-laws of local or other statutory authorities which apply to the Blue Castle Equipment;
 - be responsible for and to indemnify Blue Castle against any loss or damage to the Blue Castle Equipment (other than ordinary wear and tear).

5.5 Without prejudice to clause 5.4(k), in the event of any loss or damage to any **Blue Castle Equipment** supplied to the Customer (including any such loss or damage caused by third parties), the Customer shall bear all costs associated with the repair or replacement thereof and all associated costs of Blue Castle. The Customer shall be responsible for providing and maintaining throughout the Term reasonable insurance cover (with an insurance company of repute) for all **Blue Castle Equipment** and shall upon request by Blue Castle provide a copy of the insurance policy and a receipt for the then current premium.

5.6 The Customer shall be fully responsible for:

- giving adequate notice to Blue Castle's personnel of site regulations and safe working procedures at the Premises insofar as they relate to the provision of the Services;
 - the health and safety of all persons (including Blue Castle's employees, agents and other personnel) whilst present at the Premises from time to time;
 - any use of Blue Castle Equipment other than by Blue Castle (or its personnel, its agents or sub-contractors).
- 5.7 If the Customer requests that Blue Castle Equipment is placed in a position which requires Blue Castle's vehicle to leave the public highway, the Customer shall indemnify and hold Blue Castle (and its agents, employees and or its sub-contractors) harmless against all resulting loss, costs, claims, damages and expenses incurred (including damage to the vehicle, Blue Castle Equipment, the property of the Customer or a third party, or damage to the road margin or pavements) except where the operator of the vehicle is negligent.

5.8 Blue Castle may refuse to provide the Services if it reasonably considers that the work required might place at risk any person, vehicle, or property and such refusal will not be deemed to be a breach or default of Blue Castle under the Waste Management Services Agreement.

5.9 If Blue Castle's performance of any of its obligations under the Waste Management Services Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- Blue Castle shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Blue Castle's performance of any of its obligations;
- Blue Castle shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Blue Castle's failure or delay to perform any of its obligations as set out in this clause 5.9; and
- the Customer shall reimburse Blue Castle on written demand for any costs or losses sustained or incurred by Blue Castle arising directly or indirectly from the Customer Default.

6. CHARGES AND PAYMENT

6.1 The Customer shall pay the Charges in respect of the supply of the Services (**Services Charge**) calculated in accordance with Blue Castle's 'Price Structure' rates set out in the Blue Castle Transfer Note Agreement (subject to increases in accordance with clause 6.4). Hazardous Waste removals will be quoted for by Blue Castle as required by the Customer in addition to any monthly charges agreed for scheduled Waste collections.

6.2 In relation to any Waste which is subject to a rebate payment to the Customer by Blue Castle, the amount of such payment shall be calculated by Blue Castle based upon the weight of each consignment of rebateable Waste (determined in accordance with the provisions of clause 9) calculated at Blue Castle's then current rate applicable to the Waste concerned (which will vary to reflect current market rates) and any relevant range of rates agreed with the Customer in the Blue Castle Transfer Note Agreement.



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Company Reg No: 04591999

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- 6.3 Blue Castle reserves the right to make additional charges (**Additional Charges**) in the event that it supplies to the Customer additional waste removal services relating to non-scheduled waste, uncontaminated waste, loose waste, excessively weighted bags/bins or unidentified waste. Additional Charges shall also be made by Blue Castle if it supplies any other Additional Services to the Customer as envisaged in clause 4.7. Any Additional Charges are calculated in accordance with Blue Castle's relevant standard rates from time to time or for such work, and shall be invoiced to the Customer in arrears at the end of each month.
- 6.4 Blue Castle may vary any of its Charges (or the rates relating to those Charges) as follows:
- (a) Blue Castle shall have no right to increase its Charges (or the rates relating to those Charges) during the first 12 months after the Commencement Date save and except to the extent required to recover from the Customer any increase in landfill or other tax which takes place during such 12 month period in respect of waste collected from the Customer; and
- (b) at any time after the first 12 months following the Commencement Date by giving the Customer not less than 1 month's prior written notice at any time, by an amount specified by Blue Castle which is sufficient to cover any increase in Blue Castle's costs in carrying out the Services, including increases in raw materials, waste disposal costs, fuel, labour or energy costs, increases in landfill or other taxes, increases in charges imposed by Blue Castle's agents or sub-contractors, costs incurred in complying with any law or governmental order, rule, regulation or direction, foreign exchange fluctuation, currency regulation or alteration of duties; and
- (c) as noted in clause 6.2, in respect of any Services identified in the Blue Castle Transfer Note Agreement as being subject to current market rates ruling from time to time (for example Waste eligible for a rebate payment), then the applicable rates are subject to change at any time by Blue Castle in line with current rates applicable to the Waste concerned.
- 6.5 Where the Charge per lift is based on assumed weight of waste, Blue Castle may give notice to the Customer requesting that they revise the assumed weight (and consequently the charge per lift) at any time if Blue Castle reasonably believes the actual weight per collection is less than or greater than the assumed weight.
- 6.6 The Customer shall pay each invoice submitted by Blue Castle:
- (a) within the relevant payment period (30 days of the date of the invoice unless specified otherwise in the Blue Castle Transfer Note Agreement); and
- (b) in full and in cleared funds to a bank account nominated in writing by Blue Castle, and time for payment shall be of the essence of the Waste Management Services Agreement.
- 6.7 All amounts payable by the Customer under the Waste Management Services Agreement are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Waste Management Services Agreement by Blue Castle to the Customer, the Customer shall, on receipt of a valid VAT invoice from Blue Castle, pay to Blue Castle such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.8 Without limiting any other right or remedy of Blue Castle, if the Customer fails to make any payment due to Blue Castle under any Waste Management Services Agreement by the due date for payment (**Due Date**), Blue Castle shall have the right (without prejudice to any of its other rights or remedies) to:
- (a) charge interest on the overdue amount at the rate of 4% per annum above the then current Lloyds Bank plc's base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding Quarterly; and
- (b) suspend performance of all Services provided, under this or similar agreements, until all payments due from the Customer (including any interest under clause 6.8(a)) have been made.
- 6.9 The Customer shall pay all amounts due under the Waste Management Services Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Blue Castle in order to justify withholding payment of any such amount in whole or in part. Blue Castle may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Blue Castle to the Customer.
- 6.10 Blue Castle may require a credit application from the Customer and in processing the credit application the Customer consents to Blue Castle making enquiries of credit reference agencies or other sources (each of whom may keep a record of Blue Castle's enquiry) and using any information obtained for the purpose of risk assessment, fraud prevention and occasional debt tracing.
- 7. WASTE SPECIFICATION**
- 7.1 The Customer shall permit Blue Castle's personnel and sub-contractors unrestricted and immediate access to the Premises as reasonably required from time to time for the purpose of inspecting and sampling the Waste.
- 7.2 The Customer agrees to supply to Blue Castle such evidence of the Waste as it may require to satisfy itself that the description of the Waste is identical to the Waste Specification or to enable it to comply with Environmental Laws and use the appropriate European Waste Catalogue (EWC) codes.
- 7.3 The Customer must notify Blue Castle (and Blue Castle shall notify the Customer) immediately if it becomes aware that any Waste serviced or to be serviced does not conform to the appropriate Waste Specification. Any such notification shall include reasonably appropriate details of the matter.
- 7.4 If at any time Blue Castle has reason to believe that any Waste does not conform with the appropriate Waste Specification, or is toxic, poisonous, explosive, radioactive, inflammable or otherwise dangerous; or the handling of which may cause Blue Castle to incur civil or criminal liability, or the disposal of which may involve Blue Castle in additional expense or an unreasonable amount of extra work; then (in any such case) Blue Castle may without incurring any liability suspend the Services (wholly or in part) and refuse to accept the Waste (or any relevant part(s) of it) until such time as it is reasonably satisfied that the Waste conforms with the relevant EA Code referred to in clause 5.1(a)(ii) above and the Waste Specification.
- 7.5 If the Customer proposes any change in:-
- (a) the specification of the Waste to be serviced; or
- (b) production techniques schedules or other aspects of its business;
- in consequence of which the Waste to be serviced will or may not conform with the appropriate European Waste Catalogue (EWC) code or Waste Specification, the Customer shall notify Blue Castle immediately of such change with sufficient details thereof to enable Blue Castle to decide whether or not such Waste is capable of being serviced under the Waste Management Services Agreement. Blue Castle may at its discretion upon notice to the Customer suspend the Services without liability to the Customer following which the provisions in clauses 7.6 and 7.7 below shall apply.
- 7.6 Before resumption of the Services, the parties are to agree in writing a revised Waste Specification for the Waste to be serviced, revised Charges and any other necessary amendments to the Waste Management Services Agreement whereupon the revised Waste Specification shall become the Waste Specification. If:-
- (a) Blue Castle is not content for the Services continue on the then current terms; and/or
- (b) the parties cannot agree revised terms within 10 days of the suspension of the Services;
- then Blue Castle may immediately terminate the Waste Management Services Agreement upon notice to the Customer (but without prejudice to any right or remedy of either party for any prior breach of the Waste Management Services Agreement).
- 7.7 Suspension of the Services pursuant to clauses 7.4 or 7.5 shall not affect the Customer's obligation to pay all Charges falling due from time to time. Payment of such Charges shall be without prejudice to Blue Castle's right to recover from the Customer any other loss or expense incurred by Blue Castle caused by the suspension of the Services.
- 7.8 Save and except where Blue Castle has agreed to package and label Waste, the Customer warrants and undertakes to ensure that all drums, other sealed containers and packages are sound, suitable for the Waste and labelled in accordance with Environmental Laws, including (without limitation) an accurate description of the Waste within them and (where appropriate) a warning of hazard presented by their contents. The Customer shall ensure that no other marking is made on or allowed to remain upon any such drum, container or package.
- 8. OWNERSHIP OF RIGHTS & PROPERTY**
- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Blue Castle.
- 8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional upon Blue Castle obtaining a written licence from the relevant licensor on such terms as will entitle Blue Castle to license such rights to the Customer.
- 8.3 All Blue Castle Equipment is and shall remain the exclusive property of Blue Castle, and the Customer shall not sublet or otherwise part with possession of any Blue Castle Equipment. Blue Castle may at its discretion at any time replace any Blue Castle Equipment supplied with other Blue Castle Equipment. The Customer shall not be entitled to exercise any lien over any Blue Castle Equipment.
- 8.4 Title to and ownership of all Waste (and responsibility for its disposal) passes to Blue Castle at the time that the Waste is removed from the Customer's Premises.
- 8.5 Title to any property (including personal effects) deposited by the Customer or any third party in the Waste shall pass to Blue Castle in accordance with clause 8.4, whereupon Blue Castle is not bound to return any such property nor is it liable for its loss and damage. The Customer indemnifies to Blue Castle against all costs, claims, demands and liabilities in respect of any such property deposited in the Waste.
- 9. QUANTITY/WEIGHT OF WASTE CALCULATION**
- 9.1 In respect of any Waste which is charged for (or subject to a rebate payment) based on weight, on arrival at the relevant disposal site the vehicle containing a consignment of Waste shall be weighed on a weighbridge. Following the off-loading of the consignment of Waste, the vehicle shall again be weighed on a weighbridge. Each such weighing shall be under the direction and supervision of the weighbridge operator (or other authorised representative). The weight for each consignment of Waste shall be the difference between the two weights recorded on the weighbridge. The weight of such consignment as calculated shall, in the absence of manifest error, be binding on the Customer and the weighbridge ticket issued shall be conclusive as to the weight of the consignment of Waste off-loaded. If at any time the weighbridge is not (in the opinion of Blue Castle) working properly or at all, Blue Castle and the Customer shall use all reasonable endeavours to agree the weight of the relevant consignment of Waste, having regard to the average weight load for the vehicle in question.
- 9.2 If any Waste is charged for (or subject to a rebate payment) based on the quantity of vehicle loads, Blue Castle will keep records of aggregate quantities of Waste and such records shall, in the absence of manifest error, be binding on the Customer.
- 10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 10.1 Except as expressly provided in these Conditions, the following provisions set out the entire financial liability of Blue Castle (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Waste Management Services Agreement or these Conditions; and
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Waste Management Services Agreement.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Waste Management Services Agreement.
- 10.3 Nothing in the Waste Management Services Agreement (including these Conditions) shall limit or exclude Blue Castle's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.4 Blue Castle shall not be liable to the Customer for any:
- (a) loss of profits;
- (b) loss of anticipated profits;
- (c) loss of anticipated savings;
- (d) loss of expected future business;
- (e) damage to the Customer's reputation or goodwill; and/or
- (f) corruption of any data;
- which arise out of or in connection with the performance or contemplated performance by Blue Castle of the Waste Management Services Agreement, or
- (g) any damages, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) whether arising from negligence, breach of contract or howsoever caused which may not fairly and reasonably be considered to have arisen naturally from the breach by Blue Castle of any obligation in the Waste Management Services Agreement and which were not at the date of the Waste Management Services Agreement reasonably foreseeable as liable to result from the breach.
- 10.5 Subject to clause 10.2 and 10.3 and without prejudice to clause 10.4, Blue Castle's total liability arising in contract (including without limitation any breach of these Conditions by Blue Castle), tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising out of or in connection with the performance or contemplated performance by Blue Castle of the Contract shall be limited to the following amounts:
- (a) in respect of damage to tangible property resulting from the negligence of Blue Castle, its employees or sub-contractors, the sum of £10,000,000; and
- (b) in all other cases, the total sums paid or payable by the Customer to Blue Castle under the Waste Management Services Agreement.
- 10.6 This clause 10 shall survive termination of the Waste Management Services Agreement.
- 11. TERM & TERMINATION**
- 11.1 The Waste Management Services Agreement shall come into force on the Commencement Date and shall (subject to earlier termination in accordance with these Conditions) continue in force for an initial period of 12 months, after which it shall automatically renew for successive periods of 12 months commencing on each anniversary of the Commencement Date (the initial 12 month period and each subsequent 12 month period being an **Annual Period**) unless or until terminated by either Blue Castle or the Customer giving not less than 6 months' prior written notice of termination to the other (such notice to be given not later than 3 months prior to the end of the then current Annual Period and expiring 3 months after the end of the then current Annual Period).
- 11.2 Without limiting its other rights or remedies, each party may terminate the Waste Management Services Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of the Waste Management Services Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (b) an order is made or a resolution is passed for the winding up of the other party (other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party), or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade.
- 11.3 Without limiting its other rights or remedies, Blue Castle may terminate the Waste Management Services Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Waste Management Services Agreement on the due date for payment.
- 11.4 Without limiting its other rights or remedies, Blue Castle shall have the right to suspend provision of the Services under the Waste Management Services Agreement or any other contract between the Customer and Blue Castle if the Customer becomes subject to any of the events listed in clause 11.2(b) to clause 11.2(f), or Blue Castle reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Waste Management Services Agreement on the due date for payment.
- 12. CONSEQUENCES OF TERMINATION**
- 12.1 On termination of the Waste Management Services Agreement for any reason:
- (a) the Customer shall immediately pay to Blue Castle all of Blue Castle's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted (and in respect of any applicable charges for collection of Blue Castle Equipment) Blue Castle shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all Waste Containers and any Blue Castle Equipment which have not been fully paid for: If the Customer fails to do so, then Blue Castle may enter the Customer's Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Waste Management Services Agreement;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Waste Management Services Agreement which existed at or before the date of termination; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 12.2 If Blue Castle terminates the Waste Management Services Agreement under clause 11.2 or 11.3 then (in addition to those amounts referred to in clause 12.1(a)) the Customer shall pay to Blue Castle by way of liquidated damages for early termination of the Waste Management Services Agreement (the Early Exit Payment) an amount calculated in accordance with this clause 12.2 in respect of the period between the actual date of such termination and the earliest date on which the agreement could legitimately be terminated under clause 11.1 (the Contract Term Shortfall Period). The Early Exit Payment shall be calculated as an amount equal to 41% of the aggregate daily rental and collection charges which would have become payable in respect of the Services during the Contract Term Shortfall Period based upon the following assumptions:
- (a) where the Services have been provided by Blue Castle for a period of less than 3 months, it shall be assumed (for the purposes of calculating the Early Exit Payment) that waste collections would have been made during the Contract Term Shortfall Period at the expected frequency set out in the **Blue Castle Transfer Note Agreement**; or
- (b) where the Services have been provided by Blue Castle for a period of more than 3 months, it shall be assumed (for the purposes of calculating the Early Exit Payment) that waste collections would have been made during the Contract Term Shortfall Period at a frequency which is the greater of (i) expected frequency set out in the **Blue Castle Transfer Note Agreement** and (ii) at the same average frequency as applied during the 3 months immediately preceding the termination date.
- 12.3 The Customer acknowledges that the Early Exit Payment calculated in accordance with clause 12.2 is a genuine pre-estimate of the likely loss which Blue Castle would incur as a result of early termination of the Waste Management Services Agreement.
- 13. GENERAL**
- 13.1 **Force majeure:**
- (a) For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of Blue Castle including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Blue Castle or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Blue Castle shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Waste Management Services Agreement as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents Blue Castle from providing any of the Services for more than 12 weeks, Blue Castle shall, without limiting its other rights or remedies, have the right to terminate the Waste Management Services Agreement immediately by giving written notice to the Customer.

13.2 Assignment and subcontracting:

- (a) Blue Castle may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Waste Management Services Agreement and may subcontract or delegate in any manner any or all of its obligations under the Waste Management Services Agreement to any third party or agent. The Customer acknowledges and agrees that the Services will be sub-contracted by Blue Castle to relevant third party operator(s) and that the Customer owes a duty of care to such third party operator(s).
- (b) The Customer shall not, without the prior written consent of Blue Castle, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Waste Management Services Agreement.

13.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with the Waste Management Services Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 13.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Waste Management Services Agreement shall not be validly served if sent by e-mail.

13.4 Waiver:

- (a) A waiver of any right under the Waste Management Services Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Waste Management Services Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Waste Management Services Agreement are cumulative and do not exclude rights provided by law.

13.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Waste Management Services Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Waste Management Services Agreement shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Waste Management Services Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.6 No partnership: Nothing in the Waste Management Services Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.7 Third parties: A person who is not a party to the Waste Management Services Agreement shall not have any rights under or in connection with it.

13.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Waste Management Services Agreement, shall only be binding when agreed in writing and signed by Blue Castle.

13.9 Governing law and jurisdiction: The Waste Management Services Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

14. SPECIAL CONDITIONS / ADDITIONAL POINTS

14.1 Compactable Waste: Unless specifically stated within The Waste Management Services Agreement the Waste will not be compacted by any mechanical or similar process prior to the Waste being collected.

14.2 Special Conditions Relating to One-Off & Bin Hire Services: Notice of cancellation must be made at least 7 days prior to the planned delivery date of any Equipment or the agreed service date (whichever is earlier). Failure to give such notice will render The Customer liable to pay Blue Castle a percentage of the estimated job value as per the following scale. Less than 1 days' notice, 100% payable, 1-2 days' notice 75% payable, 3-7 days' notice 50% payable.



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