



Resource London

TERMS AND CONDITIONS TOOLKIT
FOR LOCAL AUTHORITY
COMMERCIAL CUSTOMERS'

2019



LWARB

London Waste and Recycling Board

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Introduction

The below contract provisions are a combined and consolidated version of the customer Terms & Conditions used by 12 Local Authorities in London. These are by no means exhaustive of what should be included in your contract but can be used as a good reference point.

The Local Authorities that provided copies of their contracts have differences in how their commercial waste services are run (e.g. inhouse, contracted, etc...) and this should be taken into consideration when reading through the contract provisions. Some aspects of the below provisions may not be applicable to your service or may need to be amended to fit your service, so please ensure that any changes to your Terms and Conditions are reviewed by your legal teams and any other relevant council or contractor teams.

The blue italic text within the contract provisions below identify the need for specificity from your Local Authority in relation to the terms and conditions your customers need to adhere to. For example, it could indicate the need for you to enter the date that your fees and charges are reviewed or your response times for missed collections.

Contract Provisions

1. Definitions and interpretations of key terms

- a. Within this section state definitions and interpretations of any key terms. Examples of key terms could include, but are not limited to: 'effective date', 'initial term', 'termination', 'fees and charges', 'council', 'customer', 'equipment', 'waste material', 'schedule', 'customers location', 'agreement', 'excluded waste', 'contaminated waste', 'waste transfer note', 'end destination', 'service disruption', 'force majeure', 'private and confidential', dispute'

2. Duration / term

- a. The agreement will commence on the effective date and shall remain in full force and effect for the initial term, and shall be renewed automatically and remain in full force and effect for further successive (*enter number of months*) month terms, unless and until:
 - i. It is subject to early termination under common law or statute
 - ii. Either the customer or the council gives notice of termination by written notice to the other with at least (*enter number of days*) days' notice prior to the ending of the initial term or renewal term

3. Fees and charges

- a. The customer will be advised of the current scale of fees and charges as at the date of this agreement until (*enter date*) when they may be changed
- b. Fees and charges are subject to change by the council from time to time in addition to also being subject to any change in the rate of VAT where applicable

4. Collection policy

- a. The customer must always keep the lid of the equipment closed, other than when the bin is being loaded or unloaded, if the lid of the equipment cannot be closed due to containing too much waste material it may not be collected by the council
- b. The customer must place the equipment in a place for collection that has been agreed by the council, if the equipment is not in the agreed place at the time of the collection the council have the right to not collect it
- c. The customer must ensure that any equipment in the form of waste sacks are securely tied to prevent any waste material from escaping and that cardboard is flat-packed, bundled and correctly labelled with the councils' cardboard stickers
- d. In the event of the customers waste not being collected at the scheduled time the customer must contact the council by *(enter contact method, e.g. phone, email)* no later than *(enter number of hours)* after the missed collection. The council will return to the customers location to rectify the missed collection within *(enter number of hours)* hours.

5. Waste material

- a. The waste material covered by this agreement does not include excluded waste which is considered to be:
 - i. Liquid waste including, but not limited to, paint and cooking oil
 - ii. Animal carcasses and parts of animal carcasses (including blood, hides, skins, bones, feathers)
 - iii. Any toxic or other hazardous substances as defined in Hazardous Waste (England and Wales) Regulations 2005, Environmental Protection Act 1990, or any other act, schedule or list that may subsequently come into force
 - iv. Gas bottles or explosives
 - v. Electrical goods according to the Waste Electrical and Electronic Equipment Regulations 2013 including telephones and fluorescent tubes
- b. The customer will place all waste material in the equipment and will not place any waste material:
 - i. Outside of the equipment
 - ii. In the vicinity of the equipment
 - iii. In any other place for collection by the council
- c. If waste material is placed anywhere other than in the equipment the council will be entitled to charge the customer an amount the council considers appropriate in relation to the volume of waste material deposited, unless the waste is presented in paid for council waste sacks
- d. The customer acknowledges they have ownership of the waste material and has both the right to deposit it in the equipment and the right to transfer the waste material to the council
- e. The customer will take full responsibility for the identity of the waste that is deposited within the equipment, including when this waste is deposited by a 3rd party, with or without the customers consent
- f. The customer agrees that each Waste Transfer Note that is completed in relation to the waste material covered by this agreement will contain an accurate and adequate description of the nature and characteristic of the waste material and that the

council has an accurate knowledge of the waste composition for any time that the council has custody or control of the waste material

- g. Prior to the waste material being placed in the equipment the customer must ensure that it is lawfully and properly labelled and packaged to enable it to reach its end destination or disposal without escape
- h. The council acquires absolute ownership of the waste material once it is loaded into the council's waste collection vehicle
- i. The customer will use no mechanical means to compact the contents being placed in the equipment without written consent from an appropriate council representative

6. Excluded waste and contamination

- a. Unless agreed by both the council and the customer in writing in advance, this agreement will not cover the storage and collection of excluded waste
- b. The customer agrees not to place any excluded waste or contamination within equipment or out for collection by the council and they shall use all reasonable endeavours to ensure that no other person(s) does so either
- c. If contamination occurs:
 - i. In the first instance the customer will be informed and advised of best practice by an appropriate council officer, with collections of that equipment suspended until the contamination has been removed
 - ii. In the second and later instances the council will levy a charge to the customer, that they deem appropriate, to cover the costs to the council of collecting and disposing of contaminated recycling
- d. If the above clauses are breached the excluded waste will not form part of the waste material and no ownership of any such excluded waste will pass to the council and the customer will indemnify for and all claims, losses, damages, penalties, fines, and liabilities whatsoever arising out of:
 - i. Excluded waste or contamination being deposited into the collection vehicle, containers and other council equipment
 - ii. Any subsequent handling of such excluded waste or contamination by, and on behalf of, the council, its agents, its contractors and its employees

7. Responsibility for equipment

- a. The customer will have the care custody and control of the equipment, yet ownership will remain with the council
- b. The customer will acknowledge that the equipment will be used solely for the storage of waste material that is to be collected by the council
- c. The customer accepts responsibility for all loss, damage or defacement to the equipment except for normal wear and tear. The customer will pay, upon demand from the council, the cost of replacing and/or repairing and/or reinstating any lost and/or damaged and/or defaced equipment
- d. If the equipment, or any part of the equipment, is lost, damaged or defaced in any way, the customer shall notify the council immediately
- e. The customer will keep the equipment safe and secure at their premises and will use all reasonable endeavours to prevent any loss, damage or defacement to the equipment, or any part of the equipment

- f. The customer shall not do the following to the equipment:
 - i. Overload it by weight or volume (*detail maximum weights for each sack and bin size*)
 - ii. Move it from their location or alter it
 - iii. Affix anything to it
 - iv. Use it for any purpose other than its proper and intended use
 - v. Load it so that any waste material shall be above the level of the side
- g. The customer shall take all proper precautions to prevent risk and/or injury to any person due to the presence of the equipment at the customers location
- h. The customer shall not, without written consent by the council, place any name, sign, marking, advertising or other device on the equipment nor will they remove, cover or deface any name, sign, marking or advertising or other device place on the equipment by the council
- i. The customer shall be responsible for the cleanliness of the equipment and/or the council will either clean the equipment at no less often than (*enter number of months*) months or replace the equipment with clean equipment no less often than (*enter number of months*) months
- j. The council will not be liable for any damage to customer premises or other parties premises resulting from the council providing or attempting to provide the services at the customers location
- k. The customer provides the right and licence to the council and its representatives to enter its premises (not limited to the customers location) for the purpose of assessing and/or removing the equipment:
 - i. At any time
 - ii. With or without vehicles
 - iii. With or without notice
- l. The customer will provide unobstructed and safe access to the equipment on any schedule or other collection day however if the equipment is inaccessible, and the scheduled pick-up cannot be made, the council:
 - i. Will notify the customer, and provide the customer with a reasonable opportunity to provide access
 - ii. Reserves the right to charge the customer for any additional collection costs incurred due to the customers failure to provide access
- m. The customer will ensure that any access provided from the public highway to the customers equipment location is sufficient to bear the weight of the councils waste collection vehicles and equipment that are required to perform the service.

8. Waste transfer note

- a. The customer shall ensure that the waste transfer note accurately records the waste material and is completed in accordance with all legislation and regulations including recording of:
 - i. The appropriate six-digit code in the European Waste Catalogue
 - ii. The quantity of waste material
 - iii. How the waste material is contained
- b. The customer shall ensure that the waste transfer note is signed and returned to the council

- c. The customer shall ensure that if the type of waste material collected changes during the period the waste transfer note is issued for, they will complete a new, signed waste transfer note and return it to the council
- d. The signed copy of the Waste Transfer Note must be retained by the customer for two years after the date of the last collection specified in the waste transfer note and must be presented to an authorised person when requested
- e. The council shall issue a signed Waste Transfer Note at the time of this agreement being signed, and yearly on *(enter date)* thereafter

9. Licensed waste disposal facilities

- a. The council will use reasonable endeavours to ensure that the end destination of the waste material (except for excluded waste) shall be at a properly licensed or exempted facility for:
 - i. Disposal
 - ii. Recycling
 - iii. Treatment
 - iv. Transfer

10. Insurance

- a. At all times during the agreement term the customer shall maintain adequate insurance coverage in respect of the equipment to be in an amount not less than the full replacement value against fire, theft, destruction & damage, and other risk and third-party liability.
- b. The customer must notify the insurer of the council's interest in the equipment and noted on the policy should be an agreement that all proceeds of any claims are to be paid directly by the insurer to the council
- c. The customer shall, on demand, produce to the council evidence of appropriate insurance coverage
- d. If the insurers state that the equipment, or any part of the equipment, is lost or damaged beyond economic repair the council will have the right to decide whether:
 - i. The insurance money is applied as far as possible in replacing the equipment, or part of equipment, with equipment, or part of equipment, that is of a similar type and/or description OR
 - ii. To terminate this agreement by giving at least *(enter number of days)* days written notice to the customer
- e. If the council serves notice to the customer under the above clause, the customer shall, within *(enter number of days)* days of being notified of the termination:
 - i. Pay to the council all sums due under this agreement
 - ii. Pay to the council all costs and expenses incurred by the council in locating, repossessing or recovering equipment and/or collecting any payments due and/or obtaining due performance of the Customer's obligations including legal costs
 - iii. Pay to the council any difference between the full replacement cost of the equipment, or part of the equipment, and the amount of insurance monies received by the council

- iv. Make available for collection by the council the equipment, or part of equipment that is not lost or damaged

11. Service disruption and force majeure

- a. Collection services may be varied by the council during Bank Holidays, other notified holidays and at such other times as is considered appropriate giving notice to the customer as is reasonable in the circumstances
- b. If at any time during the term of this agreement it shall become impossible by reason of operational difficulties to the fleet or services and/or by reason of strike, employment dispute or lock-out, for the council to carry out their duties as contained under this agreement on the scheduled day the council reserves the right to re-schedule the collection to the earliest possible opportunity without prior notice to the customer or cost to the council
- c. If there are Force Majeure Events (fire, flood, acts of terrorism, war, rebellion, riot, lock-out, strike, explosion, adverse weather conditions or other events beyond the control of the council) that mean either the council or customer is unable to perform an obligation within this agreement then they will:
 - i. Inform the other party immediately that they cannot perform their obligation
 - ii. Mitigate the impact of the Force Majeure event as best possible
 - iii. Be excused of the performance of the obligation and will not be liable for any damages in respect of any omission of services

12. Payments

- a. The customer shall pay for the services provided on a *(enter payment frequency, e.g. monthly)* basis, by *(enter payment method, e.g. direct debit)* unless agreed otherwise. This will be in accordance with the published charges and rates enforced at the time.
- b. Payments shall be made in full by the customer to the council within *(enter number of days)* days of the date of the invoice
- c. The council will be entitled to charge interest at *(enter interest rate %)* above the base rate published by the *(enter name of bank rate used)* Bank on any sum due by the customer to the council that remains unpaid for a period of *(enter number of days)* days from the invoice date
- d. If the customer does not utilise the full capacity of the equipment stated in this agreement a rebate will not be provided by the council

13. Payment default and termination

- a. The council can treat this agreement as invalid (and either terminate it by written notice or allow the customer a period of *(enter number of days)* days to rectify the breach) if the customer:
 - i. Is more than *(enter number of days)* days late in payment of an invoice
 - ii. Is in breach of any provision of this agreement
 - iii. Is unable to pay its debt
- b. If the council does terminate this agreement the customer shall make any equipment available for collection by the council and will pay to the council:

- i. All sums due under the agreement
- ii. £ *(enter charge due)* charge to collect equipment from the customers location
- iii. As liquidated damages:
 1. For collection services and/or equipment: the customers latest monthly charge for the services multiplied by *(enter number of months)* months (either months remaining in the agreement or a set amount)
 2. All costs and expenses incurred by the council in locating, repossessing or recovering equipment and/or collecting any payments due and/or obtaining due performance of the Customer's obligations including legal costs
- iv. An amount equivalent to the cost of repairing or reinstating the equipment and/or an amount equivalent to the cost of replacing the equipment should the equipment not be in a condition deemed suitable by the council, or if the equipment is lost or damaged beyond repair

14. Service changes and charge adjustments

- a. Any changes to the type, size and amount of the equipment, or the type or frequency of the collections that form the services will require, *(enter number of days)* days' notice by written agreement between the council and the customer, and may result in increases in the councils charges and rates
- b. Any agreed changes will not affect the validity of this agreement and this agreement will be amended accordingly and the customer will be liable to pay a contract amendment charge of *(enter charge)*
- c. This agreement will continue for the duration of the term and will be applied to any agreed new service address location of the customer within the area for which the council provides a collection service, but the agreement will be subject to appropriate increases to the charges and rates in accordance with the councils scale of charges for that area
- d. The council will have the right to adjust charges / rates to reflect any increase in:
 - i. Operating or transportation costs due to any changes that may occur, including locality changes
 - ii. The Retail Price Index as published by the Office of National Statistics
 - iii. The council's costs as a result of changes in legislation, rules or regulations (local, national or international) that are applicable to the councils operations of the services within this agreement
 - iv. Taxes, duties, fees or other government charges suffered by the council

15. Agreement and amendment

- a. This agreement supersedes any and all previous agreements and understandings between the customer and the council
- b. Any amendments to this agreement will not be binding unless in writing and signed by a duly authorised representative of the council and the customer

16. Notices

- a. Any notices that are served by the customer under this agreement shall be sent by:
 - i. First class post which will be deemed to have been delivered to the council 2 working days after the date of posting
 - ii. E-mail which will be deemed to have been delivered to the council at the time of sending if a confirmation report of a successful transmission is obtained

17. Waiver and severance

- a. If the council, at any time, fails to enforce any of the provisions of this agreement, this will not:
 - i. Be classed as a waiver of the provision, or of the right to subsequently enforce all terms and conditions of this agreement
 - ii. Affect the validity of this agreement or the right of the council to enforce any provision in accordance with its terms
- b. In the event of any provision within the agreement becoming ineffective or unenforceable, this will not invalidate the remaining provisions of this agreement, that will remain in full force and effect

18. Confidentiality and data protection

- a. Both the customer and the council, for the duration of this agreement and at any time following the termination of this agreement, shall keep private and confidential any confidential and/or commercially sensitive business of and/or belonging to the other party that has come to their attention because of the agreement being in place
- b. Confidential information in relation to the services shall not be disclosed unless this information:
 - i. Comes into the public domain or is disclosed to the public in a way other than by breach of this clause OR
 - ii. Is required to be disclosed by law by any regulatory authority OR
 - iii. Was already in the possession of the disclosing party, without objections of confidentiality, on the date of its receipt from the other party
- c. The customer acknowledges that the council is subject to the requirement of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the council (at the customer's expense) to enable the council to comply with these information disclosure requirements
- d. In no event shall the customer respond directly to a request for information unless expressly authorised to do so by an appropriate council representative
- e. The council is under a duty to protect public funds and so it may use information the customer has provided within this agreement for the prevention and detection of fraud, as well as sharing this information with other bodies responsible for auditing or administering possible funds for these purposes

19. Liability and indemnity

- a. The council will not be liable to the customer for any direct or indirect or consequential loss, for any damage and/or expense incurred or suffered by the

customer, arising in connection with the provision of any services by the council, its employees or agents unless the following exceptions are present:

- i. The council breaches their duty of care pursuant to Section 34 of the Environmental Protection Act 1990
 - ii. The negligence of the council or its agents, servants or employees
- b. The customer acknowledges being subject to the duty of care under section 34 of the Environmental Protection Act 1990, and, if the customer fails to comply with this duty of care, they shall indemnify and hold harmless the council from and against all:
- i. Claims
 - ii. Losses
 - iii. Damages
 - iv. Penalties
 - v. Fines
 - vi. Liabilities
- c. The customer shall indemnify and hold harmless the council against all claims, damages, losses and liabilities for injury or death to persons and/or loss or damage to property due to the customers use, location, operation or possession of equipment unless caused by the negligence of the council or it's agents, servants or employees
- d. The customer will be liable and will indemnify and hold harmless the council (including its officers, employees and agents) against:
- i. All liabilities, damages, costs, charges, expenses, losses, claims, demands and proceedings incurred or suffered
 - ii. Injury to any persons
 - iii. Loss, whether arising directly or indirectly, out of the act, default or negligence of the customer (including its employees or agents) in connection with the customers rights under this agreement

20. Law and jurisdiction

- a. This agreement shall be governed by and interpreted in accordance with the laws of England
- b. The council and the customer agree to submit to the jurisdiction of the English courts

21. Dispute resolution

- a. If there is a dispute between the council and the customer about the interpretation or operation of this agreement, in the first instance the council's *(enter relevant job role)* will meet with the customer to try and resolve any disputes or issues between the parties amicably
- b. If this process fails, or at any time following the original dispute, the customer can follow the council's complaints procedure and the dispute will be referred to a senior officer at the council for resolution.
 - i. *(Enter an appropriate dispute resolution that is appropriate to your Local Authority)*