

South Hams District Council

Trade Waste Service Terms and Conditions 2021

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause [5](#) ([Charges and payment](#)).

Commencement Date: has the meaning given in clause [2.2](#).

Conditions: these terms and conditions as amended from time to time in accordance with clause [11.4](#).

Contract: the contract between the Council and the Customer for the supply of Services in accordance with these Conditions.

Council: South Hams District Council of Follaton House, Plymouth Road, Totnes TQ9 5NE or any contractor, agent or third party carrying out any part of the Services on behalf of the Contractor.

Contractor: the sub-contractor contracted by the Council from time to time to carry out the Services.

Customer: the person or firm who purchases Services from the Council.

Customer Default: has the meaning set out in clause [4.2](#).

Duty of Care Waste Transfer Note: the written record of the waste required under the Environmental Protection Act 1990. The Duty of Care Waste Transfer Note may also be referred to as a WTN or Duty of Care DOC.

Hazardous Waste: waste that contains hazardous properties harmful to human health or the environment as identified in the European Waste Catalogue available on the Environment Agency website.

Order: the Customer's online order for the Services.

Prescribed Collection Dates: the collection dates that will be specified by the Council to the Customer following receipt of an Order.

Services: the collection of trade waste by the Council on the Prescribed Collection Dates.

Trade Waste: the waste produced by the Customer in the course of carrying out its business and commercial activities.

Trade Waste Bins: the trade waste bins belonging to the Council that shall be placed at the Customer's property for the purposes of the containing the Trade Waste produced by the Customer until its collection by the Council.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to writing or written includes fax but not email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Council issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (Commencement Date) subject to the Customer signing a valid Duty of Care Waste Transfer Note.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Council, and any descriptions or illustrations contained in the Council's 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 Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Council shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

3.1 The Council shall supply the Services to the Customer.

3.2 For the purposes of carrying out the Services the Council shall provide the Customer with the relevant size and number of Trade Waste Bins. The Trade Waste Bins shall remain in the ownership of the Council during the Contract.

3.3 The Council reserves the right to amend the Prescribed Collection Dates.

3.4 The provision of the Services may be varied by the Council during Bank Holidays, other holidays, during emergency or to meet other operational requirements including inclement weather or in other circumstances outside the control of the Council. The Council do not undertake to provide an alternative collection. Where possible the Council will endeavour to notify the Customer in advance. Any such variation will be without liability to the Council. However the Council will endeavour to make arrangements for any uncollected Trade Waste to be collected. The Customer agrees to assist the Council in it attempts to make alternative arrangements for the collection of the Trade Waste and the Customer acknowledges that circumstances may

dictate that an alternative method of storage and/or disposal of the Trade Waste may need to be undertaken by the Customer in the interim at their own risk and cost.

3.5 The Council reserves the right to make operational changes as it deems necessary to ensure that the Services are provided to all customers in an efficient and cost-effective manner. The Customer will be notified of such operational changes, if not in advance, as soon as possible.

3.6 The Council and the Customer shall comply with all legislation and officially recognised guidance and codes of practice relating to the Services including the Environmental Protection Act 1990 and the Control of Pollution Act 1974.

3.7 The Council shall not be liable for any loss or damage howsoever arising for failure to collect the waste from the Customer because of any event beyond the Council's control including access issues, adverse weather conditions, accidents, or obstruction of any public road or highway.

3.8 The Customer hereby gives the Council the irrevocable right and licence to enter the Customers premises at any time with or without vehicles and with or without notice for the purposes of assessing the location and/or carrying out the Services.

3.9 The Customer does not have any authority to deposit any waste on the public highway in advance of collection. The Services shall not apply to the collection of Trade Waste placed on the public highway.

4. Customer's obligations

4.1 The Customer shall:

- (a) Ensure that the terms of the Order and any information it provides is complete and accurate.
- (b) Co-operate with the Council in all matters relating to the Services.
- (c) Provide the Council, the Contractor and their employees, agents and consultants with access to the Customer's premises, as reasonably required.
- (d) Provide the Council with such information and materials as the Council may reasonably require to supply the Services and ensure that such information is complete and accurate in all material respects.
- (e) Place the Trade Waste Bins in positions of easy access for collection. The Customer shall afford reasonable, safe, adequate access and space in which loading and unloading operations can be carried out. Collections must be carried out without, risk to the drivers, its loaders or damage to the vehicle without obstruction to the public highway.
- (f) Only use the Trade Waste Bins for the disposal of commercial waste produced at the Customer's premise.
- (g) Not use the Trade Waste Bins for the disposal of anything other than the waste outlined in the Duty of Care Waste Transfer Note. This includes but is not limited to, Hazardous Waste,

metals of any description, builder's materials (including asbestos and plasterboard), glass or liquids including engine and food oils.

- (h) Not to use the recycle sacks for the disposal of anything other than paper and card in purple sacks and plastic bottles and tins in pink sacks. No other recyclables are accepted in the recycling sacks.
- (i) Only commercial waste produced at the Customer's premises is to be placed in the Trade Waste Bins provided by the Council.
- (j) To keep the lids of the Trade Waste Bins closed when not in use.
- (k) Not overload the Trade Waste Bins either in terms of volume or weight nor load them in a manner, which makes disposal unsafe. The Services will not be undertaken if in the reasonable opinion of the Council the Trade Waste Bin has been left in any way described in this Condition.
- (l) Indemnify the Council in respect of all damage or injury to person or property and against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith occasioned indirectly by the presence of the Trade Waste Bins on or about the Customers premises.
- (m) Comply with all applicable laws, including health and safety laws.
- (n) Keep the Trade Waste Bins at the Customer's premises in safe custody at its own risk, maintain the Trade Waste Bins in good condition until returned to the Council, and not dispose of or use the Trade Waste Bins other than in accordance with the Council's written instructions or authorisation.
- (o) The Customer shall at his/her own expense keep the Trade Waste Bins clean and/or disinfected, in good repair and condition (fair wear and tear expected), wheels should be oiled and kept free from obstruction.
- (p) The Customer shall report to the Council as soon as possible any faulty or damaged Trade Waste Bin to allow time for any necessary repair or replacement.

4.2 If the Council's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) without limiting or affecting any other right or remedy available to it, the Council shall 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 in each case to the extent the Customer Default prevents or delays the Council's performance of any of its obligations;
- (b) the Council shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Council's failure or delay to perform any of its obligations as set out in this clause 4.2; and

- (c) the Customer shall reimburse the Council on written demand for any costs or losses sustained or incurred by the Council arising directly or indirectly from the Customer Default.

5. Duty of Care and Duty of Care Waste Transfer Note

5.1 The Environmental Protection Act 1990 ('EPA') places a duty of care on the producer of waste. The law requires that waste producers take all reasonable steps to ensure that waste is managed in an authorised manner. The waste producer must ensure the waste is properly contained and does not escape from their control and is only transferred to an authorised person with a written description of the waste on a Duty of Care Waste Transfer Note. For the purposes of this Contract the Customer is the Waste Producer under the EPA.

5.2 The Customer warrants that the Duty of Care Waste Transfer Note contains an accurate and adequate description of the nature and characteristics of the waste material and that the Council is advised at all times of the composition of the waste material prior to collection. The Customer must complete, sign and return the Duty of Care Waste Transfer Note before the Contract commences.

5.3 The written description of the waste material in the Duty of Care Waste Transfer Note must contain sufficient information to enable safe and legal handling, recovery or disposal. It must also contain reference to the appropriate six-digit code in the European Waste Catalogue. The Duty of Care Waste Transfer Note must also show the quantity of the waste material and how it is contained.

5.4 Where there are regular collections of the waste material and the description remains unchanged a Duty of Care Waste Transfer Note can be valid for up to one year.

5.5 The signed copy of each Duty of Care Waste Transfer Note must be retained by the Customer for two years after the date of the last collection specified in the Duty of Care Waste Transfer Note and must be shown, on request to an authorised person.

6. Charges and payment

6.1 The price for the supply of the Services shall be the price set out in the Order.

6.2 The Customer shall pay for the Services in advance when placing their Order for either a 52-weekly collection, 39-weekly (schools only) or 26-weekly collection per annum on a rolling contract basis

6.3 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Council to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Council, pay to the Council 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.

6.5 The Council reserves the right to increase or decrease charges at any time to compensate for increases in disposal or other cost over which the Council has no control, any changes to be notified to the Customer in writing by the Council 4 weeks prior to commencement.

7. General

7.1 Governing law The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

7.2 Jurisdiction Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

7.3 Indemnity

- (a) The Customer shall be wholly responsible for the Trade Waste Bins and the safety of all persons (including waste collection workers) entering the location where the Customer keeps, stores or sites the Trade Waste Bins and the Customer shall be liable and agrees to indemnify the Council against any such liability, losses and claims whatsoever for injury or death to persons or loss or damage to property arising there from except where death or injury to a person or damage to property is caused by the negligence of the Council.
- (b) The Customer shall indemnify the Council against all claims arising through any neglect, act or breach by the Customer in connection with the Contract.
- (c) The Customer shall indemnify the Council against any damage its collection vehicle may cause to the road/drive, car park surface, or any other property not on the public highway, where the collection vehicle is required to enter to perform the Services including all apparatus or services located beneath the route taken by the collection vehicle subject to the Council's driver operating with normal care and attention.

8. Data Protection

8.1 Data Processing

To process the Customer's Order, the Council as the Data Controller require the Customer to provide the Council with personal data. Personal data shall have the meaning set out in the General Data Protection Regulation, specifically any information relating to a Data Subject who can be identified directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

For the purpose of the Services, the personal data the Council processes includes:

- Name;

- Address;
- Email address;
- Contact telephone number;
- Any other personal data provided to the Council for the purpose of providing the Services.

8.2 Data Sharing

The Council will process the Customer's personal data for the performance of this Contract, to provide the Customer with the Services. Data will be shared with the Council's contractor FCC Environmental Limited who deliver this service on the Council's behalf. FCC Environmental Limited act as a Data Processor and are required to retain data as set out in this Contract. At the end of the Contract, data will be deleted by the processor or returned to the Council.

The Council which consists of South Hams District Council and West Devon Borough Council operate a shared service and therefore personal data is shared between the two only where required to deliver the Service.

The Council may also use the personal information provided under this contract for the purpose of performing its statutory enforcement duties. The Council will not disclose any personal information to other third parties unless required to do so by law or to detect crime.

8.3 Data Retention & Transferring

The Council will store the Customer's personal data securely in hard copy format, electronically or both. The Customer's data will be retained for a maximum of two years after the Customer's request has been completed. It will be accessible to authorised employees and third-party contractors only for the purpose of handling the Customer's request.

8.4 Breach Notification

In the event of a breach, the Council and any third parties, will comply with the requirements of the Data Protection Act 2018 and General Data Protection Regulation.

If the Customer wishes to see the personal data the Council holds, please contact the Council's Data Protection Officer, Drew Powell, South Hams District Council & West Devon Borough Council. Data.Protection@swdevon.gov.uk

Visit our Privacy and Personal Data here:

<https://www.southhams.gov.uk/PrivacyAndPersonalData>

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 5 working days written notice.

9.2 Without affecting any other right or remedy available to it, the Council may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.3 Without affecting any other right or remedy available to it, the Council may suspend the supply of Services under the Contract or any other contract between the Customer and the Council if the Customer fails to pay any amount due under the Contract on the due date for payment.

10. Consequences of termination

10.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Council all of the Council's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Council shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Council shall collect all the Trade Waste Bins at the Customer's premises. Until they are collected, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

11.1 The Council will not be liable to the Customer or deemed to be in breach of the Contract by reason of any delay in performing or failing to perform any of the Council's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Council's reasonable control resulting from: act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, laws, prohibitions or measures of any kind on the part of any government; strikes, lockouts or other industrial actions or trade disputes (whether involving Council employees or third party employees); difficulties in obtaining labour fuel, parts or machinery or failure or breakdown of machinery.

11.2 Assignment and other dealings.

- (a) The Council may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

11.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.4 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice or communication shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

11.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

11.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.