

Any queries or complaints should be addressed to “The Managing Director, Harpers Environmental Ltd , Cleveland, Carr Lane, Sutton-on-the-Forest, York, YO61 1EY.

Tel: 01347 810677

Company Number: 01866895

1. GENERAL

- 1.1 These Conditions apply to all agreements for the supply of services by Harper’s and supersede any previous terms and conditions. No additions or modifications to or terms inconsistent with these Conditions shall be binding upon Harper’s unless specifically agreed in writing by Harper’s.
- 1.2 Harper’s may require a credit application from the Customer and in processing the credit application the Customer consents that Harper’s may make enquiries of credit reference agencies or other sources, who may keep a record of Harper’s’s enquiry, and that Harper’s may use any information obtained for the purposes of risk assessment, fraud prevention and for occasional debt tracing.
- 1.3 The rights and obligations of the Customer under this agreement shall be personal and shall not be assignable without the express consent of Harper’s.
- 1.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

2. DURATION

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

3. PAYMENT TERMS

- 3.1 The Charge will be calculated as stated overleaf. The amounts stated overleaf are exclusive of VAT and the Customer shall pay all sums due in respect of VAT in accordance with the invoice for the Service. Harper’s will ensure that each invoice for the Service contains adequate details of the VAT charged.
- 3.2 All payments for the Service shall be due and payable within 30 days of the date of the invoice for the Service SAVE THAT payment of all outstanding invoiced sums shall become due in any event forthwith upon termination of this agreement (howsoever caused). All payments made by the Customer under this agreement shall be made in full without any set-off or counter-claim whatever and the time of payment shall be of the essence of this agreement.
- 3.3 Any sums which are not paid by the due date shall thereafter attract interest on a daily basis at a rate of 4% per annum above the base lending rate for the time being of Barclays Bank pic. Without prejudice to Harper’s’s other rights in respect thereof, if the Customer defaults in payment by the due date of any amount invoiced for the Service, Harper’s shall be entitled to withhold further performance of this agreement until all arrears have been discharged by the Customer. The customer will be responsible for any legal or related fees that are incurred as a result of their breach of contract including non payment.
- 3.4 The Customer shall not be entitled to dispute any payment made. The Customer agrees that Harper’s’s records will be proof of the Service provided. The customer agrees to receive invoices for work completed on a weekly basis or as Harpers deems suitable during on-going work during an extended period. Invoiced work supported by Harpers records (including work within a contractual framework or on a staged payment basis) will be treated as discreet and fully completed at the point of invoicing for the purposes of payment.
- 3.5 Without prejudice to any other rights of Harper’s, if there is or there arises in Harper’s’s reasonable opinion reason to doubt that amounts due from the Customer will be paid in full then Harper’s reserves the right to require payment in advance before commencing or continuing the Service or at its sole discretion Harper’s may terminate the agreement forthwith.

4. PRICE

- 4.1 Harper’s shall have the right to increase the Charge at any time to take account of any variation in Harper’s’s costs including (but not limited to) variations in wages, disposal costs, administration costs, cost of materials and Equipment, fuel costs, taxes, duties and cost of compliance with Relevant Law. Harper’s shall endeavour to give the Customer not less than one calendar month’s notice of any variation of the Charge under this Clause but notwithstanding this the Customer shall be liable to pay any increase from the date specified in the notice.
- 4.2 Where the Charge Per Lift is based on an Assumed Weight Harper’s may revise the Assumed Weight (and consequently and proportionately the Charge Per Lift) at any time if it reasonably believes that the actual average weight per collection is less than or greater than the Assumed Weight.
- 4.3 Harper’s may charge and the Customer shall pay to Harper’s the EA Charge. Harper’s shall endeavour to give not less than one month’s notice to the Customer of the EA Charge but notwithstanding this and subject to condition 3.2 hereof the Customer shall be liable to pay the EA Charge within 30 days of the date of the invoice.

5. DELIVERY ACCESS UNLOADING AND RETURN

- 5.1 The Equipment shall be delivered to the Collection Site in the quantity specified overleaf. Time of delivery shall not be of the essence of this agreement.
- 5.2 The Customer shall take delivery of the Equipment on the date agreed between the parties or otherwise on the date on which the Equipment is delivered by Harper’s and shall provide suitable and safe access to the Collection Site, a suitable area for siting the Equipment and suitable facilities for turning the Vehicle around.
- 5.3 The driver of the Vehicle may in his absolute discretion refuse delivery if he believes that access to the Collection Site or turning facilities are unsafe or likely to cause damage to the Vehicle or if there is any reason to believe that the proposed area for siting the Equipment is unsuitable.
- 5.4 Subject to condition 9.2, the Customer shall be responsible for the safety of any person (including the employees and agents of Harper’s) whilst on or about the Collection Site.

6. PERFORMANCE DATES AND FORCE MAJEURE

- 6.1 Harper’s will use reasonable endeavours to meet the dates for collection (which shall always be Working Days unless expressly agreed otherwise between Harper’s and the Customer) set out overleaf but shall not be liable for late performance or delay in performance of the Service and delays shall not entitle the Customer to rescind the agreement.
- 6.2 Without prejudice to the generality of condition 6.1, Harper’s shall have no liability for any delay or default in the provision of the Service

caused directly or indirectly by breakdown or unavailability of Equipment or Vehicles inability to obtain labour or any other causes beyond Harper's reasonable control.

7. CHANGES IN CUSTOMER REQUIREMENTS

7.1 If the Customer's requirements for the Service shall at any time change, Harper's shall, subject to condition 7.2, implement such changes as are agreed between the Customer and Harper's.

7.2 Harper's and the Customer shall join in making such written amendments to this agreement (which, for the avoidance of doubt includes the Charge) and in executing such replacement Transfer Note as may be necessary to give effect to any changes agreed under this condition 7.

8. RISK

8.1 Risk of any loss or damage to the Equipment shall pass to and remain with the Customer from the time when the Equipment first arrives at the Collection Site, except where the loss or damage arises from the negligence or wilful default of Harper's, its employees, agents or sub-contractors.

9. TERMS AND REPRESENTATIONS

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

9.1 The Equipment shall be deemed to be in good working order and condition and fit for the Customer's purpose (save for defects not discoverable by a reasonable examination) except to the extent that the Customer has notified Harper's to the contrary within three working days of the delivery of the Equipment at the Collection Site.

9.2 Harper's accepts liability for death or personal injury to the extent that it results from negligence of Harper's, its employees or agents and further accepts liability for any breach on the part of Harper's of any condition or warranty as to title and quiet possession which may be implied by Section 7 of the Supply of Goods and Services Act 1982.

9.3 Subject to condition 9.4, Harper's also accepts liability for any other direct loss or damage (but not any indirect or consequential loss, including (but not limited to) loss of profits, production, business or reputation) in relation to the Equipment, the Service or items belonging to the Customer, its employees or agents (including personal effects) to the extent that it results from:

9.3.1 a breach by Harper's of any of the express provisions of these standard conditions of supply; or 9.3.2 the negligence of Harper's, its employees or agents and does not result from (and to the extent that it is not contributed to by) the act, omission or negligence of the Customer, its employees or agents and so that Harper's shall not otherwise be liable for any defect in the Equipment or loss, damage, nuisance or interference whatsoever caused by or in relation to the Equipment, the Service or items belonging to the Customer, its employees or agents (including personal effects) and the same shall be the liability of the Customer.

9.4 Harper's total liability (including for related costs, fees and expenses) in respect of any one Transgression (except one giving rise to the liability referred to in condition 9.2) shall be limited to £50,000.

9.5 If any exclusion or limitation of liability or any other provision contained in this condition 9 or otherwise contained in the agreement is held invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if Harper's thereby becomes liable for any defect or loss, damage or nuisance which would have otherwise been excluded such liability shall be subject to the other exclusions limitations or provisions set out in the agreement.

9.6 The provisions of this condition 9 shall remain in full force and effect notwithstanding any breach of this agreement by Harper's, and shall apply to such breach whether or not this agreement is terminated in consequence of such breach.

10. EMPTYING REPLACEMENT AND REMOVAL

10.1 The Customer shall at all times allow Harper's, its employees or agents and its Vehicles access to the Equipment to empty or replace it and on the termination of this agreement to remove it from the Collection Site.

10.2 All Waste deposited in the Equipment shall become the property of Harper's from the time when Harper's empties or replaces the Equipment PROVIDED THAT this condition shall not absolve the Customer from any liability or responsibility in relation to the Waste.

11. EQUIPMENT

11.1 The Customer will conform to any statutory enactments and regulations and bye-laws and regulations of local or other statutory authorities which apply to the Equipment.

11.2 The Customer shall not

11.2.1 overload or overfill the Equipment PROVIDED THAT overfilling refers to waste exceeding the level of the sides of the Equipment; or

11.2.2 set fire to the contents of the Equipment; or

11.2.3 interfere with the mechanism of the Equipment; or

11.2.4 add or attach to the Equipment any painting, sign, writing, lettering or advertising.

11.3 All Equipment provided shall remain the property of Harper's and the Customer will have no rights in the Equipment other than as a mere bailee. The Equipment must only be used by the Customer and must be kept at the Collection Site. The Customer shall have no right of lien over the Equipment.

11.4 The Customer has agreed that the Equipment is suitable to contain and transport the Waste in the quantities specified. Harper's relies on the Customer's advice as to the quantity and weight of Waste involved in the provision of the Service.

12. WASTE

12.1 The Customer and Harper's shall each sign a new Transfer Note:-

12.1.1 without prejudice to condition 12.3, at any time when there is a change in any of the details set out in sections 2 and 3 above or on any Transfer Note; and/or

12.1.2 before the expiration of twelve months from the commencement Date or any current Transfer Note.

12.2 The Customer shall be solely responsible for the accurate and complete description of the Waste and warrants that the details relating to the Waste (including, for the avoidance of doubt, those relating to weight and compactability) contained overleaf or in any Transfer Note will during the term of this agreement be true and complete. Harper's relies on those details in the provision of the Service. Harper's shall be entitled to take samples of the materials placed in the Equipment to satisfy itself that the description is accurate prior to collection and disposal. Such right shall under no circumstances relieve the Customer of its obligations to describe the Waste accurately.

12.3 The Customer may not place or caused to be placed in the Equipment any material other than Waste described overleaf or, if such has been signed, in the current Transfer Note.

12.4 Without prejudice to the generality of the provisions of this condition 12, Harper's will be entitled to refuse to deal with any material:-

12.4.1 which it has reason to believe is toxic, poisonous, explosive, inflammable or otherwise dangerous; or

12.4.2 the handling of which may cause Harper's to incur civil or criminal liability; or
12.4.3 which in Harper's reasonable opinion does not comply with the description given to Harper's in any Transfer Note; or
12.4.4 the disposal of which might involve Harper's in additional expense or an unreasonable amount of extra work.

13. NAME PLATES

13.1 The Customer shall not remove, deface or conceal any name plate or mark indicating that the Equipment is the property of Harper's and Harper's shall at all reasonable times have access to inspect or repair such name plates or marks.

14. DISPOSAL

14.1 Harper's will use all reasonable endeavours to satisfy itself that any Disposal Site at which the Customer's Waste is disposed of is operated in accordance with statutory requirements where such Disposal Site is not operated by Harper's. However, Harper's accepts no liability whatsoever for any third party's failure so to operate.

15. LIABILITIES OF THE CUSTOMER

15.1 During the agreement the Customer shall make good to Harper's all loss of or damage to the Equipment (fair wear and tear excepted).

15.2 Subject to condition 9, the Customer shall indemnify and hold Harper's harmless against any injury demands actions costs charges expenses loss damage or liability to any persons or property arising from:

15.2.1 any act omission or negligence of the Customer its agents or employees; or

15.2.2 the provision of the Service.

15.3 If the Customer requests that the Equipment be placed in a position which requires the Vehicle to leave the public highway the Customer shall indemnify and hold Harper's harmless against any loss costs claims damages or expenses which Harper's may thereby incur whether as a result of damage to the Vehicle, the Equipment, the property of the Customer or a third party including damage to the road margin or pavements.

15.4 The Customer shall maintain insurance cover in respect of this indemnity and shall at the request of Harper's provide a copy of the insurance policy as proof of maintaining such cover.

16. TERMINATION

16.1 If the Customer commits any breach of this agreement Harper's may, in addition to its other rights in respect thereof, give notice to the Customer to terminate this agreement immediately or, at the option of Harper's, after 21 days from the date of such notice if the Customer shall not have remedied the breach to Harper's satisfaction during that time.

16.2 If the Customer shall have a receiver, an administrator or an administrative receiver appointed for the whole or any part of its assets or if an order shall be made or a resolution passed for its winding-up (unless this is for the purpose of its reconstruction or amalgamation) then this agreement shall terminate forthwith.

16.3 Either party may terminate this agreement by the service of notice, which must be of not less than three months' duration and not more than six months duration, must be expressed to expire on the date which is three months after any anniversary of the Commencement Date and must be given in the manner set out in condition 18.

16.4 If Harper's elects to terminate this agreement under condition 16.1, or the agreement is terminated under condition 16.2, the Customer shall pay all Charges accrued due and in addition shall pay to Harper's as liquidated damages (and the Customer acknowledges this to be a genuine pre-estimate of the likely loss which Harper's would incur in such event) for the period (the "Damages Period") from the date of such termination to the earliest date on which this agreement could validly be terminated by a notice given in accordance with condition 16.3, the following amount:-

16.4.1 in the case of Customers for which Harper's collects Waste on a Scheduled Collection Day, an amount equal to 41 % of the aggregate Daily Rental and Collection Charge which would have become payable in respect of the Service during the Damages Period;

16.4.2 in the case of Customers for which Harper's collects Waste not on a scheduled Collection Day but upon request, an amount equal to 41% of the aggregate Daily Rental and Collection Charge which would have become payable in respect of the Service during the Damages Period on the following assumptions:

16.4.2.1 where the Service has been provided for less than three months, that collections would have been made during the Damages Period at the Expected Frequency set out overleaf; or

16.4.2.2 where the Service has been provided for more than three months, that collections would have been made during the Damages Period at the greater of (1) the Expected Frequency or (2) at the same average rate as during the three months immediately preceding the termination date.

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

17. AMENDMENT

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

18. NOTICES

18.1 Any proposal acceptance agreement authority permission or notice referred to in this agreement shall be:

18.1.1 in writing; and

18.1.2 given to the party for whom it is intended at the address for that party as set out in this agreement, or such address as is notified to the other party for that purpose; and

18.1.3 given by post, facsimile or e-mail and shall be deemed to have been received two Working Days after the date of posting or one Working Day after the date of facsimile transmission or e-mail as the case may be.

19. GOVERNING LAW

19.1 This agreement shall be governed by and construed in accordance with the Laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

19.2 Any reference to any Act of Parliament Regulation or Order shall include any re-enactment, amendment, replacement or modification thereof.

20. FOREBEARANCE

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

DEFINITIONS

In these Conditions the following words and expressions shall have the following meanings: "Animal By Product" means animal by product as defined by Relevant Law. "Assumed Weight" means the assumed weight further particulars of which are set out in section 2.

"Harper's" means E. Harper (York) Limited or any of its subsidiary or associate companies.

"Charge" means the total amount payable for the Service in respect of the Collection Charge, Daily Rental and Delivery Charge.

"Charge Per Lift" means the amount per lift (or collection) of Waste set out overleaf, as increased from time to time pursuant to condition 4.

"Charge Per Tonne" means the amount per tonne of Waste collected in any lift set out overleaf, as increased from time to time pursuant to condition 4.

"Collection Charge" means, for invoice type 1, the Charge Per Lift and, for invoice types 2 and 4, the Charge Per Lift plus the Charge Per Tonne.

"Collection Site" means the site or sites further particulars of which are set out overleaf.

"Commencement Date" means the date on which both parties sign overleaf.

"Customer" means the customer further particulars of which are set out overleaf.

"Daily Rental" means the daily amount set out overleaf, as increased from time to time pursuant to condition 4.

"Delivery Charge" means the amount set out overleaf.

"Disposal Site" means the site or sites further particulars of which are set out overleaf.

"EA Charge" means the environmental administration charge levied by Harper's from time to time in accordance with this Agreement.

"Equipment" means each and every item of waste disposal equipment hired out by Harper's to the Customer, including containers.

"Excluded Waste" means those types of waste conditionally or unconditionally prohibited from landfill by Relevant Law.

"Expected Frequency" means the frequency stated overleaf, being (in the case where scheduled collection day(s) is/are not set out overleaf) the Customer's expectation of the frequency at which it will require the collection of Waste.

"Hazardous Waste" means hazardous waste as defined by Relevant Law.

"Inert Waste" means inert waste as defined by Relevant Law.

"Liquid Waste" means liquid waste as defined by Relevant Law.

"Non Hazardous Waste" means non hazardous waste as defined by Relevant Law.

"Relevant Law" means any statute, European Community Directive or the requirements of any government department, local authority or other public or competent authority, and guidelines including (but not limited to) those contained in government waste management papers and codes of practice issued by the government for the waste disposal industry and which are relevant to the parties' obligations under this agreement.

"Scheduled Collection Day(s)" means the scheduled collection day or days (as the case maybe) stated at Section 2 overleaf as amended from time to time in accordance with this agreement.

"Service" means the provision of Equipment and a Transfer Note (or any other document required for the lawful storage, collection, transportation and disposal of Waste), collection of Waste, transport of Waste and disposal of Waste or any part thereof as agreed between Harper's and the Customer.

"Special Waste" means a special waste as defined in the Special Waste Regulations 1996 or any other Relevant Law from time to time.

"Transfer Note" means the current controlled waste description and transfer note completed by the Customer and Harper's pursuant to Relevant Law.

"Transgression" means any single breach of this agreement, tort or other act default omission or statement of Harper's its employees agents or subcontractors in respect of which Harper's is held liable to the Customer.

"Treatment" means as such term is defined by Relevant Law.

"Vehicle" means each and every vehicle owned or operated by Harper's, its agents or sub-contractors which visits any Collection Site to deliver, empty, replace or remove Equipment.

"Waste" means the waste further particulars of which are set out overleaf or in any current Transfer Note applicable to this agreement.

"Working Day" means a day (excluding Saturday and days where local holidays do not coincide with public/bank holidays) on which banks in London are open for general business.