

TERMS AND CONDITIONS

1 General

- a This Agreement is binding on EWSL only when signed by a Director. Any variation must be in writing, signed by a Director of EWSL and a duly authorised representative of the Customer. This Agreement and any duly executed written variation contain the entire agreement between the parties in respect of its subject matter and supersede all previous agreements and understandings between the parties. Terms and Conditions appearing on a Customer's order, printed stationery or other communication to EWSL, its employees, servants, agents or other representatives, shall have no effect.
- b In these terms and conditions, terms shall have the meanings ascribed to them overleaf. In addition, the following terms shall have the following meanings: "the Location" means the place to which the equipment is delivered, or, as the case may be, from which the Equipment is collected and redelivered; "Permitted Waste" means such type of waste as the Customer shall have disclosed and EWSL shall have agreed but which shall not under any circumstances include (i) special waste within the meaning of the Control of Pollution (Special Waste) Regulations 1980 (as amended), (ii) builders rubble, (iii) metal, (iv) large volumes of polystyrene (unless the polystyrene is from a special polystyrene machine with an expulsion unit); "the Services" means the provision of the Equipment, the periodic maintenance thereof (if included), and the collection and disposal of Waste therefrom; "Working Hours" means between 09 00 and 17 00 Monday to Friday inclusive but excluding bank holidays and other public holidays
- c The conditions of this Agreement shall apply not only to this tender (if accepted) and ensuing contract, but also to all orders subsequently placed with EWSL in connection with the same or similar work unless otherwise agreed in writing.

2 EWSL's Obligations

- a EWSL shall
- (i) Arrange for the Equipment to be delivered to and installed ready for use at the Location and instruct the Customer's nominated person in the use and routine care of it.
- (ii) On notification by the Customer that the pre-filled warning indicator light on the Equipment has illuminated, arrange for the Equipment to be lifted, safely dispose of its contents and return the Equipment to the Location as soon as practicable within Working Hours following notification.
- (iii) If the maintenance option(s) has(ve) been selected, provide servicing and periodic routine maintenance cover in respect of the Equipment, in accordance with the Maintenance Schedule.

3 Customer's Obligations

- a The Customer shall:
- (i) Make each Payment promptly on the dates specified in this Agreement. The Customer will be liable for costs incurred by EWSL in recovering monies owed to it, and the Customer hereby agrees to pay to EWSL interest at a rate of 2% of the all sums outstanding per month (or part of a month) calculated from the due date.
- (ii) At all times provide a suitable power supply and safe and easy access to the Equipment for both operational collection and disposal purposes,
- (iii) Use the Equipment for the sole purpose of receiving and storing, ready for disposal, Permitted Waste.
- (iv) Not at any time place within the Equipment any waste which is not Permitted Waste
- (v) Not overload the Equipment, and will promptly notify EWSL as soon as possible once the pre-filled load indicator lights have illuminated.
- (vi) Take all steps as may be recommended by the manufacturer or supplier of the Equipment or as may otherwise be necessary, to ensure that the Equipment will be safe and free from risk to health when properly used by the Customer or its employees or others authorised by them, and to ensure that employees, agents, sub-contractors and others using the Equipment are properly trained and (where appropriate) supervised in its use .
- (vii) Take reasonable precautions, as agreed with EWSL and consistent with normal useability of and access to the Equipment, to keep the Equipment in a secure environment;
- (viii) Not, without the prior written consent of EWSL, remove the

Equipment from the Location.

- (ix) Not make any modification to the Equipment or dispose of or part with possession of it, or allow someone else to use it for any reason.
- (x) Immediately notify EWSL of any defects in, damage to, or loss of the Equipment.
- (xi) Obtain all necessary licences, permits and permissions for the use of the Equipment, including such licences as may be required under the terms of the Environmental Protection Act 1990.
- (xii) Allow EWSL access to the Location at any time in order that it may perform its obligations under this Agreement, or to Inspect or repossess the Equipment.
- (xiii) Ensure that the machine is prepared for uplift in the prescribed manner.
- (xiv) Visually check for damage as soon as possible following return from uplift and advise EWSL within 24 hours of any damage noted.

4 Damage to the Equipment

- a The Customer insure the Equipment against loss or damage for full replacement value, against fire, theft, accidental and malicious damage and other normal commercial risks while at the Location, and the interest of EWSL and its assignees will be intimated to the insurers and endorsed on the policy.
- b EWSL accepts the risk of loss or accidental damage to the Equipment only during the course of collection, disposal and return to the Location. In particular, EWSL does not accept liability where loss or damage is caused as a result of the negligence or the deliberate act of the Customer or where the Customer is in breach of any of the terms of this Agreement concerning the use or operation of the Equipment or the type or volume of waste permitted to be deposited therein.
- c If, as a result of an insured risk, the Equipment becomes a total loss, EWSL shall, as soon as possible after acceptance by the Customer or its insurer of liability for costs of replacement and any balance due in respect of the Equipment, provide suitable alternative Equipment for the use of the Customer. The Payments due shall be suspended for the period until such suitable alternative Equipment is supplied and the Contract Period shall be extended, such that all the Payments originally due under this Agreement, are paid in full.
- d Where damage is such that it does not amount to a total loss, EWSL shall at its absolute discretion, as soon as possible after acceptance by the Customer or its insurer of liability for cost of repair, arrange for repair of the Equipment. The Customer shall, subject to sub-clause e below, continue to pay Payments due during the period of such reinstatement or repair.
- e In the event that damage or loss shall occur to the Equipment and as a result of such damage or loss the Equipment is not available for the performance of the services, the Customer shall pay EWSL the actual cost incurred by EWSL in performing waste disposal services on behalf of the Customer in respect of Permitted Waste deposited at the Location.

5 EWSL's Rights

- a EWSL reserves the right;
- (i) To perform the Services by itself, its servants, agents, sub-contractors or assignee and by such means as it shall best consider meet the Customer's requirements.
- (ii) To suspend the Services at any time in the event that EWSL shall consider the Equipment to be under-performing or to require remedial work or replacement, and to provide such alternative Equipment therefor as it shall, in its absolute discretion, think fit; or if no such suitable alternative Equipment is available, to suspend or amend the Payments, until any necessary adjustments or repairs shall have been carried out. In no circumstances will EWSL be responsible for any loss, costs or expenses, sustained by the Customer whilst the Services are withdrawn
- (iii) To suspend the provision of the Services at any time if the Customer shall be in arrears with any Payments due or shall otherwise be in breach Of these terms and conditions.
- (iv) To advertise its name or services provided on its own equipment.
- b If the Customer signs a direct debit mandate when it signs this

Agreement, but subsequently chooses to pay by invoice, the Payments will be increased by a maximum of 2%.

6 Additional Charges

a EWSL shall be entitled to levy an additional charge at the agreed cost per lift in the event that:-

- (i) The number of lifts which EWSL has to undertake is greater than that specified in the Agreement, and the minimum tonnage requirement specified therein has been achieved; or
 - (ii) Where extra lifts are undertaken for the convenience of the Customer and at his request notwithstanding that the full indicator light has not illuminated.
- b EWSL shall be entitled to levy additional charges for provision of services not detailed on the Maintenance Schedule or for services provided in relation to which additional charges are stated to be payable, on such schedule.
- c EWSL may levy an additional charge to the Customer in the event that waste other than Permitted Waste or excess volumes of polystyrene or cardboard are placed into the Equipment and EWSL (acting reasonably) shall be the sole judge as to whether or not such volumes are excessive.
- d EWSL shall on an annual basis, be entitled to apply increases to the Payments to take account of any increase in the Retail Price Index, or, if greater, any Increase in the cost of waste disposal (as determined by EWSL by reference to the Increase in the average gate prices charged to it during the previous twelve month period), or any increase in the cost of provision of maintenance service. Notice of increase shall be intimated in writing to the Customer at least one month prior to their coming into effect.

7 Title

a Title to the Equipment shall at all times remain with and be vested in EWSL or its assignee. EWSL shall display a plate on each item of Equipment supplied which shall be displayed in a prominent position and identify the Equipment as the property of EWSL. The Customer shall not interfere with or obliterate the said plate and shall fully and effectually indemnify EWSL against any loss which EWSL may suffer as a result of any such interference or obliteration.

8 Termination by EWSL

a EWSL may terminate this Contract forthwith, in the event that there is a repudiation of this Agreement by the Customer, such repudiation being evidenced by:-

- (i) The Customer failing to pay any sum within 14 days after the due date for payment, whether demanded or not.
 - (ii) The Customer being an individual, being sequestered or made bankrupt or, being a company, entering into liquidation or having an Administration Order made against it or a receiver appointed over the whole or any part of its property, assets, or undertaking or the Customer being struck off the Register of Companies or dissolved.
 - (iii) The Customer, being a company, being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or the Customer entering into any composition or arrangement with its creditors or suffering distress or execution to be levied on its goods, or the Equipment being seized under Landlord's hypothec.
 - (iv) The Customer committing a breach of any term of this Agreement with EWSL and failing to remedy it within 7 days of its occurrence.
- b In the event that the Agreement is terminated under clause 8(a) above, EWSL or its assignee shall be entitled to recover possession of the Equipment forthwith (which Equipment must be in a fully operable condition). In addition the Customer will pay to EWSL the sum of the following:
- (i) All payments due and outstanding up to the date of termination together with interest thereon at the rate specified in clause 3(i) above, and
 - (ii) A sum equal to the total of the Payments which would have been due from the date of termination to the end of the Contract Period: less
 - (iii) Such proportion of the Payments due (if any) as shall be in respect of maintenance charges, and less
 - (iv) A discount on the balance at the rate of three per cent per annum on such future Payments, calculated from the date of termination to the end of the Contract Period.

- c In addition to the amounts payable under clause 8(b) above, the Customer shall also account to EWSL for any loss, costs or expenses incurred by it as a result of the Equipment failing to be in a fully operable condition, upon its return to EWSL.

9 Termination by the Customer

a The Customer may not terminate this Contract during the Contract Period, but shall remain liable for the Payments due for the entire Contract Period.

10 General Liability

a EWSL accepts liability for death and personal injury resulting from its own negligence, without limitation. Otherwise, EWSL shall not be under any liability to the Customer in contract, delict or otherwise, save for loss or damage caused to the Customer as a result of its own negligence and subject, in any event, to the following overriding limits and exceptions:-

- (i) The total liability of EWSL or of any sub-contractor to the Customer shall be limited in respect of any one defect or event to the sum of One hundred thousand pounds (£100,000); and
- (ii) Neither EWSL nor any sub-Contractor shall be liable for any consequential or economic loss of the Customer, however arising, and particularly, without prejudice to the generality, for loss of profit, business, contracts, revenues or anticipated savings, nor for loss of use of the Equipment or damages consequential on such loss of use, nor for any other form of loss or damage howsoever arising. EWSL shall not be responsible for, or for any failure to perform, as a result of circumstances beyond its control; and
- (iii) EWSL will not in any event be responsible for any delay in or failure to perform the Services or to supply the Equipment which is caused by factors beyond their reasonable control which shall include, but not be limited to, acts of God, acts of governmental or any other lawful authority, strike, war, riot, civil commotion, flood, fire, explosion, epidemic, trade embargo or any other acts or omissions on the part of any third party or sub-Contractor or any failure of electricity or any fuel or equipment

11 Customers Indemnity

a The Customer shall indemnify EWSL and any sub-contractors against all liability, loss, claims, proceedings or costs whatsoever which may arise in respect of or as a result of the improper operation or use of the Equipment including, but not limited to, overloading or storage of materials other than Permitted Waste within the Equipment.

12 Notice

a Any notice or other communication required to be sent in relation to this Agreement by one party thereto to the other shall be effective if in writing and served by hand delivery or by recorded delivery post addressed to the address of a party to be served stated on the face of this Agreement or in the case of a limited liability company its registered office. Service shall be deemed to have been effected on the date of hand delivery or 2 days after the same shall have been posted as the case may be.

13 Jurisdiction and choice of Law

a This contract shall be governed by and construed in all respects in accordance with Scots law. Any dispute arising shall be submitted to the courts of Scotland to the exclusion of all others.

14 No Waiver

a If EWSL does not, at any time, enforce any of its rights under this Agreement, it does not give up any of those rights.

15 No Set-Off

a The Customer shall not be entitled to withhold payment of any amount payable under this Agreement because of a disputed claim of any nature, nor to retain any monies it owes under this Agreement, by way of set-off or counterclaim.

16 Severability

a If any provision of this Agreement is held by any Court or other competent authority to be void or unenforceable in whole or in part, all other provisions of this Agreement, including the remainder of the affected portion, shall continue to be valid.