

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

AUL: Contract: the Customer's purchase order and AUL's acceptance of it under condition 3.

Commencement Date: the date for the commencement of the supply of Services specified in Part A and where appropriate Part B.

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

Equipment: equipment owned or supplied by AUL or to the possession of which AUL is entitled.

Initial Term(s): the period of time specified in Part A and where appropriate Part B.

Part A and Part B: the forms to which these terms and conditions are attached, labelled and completed as appropriate.

Premises: the premises identified in Part A and where appropriate Part B.

Services: the services to be provided by AUL under the Contract as set out in Part A and where appropriate Part B.

Term: the term of the Contract under clause 3.2.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Waste: waste of the type described in Part A and where appropriate Part B.

1.2 Headings do not affect the interpretation of these conditions.

2. Application of conditions

2.1 These conditions shall:

(a) Apply to and be incorporated in the Contract; and
(b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by trade custom, practice or course of dealing.

2.2 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

3. Effect of purchase order

3.1 The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgment copy of the purchase order form by AUL, or AUL's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

3.2 The Customer appoints AUL to supply the Services set out in Part A and where appropriate Part B for the Initial Terms specified in Part A and where appropriate Part B commencing on the Commencement Date. At the expiry of the relevant Initial Term (**Expiry Date**) and each anniversary thereof the Contract will automatically renew for a further period of 1 year on the same terms unless either party has not less than 3 months prior to the Expiry Date or the relevant anniversary given to the other party written notice of their intent to terminate the Contract on said Expiry or anniversary date.

4. AUL'S Obligations

4.1 AUL shall supply the Services for the Term.

5. Customer's Obligations

5.1 The Customer shall provide AUL with such assistance and co-operation as is necessary or expedient in relation to AUL's supply of the Services, including but not limited to:

(a) Agreeing with AUL the location at the Premises of waste collection containers ("Locations") as required by AUL from time to time; and
(b) ensuring that such locations are implemented and observed by the Customer's personnel;
(c) Facilitating AUL's access to the Premises and Locations at the agreed times for waste collections.

5.2 If any Equipment remains at the Premises at any time, the Customer shall not acquire title to it and shall at its own cost maintain and keep such Equipment in a safe, secure place and strictly in accordance with AUL's or the Equipment manufacturer's instructions, guidance and recommendations. The Customer shall neither move nor permit third parties to use such Equipment without AUL's consent in writing, and acknowledges AUL's right:

(a) To remove such Equipment from the Premises entirely at AUL's discretion; and
(b) To recover from the Customer any loss AUL may sustain as a result of any damage howsoever caused to the Equipment while in the Customer's care and control.

5.3 If AUL's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to AUL on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to AUL confirming such costs, charges and losses to the Customer in writing.

5.4 In relation to Waste, the Customer agrees;

(a) To ensure that all waste to be collected by AUL falls within the definition of Waste in clause 1; and
(b) To notify AUL in the event that any waste or part thereof to be collected by AUL falls outside the definition of Waste in clause 1 (in which event AUL may decide, in its absolute discretion, whether to collect such waste and, if so, the terms on which it will so collect including as to the charges for so doing); and
(c) In the event of the Customer's failure to notify under sub-clause 5.4(b), to indemnify AUL in respect of;
(i) any and all costs, losses, claims, demands and liabilities arising from AUL's transport and disposal of such waste, including but not limited to its treatment and lawful disposal; and
(ii) any and all costs, losses, claims, demands and liabilities arising from such waste, including but not limited to death or personal injury resulting from hazardous or dangerous waste.
(d) To comply and ensure that its employees and agents comply with any and all legislative, regulatory and other legal requirements applicable to it in relation to the storage, handling and disposal of Waste.

5.5 Any title to Waste collected by AUL shall pass to AUL when the Waste is accepted into a disposal facility.

6. Amendments to the services

6.1 Any amendments to the Services sought by either party shall be agreed in writing prior to their implementation.

6.2 In the event that amendments involve an increase in the level of Services, AUL shall notify the Customer in writing of any consequent increase in the charges payable. Such amendments shall not take effect until the Customer has agreed in writing to any such increase in charges.

6.3 AUL shall be under no obligation to agree amendments to the Services requested by the Customer.

7. Charges and payment

7.1 AUL's charges for the Services are set out in Part A and where appropriate Part B and may be increased by AUL at its discretion upon giving the Customer no less than 30 days' notice. The charges are subject to VAT, Landfill Tax and any other tax or levy charged to AUL in addition.

7.2 All charges set out in clause 7.1 are subject to the following weight restrictions in respect of the collection of general waste (EWC 20 03 01) as follows: 1100L 75Kgs, 660L 50Kgs, 360/240L 35Kgs AUL reserve the right to make an additional charge of £0.15p per Kg for any containers that exceed the above weight restrictions. AUL also reserve the right to refuse to collect any overweight containers that may present a Health and Safety risk to its employees.

7.3 The Customer shall pay each invoice submitted to it by AUL in full, and in cleared funds, within 30 days of receipt.

7.4 Without prejudice to any other right or remedy that AUL may have, if the Customer fails to pay AUL on the due date AUL may at its sole discretion:

(a) charge interest on such sum from the due date for payment at either (i) the annual rate of 5% above the base lending rate from time to time of AUL's principal bankers at the relevant time or (ii) under the Late Payment of Commercial Debts (Interest) Act 1998; and
(b) suspend all Services until payment has been made in full.

7.5 Time for payment shall be of the essence of the Contract.

7.6 All payments payable to AUL under the Contract shall become due immediately on termination of the Contract, despite any other provision.

7.7 AUL may, without prejudice to any other rights it may have, set off any liability of the Customer to AUL against any liability of AUL to the Customer.

8. Confidentiality and Supplier's property

8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by AUL or its agents, and any other confidential information concerning AUL's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to AUL, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

8.2 All materials, equipment and tools, drawings, specifications and data supplied by AUL to the Customer shall at all times be and remain the exclusive property of AUL, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to AUL, and shall not be disposed of or used other than in accordance with AUL's written instructions or authorisation.

8.3 This condition 8 shall survive termination of the Contract, however arising.

9. Limitation of liability

9.1 The following provisions set out the entire financial liability of AUL (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 Contract;
(b) any use made by the Customer of the Services or any part of them; and
(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these conditions excludes the liability of AUL:

(a) for death or personal injury caused by AUL's negligence; or
(b) for fraud or fraudulent misrepresentation

9.4 Subject to condition 9.2 and condition 9.3:

(a) AUL shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) AUL's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total sum paid by the Customer to AUL in the first year of the Initial Term specified in Part A

10. Termination

10.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

(a) the other party commits a material breach of the Contract 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; or
(b) an order is made or a resolution is passed for the winding up of the 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 any other third party; 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; or
(g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

10.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

10.3 In the event of termination of the Contract howsoever caused, the Customer licences and permits AUL to enter the Premises at any time, without notice and with or without vehicles of any description in order to collect any Equipment thereon.

11. Force majeure

AUL shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of AUL 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 sub-contractors.

12. Waiver

12.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

12.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13. Severance

13.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

13.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14. Status of pre-contractual statements

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

15. Assignment

15.1 The Customer shall not, without the prior written consent of AUL, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 AUL may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

16. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17. Third party rights

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

18. Notices

Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

19. Governing law and jurisdiction

19.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

19.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).