



# Service Agreement Terms and Conditions

## Agreement, Contract Period & Adjustment Charges

### 1. Agreement

It is hereby agreed that Ellgia Limited (defined as “the Company” and shall include any of its sub-contractors may participate in the performance of the contract) will exclusively undertake the waste services referred to above on behalf of the Customer (as defined above) and in accordance with the Company’s Terms and Conditions (available on request and on the following page).

### 2. Contract Period

2.1 This agreement shall remain in force, subject to earlier termination as provided in clause 7 of the terms and conditions on the following page, for the Initial Period (as defined above) and shall automatically renew and remain in force for successive one year periods (the Renewal Period) thereafter unless either party shall give notice of termination by written notice to the other at least ninety days prior to the expiration of the Initial Period or any Renewal Period.

2.2 Subject clause 2.3 if the customer terminates the Agreement in any Renewal Period then the customer agrees to pay Ellgia Limited as liquidated damages a sum equal to the following amounts:

2.2.1 In the case where the Customer received Services during the last two months a sum equal to the average monthly charge (calculated over those two months) multiplied by the number of full months between (i) the receipt by Ellgia Limited of the written termination and (ii) the end of that Renewal Period

2.2.2 In the case where the Customer has not received Services during the last two months a sum equal to the last complete monthly charge as outlined in the service agreement multiplied by the number of full months between (i) the receipt by Ellgia Limited of written notice and (ii) end of that Renewal Period

2.3 If the Customer’s notice to terminate has only been served within the final 90 days of either the Initial Period or Renewal Period then the “end of that Renewal Period” (As referred to in clause 2.2.1 and 2.2.2 above) shall mean the end of the next Renewal Period because the agreement will already have rolled over for a further 12 month period.

### 3. Adjustment of Charge

Ellgia Limited may adjust the Charges from time to time by providing the Customer notice in writing as set out in the Terms and Conditions.

## Terms & Conditions

### 1.0 Contracted Service

- 1.1 Ellgia Limited will visit the Premises and provide the Service in accordance with these terms and conditions (the "Conditions") and the Service Agreement and Waste Transfer Note overleaf (together with the Conditions called the "Agreement") during the Contract Period (as described in Clause 2 of the Service Agreement and Waste Transfer Note) subject to suspension in accordance with Clause 2.6 below
- 1.2 "Service" shall mean the collection, transportation and/or disposal of waste materials from the Customer.

### 2.0 Charges Payment and Suspension

- 2.1 The "Charge" is the price to be paid to Ellgia Limited for the Service and comprises the Service charge and other charges set out on the Service Agreement and Waste Transfer Note together with any other payments that are due from the Customer.
- 2.2 Ellgia Limited will invoice the Customer as set out in the Service Agreement and Waste Transfer Note. The Customer shall pay each invoice within thirty days of the date of invoice. Ellgia Limited reserves the right to charge interest on all sums that remain unpaid after the due date, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, at the rate of 8% (or whichever rate shall apply at the time) over the current Bank of England Base rate, together with the late payment charges as set out in the Act, until payment is made.
- 2.3 Where necessary, Ellgia Limited reserves the right to increase the Charge of any item referred to in this Agreement on giving prior written notice to the Customer.
- 2.4 The Charge is exclusive of any applicable value added tax which the Customer shall be additionally liable to pay Ellgia Limited at the prevailing rate at the date of invoice.
- 2.5 Subject to clause 2.3 and 6.5 the Charge is inclusive of any applicable landfill tax.
- 2.6 In the event of the Customer failing to pay the Charge within thirty days of the date of invoice or being in default of its obligations under this Agreement, Ellgia Limited at its discretion may rely on its common law remedies and/or, upon immediate written notice to the Customer, suspend the service until all the arrears of the Charge have been paid and/or any other Customer default has been rectified, provided that such suspension shall not amount to a termination of this Agreement nor entitle the Customer to terminate this Agreement.
- 2.7 Notwithstanding the terms of clause 2.6 above non payment of the Charge may lead to termination of this Agreement in accordance with the terms of 7.1.1.

### 3.0 Visit Schedule

- 3.1 If unforeseen circumstances arise, Ellgia Limited reserves the right to change the visit days to meet operational requirements which where possible will be notified to the Customer in advance.
- 3.2 If through operational difficulties caused by unforeseen circumstances Ellgia Limited is not able to visit the Premises on the scheduled day the Company reserves the right to reschedule the visit to the earliest possible opportunity without liability to the Customer.

### 4.0 Safety

- 4.1 The Customer shall be wholly responsible for the safety of all persons on the Premises (including the employees and agents of Ellgia Limited).
- 4.2 The Customer shall bear all risks in connection with the siting, loading and use of all equipment provided by Ellgia Limited in connection with the Service (the "Equipment").
- 4.3 Ellgia Limited must comply with the following in relation to packaging the Waste:
- 4.3.1 The Customer is responsible for packaging the Waste and placing it in Equipment ready for collection by Ellgia Limited;

- 4.3.2 All Equipment shall be loaded safely and evenly and no sharp or hot materials are to be placed in any plastic Equipment or other Equipment likely to be damaged thereby;
- 4.3.3 Unless otherwise agreed, no Equipment shall be placed on the highway;
- 4.3.4 No rubbish shall be burned in any Equipment or any fire started or permitted therein by the Customer or any other person;
- 4.3.5 All methods of packaging shall comply with the requirements of appropriate legislation.
- 4.4 The Customer must notify Ellgia Limited in advance of any particular requirement of the Customer relating to health and safety at work and of any hazards, risks or dangers that may arise as a result of Ellgia Limited or its employees or agents undertaking the Service.
- 5.0 Responsibility of Equipment
- 5.1 All Equipment provided by Ellgia Limited shall at all times remain the property of the company.
- 5.2 The Customer shall be responsible for:
  - 5.2.1 any loss or damaged caused to the Equipment whilst it is at the Premises and is not in the care or control of Ellgia Limited.
  - 5.2.2 maintaining a suitable and safe means of access to and egress from the Equipment at the Premises for the Company's vehicles and employees or agents;
  - 5.2.3 effecting adequate insurance cover for the Equipment for its full replacement value against the risk of loss or damage.
- 6.0 The Waste
- 6.1 The Customer undertakes that the Waste placed in the Equipment for collection by Ellgia Limited (the "Waste") shall accord with the description in the schedule and will not be or contain any Hazardous Waste as defined in the Hazardous Waste Regulations (England & Wales) 2005 and the Special Waste Regulations 1996 (for Scotland)
- 6.2 The Customer undertakes to conform with all duties applicable to it under all or any law, statutory guidance, circular code, standard or resolution of any regulatory body, court or agency in respect of the Waste to the extent that they have legal effect or enforceable at any time in the past, present or future and, for avoidance of doubt this shall include the duties laid down in the Environment Protection Act 1990 and the Environment Act 1995.
- 6.3 Ellgia Limited has no contractual obligation to remove from the Premises any Waste which has not been placed within the Equipment or which does not otherwise conform to the requirements set out in this Agreement ("Additional Waste"). Ellgia Limited may agree to remove and deal with any Additional Waste upon request by Customer on terms specified by the Company.
- 6.4 Any waste specified by the Customer as recyclable ("Recyclable Waste") must be capable of being reprocessed in a production process for the original purpose, or for other purposes, but excluding energy recovery and composting.
- 6.5 If Ellgia Limited determines that the Recyclable Waste does not comply with clause 6.4, it shall inform the Customer of this non-compliance and Ellgia Limited shall be entitled to landfill or return the Waste at its discretion. The Customer shall pay Ellgia Limited under separate invoice such reasonable additional fees for the services provided under clause 6.5 and set out in that invoice.
- 6.6 Property in the Waste shall pass to Ellgia Limited on collection but the Customer shall remain liable at all times for any damage caused by the Waste in breach of this Agreement.
- 6.7 The Service will not be performed if in the reasonable opinion of the operative collecting the Waste, it has been left in a poor conditions or not properly sealed or has otherwise not been packaged in accordance with this Agreement or my place any person, vehicle or property at risk, at which time the operative shall advise the

Customer where possible, of the reason for non collection. The Customer shall still be responsible for the Charge.

## **7.0 Termination and Damages**

- 7.1 Ellgia Limited may immediately terminate this Agreement at any time by notice in writing to Customer in the event of:
- 7.1.1 the Customer being in arrears of any payment due this Agreement; or
  - 7.1.2 the Customer being in breach of the terms of this Agreement; or
  - 7.1.3 the Customer making or proposing to make voluntary arrangement with its creditors, being the subject of an administration order or being the subject of any bankruptcy petition or order or winding up petition or order or convening a meeting for its voluntary liquidation; or
  - 7.1.4 the Customer causing or unreasonably allowing a health and safety risk to arise which was not present on the original site survey carried out by Ellgia Limited prior to the Commencement Date.

Provided that in such circumstances, Ellgia Limited shall be entitled to claim liquidated and ascertained damages from the Customer equivalent to the Charges (at the rate prevailing at date of termination) that would have been payable under this Agreement if this Agreement had continued from the date of such termination to the end of the Renewal Period which is at least three months from the date of actual termination.

- 7.2 The Customer or Ellgia Limited may terminate this Agreement as set out at Clause 2 (Contract Period) of the Service Agreement and Waste Transfer Note.

## **8.0 Indemnity and Liability**

- 8.1 Subject to clause 8.2 each party ("the Indemnifying Party") shall indemnify the other party against all claims, losses and expenses arising through any negligent act or omission of the Indemnifying Party, its employees and agents, or breach by the Indemnifying Party of the terms of this Agreement, and/or (In the case of the Customer only) arising because of any substance, article or thing placed in the Waste.

- 8.2 Subject to clause 8.4 the Company shall not be liable for any indirect claim, damage or loss (including to avoid doubt any claim for loss of profits), and whether caused by the negligence of Ellgia Limited, its agents or employees, or as a result of any representation or condition or other term, or any duty at common law, or under the express terms of this Agreement, or otherwise.

- 8.3 Notwithstanding Clause 8.1:

- 8.3.1 Ellgia Limited shall not be liable to the Customer for any damage caused to the surface of the Premises by their vehicles and Equipment arising from inadequate construction of such surface for the weight or type of vehicles and Equipment used by Ellgia Limited in providing the Service; and
- 8.3.2 Ellgia Limited shall not be liable to the Customer, or be deemed to be in breach of this Agreement, by reason of any delay in performing, or any failure to perform, any of Ellgia Limited's obligations under this Agreement, if any delay or failure was due to any cause beyond Ellgia Limited's reasonable control.

- 8.4 Ellgia Limited does not exclude liability for death or personal injury, or direct damage to property caused by its negligence, or for fraudulent misrepresentation.

## **9.0 Rebates**

- 9.1 Ellgia Limited may change the rate of the Rebate or cease paying the rebate at anytime due to Market Fluctuation.
- 9.2 Ellgia Limited will notify you of any changes to the rebate within seven working days

## **10.0 Miscellaneous Provisions**

- 10.1 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions in question shall not be affected thereby and shall remain in full force and effect.

- 10.2 Any Notice to be given under this Agreement shall be writing and shall be sent by First Class mail, or by email (Confirmed by First Class Letter) to the address of Invoice address or registered address of the Customer or Registered Address of Ellgia Limited.
- 10.3 Any Notice sent as above shall be deemed received after three working days after the working day posting, or on the next working day after transmission.
- 10.4 Terms defined on the Service Agreement and Waste Transfer Note shall have the same meaning in these terms and conditions.
- 10.5 Any reference to any law, regulation or order shall include any re-enactment, amendment or modification thereto.
- 10.6 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 10.7 The Customer undertakes to Ellgia Limited to keep confidential the existence of this Agreement.
- 10.8 This Agreement shall be governed by the laws of England and the courts of England and Wales shall have exclusive jurisdiction.

### **Pre-Treatment Declaration**

Schedule 10 Paragraph 5 (1) (c) of the Environment Permitting (England and Wales) Regulation 2007 requires that all waste must be pre-treated before it can be landfilled. Pre-treatment is defined as; Physical, thermal, chemical or biological processes that changes the characteristics of the waste in order to reduce its volume or hazardous nature, facilitate its handling or enhance recovery.