

STANDARD CONDITIONS OF SUPPLY – CUSTOMER COPY

1. GENERAL

- 1.1 These Conditions apply to all agreements for the supply of services by Procuria and supersede any previous terms and conditions. No additions or modifications to terms inconsistent with these Conditions shall be binding upon Procuria unless specifically agreed in writing by Procuria.
- 1.2 Procuria may require a credit application and Direct Debit from the Customer and in processing the credit application the Customer consents that Procuria may make enquiries of credit reference agencies or other sources, who may keep a record of Procuria's enquiry, and that Procuria 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 Procuria.
- 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. The amounts are exclusive of VAT and the Customer shall pay all sums due in respect of VAT in accordance with the invoice for the Service.
- 3.2 All payments for the Service shall be due and payable up to 15 days of the date of the invoice for the Service and will be direct debited by our sister company Central Billing Ltd. 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 HSBC Bank plc. Without prejudice to Procuria's other rights in respect thereof, if the Customer defaults in payment by the due date of any amount invoiced for the Service, Procuria shall be entitled to withhold further performance of this agreement until all arrears have been discharged by the Customer.
- 3.4 The Customer shall not be entitled to dispute any payment made. The Customer agrees that Procuria's records will be proof of the Service provided.
- 3.5 Without prejudice to any other rights of Procuria, if there is or there arises reason to doubt that amounts due from the Customer will be paid in full then Procuria reserves the right to require payment in advance before commencing or continuing the Service, or at its sole discretion Procuria may terminate the agreement forthwith.
- 3.6 As Procuria collect payments via Direct Debit, Any charges incurred by non-receipt of monies will be re-charged.

4. PRICE

- 4.1 Procuria shall have the right to increase the Charge at any time to take account of any variation in Sub Contractor 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 Legislation. Procuria shall endeavor 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 All Charges per Lift is based on an Assumed Weight. Depending on provider Procuria may revise the Assumed Weight (and consequently and proportionately the Charge per Lift, depending on pence per Kilo charge) at any time if it reasonably believes that the actual average weight per collection is greater than the Assumed Weight.
- 4.3 Procuria may charge and the Customer shall pay to Procuria the EA Charge. Procuria shall endeavour to give not less than one month's notice to the Customer of the EA Charge but notwithstanding this 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, this delivery is Free of charge.
- 5.2 The Customer shall provide suitable access to the Collection Site, a suitable area for locating 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 locating the Equipment is unsuitable.
- 5.4 Subject to Clause 9.2, the Customer shall be responsible for the safety of any person (including the employees and agents of Sub Contractor) whilst on or about the Collection Site.

6. PERFORMANCE DATES AND FORCE MAJEURE

- 6.1 Procuria will use reasonable endeavors to meet the dates for collection (which shall always be Working Days unless expressly agreed otherwise between Sub Contractor and the Customer) set out on Page 1 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 Clause 6.1, Procuria 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 Procuria's reasonable control.

7. CHANGES IN CUSTOMER REQUIREMENTS

- 7.1 If the Customer's requirements for the Service shall at any time change, Procuria shall, subject to clause 7.2, implement such changes as are agreed between the Customer and Procuria.
- 7.2 Procuria 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 clause 7.

Our details

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Priory Park East
Hull
HU4 7DY

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 willful default of Procuria, 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 Procuria, 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 Procuria 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 Procuria to the contrary within three working days of acceptance of the Equipment at the Collection Site.

9.2 The Sub Contractor accepts liability for death or personal injury to the extent that it results from negligence of that Sub Contractor, its employees or agents and further accepts liability for any breach on the part of that Sub Contractor 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 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 willful default of Sub Contractor, its employees or agents.

9.3.1 A breach by Procuria of any of the express provisions of these standard conditions of supply; or

9.3.2 the negligence of Procuria, 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 Procuria 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 Sub Contractors 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 Clause 9.2) shall be limited to £50,000.

9.5 If any exclusion or limitation of liability or any other provision contained in this Clause 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 Sub Contractor 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 Clause 9 shall remain in full force and effect notwithstanding any breach of this agreement by Procuria, 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 Sub Contractor, its employees or agents 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 Sub Contractor from the time when Sub Contractor empties or replaces the Equipment PROVIDED THAT this Clause shall not absolve the Customer from any liability or responsibility in relation to the Waste.

10.3 Any removal of container at end of contract is subject to a provider charge, which will be invoiced on the last service invoice.

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; 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 Sub Contractor and the Customer will have no rights in the Equipment other than as a service user. 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. Sub Contractor 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 Procuria shall each sign a new Transfer Note, which will be sent out via SIGNABLE, which will prove receipt:

12.1.1 without prejudice to Clause 12.3, at any time when there is a change in any of the details set out in sections 2 and 3 on any Transfer Note (Which also acts as your rolling contract with Procuria); and/or

12.1.2 Before the expiration of twelve months from the Commencement Date or any current Transfer Note.

12.2 The Customer warrants that the details relating to the Waste (including, for the avoidance of doubt, those relating to weight and compactability) contained in any Transfer Note are and will be true and complete. Procuria relies on those details in the provision of the Service. Procuria 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 cause to be placed in the Equipment any material other than Waste described if such has been signed, in the current Transfer Note.

12.4 Without prejudice to the generality of the provisions of this Clause 12, Procuria 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 Sub Contractor to incur civil or criminal liability; or

12.4.3 which it has reason to believe is or may be a Special Waste; or

12.4.4 the disposal of which might involve Sub Contractor in additional expense or an unreasonable amount of extra work.

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Procuria Ltd. Registered in England. Co. No. 04873951

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 Sub Contractor and Sub Contractor shall at all reasonable times have access to inspect or repair such name plates or marks.

14. DISPOSAL

14.1 Procuria will use all reasonable endeavor 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 Biffa. However, Procuria 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 right to Sub Contractor all loss of or damage to the Equipment (fair wear and tear excepted).

15.2 Subject to Clause 9, the Customer shall indemnify and hold Procuria 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 not hold Procuria liable against any loss costs claims damages or expenses which Procuria 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 Procuria 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 Procuria 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 Procuria, after 21 days from the date of such notice if the Customer shall not have remedied the breach to Procuria'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 Clause 18.

16.4 If Procuria elects to terminate this agreement under Clause 16.1, or the agreement is terminated under Clause 16.2, the Customer shall pay all Charges accrued due and in addition shall pay to Procuria as liquidated damages (and the Customer acknowledges this to be a genuine pre-estimate of the likely loss which Procuria 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 Clause 16.3, the following amount:-

16.4.1 in the case of Customers for which Procuria 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 Sub Contractor collects Waste not on a specific 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; 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. 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 Procuria 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 Procuria 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 Procuria under this agreement or operate as or be a waiver of any breach by the Customer of the terms of this agreement.

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