

# AUGEAN TREATMENT LTD TERMS AND CONDITIONS



## 1. INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

**"Adequate Procedures"** - such procedures as are required so as to comply with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act);

**"Anti-Bribery Laws"** - all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including but not limited to, the Bribery Act 2010;

**"Anti-Bribery Policies"** - the Company's ethics, anti-bribery and anti-corruption policies (which can be found online at [www.augeanplc.com](http://www.augeanplc.com)) and any relevant industry code on anti-bribery, in each case as the Company or the relevant industry body may update them from time to time;

**"Associated Person"** - shall have the meaning given to such expression in Section 8 of the Bribery Act 2010;

**"Change in Law Event"** - means, after the date of this Contract:

- (a) the adoption, modification, repeal, coming into effect or replacement of any legislation or guidance, other than where such legislation has on the date of this Contract been published in a bill or draft statutory instrument; or
- (b) any applicable judgment of a relevant court of law, tribunal or equivalent body which applies directly to the Company or a relevant associate of the Company or changes a precedent; or
- (c) any change in or clarification of any policy, ruling, assessment, guidance, interpretation or other decision of a relevant tax authority or other regulatory body; or
- (d) any change, modification or revocation of a relevant permit or consent, or any change in the interpretation of such permit or consent by a regulator, which is attributable to any change in law event set out at paragraph (a), (b) or (c) above.

**"Company"** - Augean Treatment Limited, a company registered in England with company number 04062656 and having its registered office at 4 Rudgate Court, Walton, Wetherby West Yorkshire LS23 7BF;

**"Contaminated Land Waste"** - material the disposal of which by way of Landfill at the Site (where applicable) will not qualify as a taxable disposal for the purposes of Part III of the Finance Act 1996 on the grounds that it qualifies as a disposal within section 43A(2) of the Finance Act 1996;

**"Contract"** - the contract between the Company and the Customer for the provision of the Services by the Company (which shall for the avoidance of doubt be deemed to include these terms and conditions);

**"Contract Waste"** - Waste which is the subject matter of the Contract;

**"Customer"** - the Person(s) who purchases the Services from the Company and for the purposes of these terms and conditions such expression shall be deemed to include the employees, agents, sub-contractors or carriers of such Persons(s);

**"Data Protection Legislation"** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

**"Delivery Point"** - the place where the Contract Waste is to be collected by the Company and, where applicable, any Recovered Materials are to be delivered by the Company pursuant to the terms of the Contract;

**"Environmental Laws"** - all or any Laws relating to the pollution or protection of the environment or harm to or the protection of human health and safety or the health of animals and plants from time to time in force including but not limited to the Environmental Protection Act 1990, the Waste Management Licensing Regulations 1994, the Environment Act 1995, the Hazardous Waste Regulations 2005, the Special Waste (Scotland) Regulations 2006 and the Waste Management: the Duty of Care Code of Practice;

**"Hazardous Waste"** - any Hazardous Waste as defined by the Hazardous Waste Regulations 2005;

**"Landfill"** - has the meaning given in section 65(1) of the Finance Act 1996 (and **"Landfilled"** and **"Landfilling"** shall be interpreted accordingly);

**"Landfill Tax"** - has the meaning given in section 39(1) of the Finance Act 1996;

**"Laws"** - all or any applicable law (whether criminal, civil or administrative), common law, judgment, court order, statute, statutory instrument, regulation, directive, European Union decision (insofar as legally binding), bye-law, treaty, government circular, code of practice and guidance notes or instruction or decision of any competent regulatory body;

**"Loss"** - any and all actions, awards, proceedings or claims, complaints, costs, expenses (including legal expenses and disbursements), penalties, damage or loss (including loss of profit);

**"Person"** - any individual, firm, company, incorporated association, partnership, government, state, or agency of state, or joint venture;

**"PPC Permit"** - the relevant pollution prevention and control permit as held by the Company or issued by the Environment Agency from time to time;

**"Processing"** - loading, unloading, decontamination, transport, treatment disposal, recycling and any other method of managing Waste undertaken by the Company;

**"Quotation"** - the relevant quotation provided by the Company in respect of each Contract;

**"Recovered Materials"** - any materials recovered as a by-product from the Processing of Contract Waste;

**"Services"** - the services to be performed by the Company in accordance with these terms and conditions, which include but are not limited to Processing;

**"Site"** - any land or premises made available by the Company for the provision of the Services;

**"Waste"** - such Commercial Waste, Household Waste, Industrial Waste, Contaminated Land Waste, and Hazardous Waste (as the case may be) as the Company is permitted to receive and recycle or treat and dispose of from time to time in accordance with any waste management licence and/or PPC Permit in force from time to time in relation to any Site. For the purpose of these terms and conditions the expressions **"Commercial Waste"**, **"Household Waste"** and **"Industrial Waste"** shall in each case have the meaning given to such expressions respectively in section 75 of the Environmental Protection Act 1990, so long as the same are in each case also **"Directive Waste"** as defined in paragraph 1(3) of the Waste Management Licensing Regulations 1994 (as amended).

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

1.3 Words imparting the singular include the plural and vice versa.

1.4 References to any statute or statutory provisions will, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in such statute or provisions, and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-

enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provisions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.4, **the Contract will be on the terms and conditions set out herein to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document).**

2.2 Each acceptance of a Quotation by the Customer shall be deemed to be an offer by the Customer to purchase the Services from the Company subject to these terms and conditions, which shall not be accepted until the Company sends written acceptance of such offer or commences performance of the Services (whichever event occurs earlier), at which point the Contract shall take effect as between the Customer and the Company.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order or similar document will form part of the Contract simply as a result of a reference to such document being included in the Contract.

2.4 Any variation to these terms and conditions and any representations (other than those set out in these terms and conditions) about the Services shall have no effect unless expressly agreed in writing and signed by a director or duly authorised representative of the Company.

2.5 The Quotation is given on the basis that no Contract in respect thereof will come into existence until the Company has accepted the Customer's offer in accordance with Condition 2.2. The Quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it.

## 3. COMPANY'S OBLIGATIONS

3.1 The Company shall perform the Services:

3.1.1 with reasonable care and skill;

3.1.2 in accordance with any special site conditions and safe working procedures notified to it in writing by the Customer prior to commencement of the Services; and

3.1.3 in accordance with all applicable Laws relating to the Services.

3.2 Where it is agreed that the Customer shall deliver Contract Waste to the Site, the Company shall, subject to these terms and conditions, provide to the Customer such space at the Site which shall (in the reasonable opinion of the Company) be sufficient to enable the Customer to off-load Contract Waste at the Site in accordance with Condition 6.

3.3 The Company undertakes that any management of Contract Waste at any Site by the Company will be carried out in accordance with the provisions of the Company's waste management licence(s) and/or applicable PPC Permit in force from time to time. The Customer acknowledges and agrees that in order for the Company to comply with its obligations under its waste management licence(s) and/or applicable PPC Permit from time to time, the Company relies on the notification given by the Customer in accordance with Condition 5.1 as to the classification and description of the Contract Waste to be received and treated.

3.4 Subject to Condition 7.4, the Company shall provide appropriate weighbridge facilities to enable each consignment of Contract Waste to be weighed.

3.5 The Company may, in its absolute discretion, refuse to accept Waste at its sites for any reasons relating to health and safety or on environmental grounds. Where this is the case, the Company shall incur no liability or costs in relation to such a refusal.

## 4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

4.1.1 co-operate with the Company in all matters relating to the Services;

4.1.2 provide, for the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, data and

other facilities where reasonably required by the Company to carry out the Services;

4.1.3 provide, to the Company, in a timely manner and at no charge, all documents, information, items and material in any form (whether owned by the Customer or a third party) where reasonably required by the Company to carry out the Services; and

4.1.4 inform the Company of all health and safety and security requirements that apply at any of the Customer's premises relevant to the provision of the Services.

4.2 The Customer shall, at all times and in all respects comply with Environmental Laws and its obligations in respect thereof in relation to Contract Waste. For the avoidance of doubt this includes but is not limited to the Customer's waste management duty of care, its record-keeping obligations and its notification requirements under the Hazardous Waste Regulations 2005 and/or the Special Waste (Scotland) Regulations 2006.

4.3 The Customer shall at all times comply with the notification requirements set out in Condition 5, and shall procure that no material or substance (whether natural or artificial and whether in solid or liquid form or in the form of a gas or vapour) other than Contract Waste shall comprise any part of the subject matter of any Contract.

4.4 Whilst the Customer is on a Site it shall, at all times and in all respects, observe safe working practices and comply with all reasonable directions of the Company, all Site regulations, Site conditions of use and the Company's health and safety policies, procedures and practices from time to time in place.

4.5 The Customer undertakes that whilst the Company, its employees, agents and/or sub-contractors (together "Carriers") are attending a Delivery Point it shall:

4.5.1 provide the Carriers with such free and safe means of vehicular access to the Delivery Point as may be required by the Carriers for the purpose of inspecting, sampling and collecting the Contract Waste or delivering any Recovered Materials;

4.5.2 make available at the Delivery Point such facilities (to include labour and equipment) as the Carriers may require in order to discharge their obligations under the Contract;

4.5.3 take all reasonable precautions to protect the health and safety of the Carriers;

4.5.4 provide the Carriers with the required health and safety information relevant to any Hazardous Waste which may be present in the Contract Waste being collected by Carriers to enable the Company to comply with its duties imposed under Environmental Law; and

4.5.5 pay to the Company a demurrage fee for every complete hour or part thereof over one hour the Company is kept waiting by the Customer at the Delivery Point.

4.6 The Customer shall ensure that all vehicles, trailers and any containers carrying Contract Waste (including barrels and other sealed containers) are sound, suitable for the relevant Contract Waste and comply with all Laws relating thereto, and also that all containers carrying Contract Waste are, where applicable, clearly marked with a legible warning that the Contract Waste is flammable or otherwise dangerous or hazardous in compliance with all Laws relating to the marking thereof.

4.7 Where, due to ground conditions, it is necessary to tow vehicles for the purposes of offloading waste, the Company accepts no liability for any damage caused due to such towing and the Customer must ensure that their vehicles are suitable for this purpose.

## 5. DESCRIPTION OF THE WASTE

5.1 The Customer shall, at the time of submitting its order for Services, notify the Company as to whether the Waste proposed to be the subject matter of the Contract, is classified as either Commercial Waste, Household Waste, Industrial Waste, Contaminated Land Waste or Hazardous Waste (as

- the case may be) and provide an accurate description and classification of the quantity and content of the Waste in such form and in such detail as the Company shall require from time to time. For the avoidance of doubt:
- 5.1.1 Any opinions expressed by the Company or its employees as to the classification of materials as Hazardous or Non-Hazardous are given in good faith based on the Hazardous Waste Regulations and supporting Literature.
- 5.1.2 Under the Duty of Care it is the waste producers' and therefore the Customer's responsibility to verify the classification of the Waste to their own satisfaction.
- 5.1.3 It is also the Waste producers' and therefore the Customer's responsibility to ensure the waste hierarchy has been applied to their own Waste, as required by Regulation 12 of the Waste (England and Wales) Regulations 2011, or the equivalent in the Duty of Care (Scotland) Regulations 2014.
- 5.2 Forthwith, following the submission of its order, the Customer shall provide to the Company written confirmation of the details notified to the Company in accordance with the foregoing provision of Condition 5.1, together with confirmation that the constituents of the Contract Waste are compatible and stable and will not create any hazard on the mixing of such constituents, and such evidence as the Company shall require that any Contaminated Land Waste qualifies as such within the definition in Condition 1.1. If the Customer does not provide such written confirmation, the Company's records shall be conclusive as to the classification and description of Waste so notified to the Company and shall be binding upon the Customer.
- 5.3 The Customer shall ensure that the Contract Waste corresponds at all times and in all respects with the classification as notified to the Company and corresponds at all times and in all material respects with the classification as notified. If the description and/or classification of the Contract Waste changes the Customer must inform the Company in writing as soon as practicable providing the new classification pursuant to Condition 5.1.
- 5.4 If, in the opinion of the Company, the classification of any consignment of Contract Waste does not or may not comply with the quantity and/or classification and/or description as notified to the Company by the Customer in accordance with the provisions of Condition 5, then the following provisions shall apply:
- 5.4.1 if the Contract Waste is able to be managed by the Company within the terms of its waste management licence(s) (and/or its applicable PPC Permit) at the material time, the Company shall expressly reserve its right to increase the price in accordance with Condition 10.6; or
- 5.4.2 if the Contract Waste is unable to be managed by the Company within the terms of its waste management licence(s) (and/or its applicable PPC Permit) at the material time, the Company shall be expressly entitled to:
- (1) reject the consignment of Contract Waste and terminate the Contract; or
  - (2) suspend performance of the Services until such time as the Contract Waste conforms with the description provided under the provisions of this Condition 5.
- 5.4.3 if the Company discovers that any Waste, already having been accepted onto the Site, fails to comply with the provisions of this Condition 5, the Company shall be expressly entitled to reject the Waste, terminate the Contract and the Customer shall thereafter indemnify, keep indemnified and hold harmless the Company in relation to any further costs incurred by the Company in relation to recovery of the Waste from the Site.
- 5.5 No refund or discount can be made or applied once a disposal has taken place.
- 5.6 The entire contents of this Condition 5 are without prejudice to the Company's rights and the Customer's obligations under Conditions 10 and 14.
- 6. COLLECTION AND DELIVERY**
- 6.1 Unless agreed otherwise, delivery of Contract Waste to the Site shall be the responsibility of the Customer.
- 6.2 Where collection by the Company is agreed, such collection of the Contract Waste and, if applicable, delivery of the Recovered Materials, shall take place at the Delivery Point.
- 6.3 The Customer shall notify the Company when the Contract Waste is available for collection from the Delivery Point. The Carrier has seven (7) days from the date of service of the notification to collect the Contract Waste.
- 6.4 The Customer shall take delivery of any Recovered Materials within seven (7) days of the Company notifying the Customer that the Recovered Materials are ready for delivery.
- 6.5 If the Customer fails to take delivery of any Recovered Materials within the time period specified in Condition 6.4:
- 6.5.1 risk in the Recovered Materials will immediately pass to the Customer;
  - 6.5.2 the Recovered Materials will be deemed to have been delivered upon the expiry of such time period; and
  - 6.5.3 the Company may store the Recovered Materials until delivery at the Customer's cost (including but not limited to storage and insurance costs).
- 6.6 The Company may collect the Contract Waste or deliver any Recovered Materials by such means as the Company determines fit unless otherwise agreed.
- 6.7 Collection of the Contract Waste or delivery of any Recovered Materials from/to the Delivery Point may be made by the Company at any time of the day.
- 6.8 Any dates specified by the Company for provision of the Services are approximate only and time for performance of the Services shall not be of the essence and may not be made of the essence by notice. If no dates are so specified, provision of the Services will be within a reasonable time.
- 6.9 The Company will not be liable for any Loss caused directly or indirectly by any delay in the provision of the Services (even if caused by the Company's negligence).
- 6.10 When it is agreed that the Customer shall deliver the Contract Waste to the Site, the following conditions shall apply:
- 6.10.1 on arrival at the Site the Customer shall report to the Company's weighbridge operator (or other authorised representative of the Company) and each consignment of Contract Waste shall be weighed in accordance with the provisions of Condition 7. Under no circumstances shall the Customer off-load any consignment of Contract Waste prior to weighing;
  - 6.10.2 the off-loading at the Site of each consignment of Contract Waste shall be the responsibility of the Customer and each consignment shall be off-loaded at the location on the Site specified by the Company. The Customer shall act with all due care and attention in off-loading each consignment of Contract Waste, having due regard to safe working practices and to the Company's reasonable instructions, Site regulations, Site conditions of use and the Company's health and safety policies, procedures and practices from time to time in place.
- 6.11 If the Customer fails to make available to the Company or the Company's weighbridge operator (or other authorised representative of the Company) any instructions, documents, licences, permits or authorisations required by the Company in respect of each consignment of Contract Waste to enable the Services to be provided (including but not limited to waste transfer notes and/or consignment notes) the Company shall be entitled to reject such consignment.
- 7. WEIGHT CALCULATION**
- Where prices are quoted by weight the following provisions apply.
- 7.1 The weight of each consignment of Contract Waste shall be determined in accordance with the provisions of this Condition 7.
- 7.2 On arrival at the Site the vehicle containing the consignment of Contract Waste shall be weighed on the Company's weighbridge. Following the off-loading of the consignment of

Contract Waste, the vehicle shall again be weighed on the Company's weighbridge. Each such weighing shall be under the direction and supervision of the Company's weighbridge operator (or other authorised representative of the Company).

7.3 The weight for each consignment of Contract Waste shall be the difference between the two weights recorded on the Company's weighbridge in accordance with Condition 7.2. The weight of such consignment as so calculated shall, in the absence of manifest error, be binding on the Customer and the weighbridge ticket issued by the Company to the Customer shall be conclusive as to the weight of the consignment of Contract Waste off-loaded at the Site.

7.4 If at any time the Company's weighbridge is not (in the opinion of the Company) working properly or at all, the following provisions of this Condition 7.4 shall apply:

7.4.1 the Company and the Customer shall use reasonable endeavours to agree the weight of the relevant consignment of Contract Waste, having regard to the average weight load for the vehicle in question; and

7.4.2 if the Company and the Customer are unable to agree the weight the Company shall not be obliged to accept the consignment of Contract Waste and the Customer shall deliver such consignment at such later date as notified by the Company.

## 8. FORCE MAJEURE

8.1 The Company shall not be liable to the Customer in any manner nor be deemed to be in breach of the Contract (subject to Condition 13) because of any delay in performing or any failure to perform any of the Company's obligations under the Contract if the delay or failure was due to any cause beyond the Company's reasonable control.

8.2 Without prejudice to the generality of Condition 8.1 the following shall be included as causes beyond the Company's reasonable control:

8.2.1 governmental actions (including, but not limited to, the Environment Agency or Scottish Environment Protection Agency as appropriate) war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

8.2.2 act of God, fire, explosion, flood, epidemic or accident;

8.2.3 weather conditions making a Site inaccessible or making it impractical or unsafe to operate a Site (in each case in the opinion of the Company);

8.2.4 import or export regulations or embargoes;

8.2.5 labour disputes whether or not including disputes involving the Company's workforce;

8.2.6 any inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour; or

8.2.7 unlawful acts by any third parties which prevent access to a Site; or

8.2.8 closure or breakdown of the Site.

## 9. TITLE IN THE CONTRACT WASTE

9.1 The Customer warrants and represents that it will have the true and unencumbered right to authorise and allow the Company to provide the Services in respect of the Contract Waste.

9.2 Title to each consignment of Contract Waste shall as between the Company and the Customer pass to the Company at the point in time when the Contract Waste has been collected from the Delivery Point or when off-loading of the Contract Waste has been completed at the Site (as appropriate).

## 10. PRICE

10.1 The price for the Services shall, unless otherwise expressly agreed between the parties or amended pursuant to this Condition 10, be the price per tonne or other appropriate unit in respect of each classification of Contract Waste as set out in the Quotation.

10.2 In the event of an increase in the prevailing price for the Services the Quotation will be subject to an increase by the Company. The Company shall write to the Customer or issue a revised

Quotation (the "Notification") setting out the amended price and such amended price shall be effective immediately from the date of this Notification. The Customer shall have seven (7) days from the date of the Notification to indicate in writing to the Company whether it accepts or rejects the increase. If the Customer rejects the increase set out in the Notification, the Customer shall notify the Company and the Company may at its discretion choose to revert to the previous price prior to the Notification. Where the Company does not choose to disapply the amended price set out in the Notification, the Customer shall be entitled (but not bound) to terminate the Contract on giving seven (7) days written notice to the Company. If the Customer has not confirmed in writing to the Company whether it accepts or rejects the increase in price within seven (7) days from receipt of the Notification, the Customer shall be deemed to have accepted the price increase from the date of receipt of the Notification.

10.3 The price for the Services is exclusive of any value added tax, Landfill Tax, or any other applicable tax duty or levy which the Customer shall pay in addition to the price when it is due to pay for the Services unless otherwise stated in the Quotation.

10.4 In the event of any tax, duty or levy being imposed on, or any existing tax, duty or levy being increased in respect of the Processing of Contract Waste (or any category thereof) then the Customer shall bear such tax, duty or levy (or increase thereof) in its entirety.

10.5 In the event of a dispute in respect of the amount to be paid by the Customer, the Company's records (including without limitation, weighbridge records) shall in the absence of manifest error, be conclusive and binding on the Customer.

10.6 In the event that the Company agrees (in accordance with the provisions of Condition 5.4) to accept a consignment of Contract Waste which does not comply with the classification as notified by the Customer in accordance with Condition 5.1, the Company shall be entitled (but not obliged) to adjust the price in respect of such consignment to accord with the Company's then current rate in respect of the correct classification applicable to such Contract Waste.

10.7 If there is a Change in Law Event at any time after the date of the Contract which:

10.7.1 increases the costs of the Company performing its obligations under this Contract (which, for the avoidance of doubt, shall include an increase in landfill tax payable by the Company or any of its associates on any disposal of the material received under this Agreement); or

10.7.2 renders it illegal, impossible or uneconomic for the Company to perform any or all of its material obligations under this Contract,

Then the Company shall be entitled to:

10.7.3 an adjustment to the Charges under the Contract to reflect any increase in the costs of the Company providing the Services; and

10.7.4 relief from its obligations to the extent that it cannot lawfully, practically or commercially perform those obligations as a result of the Change in Law Event; and

10.7.5 without prejudice to the Company's other rights under these conditions, either:

(i) request any amendment to this Contract necessary to allow Augean to provide the Services in compliance with the Change in Law Event; or

(ii) terminate the Contract upon seven (7) days' written notice.

10.7.6 Neither Party shall be liable to the other Party for a failure to perform any obligation under this Contract which becomes illegal, impossible to perform or uneconomic by reason of a Change in Law Event.

## 11. PAYMENT

11.1 The Company may invoice the Customer for the Services in respect of each individual consignment of Contract Waste at any time after completion of the collection or off-loading (as appropriate) of such consignment of Contract Waste in accordance with the provisions of these terms and conditions.

- 11.2 Time for payment shall be of the essence.
- 11.3 Payment of the price for the Services is due within thirty (30) days from the date of the Company's invoice.
- 11.4 No payment shall be deemed to have been received until the Company has received the payment in full and cleared funds.
- 11.5 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract notwithstanding any other provision of these terms and conditions.
- 11.6 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 11.7 If the Customer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Company may:
- 11.7.1 charge the Customer interest (both before and after judgment) on the amount unpaid at the annual rate of 5% above Barclays Bank plc's base rate from time to time from the due date until payment is made in full (and a part of a month shall be treated as being a full month for the purpose of calculating interest);
- 11.7.2 withdraw any credit facilities granted to the Customer;
- 11.7.3 set off any amount owing at any time from the Customer to the Company against any amount owing from the Company to the Customer; and
- 11.7.4 suspend all or part of the Services until payment has been made in full.
- 11.8 All payments shall be made by bank transfer or BACS. The Company will not accept cheques or cash as a means of payment.

## 12. QUALITY OF RECOVERED MATERIALS

Where Recovered Materials are relevant to this Contract the following provisions apply.

- 12.1 The Company warrants to the Customer that (subject to these terms and conditions) upon delivery the Recovered Materials shall:
- 12.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 12.1.2 be reasonably fit for any purpose held out by the Company.
- 12.2 The Company shall not be liable for a breach of the warranties at Condition 12.1 unless:
- 12.2.1 the Customer gives written notice of the defect to the Company (and, if the defect is as a result of damage in transit, to the Carrier) within seven (7) days of the date of delivery of the Recovered Materials (where the defect would be apparent to the Customer upon reasonable inspection) or the time when the Customer discovers or ought to have discovered the defect (where the defect would not have been apparent to the Customer on reasonable inspection); and
- 12.2.2 the Company is given a reasonable opportunity after receiving notice of the defect to examine such Recovered Materials and the Customer (if asked to do so by the Company) returns such Recovered Materials to the Company for such examination to take place.
- 12.3 The Company shall not be liable for a breach of the warranties in Condition 12.1 if:
- 12.3.1 the Customer makes any further use of the Recovered Materials after giving notice under Condition 12.2.1; or
- 12.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, use or maintenance of the Recovered Materials.
- 12.4 Subject to Conditions 12.2 and 12.3, if any of the Recovered Materials do not conform with the warranties in Condition 12.1 the Company shall at its sole discretion:

12.4.1 refund the price of such Recovered Materials at the pro-rata Contract price, based on the quantity of the Recovered Materials which do not confirm with Condition 12.1; or

12.4.2 remedy the defect;

and such remedies set out in this Condition 12.4 shall be the Customer's sole and exclusive remedy in relation to such defective Recovered Materials.

## 13. LIMITATION OF LIABILITY

- 13.1 The following provisions of this Condition 13 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 13.1.1 any breach of the Company's contractual obligations; and
- 13.1.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the maximum extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these terms and conditions excludes or limits the liability of either party for fraud, fraudulent misrepresentation or death or personal injury caused by its negligence or any other liability that cannot be excluded or otherwise limited by law.
- The Customer's attention is in particular drawn to the provisions of Conditions 13.4 and 14**
- 13.4 Subject to Conditions 13.2 and 13.3:

13.4.1 the Company's total aggregate liability to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise howsoever arising in relation to any particular Contract shall be limited to fifty per cent (50%) of the price paid in any contract year by the Customer for the Services which are the subject matter of that Contract; and

13.4.2 the Company shall, notwithstanding any other provision of the Contract, not under any circumstances be liable in contract, tort (including negligence) or breach of statutory duty, statute or otherwise for any loss of profit or any indirect or consequential loss or damage of any kind including, without limitation, loss of use, loss of contract or any other financial or economic loss.

## 14. INDEMNITY

- 14.1 The Customer shall indemnify, keep indemnified and hold the Company harmless in full in respect of all Loss which the Company may suffer or incur as a result of or arising out of or in connection with:
- 14.1.1 any negligence by the Customer in connection with the Contract or breach of the Contract by the Customer;
- 14.1.2 loading of Contract Waste by the Customer and the suitability of its vehicles and any containers used for the containment and transport of Contract Waste;
- 14.1.3 handling, storage and treatment of Contract Waste by the Customer prior to the collection of Contract Waste from the Delivery Point or completion of off-loading of the Contract Waste at a Site in accordance with the provisions of these terms and conditions;
- 14.1.4 any act or omission of the Customer relating to transport of Contract Waste to the point it is off-loaded at a Site;
- 14.1.5 off-loading of Contract Waste at a Site (other than in accordance with the Company's instructions and in an area designated by the Company on a Site);
- 14.1.6 the Customer's failure to declare the presence in Contract Waste of hard/solid objects (such as medical equipment, tools, steels, metallic objects or slag) aerosols, flammable and air/water reactive materials

which may cause damage to the Site, Augean's plant or injuries to its staff;

14.1.7 any action or omission of the Customer resulting in:

- (1) any personal injury to or death of any of the Company's employees, agents or sub-contractors or any third party; or
- (2) any damage to or loss of any property of the Company, its employees, agents or sub-contractors or any third party; or
- (3) any claims or actions brought or threatened against the Company by any third party (including without limitation, the Environment Agency or other similar competent body or authority) resulting from or arising out of or in connection with:
  - (i) any breach of any Contract by the Customer; or
  - (ii) any failure by the Customer to comply with any Laws; or
  - (iii) any failure by the Customer or Associated Person of the Customer to comply with any Anti-Bribery Laws

(unless such liability, loss, damage, cost or expense arises out of the negligence or a default of the Company under the Contract).

## 15. TERMINATION

15.1 The Company is entitled to terminate the Contract immediately on written notice if:

- 15.1.1 the Customer fails to observe or perform any of its obligations or duties under the Contract or any other contract between the Company and the Customer;
- 15.1.2 the Customer commits any act which brings or is likely to bring the Company or the Company's business interests into disrepute or which damages or is likely to damage those interests;
- 15.1.3 the Customer suspends or ceases, or threatens to suspend or cease, to carry on with all or a substantial part of its business;
- 15.1.4 the Customer makes late or non-payment of any monies due to the Company under the Contract or otherwise (and if the Services have been provided, but not paid for, the price payable under the Contract shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary);
- 15.1.5 the Customer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it;
- 15.1.6 the Customer, being an individual or partnership:
  - (1) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
  - (2) makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; or
  - (3) is the subject of a bankruptcy petition or order; or
  - (4) dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing its own affairs or becomes a patient under any mental health legislation;
- 15.1.7 the Customer, being a company or other body corporate:
  - (1) has an order made or a resolution passed for its winding up, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or an order is made for the appointment of an administrator to manage its affairs, business and property or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer; or

notice of intention to appoint an administrator is given by the Customer or the Customer's directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

- (2) has a receiver appointed over any of the Customer'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 Customer or if any other person takes possession of or sells the Customer's assets; or
- (3) 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
- (4) is, or is reasonably considered to be unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986;

15.1.8 any event or circumstance similar, equivalent or analogous to any of the events described in Condition 15.1.6 or 15.1.7 occurs in relation to the Customer in any jurisdiction;

15.1.9 the Company, acting reasonably, has serious doubts as to the Customer's solvency;

15.1.10 there are any changes to Environmental Law from time to time or any changes (including without limitation variation, suspension or revocation) to any waste management licence(s) (or any other relevant authorisation or consent, including a PPC Permit) of the Company from time to time in force which result in the Company being no longer able to provide the Services pursuant to any Contract; or

15.1.11 the Customer is in breach of Conditions 16, 17 or 18.

15.2 The Company is entitled to terminate the Contract in whole or in part on giving one month's written notice.

15.3 The Company's rights and the Customer's obligations (but not the Customer's rights) contained in Conditions 13 and 14 shall continue beyond the discharge of the Customer's and the Company's primary obligations under the Contract.

15.4 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Customer or the Company accrued prior to termination and any obligations which are expressly or by implication intended to survive termination.

## 16. BRIBERY AND CORRUPTION

16.1 To the extent that any Anti-Bribery Laws apply to any aspect of the relationship between the Company and the Customer, including any Associated Persons of either party, the Customer shall, in relation to the Contract:

16.1.1 comply with any Anti-Bribery Laws;

16.1.2 comply with the Anti-Bribery Policies;

16.1.3 have and maintain in place throughout the term of this Contract its own policies and procedures, including, but not limited to, Adequate Procedures to ensure compliance with the Anti-Bribery Laws and the Anti-Bribery Policies and will enforce them where appropriate;

16.1.4 promptly report to the Company any offer, promise, or giving of, or any request for, agreement to receive, or acceptance of any undue financial or other advantage of any kind, to or by the Customer or the Company or any Associated Persons of either of the same, in connection with the performance of the Contract;

16.1.5 if so required by the Company at any time, certify to the Company in writing, signed by an officer of the Customer, compliance with this Condition 16 by the Customer and all of its Associated Persons, providing also such supporting evidence of compliance as the Company may reasonably request;

16.2 The Customer hereby warrants to the Company that there has been no breach by it of the Anti-Bribery Laws and the Anti

Bribery Policies in connection with the procurement and/or negotiation of the Contract.

## **17. DATA PROTECTION AND DATA PROCESSING**

- 17.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 17 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Condition 17.
- 17.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Company may be the data controller and the Customer the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 17.3 Without prejudice to the generality of Condition 17, the Customer shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under the Contract:
- 17.3.1 process that Personal Data only on the written instructions of the Company unless the Customer is required by Laws to otherwise process that Personal Data. Where the Customer is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Customer shall promptly notify the Company of this before performing the processing required by the Laws unless those Laws prohibit the Customer from so notifying the Company;
- 17.3.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 17.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 17.3.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Company has been obtained and the following conditions are fulfilled:
- (i) the Customer or the Company has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (iii) the Customer complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Customer complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 17.3.5 assist the Company, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 17.3.6 notify the Company without undue delay on becoming aware of a Personal Data breach;
- 17.3.7 at the written direction of the Company, delete or return Personal Data and copies thereof to the Company on termination of the agreement unless required by Laws to store the Personal Data; and
- 17.3.8 maintain complete and accurate records and information to demonstrate its compliance with this Condition 17.

## **18. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES**

- 18.1 In performing its obligations under the Agreement both parties shall:
- 18.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015; and
- 18.1.2 have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance; and
- 18.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

## **19. GENERAL**

- 19.1 Time for performance of all obligations of the Customer is of the essence.
- 19.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 19.3 Any Condition or sub-Condition of these terms and conditions which is held by any court or competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other Conditions and sub-Conditions of these terms and conditions and the remainder of such Condition or sub-Condition shall not be affected.
- 19.4 Failure by the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 19.5 The Company may assign, license or sub-contract all or any part of its rights or obligations under the Contract without the Customer's consent.
- 19.6 The Contract is personal to the Customer who may not assign, license or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 19.7 Without prejudice to the Company's rights under Condition 17.5, these terms and conditions do not confer any rights on any Person or party (other than the Company and the Customer) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.8 The Contract (incorporating these terms and conditions and any Quotation) contains the entire agreement between the parties in respect of the supply of the Services to the Customer by the Company and replaces any previous agreement or understanding between the parties.
- 19.9 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission to the other party at its last known address or facsimile number or e-mail account. Communications shall be deemed to have been received two (2) days after posting or hand delivery or, in the case of facsimile transmission or e-mail, on the next working day.
- 19.10 The formation, construction, performance, validity and all aspects of the Contract (together with matters of a non-contractual nature in connection with these terms and conditions) are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.