

AUGEAN SOUTH 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) 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;

"Company" - Augean South Limited, a company registered in England with company number 04636789 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 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;

"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 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), byelaw, treaty, government circular, code of practice and guidance notes or instruction or decision of any competent regulatory body;

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

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

"Services" - the management of Waste (mainly Hazardous Waste) in accordance with these terms and conditions which may be disposed of via one of the Company's Sites or may be brokered to a third party for disposal;

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

"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 dispose of by way of Landfill from time to time in accordance with any waste management licence(s) 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. Formation and incorporation

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 Entry onto a Site or delivery or attempted delivery of Contract Waste to a Site by the Customer shall be and be deemed to be conclusive evidence of the Customer's acceptance of these terms and conditions.
- 2.6 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 thirty (30) days only from its date provided the Company has not previously withdrawn it.

3. Company's Obligations

- 3.1 The Company shall, subject to the provisions of 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.
- 3.2 The Company undertakes that any management of Contract Waste or disposal of Contract Waste by way of Landfill (as the case may be) at any Site by the Company will be carried out in accordance with the provisions of the Company's waste management licence(s) 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) 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 recycled or disposed of by way of Landfill at that Site.
- 3.3 Subject to Condition 7.4, the Company shall provide appropriate weighbridge facilities to enable each consignment of Contract Waste to be weighed.

4. Customer's Obligations

- 4.1 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 and its notification requirements under the Hazardous Waste Regulations 2005.
- 4.2 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 Waste shall comprise any part of the subject matter of any Contract.
- 4.3 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.
- 4.4 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. The Customer shall also ensure 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.

5. Description of the Waste

- 5.1 The Customer shall, at the time of submitting its order for the 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 of the quantity and content of the Waste in such form and in such detail as the Company shall require from time to time.
 - 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 description so provided.
 - 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 this 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) at the material time, the Company shall expressly reserve its right to increase the price in accordance with Condition 10.5;
 - 5.4.2 if the Contract Waste is unable to be managed by the Company within the terms of its waste management licence(s) at the material time, the Company shall be expressly entitled to reject the consignment Waste and terminate the Contract; and
 - 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 The entire contents of this Condition 5 are without prejudice to the Company's rights and the Customer's obligations under Conditions 10 and 13.
- ### **6. Collection and disposal of Contract Waste**
- 6.1 For the avoidance of doubt, delivery of Contract Waste to the Site shall be the responsibility of the Customer.

- 6.2 Delivery of Contract Waste shall be during the normal operational hours of the Site as notified to the Customer from time to time.
- 6.3 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.
- 6.4 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.
- 6.5 Any dates specified by the Company for the provision of the Services are approximate only 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.
- 6.6 Subject to the other provisions of these terms and conditions, the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the provision of the Services (even if caused by the Company's negligence).
- 6.7 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 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

- 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 all 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 12) because of any delay in performing or any failure to perform any of the Company's obligations under this 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) 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; or
- 8.2.6 any inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour.

9. Title in the Contract Waste

- 9.1 The Customer warrants 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 off-loading of the Contract Waste has been completed at the Site.

10. Price

- 10.1 The price for the Services shall, unless otherwise expressly agreed between the Parties or amended pursuant to Condition 10.5, 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 The price for the Services is exclusive of any value added tax, Landfill Tax, or any other applicable tax which the Customer shall pay in addition to the price when it is due to pay for the Services unless otherwise stated in the Company's quotation.
- 10.3 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 management or the Landfilling or depositing of Contract Waste (or any category thereof) then the Customer shall bear such tax, duty or levy (or increase thereof) in its entirety.
- 10.4 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.
- 10.5 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.

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 off-loading 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 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 cleared funds.
- 11.5 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 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 charge the Customer interest (both before and after judgment) on the amount unpaid at the annual rate of 5% above Barclay's Bank plc's base rate from time to time from the due date until payment is made in full. A part of a month shall be treated as being a full month for the purpose of calculating interest.

12. Limitation of liability

- 12.1 The following provisions of this Condition 12 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:
- 12.1.1 any branch of the Company's contractual obligations; and
- 12.1.2 any representations, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the maximum extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these terms and conditions excludes or limits the liability of either party for fraud or 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 12.4 and 13

12.4 Subject to Conditions 12.2 and 12.3:

12.4.1 the Company's total aggregate liability to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise howsoever arising for any claim, damage, loss or costs in relation to any particular Contract shall be limited to the price payable by the Customer for the Services which are the subject matter of that Contract; and

12.4.2 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 financial or economic loss.

13. Indemnity

- 13.1 The Customer shall indemnify the Company and keep indemnified and hold the Company harmless in respect of all liability, loss, damages, costs and expenses (including legal expenses on an indemnity basis and any necessary expenses arising from remediation works) which the Company may suffer or incur as a result of or arising out of or in connection with:
- 13.1.1 any negligence by the Customer in connection with the Contract or breach of the Contract by the Customer;
- 13.1.2 loading of Contract Waste by the Customer and the suitability of its vehicles and any containers used for transport of Contract Waste;
- 13.1.3 handling, storage and treatment of Contract Waste by the Customer prior to completion of off-loading of the Contract Waste at a Site in accordance with the provisions of these terms and conditions;
- 13.1.4 any act or omission of the Customer relating to transport of Contract Waste to the point it is off-loaded at a Site;
- 13.1.5 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);
- 13.1.6 the Customer's failure to declare the presence in Contract Waste of hard/solid objects (such as tool steels or slag) aerosols, flammable and air/water reactive materials which may cause damage to Augean's plant or injuries to its staff;
- 13.1.7 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;
- 13.1.8 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:
- (1) any breach of any Contract by the Customer;
- (2) any failure by the Customer to comply with any Laws; or
- (3) any failure by the Customer or Associated Person of the Customer to comply with any Anti-Bribery Laws.

14. Termination

- 14.1 The Contract will terminate immediately upon the happening of any one or more of the following events: the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statute or legislation for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed over its

undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

14.2 The Contract will terminate immediately upon service of written notice of termination by the Company on the Customer on the happening of any one or more of the following:

14.2.1 the Customer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it;

14.2.2 the Customer fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Company and the Customer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases (or threatens to cease) to trade; or

14.2.3 any changes to Environmental Laws 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) 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.

14.2.4 the Customer is in breach of Condition 15.

14.3 The Company's rights and the Customer's obligations (but not the Customer's rights) contained in Conditions 12 and 13 shall continue beyond the discharge of the Customer's and the Company's primary obligations under the Contract.

14.4 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.

15. Bribery and Corruption

15.1 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:

15.1.1 comply with any Anti-Bribery Laws;

15.1.2 comply with the Anti-Bribery Policies;

15.1.3 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;

15.1.4 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; and

15.1.5 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 15 by the Customer and all of its Associated Persons, providing also such supporting evidence of compliance as the Company may reasonably request.

15.2 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.

16. General

16.1 Time for performance of all obligations of the Customer is of the essence.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 Without prejudice to the Company's rights under Condition 16.5, 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.

16.8 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. Communications shall be deemed to have been received two (2) days after posting or hand delivery or, in the case of facsimile transmission, on the next working day.

16.9 The Contract (incorporating these terms and conditions and any order for the Services issued by the Customer under Condition 2.2 above) contains the entire agreement between the parties in respect of the supply of the Services to the Customer by the Company. The Contract replaces any previous agreement or understanding between the parties.

16.10 The formation, construction, performance, validity and all aspects of the Contract (whether of a contractual or non-contractual nature) are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.