

CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS

1.1 For the purpose of this agreement the terms set forth below will have the following meanings:

“Commencement Date” is the date on which the Customer signs this Agreement .

“Confidential Material” is any item deemed by SDR and the Customer to be confidential and/or sensitive in nature including without limitation, paper, discs, videos, uniforms and IT and electronic equipment; “WEEE” is Waste electrical and electronic equipment.

“Customer” is the person, partnership, unincorporated association, company or other organisation named on the customer order; “Initial Period” means the relevant Minimum Hire/Service or Collection Period of thirty six months.

“Payments” are the sums payable by the Customer according to the type of agreement selected, as set out on the customer order or as varied under Clause 4.2 below;

“SDR” means Secure Data Recycling Limited,

“Customer Order” refers to the customer order form, signed and dated by the Customer

“Supplementary Charges” means the charges for any services provided by SDR which are not included within the scope of the Agreement Type selected by the Customer as set out in Clause 2 below; “CBP’s” refers to Collapsible Box Pallets.

“Units” means the storage containers, consoles, CBP’s (collapsible Box Pallets), sacks or materials or other equipment (or any substitute for such items) to which this Agreement applies as set out on the customer order; and “Working Days” means Monday to Friday in each week excluding public holidays in England and Wales.

1.2 In this Agreement any reference to any legislation includes such legislation as amended, extended, consolidated or replaced from time to time.

2. BASIS OF AGREEMENT

2.1 In consideration of the Customer making Payments, SDR will perform its obligations with reasonable care and skill and hire the Units to the Customer and/or service/collect the Units for the Customer (as applicable according to the Agreement Type selected by the Customer on the customer order) in accordance with the terms set out in this Agreement, to the exclusion of all other terms and conditions (including any which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the contract between the Customer and SDR simply as a result of such document being referred to by the parties to this Agreement.

2.3 These conditions apply to the Units, services and collections supplied to the Customer under this Agreement and any variation to these conditions and any representations by SDR shall have no effect unless expressly agreed in writing and signed by a SDR Company Director. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of SDR which is not set out in this Agreement. Nothing in this condition shall exclude or limit SDR’s liability for fraudulent misrepresentation.

2.4 All Units remain at all times the property of SDR, the Customer will have no interest in, or rights to the Units or any other equipment provided by SDR.

2.5 Each order or acceptance of a quotation for the supply of Units, services and collections by the Customer from SDR shall be deemed to be an offer by the Customer to hire the Units and use the services and collections subject to these conditions and a minimum of 2 working days written notice must be received for any variations on this agreement, failure to provide this minimum notice will result in a charge being issued for the total volume of waste stated on the Customer Order.

2.6 A charge will be levied for the delivery or collection of the units for each individual delivery address at the prevailing rate.

2.7 SDR will physically collect the customers WEEE and redundant IT on regularly scheduled or on an Ad Hoc basis to be mutually determined by SDR and the Customer. The materials for collection will be transported to SDR’s authorised Waste Treatment facility and all items to be collected will be recycled in accordance with the Best Available Treatment, Recovery and Recycling (BATRRRT) directive.

2.7.1 All HDDs will be wiped to CESG standards unless previously agreed and stated on the Customer order.

2.7.2 A full asset list will be available to the customer, subject to additional costs; as an electronic document or access through the SDR portal as previously agreed and stated on the Customer order.

2.8 SDR will provide to the Customer, if required, a certificate of destruction for each consignment of Confidential Material removed from the Customer’s site under this Agreement.

2.9 SDR may, with the Customer’s prior agreement, employ a subcontractor for the purpose of fulfilling any contract entered into by SDR.

3. COMMENCEMENT AND DURATION OF AGREEMENT

This Agreement shall commence on the Commencement Date and, subject to the provisions for termination set out in it, (which includes the ability to terminate the hire/service/collection of one or more Units), shall run for the Initial Period and then for consecutive periods each equivalent in time to the Initial Period (an “Extension Period”).

4. PAYMENTS

4.1 The Payments shall be payable by the Customer 30 days after the date of SDR’s invoice without deduction, counterclaim or set-off. The time of payment of each and every Payment shall be of the essence of this Agreement and a failure to pay on time shall be deemed to be a fundamental breach of this Agreement.

4.1.1 The Customer agrees to pay the minimum charge stated in the customer order or the kilo/per minute charge detailed in the customer order, whichever is the greater sum for ad hoc orders.

4.1.2 The Customer agrees to pay the minimum charge stated in the customer order plus the kilo/per minute charge detailed in the customer order for all regular service orders.

4.2 SDR shall be at liberty to vary the Payments as follows:

4.2.1 At any time where performance of its obligations is made more difficult or costly as a result of new legislation or regulations or changes to existing legislation or regulations, including those which result in increases in National Insurance Contributions;

4.2.2 To take account of an increase in SDR’s operating costs, including (without limitation) costs arising from increases in fuel prices;

4.2.3 Upon each anniversary of the Commencement Date during the Initial Period, by the average increase in inflation during the previous 12 month period as measured by an appropriate index (such index to be determined by SDR); and

4.2.4 At the beginning of the first Extension Period and upon each anniversary of the start of the first Extension Period (including upon all anniversaries during any subsequent Extension Periods) by a percentage increase applied at the discretion of SDR.

4.3 All amounts due under this Agreement are (unless otherwise specified) subject to the addition of VAT at the prevailing rate, which shall be additionally payable by the Customer in full.

5. SUPPLEMENTARY AND OTHER CHARGES

5.1 Supplementary Charges shall be payable by the Customer if SDR carries out any non-routine repairs referred to in Clause 7.2 below and where performance of its obligations is made more difficult or costly by a breach of the Customer's obligations under this Agreement.

5.2 Unless previously agreed and authorised, if the waste is not located on the ground floor and requires the SDR Representative/driver to collect via the stairways there will be an additional surcharge;

5.2.1 50 pence per box or sack for each flight of stairs, both ascended and descended.

5.2.2 All paper not contained and therefore loose, will be charged at 5 pence per kilo for each flight of stairs, ascended and descended.

5.3 There will be a surcharge of £6.00 per minute where SDR carries out any other service relating to the collection and/or disposal of waste other than as specified on the customer order, this is inclusive of but not limited to; waste not contained or located as agreed on the customer order, waste stored in plastics wallets/lever arch files unless previously agreed and stated on the customer order, SDR representative/driver unable to enter the premises/collect the waste (provided it is within the customers opening times as stated on the customer order) and kept waiting for a maximum of 30 minutes.

5.3.1 Should the SDR Representative/driver be denied access or the waiting time reaches 30 minutes, this will be classed as a failed collection and SDR reserves the right to instruct the driver to leave the premises and charge £195 or the minimum charge stated on the Customer Order, whichever is the greater value.

5.4 Should the volume of waste collected be less than the volume stated by the customer on the Customer Order, SDR reserves the right to charge the customer for the total volume of waste stated on the Customer Order.

5.5 Should the customer request CBP's free of charge, SDR reserves the right to charge the customer any costs incurred, plus carriage costs in the event that after 2 months a collection has not been arranged and/or any surplus sacks have not been returned to SDR, unless previously agreed and stated on the Customer order.

5.6 Where there is restricted vehicle and/or parking access outside a customer's premises ie. London Red Routes, no parking zones, parking meters etc. together with any congestion charge incurred by SDR in the delivery, installation, service or collection of the Units, SDR reserves the right to charge an access surcharge on completion of the collection.

5.7 Fridges, Freezers and Fluorescent tubes cannot be accepted by SDR. If it is found that clients integrate these items into the IT/WEEE collection a surcharge of £299 per item will be applied to cover the cost of delivering the items to a specialist treatment facility.

5.8 All Supplementary Charges and other charges referred to in this Clause are payable at the rates current at the time that the relevant services are provided and are to be paid within 30 days of the date of SDR's invoice.

6. LATE PAYMENT

6.1 If the Customer fails to pay any of the Payments or the Supplementary Charges on the due date then, without prejudice to its other rights and remedies, SDR may:

6.1.1 SDR understand and will exercise our statutory right to claim interest and compensation recovery costs at 8% above the Bank of England Base rate for debt under the late payment legislation if we are not paid according to agreed credit terms; and

6.1.2 (without being in breach to the Customer) suspend the performance of its obligations under this Agreement until such time as the overdue sum is paid in full.

6.1.3 An additional charge equal to 10% of the total invoice value will be levied for payment not received within 30 days of the invoice date.

7. NON-ROUTINE REPAIR AND MAINTENANCE OF SDR OWNED UNITS

7.1 Upon any fault occurring to the Units or if the Units become a health and safety hazard;

7.1.1 The Customer shall notify SDR as soon as possible and take such steps as are reasonably necessary to mitigate the effect of such fault or hazard; and

7.1.2 subject to Clause 7.2 below, SDR will, as soon as reasonably practicable, take all proper steps to correct the fault at its own cost by repairing or, replacing all or part of the Units.

7.2 The Agreement does not include the repair of any faults resulting from misuse, vandalism or any other accidental, negligent or willful damage, for which Supplementary Charges will be payable.

8. COVENANTS OF THE CUSTOMER

8.1 The Customer agrees and covenants with SDR as follows:

8.1.1 to allow SDR and its agents full, convenient and safe access to the site where the Units are maintained or from which collections are carried out during such hours as may be necessary to perform its obligations under this Agreement;

8.1.2 not to interfere with the Units (including attempting to repair, adjust or modify the Units) or place the Units on a public highway

8.1.3 not to sell or offer for sale, lend, assign, pledge, underlet or otherwise deal with or part with possession of the Units and not to remove them from its premises without SDR's prior written consent;

8.1.4 to promptly carry out such action to the Units as may be advised by SDR from time to time;

8.1.5 to notify SDR immediately of any loss of, or damage to, the Units;

8.1.6 to ensure that the waste materials to be collected and disposed of shall be of the type, character and quantities as specified on the Customer Order and the Customer shall ensure that no material change in the nature of the waste materials shall take place during the contract period. If waste other than the material covered in this Agreement is received, SDR will contact the Customer to agree the method of disposal, and SDR reserves the right to charge the Customer additional charges for such service at the rate current at the time that the service is provided. Such additional charges are to be paid within 30 days of the date of SDR's invoice;

8.1.7 to ensure that the materials to be collected and shredded do not contain any materials that could damage the shredding equipment used by SDR. SDR reserves the right to charge the Customer additional charges to cover any breakdown or repair as a result of the Customer's actions; and 8.1.8 to ensure that it has the consent of all relevant data subjects to the destruction of the data comprised in the Confidential Material.

9. COVENANTS OF SDR

9.1 All depots, processes, onsite and offsite vehicles are inspected to BS EN 15713 standards.

9.2 All SDR staff are security vetted to BS7858 standards.

10. ACKNOWLEDGEMENTS AND WARRANTIES BY THE CUSTOMER

10.1 Where the Units supplied under this Agreement have been manufactured or customised to the Customer's own specifications or requirements, the Customer acknowledges that:

10.1.1 the Units are required for the purposes of a business carried on by the Customer, that they were selected by the Customer and acquired at its request by SDR from the supplier for the purposes of this Agreement; and 10.1.2 the supplier is not the agent of SDR unless this is required by law.

10.2 The Customer warrants to SDR that the waste SDR collects under this Agreement does not contain any hazardous waste or hazardous concentration of any noxious, poisonous or polluting substances, and that any significant change in the waste will be declared to SDR in advance of collection.

11. TERMINATION BY SDR

11.1 If the Customer breaches any term of this Agreement or suffers distress or execution, becomes insolvent or bankrupt, or enters into an arrangement or composition with its creditors or if a liquidator, receiver or administrator is appointed over the whole or any part of its business or assets then, without prejudice to its other rights and remedies, SDR may immediately terminate this Agreement.

11.2 SDR may also terminate this Agreement at any time by giving the Customer 10 days prior written notice.

12. TERMINATION BY THE CUSTOMER

12.1 The Customer may only terminate the hire and/or service/collections of one or more of the Units or this Agreement in its entirety by giving at least 90 days prior notice in writing, such notice to expire at the end of the Initial Period or an Extension Period.

13. CONSEQUENCES OF TERMINATION

13.1 Upon termination of this Agreement howsoever arising:

13.1.1 the Customer shall, without prejudice to SDR's other rights and remedies, pay to SDR on demand all arrears of Payments and any other sums payable under this Agreement up to the date of termination;

13.1.2 any servicing, collections, maintenance or repair of the Units by SDR shall cease;

(i) the hiring of the Units shall cease and the Customer shall no longer be in possession of the Units with SDR's consent;

(ii) the Customer shall immediately make the Units available for collection by SDR in good working order and condition (fair wear and tear excepted), in default of which SDR shall be entitled to charge Payments from the date of termination to the date on which the Units are collected; and

(iii) the Customer shall, without prejudice to SDR's other rights and remedies, pay to SDR on demand the cost of repairs to the Units to put them in good working order and condition (fair wear and tear excepted).

13.2 If the Customer seeks to terminate otherwise than in accordance with Clause 12.1 above, then it shall also pay SDR by way of liquidated damages a sum equal to 75% of the aggregate Payments which, but for termination, would have been payable from the date of termination up until expiry of the Initial Period or the then current Extension Period.

13.3 Where the Payments fluctuate from one payment date to the next, the sum due upon termination under Clause 13.2 above shall be calculated by averaging the Payments due from the Customer from the Commencement Date up to the date of termination and multiplying such average by the number of payments which, but for termination, would have been payable up until the end of the Initial Period or the then current Extension Period.

14. LIABILITY

14.1 Subject to Clause 14.2 below, all conditions, warranties and representations, whether express or implied and whether arising by reason of statute, common law or otherwise relating to the quality of the Units, their suitability or fitness for purpose and their conformity with description or sample, are expressly excluded from this Agreement to the fullest extent permitted by law. In particular, any published pictures or descriptions of the Units are for indication purposes only and actual products supplied may differ from such pictures or descriptions.

14.2 SDR does not exclude or limit liability for death or personal injury caused by its negligence or fraudulent misrepresentation but, subject to this and the requirements of the law, its liability to the Customer in contract, tort or otherwise for any damage, loss, liability, costs or expenses suffered or incurred by the Customer or any other person arising directly or indirectly or in any manner howsoever out of the use or possession of the Units by the Customer or such other person, the provision of any services under this Agreement or otherwise shall be limited as follows:

14.2.1 SDR's liability for loss or damage to buildings and fixtures and fittings caused by an act or omission of SDR, its agents, employees or subcontractors shall not exceed £1,000,000 per incident;

14.2.2 SDR's liability for all other loss or damage suffered by the Customer in any 12 month period and caused by an act or omission of SDR, its agents, employees or subcontractors shall not exceed the annual equivalent of the total Payments set out on the Customer Order (excluding any increases to such payments)

14.2.3 the Customer agrees that SDR shall not be liable in any way for any loss of profits, nor shall it be liable for any indirect, consequential or special loss or damage howsoever caused and arising from the Customer's use or possession of the Units or benefit from the services provided by SDR or otherwise; and

14.2.4 SDR shall not be liable for any delay or failure to comply with its obligations where the failure is caused by fire, flood, inclement weather, strikes, industrial action or any other reason or circumstances (not necessarily similar to those listed) beyond its reasonable control.

14.3 Unless the law provides otherwise (and except as a result of a breach by SDR of its obligations under this Agreement or SDR's negligence or where SDR is otherwise liable at law for such damage, loss, liability or expenses) and without prejudice to SDR's other rights and remedies, the Customer shall indemnify SDR against all or any of the following:

14.3.2 any and all damage, loss, liability or expenses which SDR may suffer or incur as a result of a claim by a third party; and

14.3.3 all costs and expenses (including enquiry agents, debt collection agents and legal costs on a full indemnity basis) incurred or sustained by SDR in enforcing any of the terms of this Agreement.

14.4 The Customer shall indemnify SDR against any and all damage, loss, liability or expense which SDR may suffer or incur as a result of any action taken by the Environment Agency or similar regulatory body as a result of SDR having entered into this Agreement.

14.5 The Customer shall indemnify SDR against any and all damage, loss, liability or expense which SDR may suffer or incur as a result of any claim by a third party arising out of or in connection with the destruction of any Confidential Material.

15. SERVICE OF NOTICES

15.1 Any notice required or permitted to be given under this Agreement shall be deemed to have been validly given if served personally upon that party or if sent by first class prepaid post to the address of that party as stated at the head of this Agreement, its last known address or to its registered office.

15.2 Any notice or other information sent by first class prepaid post shall be deemed to have been received by the other party within 48 hours after the date of posting.

16. GENERAL

16.1 The person or persons who sign this Agreement on behalf of the Customer warrant that they have the appropriate and necessary authority to do so and to bind the Customer to the terms set out in it. Where two or more persons are stated on the Customer Order to be the Customer, each of those persons shall be jointly and severally liable for performance of the Customer's obligations under this Agreement.

16.2 SDR (but not the Customer) shall be free to assign or novate all or any of its rights or obligations under this Agreement (in whole or in part) to any other party without the consent of the Customer

16.3 This Agreement contains the entire agreement between the parties and may only be modified in writing. If any part of it shall, for any reason, be found or held invalid or unenforceable, this shall not affect the remainder of its terms, which shall survive and be construed as if the invalid or unenforceable part had not been contained in this Agreement.

16.4 A person who is not a party to this Agreement has no right to enforce any term of this Agreement.

16.5 The failure of SDR to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy consequent upon breach of any such provision shall not constitute a waiver of any such breach or any subsequent breach of such provision or prejudice in any way any right of SDR under this Agreement.

16.6 The parties agree that it is not practical to obtain signatures for all services performed and so the Customer accepts that the computerised records of SDR, its subcontractors or agents (as relevant) of the services provided would be adequate proof of the fact that those services have been delivered.

16.7 This Agreement shall be governed by the laws of England and Wales and the English and Welsh courts shall have non exclusive jurisdiction for any disputes arising out of it.