



Terms & Conditions of Trading - Wheelie Bins -

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MaxRecycle - CURRENT TERMS AND CONDITIONS OF TRADING

1. Definition and Interpretation

For the purpose of any Contract except where expressly stated to the contrary, the following words shall have the following meanings: "Company" means The Durham Company Ltd. and its trading style MaxRecycle. "Customer" means the person(s) firm or company named in any Contract and includes the customer's legal personal representatives, successors and permitted assignees. "Contract" means the form of agreement entered into between the Company and the Customer incorporating these terms and conditions of trading; "Contract Commencement date" means the first date services begin, unless otherwise specified on the front of any contract identified under the section and provisions of E-E1, although any contract is binding from the date of signature; "Contract Price" means all sum(s) to be paid by the Customer to the Company under any Contract; "Contract Term" is defined as thirty-six months, unless recorded in Section E on the front of any contract; "Equipment" means equipment and any other items supplied by the Company to the Customer as stated in any Contract; "Services" means the services described in any Contract including but not limited to the provision by the Customer of all necessary resources as agreed such as personal goods, material, plant and equipment; "Site" means the place(s) where the Services are to be performed; "Waste" means all waste collected by the Company as detailed in any Contract; "Wheeled Unit" means the storage containers for the Waste which are collected by the Company.

2. Assignment and sub-contracting

- The Customer shall not assign any Contract in whole or in part or any benefit or interest therein without the prior written consent of the Company.
- The Company may assign, sub-contract or otherwise transfer any Contract in whole or part or any benefit or interest to any party which where possible, will be notified in writing in advance.
- Where a Company customer enters into an agreement with a third party waste provider, e.g. a waste broker, it is understood that, even if the Company agree to work with said party on the provision of waste services, a novation of the existing contract has not occurred in any circumstances unless specifically agreed in writing by the Company.

3. Commencement and Termination

- Any contract is binding on either party from the date of signature for the agreed Contract Term and unless otherwise specified within Section 'DUTY OF CARE W.I.N./CONTRACT DECLARATION' on the front of any Contract, it is accepted by the Customer that the term of any Contract will be 36 months, and shall automatically renew at the end of this period and remain in force for successive periods, equal to the initial term, unless terminated at the end of such period by acknowledged written notice to the Company, sent to its Head Office address by post; received not more than six months and not less than three months before the end of any such period.
- Please note, no requests will be accepted or processed by the Company, whilst any breaches of any contract remain outstanding, no matter how trivial. Examples include, but are not limited to, outstanding invoices or incomplete/outstanding documentation etc.
- The Company reserves the right to automatically increase any contract term for a period equal to any Suspension Period (including suspensions to services as a result of non-payment of invoices, or the absence of complete documentation such as a Duty of Care Waste Transfer Notes), or the sum total of multiple suspension periods, where such have been permitted by The Company, over any contract period.
- The Company may by notice in writing to the Customer terminate the whole or any part of any Contract forthwith if the Customer:
 - has been given written notice of substantial or persistent breach stating the period during which such breach is to be rectified and the Customer has failed to satisfactorily remedy such breach within the stated period. Failure to pay any sums due in accordance with clause 5 is a substantial breach of the terms of any Contract which is not capable of remedy; or
 - becomes bankrupt or insolvent or has entered into liquidation or into any arrangement with its creditors or takes or suffers any similar actions in consequence of a debt; has any distraint, execution or other process levied or enforced on any of its property, or ceases or threatens to cease to trade;
 - The Company shall be entitled to suspend with immediate effect, any performance or obligation due to occur, following service of notice, specifying any breach of any contract including non-payment of account, and/or possession of a valid Duty of Care Waste Transfer Note, until either the breach is remedied or any contract terminates, whichever occurs first. The Customer acknowledges and accepts that failure to pay outstanding balances due, does not release the Customer from their contractual obligations as set out under any contract. Should the Company suspend any contracted services for any breach or for non-payment of account then an administration charge of £30 will be incurred and payable by the customer. On resumption of service to the Customer the Company will not be responsible for the disposal of any excess waste which has accumulated during the period of service suspension.
 - The Customer acknowledges that it is their responsibility to request any desired service suspensions, and/or downgrades in writing, and that such suspensions, and/or downgrades are permitted purely at the Company's discretion.
- "Agreed Compensation":
 - Where a Customer pays in Advance: Any contract is binding from the date of signature by or on behalf of the Customer. If the Customer purports to cancel any Contract before the proper expiry date (including any successive periods as per Contract) other than in accordance with conditions 3(a) or 3(e) of any Contract, then the Customer shall pay by the way of liquidated damages to the Company a sum of money equivalent to 43 per cent of the most recent monthly charge multiplied by the number of remaining months of any contract. The Customer and the Company both agree that this represents a genuine pre-estimate of the loss of gross profit incurred by the Company, as a result of any such termination.
 - Where a Customer pays in Arrears: Any contract is binding from the date of signature by or on behalf of the Customer. If the Customer purports to cancel any Contract before the proper expiry date (including any successive periods as per Contract) other than in accordance with conditions 3(a) or 3(e) of any Contract, then the Customer shall pay by the way of liquidated damages to the Company a sum of money equivalent to 43 per cent of the average of monthly charge, calculated on the previous 12 months service charges. (Or up to 12 months service charges, where 12 months service charges have not been rendered) multiplied by the number of remaining months of any contract. The Customer and the Company both agree that this represents a genuine pre-estimate of the loss of gross profit incurred by the Company, as a result of any such termination.
- Notwithstanding the above, the Company shall allow a cooling off period of three working days from the date of signing of the original contract, whereby upon written notification to the Company (to be sent recorded delivery) the Customer may cancel any contract without penalty.
- Please note failure to render payment for invoices relating to the services performed, within the credit terms demanded by and agreed under any contract (Clause 5), will be deemed by the company as a failure to keep within any contract terms and will not be considered as a legitimate cause for complaint, especially relating to the suspension of services as a consequence of such a breach.
- Although binding from the date of signature, the commencement date of any contract shall be the first date services begin, unless otherwise specified on the front of any contract identified under the section and provisions of E1.
- If the Customer terminates any Contract prior to any Contract start date, other than in accordance with 3(h), all monies due under any Contract will become due and payable immediately.

4. Contract Price

- Any Contract Price is set out in the original Contract. Where, for whatever reason there is not a price set out on any Contract, then the Customer accepts that any Contract Unit Price will be that which is detailed on their invoice and not disputed within 30 days from the date of that invoice.
- The Company reserves the right to review and increase any Contract Price:
 - the Company reserves the right to subsequently increase the price and change the price structure of any item of the service whereby notice will be given to the Customer at the earliest reasonable opportunity after such change is effected by way of the Company's invoice;
 - upon notice at the earliest possible opportunity to the Customer to conform with any applicable safety, environmental, operational needs or other statutory or regulatory requirements or changes in the law which has an impact on the cost of performance of the Services.
- Should the Company permit the customer to pay by a method other than Direct Debit, then in accordance with Clause 5. (a), the Company reserves the right to levy a monthly charge of nine pounds per account.
- The Company reserves the right to levy a charge of £15 per month on any invoice that remains overdue beyond the 30 day credit terms permitted under Clause 5 (a).
- An administration charge of £30 will be applied where the Company fails to

receive a valid DOC-WTN (for each month the document(s) remains unreturned or invalid) and/or where Direct Debits fail to meet with payment.

- Should the Customer require additional copies of any Contract, DOC-WTNs and Invoices then an administrative Charge of £30 will be applied and be payable either immediately or taken by Direct Debit where such a mandate exists.
- At the end of any Contract a £50 charge will be payable, to cover Collection, Cleansing and Disposal of any residual waste, on the first bin, and £30 per bin thereafter. These charges are exclusive of VAT.
- Duty of Care Waste Transfer Notes - This Document is a legislative requirement of the Customer, as a Waste Producer (Environmental Protection Act 1990) and must be completed each year (the statutory minimum requirement) to permit the transfer of the Customer's waste. The Company cannot and will not collect (transfer) waste without a valid certificate. The Customer accepts that unless otherwise agreed in writing, The Company reserves the right to make an annual charge to the customer, covering the cost of Providing, Auditing, Storing and Generally Administering Duty of Care Waste Transfer Notes for each contracted service (i.e. Waste, Glass, Cardboard etc.) and that this charge, when applied will be no less than ninety five pounds plus VAT. It is further accepted by the Customer, that should this document be incorrectly or inadequately completed, then a charge of thirty pounds plus VAT will be levied for each time the Company has to re-issue the required Document, and that should the Company no longer possess a valid Duty of Care, services will be immediately suspended under the provisions of clause 3 (e).
- Where the Customer pays in arrears and either: presents less waste for collection than is stipulated by any contract, or than is considered by the Company, at the Company's sole discretion, to be less than is economically viable to cover the cost of the Service Visit, then the Customer acknowledges that the Company has the right to charge the Customer a sum of money, not less than £50 plus VAT.

5. Payment

- Unless otherwise specified in writing the payment of any Contract Price shall be made by Direct Debit, within 30 days of the date shown on the Company's relevant invoice.
- The Company reserves the right to pass outstanding accounts to an outside credit referencing agency and pass on all associated charges, which will be payable by the customer.
- The Customer shall unless otherwise specified in any Contract make payments in pounds sterling.

6. Service Schedule

- The Company reserves the right to change the service days to meet operational requirements and/or public holidays, which, where possible, will be notified to the Customer in advance.
- The Customer should make their waste available for collection at all times and without restriction, e.g. by time/location/obstruction.
- If the Company cannot perform the Services on the scheduled day, it will perform the Services on the next available date.
- If the Customer does not have waste ready for collection, the Company reserves the right to charge the Customer for returning, where possible, at a rate which is not less than £50 +VAT.
- The Customer agrees that all of its requirements for the Services or similar services shall be performed exclusively by the Company during the Period, including the sanitisation of wheeled units at the earliest possible opportunity.
- If, for whatever reason, the Customer wishes to complain about the service provided, it should be done so in writing. On receipt of a written complaint the Company will investigate, and if the complaint is warranted, shall agree a period in which the breach shall be rectified. Please note failure to render payment for invoices relating to the services performed, within the credit terms demanded by and agreed under any contract (Clause 5), will be deemed by the company as a failure to keep within any contract terms and will not be considered as a legitimate cause for complaint, especially relating to the suspension of services as a consequence of such a breach.

7. Additional Service

- Subject to the payment of the relevant additional charges, the Company may at its discretion perform additional services to those specified in any Contract upon these terms and conditions at the Customer's request.
- The Customer acknowledges that, any request for collections outside of any contract, unless constituting the Company's definition of a permanent increase in any contracted services, are classified as "Unscheduled" collections, and that any such Non-contracted, Unscheduled collections are chargeable at any contracted rate, PLUS 20% ex VAT. Permanent increases in services, are those considered to be changes that last for a period of at least 12 months and require, either, an alteration to the existing paperwork, or new contractual paperwork, to be put in place.
- Where additional "Unscheduled" collections are requested for a period of time, rather than a "one-off" request, the Customer acknowledges that it is expressly their responsibility to provide the dates that any services are both to commence and end. Should the customer commence such services and for whatever reason, leave the cessation date open ended, then it is expressly the responsibility of the customer to notify the Company of the alteration of these services. The Customer will not be entitled to any form of credit, or refund based on their failure to notify the Company in this regard, at least 7 days in advance of the notified date of effect.
- Any "Site Clearance" requests, will be quoted for, upon presentation of any such requests.

8. The Equipment

- Title to and property in the Equipment shall remain with the Company at all times.
- Notwithstanding the above, the Customer shall be responsible for any loss or damage to the Equipment, or caused by, the Equipment, whilst in the Customer's care, custody or control or upon delivery to the Site. No replacement equipment will be received until payment has been made in full for lost/damaged container(s).
- The Equipment made available to the Customer shall be identified in the Customer records and clearly marked as the property of the Company and the Customer shall protect and hold all Equipment Fee from all liens and other encumbrances.
- The Company will not be responsible for any damage caused to property and vehicles belonging to 3rd parties or otherwise, and the interior décor and fittings at the site by reason of the installation or use of the equipment. Further whilst company operatives will endeavour to apply the brakes to the wheeled units where applicable, the responsibility for ensuring that the wheel brakes remain applied lies with the customer. Expressly, the company will accept no responsibility for damaged caused by acts of god including wind driven loose bins, or that caused by irresponsible handling by the customer or their staff and/or members of the public.
- Upon termination of any Contract, the Customer shall return the Equipment in good condition, fair wear and tear accepted.

9. Intellectual Property

- Any intellectual property rights which arise out of the provision of the Services shall vest in the Company.

10. Acceptable Waste

- All waste contained within the wheeled unit shall comply with the description detailed in the DOC WTN.
- Unless otherwise stated and agreed in writing, all wheeled units should not exceed the following weights upon collection and all lids must be closed:

1100 litre units - no more than 90 kilos	240 litre units - no more than 20 kilos
660 litre units - no more than 50 kilos	120 litre units - no more than 12 kilos
360 litre units - no more than 25 kilos	8 yd fel - no more than 350 kilos

Any excess waste will be charged to the Customer at a rate of 25pence per kilo.
- The customer is responsible for any waste placed in the wheeled unit or receptacle at all times as per their "cradle to grave" responsibilities towards waste. The Company can accept no responsibility for waste, or the storage of waste, prior to collection.
- The Customer shall not place any items in company equipment that is not specified within the Customer contract location waste transfer note.
- The customer acknowledges that wheeled bins collected must have their lids closed in a flat position, and that this "flat lid position" physically comprises the volume aspect of the service provided.
- In the event that wheeled bins are filled beyond the position in which the wheeled bin lid is capable of being flatly closed in accordance with 10(d) above, then the customer accepts that the company reserves the right to raise a supplementary charge, equal to a secondary collection of the original wheeled bin whose limit has been exceeded.
- Any waste/waste bags left around wheeled units will not be collected, unless organised by prior arrangement with the company, and should such a build up of waste restrict the company's access to the collection of any wheeled unit(s), then the customer accepts responsibility for any resulting service failure.

11. Service Proof

- Both parties agree it is not practical to issue work tickets as evidence of performance of the Services or obtain signatures for Services performed and therefore the Customer accepts that the records kept by the Company of Services provided will be adequate proof of provision of the Services.
- The Customer acknowledges and accepts that all evidence and records compiled and stored by the Company relating to the Services (including but not limited to specific weights of any Waste collected) are the property of the Company and the Company reserves the right to make such information available to third parties.
- Any such evidence of records will be detailed on invoices to the Customer.

12. Safety, Indemnity and Liability

- The Customer must ensure that there will be a suitable and safe means of access (including roadways and paths) so as to ensure that the collection of Waste takes place without risks to persons or property and that the Wheeled Unit is placed within 4 metres of the Company vehicle collection point and placed on a flat, even surface. The Company reserves the right to refuse to collect Waste which is located in a place that it considers unsafe.
- The Customer shall be responsible for taking such security precautions as are necessary to ensure the prevention of theft, vandalism or scavenging of the Waste whilst it is on the Site.
- The Customer shall bear all risks involved in connection with siting or loading and use all such Equipment only for the purposes described in any Contract, as well as damage caused to property and vehicles belonging to 3rd parties or otherwise, and the interior décor and fittings at the site by reason of the installation or use of the equipment. Further whilst company operatives will endeavour to apply the brakes to the wheeled units where applicable, the responsibility for ensuring that the wheel brakes remain applied lies with the customer. Expressly, the company will accept no responsibility for damaged caused by acts of god including wind driven loose bins, or that caused by irresponsible handling by the customer or their staff and/or members of the public.
- The Customer shall be wholly responsible for the safety of all person (including the employees and agent of the Company) entering the Site for the purposes of any Contract.
- The Customer shall indemnify the Company against all losses, claims, costs damages and expenses arising as a result of the breach of contract, negligence, act or omission by the Customer, its agents, residents, patients or employees.
- Clauses 12 (g) to (i) set out the entire liability of the Company (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of any breach of its contractual obligations under any Contract and any representation, statement or tortious act or omission, including negligence, arising under or in connection with any Contract. The customer acknowledges that clauses 12 (g) to (i) are reasonable and reflected in the price which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.
- The Company does not exclude its liability (if any) to the Buyer for personal injury or death resulting from the Company's negligence; for any matter which it would be illegal for the Company to exclude (or to attempt to exclude) its liability; or for fraud.
- Subject to clause 12 (g), the total liability which the Company shall owe to the Customer and in respect of all claims in any calendar year shall not exceed (the total price payable for the Services in that calendar year) PROVIDED THAT the Company will be under no liability to the Customer for any indirect or consequential loss including, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss, howsoever caused arising out of or in connection with the performance of the Services.
- Subject as expressly provided in these conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13. Insurance

- The Customer shall take out and maintain in force or procure the taking out and maintenance of insurance cover with a reputable insurer or the sum of £5 million per occurrence in respect of employer's liability and public liability to cover both injury and loss to third parties and damage to property and any other insurance required by law in respect of claims made relating to occurrences during the Period.

14. Laws, Regulations and Bylaws

The Customer shall observe and comply with all statutes and regulations together with any bylaws and regulations of local authorities applicable to the Service at all times.

15. Publicity

The Customer shall obtain written approval from the Company prior to taking photographs or making publicity releases or announcements regarding either any Contract or the activities of the Customer relating to its participation in any Contract.

16. Force Majeure

- The Company shall not be liable to the Customer or be deemed to be in breach of any Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Services if the delay or failure was due to any cause beyond the Company's reasonable control including without limitation, acts of God, fire or accident, civil disturbance, strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining labour, fuel, parts or machinery or failure or breakdown in machinery.

17. General

- The customer warrants and accepts that it enters into this agreement for the purposes of its business and not as a consumer as defined in regulation 4 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- The delay in or failure to enforce any of the terms of any Contract by either party shall not be construed, as a waiver of any of that party's rights.
- The Company may give notices in writing to the address of the Customer as stated therein or by any subsequently notified address. A notice sent by post shall be deemed to have been served four days after posting. Alternatively, the Company reserves the right to make notices by way of its website www.maxrecycle.com, e-mail and its automated telephone service. The Customer must give notices in writing to the Company at its head office address. All notices are not deemed received by the Company until the Customer receives an acknowledgement receipt from the Company.
- Any Contract comprises the entire agreement between the parties and parties agree that they have not been induced to enter into any Contract on the basis of any representation. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth in any Contract and no amendment to any Contract other than variations to the Scope shall be binding on either party, unless in writing and signed by an authorised representative of each party.
- The laws of England shall govern any contract and the parties hereby agree to submit to the exclusive jurisdiction of the English courts.
- The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of any Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- The Customer acknowledges and accepts that the Company can vary the terms and conditions of trading at anytime, and that these terms and conditions are freely available at: <http://www.maxrecycle.com/licenses-and-policies/mr-trading-terms-and-conditions.pdf>
- The Customer acknowledges that howsoever the Company updates or varies its terms and conditions of trading, including by way of issuing invoices that comprise a copy of its terms and conditions on the reverse, attached, or along with those invoices (no matter how so delivered; by post, electronically, or otherwise) any such terms and conditions are those that apply to the services rendered under that invoice and any future services, unless otherwise subsequently superseded by the Company. The customer further and expressly acknowledges that the act of making payment, or any part payment, of such invoices by the customer, explicitly confirms their acquiescence and unequivocal acceptance of those terms and conditions.

