

# SMITH'S (GLOUCESTER) LIMITED

## TERMS AND CONDITIONS

### *PART B ~ SERVICE TERMS AND CONDITIONS*

#### *SKIP HIRE DIVISION*

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Except as otherwise defined herein and except where the context requires otherwise, words and expressions defined in the General Terms and Conditions set out in Part A above, shall have the same meanings when used in these terms and conditions.

#### **SKIP HIRE**

##### **1. ADDITIONAL DEFINITIONS**

**Bin** any skips, hook bins, compactors, general refuse bins, bags or other containers hired by the Supplier to the Customer.

**Hire Charge** shall have the meaning in condition 2.

**Hire Period** shall have the meaning in condition 3.

**Waste** any material loaded into a Bin.

##### **THE FOLLOWING ADDITIONAL DEFINITIONS APPLY TO COMPACTOR HIRES:**

**Compactor** any electrical operated waste compaction or similar device.

**Renewal** shall be 36 months from the Start Date and subsequent 12 month anniversaries thereof.

**Penalty Fee** shall be 50% of the Hire Charges for the remainder of the initial period or subsequent 12 month periods.

**Schedule** The compactor hire schedule.

**Start date** as defined in the Schedule.

##### **2. HIRE CHARGE**

2.1 The Hire Charge is the charge in respect of the hire of the Bin as set out in the Order or as otherwise stated in the Supplier's price list from time to time

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or as agreed in writing from time to time between the Customer and the Supplier. **The Hire Charge is exclusive of VAT unless otherwise stated.**

- 2.2 Unless otherwise agreed, the Hire Charge includes the hiring of the Bin, the delivery and removal costs and the disposal costs of the Waste.
- 2.3 Where the Order is placed on a tonnage agreement, the Hire Charge comprises the hiring of the Bin, the delivery and removal costs and the disposal costs of the Waste up to a set tonnage limit. Waste that exceeds this tonnage limit will be charge at the rates agreed.
- 2.4 In respect of compactor hires, the Hire Charge is detailed on the Schedule.

### **3. DURATION**

- 3.1 The Hire Period shall commence on the date on which the Bin is delivered to the Customer.
- 3.2 With the exception of Compactors, the Hire Period shall be for a maximum period of 21 days (unless otherwise stated in the Order) after which time the Bin shall be removed by the Supplier. The Supplier is not required to give prior notification of its intention to remove the Bin once the 21 days has expired.
- 3.3 With the exception of compactors, two clear working day's notice is required by the Customer to terminate the hiring of the Bin.

### **4. PAYMENT OF HIRE CHARGES**

- 4.1 Where the Customer does not have an authorised credit account with the Supplier, payment for the Hire Charge must be paid before taking delivery of the Bin.
- 4.2 Payment for the Compactor Hire Charge will be made by direct debit, unless otherwise agreed in writing, with the 1<sup>st</sup> payment being due on installation and subsequent payments due one month after the first payment (or nearest banking day prior to that day) and monthly thereafter.

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4.3 For account Customers, an invoice for the Hire Charge will be raised and will be due in accordance with the agreed credit terms.

4.4 With the exception of Compactors, the Hire Charge includes a maximum of 21 days hire unless otherwise agreed. The Supplier reserves the right to charge for any extra days where it has not been possible to collect the Bin unless the reason for non-collection is due to circumstances outside of the Customer's control.

4.5 The date of delivery and the date of removal shall be counted as whole days for the purpose of calculating the Hire Charge.

#### **5. CANCELLATIONS**

5.1 Order cancellations by the Customer require a minimum of one working day's notice. In such circumstances a cancellation charge of 50% of the Hire Charge will apply unless otherwise agreed.

#### **6. USE OF BINS**

6.1 The Supplier will not site a Bin upon the public highway (including grass verges, footpaths or pavements) that is under the control of the local authorities, without first ensuring that the permission of the Highway Authority has been duly obtained under Section 139 Highways Act 1980. At the request of the Customer, the Supplier will obtain such permission and the cost of obtaining that permission will be charged to the Customer.

6.2 In respect of the permission in condition 6.1, the Customer warrants with respect to each Bin ordered to be placed other than on private property:

(a) that the said permission will be kept in force by the extension or renewal as necessary until either the Bin is removed or until the expiry of three working days after notice is given for the Supplier to remove the Bin;

(b) that the Customer will ensure the observation and performance at all times of all the conditions subject to which such permission is granted and in particular will ensure that the Bin is properly lighted throughout the hours of darkness;

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- (c) that the Customer will not remove the Bin from the place where it is deposited without first obtaining both the written permission of the Highways Authority and the Supplier; and
  - (d) that the Customer undertakes to fill the Bin within the period of any licence granted under the Highways Act.
  
- 6.3 Unless otherwise agreed in writing the Customer shall provide three marker cones by day and three cones plus six yellow lights on the Bin during the hours of darkness, as required by the Highways Act, if the same is placed on the public highway (including grass verges, footpaths or pavements) or anywhere else where damage to property or injury to third parties is reasonably foreseeable.
  
- 6.4 The Customer will ensure that at the time of removal there is a clear space at one end of the Bin of not less than thirty feet to enable the Supplier necessary access to effect the removal.
  
- 6.5 The Customer warrants that all Waste:
  - (a) falls within the meaning of "prescribed cases" under Section 3 of the Control of Pollution Act 1974 (hereinafter referred to as the "1974 Act") and Regulation 4 of the Control of Pollution (Licensing of Waste Disposal) Regulation 1976 (hereinafter referred to as the "1976 Regulations") and any subsequent Regulations issued by the Secretary of State for the Environment under the 1974 Act which are in force on the date of the removal of each loaded container; or
  - (b) that any requisite licenses have been issued under Section 5 of the 1974 Act; and
  - (c) that the Waste does not come within the definition of "Special Waste" contained in the Hazardous Waste Act 2005 (for excluded material refer to condition 8 below).
  
- 6.6 For the duration of the Hire Period the Bin is in the control and custody of the Customer. The Customer shall reimburse the Supplier in respect of any loss or damage to the Bin whilst on hire to the Customer from whatsoever cause the same may arise (other than fair wear and tear). The Customer shall also fully indemnify the Supplier in respect of any claim for injury to persons or

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property arising out of the use of the Bin whilst on hire to them howsoever the same may be caused or arise, and in particular the Customer undertakes:

- (a) Not to place hot materials or cause a fire to take place in the Bin;
- (b) Not to place any corrosive acid or noxious substance nor liquid cement or concrete in the Bin;
- (c) To ensure that the Bin is not filled above the level of the sides; and
- (d) To pay all extra expenses and costs including any new Bin that may result from non-observance of the above.

6.7 In event of the Highway Authority or the Police exercising their powers to, or to cause the Supplier to relocate or remove the Bin during the Hire Period, the Customer is responsible for all costs thereby incurred

6.8 The Customer shall be responsible for ensuring that the Bin is not overloaded either in terms of weight or Waste loaded on beyond the point of it being a level load. Should the Supplier be unable to remove the Bin due to overloading, howsoever caused, the Customer will be deemed to be responsible, and will be responsible for the cost of the failed delivery or removal which will be no less than 50% of the overall Hire Charge and for unloading such part of the Bin to allow for the removal by the Supplier.

6.9 The siting of the Bin is the Customer's responsibility and consideration should be given to both potential hazards that may be caused by a loaded Bin and other safety issues. The Supplier will provide blocks for placing beneath the Bin if so requested by the Customer. Once sited by the Supplier, the Bin must not be moved without the consent of the Supplier.

6.10 Liability of the Customer to members of the general public, arising from the use of the Bin, is the responsibility of the Customer and they should have adequate insurance in place. **Domestic users are advised to check that their household insurance provides adequate cover.**

#### **7. OTHER CONSEQUENTIAL LOSSES**

7.1 The Supplier shall not be liable for any consequential losses, expenses, liabilities, claims or proceedings howsoever caused by, or arising out of, the

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late delivery, non-delivery, or unsuitability of the Bin or for any damage to property resulting from the delivery, hire and use of the Bin.

- 7.2 The Supplier will endeavour to ensure the Bin arrives for when the Customer needs it. Any approximate times given are based on this and as such are not guaranteed and therefore if they are not met do not constitute a breach of contract.

#### **8. RESTRICTED MATERIALS**

- 8.1 Restricted materials which must not be deposited in the Bin without the Supplier's prior consent include:

- (a) Fridges and freezers;
- (b) Tyres;
- (c) Paint cans, solvents, mastic tubes;
- (d) Televisions, monitors or other electrical equipment;
- (e) Asbestos;
- (f) Clinical and medical waste;
- (g) Florescent tubes;
- (h) Aerosols or gas bottles;
- (i) Tree roots;
- (j) Telegraph poles or sleepers;
- (k) Liquids, including oils;
- (l) Batteries or acids;
- (m) Hazardous or toxic materials.

- 8.2 Surcharges will apply where such items have been deposited without the permission of the Supplier.

#### **9. WASTE TITLE**

- 9.1 Title to the Waste passes to the Supplier upon removal of the Bin from the Customer's site.

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#### **10. DUTY OF CARE**

10.1 The Customer will provide all information required by the Supplier to conform to current Duty of Care legislation. This will include, but is not limited to, Waste description, EWC number and site licence details for all relevant sites.

10.2 Any change in the description of Waste as specified in the Duty of Care statement must be immediately notified to the Supplier in writing and in advance of any such change to enable an updated Duty of Care statement to be prepared.

#### **11. WASTE BAG SERVICE**

11.1 In addition to these Conditions, specific conditions apply to the Waste Bag service. These conditions are printed on the reverse of the Smiths Waste Bag carrier.

#### **12. CROSS-CONTAMINATION**

12.1 Where Waste is received pre-sorted and is subsequently found to be contaminated with other Waste materials, the Supplier will charge the Customer a clean-up charge at the prevailing hourly rate.

#### **13. COMPACTOR HIRES**

13.1 The Customer must ensure that they fully insure the Compactor for all appropriate business risks and the Customer must notify their insurance company of the Supplier's interest in the Compactor. The insured value is specified in the Schedule. The Supplier may request evidence that the Customer has complied with the conditions of this clause.

13.2 Compactor hire contracts shall be for an initial period of 36 months (unless otherwise agreed in writing) and will renew for a further 12 months (and every 12 months thereafter) unless the Customer cancels this agreement, in writing to the Supplier, giving the required notice as defined in 13.3 below.

13.3 The Customer may terminate the Compactor hire by giving the Supplier not less than 30 days notice in writing prior to Renewal. If the Customer gives the

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required notice then the agreement will terminate on Renewal. If the Customer does not give the required notice the agreement will continue for a further 12 months on Renewal.

- 13.4 The Supplier may terminate this agreement at any time by giving the Customer 60 days notice in writing.
- 13.5 Should the Customer wish to cancel the agreement without having given the required notice, then the Customer will be charged the Penalty Fee.
- 13.6 The Customer shall not move the Compactor from the location that it was delivered to without first obtaining the Supplier's written consent (which may be withheld or made subject to such conditions as the Supplier in its absolute discretion shall decide).
- 13.7 The Customer shall keep the Compactor in its sole possession and shall not lend the Compactor or sublet it to any person or otherwise part with possession of it in any way unless agreed in writing with the Supplier.
- 13.8 The Customer acknowledges that the Compactor remains the property of the Supplier at all times and must not in any circumstances be sold or used as security. The Customer shall not permit any lien to be created on the compactor.
- 13.9 The Supplier will deliver, install and commission the Compactor at the site address (as specified on the Schedule). Depending on the Compactor model, the Supplier may charge for delivery, installation and commissioning. If this is the case then the charge will be stated on the Schedule.
- 13.10 The Customer will provide and maintain a suitable site for the Compactor together with a properly rated electrical supply with an isolating switch or socket in accordance with the manufacturer's instructions.
- 13.11 Upon commissioning of the Compactor, the Supplier will provide full training on the proper operation of the Compactor to those employee's or other authorised representatives of the Customer as so designated by the

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Customer. This initial training is provided free of charge although the Supplier may charge if subsequent training is required.

13.12 The Supplier will perform two scheduled preventative maintenance visits per annum (or as otherwise recommended by the manufacturer and specified on the Schedule), at no additional charge.

13.13 The Customer must notify the Supplier immediately of any defect, breakdown or malfunction and the Compactor must not be operated until such defect, breakdown or malfunction has been rectified.

13.14 Upon notification of a fault, the Supplier undertakes to attend the Customer's site within one working day (being Monday to Friday 7:00am to 6:00pm, excluding English bank holidays). The Supplier will not be responsible for any costs incurred by the Customer in respect of any temporary arrangements for the disposal of its Waste whilst the fault exists.

13.15 The Customer will be charged for damage to the Compactor due to:

- (a) Fire;
- (b) Vandalism or wilful neglect;
- (c) Defective power supply; or
- (d) Structural impact.

13.16 The Customer must follow the Supplier's instructions at all times to ensure the safe operation of the Compactor and must only allow those properly trained to operate the Compactor. The Supplier will not be liable for the consequences of the incorrect use of the Compactor by the Customer's employees or agents.

13.17 The Customer must only use the Compactor for the purpose it is supplied for.

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13.18 The Customer must take good care of the Compactor and keep the Compactor in a clean condition at all times.

13.19 The Customer must not modify the Compactor and must not add any attachment, accessory or other device without the written approval of the Supplier.

#### **14. NAMEPLATES**

14.1 The Customer must not remove, deface or cover up any nameplate or identification mark or number on the Bin, nor put any mark on the Bin, which might indicate or suggest that the Bin belongs to the Customer or other party.

#### **15. SUPPLIER PRICE REVIEWS**

15.1 Supplier price reviews will be conducted once a year, for implementation on the 1<sup>st</sup> of April.

15.2 The Supplier will write to the Customer at least 30 days prior to the 1<sup>st</sup> April each year detailing the revised pricing.

15.3 Interim reviews may be conducted where there are significant increases in costs imposed on the Supplier, where such increases are outside of the control of the Supplier. The Supplier will always give 30 days notice in writing to the Customer of any such increases.

#### **16. ADDITIONAL TERMINATION RIGHTS**

16.1 At the option of the Supplier the Contract and the hiring constituted by it shall end without notice, and the Customer shall no longer be in possession of the Bin with the Supplier's consent, if the Customer fails to pay any Hire Charge when due or if the Customer is in breach of any other condition of the Contract.

16.2 If at any time the Customer shall no longer be in possession of the Bin with the Supplier's consent the Supplier shall be entitled to take back the Bin without notice to the Customer and the Customer shall permit the Supplier to

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come onto its property for this purpose (and shall procure the consent of the landlord of the property on which the Bin is situate if required by the Supplier at the Customer's expense).

- 16.3 Repossession of the Bin by the Supplier shall not relieve the Customer from its other obligations under the Contract and any Hire Charges unpaid up to and including the date of recovery of the Bin by the Supplier shall become immediately due and payable to the Supplier.