

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In this Agreement, the following phrases shall have the following meanings:

“Commencement Date” means the date, which is 7 Working Days after the date on which the Customer signs this Agreement or, if later, the date on which this Agreement commences as set out on page 2;

“Confidential Material” means any items deemed from time to time by BDS and the Customer to be confidential and/or sensitive in nature including without limitation, paper, discs, videos, uniforms and IT and electronic equipment;

“Customer” means the person, partnership, unincorporated association, company or other organisation named on page 1;

“Initial Period” means the relevant Minimum Hire/Service or Collection Period for each Unit as set out on page 1;

“Payments” means the sums payable by the Customer according to the type of agreement selected, as set out on page 1 or as varied under Clause 4.2 below;

“BDS” means Banner Document Services;

“Supplementary Charges” means the charges for any services provided by BDS which are not included within the scope of the Agreement Type selected by the Customer as set out in Clause 2 below;

“Units” means the storage containers, sacks or materials or other equipment (or any substitute for such items) to which this Agreement applies as set out on page 1; and

“Working Days” means Monday to Friday in each week excluding public holidays

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 the Payments, BDS 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 page 1) 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 BDS 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 BDS shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of BDS. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of BDS which is not set out in this Agreement. Nothing in this condition shall exclude or limit BDS's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for the supply of Units, services and collections by the Customer from BDS shall be deemed to be an offer by the Customer to hire the Units and use the services and collections subject to these conditions.

2.5 No order placed by the Customer shall be deemed to be accepted by BDS until a written acknowledgement of order is issued by BDS or (if earlier) BDS delivers any Units or provides any services or collections to the Customer.

2.6 BDS's obligations to the Customer under each Agreement Type are summarised in the table below:

Agreement Type:	Summary Description of BDS's Obligations
S - Service Agreement	The Customer takes the Units on hire from BDS. BDS will carry out routine periodic servicing/collections as per the frequency specified on page one of this Agreement.
R - Rental Agreement	The Customer takes the Units on hire from BDS
M – Maintenance Agreement	BDS will carry out routine periodic collections from Units owned by the Customer, or of sacks either supplied by the Customer or by BDS, as per the Agreement frequency specified on page one of this Agreement.
AH – Ad Hoc Service Agreement	BDS will carry out a single specific service or collection from either units owned by the customer, or from sacks supplied by either the customer or BDS, on a date specified in this agreement

2.7 BDS 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.

2.8 BDS may, with the Customer's prior agreement, employ a subcontractor for the purpose of fulfilling any contract entered into by BDS.

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 BDS'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.

4.2 BDS 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 after 12 months, to take account of an increase in BDS'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, and any subsequent Extension 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 BDS); and

4.3. The Payments are 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 BDS 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 There will be an annual duty of care charge where BDS issues a Controlled Waste Transfer Note. This charge is payable in advance at the end of each March.

5.3 BDS will maintain records of all waste transfers for 2 years. A detailed report including dates of transfers and disposal sites used, can be supplied on a quarterly basis, if required by the Customer. There will be a charge for this service.

5.4 There will be a charge where BDS carries out any other service relating to the collection and/or disposal of waste other than as specified on the front page of this Agreement.

5.5 Any congestion charge incurred by BDS in the delivery, installation, service or collection of the Units, will be passed on to the Customer at cost.

5.6 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 BDS'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, BDS may:

6.1.1 charge interest at the prevailing Bank of England base rate plus 4%

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.

7. NON-ROUTINE REPAIR AND MAINTENANCE OF BDS 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 BDS 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, and applicable to Agreement Types "S" and "R", BDS 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 None of the Agreement Types 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.

7.3 With Agreement Types "S" and "R", BDS is entitled to replace the Units from time to time with substitute goods of a substantially similar standard and specification to the Units.

8. COVENANTS OF THE CUSTOMER

8.1 The Customer agrees and covenants with BDS as follows:

8.1.1 to allow BDS 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 and with Agreements Types "S" and "R" not to remove any registration or other identifying marks from the Units;

8.1.3 with Agreement Types "S" and "R" 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 BDS's prior written consent;

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

8.1.5 with Agreement Types "S" and "R" to insure the Units throughout the Initial Period and any and all Extension Periods to their full replacement value with an insurer of repute against

loss or damage by accident, fire and theft and other reasonable risks and hold on trust for BDS all insurance monies paid out under such policy; (in the event of the Customer defaulting under this Clause, BDS shall be at liberty to effect such insurance as it thinks fit at the Customer's expense);

8.1.6 to notify BDS immediately of any loss of, or damage to, the Units;

8.1.7 to ensure that the waste materials to be collected and disposed of shall be of the type, character and quantities as specified on page 1 of this Agreement 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, BDS will contact the Customer to agree the method of disposal, and BDS reserves the right to charge the Customer additional charges for such service at the rate current at the time that the service is provided.

8.1.8 to ensure that the materials to be collected and shredded do not contain any materials that could damage the shredding equipment used by BDS. BDS reserves the right to charge the Customer additional charges to cover any breakdown or repair as a result of the Customer's actions; and

8.1.9 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 BDS

9.1 All depots, processes, onsite and offsite vehicles used within the provisions of this service are inspected to BS EN 15713 standards.

9.2 All BDS and operator 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 BDS from the supplier for the purposes of this Agreement; and

10.1.2 the supplier is not the agent of BDS unless this is required by law.

10.2 The Customer warrants to BDS that the waste BDS 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 BDS in advance of collection.

11. TERMINATION BY BDS

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, BDS may immediately terminate this Agreement.

11.2 BDS 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 BDS's other rights and remedies, pay to BDS 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 BDS shall cease; and

13.1.3 where the Customer has selected Agreement Type "S" or "R":

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

(ii) the Customer shall immediately make the Units available for collection by BDS in good working order and condition (fair wear and tear excepted), in default of which BDS 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 BDS's other rights and remedies, pay to BDS 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 BDS by way of liquidated damages the following sums:

13.2.1 for Agreement Types "S" and "R" where the Units having been manufactured or customised to the Customer's own specifications or requirements, a sum equal to 100% 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; or

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

14.2.2 BDS'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 BDS, its agents, employees or subcontractors shall not exceed the annual equivalent of the total Payments set out on page 1 of this Agreement (excluding any increases to such payments) and assuming for Agreement types "S" and "R" that the additional quantity price set out on page 1 does not apply for the purpose of this Clause.

14.2.3 the Customer agrees that BDS 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 BDS or otherwise; and

14.2.4 BDS 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 BDS of its obligations under this Agreement or BDS's negligence or where BDS is otherwise liable at law for such damage, loss, liability or expenses) and without prejudice to BDS's other rights and remedies, the Customer shall indemnify BDS against all or any of the following:

14.3.1 with Agreement Types "S" and "R" any loss or damage to the Units, howsoever arising, including any loss or damage, which is not recoverable under the policy of insurance, referred to in Clause 8.1.5 above (including where the Customer has failed to take out such a policy of insurance);

14.3.2 any and all damage, loss, liability or expenses which BDS 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 BDS in enforcing any of the terms of this Agreement.

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

14.5 The Customer shall indemnify BDS against any and all damage, loss, liability or expense which BDS 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 page 1 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 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.

16.3 BDS (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

16.4 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.

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

16.6 The failure of BDS 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 BDS under this Agreement.

16.7 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 BDS, its subcontractors or agents (as relevant) of the services provided would be adequate proof of the fact that those services have been delivered.

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