

TERMS AND CONDITIONS FOR THE SUPPLY OF TEXTILE RECYCLING SERVICES

1. DEFINITIONS

Confidential Information means all information provided by one Party to the other which is clearly confidential or ought reasonably to be considered confidential.

Contract means these terms and conditions of supply and the terms and conditions contained in all documents and schedules annexed to and referred to herein.

Council means Dorset Council.

Date of Delivery means the date by which the Services must be delivered to the Council as specified in the Specification and Service Delivery Plan.

Delivery means the supply of the Services to the Council at the address and on the date specified in the Specification and Service Delivery Plan. 'Delivered' and 'Delivery' will be interpreted accordingly.

Services means the services to be supplied by the Supplier to the Council under the Contract in accordance with the Specification and Service Delivery Plan.

Order means the Council's written order for the Services as set out in the Council's purchase order form which is part of the Contract.

Party or Parties means the Council or the Supplier as appropriate and 'Parties' will mean both of them.

Price means the price (exclusive of any applicable VAT) payable to the Council by the Supplier under the Contract for the delivery of the Services in accordance with the Order and the Payment Mechanism.

Service Delivery Plan means the plan and the written Specification for the Services (including as to quantity, description and quality) provided by the Supplier to the Council and forming part of the Contract annexed in Schedule 2 and Schedule 3.

Staff means all employees, agents, consultants, contractors and volunteers of the Supplier and/or of any sub-contractor of the Supplier engaged in the supply of the Services.

Supplier means the individual, company, or other legal person supplying the Services to the Council.

Term means the start date of the Contract to the expiry date, as agreed in writing by the Parties, or as terminated in accordance with the law or the terms of the Contract, and including any period of extension as may be agreed in writing between the Parties.

Working Days means Monday to Friday inclusive but excluding bank holidays and public holidays.

2. INTERPRETATION

In this Contract, unless the context makes clear that this is not what is intended:

- words importing the singular include the plural and vice versa;

- headings are for reference only and not interpretation;
- references to statutory provisions include any provision that amends, replaces or supplements them;
- references to numbered clauses are references to the relevant clause in the Contract.
- The definitions in Schedule 1 apply where the defined words are used in this Contract.

3. GENERAL

This Contract specifies the terms on which the Council will contract with the Supplier for the supply of the Services. The Council is not bound by any standard or printed terms provided by the Supplier or by any trade, practice or custom, unless the Council has expressly accepted in writing that such terms may apply in the place of the Contract.

Each of the Parties represents and warrants that it has full capacity and authority and all necessary consents, licences, and permission to enter into and perform its obligations under the Contract.

4. VARIATION

Neither the Council nor the Supplier will be bound by any variation to the Contract except as agreed in writing by both Parties. The Council may by written notice to the Supplier request a variation to the scope of the Services. In the event that the Supplier agrees to any such variation, the Price will be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier. In the absence of agreement, the dispute resolution procedure at clause 22 will apply.

5. SUPPLY OF SERVICES

The Supplier will provide the Services to the Council for the Term in accordance with this Contract:

- 5.1 with such reasonable skill, care and diligence as may be expected of a competent provider of such Services;
- 5.2 in accordance with the Specification and any applicable laws and obligations relating to description, quality and fitness for purpose set out in the Specification or implied by sections 12 or 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 and all other legislation and specifications applicable to the provision of the Services;
- 5.3 in accordance with any timetable stipulated by the Council. The Supplier will provide all equipment, tools and vehicles and other items as are required to provide the Services which shall at all times be maintained in a safe and serviceable condition.

6. CANCELLATION OF GOODS

Not used

7. DELIVERY OF SERVICES

The Supplier will Services to the Council. Where the Supplier fails to deliver the Services according to the Contract then without limiting any of its other rights or remedies implied by statute or common law, the Council will be entitled to:

- (i) terminate the Contract;
- (ii) reject the Services in whole or in part; or
- (iii) buy the same or similar Services from another supplier, and recover any expenses incurred in receiving Services from another supplier which will include but not be limited to administration costs and, chargeable staff time.

8. PROPERTY AND GUARANTEE OF TITLE IN GOODS

Not used

9. GUARANTEE PERIOD

Not used

10. AUTHORISED OFFICERS

The Parties will each appoint an authorised officer (the 'Authorised Officer') who will have full authority to represent that Party in all matters pertaining to the Contract. The Parties will notify the other of any changes to the Authorised Officer. The Parties will ensure that their Authorised Officers meet on a regular basis to ensure the smooth running of the Contract and to identify concerns early enough to prevent disputes arising.

11. USE OF COUNCIL'S PREMISES AND EQUIPMENT

If relevant, the Council will enable the Supplier to gain access to the Council's premises at any reasonable time for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council's premises by the Supplier will be at the Supplier's risk. If the Supplier supplies all or any of the Services from the Council's premises, on completion of the Services or on termination or expiry of the Contract, the Supplier will promptly vacate the Council's premises, remove the Supplier's equipment, materials and rubbish and leave the Council's premises in a clean, safe and tidy condition. The Supplier will be responsible for making good any damage to the Council's premises or any objects on the premises which is caused by the Supplier, other than through fair wear and tear. The Council will be responsible for maintaining the security of its premises. While on the Council's premises, the Supplier's Staff will comply with the Council's security requirements at all times. Any equipment which the Council may agree to provide to the Supplier for the purposes of the Contract will remain the property of the Council and will be used by the Supplier's Staff only for the purpose of carrying out the Contract. Such equipment will be returned promptly to the Council on termination or expiry of the Contract. The Supplier will reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier's Staff.

12. STAFF

The Supplier will supply the Services using suitably qualified Staff who are at all times entitled to work in the United Kingdom, are fit, competent and fully trained to supply the Services and in sufficient number to ensure that the Services are provided at all times in accordance with the requirements of the Contract. If the Council believes that any of the Supplier's Staff are unsuitable to deliver the Services, it may, acting

reasonably and by giving written notice to the Supplier, refuse admission to the relevant person to the Council's premises, direct the Supplier to end the involvement of the relevant person in the provision of the Services and require the Supplier to replace any person removed with another suitably qualified person, and the Supplier will comply with any such notice. The Supplier will, if requested in writing, provide the Council with the names and addresses, and any other relevant information, of all persons who may require admission to the Council's premises in connection with the Contract and procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.

13. DISCLOSURE AND BARRING SERVICE CHECKS

The Council may, if relevant, and in accordance with its criminal records checking policy, require the Supplier to ensure that any person employed in the provision of the Services has undertaken, at its own cost, a Disclosure and Barring Service check at a level specified by the Council. The Supplier will ensure that no person who discloses that he or she has a conviction that is relevant to the nature of the Services, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a 'Relevant Conviction'), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

14. PAYMENT

In return for the Supplier providing the Services in accordance with the Contract, the Supplier will pay the Council the Payment as set out in the Payment Mechanism annexed to this Contract as Schedule 4. The Payment does not include VAT which if applicable will be paid by the Supplier to the Council at the prevailing rate in addition to the Payment. The Supplier shall be liable for every cost and expense of the Supplier incurred in connection with the provision of the Services. Should the Supplier consider it has a compelling case for a decrease in the Payment it may seek to discuss it with the Council having first submitted detailed evidence for the decrease and transparent open book calculations demonstrating how such decrease has been calculated. The Council does not commit to agree to any decrease in the Payment nor will it pay any decrease in the Payment which it has not agreed. The Supplier agrees that the continued provision of the Services does not imply the Council's agreement to a Payment. The Supplier will obtain the Council's prior written agreement to any decrease in the Payment and as to when such decrease, if agreed, is implemented.

15. PAYMENT MECHANISM

Subject to the Council having met all its obligations under the Contract, the Supplier will pay the Payment in accordance with the terms of Schedule 4. The Supplier will ensure they are in receipt of the purchase order number before the Services are supplied. If any sum of money is recoverable from or payable by the Supplier under the Contract (including any sum which the Supplier is liable to pay the Council in respect of any breach of the Contract) that sum may be deducted unilaterally by the Council from any sum then due or which may become due to the Supplier under the Contract or under any other agreement or contract with the Council.

16. MONITORING AND INSPECTION OF SERVICES

The Supplier will allow the Council's Authorised Officer to inspect and observe the performance of the Services and to investigate complaints at all reasonable times on

reasonable prior notice. The Supplier will attend meetings with the Council on reasonable notice, as required. The Supplier will meet its own costs in attending such meetings. The Supplier will meet any key performance indicators set by the Council for the performance of the Supplier's obligations under the Contract and provide any management information that the Council may require to monitor performance of the Contract.

17. RECORDS

The Supplier will maintain until six years after the Contract has been completed full and accurate records of the Contract and Services provided under it, any expenditure reimbursed and any payments made to or by the Council. The Supplier will on reasonable notice afford the Council, including its auditors, access to such records as may be required by the Council in connection with the Contract.

18. CONFIDENTIALITY, FREEDOM OF INFORMATION AND PUBLIC ANNOUNCEMENTS

The Supplier and its Staff will ensure that all Confidential Information obtained under or relating to the Contract is only used for the purposes of the Contract and will not be disclosed to anyone else except as permitted by the Contract. The confidentiality obligations under this clause will not apply to any Confidential Information which is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirement for disclosure under the Freedom of Information Act 2000. The Supplier will not make any press announcements or publicise the Contract except with the prior written consent of the Council. The Supplier recognises that the Council is subject to the Freedom of Information Act 2000 (FOIA) and will co-operate with and assist the Council at its own expense to enable the Council to meet its information disclosure obligations under the Act. In particular, the Supplier will transfer all requests for information to the Council within 2 Working Days of receiving a request for information and provide the Council with a copy of any information in its possession in the form that the Council requires within 5 Working Days of the Council requesting that information. The Council will not provide commercially sensitive information to a third party under the Act unless prior to such disclosure the Council has informed the Supplier of the request for such information and given the Supplier the opportunity to make representations about what material should be disclosed. The Council will be responsible for determining in its absolute discretion whether any information relating to the Supplier or to the Goods and/or Services is exempt from disclosure in accordance with the FOIA. The provisions of this clause will survive the termination or expiry of the Contract for a period of 10 years.

19. DATA PROTECTION

The Supplier will comply with the provisions of relevant data protection law in so far as it relates to the Services provided under the Contract.

20. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in any materials provided by the Council to the Supplier for the purposes of the Contract will remain the property of the Council but the Council grants the Supplier a royalty-free, nonexclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of the Contract. All intellectual property rights in any materials created or developed by the Supplier to meet the requirements of the Contract will vest in the

Supplier. So far as may be necessary for the Council to be able to continue to use the Services after termination or expiry of the Contract, the Supplier will grant to the Council a nonexclusive, perpetual, irrevocable royalty free licence (with a right to sublicense) to use all intellectual property rights in the materials created or developed to meet the requirements of the Contract. The Supplier will indemnify the Council in full against all costs, expenses, damages and losses (whether direct or indirect) awarded against or incurred or paid for by the Council as a result of, or in connection with, any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of the supply of the Services. The provisions of this clause will survive the termination or expiry of the Contract for a period of 6 years.

21. BREACH

If either Party fails to fulfil its obligations under the Contract (a 'Breach'), the other Party may serve on it a Breach Notice which specifies the Breach, the remedial action to be taken and the time within which such action must be taken. On receipt of a Breach Notice the Party at fault will remedy the Breach within the time specified in the Breach Notice. Failure to remedy the Breach may be actioned by either Party under clause 27.

22. DISPUTE RESOLUTION

Any dispute arising in connection with the Contract will first be addressed by direct personal contact between the Authorised Officers. If the dispute has not been resolved by the Authorised Officers within 10 Working Days, the matter will be referred to be resolved by direct contact between more senior officers representing both Parties. If the dispute has not been resolved by such senior officers within a further 10 Working Days, the matter may be referred at the option of either Party within a further 10 Working Days to mediation in accordance with the model mediation procedure for the time being of the Centre for Effective Dispute Resolution. If the dispute is referred to the Centre for Effective Dispute Resolution, the Parties will engage with the model mediation procedure in good faith. This clause will not apply after a notice of termination has been served in accordance with clause 27.

23. FORCE MAJEURE

Neither Party will be liable for any delay in performing any of its obligations under the Contract if such delay is caused by circumstances beyond its reasonable control ('a Force Majeure Event'). A Party experiencing a Force Majeure Event will promptly notify the other Party in writing when such circumstances arise and use all reasonable endeavours to resume performance as soon as possible. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Contract by written notice to the other Party.

24. LIABILITY AND LIMITATION OF LIABILITY

Subject to the provisions of this clause, each Party will indemnify the other in full, from and against all losses, damages, costs, expenses, liabilities, claims or proceedings arising out of, or in respect of, or in connection with the Contract caused directly by its act or omission. Except in respect of fraud or death or personal injury caused by the negligence of the Party at fault (for which no limitation applies) neither Party will be liable to the other for any loss of profit, loss of business, loss of revenue, loss of anticipated savings or loss of use or value or any indirect, special or consequential loss however arising. Except in respect of death or personal injury, the entire liability of each Party under or in connection with the Contract will not exceed a sum equal to

125% of the Price paid by the Supplier in respect of the year in which such liability arose. The Supplier's liability in the event of any infringement of third party intellectual property rights or a breach of the Data Protection Legislation in the supply of the Services will be unlimited.

25. INSURANCE

The Supplier will take out and maintain insurance appropriate to the provision of the Services, to at least the statutory required limit. The Supplier will provide to the Council on request copies of the insurance policies and evidence that they are in force.

26. COMPLIANCE

The Supplier will comply with the Health and Safety at Work etc. Act 1974 and with the Council's health and safety measures while on the Council's premises and notify the Council immediately in the event of any incident on the Council's premises giving rise to personal injury or damage to property. The Supplier will promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Supplier will perform its obligations under the Contract in accordance with all applicable equality legislation and take all reasonable steps to secure the observance of such by all Staff. The Supplier will not offer, give or agree to give anything to any person an inducement or reward for doing, refraining from doing or for having done or refrained from doing any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract. The Supplier will take all reasonable steps to prevent fraud by its Staff and the Supplier in connection with the Contract and will notify the Council immediately if it has reason to suspect that any fraud has occurred or is likely to occur.

27. TERMINATION

The Council may terminate the Contract at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Contract is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice. Either Party may terminate the Contract immediately by written notice if the other Party has:

- (i) committed a fundamental Breach of the Contract;
- (ii) committed a Breach and has not remedied the Breach as required by clause 21; or
- (iii) committed a Breach which is not capable of remedy.

The Council may terminate the Contract immediately by written notice in the event that the Supplier becomes insolvent, or if any order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction) or if an administrator or administrative receiver is appointed in respect of all or part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt in any jurisdiction. The Council may terminate the Contract by written notice with immediate effect if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Contract. The

Council may only exercise this right within 3 months after receiving written notice giving full details of the change of control. The Council may terminate the Contract immediately by written notice if the Supplier or its Staff commit an offence under the Bribery Act 2010 or section 117(2) of the Local Government Act 1972. The Supplier may terminate the Contract by written notice to the Council if the Council has not paid any undisputed amount within 90 days of it falling due.

28. CONSEQUENCES OF TERMINATION

Termination of the Contract will not affect any right of either Party that has arisen before termination. Any provision of the Contract that is expressly or by implication intended to have effect after termination will continue in force for the intended period. On termination or expiry of the Contract, the Supplier will give all reasonable assistance to the Council and any incoming supplier and return all requested documents, information and data to the Council as soon as reasonably practicable.

29. ASSIGNMENT AND SUB-CONTRACTING

The Supplier will not assign, novate, sub-contract or in any way dispose of the benefit or burden of the Contract without the prior written consent of the Council. If the Supplier sub-contracts its obligations under the Contract, it will nevertheless be liable for the performance of its sub-contractor. Subcontracting any part of the Contract will not relieve the Supplier of any obligation or duty owed to the Council under this Contract. Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Contract, it will ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice. The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract without the consent of the Supplier.

30. NOTICES

Any legally binding notice to be given by either Party to the other under the Contract will be in writing and may be personally delivered or sent by first class post to the address of the other Party as set out on the Order or as otherwise notified in writing. Provided the notice is not returned, it will be deemed to have been received if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt will be deemed to occur at 9am on the next following Working Day, or, if delivered by first class mail, 2 Working Days after the day of posting. In proving the giving of a notice, it will be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted. The Supplier may communicate but may not give formal notice by email.

31. WAIVER

Failure by either Party to insist on strict performance of the Contract or to exercise any right or remedy on Breach of any provision of the Contract will not constitute a waiver of the Contract or a waiver of any subsequent Breach in the performance of the Contract. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

32. SEVERABILITY

If one or more of the provisions of this Contract are or become to any extent invalid or unenforceable under any applicable law, then the remainder of the Contract will

continue in full force and effect. If this happens, both Parties will negotiate in good faith to amend the provision concerned in such a way that as amended it is valid and enforceable and to the maximum extent possible meets the original intention of the Parties.

33. STATUS OF THE PARTIES

The Supplier is an independent contractor and the Contract is not intended to, nor will it create any agency, partnership or joint venture. Neither Party will hold itself out as being entitled to represent or bind the other in any way.

34. THIRD PARTY RIGHTS

The Contract does not and is not intended to provide any third party with any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

35. PUBLIC AUTHORITY FUNCTIONS

Nothing in the Contract will prejudice or affect the rights, powers, duties and obligations of the Council in relation to the exercise of the Council's functions as a public authority.

36. TUPE

At any time during the last 6 months of the Term, the Supplier will provide to the Council within 10 Working Days of a written request, such information as the Council may reasonably require in respect of TUPE. The Supplier will comply with its confidentiality obligations in relation to any information supplied and will permit the Council to use the information for the purposes of TUPE and re-tendering. If TUPE applies on termination of this Contract, the Supplier agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of employee liability information and the Supplier agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities in connection with or as a result of any claim or demand by any Staff or other personnel or person claiming to be an employee of the Supplier on any date upon which the Contract is terminated and/or transferred to any third party ('Relevant Transfer Date') arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date. In the event that the information provided by the Supplier becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier will notify the Council of the inaccuracies and provide the amended information within 10 Working Days. The provisions of this clause will survive the termination or expiry of the Contract for a period of 6 years.

37. IR35 RULES AND EMPLOYMENT STATUS

The Supplier agrees to notify the Council as soon as reasonably practicable in the event of a change in the employment status of the Supplier during the period of the Contract within the meaning of Part Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ('the IR35 Rules') and to provide all such information regarding the same as may be reasonably requested by the Council. The Supplier will indemnify the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from the Supplier's failure to comply with this clause.

38. MODERN SLAVERY

The Supplier warrants and undertakes that in performing its obligations under the Contract it will comply with the Modern Slavery Act 2015 and not engage in any activity, practice or conduct that would constitute an offence under the Act. The Supplier will include in its sub-contracting arrangements provisions that are at least as onerous as those set out in this clause.

39. CHANGE IN LAW

The Supplier will not be relieved of its obligations to supply the Services under this Contract as a result of a change in law if the change and its effect are known at the beginning of the Term. If a change in law occurs or is shortly to occur which will significantly affect the provision of the Services including the cost of doing so, the Supplier will notify the Council to express an opinion of the likely effects of the change including whether any change is required to the Services or the Contract and whether the Supplier requires any relief from compliance with its obligations. If the Parties agree upon the effects of the change in law and any financial consequences, such agreement will be implemented through the variation provisions of clause 4. In the case of a dispute, it will be resolved in accordance with the dispute resolution provisions of clause 22.

40. TRANSPARENCY REQUIREMENTS

The Supplier confirms that it understands that the Council routinely publishes spending data of transactions over £500 in accordance with the Local Government Transparency Code 2015.

41. SERVICE CONTINUITY

The Supplier will have contingency arrangements in place, as approved by the Council, to ensure continuity of the Services at all times at no extra cost to the Council. The Supplier will demonstrate, on request by the Council, for the duration of the Contract, that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services, including an insolvency event affecting the Supplier or any key-subcontractor, such plans to be appropriate to the scale of the Supplier's commitments under the Contract. The Council reserves the right to request detailed evidence of contingency plans such as sight of the Supplier's business continuity plan and evidence of the testing of the plan, and to require review and/or amendment of the plan and any other contingency arrangements to meet the Council's requirements, and in any event the Supplier will review the plans as a minimum every six months.

42. WHISTLEBLOWING

The Supplier will adhere to the principles set out in the Council's whistleblowing policy in reporting concerns which arise during the Contract and will ensure that its agents, contractors and sub-contractors do the same. The Council's whistleblowing policy can be accessed at www.dorsetcouncil.gov.uk

43. ENTIRE AGREEMENT

This Contract is the exclusive statement of the agreement between the Parties in relation to the supply of the Services and it supersedes all previous communications, representations, arrangements and agreements between the Parties. Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

44. GOVERNING LAW AND JURISDICTION

The Contract is governed by and will be interpreted in accordance with the law of England and Wales and the Parties irrevocably submit to the jurisdiction of the courts of England and Wales/

End.