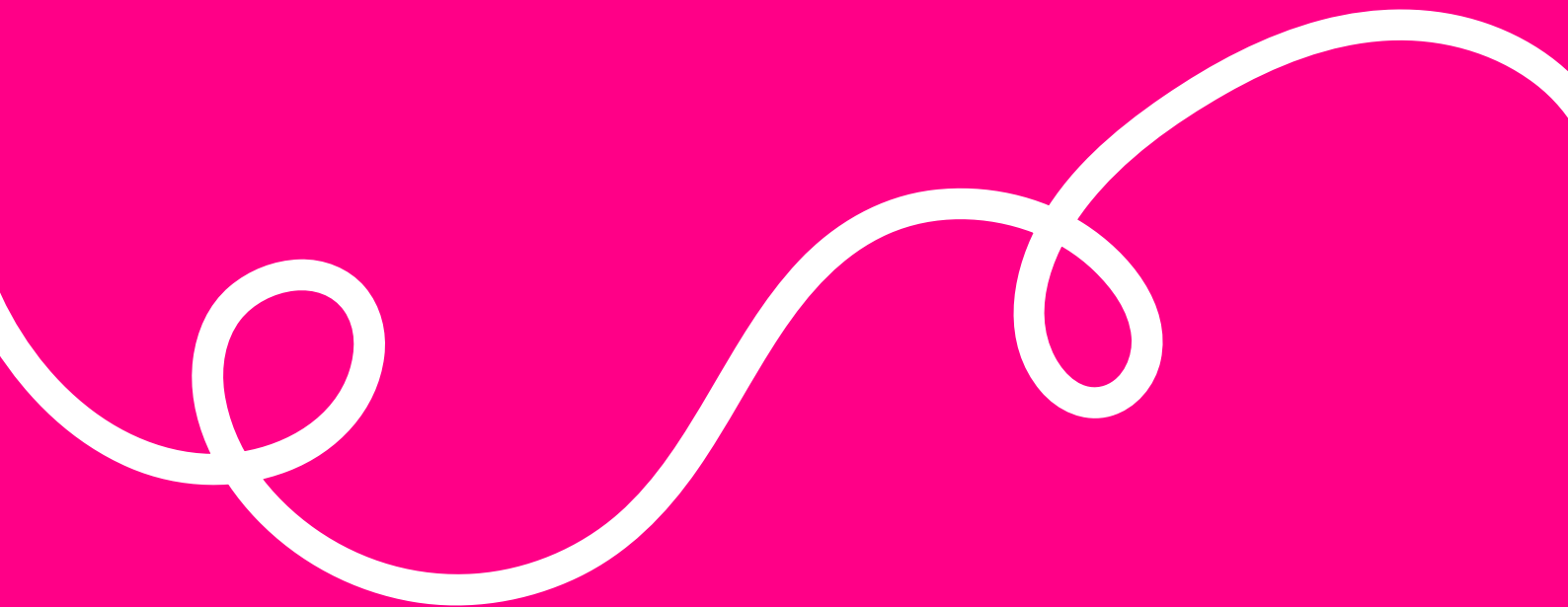


everflow<sup>®</sup>



# Waste Terms & Conditions



e.

# Standard Terms and Conditions for Waste

These **Conditions**, together with the other **Contract Documents**, set out the **Terms and Conditions** on which we will provide **Services** to you at the **Property** or **Properties** where you use our **Services** (being the Contract). These **Conditions** were last updated on 28/3/22 and are effective from 31/3/2022.

Certain words or phrases used in these **Conditions** are highlighted in bold and italics. This means that we have given those words or phrases specific meanings, which are set out in **Condition 11**. In this document, 'you' or 'your' refers to you, our customer, and 'we', 'us' or 'our' refers to Everflow Limited (company number 09651912).

## 1) The Contract

**a)** Your **Contract** with us begins on the **Contract Start Date**. These **Conditions** apply from the **Contract Agreed Date**. They then continue until the **Contract End Date** in accordance with **Condition 4**.

**b)** In the event that there is any conflict or inconsistency between your **Contract** and these **Conditions** then these **Conditions** shall have precedence.

**c)** You acknowledge and agree that we are entitled to amend the terms of any of the **Contract Documents** at any time provided that we give at least 30 days' notice of any material changes. Our notice to you will specify the effective date of the relevant amendment(s), and you will be deemed to have accepted any such amendment(s) on the effective date unless you tell us otherwise.

**d)** A **Contract** may only apply to a single distinct **Property** and a **Contract** will not apply to multiple **Properties**. Where you have multiple **Properties** for which you require the **Services**, then you will need to enter into a separate **Contract** per **Property**.

## 2) Our charges

**a)** You will find our **Charges**, and the basis on which we work out our **Charges**, in your **Contract**.

**b)** The following **Conditions** apply to your **Charges**:

Where the weight of your bin exceeds the amount stated in your **Contract** by less than 10% you will not be charged. If the weight of your bin exceeds the amount stated in your **Contract** by more than 10% on two occasions in any six month period you will not be charged. If the weight of your bin stated in your **Contract** exceeds the weight stated in your **Contract** by more than 10% on three or more occasions in any six month period you will not be charged for any of these excess but we reserve the right to vary your **Contract** to upgrade the relevant bin, provide an additional bin or bins or increase the frequency of your bin collections. We will contact you to discuss the most appropriate option but in the absence of any agreement the **Contract** will, subject to you exercising your right under clause 4 (d), be varied in our sole discretion and you will pay for any additional bin capacity or collections as the case

may be at the rate set out in our **Contract** with you. We will be notified of overweights by the supplier, who will complete the below checks at every collection;

- i.** Weigh the bin when it is first placed onto the vehicle;
- ii.** Weigh the bin at the point of tipping;
- iii.** Weigh the bin and the weight of its contents when they are tipped.

**d)** If waste is placed in a bin and it is not listed in the waste transfer note and/or is not intended for disposal in that bin the supplier may in its sole discretion either refuse to collect the contents of the bin or will remove the waste and you shall pay all additional costs of disposal or the contaminated waste stream price whichever is the higher which we will notify to you where appropriate. Refusal to collect will not be classed as a missed collection.

**e)** If a contaminated bin(s) is uplifted, the supplier will have sole discretion on how to dispose of waste in contaminated bins. If it has to be disposed of at a different waste facility these costs will be chargeable to you at the current supplier rates.

**f)** If your collection is missed due to access to your bin being made unavailable for the collection vehicle a re-scheduled collection will be chargeable at current supplier rates and we reserve the right to terminate the Contract in accordance with clause 4(e). If the supplier misses your collection but this is not due to access to the bin being unavailable or any of the reasons set out at 2 (d) and is the sole fault of the supplier, then you will not be charged for that missed collection.

**g)** In addition to our **Charges**, we may also recover our reasonable costs if you fail to keep to your responsibilities under these **Conditions**. These may include, but are not limited to, costs in connection with:

- i)** recovering unpaid **Charges**;
- ii)** you failing to allow access to a **Property** under **Condition 5e**; or
- iii)** any unauthorised removal of, obstruction of, or damage to bins

**h)** All our **Charges** will also have UK tax or duty charged on them, including VAT at the current rate, where applicable.

## 3) Payment

**a)** You agree to pay us for the **Services** you receive and to pay any other **Charges** properly due in connection with these **Conditions**. Your **Contract** specifies when and at what frequency your payments must be made.

**b)** Your billing date will be based on your **Contract Start Date** and your first bill will be for 1 months' collection service in advance, unless stated otherwise in your **Contract**. To facilitate your payment process we will provide our invoice at least 3 **Business Days** prior to the collection date.

**c)** All bills must be paid by Direct Debit, unless previously agreed by us in writing.

**d)** If your Direct Debit is cancelled and not reinstated within 5 **Business Days** without our express permission in writing, we can require you to pay using another payment method. The amounts charged in accordance with your **Contract** will be increased by 5%, or £10 per month, whichever is greater, to cover the additional administrative costs incurred by accepting payment by a method other than Direct Debit.

**e)** Unless we have agreed otherwise in writing, you must pay your bill in full within 10 **Business Days** of the date of that bill. We have the right to suspend waste collections until payment is received. If no payment is received within a further 7 **Business Days** we will terminate the **Contract** and any outstanding debt will be pursued.

**f)** If you disagree with your bill you must contact us and provide details of why you disagree and/or any complaint before your invoice is due for payment. Where there is evidence that your bill was incorrect at the time of issue we will agree that you do not need to pay the **Charges** until we have investigated and corrected any error. If we do not agree that you have a valid reason for withholding payment then you will be liable to pay 5% of the outstanding **Charges** under the disputed invoice or £10 whichever is greater to cover additional administrative costs incurred due to payment being withheld and any investigation, reissue of invoice or similar.

**g)** If you do not pay your bill (or the part of it you do agree with) by the invoice due date, we will charge you a late payment fee and we may charge you interest at the rate of 8% a year above the Bank of England bank rate from the day after your invoice due date. You can ask us for our policy on charging interest. In addition, we may also charge our reasonable costs for recovering any money you owe us that becomes overdue.

**h)** Disputes will be investigated and determined in writing and all amounts to be paid following investigation shall be paid in accordance with **Condition 3(f)**.

**i)** If you fail to make payment in full within 10 **Business Days** on at least three occasions and this is not as a result of failure on our part to provide you with an accurate and timely bill, then the prices charged in accordance with your **Contract** will be increased by 5%, or £10 per month; whichever is greater; to cover the additional administrative costs incurred due to persistent late payment.

**j)** **Charges** will be adjusted to reflect any additional cost under **Conditions 3d, 3f, and 3g**. We do not have to give you notice to do this and the change will take place immediately.

**k)** If your bank fails to honour a payment for any reason, we may change the payment arrangements immediately (e.g. from Direct Debit to BACS) and or suspend the **Services**. You will then be responsible for paying all **Services** supplied in line with the new payment

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arrangements, together with all other costs we must pay in connection with the new arrangements.

### 4) Ending the Contract.

**a)** The **Contract** can only be ended in accordance with this **Condition 4**.

**b)** After the **Contract End Date**, the **Contract** will be automatically renewed for another 12 months unless you give us more than 30 days' notice that you wish to exit the contract prior to the **Contract End Date**. Such notice cannot be given until you are within 120 days from the **Contract End Date**.

**c)** If the **Contract** is automatically renewed pursuant to **Condition 4b**, your new **Contract End Date** will be 12 months after the previous **Contract End Date**. You will automatically be switched to the prices outlined in your renewal letter which we will send you 90 days prior to the existing **Contract End Date**. It is your responsibility to notify us if you do not receive a renewal letter.

**d)** If you end the **Contract** before the end of your **Contract End Date**, for any other reason than that you have gone into administration then you will be liable to pay a fee. The fee will be the equivalent of 3 months of collection charges. If there is a supplier charge for the removal of your bin (s) at this time this charge will be passed to you at the supplier rates.

**e)** We reserve the right to terminate your **Contract** if you fail to make payment within 17 **Business Days** of the due date of payment and/or you fail to ensure that we and/or our suppliers have access to the premises to supply the **Services**. In these circumstances the fees as outlined in **Condition 4d** will apply.

**f)** We reserve the right to terminate the **Contract**. We will provide you written notice at which time any **Services** that you have paid for in advance will be refunded to you.

**g)** It is your responsibility at the end of **Contract** to make the bins accessible for collection by the supplier.

**h)** Any outstanding payments must be paid in full as due under this **Contract**.

**i)** The accrued rights and obligations of the parties at the date of termination shall survive the termination of this agreement.

### 5) Ownership of your bins

**a)** We will arrange for the delivery of bin(s) once we have appointed a waste supplier and we will provide notice to you of the delivery date(s). There will be no delivery charge. This is not a contract for hire.

**b)** At no point will we or you own the bins, they are owned by the supplier(s).

**c)** It is your responsibility to make sure that the bins are safe and securely stored.

**d)** We require the bins to be located in positions agreed with us and not move them from those locations without our prior agreement

**e)** You will allow us and our suppliers unrestricted vehicle access to the bins to, empty remove or replace the bin(s).

**f)** You must ensure that the bins are stored in compliance with any laws, planning consents, lease, licence or other occupier's obligations.

**g)** You are responsible for ensuring that the bins do not cause an obstruction or nuisance to any third party

**h)** You agree to permit us or our suppliers to inspect the bin(s) at a reasonable time during the hours of 8am and 6pm.

**i)** You agree not use the bin(s) in a way that is not permitted by statute, bye laws, rules or regulations or for any illegal purpose.

**j)** We will not be responsible for any damages caused to any property and vehicle belonging to you or third parties, by reason of delivery or use of the bins.

**k)** You will not place the bin(s) in a location where you do not have permission to locate them.

### 6) Waste Collection Service

**a)** We appoint **Waste Collection** supplier(s) who are fully licensed waste carriers. We will inform you of who your appointed waste provider(s) is/are prior to your bin(s) delivery date.

**b)** The waste supplier(s) are responsible for the collection of your waste and provision and delivery of the bins and we are responsible for arranging that delivery and collection of your bin(s) and waste only. The risk and waste ownership does not pass to us.

**c)** At our discretion we may appoint multiple suppliers to perform **Services**.

**d)** If you choose to appoint another waste provider, no transfer of the existing **Contract** with us will have occurred even in instances where we agree to work with them.

**e)** **Services** may be suspended in instances when:

**(i)** your appointed supplier is unable to carry out any of its obligations under this **Agreement** because of **conditions** beyond its reasonable control, including, acts of God, and similar occurrences ("Force Majeure"), this **Agreement** will remain in effect and the non-performing party's obligations shall be suspended without liability for a period equal to the period of the continuing Force Majeure.

**(ii)** you have failed to make payment outlined in **Condition 3 (e)** and **3 (k)**.

**(iii)** you have failed to return a compliant **Waste Transfer Note** within 5 **Business Days** as outlined in **Condition 7(c)**.

**(iv)** you have failed to return a compliant **Waste Transfer Note** within 5 **Business Days** as outlined in **Condition 7(c)**.

**(v)** you have failed to return a compliant **Waste Transfer Note** within 5 **Business Days** as outlined in **Condition 7(c)**.

### 7) Duty of Care waste transfer note

**a)** You are required to comply with the Control of Pollution Act 1974, the Environmental Protection Act 1990, Environmental Permitting (England and Wales) Regulations 2016 and any other laws and regulations relevant to the **Services**.

**b)** We will send an **Annual Waste Transfer** note

to you to complete and sign. We will require you to return the transfer note within 5 **Business Days** of it being received and you will sign any further waste transfer notes provided to you by us or the supplier within 5 **Business Days** of receipt. There will be no charge for this.

**c)** We may suspend **Services** where you do not sign the annual waste transfer note. Transfer notes are required under the Environmental Protection Act 1990, and must be completed each year or when **Services** are changed or where you have submitted a non-compliant waste for collection.

**d)** You must to provide an accurate and comprehensive list of all wastes produced by your business and the applicable EWC waste codes for that waste.

**e)** Only consign waste to bins which is compliant with waste transfer notes, EWC waste codes and any description of waste suitable for that bin.

**f)** You agree:

**(i)** to pay all additional costs and changes as invoiced to you

**(ii)** You will allow our nominated supplier(s) to provide the services on our behalf

**g)** We will take no responsibility for any breaches that result in additional costs, expenses, waste disposal charges and losses arising as a result of your breach of this **Contract**.

### 8) Our Responsibility for loss or damage

**a)** Except as set out in **Condition 8d**, we will not be responsible to you for:

**i)** loss of revenue (direct or indirect);

**ii)** loss of profit (direct or indirect);

**iii)** loss of contract (direct or indirect);

**iv)** loss of anticipated savings; (direct or indirect);

**v)** business interruption (direct or indirect);

**vi)** any special, consequential or indirect loss, however it is caused, even if it could have reasonably been foreseen; or

**vii)** any other loss or damage (including but not limited to the bins themselves).

**b)** Subject to **Conditions 8a, 8c and 8d**, the most we will pay you will not exceed the total amount you have paid us under the **Contract**.

**c)** If any act or failure to act by suppliers causes any loss or damage to you, we will limit our liability to you (if any) to the amount (if any) that we are entitled to recover from suppliers.

**d)** Nothing in the **Contract** excludes or limits our legal responsibility for death or personal injury resulting from our negligence or that of any of our officers, employees or agents, or for fraud or fraudulent misrepresentation or anything else we are not able to legally limit by law.

**e)** If the **Contract** ends, this **Condition 8** will continue to apply

**f)** We will not be responsible for any damage caused to any property and vehicles belonging to you or third parties, by reason of the use of the bins.



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g) We will have no liability for lost or damaged bins at any time and you are solely responsible at all times for the bins and their loss and/or damage.

### 9) Personal information

a) We will comply with all the applicable requirements of **Data Protection Legislation**.

b) If you require any further information about how we collect, process and store your **Personal Data**, please see our privacy policy as set out on our website

### 10) General

a) The **Contract** and any written variation of the **Contract** constitute the entire agreement between us.

b) You may not transfer any of your rights or responsibilities under the **Contract** to another person without our advance written permission

c) Except as set out in these **Conditions**, no variation to the **Contract** shall be effective unless it is in writing and signed by both parties, or our authorised representatives.

d) Nothing in the **Contract** is intended to, or shall be deemed to, establish any partnership or joint venture between us; constitute either of us as the agent of the other; or authorise either of us to make or enter into any commitments for or on behalf of the other.

e) The **Contract** does not give rise to any rights to any party who is not a party to this **Contract** (Rights of Third Parties) Act 1999.

f) If, at any time, we are informed of a regulatory investigation you will be obliged to provide all documents and take all reasonable steps to assist us in our response at your sole cost and expense.

g) If, at any time, we do not insist that you comply with any part of the **Contract**, this will not be a waiver of any term of these **Conditions** and will not prevent us from doing so in the future.

h) If any part of these **Conditions** cannot be enforced, it will not affect any other part of the **Conditions**.

i) We may serve any notice in connection with the **Contract** by leaving it at your last known address or place of business (in the case of a company, at its registered office) or at any **Property** covered by the **Contract**, in each case addressed to you, or by post addressed to you at any **Property** covered by the **Contract** or by fax to your last known fax number or by email to your last known email address. You may serve any notice in connection with the **Contract** by leaving it at, or posting it to:

### Everflow Limited

Wynyard Business Park Billingham  
TS22 5FG

j) The law of England and Wales will apply to the **Contract** and any disputes will be dealt with in the English Courts.

h) If there is a change of any relevant law, regulation, or rule which affects the terms of

this **Agreement**, the parties agree to discuss details of measures and changes needed to this **Agreement** to comply with such changes of relevant law, regulation or rule and agree on the manner, form and timing of changes promptly to enable implementation of such changes and amendment to this **Agreement** only insofar as is necessary to comply with the such change of relevant law, regulation or rule.

### 11) General

**Business Day** – a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges** – The amount payable by you for Services as specified in your **Contract** with us including the **Retail Charge** and the **Collection Charges**.

**Collection Charges** – the collection charges set by our **Supplier(s)** for collection of the bins which form part of the **Charges**.

**Conditions** – the **Terms and Conditions** set out in this document

**Contract Agreed Date** – the date you agree to enter into the **Contract** with us either verbally or in writing.

**Contract Documents** – these **Conditions**, quote summary, contract schedule and **Charges**.

**Contract Start Date** – the date specified in your contract schedule as your **Contract Start Date**.

**Contract End Date** – the date specified in your contract schedule as your **Contract End Date** (which will usually be 1 year after the **Contract Start Date**) or as calculated in accordance with **Condition 7h**.

**Contract** – your contract with us, which sets out the specific terms of our agreement with you, may have been formed orally, in writing or through the waste online quoting platform. If it has been formed orally, we will always send you a contract confirmation in a welcome email. All contracts are subject to these **Conditions** and are made up of the **Contract Documents**.

**Data Protection Legislation** – the **UK Data Protection Legislation** and relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of **Personal Data** (including, without limitation, the privacy of electronic communications).

**Deemed Contract Terms and Conditions** – the conditions which apply in circumstances where there is no other contractual agreement in place between us and a customer receiving our Services.

**Outstanding Debt** – a debt which has been outstanding for 14 days or more, where a revised payment date has been offered and not met, and where no valid query on the **Charges** due has been accepted for investigation by us within that 14 day period.

**Personal Data** – has the meaning given to it in the **Data Protection Legislation**.

**Property** – a premises you own, lease or otherwise occupy.

**Services** – Waste collection services and other services which we may provide to you from time to time as agreed in writing.

**Retail Charge** – a fixed proportion of the **Charges** per year of the term of the **Contract** forming part of the **Charges**.

**UK Data Protection Legislation** – all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

