

GENERAL TERMS AND CONDITIONS FOR: WEEE BOX COLLECTION SERVICES

1 DEFINITIONS AND INTERPRETATION

1.1 In these general terms and conditions ("**Terms and Conditions**") words and expressions shall have the following meanings:

"**Agreement**" means the Order and these Terms and Conditions.

"**Business Day**" means a day (not being a Saturday or Sunday) on which banks are open for normal banking business in the City of London.

"**Client**" means the client as stated in the Order to whom Valpak shall provide the Services in accordance with the Agreement.

"**Client Data**" means such data relating to Client or Client's business as is reasonably required by Valpak to provide the Services and is supplied by Client as set out in the Order.

"**Collection**" means the collection of a single container from the pre-agreed Client location by Valpak.

"**Commencement Date**" means the date set out in the Order.

"**Confidential Information**" means any and all information relating to the Services, the Agreement or business, technical, sales, product, financial or other information relating to Valpak or Client or arising out of or in connection with the Agreement.

"**Container**" means the container provided by Valpak to Client to be filled with WEEE by the Client.

"**Contract Term**" means the period from the Commencement Date until the termination of this Agreement in accordance with its terms.

"**Controller, Personal Data and Processing**" shall bear the respective meanings given to them in the Data Protection Law (and Process and Processes shall be construed accordingly).

"**Data Protection Law**" means the General Data Protection Regulation 2016 (Regulation (EU) 2016/679) ("GDPR"), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), together with the equivalent legislation of any other applicable jurisdiction and all other applicable law, regulations, guidance and codes of conduct or practice in any relevant jurisdiction relating to the processing of personal data, cyber security and/or privacy including the guidance and codes of practice issued by the UK Information Commissioner's Office ("ICO"), the Article 29 Working Party, the European Data Protection Board or any relevant supervisory authority from time to time.

"**Directive**" has the same meaning as in the Regulations.

"**Fees**" means the fees for the Services detailed in the Order or as otherwise agreed in writing between the parties, and shall include the Delivery Fees, the Collection Fees and the Rental Fees (as defined in Clause 6.1).

"**Invoice Date**" means the first day of every calendar month, or such other day as is specified by Valpak.

"**Legislation**" means all statutes, enacting instruments, common law, delegated legislation, Regulations, directives, bye-laws, codes of practice, circulars, guidance notes, decisions, recommendations and the like in the relevant Jurisdiction.

"**Order**" means the order document entered into between Valpak and Client that sets out, amongst other things, the Services to be provided by Valpak to Client and the locations that Collections will take place from.

"**Regulations**" means the Waste Electrical and Electronic Equipment Regulations 2006 in force in the United Kingdom or such other legislation that is transposed into UK law to implement the Directive.

"**reuse**" has the same meaning as in the Regulations.

"**treatment**" has the same meaning as in the Regulations; and "**treated**" shall be construed accordingly.

"**Services**" means the provision of one or more Container, and the collection and disposal of such Containers and the WEEE contained therein as more particularly described in the Order.

"**Valpak**" means Valpak Recycling Limited (company number 04683865) whose registered office is at Stratford Business Park, Banbury Road, Stratford-upon-Avon 7GW.

"**WEEE**" has the same meaning as in the Regulations.

1.2 Any reference in these Terms and Conditions to any statute or statutory provision or subordinate legislation will (unless the context otherwise requires) be construed as a reference to that statute, statutory provision or subordinate legislation as amended, consolidated, modified, extended, re-enacted or replaced from time to time in the specified Jurisdiction including as a result of the United Kingdom's withdrawal from the European Union by virtue of Article 50 of the Treaty of the European Union.

1.3 Clause headings are for ease of reference only and shall not be taken into account in construing these Terms and Conditions.

1.4 Any phrase in these Terms and Conditions introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.5 A reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF AGREEMENT

2.1 In case of a conflict between any documents or provisions contained in the Agreement, it shall be resolved by applying those documents or provisions in the following order of precedence (prevailing document first):

2.1.1 the Order; and

2.1.2 these Terms and Conditions.

2.2 These Terms and Conditions (and the Order) are the only terms upon which Valpak is prepared to deal with

Document number	44748919
Review Date	October 2020

the Client and they shall govern the Agreement to the entire exclusion of all other terms and conditions.

No terms or conditions (other than these Terms and Conditions) endorsed upon, delivered with or contained in the confirmation of order or other document (whether or not any such document is referred to in the Agreement) or any other terms that the Client seeks to impose or incorporate will form part of the Agreement.

ORDERING PROCESS

Following commencement of this Agreement, Valpak shall deliver the first Container(s) to the agreed Client's location(s) as specified in the Order, and the Client shall ensure that appropriate access and personnel is made available at such locations to enable Valpak to deliver the Container.

When the Client requires collection of a Container, Client shall contact Valpak at collections@valpak.co.uk to arrange a date for collection of the Container, which shall be at least two (2) to three (3) Business Days following the date of contact.

Client shall make the Container available to Valpak to collect from the agreed location and on the agreed day for collection. Client shall ensure that, on the agreed day, the Container is located so as to enable Valpak to collect using a wheeled pump truck or pallet jack. Valpak shall not be responsible for any delays in collecting a Container arising as a result of Client failing to locate the Container in an accessible location.

Valpak shall use reasonable endeavours to attend to collect the Container on the agreed day, but the parties acknowledge that time will not be of the essence for collection of the Containers.

When contacting Valpak to arrange collection pursuant to Clause 3.2, the Client shall inform Valpak as to whether it requires a replacement Container. If a replacement Container is requested, it shall be delivered to the Client at the same time as, or as soon as reasonably practicable after, the full Container is collected pursuant to Clause 3.2. Valpak shall invoice the Client for such replacement Containers on the next Invoice Date following the date of delivery.

Risk in the Container(s) shall pass to the Client upon delivery of the Container to the Client, and Client shall reimburse Valpak for the cost of any Container(s) that are lost or damaged while in the Client's control. The costs for lost and damaged Containers are as set out in the Order. For the purpose of this Clause 3.6 it is assumed that any Container that has been delivered to the Client and which is not made available for collection before termination of expiry of this Agreement has been lost by the Client.

Client shall not gain any title to or rights in the Containers.

PROVISION OF THE SERVICES

Valpak agrees to provide the Services using all reasonable skill and care and in accordance with the Order and these Terms and Conditions in all material respects.

Valpak shall use all reasonable endeavours to meet any performance dates specified in the Order.

CLIENT'S OBLIGATIONS

Notwithstanding the Services provided by Valpak pursuant to this Agreement, Client will remain fully responsible for all its responsibilities under the Regulations, under any applicable Legislation or otherwise. Client warrants that it shall comply with the Regulations and shall indemnify Valpak from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever arising in relation to or in connection with any breach by the Client of the Regulations.

Client agrees to cooperate with Valpak in the performance of the Services and to give Valpak such assistance as Valpak may reasonably require in relation to the Agreement to facilitate Valpak in providing the Services.

Client shall ensure that, when the Containers are made available for collection:

5.3.1 that the Containers contain only WEEE that is suitable for treatment, in accordance with the requirements of the Order; and

5.3.2 that the lid of the Container can be securely closed in such a way that allows other items to be stacked on top of the Container.

Valpak will not check the contents of Containers prior to their delivery to treatment sites, and Client shall be fully liable for and shall indemnify Valpak from and against any costs, losses, damages or expenses incurred by Valpak or any third party as a result of the contents of any Container.

Valpak shall be entitled to treat repeated breaches of clause 5.3 as a material breach of this Agreement.

Client acknowledges and agrees that the Services are provided on the assumption that the WEEE collected is suitable for reuse. Accordingly, Client shall ensure that any WEEE made available for collection under this Agreement does not contain and personal data or information that is otherwise sensitive, or any WEEE that may contain such data (such as hard-drives that have not been wiped), and Valpak shall have no liability to Client or any third party if any such items are included within a Container.

Client acknowledges and agrees that provision of the Services are contingent on and subject to Client complying with the obligations set out in clauses 3.3 and 5.2 and that Valpak shall (subject to clause 8.1) have no liability to Client in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any failure to provide any part or parts of the Services that arises as a result of failure by Client to comply with such obligations, and Valpak reserves the right to charge the Client for any additional costs reasonably incurred by Valpak as a result of such failure.

FEES

The Fees payable for the Service are set out in the Order and comprise the following elements:

6.1.1 an initial fee for the first delivery of Container(s) ("**Initial Delivery Fee**")

6.1.2 a fee charged per Collection ("**Collection Fee**"); and

Document number	44748919
Review Date	October 2020

- 6.1.3 a rental fee charged for each month or partial month that the Client is in possession of a Container (“**Rental Fee**”).
- 6.2 Valpak shall, unless stated otherwise in the Order, invoice the Client on:
- 6.2.1 the first Invoice Date following the initial delivery of Container(s) for:
- a) the applicable Initial Delivery Fee; and
 - b) the Rental Fee for the following month; and
- 6.2.2 each subsequent Invoice Date for:
- a) the Collection Fee payable in respect of any Container delivered in the subsequent month pursuant to Clause 3.5; and
 - b) the Rental Fee for the following month.
- 6.3 All sums payable by one party to the other shall be paid in accordance with the Order.
- 6.4 If any sum payable by Client to Valpak under the Agreement remains unpaid for more than 30 days from the due date for payment, then Valpak may (at its sole discretion) charge Client interest on such invoice at the rate of 2% (two per cent) per annum above Bank of England’s base rate from time to time. Such interest to be calculated on a daily basis from the date upon which the invoice became due until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 6.5 Valpak may suspend its provision of the Services during any period in which any undisputed payments from Client are overdue.
- 6.6 Subject to Client’s approval (such approval not to be unreasonably withheld or delayed and in any case to be provided within thirty (30) days of Valpak’s written notice) Valpak may (acting reasonably) increase the Fees provided that such Fees cannot be increased or varied unless such increase or variation is the result of alterations to the Services arising as a result of:
- 6.6.1 a change in Legislation affecting the Services;
 - 6.6.2 a change in the Services to be provided by Valpak due to a variation of the Agreement pursuant to clause 14.4 of these Terms and Conditions; or
 - 6.6.3 a change to the timelines or timeframes in which Valpak are to provide the Services where such change is due to unanticipated problems beyond Valpak’s control.
- 6.7 All sums payable in accordance with the Agreement are exclusive of value added tax and any other sales or similar taxes, which shall be added to such sum to the extent applicable from time to time.
- 7 CONFIDENTIALITY**
- 7.1 Each party shall not without the other party’s prior written consent (and shall procure so far as it is able that each of its directors, officers and employees and group companies shall not) at any time (whether before or after the termination for whatever reason of the Agreement) divulge or communicate to any person

- other than as is reasonably necessary for the purpose of conducting its business, any Confidential Information except to the extent to which:
- 7.1.1 such information can be shown to be (other than through any unauthorised disclosure by it or any of its directors, officers or employees) within the public domain on a non-confidential basis; or
 - 7.1.2 it is required by Legislation or by any court or by any appropriate agency or any governmental body but only to this extent and for the avoidance of doubt such information shall otherwise remain confidential; or
 - 7.1.3 Valpak is required to disclose Confidential Information of Client to third parties (including any appropriate agency, governmental authority or service provider) in order for Valpak to provide the Services.
- 7.2 For the avoidance of doubt, all information contained within the Deliverables produced by Valpak under the terms of this Agreement shall be deemed to be confidential and shall be treated by the parties in accordance with clause 7.1. In addition, Client shall not supply or otherwise provide any of the Deliverables (or any part thereof) to any third party without the prior written consent of Valpak.
- 7.3 The provisions of this clause 7 shall continue in force notwithstanding termination of the Agreement howsoever caused.
- 8 LIABILITY**
- 8.1 Nothing in the Agreement shall exclude or limit either party’s liability for:
- 8.1.1 death or personal injury resulting from its own negligence, or the negligence of its employees, agents or subcontractors;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 for breach of the terms (if any) implied by section 2 of the Supply of Goods and Services Act 1982.
- 8.2 Subject to clause 8.1, neither party shall under any circumstances whatsoever be liable to the other party whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss or damage suffered or incurred by the other party (or the other party’s employees, agents, sub-contractors or any third party) (even if the loss or damage is reasonably foreseeable or the possibility of such loss or damage occurring has been advised) arising from: (a) loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings; (b) loss of data or use of data; and/or (c) consequential, special or indirect loss or damage (collectively meaning those losses recoverable under the second limb of the rule in *Hadley v Baxendale (1854) 9Ex341*).
- 8.3 Subject to clauses 8.1 and 8.2 Valpak’s aggregate liability to Client in respect of all losses arising out of or in connection with the Agreement or its subject matter in each twelve (12) month period shall not exceed an amount that is equal to the Fees paid by Client in the relevant twelve (12) month period.
- 8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent

Document number	44748919
Review Date	October 2020

- permitted by law, excluded from the Agreement.
- 8.5 The provisions of this clause 8 shall survive the expiry or the termination of the Agreement for whatever reason.
- 9 **TERM AND TERMINATION**
- 9.1 The Agreement shall commence on the Commencement Date and shall, subject to the terms of the Agreement, continue for an initial period of 2 months (“**Initial Period**”) and thereafter it shall continue for as long as the Customer has one or more Containers in its possession or control.
- 9.2 Either Party may terminate the Agreement at any time on giving 30 days’ prior written notice to the other Party.
- 9.3 Without limiting its other rights or remedies, Valpak may terminate the Agreement with immediate effect by giving written notice to the Client if:
- 9.3.1 the Client is in material and/or persistent breach of the Agreement and (where the breach is remediable) fails to remedy such breach (to the reasonable satisfaction of the party giving such notice) within 30 days of being notified in writing of the breach;
- 9.3.2 the Client is subject to an insolvency event;
- 9.3.3 Client fails to pay any amount due under the Agreement within thirty (30) days of the due date for payment;
- 9.3.4 Valpak is unable to provide the Services due to a change in Legislation; or
- 9.3.5 Client fails to provide its approval within 30 days of Valpak’s reasonable request in accordance with clause 6.6.
- 10 **CONSEQUENCES OF TERMINATION**
- 10.1 On termination of the Agreement for any reason:
- 10.1.1 Client shall immediately pay to Valpak:
- a) all of Valpak’s outstanding unpaid and undisputed invoices and interest; and
- b) in respect of Services supplied but for which no invoice has been submitted, Valpak shall submit an invoice, which shall be payable by Client immediately on receipt. For the avoidance of doubt, Client shall not be entitled to a refund of any sums paid by Client to Valpak prior to termination if the Agreement;
- 10.1.2 Client shall immediately contact Valpak to arrange for collection of any Containers still in the Client’s possession or control, and the terms of this Agreement shall remain in force in relation to such Containers until they are collected, or are deemed to be lost by Valpak (in its sole discretion), and the provisions of clause 3.6 shall apply in respect of such lost Containers;
- 10.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- 10.1.4 Valpak shall not be required to repay any amount of Rental Fee charged in advance for any period following termination.
- 10.2 The provisions of clauses 6, 7, 8, 10 and 14, and any other clauses that expressly or by implication have effect following termination or expiry of the Agreement, shall survive termination or expiry of the Agreement.
- 11 **DATA PROTECTION**
- 11.1 The Parties agree and acknowledge that the only Personal Data to be Processed by each Party in relation to this Agreement shall be the contact details of employees of each Party as necessary for each Party to administer this Agreement. Accordingly the Parties shall each be independent controllers for the purpose of Data Protection Law.
- 11.2 Each Party shall comply with applicable Data Protection Law in carrying out its obligations under this Agreement.
- 12 **BRIBERY AND MODERN SLAVERY**
- 12.1 Each party shall, and that it shall procure that persons associated with it shall comply with all applicable laws, statutes, regulations and codes relating to bribery and other corruption, slavery and human trafficking, including the Bribery Act 2010 and the Modern Slavery Act 2015.
- 13 **FORCE MAJEURE**
- 13.1 A party, provided that it has complied with the provisions of clause 13.3, shall not be in breach of the Agreement, nor liable for any failure or delay in performance of any obligations under the Agreement (and, subject to clause 13.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (“**Force Majeure Event**”), including but not limited to any natural disaster (including fire, flood, earthquake, windstorm or adverse weather conditions); war, terrorist attack, cyber attack or similar actions; compliance with any law, any labour dispute, including but not limited to strikes, industrial action or lockouts; non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and interruption or failure of utility service.
- 13.2 The corresponding obligations of the other party will be suspended to the same extent.
- 13.3 Any party that is subject to a Force Majeure Event shall not be in breach of the Agreement provided that:
- 13.3.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- 13.3.2 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 13.4 If the Force Majeure Event prevails for a continuous period of more than six (6) weeks, either party may terminate the Agreement by giving fourteen (14) days’ written notice to all the other party. On the expiry of this notice period, the Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Agreement occurring prior to such termination.

Document number	44748919
Review Date	October 2020

14 **GENERAL**

14.1 **Whole Agreement:**

14.1.1 These Terms and Conditions the Order constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of the Agreement.

14.1.2 Each party acknowledges that, in entering into the Agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in the Agreement (whether made innocently or negligently) shall be for breach of contract.

14.1.3 Nothing in this clause shall limit or exclude any liability for fraud.

14.2 **Assignment and sub-contracting:**

14.2.1 Client shall not at any time (without Valpak's prior written consent, such consent not to be unreasonably withheld or delayed) assign, transfer, hold on trust or sub-contract any of Client's rights or obligations under the Agreement or appoint any third party agent to perform such obligations.

14.2.2 Valpak shall not be entitled to, without Client's prior written consent (such consent not to be unreasonably withheld or delayed), assign, transfer, hold on trust or sub-contract any of its rights or obligations under the Agreement to any third party or appoint any third party agent to perform such obligations. For the avoidance of doubt, Valpak shall be entitled to transfer the Agreement or any of its rights or obligations under it to any subsidiary or holding company of Valpak (from time to time) in its absolute discretion and Client shall do all such further acts, deeds and things necessary to effect such a transfer (including but not limited to executing such novation agreement as Valpak, acting reasonably, may provide to Client).

14.2.3 Valpak shall be entitled to sub-contract its obligations under this Agreement, and shall remain liable for any act or omission of such sub-contractors in breach of this Agreement.

14.3 **Notices:**

14.3.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office, or sent by fax to the other party's main fax number or sent by email to the other party's email address as notified in writing from time to time.

14.3.2 Any notice or other communication shall be deemed to have been duly received if delivered

personally, when left at the address referred to in clause 14.3.1 or, if sent by pre-paid first-class post or recorded delivery, on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next business day after transmission, or if by email, it shall be sufficient to show that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.

14.4 **Variation:** Valpak may (acting reasonably) at any time and from time to time amend, modify or add to any provision of the Agreement on giving to the Client not less than sixty (60) days' notice in writing of such amendment, modification or addition, unless such amendment, modification or addition is made by reason of any requirement of or any amendment to or pursuant to Legislation or the requirement of any relevant appropriate agency, governmental authority and/or other regulatory body in which event such amendment, modification or addition shall have effect from the date specified in the notice.

14.5 **Severance:** Each provision of the Agreement is severable and distinct from every other provision. If any provision of the Agreement is found by any competent court or administrative body to be illegal, invalid or unenforceable, this shall not affect the other provisions of the Agreement or remainder of the affected provision, which shall remain in full force and effect.

14.6 **Waiver:** A waiver of any term, provision or condition of the Agreement shall be effective only if given in writing and validly signed by the waiving party. No failure or delay on the part of either party in exercising any right, power or privilege under the Agreement shall operate as a waiver of it, nor shall any single or partial exercise of any such right power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.

14.7 **No partnership:** Nothing in the Agreement and no action taken by either party pursuant to the Agreement shall constitute, or be deemed to constitute, a partnership, association, joint venture, agency or any other co-operative entity.

14.8 **No right of set off:** All sums due from one party to the other in accordance with the Agreement will be paid in accordance with the payment provisions of the Order and the Terms and Conditions (in cash or cleared funds) in full without any deduction, withholding, counterclaim or set off. All sums payable under the Agreement are exclusive of any value added tax and any other sales or similar taxes, which will be added to such sum to the extent applicable from time to time.

14.9 **Third party rights:** No term of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Agreement.

14.10 **Counterparts:** This Agreement may be executed in counterparts or duplicates, each of which, when executed, shall constitute an original of this Agreement and such counterparts or duplicates together shall

Document number	44748919
Review Date	October 2020

constitute one and the same instrument. No counterpart or duplicate shall be effective until each party has executed at least one counterpart or duplicate.

14.11 **Governing law and Jurisdiction:** The Agreement shall be governed by and construed in accordance with the law of England. Each party agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Agreement.

Document number	44748919
Review Date	October 2020