

AES - DOMESTIC CUSTOMERS - TERMS & CONDITIONS 5/13

By signing the Order Form, or accepting Service from AES, the Customer agrees to and is bound by these Terms and Conditions. AES reserves the right to amend these Terms and Conditions from time to time. Any amendment to these Terms and Conditions will take effect and will bind the Customer twenty-one days after notice of the amendment has been sent to the Customer. A copy of the most recent Terms and Conditions is available on request in writing to AES or on www.aesirl.ie.

1. DEFINITIONS

In these Terms and Conditions:-

"Address" shall mean the collection address where Materials are to be collected by AES and which is specified by the Customer either in the Order Form or verbally by telephone;

"AES" means Advanced Environmental Solutions (Ireland) Limited, registered in Ireland no. 224173, whose registered office is at Bord na Móna Offices, Main Street, Newbridge, Co. Kildare; "Billing Period" shall mean the period of time from the Commencement Date to the 30th of June or the 31st of December of any calendar year, as appropriate;

"Cancellation Fee" shall mean a fee of €15 per bin charged by AES to the Customer who cancels the Services;

"Cooling-Off Period" shall mean the period of seven (7) working days from the date on which the Customer has procured the Services from AES;

"Commencement Date" shall be the period of seven (7) working days from the date on which the Customer has signed the Order Form or has placed the request for the Services verbally by telephone with a representative of AES;

"Confirmation Letter" shall mean a letter confirming Customer details and other particulars in relation to the Services which is sent from AES to the Customer following their request for Services or execution of the Order Form;

"Contract" means the Order Form and/or the Confirmation Letter together with these Terms and Conditions;

"Customer" means any individual, person, firm, company or unincorporated association, to whom AES is providing the Services;

"Equipment" means the equipment provided by or on behalf of AES to the Customer for the collection of the appropriate Materials, or any substituted equipment for such equipment, and any additional equipment supplied for such purposes from time to time;

"Request for Payment Document" means the document given or dispatched to the Customer detailing the Equipment, the amount due in accordance with the Pricing Plan and, where relevant, the Service Charge;

"Materials" shall mean the collective term used for the organic materials, recyclable materials, glass materials and Waste Materials indicated as being suitable for disposal in the appropriate Equipment and is destined for recycling, recovery or disposal as appropriate;

"Order Form" means the note of Customer details and other particulars in the form prescribed by AES signed on behalf of the Customer and marked with the heading "DOMESTIC CUSTOMER ORDER FORM";

"Price" means the price that the Customer shall pay for the Services, inclusive of VAT, being the price indicated on the Order Form or Confirmation Letter or as notified to the Customer in writing by AES;

"Personal data" is data that identifies any living Customer or can be used to identify or contact any living Customer and may include the Customer's name, address, email address, mobile and telephone number. For the avoidance of doubt, Personal Data does not include data that identifies a firm, company or unincorporated association.

"Pricing Plan" means the pricing plan chosen by the Customer and indicated on the Order Form or Confirmation Letter, being one of the pricing plans available in a Customer's area, as indicated by AES from time to time;

"Route" shall mean a route on which AES regularly operates its services to customers and is willing to provide the Services.

"Services" means:-

1.1.1 the supply of the Equipment for use by the Customer at the Address;

1.1.2 the collection and disposal of the Materials; and

1.1.3 any additional services expressly agreed in the Order Form or Confirmation Letter;

"Service Charge" shall, if included in the Pricing Plan chosen by a Customer, mean the fee payable either bi-annually or annually, by the Customer to AES for the Services provided;

"Surcharge" shall mean an additional cent per kilogram charge, charged at the discretion of AES, in accordance with the provisions of clause 4.1.4 below;

"Term" shall mean the period of time from the Commencement Date up to the next Billing Period;

"Termination Right" shall mean the right of AES to terminate the Contract with immediate effect where a Customer is in material breach of the Terms and Conditions;

"Terms and Conditions" means these terms and conditions of service and any amendments, alterations or revisions made to them after the date hereof;

"Waste Materials" shall mean all waste material suitable for disposal in the appropriate AES' Equipment (but excluding recyclable materials, organic materials and glass materials) and shall not include hazardous or toxic waste, unless otherwise agreed in writing in advance with AES, (including but not limited to: liquid waste, car tyres, paint tins, plasterboard, animals, electrical appliances, batteries, carbon wastes, building materials and fluorescent bulbs) and produced at the Address and placed in the appropriate Equipment provided for this purpose by or on behalf of AES and destined for disposal.

2. SUPPLY OF SERVICES

2.1 AES agrees to provide the Services set out in the Order Form or Confirmation Letter in a proper and efficient manner.

2.2 Notwithstanding the provisions of Clause 2.1, AES shall have the right to make reasonable changes to times and dates for collection of Materials to meet operational and regulatory requirements. Where possible, AES shall give prior notification of such changes to the Customer and no claim shall lie against AES by the Customer in this respect.

2.3 If the Service is not carried out on the day specified, AES reserves the right to reschedule the visit to the next reasonable opportunity for such Service and no claim shall lie against AES by the Customer in this respect.

2.4 AES has the right to sub-contract the provision of any of the Services.

2.5 Notwithstanding the provisions of Clause 4.1.6, AES shall repair damage caused to the Equipment through reasonable wear and tear.

3. DELIVERY OF EQUIPMENT AND RISK

3.1 AES shall, so far as practicable, notify the approximate date of delivery of the Equipment (if any). Unless otherwise agreed with the Customer, AES shall effect delivery of the Equipment at the Address.

3.2 In all circumstances, delivery shall be deemed to take place when the Equipment comes within the possession or control (actual or constructive) of the Customer. Risk in the Equipment shall pass to the Customer immediately upon delivery of the Equipment to the Customer, notwithstanding any failure by the Customer to endorse their acceptance. AES shall not have any responsibility in respect of the safety of the Equipment following delivery of the Equipment despite title not having passed to the Customer.

3.3 Any Equipment delivered to the Customer, or in the possession of the Customer, will be the responsibility of the Customer and the Customer will be liable to take reasonable care of the Equipment, including the RFID Chip fitted on the Equipment. The Customer shall be liable for any damage (reasonable wear and tear excepted) however caused to the RFID Chip arising from the attempted removal of the RFID Chip, loss, neglect, or default caused by the Customer and/or the Customer agents.

3.4 AES at all times reserves the right to refuse delivery of Equipment and/or to provide or continue to provide the Services to any Address that is not or is removed from the Route and/or is deemed inaccessible for AES' collection vehicles and/or in the opinion of AES, a danger or risk will be created thereby, being in particular, a risk of danger or injury to third parties.

4. OBLIGATIONS OF THE CUSTOMER

The Customer shall ensure that:

4.1.1 when they want the Equipment to be emptied the Equipment is left in an accessible and safe place on the collection date, as set out in the collection calendar provided by AES from time to time;

4.1.2 all Materials to be collected shall be deposited in the appropriate Equipment (i.e. Only recyclable materials should be deposited in the Equipment for recyclable materials);

4.1.3 any Materials that has the potential to be carried by wind must be covered or secured within the Equipment;

4.1.4 the Equipment is not filled beyond the relevant weight restriction for the relevant Equipment, as communicated to the Customer by AES or otherwise, at the discretion of AES a Surcharge may be applied to the Customer's account or AES may refuse to collect the Materials from the Equipment;

4.1.5 the Equipment is not filled above the level load permitted by the Equipment, such that the lid cannot close;

4.1.6 they take all reasonable care of the Equipment while in their custody. The Customer shall be liable for any damage howsoever caused to or by the Equipment arising from the neglect or default of the Customer or their agents;

4.1.7 Materials are not compacted into the Equipment with the aid of mechanical pneumatic, (or any other), compaction devices for the avoidance of doubt, AES reserves the right to charge the Customer for any damage caused to the Equipment by the Customer's use of a mechanical pneumatic, (or any other), compaction devices to fill the Equipment;

4.1.8 the Equipment is kept in a safe place, away from third party interference;

4.1.9 there are no names, notices or labels affixed to the Equipment; and

4.1.10 the appropriate Equipment is used only for the disposal of the appropriate Materials.

4.2 For the avoidance of doubt, AES shall not be obliged to collect Equipment that is overweight, overfull, left out for collection on the incorrect collection date, left out for collection in an inaccessible location and/or Materials not contained within the appropriate Equipment. The decision of AES in this respect shall be final.

4.3 Customers shall permit AES reasonable access to their property or premises to enable AES to carry out the Services, in accordance with these Terms and Conditions.

5. FORCE MAJEURE

5.1 Should AES be delayed in or prevented from making delivery of the Equipment or providing the Services due to war, strikes, lock-outs, fire, floods, extreme weather conditions, explosion, labour disturbances, trade disputes or shortages in raw material or due to any other cause whatsoever beyond the control of AES, AES shall be at liberty (in its sole discretion) to cancel or suspend the Contract without incurring any liability for any loss or damage arising therefrom (whether in contract, negligence in Tort or otherwise).

6. TITLE TO THE EQUIPMENT

6.1 Notwithstanding delivery and passing of risk in the Equipment, or any other provision of these Terms and Conditions, title to the Equipment shall not pass to the Customer and the Equipment shall at all times remain the property of AES.

6.2 Subject to the consent of the Customer (whether given orally or in writing), AES may on termination of the Contract by either party re-take possession of the Equipment. For this purpose AES may visit any premises of the Customer or third party where the Equipment is kept for the purpose of re-taking possession of the Equipment.

7. PRICING AND PAYMENT

7.1 Customers shall pay for the Services in accordance with the Pricing Plan stated on the Order Form or Confirmation Letter and through one of the payment options available in their area, each as notified to them by AES from time to time.

7.2 AES reserves the right to amend any Pricing Plan, the Cancellation Fee, the Surcharge or the Service Charge during the Term, in line with AES's pricing review. If the Customer considers any amendments to the Pricing Plan, the Cancellation Fee, the Surcharge or the Service Charge to be too high the Customer may terminate the Contract with AES in accordance with clauses 11.4 and 11.5. For the avoidance of doubt, the amendments to the Pricing Plan, the Cancellation Fee, the Surcharge or the Service Charge will not apply to the Customer's account during the termination period.

7.3 It is hereby expressly agreed that, if the Customer does not pay for the Services within the payment period stated in the Request for Payment Document, this shall be considered a material breach of the Terms and Conditions of the Contract and AES may, at its option, either suspend all further Services to be provided to the Customer until payment has been paid or exercise their Termination Right.

7.4 All prices quoted are inclusive of Value Added Tax and any other taxes payable for the Services.

7.5 The Customer shall make all payments, without set-off or counterclaim and free and clear of all taxes, deductions, withholdings and other charges.

7.6 Any amendments to the Customer's Price will be confirmed in writing by AES to the Customer and will only be valid until the Customer's next Billing Period. For the avoidance of doubt, any amendments to the Customer's Price will not carry forward to subsequent Billing Periods unless expressly agreed in writing by AES.

7.7 Where a Customer receives a discounted Price for the Services, which is based on the payment method selected by the Customer and the Customer discontinues (for whatever reason)

the agreed payment method, AES reserves the right to discontinue the discounted Price to the Customer without further notice and to charge the Customer the undiscounted Price applicable at the time.

7.8 AES reserves the right, without further notice, to charge the Customer an administration fee of €5 per submission if a direct debit payment request is not honoured by the Customer's financial institution on behalf of the Customer.

7.9 AES may, at its discretion, suspend Services to the Customer at the Customer's request, if the Customer gives at least one week's notice in writing of the suspension subject to the Customer's account being up to date and the period of suspension is at least three continuous weeks and no more than three continuous months. For the avoidance of doubt, AES will only apply a credit to the Customer's account for the period of suspension.

8. INDEMNITY

8.1 THE CUSTOMER SHALL INDEMNIFY AES IN RESPECT OF ALL LOSS, DAMAGE OR INJURY OCCURRING TO ANY PERSON, FIRM, COMPANY OR PROPERTY, AND AGAINST ALL ACTIONS, SUITS, CLAIMS AND DEMANDS, CHARGES OR EXPENSES (INCLUDING LEGAL EXPENSES) IN CONNECTION THEREWITH FOR WHICH AES MAY BECOME LIABLE IN RESPECT OF THE EQUIPMENT AND THE MATERIALS IN THE EVENT THAT SUCH LOSS, DAMAGE, OR INJURY SHALL HAVE BEEN OCCASIONED BY THE NEGLIGENCE, MISUSE OF EQUIPMENT, BREACH OF DUTY OR BREACH OF THE TERMS OF THE CONTRACT BY THE CUSTOMER.

9. LIABILITY

9.1 AES's total liability under or in connection with the Contract whether in contract, tort (including negligence) or otherwise shall not exceed in aggregate the total fees for Services received by AES from the Customer during the previous six (6) months.

9.2 AES SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO THE CUSTOMER BY REASON OF ANY REPRESENTATION OR WARRANTY, CONDITION OR OTHER TERM OR ANY DUTY OF COMMON LAW, OR UNDER THE EXPRESS TERMS OF THESE TERMS AND CONDITIONS, FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITATIVE LOSS OR DAMAGE (WHETHER FOR LOSS OF CURRENT OR FUTURE PROFITS, LOSS OF ENTERPRISE VALUE OR OTHERWISE) AND WHETHER OCCASIONED BY THE NEGLIGENCE OF AES, ITS EMPLOYEES OR AGENTS OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 Nothing in these Terms and Conditions shall exclude or limit the liability of AES for death or personal injury resulting from the negligence of AES or any of its employees or agents, nor shall they operate to exclude or limit any statutory rights which cannot be legally excluded or limited, including the statutory rights of a consumer.

10. DATA PROTECTION

10.1 AES will process any Personal Data provided for the following purposes:

10.1.1 to adequately deal with the Services;

10.1.2 to contact the Customer if required in connection with the Services;

10.1.3 to respond to any communications sent to AES by the Customer; and/or

10.1.4 to send notifications about the range of services available from the Group if a Customer has opted to receive such notifications.

10.2 AES will not disclose Personal Data to third parties, outside of the Bord na Móna group, unless the Customer has consented to this disclosure or unless the third party is required to fulfil the Services (in such circumstances, the third party is bound by similar data protection requirements).

10.3 AES will disclose Personal Data if they believe in good faith that they are required to disclose it in order to comply with any applicable law, a summons, a search warrant, a court or regulatory order, or other statutory requirement.

11. TERMINATION OR CANCELLATION OF SERVICES

11.1 The Customer may cancel or terminate the Contract during the Cooling-Off Period.

11.2 The Contract shall commence with effect from the Commencement Date and shall continue for the duration of the Term unless terminated earlier in accordance with the provisions of clause 11.1 or 7.3. Thereafter, unless a party gives at least one month's written notice to the other, prior to the expiry of the Term, this Contract shall be deemed to be extended for further periods equal to the Term and shall continue in force until terminated by either party giving one month's written notice to the other prior to the expiry of any such extended Term.

11.3 AES will only accept cancellation or termination notices from the Customer and will not accept notification from any third party.

11.4 As per clauses 7.2 and 11.2, the Customer must confirm termination of the Services to AES in writing. For the avoidance of doubt, until such time as AES receives the termination notice from the Customer the Service Charges will continue to accrue.

11.5 As per clauses 7.2 and 11.2, AES reserves the right to insist on one month's written notice during which time the Services will continue to be provided by AES and the Service Charges will continue to accrue.

11.6 Upon termination of this Contract by the Customer, outside of the Cooling-Off Period, AES reserves the right to charge the Customer a Cancellation Fee and this charge will become due and owing to AES by the Customer as a normal contract debt.

11.7 If a credit applies to a Customer's account on termination or cancellation of the Services the Customer will receive a refund for the prepaid period less any Cancellation Fee that may be applied.

11.8 Where a Customer has obtained a discounted Price that is subject to the Customer agreeing to a minimum Term of Contract and the Customer subsequently cancels or terminates the Contract, prior to the expiry of the minimum Term, AES reserves the right to charge the Customer the remaining balance of the Price due to AES for the remainder of the Term.

11.9 On termination of the Contract AES shall have the right, in accordance with the provision of clause 6.2 to remove Equipment.

11.10 Upon termination of this Contract, outside of the Cooling-Off Period, by either party, any amounts owing to AES shall immediately become due and payable by the Customer. The termination of this Contract shall be without prejudice to any rights or obligations which shall have accrued before termination, including any remedy available in respect of a breach of this Contract.

12. GENERAL

12.1 The construction validity and performance of the Contract shall be governed by and construed in accordance with the laws of Ireland and for all matters arising under, out of or in connection with the Contract the parties hereby submit to the exclusive jurisdiction of the Irish courts.