



AGREEMENT AND UNDERTAKING

national consumer agency
gníomhaireacht náisiúnta tomhaltóirí

The National Consumer Agency (“the Agency”)

putting consumers first

-and-

The City Bin Co. (“City Bin”)

This Agreement and Undertaking is made by and between the National Consumer Agency and **CITY BIN** on the date set forth below. The Undertaking of **CITY BIN** contained herein is accepted by the Agency pursuant to section 73 of the Consumer Protection Act, 2007. The Agency and **CITY BIN** are referred to collectively herein as the “Parties”.

WHEREAS FOR THE PURPOSES OF THIS UNDERTAKING:

- A. City Bin is engaged in the waste collection and disposal of domestic waste. It provides a complete set of written terms and conditions for consumers who engage with the services of the company. These terms have been drawn up by the trader in advance and are presented as a standard form. The consumer is not presented with an option as to the terms upon which s/he may contract. None of the terms are individually negotiated.
- B. It is the function of the Agency pursuant to section 8(1) of the Consumer Protection Act 2007 (“the Act”) to, *inter alia* –
 - i. Promote and protect the interests and welfare of consumers;
 - ii. Enforce the relevant statutory provisions, including by the prosecution of offences, by way of summary proceedings
 - iii. Encourage compliance with the relevant statutory provisions,
 - iv. Investigate instances of suspected offences under any of the relevant statutory provisions.
- C. The Agency has examined the standard contract terms described at “A” herein and considered whether any of the terms and conditions as presented by City Bin constitute an unfair term in a contract concluded between a seller or supplier and a consumer as measured against the provisions contained within the EC Directive 93/13 on Unfair Terms in Consumer Contracts given effect in Ireland by S.I. 27 of 1995.
- D. As a result of the findings of its examination, the Agency has reason to believe that particular terms and conditions of the standard form contract as presented by City Bin to consumers are unfair. The particular terms and conditions are as follows;

- under the “Payment” heading

d) The method of payment to the Company can be changed from time to time with 1 week’s prior notice to The Buyer.

The NCA consider this to be unfair as it considers such a term to have the object or effect of enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract (as listed in Schedule 3, 1(j) to the Regulations).

- under the “Provision of Service” heading

e) If the Company’s retains ownership of its equipment (e.g. bins, locks, etc.) for the duration of the contract and the event that it is lost or stolen, The Buyer shall immediately notify The Company and shall remain liable for all charges incurred.

The NCA considers this to be unfair as it considers such a term to have the object or effect of imposing unspecified charges on the consumer thereby requiring any consume who fails to fulfil his obligation to pay a disproportionately high sum in compensation (as listed in Schedule 3, 1(e) to the Regulations).

f) The Company may for operational reasons change its invoicing methods and periods.

The NCA considers this to be unfair as it considers such a term to have the object or effect of enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract. (as listed in Schedule 3, 1(j) to the Regulations).

h) The Company may modify or suspend the Service wholly or partially, with or without notice, if such action is deemed necessary by The Company (e.g. for maintenance, security or other valid reasons) or if the Company is requested to do so by an authorised authority.

The NCA consider this to be unfair as it considers such a term to have the object or effect of enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract (as listed in Schedule 3, 1(j) to the Regulations).

j) The Company will apply an extra charge for contaminated bins (€30 per bin) or replacement bins (€40 per bin).

The NCA considers this term to be unfair as due to the absence of some qualification to protect compliant consumers from the actions of other parties, given that the bins must be left on the public footpath for periods of time, it thereby causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer (as provided for under Regulation 3(2))

k) The Company reserves the right to charge for excessive weight from The Buyer i.e. where The Buyer is disposing in excess of the threshold allowance of waste in the grey landfill bin (typically 50kg). Please note that an average bin weighs less than 30kg.

Terms (a), (b) and (c) under the "Fair Usage Policy" heading are also relevant.

The Agency considers these to be unfair as consumers do not have the opportunity to familiarise themselves with the nature of any excessive weight charges before entering into the contract and such a term thereby causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer (as provided for under Regulation 3(2)).

o) The Company will notify The Buyer in advance of any changes to the pricing structure.

The NCA considers this to be unfair as it considers that such a term has the object or effect of enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract (as listed in Schedule 3, 1(j) of the Regulations).

- under the "Termination of Service" heading

a) The term of this Agreement shall be 12 months commencing on the date the bins are delivered. In the event that The Buyer continues to engage the Company after the expiration of the term of one year from the commencement date, it is hereby agreed and declared that the terms of this Agreement shall continue to apply for an additional 12 months mutatis mutandis.

The NCA considers this to be unfair as Regulation 5(1) requires that terms are drafted 'in plain, intelligible language'.

d) If the contract is terminated within 12 months of the start date, then a surcharge of €15 per bin shall apply for returning and cleaning the bins.

e) Furthermore, if the direct debit is terminated before the final payment is made, then The Buyer is liable for a minimum charge of €100, or for all reasonable administration and legal costs incurred by The Company in recovering your final payment.

The NCA considers these to be unfair as it considers such a term to have the object or effect of requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation (as listed in Schedule 3, 1(e) to the Regulations).

- E. As a result of the findings of its examination, the Agency is contemplating an application to the High Court wherein the Agency would seek an order prohibiting the use of the terms and conditions as outlined at 'D' herein.
- F. As a result of this investigation, the Parties have reached an agreement, as more particularly described below, wherein the Agency accepts City Bin's undertaking of certain obligations in respect of its use of the subject terms and conditions.

IT IS HEREBY AGREED AS FOLLOWS :

1. City Bin undertakes that:-
 - a) It will refrain from using terms and conditions in its standard form contract which are non-negotiated and cause a significant imbalance in the parties rights and obligations under the contract to the detriment of the consumer.
 - b) Within **7 days**, from the date of this agreement, it will amend its standard form contract so as to address the unfair aspects of the terms and conditions contained at 'D' herein.
 - c) It will refund those consumers who have already paid the bin contamination charge (€30 per bin) and / or the bin replacement charge (€40 per bin).
 - d) It will communicate the changes to its standard contract to its consumers at the earliest opportunity but no later than **7 days** from the date of this agreement.
2. In consideration of the undertakings furnished by City Bin as set out herein, the Agency agrees that it will not institute an application to the High Court under S.I. 27 of 1995 for an order prohibiting the use of the terms and conditions described at "D" herein. Nothing in this agreement shall be construed so as to impair the Agency's right to institute civil or criminal proceedings for any matter not specifically described herein.
3. This Agreement and Undertaking shall be and is intended by the Parties to be a binding and enforceable agreement which may be enforced by action in any Court of competent jurisdiction in the State.
4. The Undertakings provided herein shall be binding on the directors, officers, employees, servants, agents, and successors and assigns of City Bin.
5. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.

dated this 05 day of 02 2013 in Dublin, Ireland.

AGREED AND ACCEPTED BY:

Signed 

Mr/Ms Gene Browne (Block Capitals)
Director / Manager / Secretary / other officer /* on behalf of City Bin

Signed 

John Shine
Director of Commercial Practices for and on behalf of the National Consumer Agency

* Delete where appropriate