



AGREEMENT AND UNDERTAKING

national consumer agency
gníomhaireacht náisiúnta tomhaltóirí

The National Consumer Agency (“the Agency”)

putting consumers first

-and-

Greenstar Ltd (In Receivership) (“Greenstar”)

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

WHEREAS FOR THE PURPOSES OF THIS UNDERTAKING:

- A. Greenstar 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 Greenstar 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 Greenstar to consumers are unfair. The particular terms and conditions are as follows;

- Under what is listed as ‘1. General’ you publish the following;

“These terms and conditions are subject to change at any time, at Greenstars sole discretion.”

The Agency considers this term to be unfair as it has the object or effect of enabling Greenstar 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 what is listed as ‘2. Payment & Billing’ at 2.(b) you publish the following;

“The Company will provide written notification to the Customer in advance of any change to domestic service charges.”

The Agency considers this term to be unfair as you publish a term at 2.(a) which states that, ‘*The price of the service provided shall be the Company’s price ruling at the date of customer application process.*’ The term at 2(b) then introduces a facility the object or effect of which allows Greenstar to increase its price without giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded (as listed in Schedule 3.1(1) of the Regulations).

- Under what is listed as ‘2. Payment & Billing’ at 2.(i) you publish the following;

“Administration charges are subject to change at any time, at Greenstars sole discretion.”

The Agency considers this term to be unfair as it has the object or effect of enabling Greenstar 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 what is listed as ‘4. Termination of Service’ at 4(c) you publish the following;

“If a contract is terminated before the minimum contract term, the following cancellation charges will apply; (i) early cancellation fee of €25 (ii) surcharge of €25 per bin for returning and cleaning the bins.”

The Agency considers this to be a penalty clause as the quantum cannot be considered to be a genuine pre-estimate of the loss that would be suffered by Greenstar in the event of a termination. The Agency notes the absence of a counterbalancing sanction on the company if it does not comply with its obligations. The Agency notes that the contract is also silent as to what constitutes ‘*the minimum contract term*’ and is therefore unfair as it potentially exposes the consumer to being irrevocably bound to a term which he had no real

opportunity of becoming acquainted with before the conclusion of the contract. (as listed in Schedule in 3.1(i) of the Regulations).

- Under what is listed as ‘4. Termination of Service’ at 4(e) you publish the following;

“Where a direct debit instruction is terminated before the final payment is made, the Customer 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 Agency considers the imposition of a minimum charge of €100 to be open ended, arbitrary and therefore penal. Greenstar have failed to provide a valid reason for the imposition of such a charge and therefore such a term has 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) of 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 Greenstar’s undertaking of certain obligations in respect of its use of the subject terms and conditions.

IT IS HEREBY AGREED AS FOLLOWS :

1. Greenstar 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 use all reasonable endeavours to refund those consumers who have already paid the €25 "early cancellation fee".
 - d) It will use all reasonable endeavours to refund those consumers who have already paid the €25 per bin charge for bin return / cleaning.
 - e) 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 Greenstar 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 Greenstar.
5. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.

dated this 7th day of March 2013 in Dublin, Ireland.

AGREED AND ACCEPTED BY:

Signed _____


Mr/Ms JERRY DEMPSEY (Block Capitals)
Director / ~~Manager~~ / ~~Secretary~~ / ~~other officer~~ /* on behalf of Greenstar

Signed _____

John Shine

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

* Delete where appropriate