



## AGREEMENT AND UNDERTAKING

national consumer agency  
gníomhaireacht náisiúnta tomhaltóirí

**The National Consumer Agency ("the Agency")**

putting consumers first

-and-

**Country Clean Recycling Ltd ("Country Clean")**

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

### WHEREAS FOR THE PURPOSES OF THIS UNDERTAKING:

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

- Term 4

***"Keep the wheelie bin in good and substantial repair and condition (fair, wear and tear only excepted) and replace the wheelie bin should it be stolen or broken and in default of so doing permit Country Clean to take possession of the wheelie bin for the purpose of having repairs carried out and repay to Country Clean the cost of such repairs"***

The Agency notes that the bin replacement cost is not specified. The Agency considers this provision 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).

- Term 5

***"Permit Country Clean and other person authorised by him at all reasonable times to enter upon the premises in which the wheelie bin is for the time being placed or kept for the purpose of inspection and examining the condition of the wheelie bin or repairing the same or taking possession thereof"***

The Agency has concerns about Country Clean Recycling seeking a facility of free entry to the consumer's property and considers that this provision causes a significant imbalance in the parties' rights, to the detriment of the consumer (contrary to the requirement listed in Regulation 3.(2) of the aforementioned Regulations).

The Agency has a similar concern in relation to Term 11 below.

***"Upon the termination of this Agreement pursuant to clauses 6 or 7 hereof Country Clean may without notice take possession of the wheelie bin and may for that purpose by himself, his servants or agents without previous notice enter upon any land or premises on or in which the bin is believed by Country Clean to be situated"***

- Term 6

***"Indemnify Country Clean against all third party claims howsoever arising and against loss of or damage to the wheelie bin or any part thereof from whatever cause arising and whether or not such loss or damage results from the negligence of the customer or any other party"***

The Agency has concerns that this provision, which exposes the consumer to unspecified costs, causes a significant imbalance in the parties' rights, to the

detriment of the consumer (contrary to the requirement listed in Regulation 3.(2) of the aforementioned Regulations).

- Term 7

***"Punctually pay for all repairs to or treatment of the wheelie bin and keep the same free from any distress execution or other legal process"***

The Agency considers this provision to be unfair as it is unclear as to what is actually meant by the latter part of this sentence (contrary to the requirement listed in Regulation 5.(1)).

The Agency has a similar concern in relation to Term 12.

***"No relaxation, forbearance, delay or indulgence by Country Clean in enforcing any of the terms and conditions of this Agreement or the granting of time by Country Clean to the customer shall prejudice effect or restrict the rights and powers of Country Clean hereunder nor shall any waiver of agreement be entertained"***

- Term 9

***"Country Clean Recycling have the right to terminate any contract at any given time"***

The Agency considers this to be unfair as it considers such a term to have the object or effect of authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, (as listed in Schedule 3, 1(f) to the Regulation).

- Term 13

***"Upon service termination Country Clean Recycling may apply a cancellation, return fee"***

The Agency notes that the contract does not specify a quantum for the "cancellation, return fee" and is also silent on the criteria when such a fee will apply. The Agency considers this provision 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).

- 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 Country Clean's undertaking of certain obligations in respect of its use of the subject terms and conditions.

**IT IS HEREBY AGREED AS FOLLOWS :**

1. Country Clean 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 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 Country Clean 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 Country Clean.
5. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.

dated this 20 day of March 2013 in Dublin, Ireland.

**AGREED AND ACCEPTED BY:**

Signed \_\_\_\_\_

Mr/Ms

*DENIS MURPHY*

(Block Capitals)

~~Director / Manager / Secretary~~ / other officer /\* on behalf of Country Clean

Signed \_\_\_\_\_

John Shine

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

\* Delete where appropriate