



## AGREEMENT AND UNDERTAKING

national consumer agency  
gníomhaireacht náisiúnta tomhaltóirí

The National Consumer Agency ("the Agency")

putting consumers first

-and-

Oxygen Environmental ("Oxygen")

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

### WHEREAS FOR THE PURPOSES OF THIS UNDERTAKING:

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



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13 March 2013

Ms Majella Flynn  
Head of Customer Operations  
Oxigen Environmental  
Merrywell Industrial Estate  
Ballymount Road Lower  
Dublin 22

### Potentially Unfair Terms in the Oxigen 'Terms & Conditions'

Dear Ms Flynn

The Agency welcomes the intention of Oxigen to provide an Undertaking to the National Consumer Agency to address the issues previously highlighted.

Please find enclosed a copy of the Undertaking, as provided for by S.73 of the Consumer Protection Act 2007, that the Agency is seeking within 7 days of receipt of this correspondence. I would be obliged if you would arrange for the Undertaking to be signed / dated and returned to me.

Yours

John Shine

Director of

Practices

- ***“Lost or stolen bins will be subject to a €50 replacement charge”***

The Agency considers a €50 per bin replacement charge to be excessive and therefore unfair as it seeks to impose disproportionately high costs on the consumer (as listed in Schedule 3, 1(e) to the Regulations).

- ***Termination of service: In order to terminate the service one month’s notice of your intention to terminate must be provided. Termination of service will be subject to a €50 cancellation fee***

In the absence of a breakdown of the legitimate costs to Oxigen in the event of a termination of service, the Agency considers that the €50 cancellation fee might be considered a penalty clause as the quantum cannot be considered to be a genuine pre-estimate of the loss that would be suffered by Oxigen.

- ***Please note that if the service was paid for in advance, the customer is not entitled to a refund at the time of termination***

The Agency consider this to be unfair as it considers such a term to have the object or effect of permitting Oxigen to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount where Oxigen is the party cancelling the contract (as listed in Schedule 3, 1(d) 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 Oxigen’s undertaking of certain obligations in respect of its use of the subject terms and conditions.

**IT IS HEREBY AGREED AS FOLLOWS :**

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

dated this 24<sup>TH</sup> day of MARCH 2013 in Dublin, Ireland.

**AGREED AND ACCEPTED BY:**

Signed



Mr/Ms MARTIN HARRELL (Block Capitals)  
Director / Manager / Secretary / ~~other officer~~ /\* on behalf of Oxigen

Signed

John Shine

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

\* Delete where appropriate