

Te Kaunihera-ā-Rohe o Ngāmotu

New Plymouth District Council

The Sorting Depot

User Terms and Conditions

New Plymouth District Council ("Council")	
Street address	84 Liardet Street, New Plymouth 4342
Postal address	Private Bag 2025, New Plymouth 4340

[User name] ("User")	
Street address	[]
Postal address	[]
Company No.	[]

The Sorting Depot

User Terms and Conditions

1. **Purpose:** The purpose of this contract is to create a legally enforceable agreement between the User and the Council which will allow the User to dispose of Acceptable Waste and Recoverable Materials in accordance with the Acceptable Criteria set out in Schedule 1 (the “**Acceptable Waste**” and “**Recoverable Materials**”) at the commercial waste sorting facility owned and operated by the Council (“**the Sorting Depot**”) in accordance with the terms and conditions contained in this contract.
2. **Term:** This contract will commence on the date on which parties have signed this contract (“**Commencement**”) and continue until terminated in accordance with clause 11.
3. **Recycling Services:**
 - 3.1 **Provision of Services:** The Council will, on the terms set out in this contract, accept Acceptable Waste and Recoverable Materials from the User for sorting, recycling and disposal at the Sorting Depot (the “**Services**”) in consideration of the User’s payment of user charges under clause 6 of this contract (“**User Charges**”), and the other obligations on the part of the User under this contract.
 - 3.2 **Modification of Services:** The Council may, at its discretion:
 - 3.2.1 **Modification of Terms:** modify, change or amend the terms and conditions of this contract, including any changes to the Recoverable Materials at any time with notice to the User and will publish any such amendments on its website; and
 - 3.2.2 **Disruption of Services:** modify, change, interrupt or suspend the supply of the Services under this contract for any other reason (acting reasonably). The Council makes no representations or warranties for, and does not guarantee any minimum or maximum quantity, frequency or availability of Services.
4. **Access and Operating Hours:**
 - 4.1 **Weighbridge:** The User must weigh in all Acceptable Waste and Recoverable Materials at the Sorting Depot’s weighbridge upon entry to the Sorting Depot.
 - 4.2 **Operating Hours:** While the Sorting Depot will normally be open within the hours of 8am and 4.30pm Monday to Friday (excluding public holidays and the period from Christmas Day to 5 January the following year), the Council reserves the right to amend the Sorting Depot opening hours at any time for any reason (including as required by the consents held by the Council) as may be published on the Council’s website (<https://www.npdc.govt.nz/>) from time to time.
5. **User Obligations:** From Commencement, the User shall:
 - 5.1 **Compliance:** at all times, comply with:
 - 5.1.1 **Terms of Use:** the terms and conditions of this contract and any applicable additional terms published on the Council’s website from time to time (together, “**Terms of Use**”), as well as ensuring that the User’s employees or agents comply with the Terms of Use as if they were party to them;
 - 5.1.2 **Acceptance Criteria:** the Acceptance Criteria, in disposing of Acceptable Waste and Recoverable Materials;

- 5.1.3 Compliance with Laws:** all legal and regulatory requirements applicable to the User when accessing or using the Facility, including (but not limited to):
- (a) any relevant requirements of the Waste Minimisation Act 2008 and any associated regulations, and / or any bylaw that is in effect; and
 - (b) the Health and Safety at Work Act 2015 and all related legislative instruments, regulations, guidance and codes of practice (as well as the Council's health and safety rules, policies and procedures, and all health and safety directions given by the Council). To the extent that the Council and the User have overlapping health and safety duties under this contract, the User agrees to consult, co-operate, and co-ordinate activities with the Council, so far and is reasonably practicable (and to provide all information the Council may reasonably require).
- 5.2 Payments:** in accordance with clause 6 of this contract:
- 5.2.1 User Charges:** pay the User Charges; and
- 5.2.2 Penalty Fees:** where the User has disposed of waste at the Sorting Depot which does not comply with the Acceptance Criteria ("**Contamination**"), pay the penalty fees ("**Penalty Fees**");
- 5.3 Instructions:** follow all Council representatives' instructions when accessing or using the Sorting Depot;
- 5.4 Inspection:** provide satisfactory access to and collaborate with Council representatives to inspect any loads of Acceptable Waste and Recoverable Materials prior to depositing Acceptable Waste and Recoverable Materials at the Sorting Depot;
- 5.5 Use of the Sorting Depot:** take reasonable care when accessing or using the Sorting Depot to avoid:
- 5.5.1 Damage:** damage to the Sorting Depot, or any vehicles or property belonging to another person using the Sorting Depot or to any member of the public (and the User must report any such damage immediately to the Council); and
 - 5.5.2 Contamination:** any contamination with hazardous materials of the Acceptable Waste and Recoverable Materials at the Facility (any such contamination must be reported immediately to the Council);
- 5.6 Behaviour:** behave in a professional and courteous manner towards the Council's representatives, other users of the Sorting Depot and any member of the public;
- 5.7 Notify of Breach:** notify the Council of other users of the Sorting Depot who are using the Sorting Depot in a way which would breach the terms of this contact; and
- 5.8 Reduce Disruption:** take all practicable steps to reduce any interruption or disruption caused to others by the User's presence at, or use of, the Sorting Depot, including by ensuring the noise levels from the User's vehicles and activities are kept to a minimum while using the Sorting Depot.
- 6. Payment:**
- 6.1 Monthly Invoice:** The Council will invoice the User on a monthly basis for the User Charges, and to the extent incurred by the User, any Penalty Fees, at the rate published on the Council's website (<http://www.npdc.co.nz>) from time to time, together with any other charges incurred by the User under the Terms of Use.

- 6.2 Payment of Invoice:** The User will pay the Council's invoices sent to the User by the due date set out on the relevant invoice.
- 6.3 Failure to Pay Invoice:** Any failure to pay the relevant invoices in full by the due date may incur late payment charges, interest, administration charges, collection and/or legal fees as notified by the Council to the User.
- 6.4 Change to Account Information:** The User is obligated to inform the Council of any change to account information and failure to do so will not affect the User's liability to pay any invoices or any charges levied pursuant to clause 6.3.
- 6.5 Refusal of Supply:** The Council may refuse supply where the User has failed to pay charges in accordance with this clause, or breached any other term of this contract.
- 7. Indemnity:** The User shall indemnify the Council, and keep the Council indemnified, against any loss, actions, claims, damages, proceedings or liability the Council may suffer or incur in relation to the User's access to or use of the Sorting Depot, including without limitation:

 - 7.1 Misrepresentation or Breach:** any misrepresentations or breaches of warranties or guarantees given by the User regarding its access to, and use of, the Sorting Depot or the Services, whether express or implied;
 - 7.2 Breach of Terms of Use:** any breach by the User of the Terms of Use;
 - 7.3 Damage caused by User:** any damage (accidental or otherwise) caused directly or indirectly by the User, its employees, contractors or agents to the Sorting Depot or other property;
 - 7.4 Disruption to Facility Operations:** any disruption to the Sorting Depot operations caused by the User, its employees or agents;
 - 7.5 Contamination:** any Contamination caused at the Sorting Depot or to any Recoverable Materials, including any losses suffered in remedying such Contamination; and
 - 7.6 Claims from Customers:** any claims from the User's customers or other persons concerning property damage, pecuniary loss, injury or death resulting from any act or omission of the User, its employees or agents.
- 8. Liability:** The Council shall not be liable to the User for any loss, damage or inconvenience which the User may suffer or sustain in respect of its access to, or use of, the Sorting Depot or the Services, including as a result of:

 - 8.1** any interruption to access of the Sorting Depot or to the Services; or
 - 8.2** any deficiencies in the quality of the Services.

The Council shall not be liable to the User or any third party in respect of any indirect or consequential loss. The maximum liability of the Council under or in connection with this contract whether arising in contract, tort (including, without limitation, negligence) or otherwise shall not exceed the charges paid by the User in accordance with clause 6 of this contract.
- 9. Disputes:** If a dispute arises between the parties as to the Terms of Use, the following process will apply:

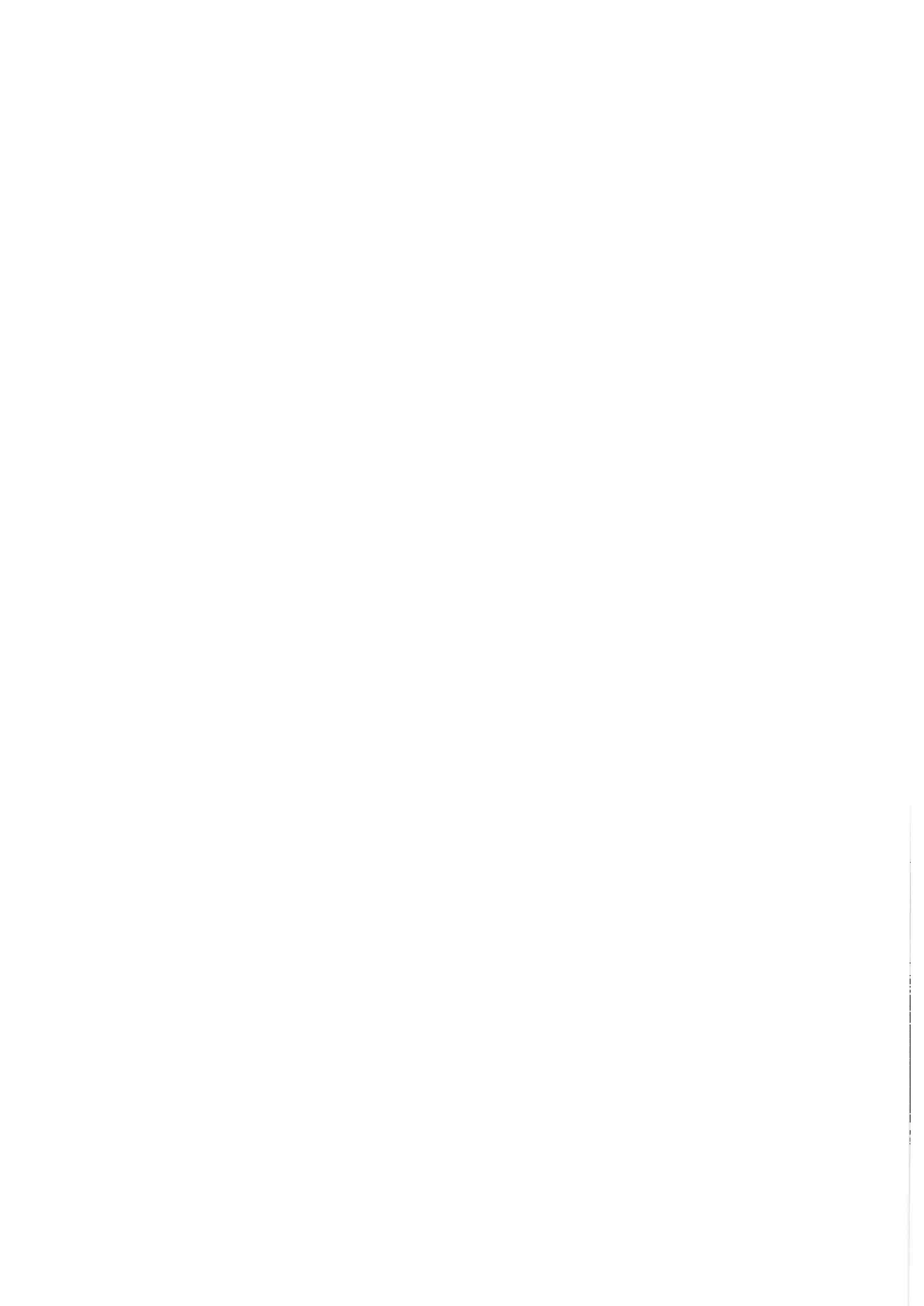
 - 9.1 Meeting with Council:** the Council will offer a meeting with the User at the Council offices in an attempt to resolve the dispute by discussion;

- 9.2 Mediation:** if the meeting fails to resolve the dispute, either party may require the dispute to be referred to mediation;
- 9.3 No Court Action:** Where either party has required that the dispute be mediated, neither party can take any court action in respect of the dispute until the mediation has been concluded; and
- 9.4 No Termination for Late Payment:** the Council will not terminate the contract for late payment of a genuinely disputed amount, where the User is taking reasonable steps to comply with the dispute resolution process above.
- 10. Force Majeure:** Neither party will be liable for any failure to perform any of its obligations under this contract if that failure results directly from an event or circumstance beyond the reasonable control of that party, including but not limited to pandemic, storm, tempest, flood, act of God, riot or civil disturbance, war, military action, insurrection, act of any governmental or military agency acting under actual or assumed authority, expropriation, delay in transport, failure of any source of supply, acute or unusual material shortages, strike, lockout, labour disturbances or lawful or unlawful labour dispute and any other like cause, provided that this clause does not apply to any payment obligations under this contract.
- 11. Termination:** This contract will terminate on the earlier of:
- 11.1 Written Notice by Party:** seven days' written notice by either party to the other party of the intention to terminate; or
- 11.2 Breach by User:** immediately following notice by the Council to the User that the User:
- 11.2.1** has breached the Terms of Use; or
- 11.2.2** suffers any insolvency event, including where the User becomes insolvent, has appointed an administrator, liquidator, receiver or trustee over the whole or any part of its property, ceases or threatens to cease carrying on business, or enters into any arrangement for the benefit of its creditors,
- acknowledging the Council may also at its discretion suspend the agreement in whole or part.
- 12. Consequences of Termination:**
- 12.1 Payment of Final Invoice:** On termination of this agreement, the User will pay all unpaid User Charges and any Penalty Fees incurred up to the time of termination pursuant to a final invoice issued in accordance with clause 6.1.
- 12.2 Rights Not Prejudiced:** If the Council terminates this contract, it will not affect the Council's rights against the User that arose prior to the date of such termination.
- 13. Assignment:** The User shall not, directly or indirectly, assign or transfer any of its rights or obligations under this contract, except with the prior written consent of the Council.
- 14. Entire Agreement:** This contract supersedes any other agreements or arrangements between the parties in respect of the supply of commercial waste sorting services by the Council to the User which existed on or prior to Commencement. Except as otherwise stated, this contract contains everything the parties have agreed in relation to the matters it deals with. No party may rely on an earlier document or anything said or done by another party, or by a director, officer, agent or employee of that party, before this contract was executed, except as permitted by law.

15. **No Representations or Warranties:** The User acknowledges that the Council makes no representations or warranties that the Sorting Depot or Services are suited to any particular purpose or use, regardless of whether or not the User has advised the Council of such purpose or use.
16. **Regulatory Role of the Council:** Nothing in this contract shall be used to limit, remove, alter or restrict any rights, powers, remedies or actions which the Council may have under any statute, regulation or bylaw, or in any other capacity or in respect of any other matters.
17. **Exclusion of CGA:** In respect of any Services supplied to a User registered in New Zealand, to the extent the Services are acquired by the User for business purposes, the Consumer Guarantees Act 1993 does not apply.
18. **Reliance:** A copy of this contract may be relied on by the Council or the User and presented as evidence of an agreement between the Council and the User on the terms set out in this contract.
19. **Governing Law:** This contract is governed by New Zealand law and New Zealand courts have exclusive jurisdiction over any matters subject of this contract.

Signed under delegated authority for and on behalf of New Plymouth District Council by:
 <hr/> <i>Authorised signatory</i>
Name: Amy Brasch
Position: NPDC Resource Recovery Operations Lead
Date: _____

Signed for and on behalf of [User name] by:
 <hr/> <i>Signature of Director/Authorised signatory</i>
Name: []
Position: []
Date: _____
 <hr/> <i>Signature of Director/Authorised signatory</i>
Name: []
Position: []
Date: _____



SCHEDULE 1

ACCEPTANCE CRITERIA

The Sorting Depot is targeting mixed dry waste, termed Acceptable Waste. Acceptable Waste includes, but is not limited to materials that:

- contain no asbestos;
- are suitable for sorting, being free of liquids, putrescible (for example green or food waste or soil) or hazardous material;
- are uncompacted – transported loose in skip bins, bulk transporters (e.g. those servicing flexi-bins), hook bins or similar containers; and
- are not contained in bags or otherwise held together in a way that will make separation difficult or make it difficult to identify material through visual inspection.

Acceptable Waste may contain variable proportions of Recoverable Materials and Landfill Waste. Loads that are assessed at the weighbridge as containing no Recoverable Materials may not be accepted.

The Sorting Depot may also accept loads that are comprised of a single Recoverable Material.

The presence of prohibited waste i.e. material that does not meet the Acceptable Waste criteria noted above in a load deposited at the site will result in the entire load being defined as Prohibited waste. Any load containing prohibited waste will incur a non-compliant load fee.

Recoverable Materials	Specification Reference
Cardboard	Dry, reasonably clean
Concrete, brick, rubble	Concrete for recycled aggregate Largely free of dirt Larger pieces and concrete that contains steel may incur Penalty Fees
Metals	Separate into ferrous and non-ferrous Metals where possible.
Untreated native timber	
Untreated timber	Timber with nails accepted Little or no paint
Treated timber	
Building fixtures and other materials	Good condition Meets listed sizes and types
Tyres	Tyres removed from rims
General recyclables (kerbside) – paper, card, tin, al, plastic containers 1, 2, 5, glass bottles and jars	No window glass Generally clean
Polystyrene	
PVC pipe	Up to 6 m long
PE/HDPE pipe	Up to 4 m long
Window glass	Criteria apply

