

GENERAL CONDITIONS FOR THE REMOVAL OF WASTE AND SCRAP METAL

DEFINITIONS

In these Conditions the following words and expressions shall have the following meanings:

Agreement

means any Agreement whether or not in writing between the Customer and Ward for the provision of the Service into which these General Conditions are incorporated, the Credit Application and the Transfer Note relating to the Service from time to time

Charge

means each and any charge payable by the Customer to Ward Recycling under the Agreement or the aggregate of all Charges (as the context requires)

Collection Site

means the site or sites further particulars of which are set out in the Agreement or the Transfer Note

Commencement Date

means the date that the Agreement is signed by the Customer

Credit Application

means the mandatory credit application completed by the Customer

Customer

means the customer or supplier of Scrap Metal and/or Waste described in the Credit Application or the Transfer Note

Disposal Site

means any site or sites for the disposal of Waste and/or Scrap Metal details of which are set out in the Agreement or a Transfer Note

Duty of Care Charge

means any environmental administration charge or duty of care charge levied by Ward Recycling from time to time in accordance with the Agreement

Equipment

means each and every item of waste disposal equipment provided by Ward Recycling to the Customer, including containers

Initial Period

means the period during which the Agreement may not be terminated as indicated overleaf which runs from the date that the Agreement is signed by the Customer

Rebate

means any rebate in relation to Scrap Metal or Recyclate granted by Ward Recycling to a Customer

Recyclate

means any Waste which may be recycled

Relevant Legislation

means any statute, European Community Directive or the requirements of any government department, local authority or other public or competent authority, and guidelines contained in government waste management papers and codes of practice issued by the government for the waste disposal industry and which are relevant to the parties obligations under the Agreement

Scrap Metal

means any scrap metals of the type or description specified in the Agreement or any current Transfer Note or otherwise as may be agreed by Ward Recycling and the Customer during the Term

Service

means the provision of Equipment and a Transfer Note (and/or any other document required for the lawful storage, collection, transportation and disposal of Waste and/ or Scrap Metal), collection of Waste and/ or Scrap Metal, transport of Waste and/ or Scrap Metal and disposal of Waste and/ or Scrap Metal or any part thereof as agreed between Ward Recycling and the Customer or as described in the Agreement

Special Waste

means a special waste as defined in the Special Waste Regulations 1996

Term

means the Initial Period and the period thereafter until the date when the Agreement is terminated under clause 16 other than in relation to a single collection when Term shall mean the period from the date of signature of the Agreement by the Customer to the date on which the Service is performed or paid for in full (whichever is the latter)

Transfer Note

means the current controlled waste description and transfer note completed by the Customer and Ward Recycling pursuant to the provisions of the Environmental Protection Act 1990 and regulations made thereunder which relates to the Waste covered by the Agreement

Transgression

means any single breach of the Agreement, tort or other act, default, omission or statement of Ward Recycling its employees, agents or sub-contractors in respect of which Ward Recycling is held liable to the Customer

Vehicle

means each and every vehicle owned or operated by Ward Recycling, its agents or subcontractors which visits any Collection Site to deliver, empty, replace or remove Equipment

Ward Recycling

means Donald Ward Limited or any of its subsidiary or associate companies (each as defined in the Companies Act 2006)

Waste

means any waste in respect of which Ward Recycling is to provide the Service further particulars of which are set out in the Agreement or in any current Transfer Note applicable to the Agreement

Working Day

means a day (excluding Saturday and days where local holidays do not coincide with public/bank holidays) on which banks in London are open for general business

1 GENERAL

1.1 These conditions apply to all Agreements for the supply of the Service by Ward Recycling and supersede any previous terms and conditions. No additions or modifications to or terms inconsistent with these General Conditions shall be binding upon Ward Recycling unless specifically agreed in writing by Ward Recycling.

1.2 Ward Recycling requires a credit application from the Customer and in processing the credit application the Customer consents to Ward Recycling making use of credit reference agencies or other sources, who may keep a record of Ward Recycling's enquiry, and that Ward Recycling may use any information obtained for the purpose of risk assessment, fraud prevention and for occasional debt recovery. In the event that a Credit Application is rejected or qualified in a manner unacceptable to Ward Recycling the Agreement shall be void and the Customer shall have no claim against Ward Recycling in relation to it

1.3 The rights and obligations of the Customer under this the Agreement shall be personal and shall not be assignable without the express consent of Ward Recycling.

1.4 A person who is not a party to the Agreement shall not have any rights under or in connection with it.

1.5 If there is any conflict or ambiguity between these General Conditions and the terms and conditions of the Agreement, the terms and conditions set out in the Agreement shall prevail.

2 DURATION

2.1 The Agreement shall commence on the Commencement Date and shall continue unless and until terminated in accordance with the Agreement or these General Conditions.

2.2 Unless stated otherwise in the Agreement, during the Term the Customer shall not obtain the Service or services substantially similar to the Service from any third party.

3 PRICE AND PAYMENT TERMS

3.1 The Charge will be calculated on the basis set out in the Agreement. The amounts stated in the Agreement are exclusive of VAT and the Customer shall pay all sums due in respect of VAT in accordance with the invoice for the Service.

3.2 Unless otherwise stated in the Agreement, all payments for the Service which is 'TW' or 'REL' shall be due and payable by the 15th day of the month following the month of invoice and all payments for services not 'TW' or 'REL' shall be due and payable no later than 30 days from end of the month of invoice and time for payments shall be of the essence of the Agreement.

3.3 Any sums, which are not paid by the due date will attract interest at the rate dictated by the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) or any successor legislation Without prejudice to Ward Recycling's other rights in respect thereof, if the Customer defaults in payment by the due date of any amount invoiced for the Service, Ward Recycling shall be entitled to withhold further performance of the Service under the Agreement until all arrears have been discharged by the Customer.

3.4 The Customer shall not be entitled to dispute any payment due or made. The Customer agrees that Ward Recycling's records will be proof of the Service provided.

3.5 Without prejudice to any other rights of Ward Recycling, if there is or there arises reason to doubt that amounts due from the Customer will be paid in full then Ward Recycling reserves the right to require payment in advance before commencing or continuing the Service or, at its sole option, to terminate the Agreement forthwith.

3.6 Ward Recycling shall be entitled to offset any amount owed by Ward Recycling to the Customer under the Agreement or any other Agreement (and whether in relation to the purchase by Ward Recycling of scrap metal or otherwise) against any amount owed by the Customer to Ward Recycling under the Agreement.

3.7 Ward Recycling may increase the Charge at any time to take account of any variation in Ward Recycling's costs including (but not limited to) variations in wages, disposal costs, administration costs, cost of materials and Equipment, fuel costs, taxes, duties and cost of compliance with Relevant Legislation. Ward Recycling shall endeavour to give the Customer not less than one calendar month's notice of any such variation of the Charge but notwithstanding this the Customer shall be liable to pay any increase from the date specified in the notice.

3.8 Where a lift rate charge is based on a maximum weight, Ward Recycling may revise the lift rate charge to reflect any additional costs which Ward Recycling incurs as a result of exceeding the maximum weight. Ward Recycling may increase the maximum weight with an increased lift charge if deemed acceptable within Ward Recycling's health and safety guidelines

3.9 Ward Recycling may charge and the Customer shall pay to Ward Recycling the Duty of Care Charge.

3.10 Ward Recycling may, at any time, require the Customer to pay a security deposit in relation to any item of Equipment. Ward Recycling may use the security deposit to pay outstanding Charges or other charges under the Agreement.

3.11 In the case of a Rebate, Ward Recycling shall be entitled, at its discretion, to apply either the price for the relevant materials stated in the Agreement or the current price offered by Ward Recycling from time to time

3.12 Ward Recycling may, at its sole discretion, pay or agree to pay to the Customer all or part of the Scrap Metal Price to the Customer before the Scrap Metal is collected by or delivered to Ward Recycling (an "Advance Payment").

3.13 In any circumstances where Ward Recycling has made an Advance Payment following the receipt by Ward Recycling of the relevant Scrap Metal, Ward Recycling shall calculate the final Scrap Metal Price for such Scrap Metal and:

3.13.1 if the Advance Payment is less than the final Scrap Metal Price, Ward Recycling shall pay to the Customer the balance of the Scrap Metal Price after deduction of the Advance Payment; or

3.13.2 if the final Scrap Metal Price is less than the Advance Payment, the Customer shall pay to Ward Recycling immediately upon demand a sum equal to the amount by which the final Scrap Metal Price falls short of the Advance Payment.

3.14 Upon the payment by Ward Recycling of any Advance Payment, the Customer irrevocably undertakes and agrees to supply or make available for collection to Ward Recycling Scrap Metal of the type specified in the Agreement with an aggregate value of not less than the Advance Payment and if the Customer fails to do so within a reasonable period following the Advance Payment (as determined by Ward Recycling), the Customer shall immediately upon a demand by Ward Recycling, pay to Ward Recycling an amount equal to the shortfall between the Advance Payment and the value of the Scrap Metal actually received by Ward Recycling.

3.15 If Ward Recycling makes an Advance Payment in relation to any Scrap Metal which is in the ownership or under the control of the Customer at the time the Advance Payment is made to the Customer, title to the Scrap Metal shall pass to Ward Recycling at the time the Advance Payment is made and:

3.15.1 the Customer shall hold such Scrap Metal on a fiduciary basis as Ward Recycling's bailee;

3.15.2 the Customer shall identify the Scrap Metal as belonging to Ward Recycling and, where reasonably practicable, shall store the Scrap Metal separately from other materials;

3.15.3 the Customer grants Ward Recycling, its agents and its employees an irrevocable license at any time to enter the premises where the Scrap Metal is stored in order to inspect or to take possession of the Scrap Metal; and

3.15.4 on termination of the Agreement, howsoever caused, Ward Recycling's rights under this clause 3.15 shall remain in effect.

4 DELIVERY ACCESS UNLOADING AND RETURN

4.1 Ward Recycling shall deliver Equipment to the Collection Site in the quantity specified in the Agreement. The Customer is responsible for instructing Ward Recycling where to deliver or collect all Equipment at the Collection Site. Unless otherwise agreed, Ward Recycling shall not be obliged to deliver the Equipment to any location other than directly off a public highway and the Customer shall indemnify and hold Ward Recycling harmless from and against any costs, losses, expenses, fines, penalties or other liabilities which may be incurred by Ward Recycling as a result of the location of the Equipment at the Collection Site.

4.2 The Customer shall provide safe and appropriate access to the Collection Site, a suitable area for siting the Equipment and suitable facilities for turning any Vehicle around and ensure that the Collection Site is suitable for the location of the Equipment.

4.3 The driver of the Vehicle may in his absolute discretion refuse to deliver any Equipment if he believes that access to the Collection Site or turning facilities are unsafe or likely to cause damage to the Vehicle or if there is any reason to believe that the proposed area for siting the Equipment is unsuitable.

4.4 Subject to condition 8.2, the Customer shall be responsible for the safety of any person (including the employees and agents of Ward Recycling) whilst on or about the Collection Site

4.5 If, as a result of an act or omission of the Customer, Ward Recycling is prevented from collecting or delivering Equipment within 20 minutes of arrival at the Collection Site, Ward Recycling may charge the Customer for waiting time at its standard rate.

4.6 If, following delivery of any Equipment by Ward Recycling, Ward Recycling agrees (following a request by the Customer) to attend the Collection Site to re-locate the Equipment, Ward Recycling may charge the Customer at its delivery charge rate (and the provisions of condition 4.5 above shall apply).

5 PERFORMANCE DATES AND FORCE MAJEURE

5.1 Ward Recycling will use reasonable endeavours to meet the dates for collection (which shall always be Working Days unless expressly agreed otherwise between Ward Recycling and the Customer) set out in the Agreement but shall not be liable for late performance or delay in performance of the Service and delays shall not entitle the Customer to rescind the Agreement.

5.2 Without prejudice to the generality of condition 5.1, Ward Recycling shall have no liability for any delay or default in the provision of the Service caused directly or indirectly by breakdown or unavailability of Equipment or Vehicles or inability to obtain labour or any other causes beyond Ward Recycling's reasonable control.

6 CHANGES IN CUSTOMER REQUIREMENTS

6.1 If the Customer's requirements for the Service shall at any time change and such changes are agreed between the Customer and Ward Recycling then the provisions of the Agreement shall apply to the Services as amended .

6.2 At Ward Recycling's request the Customer shall join in making such written amendments to the Agreement and in executing a replacement Transfer Note as may be necessary to give effect to any changes agreed under this condition 6.

7 RISK

Risk of any loss (including but not limited to theft) or damage to the Equipment shall pass to and remain with the Customer from the time when the Equipment first arrives at the Collection Site, except where the loss or damage arises from the negligence or willful default of Ward Recycling, its employees, agents or sub-contractors.

8 TERMS AND REPRESENTATIONS

These conditions set out the Customer's rights in respect of any loss or damage caused by the provision of the Service or any statements made by Ward Recycling, its employees or agents. Customers are advised to read these provisions carefully and to check that they are adequately insured against any loss or damage that they may sustain in respect of which the potential liability of Ward Recycling is or may be restricted or excluded hereunder.

8.1 Ward accepts liability for death or personal injury to the extent that it results from negligence of Ward Recycling, its employees or agents and further accepts liability for any breach on the part of Ward Recycling of any condition or warranty as to title and quiet possession which may be implied by Section 7 of the Supply of Goods and Services Act 1982. Nothing in the Agreement shall have the effect of limiting or excluding any liability for fraud.

8.2 Subject to condition 8.4, Ward Recycling also accepts liability for any other direct loss or damage (but not any indirect or consequential loss, including (but not limited to) loss of profits, production, business or reputation or any loss caused to a third party) in relation to the Equipment, the Service or items belonging to the Customer, its employees or agents (including personal effects) to the extent that it results from:

8.2.1 a breach by Ward Recycling of any of the express provisions of the Agreement; or

8.2.2 the negligence of Ward Recycling, its employees or agents, and does not result from (and to the extent that it is not contributed to by) the act, omission or negligence of the Customer, its employees or agents and so that Ward Recycling shall not otherwise be liable for any defect in the Equipment or loss, damage, nuisance or interference whatsoever caused by or in relation to the Equipment, the Service or items belonging to the Customer, its employees, or agents (including personal effects) and the same shall be the liability of the Customer.

8.3 Ward Recycling's total liability (including for related costs, fees and expenses) in respect of any one Transgression (except one giving rise to the liability referred to in condition 8.2) or series of related Transgressions shall be limited to £5,000.

8.4 If any exclusion or limitation of liability or any other provision contained in this condition 8 or otherwise contained in the Agreement is held to be unlawful, it shall to that extent be deemed omitted, but if Ward Recycling thereby becomes liable for any defect or loss, damage or nuisance which would have otherwise been excluded such liability shall be subject to the other exclusions, limitations or provisions set out in the Agreement.

9 EMPTYING REPLACEMENT AND REMOVAL

9.1 The Customer shall at all times allow Ward Recycling, its employees or agents access to the Equipment to empty or replace it and on the termination of the Agreement to remove it from the Collection Site. In the event that Ward Recycling cannot access the Equipment within 20 minutes of arrival at the Collection Site the Customer shall pay to Ward Recycling a wasted journey cost equal to 50% of the charge per lift rate for skips and 100% of the charge per lift rate for rolonoffs and compaction containers

9.2 All Waste deposited in the Equipment shall become the property of Ward Recycling from the time when Ward Recycling empties it at the Disposal Site or replaces the Equipment PROVIDED THAT this condition shall not absolve the Customer from any liability or responsibility in relation to the Waste.

10 EQUIPMENT

10.1 The Equipment shall be deemed to be in good working order and condition and fit for the Customer's purpose (save for defects not discoverable by a reasonable examination) except to the extent that the Customer has notified Ward Recycling to the contrary within three working days of acceptance of the Equipment at the Site.

10.2 The Customer will conform with any statutory enactments and regulations and byelaws and regulations of local or other statutory authorities, which apply to the Equipment.

10.3 The Customer shall not:

10.3.1 overload or overfill the Equipment; or

10.3.2 set fire to the contents of the Equipment; or

10.3.3 interfere with the mechanism of the Equipment; or

10.3.4 add or attach to the Equipment any painting, sign, writing, lettering or advertising.

10.4 All Equipment provided shall remain the property of Ward Recycling and the Customer will have no rights in the Equipment other than as a mere bailee. The Equipment must only be used by the Customer and must be kept at the Collection Site. The Customer shall have no right of lien over the Equipment.

10.5 The Customer shall take reasonable care to keep the Equipment clean and in good condition. When cleaning any Equipment, the Customer shall ensure that the method used (including cleaning products) does not cause damage or otherwise pollute the Equipment or the Waste or Scrap Metal.

10.6 The Customer has agreed that the Equipment is suitable to contain and transport the Waste and/or Scrap Metal in the quantities specified. Ward Recycling relies on the Customer's advice as to the quantity and weight of Waste and/or Scrap Metal involved in the provision of the Service.

10.7 Ward Recycling may, at any time, change the type of Equipment provided to the Customer by replacing it with a reasonable alternative, for example, if Ward Recycling wishes to change the type of Vehicle which collects the Customer's Waste and/or Scrap Metal.

11 WASTE AND SCRAP METAL

11.1 The Customer warrants that the details relating to the Waste and/or Scrap Metal (including, for the avoidance of doubt, those relating to weight and compactability) contained in the Agreement or in any Transfer Note are and will be true and complete. Ward Recycling relies on those details in the provision of the Service. Ward Recycling shall be entitled to take samples of the materials placed in the Equipment to satisfy itself that the description is accurate prior to collection and disposal. Such right shall under no circumstances relieve the Customer of its obligations to describe the Waste and/or Scrap Metal accurately.

11.2 The Customer may not place or cause to be placed in the Equipment any material other than Waste and/or Scrap Metal described in the Agreement or, if such has been signed, in the current Transfer Note and Ward Recycling reserves the right to charge for collection of the actual material at its then current rate.

11.3 Without prejudice to the generality of the provisions of this condition 11, Ward Recycling will be entitled to refuse to deal with any material:

11.3.1 which it has reason to believe is toxic, poisonous, explosive, inflammable or otherwise dangerous; or

11.3.2 the handling of which may cause Ward Recycling to incur civil or criminal liability; or

11.3.3 which is has reason to believe is or may be a Special Waste; or

11.3.4 the disposal of which might involve Ward Recycling in additional expense or an unreasonable amount of extra work.

11.4 If any Scrap Metal is contaminated by or mixed with waste (other than an amount of waste which is, in the opinion of Ward Recycling, minor contamination), then Ward Recycling will remove the Scrap Metal and the waste from the Collection Site but shall not be obliged to purchase the Scrap Metal. If the Scrap Metal contains only minor amounts of waste, Ward Recycling shall be entitled to make such deduction from the Scrap Metal Price as Ward Recycling considers appropriate. If, following collection of any Scrap Metal, either the Scrap Metal is of a lower quality than indicated by the Customer or, the weight of such Scrap Metal is lower than first stated, the Scrap Metal Price may be adjusted accordingly. Ward Recycling's decision as to the weight or quality of such Scrap Metal shall be final.

11.6 The Customer warrants in relation to each item of Scrap Metal the subject of this Agreement:

11.6.1 that the Customer has good and proper title to the Scrap Metal;

11.6.2 that any documentation supplied with the Scrap Metal is true, genuine and accurate in all material respects; and

11.6.3 that the Scrap Metal is not contaminated by a hazardous substance.

12 NAME PLATES

The Customer shall not remove, deface or conceal any name plate or mark indicating that the Equipment is the property of Ward Recycling and Ward Recycling shall at all reasonable times have access to inspect or repair such name plates or marks.

13 DISPOSAL

Ward Recycling will use all reasonable endeavours to satisfy itself that any Disposal Site at which the Waste is disposed of is operated in accordance with statutory requirements where such Disposal Site is not operated by Ward Recycling. However, Ward Recycling accepts no liability for any third parties' acts or omissions in relation to the operation of a Disposal Site.

14 LIABILITIES OF THE CUSTOMER

14.1 During the Term the Customer shall make good to Ward Recycling all loss of or damage to the Equipment (fair wear and tear excepted).

14.2 Subject to condition 8, the Customer shall indemnify and hold Ward Recycling harmless against any injury, demands action, costs, charges, expenses, loss, damage, or liability to any persons or property arising from:

14.2.1 any act, omission or negligence of the Customer its agents or employees; or

14.2.2 the provision of the Service.

14.3 If the Customer requests that the Equipment be placed in a position which requires the Vehicle to leave the public highway the Customer shall indemnify the hold Ward Recycling harmless against any loss, costs, claims, damages or expenses which Ward Recycling may thereby incur whether as a result of damage to the Vehicle, the Equipment, the property of the Customer or a third party including damage to the road margin or pavements.

14.4 The Customer shall maintain insurance cover in respect of its liability under the Agreement and shall at the request of Ward Recycling provide a copy of the insurance policy as proof of maintaining such cover.

15 TERMINATION

15.1 If the Customer commits any breach of the Agreement Ward Recycling may, in addition to its other rights in respect thereof, give notice to the Customer to terminate the Agreement immediately or, at the sole option of Ward Recycling, after 14 days from the date of such notice if the Customer shall not have remedied the breach to Ward Recycling's satisfaction during that time.

15.2 If the Customer shall have a receiver, an administrator or an administrative receiver appointed for the whole or any part of its assets or if an order shall be made or a resolution passed for its winding-up (unless this is for the purpose of its reconstruction or amalgamation) or if it ceases to trade or has its credit insurance removed then the Agreement shall terminate forthwith.

15.3 Either party may terminate the Agreement by the service of notice, which must be of not less than three months' duration and not more than six months duration, must be expressed to expire on the date which is any anniversary of the Commencement Date which falls outside of the Initial Period and must be given in the manner set out in condition 17.

15.4 If the Customer terminates the Agreement other than under condition 15.3 or, if Ward Recycling elects to terminate the Agreement under condition 15.1 or the Agreement is terminated under condition 15.2 the Customer shall pay all Charges accrued due and, in addition, shall pay to Ward Recycling as liquidated damages (and the Customer acknowledges this to be a genuine pre-estimate of the likely loss which Ward Recycling would incur in such event) for the period (the "Damages Period") from the date of such termination to the earliest date on which the Agreement could validly be terminated by a notice given in accordance with condition 15.3, the following amount:

15.4.1 in the case of Customers for which Ward Recycling collects Waste on a scheduled collection day, an amount equal to 43% of the aggregate Charges which would have been payable in respect of the Service during the Damages Period; or

15.4.2 in the case of Customers for which Ward Recycling collects Waste not on a specific collection day but upon request, an amount equal to 43% of the aggregate Charges which would have been payable in respect of the Service during the Damages Period based on the assumption that collections during the Damages Period would have been made at the same average rate as during the Agreement up to the date of termination.

15.4.3 in the case of Customers from which Ward Recycling buys Scrap Metal upon request, an amount equal to 43% of the aggregate Charges which would have been payable in respect of the Service during the Damages Period based on the assumption that collections during the Damages Period would have been made at the same average rate as during the Agreement up to the date of termination

15.5 Termination of the Agreement shall be without prejudice to any rights or liabilities of either party which may have accrued to that date.

16 AMENDMENT

Ward Recycling reserves the right to amend the Agreement and these General Conditions as it considers necessary to comply with statutory requirements from time to time or any change in legislation governing the collection, transport and disposal of Waste and will notify any such amendment to the Customer as soon as practicable.

17 NOTICES

17.1 Any proposal, acceptance, agreement, authority, permission or notice referred to in the Agreement or these General Conditions shall be:

17.1.1 in writing; and

17.1.2 given to the party for whom it is intended at the address for that party as set out in the Agreement or such address as is notified to the other party for that purpose; and

17.1.3 given by post and shall be deemed to have been received two Working Days after the date of posting.

18 GOVERNING LAW

18.1 The Agreement shall be governed by and construed in accordance with the Laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

18.2 Any reference to any Act of Parliament Regulation or Order shall include any re-enactment, amendment, replacement or modification thereof.

19 FOREBEARANCE

No time indulgence or relaxation on the part of Ward Recycling shown or granted in respect of any of the provisions of the Agreement shall in any way affect, diminish, restrict or prejudice the rights or powers of Ward Recycling under the Agreement or operate as or be a waiver of any breach by the Customer of the terms of the Agreement.

20 SEVERANCE
20.1 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

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