

# THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED

## SALES TERMS AND CONDITIONS

### 1. Introduction and Definitions

In these terms and conditions 'the Company' means The Coventry and Solihull Waste Disposal Company Limited and 'the Customer' means anyone to whom the Company is supplying Goods or Services. The Coventry and Solihull Waste Disposal Company Limited is registered in England with company number 02690488 and its registered office is the Waste To Energy Plant, Bar Road, Coventry CV3 4AN. The principal Service provided by the Company is Energy Recovery from Waste provided to it by Customers, by means of thermal treatment. Waste means the waste provided to the Company by the Customer. Other Goods and Services may be provided by the Company from time to time as may be agreed in writing and Goods or Services shall be construed accordingly.

### 2. Basis of Contract

These terms and conditions shall form the terms and conditions of the Contract (which means the contract made between the Company and the Customer for the supply of the Goods and/or Services which is subject to these terms and conditions) and shall apply to the exclusion of any terms or conditions whether put forward by or on behalf of the Customer in or on its order or otherwise or whether implied by law (insofar as the exclusion of the same is lawful). In addition to these terms and conditions the Contract comprises:

- the specification for the Waste as set out in the relevant Waste Questionnaire approved by the Company in writing, or the specification of other Goods and/or Services agreed in writing by the Company. In the absence of an agreed specification the Company's standard specification will apply;
- the price agreed in writing by the Company;
- the delivery details provided in writing by the Company;
- the Company's Waste Reception Site Rules.

The Contract is the entire agreement in relation to its subject matter and supersedes any prior agreements, understandings or discussions between the parties, other than representations made fraudulently. No variation to the Contract is valid unless it is in writing and is signed by authorised representatives of both the Company and the Customer.

### 3. Cancellation and Variation

Following acceptance by the Company of the Customer's order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the prior written consent of a director of the Company and upon terms that the Customer shall indemnify the Company in full against including for all work carried out under the Contract, all costs incurred and any costs which the Company is committed to pay and/or any loss (including without limitation loss of profit) damages, costs expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with the cancellation.

The Customer may ask the Company to vary the order and subject to the Customer agreeing to the Company's revised price, time scale for delivery and any other relevant terms notified by the Company, the Company agrees to make the supply in accordance with the agreed variation.

The Company may vary the price by an amount sufficient to cover any significant increase in the cost of materials or other costs incurred to fulfill the order.

If the Company is unable to fulfill the order within a reasonable time due to operational issues, it may cancel the order with no further obligation or liability to the Customer other than to return any amount already paid by the Customer to Company in respect of those Goods or Services which the Company is unable to so supply less any costs incurred by the Company at the Customer's request.

### 4. Price

The price will be notified to the Customer in writing. The Company reserves the right to vary prices from time to time and where it does so the revised price becomes the new price for the Goods or Services supplied and supersedes any other price previously notified. Prices exclude applicable VAT and any other tax imposed on the supply which shall be payable by the Customer at the rate prevailing at the relevant tax point. The price charged to the Customer under the Contract will be the price current at the date of invoice.

### 5. Payment

Where credit facilities are not offered or agreed by the Company, payment for Goods or Services shall be made by the Customer prior to the supply of those Goods or Services. Where credit facilities agreed by the Company, the Company will invoice the Customer once the Goods or Services have been supplied. The Customer shall pay the invoice within 30 days of the date of the relevant invoice without set-off or counterclaim. The Company is not obliged to supply any Goods or Services to the Customer while any payment is overdue on this or any other Contract between the Parties. If any payment is not paid by the due date the Company may charge interest at the annual rate of 4% above the Lloyds TSB Bank plc base rate calculated on a daily basis on all monies outstanding after the due date until the actual date of payment (both before and after judgment). The Company may set off any sums owed by the Customer against any sums owed by the Company to the Customer.

### 6. Warranties and Liabilities

The Customer shall be liable (including any liability for the negligent acts and omissions of its employees, agents or sub-contractors) for, and shall indemnify and keep the Company indemnified on a full indemnity basis from and against, any and all actions, proceedings, claims, demands, losses or liabilities suffered, incurred and/or paid by the Company arising from any breach by the Customer, its employees, servants or agents of the Contract and/or negligence of the Customer, its employees, servants or agents including but not limited to:

- loss or damage to the Company's property and/or the property of third parties;
- loss, injury, damage or death of any person.

The Company shall make good by reimbursement of the price or by re-performance of the Services any defect in the performance of Services provided that any such defect is notified in writing to the Company immediately and the Company agrees that the Service was defective.

The Company shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its servants or agents, in a sum which is greater than the Contract price.

The Company shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss of profits, loss of contracts, loss of anticipated savings, loss of revenue, loss of business, loss of goodwill, loss of reputation, loss or corruption of data or information, loss of production or any special, indirect or consequential (including economic) loss of any kind which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agents.

All implied warranties or conditions are excluded to the fullest extent permitted by law. Nothing in these terms and conditions shall limit or exclude either Party's liability for death or personal injury caused by its negligence or the negligence of its employees or agents or for fraudulent misrepresentation or exclude the application of Section 12 of the Sale of Goods Act 1979.

### 7. Delivery

Any time quoted by the Company for delivery of all or any of the Goods and/or performance of all or any of the Services is an estimate only and time shall not be of the essence. The Company shall not be liable for any failure to meet any such estimate, nor for any loss, of whatsoever nature resulting directly or indirectly therefrom.

### 8. Passing of Risk and Title

Risk in and property in and title to the Waste shall remain at all times in the Customer until it has been delivered to the Site and the Company agrees that the Waste conforms with the agreed specification whereupon risk in and property in and title to Waste shall pass to the Company.

Risk in Goods supplied shall pass to the Customer immediately on delivery to the Customer or into custody on the Customer's behalf whichever is the sooner.

Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain in the Company until the Company has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by the Company to the Customer under any other contract whatsoever.

Without prejudice to the Customer's right to deal with the Goods in the ordinary course of its business, until property in and title to the Goods passes to the Customer

(a) the Customer shall keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to the Company the Customer or any third party;

(b) the Company shall be entitled at any time forthwith to revoke the Customer's power to deal with the Goods; and it shall automatically cease if an Insolvency Event (as defined in condition 10) shall occur in respect of the Customer; and

(c) the Customer shall not make any modification to the Goods or their packaging or alter remove tamper with any marks, numbers or other means of identification used on or in relation to the Goods.

Upon termination of the Customer's power to deal with the Goods, the Customer shall place the Goods at the disposal of the Company and the Company and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Customer or any third party for the purpose of removing the Goods.

### 9. Assignment

The Customer agrees that the Contract is personal to the Customer and neither the Contract nor any interest therein shall be assigned, transferred, sub-contracted or charged by the Customer except with the Company's prior written approval which shall not be unreasonably withheld. If the Contract is sub-contracted in whole or in part the Customer shall remain fully liable to the Company for any act or omission of its sub-contractor. The Company may assign, transfer or sub-contract the Contract whether in whole or in part.

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### 10. Termination

Without prejudice to any rights and remedies available to it, the Company shall be entitled, forthwith on written notice to the Customer either to terminate the Contract wholly or in part and/or any other contract with the Customer or to withhold performance of all or any of its obligations under the Contract and/or any other contract with the Customer (and on the giving of such notice all monies outstanding from the Customer to the Company shall become immediately due and payable) if:

- any sum owing to the Company from the Customer on any account whatsoever shall be unpaid after the due date for payment (in which event the Company shall have a general lien for any such sum on all and any property of the Customer in its possession);
- an Insolvency Event shall occur in respect of the Customer. Insolvency Event means any one or more of (1) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; (2) a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made; (3) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; (4) suspension of payments to all or any creditors and/or ceasing business; (5) an encumbrancer taking possession of all or any assets of a party; (6) an administrator or receiver being appointed over a party or all or any of its assets; (7) any action anywhere similar or analogous to any of the foregoing; (8) the other party having reasonable grounds for believing that any of the foregoing is imminent;
- the Customer shall commit any breach of any contract (including without limitation the Contract) with the Company.

In the event of a suspension of performance the Company shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

### 11. Safety, Health and the Environment

The Company and the Customer shall perform their obligations under these terms and conditions in accordance with all applicable laws including those relating to the environment, including the duty of care obligation under section 34 of the Environmental Protection Act 1990. The Customer shall comply with and ensure that all of its employees, agents and sub-contractors comply with the Company's Health and Safety Procedures notified by the Company to the Customer in the Waste Reception Site Rules, and all applicable laws relating to health and safety, when delivering the Waste to the Site. For the purposes of Section 6(8) of the Health and Safety at Work Etc Act 1974 the Customer undertakes to comply with all instructions relating to any Goods received from the Company from time to time and to take such other steps sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when being properly used, set, cleaned and maintained by a person at work.

### 12. General

(a) It shall be the responsibility of the Customer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with.

(b) It shall be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Customer.

(c) Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.

(d) The rights and remedies of the Customer in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company to the Customer nor by any failure of or delay by the Company in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by the Company shall not affect its rights and remedies as regards any other party nor its rights and remedies against the Customer in whose favour it is granted or made except to the extent of the express terms of the release and no such release shall have effect unless granted or made in writing. The rights and remedies in this Contract are cumulative and not exclusive of any rights and/or remedies provided by law.

(e) The provisions of these terms and conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.

(f) The headings in these terms and conditions are for convenience only and do not affect the interpretation of the Contract.

(g) These terms and conditions and the Contract shall not constitute and shall not be deemed to constitute a partnership between the Company and the Customer and the

Customer shall not act nor purport to act as agent for the Company but solely as an independent contractor.

(h) All notices under this Contract shall be in writing and may be served by post or email (other than notices relating to breach, termination and/or service of legal proceedings which must be sent by post) addressed to the other party at the address given in this Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under this Contract and every such notice shall be deemed to have been served by post at the expiration of 2 days after despatch of the same or if sent by email at 10am local time on the next normal Business Day of the recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of an email a sent item record showing the correct email address and that no error message indicating failure to deliver has been received by the sender. Saturdays, Sundays and Bank Holidays are not Business Days and shall not in any event be treated as days on which service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.

(i) Any term or expression which is defined in the provisions of Incoterms 2010 (or any subsequent revision thereof) shall import the respective obligations of Buyer and Seller into these terms and conditions, but in the event of conflict these terms and conditions shall prevail.

### 13. Law and Jurisdiction

These terms and conditions and the Contract shall in all respects be governed and construed in accordance with English law. Any dispute arising under this Contract or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English courts and the parties waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

### 14. Third Party Rights

For the avoidance of doubt nothing in the Contract shall confer on any third party any benefit or the right to enforce any provision of the Contract.