

# THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED SALES TERMS AND CONDITIONS

## 1. Interpretation and Definitions

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Company:** The Coventry and Solihull Waste Disposal Company Limited (registered in England and Wales with company number 02690488) of Waste To Energy Plant, Bar Road, Coventry CV3 4AN.

**Conditions:** these terms and conditions as amended from time to time in accordance with Clause 13.6.

**Contract:** the contract between the Company and the Customer for the supply of Services and or goods in accordance with these Conditions.

**Customer:** the person or firm who purchases Services and/or Goods from the Company.

**Goods:** the Goods which the Company shall provide to the Customer from time to time, as may be agreed in writing.

**Order:** the Customer's order for Services and/or Goods as set out in the Customer's purchase order form.

**Services:** the provision of energy recovery from waste services provided by the Company to the Customer, by means of thermal treatment, or such other services as the Company may provide to the Customer from time to time, as set out in the Company's written acceptance of the Order or otherwise agreed in writing.

**Specification:** has the meaning given in Clause 2.4(a).

**Waste:** the waste provided to the Company by the Customer.

### 1.2 Interpretation:

(a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:

(i) is a reference to it as amended, extended or re-enacted from time to time; and

(ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

(b) Any words following the terms **including, include, in particular,**

**for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to **writing** or **written** includes email but not fax.

## 2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services and/or Goods in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 These Conditions shall form the terms and conditions of the Contract 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, trade custom, practice or course of dealing (insofar as the exclusion of the same is lawful). The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.4 In addition to these Conditions the Contract comprises:

a) 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 or, in the absence an agreed specification, the Company's standard specification will apply ("**Specification**");

b) the price agreed in writing by the Company;

c) the delivery details provided in writing by the Company;

d) the Company's Waste Reception Site Rules.

2.5 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained on the Company's website or in its catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services or Goods described in them. They shall not form part of the Contract or have any contractual force.

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## 3. Cancellation and Variation

3.1 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.

3.2 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.

3.3 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

4.1 The price will be notified to the Customer in writing.

4.2 The price charged to the Customer under the Contract will be the price current at the date of invoice.

4.3 The Company reserves the right to vary prices from time to time on giving notice to the Customer 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.

4.4 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.

## 5. Payment

5.1 Where alternative payment terms are not offered or agreed by the Company to the Customer, payment for Goods or Services shall be made by the Customer prior to the supply of those Goods or Services, and the Company shall provide an invoice to the Customer. Where alternative payment terms are 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. Time for payment shall be of essence of the Contract.

5.2 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).

5.3 The Company may set off any sums owed by the Customer against any sums owed by the Company to the Customer whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## 6. Warranties and Liabilities

6.1 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:

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

6.2 The Company shall supply the Services and/or Goods to the Customer in accordance with the Specification in all material respects. The Company reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and/or Goods, and the Company shall notify the Customer in any such event.

6.3 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

6.4 The Company shall make good by (at its option) reimbursement of the price (or a proportionate part of it) or by re-performance of the Services any defect in the performance of Services provided that any such defect is notified in writing

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- to the Company immediately and the Company agrees that the Service was defective.
- 6.5** The Company shall make good by (at its option) reimbursement of the price (or a proportionate part of it) or by replacing the defective Goods provided that any such defect is notified in writing to the Company within a reasonable time of discovery of the defect, the Company is given a reasonable opportunity of examining such Goods and the Company agrees that the Goods are defective and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business.
- 6.6** The Company shall not be liable for the Goods' failure to comply with the warranty set out in Clause 6.2 if:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 6.5;
  - (b) the defect arises because the Customer failed to follow the Company's oral or written instructions (including the Waste Reception Site Rules) as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises because the Customer failed to comply with its obligations under Clause 11 of these Conditions;
  - (d) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
  - (e) the Customer alters or repairs such Goods without the written consent of the Company;
  - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (g) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.7** If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services or delivery of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or
- delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Clause 6.7; and
  - (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 6.8** Nothing in this Clause 6 shall limit the Customer's payment obligations under the Contract.
- 6.9** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- a) death or personal injury caused by negligence;
  - b) fraud or fraudulent misrepresentation; and
  - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 6.10** 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.
- 6.11** 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.
- 6.12** The Company has given commitments as to compliance of the Services and/or Goods with relevant specifications in this Clause 6. In view of these commitments, 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.

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## 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

**8.1** 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 has agreed that the Waste conforms with the agreed Specification whereupon risk in and property in and title to Waste shall pass to the Company.

**8.2** 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.

**8.3** 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 Clause 10) shall occur in respect of the Customer;
- c) the Customer shall notify the Company immediately if it becomes subject to any of the events listed in Clause 10; and
- d) 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.

**8.4** 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.

## 10. Termination

**10.1** Without prejudice to any rights and remedies available to it, the Company shall be entitled, by giving written notice to the Customer: (i) to terminate the Contract with immediate effect wholly or in part and/or any other contract with the Customer, or (ii) to withhold performance of all or any of its obligations under the Contract and/or any other contract with the Customer if:

- a) 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);
- b) 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;

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c) the Customer commits any breach of any contract (including without limitation the Contract) with the Company.

**10.2** 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.

**10.3** On termination of the Contract, the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services or Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.

**10.4** Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

## **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. Anti-Bribery and Anti-Corruption**

**12.1** The Customer shall (and shall procure that any person associated with it) during the term of the Contract:

(a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (**Relevant Requirements**), including but not limited to the Bribery Act 2010;

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) not do, or omit to do, any act that will cause or lead the Company to be in breach of any of the Relevant Requirements;

(d) notify the Company (in writing) if it becomes aware of any breach of Clause 12.1(a), clause 12.1(b), or clause 12.1(c), or has reason to believe that it or any persons associated with it have received a request or demand for any undue financial or other advantage in connection with the performance of the Contract;

(e) establish, maintain and enforce its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 12.1(b); and

(f) if requested, provide the Company with any reasonable assistance, at the Company's reasonable cost, to enable the Company to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements.

**12.2** The Customer warrants and represents that:

(a) neither the Customer nor any of its officers, employees or other person associated with it:

(i) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;

(ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or

(iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including, without limitation, any exclusion under regulation 57 of the Public Contracts Regulations 2015 (SI 2015/102) or regulation 80 of the Utilities Contracts Regulations 2016 (SI 2016/274);

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- (b) none of the officers or employees of the Customer or any other person associated with it is a foreign public official; and
- (c) no foreign public official owns a direct or indirect interest in the Customer or any other person associated with it and no public official has any legal or beneficial interest in any payments made by the Company under the Contract.
- 12.3** The Customer shall promptly notify the Company if, at any time during the term of the Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 12.2 at the relevant time.
- 12.4** Breach of this clause 12 shall be deemed a material breach under the Contract.
- 12.5** Notwithstanding any other provision in the Contract, the Company shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.
- 12.6** For the purpose of this clause 12 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act, and section 8 of that Act respectively.
- 13. General**
- 13.1** 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.
- 13.2** 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.
- 13.3** Neither party shall be in breach of the Contract nor 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.
- 13.4** 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.
- 13.5** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 13.6** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.7** The provisions of these 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.
- 13.8** The headings in these Conditions are for convenience only and do not affect the interpretation of the Contract.
- 13.9** These 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.
- 13.10** 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. 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 10.00am 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.

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**13.11** 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 Conditions, but in the event of conflict these Conditions shall prevail.

## **14. Governing Law and Jurisdiction**

These terms and conditions and the Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall in all respects be governed and construed in accordance with English law. Any dispute or claim arising under or in connection with 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.

## **15. Third Party Rights**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.