

# **CUMBRIA WASTE RECYCLING LIMITED TERMS AND CONDITIONS OF BUSINESS**

## **1. DEFINITIONS**

1.1 In these terms and conditions ("conditions") the following words shall have the following meanings:-

"the Act" means the Environmental Protection Act 1990.

"the Carrier" means any person, firm or company (which may for the avoidance of doubt include the Company) as may from time to time be nominated by the Company to collect the Contract Waste or any part thereof on behalf of the Company (where this is the responsibility of the Company).

"the Client" means the party for whom the Company agrees to collect, recycle and dispose of Contract Waste.

"the Company" means Cumbria Waste Recycling Limited and its successors and assigns.

"Contract" means each agreement made between the Company and the Client for the Collection, Recycling and Disposal of Contract Waste.

"Contract Waste" means and includes any material intended or tendered for recycling or Disposal hereunder and detailed in the Company's quotation.

"Contract Waste Description" means and includes the description, details and information in relation to the Contract Waste set out in the Company's quotation and set out in any transfer note (in the case of Contract Waste which is "Controlled Waste" as defined in the Act) or in any consignment note (in the case of any Contract Waste which is "Hazardous Waste" as defined in the Regulations).

"Disposal" means the disposal of Contract Waste and where the Company accepts responsibility for such matters the collection, transport, provision of receptacles, treatment, recycling and any other handling method of Contract Waste.

"Ongoing Contract" means any Contract which is not either for a specified fixed term or a limited number of collections/disposals.

"Order Details" means and includes the Contract Waste Description and all details and information in respect of the Contract Waste set out on the Company's quotation form including any special conditions.

"Permissible Tolerances" means any tolerances in respect of the constituent elements of Contract Waste which are acceptable to the Company and which have been detailed in the Order Details.

"the Transit Period" means the period commencing on arrival at the place of collection of any vehicle provided by the Company or Carrier for transport of the Contract Waste and ending on completion of discharge of Contract Waste from such vehicle at the Company's or Client's premises.

"Writing" includes telex, cable, facsimile transmission and/or other means of communication.

## **2. GENERAL**

2.1 These conditions shall be deemed to be incorporated into every Contract and shall notwithstanding any statement to the contrary contained in any of the Client's communications prevail over any conflicting or inconsistent terms and conditions contained in any order, telex, letter, or form of contract sent by the Client to the Company or any other communication between the Client and the Company whatsoever and whatever their respective dates unless or to the extent that any variation of these conditions shall be expressly agreed in writing and signed by one of the Company's directors.

2.2 These conditions and the relevant quotation of the Company comprise and represent the entire agreement between the Company and the Client and the Client agrees that it has not been induced to enter into any Contract on the basis of any representation made by the Company or its officers and agents.

2.3 No order placed with the Company shall be binding until the Company has received a completed and accepted quotation duly signed and dated by an authorised representative of the Client.

2.4 All dealings between the Company and the Client are confidential. The Client may not disclose information concerning contracts with the Company (unless required by law) to any third party without the consent of the Company.

2.5 Any reference in these conditions to any provisions of a statute or regulation/statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2.6 The headings in these conditions are for convenience only and shall not affect their interpretation.

2.7 All quotations issued by the Company shall be deemed to have lapsed if not accepted within 90 days of issue.

## **3. DELIVERY/COLLECTION**

3.1 Where the Company has accepted responsibility in its quotation form for collection of the Contract Waste then the Company or the Carrier shall endeavour to collect the Contract Waste on the date requested. Time for collection of the contract waste shall be of the essence.

3.2 The Company shall not under any circumstances be liable to compensate the Client for any indirect or consequential loss whatsoever whether arising from the Company's failure or its Carrier's failure to collect the Contract Waste on any

specified date or the Company's inability to accept waste being delivered by the Client upon the date or at the time requested by the Client.

3.3 If in circumstances where it is the Company's responsibility to collect Contract Waste the Client fails to make the Contract Waste readily available for collection or to provide a safe means of access then the Company's obligations under the contract are suspended until such time as the Client provides a safe means of access.

## **4. STATUTORY NOTICES**

4.1 The Client is responsible for ensuring compliance with the provisions of Regulations, the Act or any re-enactment or amendment thereto, or any order, regulation or delegated legislation made thereunder or any like provision of statute or delegated legislation calling for the service upon the proper authorities of notices as to the removal and deposit of Contract Waste. Before either any collection of Contract Waste is to be undertaken by the Company or its Carrier or any Contract Waste is due to be delivered to the Company's premises the Client shall provide the Company with a copy of any notice required to be served as aforesaid.

## **5. CLIENT'S GENERAL OBLIGATIONS**

5.1 The Client warrants and undertakes to the Company that all Contract Waste tendered for Disposal shall conform in all respects with the Order Details.

5.2 Where Contract Waste is contained in any packages, it shall be the responsibility of the Client that the packaging and method of packaging shall conform in all respects with all statutory requirements including without prejudice to the generality of the foregoing the Act and all regulations made thereunder and the Regulations or any re-enactment or amendment thereto. Without prejudice to the generality of the foregoing it shall be the responsibility of the Client to ensure that, where packaging of Contract Waste is in drums, the drums are palletted, in sound condition and marked with sufficient and accurate identification so that the Company and Carrier can readily identify the contents.

5.3 Where it is the Company's responsibility to collect the Contract Waste, the Client shall be responsible for making the Contract Waste readily available for collection and for providing a safe means of access to the place of collection.

5.4 Subject to the provisions of condition 5.5, in the event of any explosion, fire, escape of noxious fumes or other harmful consequence of whatsoever kind occurring upon or by reason of the Disposal of Contract Waste at the Company's premises, the Client shall indemnify the company and the carrier in respect of all claims, demands, suits and liabilities suffered by them or either of them.

5.5 Notwithstanding the provisions of condition 5.4 the Client shall be under no liability thereunder if the Client shall establish to the reasonable satisfaction of the Company that the relevant explosion, fire, escape or other consequence was attributable neither to lack of conformity of Contract Waste with the Order Details nor to any other act, neglect or default of whatsoever kind of the Client its servants or agents or where the relevant explosion, fire, escape or other consequence was attributable to the default, wilful act of negligence of the Company or Carrier.

5.6 The Client agrees to give notice in writing to the Company of any specialist conditions and/or safe working procedures in any way affecting the discharge by the Company or its Carrier of their obligations under the Contract. The Company and/or its Carrier reserve the right to refuse to make any collection or carry out any Disposal if they or either of them reasonably consider that the work required might place at risk any person, vehicle equipment or property and in such circumstances the Company's obligations under the agreement are suspended without liability until such time as the Client removes the source of the risk.

5.7 The Client agrees to:

5.8 Where the Contract Waste is to be delivered by the Client to the Company's premises then the Client warrants that only properly trained and experienced drivers will be used in effecting delivery and agrees to accept responsibility in relation to any injury or accident occurring to any such person(s) in the delivery process whether such person(s) are employees of the Client or its agent(s).

## **6. CLIENT'S OBLIGATIONS AND COMPANY'S RIGHTS CONCERNING NON-CONFORMITY**

6.1 In event that the Client becomes aware of any change or potential change in the composition or constituent elements of any Contract Waste from that specified in the Order Details then the Client shall immediately so advise the Company telephonically and by facsimile transmission. Without prejudice to the Company's rights contained in condition 6.4 and if deemed necessary by the Company then the Client shall forthwith provide the Company with a fresh sample of the relevant Contract Waste and the Company shall be entitled to suspend further Disposal of such Contract Waste pending analysis of such fresh sample.

6.2 If upon analysis of any such fresh sample provided to the Company pursuant to condition 6.1, the fresh sample is found not to conform with the Order Details (subject to any Permissible Tolerances) then the Company shall be entitled to either suspend Disposal of any Contract Waste from which the sample was provided or to accept the same for Disposal but in the latter case only upon such additional special conditions and/or revised price (revised price

to be determined by mutual agreement between the Company and the Client) and the Company shall in any event be entitled further to require that it be provided with a sample of any fresh Contract Waste which may thereafter be awaiting Disposal and to satisfy itself as to its conformity before arranging the Disposal of the same.

6.3 If upon analysis any fresh samples provided by the Client pursuant to conditions 6.1 and 6.2 are on two or more occasions found not to conform with the Order Details as aforesaid then the Company shall be entitled to treat the Client as being in fundamental breach and thereby repudiation of the Contract and shall be entitled (but not bound) forthwith to terminate the Contract and to claim damages for such repudiation.

6.4 In the event of either the Client notifying the Company that any Contract Waste has not conformed or does not any longer conform or will no longer conform with the Order Details or the Company notifying the Client that the Contract Waste has not or does not so conform then (without prejudice to the Company's other rights and remedies in these conditions) the Company's obligations under the agreement are suspended without liability until such time as the Contract Waste conforms with the order details to the reasonable satisfaction of the Company

6.5 Without prejudice to any other right of the Company in the event that any Contract Waste does not conform with the Order Details then in the event of the Company terminating the Contract pursuant to condition 6.4 then the Client shall be obliged to forthwith remove any Contract Waste from the Company's premises at its cost and in accordance with the Company's requirements.

## **7. PRICES**

7.1 Subject to the provisions of this condition 7 and conditions 3, 5 and 6 the price for Disposal by the Company shall be as stated in the Company's quotation. All prices are exclusive of VAT unless otherwise stated in the Company's quotation.

7.2 In event of any of Contract Waste accepted for Disposal by the Company proving to be not in conformity with the Order Details, the Company shall, without prejudice to any other of its right hereunder, be entitled to recover from the Client all reasonable costs and expenses of Disposal in excess of those which would be incurred in the Disposal of Contract Waste corresponding to that detailed or described in the Order Details

7.3 The Company's invoices are payable within 30 days.

7.4 Time of payment shall be of the essence of every Contract.

7.5 The Company shall be entitled to charge interest at the rate of two and a half per cent over and above the base lending rate from time to time of National Westminster Bank plc on all overdue amounts until actual payment in full irrespective of whether payment has been formally demanded or judgement entered.

7.6 In the event that there shall occur any of the events detailed in conditions 9.3.1 to 9.3.4 inclusive then all periods of credit afforded to the Client by the Company shall cease and all other amounts due under any Contract between the Company and the Client shall immediately become due and payable.

7.7 The results from the Company's weighbridges shall be definitive and conclusive in determining the weight or volume of any load of Contract Waste weighed at any such weighbridge.

## **8. TERMINATION ON NOTICE (NO DEFAULT)/PRICE REVIEW**

8.1 Where any Contract is an Ongoing Contract then either party shall be entitled to terminate the Contract by giving three month's prior written notice to the other. In the event of the quotation provided by CWR to the Client for the service provision specifying a contractual period longer than three months, then it is the longer time period specified on the quotation that will apply.

## **9. TERMINATION AND SUSPENSION**

9.1 Where the Company is unable to effect Disposal of the Contract Waste pursuant to any Contract owing to any of the following:

9.1.1 the Client's failure to supply any necessary information; or

9.1.2 changes to the licence of the site used by the Company for Disposal which have the affect that the site can no longer be used by the Company for disposal; or

9.1.3 any other reason beyond the Company's reasonable control including (without prejudice to the generality of the foregoing expression) breakdown of plant (unless as a result of inadequate maintenance), strikes, lock-outs, act of Government, fire, flood, Queen's enemies, explosion, lightning, aircraft, civil commotion, acts of war, malicious mischief or theft

Then the Company shall have the right on giving written notice to the Client and without incurring any liability to the Client to suspend further performance of the Contract for a period (not exceeding 3 months) equal to the continuance of any such impediment preventing the Company from performing its obligations.

9.2 At the end of any period of suspension without performance of the Contract under condition 9.1.1 the Company may terminate the Contract by notice in writing to the Client or under conditions 9.1.2 and 9.1.3 either party may terminate this Contract by notice in writing to the other.

9.3 In the event that:-

9.3.1 the Client is in arrears in making any payment due to the Company under any Contract with the Company; or

9.3.2 the Client's stated credit limit with the Company has been reached; or

9.3.3 the Company believes on reasonable grounds that any payment (whether or not any agreed credit limit has expired) will not be met by the Client when due;

Then the Company may suspend further work and/or deliveries under any Contract with the Client and require immediate payment of all amounts due to the Company and further payments in advance before making any further deliveries under any Contract (notwithstanding agreed credit terms). If any such payment or any part of it remains in arrears for 7 days after the Company has demanded it in writing then the Company shall have the further right to terminate that and/or any other Contract without prejudice to any claim for damages it may have against the Client and without incurring any liability to the Client for failure to perform.

9.3.4 In the event that:

either party ceases to trade or threatens to cease to trade or calls a meeting to pass a resolution for winding up or if a receiver is appointed or if a winding up petition is issued against the Company; or

9.3.5 Either part commits any breach of the terms and conditions of the Contract and such breach is incapable of remedy or if capable of remedy fails to remedy that breach within 30 days after notice is received from the other party, giving full particulars of the breach and requiring it to be remedied.

Then the other party may terminate the Contract forthwith by giving written notice to the other party.

9.4 When a Contract is terminated or suspended under this condition 9 or any other condition herein (except as a result of the Company's breach or the Company undergoing an insolvency event) then the Company shall be entitled to recover all reasonable costs from the Client in accordance with the following:-

9.4.1 the Company shall be entitled to charge the Client with all reasonable interest, insurance, transport, storage or other costs and charges arising from any such termination or suspension; and

9.4.2 the Client shall forthwith pay for all services provided by the Company pursuant to the Contract up to the date of any such termination or suspension and shall pay other sums then due under the Contract, or a reasonable price for the work done, whichever is the greater.

## **10 INSURANCE**

10.1 The Company and the Client each agree at their own expense to maintain at all times during the continue of any Contract a valid policy or policies of insurance in respect of any obligations or potential liabilities arising out of performance or purported performance of the Contract in question and each party shall if so required by the other produce evidence of any applicable policy for inspection together with evidence of payment of any premium.

## **11 SUB-CONTRACTING AND ASSIGNMENT**

11.1 The Company shall be entitled to sub-contract any element of the Disposal process.

11.2 The Company shall be entitled to assign its rights hereunder.

11.3 The Client shall be entitled to assign its rights hereunder only in the event that it has obtained the prior written consent of the Company, which will not be unreasonably withheld by the Company. The Client may by written notice assign or transfer any of its rights, obligations or liabilities under the Contract to any body corporate associated with its shareholders without the consent of the Company.

## **12 WARRANTIES**

12.1 The Company warrants to the Client that it will perform the Disposal of the Contract Waste with reasonable care and skill, in accordance with generally recognised commercial practices and standards in the industry for similar services and in accordance with all applicable legislation, regulations and guidelines.

## **13 LIABILITIES**

13.1 The Company's liability (if any) to the Client in respect of its obligations hereunder shall in all circumstances be limited to £100,000.

13.2 Neither party shall not under any circumstances whatsoever be liable to compensate the other party for any indirect or consequential loss.

## **14 SET OFF**

14.1 The Client shall not be entitled to set-off any claim against payment of any amounts owing to the Company.

## **15 WAIVER AND SEVERABILITY**

15.1 Any concession, latitude, or waiver allowed by the Company to the Client at any time shall not prevent the Company from subsequently exercising its full rights in all other respects.

15.2 Any provision of these conditions which is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining

provision hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

16. **JURISDICTION AND COSTS**

16.1 The validity, construction and performance of these conditions and any contract between the Company and the Client shall be subject to and be construed in accordance with English Law and the Client shall submit to the non-exclusive jurisdiction of the English Courts.

17. **NOTICES**

17.1 Any notice to be given by either party shall be sent by post to the address of the Client or the Company detailed in the Company's quotation form or if by the facsimile to the numbers detailed therein unless either party notifies the other as to a change of address or fax number.

17.2 Any notice which is posted in accordance with condition 16.1 shall be deemed to be properly served two days after posting and any notice sent by facsimile shall be deemed to be served at the time detailed upon any error free answerback.