

Brewster Brothers Ltd

Terms and Conditions for the Supply of Materials

01/08/2021 (v9)

1. INTERPRETATION

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Edinburgh are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with Clause 11.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Materials in accordance with these Conditions and the Order.

Customer: the person or firm who purchases the Materials from the Supplier, as defined in the Contract.

Force Majeure Event: has the meaning given in Clause 10.

Materials: any materials (or any part of them) set out in the Order, consisting of aggregate products.

Order: the Customer's order for the Materials, as set out in the Customer's purchase order form.

Specification: any specification for the Materials that is agreed in writing by the Customer and the Supplier.

Supplier: Brewster Brothers Ltd. registered in Scotland with company number SC155687.

UKAS: the United Kingdom Accreditation Service for Waste Management & Recycling.

1.2 Interpretation

(a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Materials in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 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.
- 2.5 A quotation for the Materials given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. MATERIALS

- 3.1 The Materials are described in the Supplier's Specification.
- 3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 The Supplier shall ensure that each delivery of the Materials is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Materials (including the code number of the Materials, where applicable), special storage instructions (if any).
- 4.2 The Supplier shall deliver the Materials to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Materials are ready.
- 4.3 Delivery is completed on the completion of unloading of the Materials at the Delivery Location, and this shall be evidenced by either: (a) a delivery note signed by the Customer or (b) the Supplier's tracking system. For the avoidance of doubt, if the Customer is not available to sign the delivery note then the Supplier's employee shall take photographs of the delivery of the Materials at the Delivery Location for attaching to the delivery note which when combined with evidence of power take-off activation and associated GPS tracking map with coordinates will be deemed as sufficient to prove delivery to the Customer at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Materials that is caused by:
 - (a) a Force Majeure Event; or
 - (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Materials;
 - (c) any delay up to 48 hours beyond the delivery date agreed in the Order caused by lack of availability of the Supplier's staff due to illness or personal circumstances.

- 4.5 If the Customer fails to accept delivery pursuant to Clause 4.3, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Materials shall be deemed to have been completed at 9:00 am on the date agreed for delivery as set out in the Order; and
 - (b) the Supplier shall store the Materials until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 7 Business Days after the day on which the Supplier has attempted to deliver the Materials per the date set out in the Order, or as otherwise agreed, the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Materials and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Materials or charge the Customer for any shortfall below the price of the Materials.
- 4.7 If the Supplier delivers up to and including 10% more or less than the quantity of Materials ordered the customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Materials was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.8 The Supplier will deliver the materials in loads of up to 20 tonnes. In the event that any load to be delivered amounts to less than 75% of the haulage capacity, the Supplier reserves the right to charge a rate of £10 per tonnage of space unused up to 75% capacity of the container.
- 4.9 The Supplier may deliver the Materials by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 It will be the Customer's responsibility to provide a safe and suitable delivery point for the Supplier to supply any Materials, failing which the Supplier shall be entitled to refuse delivery.

5. QUALITY

- 5.1 The Supplier warrants that on delivery the Materials shall:
- (a) conform in all material respects with the Specification;
 - (b) be free from contamination that is material to the intended future use of the Customer's Materials;
 - (c) be fit for any purpose held out by the Supplier. (the "**Warranty**")
- 5.2 Subject to Clauses 5.3 and 5.4, if:
- (a) the Customer inspects the Materials on delivery and notifies the Supplier immediately that some or all of the Materials do not comply with the warranty set out in Clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Materials; and

- (c) the Customer (if asked to do so by the Supplier) returns such Materials to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, replace the defective Materials, or refund the price of the defective Materials in full.

5.3 The Supplier shall not be liable for the Materials' failure to comply with the warranty set out in Clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Materials after giving notice in accordance with Clause 5.2; and/or
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Materials or (if there are none) good trade practice regarding the same.

5.4 If the Customer inspects the Materials on delivery and, in terms of Clause 5.2(a), is not satisfied that the Materials comply with the provisions of Clause 5.1 then both Parties shall take a sample of the Materials at that point (on delivery) and appropriately label the said samples.

5.5 Except as provided in this Clause 5, the Supplier shall have no liability to the Customer in respect of the Materials' failure to comply with the Warranty set out in Clause 5.1.

5.6 These Conditions shall apply to any replacement Materials supplied by the Supplier.

5.7 In the event of a dispute arising out of the Warranty, the samples of the Materials taken by both Parties in terms of Clause 5.4 shall be tested by the respective Parties in order to examine whether the Materials comply with the terms of the Warranty. Should these samples provide different results, the matter shall be referred to an independent UKAS laboratory to take carry out its own testing at the customer's cost. The results produced by the independent UKAS laboratory shall be final and binding on the parties in respect of the Warranty and these terms and conditions.

6. TITLE AND RISK

6.1 The risk in the Materials shall pass to the Customer on completion of delivery.

6.2 Title to the Materials shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Materials and any other Materials that the Supplier has supplied to the Customer (under and in terms of a separate contract), in which case title to the Materials shall pass at the time of payment of all such sums

6.3 Subject to Clause 6.4, the Customer may resell or use the Materials in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Materials. However, if the Customer resells the Materials before that time:

- (a) it does so as principal and not as the Supplier's agent; and

- (b) title to the Materials shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs].

6.4 If before title to the Materials passes to the Customer, the Customer becomes subject to any of the events listed in Clause 8.1, then, without limiting any other right or remedy:

- (a) the Customer's right to resell the Materials or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Materials in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Materials are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Materials shall be the price set out in the quotation, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

7.2 The Supplier may, by giving notice to the Customer at any time increase the price of the Materials to reflect any increase in the cost of the Materials that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Materials ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Materials:

- (a) excludes amounts in respect of value added tax ("VAT"), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging and insurance of the Materials, which shall be invoiced to the Customer

7.4 The Supplier may invoice the Customer for the Materials on or at any time after the completion of delivery.

1.1 The Customer will accept Proofs of Delivery, invoices and other relevant documentation from the Supplier in a digital format.

7.5 The Customer shall pay the invoice in full and in cleared funds immediately following delivery of the Materials or as agreed under the terms of any credit

arrangements between the Customer and the Supplier. Payment shall be made to the bank account nominated in writing by the Supplier.

- 7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4.0% per annum above the Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. TERMINATION

- 8.1 Either party may terminate the Contract with immediate effect by giving notice at any time subject always to the provisions of Clause 8.3 where a Customer gives notice to terminate after an Order has been placed but not yet fulfilled.
- 8.2 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Materials under this Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.3 If an Order has been placed and the Customer terminates the Contract pursuant to Clause 8.1 after 12pm on the day before the anticipated date of delivery of the Materials then the Customer shall pay a compensatory amount to the Supplier of £50 per load of 20 tonnes ordered by the Customer as set out in the Order or quotation to the Customer, to reflect any labour, haulage or similar costs incurred by the Supplier in preparing to fulfil the Order.

9. CONSEQUENCES OF TERMINATION

- 9.1 On termination of the Contract, unless such termination is in terms of Clause 8.1 above, in which case the remainder of this Clause 9.1 shall not apply, the Customer shall immediately pay to the Supplier any outstanding unpaid invoices in relation to the relevant Order and/or Materials supplied but for which no invoice has been submitted (in respect of which the Supplier shall provide an invoice if required) together with any payment due in terms of Clauses 4.8, 7.6 and/or 8.3 above.
- 9.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by sections 9, 10, 11, 12, 13 and 15 of the Consumer Rights Act 2015;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to Clause 10.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for:

- (a) any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; or
- (b) the Customer's failure to comply with the information and instructions which accompany the Materials or industry standards relevant to the Materials concerning use, mixing and consistency, storage, safety, laying, finishing curing or sealing and recommended applications of the Materials; or
- (c) processing or mixing of the Materials by the Customer to their own specification; or
- (d) the Customer (or a third party's) wilful damage, negligence, abnormal working practice, misuse or alteration of the Materials; or
- (e) the failure to comply with the requisite conditions for storage of the Materials; or
- (f) any spoiling material or contamination being added to the Materials within the written agreement of the Company; or
- (g) the failure of the Customer to ensure it has sufficiently qualified personnel to offload, receive and cure, lay and finish the Materials; or
- (h) the ground conditions into which the Materials are to be discharged not being suitable or appropriate to receive them; or
- (i) the failure of the Customer to stop the discharge or offloading of the Materials where they are defective on inspection in terms of Clause 5.2(a).

10.3 The Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Materials.

11. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for one month, the party not affected may terminate this Contract by giving 7 days written notice to the affected party.

12. GENERAL

12.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by Clause 12.1(b). For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 12.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12.3 Entire agreement.

- (a) This 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.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each

party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.7 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 12.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the two Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.8 **Third party rights.** No one other than a party to this Contract or the Supplier's permitted assignees shall have any right to enforce any of its terms.
- 12.9 **Governing law.** 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 be governed by and construed in accordance with the law of Scotland.
- 12.10 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including

non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.