

Brewster Brothers Ltd

Terms and Conditions for the Supply of Services

01/08/2021 (v10)

1. INTERPRETATION

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

1.1 Definitions:

Anticipated Collection Date: the date(s) on which the Services are to be provided by the Supplier to the Customer as requested by the Customer and agreed by the Supplier.

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with Clause 5 (Charges and payment).

Commencement Date: has the meaning given in Clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 9.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in Clause 4.2.

Load: the quantity of Waste Materials that the Supplier can fit into one of its own tipper lorries.

Line-a-Load Order: An Order placed by the Customer with the instruction to the Supplier to collect as many Loads to them as possible within a Business Day.

Order: the Customer's order for Services as set out in the Customer's purchase order form or the Customer's written acceptance of a quotation by the Supplier, as the case may be.

SEPA: the Scottish Environment Protection Agency;

Services: the services supplied by the Supplier to the Customer being the collection or receipt on delivery (as the case may be) of the Waste Materials for treatment or disposal by the Supplier.

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

Supplier Materials: has the meaning set out in Clause 4.1(j).

WM3 Guidance: means SEPA's guidance on the classification and assessment of waste (1st edition 2015), named: Technical Guidance WM3.

Waste Materials: means pre-approved non-hazardous waste soil and stones (conforming to the description of EWC code 17 05 04); mixed construction and demolition rubble and other materials (conforming to the description of EWC code 17 09 04) and/or other pre-approved non-hazardous waste which the Supplier is authorised to receive (from time to time) all as classified in accordance with the WM3 Guidance.

Waste Transfer Note: means the document, as may be replaced from time to time, signed by both the Supplier and the Customer to comply with the Duty of Care (as defined under section 34 of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care Regulations 1991).

1.2 **Interpretation:**

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

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 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.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. **SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer in accordance with any specific agreed terms (if applicable).

- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified to the Customer (if applicable), but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.4 The Supplier reserves the right to:
- (a) take samples of any waste or material to be uplifted or removed from the Customer's premises and/or any waste or materials delivered by a Customer; and
 - (b) carry out its own independent testing of any waste or material to be uplifted or removed from the Customer's premises and/or any waste or materials delivered by a Customer
- the above rights do not remove any obligation on the Customer to comply with all of the provisions of Clause 3.5 below in relation to any waste or material to be removed or delivered under any Contract for Services.
- 3.5 The Supplier reserves the right to refuse to perform their obligations under any agreement with the Customer if any waste or materials provided or delivered by the Customer:
- (a) are not Waste Materials;
 - (b) do not accurately match any description provided by the Customer at the time of collection or delivery;
 - (c) are not accompanied by accurate and fully completed Waste Transfer Notes;
 - (d) contain any contaminants, pollutants or unauthorised materials, whether following the results of any independent testing carried out by the Customer or otherwise;
 - (e) are deemed by the Supplier to be unsafe to collect or handle.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that all waste and materials to be collected by the Supplier or delivered to the Supplier:
 - (i) are Waste Materials;
 - (ii) accurately match any description provided by the Customer at the time of collection or delivery;
 - (iii) are accompanied by accurate and fully completed Waste Transfer Notes;
 - (iv) do not contain any contaminants, pollutants or unauthorised materials;

- (v) are not unsafe to handle;
- (b) ensure that the terms of the Order and any information (including, but not limited to quantity, quality and description) it provides is complete and accurate and;
- (c) co-operate with the Supplier in all matters relating to the Services;
- (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (e) load the Supplier's tipper lorries diligently and with due skill and care for the purposes of the Services with an excavator or shovel unless otherwise arranged between the parties;
- (f) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (g) prepare the Customer's premises for the supply of the Services including ensuring that all required machinery for the loading, transfer or handling of the waste and materials is available timeously and that there is adequate space for such loading, transfer or handling of the waste and materials;
- (h) obtain and maintain all necessary Waste Transfer Notes, licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (i) comply with all applicable laws, including but not limited to environmental and health and safety laws;
- (j) comply with any duty to pay VAT, Scottish Landfill Tax, and any other applicable taxes or duties required in relation to the Services offered by the Supplier.
- (k) keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (l) accept Waste Transfer Notes, invoices and other relevant documentation from the Supplier in a digital format;
- (m) comply with any additional obligations as specified by the Supplier (acting reasonably).

4.2 Subject to the provisions of Clause 7.3 of this Contract, the Customer shall indemnify the Supplier for any losses, claims, expenses or otherwise incurred as a result of the Customer's breach of any of the provisions of Clause 4.1 of this Contract.

- 4.3 If the Supplier'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 Supplier shall have the right to suspend performance of the Services 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 Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 4.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be calculated on a time and/or materials basis:
- (a) the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the quotation to which the Order relates;
 - (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials;
- 5.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Services to reflect any increase in the cost of the Services 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 date(s) or arrangements for the provision of Services; 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.
- 5.3 The Supplier shall invoice the Customer on completion of the Services in full or any part thereof.
- 5.4 The Customer shall pay each invoice submitted by the Supplier:

- (a) on or before delivery or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.5 If the Supplier arrives at the Customer's site to perform the Services on the Anticipated Collection Date or otherwise agreed scheduled date, then the Supplier may at its discretion charge the Customer for waiting time at a rate of £15 per 15 minutes after an initial 15 minutes grace period from the arrival time whereby the Supplier's staff are unable to provide the Services immediately due to fault or delay by the Customer, including in respect of Clauses 4.1(d) and/or 4.1(f).
- 5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 7, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.6 will accrue each day at 4% a year above the Bank of Scotland's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. LIMITATION OF LIABILITY

- 6.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this Clause 6 reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 6.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 6.3 This Clause 6.3 sets out specific heads of excluded loss:

- (a) Subject to Clause 6.2, the types of loss listed in Clause 6.3(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded:
 - (i) Loss of profits
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss, including project delay and liquidated damages.

6.4 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 14 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

6.5 This Clause 6 shall survive termination of the Contract.

7. TERMINATION

7.1 Either party may terminate the Contract with immediate effect by giving notice at any time subject always to the provisions of Clause 7.3 where a Customer gives notice to terminate after an Order has been placed but not yet fulfilled.

7.2 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the 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 or the Customer is in breach of any of the provisions of Clause 4.1.

7.3 If an Order has been placed and the Customer terminates the Contract pursuant to Clause 7.1 after 12pm on the day before the Anticipated Collection Date then the Customer shall pay a compensatory amount to the Supplier of £50 per agreed numbered Load 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. In the event that the Customer has placed a Line-a-Load Order, and terminates the Contract after the deadline set out in the Clause, the Customer shall pay to the Supplier a fixed charge of £300.

7.4 Clause 7.3 will not apply if the Customer terminates the Contract while an Order is outstanding and the Supplier is in material breach of the Contract.

8. CONSEQUENCES OF TERMINATION

- 8.1 On termination of the Contract, unless such termination is in terms of Clause 7.1 above, in which case the remainder of this Clause 8.1 shall not apply, the Customer shall immediately pay to the Supplier any outstanding unpaid invoices in relation to the relevant Order and/or Services 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 4.2, 5.5, 5.7 and/or 7.3 above.
- 8.2 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.
- 8.3 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.

9. GENERAL

- 9.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 9.2 **Assignment and other dealings.**
- (a) The Supplier may at any time assign, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under the Contract.
 - (b) The Customer shall not assign, transfer, subcontract, delegate, or deal in any other manner with any of its rights and obligations under the Contract.
- 9.3 **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, except as permitted by Clause 9.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 9.3; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4 **Entire agreement.**

- (a) 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.
- (b) 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.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

9.5 **Variation.** 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).

9.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

9.7 **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.

9.8 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the designated email address of the other party from time to time.
- (b) Any notice or other communication shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 9.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

9.9 **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 this Contract.

9.10 **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.

9.11 **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 the Contract or its subject matter or formation.