



TERMS AND CONDITIONS

DEFINITIONS

In the following conditions of sale, Derwen Plant Co. Limited is referred to as “Derwen” and the person to whom this quotation is made is referred to as the “the Customer”.

Derwen and any associated companies must adhere to these terms and conditions.

1. GENERAL

1.1 These conditions apply to all agreements for the supply of Goods and/or Service by Derwen and supersede any previous terms and conditions. No additions or modifications to, or terms inconsistent with these conditions shall be binding upon Derwen unless specifically agreed in writing with Derwen.

1.2 Derwen may require a credit application from the Customer and in processing the credit application, the Customer consents that Derwen could make enquiries from credit reference agencies or other sources, who may keep a record of Derwen’s enquiry, and that Derwen may use any information obtained for the purposes of risk assessment, fraud prevention and for occasional debt tracing.

2. DURATION

2.1 The agreement shall commence on the Commencement Date and shall continue unless terminated in accordance with this agreement.

2.2 The Service shall commence with effect from the date agreed in the Order .

3. AMENDMENTS TO CONDITIONS

3.1 Unless otherwise agreed by Derwen, in writing, these terms and conditions shall apply to all Orders or contracts placed with Derwen. Any situations or conditions contained within a Customer’s order form which could conflict with any of these terms and conditions, or in any way qualify or negative the same shall be deemed to be inapplicable to any Order placed with Derwen unless expressly agreed to by Derwen in writing when acknowledging the Order in question.

3.2 Derwen reserves the right to amend this agreement as it considers necessary to comply with the statutory requirements from time to time or any change in legislation governing the collection, transport and disposal of Waste and will notify any such amendment to the Customer as soon as practicably possible.

4. QUOTATIONS AND ORDERS

4.1 The quotation, as provided by Derwen to the Customer for the provision of Goods and/or Services verbally, by e-mail, fax, writing or otherwise is open for acceptance by the Customer for 30 days from the date of such quotation and if it has not been accepted by the Customer within this time, then this quotation shall automatically lapse unless it has been extended by Derwen..

4.2 All Orders are accepted subject to the necessary labour, materials and transport being available.

4.3 An Order will be deemed to have been placed by the Customer to Derwen by confirmation of the quotation by the Customer whether by letter, fax, e-mail, verbal confirmation or otherwise.

4.4 If for any reason Derwen is unable to directly supply Equipment to enable it to provide the Service, it reserves the right to source such Equipment from an alternative/suitable source.

5. PRICES

5.1 Prices charged will be those current at the date of quotation, Order or delivery of each load of material.

5.2 Derwen shall have the right to increase the charge at any time to take account of any variations in wages, disposal costs, administration costs, costs of materials and Equipment, fuel costs, taxes, duties and cost of compliance with relevant legislation. Derwen will endeavour to give the Customer not less than one calendar month’s notice of any variation of the Charge under this clause but notwithstanding this, the Customer shall be liable to pay any increase from the date specified in the notice.

5.3 Where Charge Per Lift is based on an Assumed Weight, Derwen may revise the Assumed Weight (and consequently and proportionately the Charge Per Lift) at any time if it reasonably believes that the actual average weight per collection is less than or greater than the Assumed Weight.

5.4 Derwen may Charge and the Customer shall pay to Derwen the EA Charge. Derwen shall endeavour to give not less than one months notice to the Customer of the EA Charge but not withstanding this, the Customer shall be liable to pay the EA Charge within 30 days of the date of the invoice.

6. PAYMENT & INTEREST

Payment for the Goods will be in accordance with the Order or agreed in writing between the Customer and Derwen. All prices for the Goods and/or Service shall be exclusive of VAT unless otherwise stated. If a price fluctuation clause shall apply to the contract as determined on there face hereof, any increase or decrease must be notified immediately to the Customer and is conditional upon

6.1 Terms are net monthly account unless otherwise stated and are then subject to the Customer having an approved account with Derwen. Unless otherwise agreed in writing, payment shall be made by the end of the month following the month of delivery and in default of such payment (without prejudice to any other remedy).

6.2 All payments for the Goods and/or Service shall be due and payable within 30 days of the date of the invoice for the Goods and/or Service. All payments made by the Customer under this agreement, shall be made in full without any set-off or counter-claim whatever and the time of payment shall be of the essence of this agreement.

6.3 Without prejudice to any other rights of Derwen, if there is or there arises reason to doubt that amounts due from the Customer will be paid in full, then Derwen reserves the right to require payment in advance before commencing or continuing with the Service, or at its sole discretion Derwen may terminate the agreement forthwith.

6.4 Without limiting any other right or remedy of Derwen, if the Customer fails to make any payment due to Derwen under the Order and these Terms and Conditions within 30 days of the date of the invoice for payment, Derwen shall have the right to Charge interest on the overdue amount at the rate of 5% per annum above the base lending rate for the time being of Barclays Bank plc. And accruing on a daily basis from the due date for payment until the actual payment of the overdue amount.

7. DELIVERY, ACCESS, UNLOADING AND RETURN

7.1 All times quoted for delivery are estimated times only.

7.2 Where delivery is to be made to the Customer's site, the Customer shall provide (in advance) and clearly indicate to the delivery driver a route from the public highway to the site which is safe and reasonable, and easily accessible.

7.3 The Customer shall provide suitable access to the Collection Site, a suitable area for siting the Equipment and suitable facilities for turning the Equipment around.

The driver of the Vehicle may in his absolute discretion refuse delivery if he believes that access to the Collection Site or turning facilities are unsafe or likely to cause damage to the Vehicle or if there is any reason to believe that the proposed area for siting Equipment is unsuitable.

7.4 The Customer shall unload the said Vehicle expeditiously and shall provide all labour for doing so. The Customer shall be responsible for any demurrage or waiting time caused by any delay in loading or unloading and will be subject to an extra Charge.

7.5 The Customer warrants to Derwen that in pursuance of the requirements of the Health & Safety at Work Act 1974 and any other applicable legislation, the Customer will provide safe working conditions on the site premises consistent with such Act and all other relevant legislation and will ensure that Derwen's personnel are not exposed to any risks to their health and safety.

7.6 Delivery will be made within Derwen's normal working hours. All materials delivered or made available at the Customers request on Bank Holidays, Sundays and Saturday afternoon's and outside Derwen's normal working hours will be subject to an extra Charge.

7.7 All delivery personnel are to wear appropriate Personal Protective Equipment ("PPE") whilst on site which, if so required, are to be provided to the delivery personnel by the Customer upon reporting to the Customer's site office. The driver must report to the Customer's site office upon arrival. Personnel who spend prolonged periods on site will require induction training. Note various environmental considerations with regard to deliveries including accesses and surrounding roads should remain free from mud and litter. Deliveries should be taken to specified storage areas and should only be completed during agreed working hours or at an agreed time only.

7.8 Subject to Clause 9.2, the Customer shall be responsible for the safety of any person (including the employees and agents of Derwen) whilst on or about the Collection Site.

8. PERFORMANCE DATES AND FORCE MAJEURE

8.1 Derwen will use reasonable endeavours to meet the dates for collection (which shall always be Working Days unless expressly agreed otherwise between Derwen and the Customer) but shall not be liable for late performance or delay in performance of the Service and delays shall not entitle the Customer to rescind the agreement.

8.2 Derwen shall have no liability for any delay or default in the provision of the Service caused directly or indirectly by breakdown or unavailability of Equipment or Vehicles inability to obtain labour or any other causes beyond Derwen's reasonable control.

9. TERMS AND REPRESENTATIONS

9.1 These Clauses set out the Customer's rights in respect of any loss or damage caused by the provision of the Goods and/or Service or any statements made by Derwen, its employees or agents. Customers are advised to read these provisions carefully and to check that they are covered by insurance against any loss or damage that they may sustain in respect of which the potential liability of Derwen is or may be restricted or excluded hereunder.

9.2 The Equipment shall be deemed to be in good working order and condition and fit for the Customer's purpose (save for defects not discoverable by a reasonable examination) except to the extent that the Customer has notified Derwen to the contrary within three Working Days of acceptance of the Equipment at the Collection Site.

9.3 Nothing in these Terms and Conditions shall limit or exclude Derwen's liability for death or personal injury to the extent that it results from negligence from Derwen, its employees or agents. Otherwise, Derwen's total liability to the Customer in respect of all other losses arising under or in connection with this agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including any breach on the part of Derwen of any condition or warranty as to title and quiet possession which may be implied by section 7 of the Supply of Goods and Services Act 1982 as well as any losses caused by a deliberate breach of this agreement by Derwen, its employees, agents or subcontractors shall not exceed the amount paid under the corresponding Order.

9.4 Subject to Clause 9.5, Derwen shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss or profit, or any indirect or consequential loss arising under or in connection with this agreement (including any losses that may result from a deliberate breach of the agreement by Derwen, its employees, agents or subcontractors).

9.5 Derwen's total liability (including for related costs, fees and expenses) in respect of any one Transgression (except one giving rise to the liability referred to in Clause 9.3) shall be limited to £50,000.

9.6 If any exclusion or limitation of liability or any other provision contained in this Clause 9 or otherwise contained in the agreement is held invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if Derwen thereby becomes liable for any defect or loss, damage or nuisance which would have otherwise been excluded such liability shall be subject to the other exclusions limitations or provisions set out in the agreement.

9.7 The provisions of this Clause 9 shall remain in full force and effect notwithstanding any breach of this agreement by Derwen, and shall apply to such breach whether or not this agreement is terminated in consequence of such breach.

10. EQUIPMENT – TITLE/RISK

10.1 The Customer will conform to any statutory enactments and regulations and byelaws and regulations of local or other statutory authorities which apply to the Equipment.

10.2 The Customer shall not

10.2.1 overload or overfill the Equipment; or

10.2.2 set fire to the contents of the Equipment; or

10.2.3 interfere with the mechanism of the Equipment; or

10.2.4 add or attach to the Equipment any painting, sign, writing, lettering or advertising; or

10.2.5 shall not remove, deface or conceal any name plate or mark indicating that the Equipment is the property of Derwen and Derwen shall at all reasonable times have access to inspect or repair such name plates or marks.

10.3 All Equipment provided shall remain the property of Derwen and the Customer will have no rights in the Equipment other than a mere bailee. The Equipment must only be used by the Customer and must be kept at the Collection Site. The Customer shall have no right of lien over the Equipment.

10.4 The Customer has agreed that the Equipment is suitable to contain and transport the Waste in quantities specified. Derwen relies on the Customer's advice as to the description of the Waste involved in the provision of the Service.

10.5 The Customer will be liable to pay for repair/replacement plus any incurred by Derwen or losses occurred as a result of the damage to the Equipment.

10.6 The Customer will maintain the Equipment in satisfactory condition and keep them insured against all risks for the value of their full price on Derwen's behalf from the date of delivery and if requested by Derwen, shall provide a copy of its insurance policy on demand.

11. RISK

11.1 Risk of any loss or damage to the Equipment shall pass to and remain with the Customer from the time when the Equipment first arrives at the Collection Site, except where the loss or damage arises from the negligence or wilful default of Derwen, its employees, agents or sub-contractors.

12. EMPTYING, REPLACEMENT AND REMOVAL

12.1 The Customer shall at all times allow Derwen, its employees or agents access to the Equipment to empty or replace it and on the termination of this agreement to remove it from the Collection Site.

12.2 All Waste deposited in the Equipment shall become the property of Derwen from the time when Derwen empties or replaces the Equipment, **provided that this Clause shall not absolve the Customer from any liability or responsibility in relation to the Waste.**

13. RECYCLED AGGREGATES/HARDCORE

13.1 Certification to prove Waste materials has been obtained/are in place to produce a recycled product (recycled aggregate) shall be provided to the Customer, this may be in the form of written compliance to the quality protocol (WRAP).

14. COLLECTED MATERIALS

14.1 Where prices are quoted ex-depot, the materials will be loaded into the Customer's Vehicle at a suitable loading point at the depot as directed by the depot manager or loading supervisor. Where practicable, notice should be given of the date and time when the Customer's Vehicle will collect the materials. The Customer's Vehicle will be loaded with the utmost dispatch but Derwen will not in the event be liable for any delay in delivery of materials into the Customer's Vehicle or any loss consequent thereon. Customers will be responsible for the condition and safety of Vehicles in which they collect materials whether owned or hired and Derwen shall not be liable in anyway for loss or contamination of material resulting from the condition of such Vehicles.

15. WASTE

15.1 A copy of the Waste Carriers Licence and a copy of all the Waste Management Facility Licences, where the Customers Waste is to be disposed of, shall be submitted to site prior to any materials being removed from site.

15.2 A Waste Transfer Note/Hazardous Waste Consignment Note, including all required information, shall be provided to the Customer's Waste Co-ordinator when the Waste is collected from the site.

15.3 The Customer and Derwen will sign a new Transfer Note or for each contract/job Order:

15.3.1 without prejudice to Clause 15.5, at any time when there is a Charge in any of the details set out as contained and agreed in the Order or on any Transfer Note; and/or

15.3.2 before the expiration of twelve months from the Commencement Date or any current Transfer Note.

15.4 The Customer warrants that the details relating to the Waste (including, for the avoidance of doubt, those relating to weight and compactability) contained as contained and agreed in the Order or in any Transfer Note are and will be true and complete. Derwen relies on those details in the provision of Service. Derwen shall be entitled to take samples of the materials placed in the Equipment to satisfy itself that the description is accurate prior to collection and disposal. Such right shall under no circumstances relieve the Customer of its obligations to describe the Waste accurately.

15.5 The Customer may not place or cause to be placed in the Equipment, any material other than Waste described or, if such has been signed, in the current Waste Transfer Note.

15.5.1 If the situation arises whereby the Customer places prohibited Waste in the Equipment and this does not become apparent to Derwen until after such time as the Equipment has been collected by Derwen, then the Customer will be liable to reimburse Derwen for any costs incurred by Derwen in disposing of the Waste appropriately and in accordance with the laws of England and Wales. The

Customer may also be liable to pay any fine levied on Derwen for handling Waste not permitted by its Waste Management Facility License,

15.6. Derwen will be entitled to refuse to deal with any material which it has reason to believe is:

15.6.1 hazardous (toxic, poisonous, explosive, inflammable or otherwise dangerous); or

15.6.2 which the handling of may cause Derwen to incur civil or criminal liability; or

15.6.3 which it has reason to believe is or may be a Special Waste; or

15.6.4 which the disposal handling of might involve Derwen an additional expense or an unreasonable amount of extra work.

15.6

16. DISPOSAL

16.1 Derwen will use all reasonable endeavours to satisfy that any Disposal Site at which the Customers Waste is disposed of is operated in accordance with statutory requirements where such Disposal Site is not operated by Derwen. However, Derwen accepts no liability whatsoever for any third party's failure so to operate.

17. SAMPLES

17.1 All samples submitted by Derwen are from current production at the time of submission of such samples.

18. SHORTAGE, LOSS & DAMAGE

18.1 Notice of any claim relating to shortage shall be made as soon as possible to Derwen confirmed in writing within 48 hours on receipt of the Goods. In the result of loss or non-delivery the Customer shall notify Derwen within 24 hours of the expected delivery and in writing within three Working Days of receiving the invoice thereof.

19. LIABILITIES OF THE CUSTOMER

19.1 During the agreement the Customer shall make good to Derwen all loss of or damage to the Equipment (fair wear and tear excepted).

19.2 Subject to Clause 9, the Customer shall indemnify and hold Derwen harmless against any injury, demands, actions, costs, Charges, expenses, loss, damage or liability to any persons or property arising from:

19.2.1 any act omission or negligence of the Customer, its agents or employees; or

19.2.2 the provision of the Service.

19.3 If the Customer requests that the Equipment be placed in a position which requires the Vehicle to leave the public highway, the Customer shall indemnify and hold Derwen harmless against any loss, cost, claims, damages or expenses which Derwen may thereby incur, whether as a result of damage to the Vehicle, the Equipment, the property of the customer or a third party including damage to the road margin or pavements.

19.4 The Customer shall maintain insurance cover in respect of this indemnity and shall at the request of Derwen provide a copy of the insurance policy as proof of maintaining such cover.

20. CUSTOMERS CREDIT, LIQUIDATION OR BANKRUPTCY

20.1 Derwen reserves the right at any time to execute an Order or contract if the arrangements for payment or the Customer's credit are not satisfactory to it.

21. TERMINATION

21.1 If the Customer commits any breach of this agreement Derwen may, in addition to its other rights in respect thereof, give notice to the Customer to terminate this agreement immediately or, at the option of Derwen, after 21 days from the date of such notice if the Customer shall not have remedied the breach to Derwen's satisfaction during that time.

21.2 If the Customer shall have a receiver, an administrator or an administrative receiver appointed for the whole or any part of its assets or if an Order shall be made or a resolution passed for its winding-up (unless this is for the purpose of its reconstruction or amalgamation) then this agreement shall terminate forthwith.

21.3 Either party may terminate this agreement by the service of notice, which must be of not less than three months duration and not more than six months duration, must be expressed to expire on the date

which three months after any anniversary of the Commencement Date, and must be given in the manner set out in Clause 22.

21.4 If Derwen elects to terminate this agreement under clause 21.1, or the agreement is terminated under Clause 21.2, the Customer shall pay all Charges accrued due and in addition shall pay Derwen as liquidated damages (and the Customer acknowledges this to be a genuine pre-estimate of the likely loss which Derwen would incur in such an event) for the period (the "Damages Period") from the date of such termination to the earliest date on which this agreement could validly be terminated by a notice given in accordance with Clause 21.3, the following amount:

21.4.1 in the case of Customers for which Derwen collects Waste on a scheduled Collection Day, an amount equal to 41% of the aggregate Daily Rental and Collection Charge which would have become payable in respect of the Service during the Damages Period;

21.4.2 in the case of Customers for which Derwen collects Waste not on a specific Collection Day but upon request, an amount equal to 41% of the aggregate Daily Rental and Collection Charge which would have become payable in respect of the Service. During the Damages Period on the following assumptions:

21.4.2.1 where the Service has been provided for less than three months, that collections would have been made during the Damages Period at the Expected Frequency set out as contained and agreed in the Order; or

21.4.2.2 where the Service has been provided for more than three months, that collections would have been made during the Damages Period at the greater of (1) the Expected Frequency or (2) at the same average rate as during the three months immediately preceding the termination date.

21.5 Termination of this agreement shall be without prejudice to any rights or liabilities of either party which may have accrued to that date.

22. NOTICES

22.1 Any proposal acceptance agreement, authority permission or notice referred to in this agreement shall be:

22.1.1 in writing; and

22.1.2 given to the party for whom it is intended at the address for that party as set out in this agreement, or such address as is notified to the other party for that purpose ; and

22.1.3 given by post, facsimile or e-mail and shall be deemed to have been received two Working Days after the date of posting one Working Day after the date of facsimile transmission or e-mail as the case may be.

23. GOVERNING LAW

23.1 This agreement shall be governed by and construed in accordance with the Laws of England & Wales and the parties irrevocably submit to the exclusive jurisdiction of the English & Welsh Courts.

23.2 Any reference to any Act of Parliament, Regulation or Order shall include any re-enactment, amendment, replacement or modification thereof.

24. FOREBEARANCE

24.1 No time indulgence or relaxation on the part of Derwen shown or granted in the respect of any of the provisions of this agreement shall in any way affect, diminish, restrict or prejudice the rights or powers of Derwen under this agreement or operate as or be a waiver of any breach by the Customer of the terms of this agreement.

25. MOBILE PHONE POLICY

25.1 The use of mobile phones whilst driving on site is prohibited at all times unless the Vehicle is fitted with an approved hands-free system in which case its use should be restricted to essential calls which cannot wait until the Vehicle is safely parked.

25.2 Texting or e mailing whilst on site is strictly prohibited.

25.3 The use of mobile phones on sites is prohibited whilst carrying out any designated operation unless the phone has been sanctioned and documented in the method statement or is a key element in the job role being undertaken (e.g. as means of a communication in an emergency) This includes making and or receiving calls.

25.4 Never use a mobile or leave it switched on when:

25.4.1 Operating or using Plant, machinery or mobile cranes

25.4.2 Directing or banking Plant

25.4.3 Working at height

25.4.4 In confined spaces

26. MISCELLANEOUS

26.1 In the case of Orders given by the Customer verbally, whether by telephone or otherwise, the record made by Derwen of such Orders shall be conclusive and binding.

26.2 Derwen acts only as a supplier of materials to the Order of the Customer and knowledge of the purpose for which the materials are intended to be used does not imply any warranty on the part of Derwen as to the quality or fitness for that purpose of the materials supplied.

26.3 The ownership of the Goods shall remain with Derwen, which reserve the right to dispose of the Goods until payment in full for all the Goods has been received by it in accordance with the terms of this contract or until such time as the Customer sells the material to its Customer by way of bona-fide sale at full market value.

DEFINITIONS

In these Conditions the following words and expressions shall have the following meanings:

“Assumed Weight” means the assumed weight further particulars of which are set out in section 2 as contained and agreed in the Order.

“Derwen” means Derwen Plant Co. Ltd or any of its subsidiary or associate companies.

“Charge” means the total amount payable for the Service in respect of the Collection Charge, Daily Rental and Delivery Charge.

“Charge Per Lift” means the amount per lift (or collection) of Waste set out as contained and agreed in the Order, as increased from time to time pursuant to Clause 4.

“Collection Charge” means, for invoice type 1, the Charge Per Lift and, for invoice types 2 to 4, the Charge Per Lift plus the Charge Per Tonne.

“Collection Site” means the site or sites further particulars of which are set out as contained and agreed in the Order.

“Commencement Date” means the date on which both parties sign as contained and agreed in the Order.

“Customer” means the customer further particulars of which are set out as contained and agreed in the Order.

“Daily Rental” means the daily amount set out as contained and agreed in the Order.

“Disposal Site” means the site or sites further particulars of which are set out as contained and agreed in the Order.

“EA Charge” means the environmental administration charge levied by Derwen from time to time in accordance with this Agreement.

“Equipment” means each and every item of Waste disposal Equipment hired out to Derwen to the customer, including containers.

“Expected Frequency” means the frequency stated as contained and agreed in the Order, being (in the case where schedules collection day(s) is/are not set out over leaf) the Customer’s expectation of the frequency at which it will require the collection of Waste.

“Goods” refers to the supply of recycled aggregate products supplied in accordance with the Waste Resources Action programme (WRAP) quality protocol criteria.

“Order” means the customer’s order for the supply of Goods and/or Services as set out and agreed whether in writing, by e-mail, verbally or otherwise.

“Relevant Legislation” means any statute, European Community Directive or the requirements of any government department, local authority or other public or competent authority, and guidelines contained in government waste management papers and codes of practice issued by the government for the waste disposal industry and which are relevant to the parties’ obligations under this agreement.

“Service” means the provision of Equipment and a Transfer Note (or any other document required for the lawful storage, collection, transportation and disposal of Waste), collection of Waste, transport of Waste and disposal of Waste or any part thereof as agreed between Derwen and the Customer.

“Special Waste” means a special waste as defined in the Special Waste Regulations 1996.

“Transfer Note” means the current controlled Waste description and Transfer Note completed by the Customer and Derwen pursuant to the provisions of the Environmental Protection Act 1990 and the regulations made there under which relates to the Waste covered by this agreement.

“Transgression” means any single breach of this agreement, tort or other act default omission or statement of Derwen, its employee’s agents or subcontractors in respect of which Derwen is held liable to the Customer.

“Vehicle” means each and every vehicle owned or operated by Derwen, its agents or sub-contractors, which visits any Collection Site to deliver, empty, replace or remove Equipment.

“Waste” means the waste further particulars of which are set out as contained and agreed in the Order or in any current Transfer Note applicable to this agreement.

“Working Day” means a day (excluding Saturday and days where local holidays do not coincide with public/bank holidays) on which banks in London are open for general business.