

## CONDITIONS FOR THE PURCHASE OF SCRAP METAL

### DEFINITIONS

In these conditions (the "General Conditions") the following words and expressions shall have the following meanings:

- "Agreement"** means any Agreement whether or not in writing between the Supplier and Ward Recycling for the purchase of Scrap Metal into which these General Conditions are incorporated
- "Bill of Lading"** means any bill of lading created or to be created in connection with the transportation or delivery of the Scrap Metal
- "Collection Site"** means the site or sites from which the Scrap Metal is to be collected further particulars of which are set out in the Agreement
- "Commencement Date"** means the date that the Agreement is signed by the Supplier or, if the Agreement was concluded without signature, the date on which such conclusion took place
- "Disposal Site"** means any site or sites for the delivery of Scrap Metal details of which are set out in the Agreement
- "Equipment"** means each and every item of waste disposal equipment provided by Ward Recycling to the Supplier, including containers
- "Price"** means the price of Scrap Metal as stated in the Agreement
- "Relevant Legislation"** means all legislation, regulations, rules and/or other requirements in relation to (directly or indirectly) the Scrap Metal, including (but not limited to) the provision, transportation and/or recovery of the Scrap Metal, including in particular but without limitation the Environmental Protection Act 1990 and the Waste (England and Wales) Regulations 2011 and the Shipments of Waste Regulation.
- "Scrap Metal"** means any scrap metals of the type or description specified in the Agreement or otherwise as may be agreed by Ward Recycling and the Supplier during the Term
- "Shipments of Waste Regulation"** means Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste
- "Special Waste"** means a special waste as defined in the Special Waste Regulations 1996
- "Supplier"** means the person, firm or company who supplies Scrap Metal as described in the Agreement
- "Transgression"** means any single breach of the Agreement, tort or other act, default, omission or statement of Ward Recycling its employees, agents or sub contractors in respect of which Ward Recycling is held liable to the Supplier
- "Vehicle"** means each and every vehicle owned or operated by Ward Recycling, its agents or subcontractors which visits any

Collection Site to remove Scrap Metal

**“Ward Recycling”** means Donald Ward Limited (company number 01292288) or any of its subsidiary or associate companies (each as defined in the Companies Act 2006)

**“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

## 1 GENERAL

1.1 These conditions apply to all Agreements for the purchase of Scrap Metal by Ward Recycling and supersede any previous terms and conditions. No additions or modifications to or terms inconsistent with these General Conditions shall be binding upon Ward Recycling unless specifically agreed by a director of Ward Recycling in writing.

1.2 The rights and obligations of the Supplier under this the Agreement shall be personal and shall not be assignable without the express consent of Ward Recycling.

1.3 A person who is not a party to the Agreement shall not have any rights under or in connection with it.

1.4 If there is any conflict or ambiguity between these General Conditions and the terms and conditions of the Agreement, the terms and conditions set out in the Agreement shall prevail.

1.5 References to an Article or Articles shall be to an Article or Articles of the Shipments of Waste Regulation.

1.6 References in **Clause 11** to recovery shall have the meaning prescribed by Article 2.

## 2 DURATION

2.1 The Agreement shall commence on the Commencement Date and shall continue unless and until the obligations of the parties are discharged in full or it is terminated in accordance with these General Conditions.

## 3 PRICE AND PAYMENT TERMS – THE SUPPLIER’S ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 3.3

3.1 The price of the Scrap Metal shall be the Price which shall be inclusive of the cost of delivery to the Disposal Site and the costs of taxes, duties, packaging, insurance and carriage of the Scrap Metal, unless otherwise agreed in writing by the Ward Recycling

3.2 Unless otherwise stated in the Agreement or these General Conditions, all payments for the Scrap Metal shall be due and payable at the end of the month following the month of its collection by Ward Recycling or delivery by the Supplier as the case may be.

3.3 Notwithstanding the provisions of **Clause 3.2**, if the Supplier has agreed in writing with Ward Recycling to deliver the Scrap Metal directly to or, has allowed the Scrap

Metal to be collected directly by a third party who has agreed to purchase the Scrap Metal from Ward Recycling (“Ward Recycling Customer”) then:

- 3.3.1 the parties agree that the payments for the Scrap Metal will not be due and payable until the end of the week following the week in which Ward Recycling receives payment in full from the Ward Recycling Customer for the Scrap Metal;
- 3.3.2 the Supplier acknowledges that there is a risk under this **Clause 3.3** that the Supplier will not recover the Price from Ward Recycling and that:
  - (a) the Price reflects such risk; and
  - (b) it has obtained or will obtain in good time insurance against such risk.
- 3.4 If, in the circumstances set out at **Clause 3.3**, Ward Recycling does not recover payment for the Scrap Metal from the Ward Recycling Customer but does recover possession of the Scrap Metal, it will make the Scrap Metal available for collection by the Supplier from such location as is nominated by Ward Recycling.
- 3.5 Any sums, which are not paid by the due date (as defined in **Clause 3.2** or **Clause 3.3** as the case may be) will attract interest at the rate of 2% above the base rate of the Bank of England from time to time.
- 3.6 Ward Recycling shall be entitled to offset any amount owed by Ward Recycling to the Supplier under the Agreement or any other agreement (and whether in relation to the purchase by Ward Recycling of scrap metal or otherwise) against any other amount owed by the Supplier to Ward Recycling under the Agreement or any other agreement.
- 3.7 Ward Recycling may amend the Price to take account of any increase in Ward Recycling’s costs including (but not limited to) variations in wages, disposal costs, administration costs, cost of materials, fuel costs, taxes, duties, the cost of compliance with Relevant Legislation and market fluctuations in price of metal.
- 3.8 Ward Recycling may, at its sole discretion, pay or agree to pay to the Supplier all or part of the Price to the Supplier before the Scrap Metal is collected by or delivered to Ward Recycling (an “Advance Payment”).
- 3.9 In any circumstances where Ward Recycling has made an Advance Payment following the receipt by Ward Recycling of the relevant Scrap Metal, Ward Recycling shall calculate the final Price for such Scrap Metal and:
  - 3.9.1 if the Advance Payment is less than the final Price, Ward Recycling shall pay to the Supplier the balance of the Price after deduction of the Advance Payment; or
  - 3.9.2 if the final Price is less than the Advance Payment, the Supplier shall pay to Ward Recycling immediately upon demand a sum equal to the amount by which the final Price falls short of the Advance Payment.
- 3.10 Upon the payment by Ward Recycling of any Advance Payment, the Supplier irrevocably undertakes and agrees to supply or make available for collection to Ward Recycling Scrap Metal of the type specified in the Agreement with an aggregate value of not less than the Advance Payment and if the Supplier fails to do so within a reasonable period following the Advance Payment (as determined by Ward Recycling), the Supplier shall immediately upon receipt of a demand by Ward Recycling, pay to Ward Recycling an amount equal to the shortfall between the Advance Payment and the value of the Scrap Metal actually received by Ward Recycling.

- 3.11 Any Advanced Payment made by Ward Recycling shall be held on trust by the Supplier for Ward Recycling until such time as Ward Recycling collects or takes delivery of the Scrap Metal in relation to which such Advanced Payment was made.
- 3.12 If Ward Recycling makes an Advance Payment in relation to any Scrap Metal which is in the ownership or under the control of the Supplier at the time the Advance Payment is made to the Supplier, title to the Scrap Metal shall pass to Ward Recycling at the time the Advance Payment is made and:
  - 3.12.1 the Supplier shall hold such Scrap Metal on a fiduciary basis as Ward Recycling's bailee;
  - 3.12.2 the Supplier shall identify the Scrap Metal as belonging to Ward Recycling and, where reasonably practicable, shall store the Scrap Metal separately from other materials;
  - 3.12.3 the Supplier grants Ward Recycling, its agents and its employees an irrevocable license at any time to enter the premises where the Scrap Metal is stored in order to inspect or to take possession of the Scrap Metal and the Supplier shall bear any costs Ward Recycling incurs in inspecting or taking possession of the Scrap Metal; and
  - 3.12.4 on termination of the Agreement, howsoever caused, Ward Recycling's rights under this **Clause 3.12** shall remain in effect.
- 3.13 in the event that Ward Recycling makes any amendment to the Price the result of which is the total Price being a sum lower than any part of the Price paid to the Supplier prior to such adjustment being made the difference between the amount of the existed Price and the amount previously paid shall be a debt immediately due from the Supplier to Ward Recycling

#### **4 DELIVERY ACCESS LOADING AND RETURN**

- 4.1 The Scrap Metal shall either be collected from the Collection Site or delivered to the Disposal Site, as agreed between the parties.
- 4.2 If it is agreed between the parties that Ward Recycling will collect the Scrap Metal from the Collection Site then:
  - 4.2.1 the Supplier shall provide safe and appropriate access to the Collection Site and suitable facilities for turning any Vehicle around;
  - 4.2.2 the driver of the Vehicle may in his absolute discretion refuse to collect any unsuitable Scrap Metal if he believes that access to the Collection Site or turning facilities are unsafe or likely to cause damage to the Vehicle or if he believes that any Equipment has been overloaded;
  - 4.2.3 subject to **Clause 7.2**, the Supplier shall be responsible for the safety of any person (including the employees and agents of Ward Recycling) whilst on or about the Collection Site; and
  - 4.2.4 if, as a result of an act or omission of the Supplier, Ward Recycling is prevented from collecting Scrap Metal within 20 minutes of arrival at the Collection Site, Ward Recycling may charge the Supplier for waiting time at its standard rate or shall be entitled to abandon the collection and terminate the Agreement without liability to the Supplier..
- 4.3 If it is agreed between the parties that the Supplier will deliver the Scrap Metal to the Disposal Site then the Supplier shall:

- 4.3.1 ensure that the Scrap Metal is properly packed and secured in such manner as to enable it to reach the Disposal Site in good condition;
- 4.3.2 ensure that each delivery of the Scrap Metal is accompanied by a delivery note which shows the type and quantity of the Scrap Metal being delivered;
- 4.3.3 provide Ward Recycling with such export documents as may be required in connection with the delivery of the Scrap Metal including, but not limited to, a Bill of Lading and shall ensure that:
  - (a) such documents are submitted to Ward Recycling for approval as soon as reasonably practicable; and
  - (b) any corrections or additions that are specified by Ward Recycling are incorporated
- 4.3.4 deliver the Scrap Metal on the date agreed by Ward Recycling and the Supplier.

## 5 **PERFORMANCE DATES**

- 5.1 Ward Recycling will use reasonable endeavours to meet the dates for collection set out in the Agreement but shall not be liable for late performance or delay in collection and delays which shall not entitle the Supplier to rescind, or in any way terminate, the Agreement.

## 6 **RISK**

- 6.1 Risk of any loss (including but not limited to theft) or damage to the Scrap Metal shall remain with the Supplier until such time as it is collected by Ward Recycling or upon completion of delivery to the Disposal Site, as the case may be.

## 7 **LIABILITY**

These conditions set out the Supplier's rights in respect of any loss or damage caused by any action of or any statements made by Ward Recycling, its employees or agents. Suppliers are advised to read these provisions carefully and to check that they are adequately insured against any loss or damage that they may sustain in respect of which the potential liability of Ward Recycling is or may be restricted or excluded hereunder.

- 7.1 Ward Recycling accepts liability for death or personal injury to the extent that it results from negligence of Ward Recycling, its employees or agents and further accepts liability for any breach on the part of Ward Recycling 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. Nothing in the Agreement shall have the effect of limiting or excluding any liability for fraud or any other liability which cannot be excluded as a matter of law.
- 7.2 Subject to **Clause 7.3**, Ward Recycling also accepts liability for any other direct loss or damage (but not any indirect or consequential loss, including (but not limited to) loss of profits, production, business or reputation or any loss caused to a third party) in relation to items belonging to the Supplier, its employees (including personal effects) to the extent that it results from:
  - 7.2.1 a breach by Ward Recycling of any of the express provisions of the Agreement; or
  - 7.2.2 the negligence of Ward Recycling, its employees or agents,

and does not result from (and to the extent that it is not contributed to by) the act, omission or negligence of the Supplier, its employees or agents.

- 7.3 Ward Recycling's total liability (including for related costs, fees and expenses) in respect of any one Transgression or series of related Transgressions shall be limited to £5,000.
- 7.4 If any exclusion or limitation of liability or any other provision contained in this **Clause 7** or otherwise contained in the Agreement is held to be unlawful, it shall to that extent be deemed omitted, but if Ward Recycling 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.

## 8 **SCRAP METAL AND EQUIPMENT**

- 8.1 The Supplier warrants that the details relating to the Scrap Metal (including, for the avoidance of doubt, those relating to weight) contained in the Agreement are and will be true and complete. Ward Recycling shall be entitled to take samples of Scrap Metal to satisfy itself that the description is accurate prior to collection and/or unloading at the Disposal Site. Such right shall under no circumstances relieve the Supplier of its obligations to describe the Scrap Metal accurately.
- 8.2 Without prejudice to the generality of the provisions of this **Clause 8**, Ward Recycling will be entitled to refuse to deal with any material:
- 8.2.1 which it has reason to believe is radioactive, toxic, poisonous, explosive, inflammable or otherwise dangerous; or
- 8.2.2 the handling of which may cause Ward Recycling to incur civil or criminal liability; or
- 8.2.3 which it has reason to believe is or may be Special Waste; or
- 8.2.4 the disposal of which might involve Ward Recycling in additional expense or an unreasonable amount of extra work.
- 8.3 If any Scrap Metal is contaminated by or mixed with waste (other than an amount of waste which is, in the opinion of Ward Recycling, minor contamination), then Ward Recycling will remove the Scrap Metal and the waste from the Collection Site but shall not be obliged to purchase the Scrap Metal. If the Scrap Metal contains only minor amounts of waste, Ward Recycling shall be entitled to make such deduction from the Price as Ward Recycling considers appropriate.
- 8.4 If, following collection or delivery of any Scrap Metal, either the Scrap Metal is of a lower quality than indicated by the Supplier or, the weight of such Scrap Metal is lower than first stated, the Price may be adjusted accordingly. Ward Recycling's decision as to the weight or quality of such Scrap Metal and any appropriate amendment of the Price shall be final.
- 8.5 If, following collection or delivery of any Scrap Metal, either the Scrap Metal is of a lower quality than indicated by the Supplier or, the weight of such Scrap Metal is lower than first stated, Ward Recycling reserve the right (with or without reference to the Supplier) to appoint an independent inspector to make a final determination as to the weight and quality of such Scrap Metal and the Price will be adjusted. The Supplier agrees that Ward Recycling shall not be obliged to appoint an independent inspector but in the event that they do any determination by the independent inspector shall be binding in the event of any dispute.

- 8.6 The Supplier warrants in relation to each item of Scrap Metal the subject of this Agreement:
- 8.6.1 that the Supplier has good and proper title to the Scrap Metal;
  - 8.6.2 that any documentation supplied with the Scrap Metal is true, genuine and accurate in all material respects;
  - 8.6.3 that the Scrap Metal is not contaminated by any substance which is radioactive toxic, poisonous, explosive, inflammable or otherwise dangerous and
  - 8.6.4 that the Scrap Metal is not Special Waste
  - 8.6.5 that the Scrap Metal is of the grade and quantity stated in the Agreement
  - 8.6.6 that where Ward Recycling has informed the Supplier that the Scrap Metal is intended for export, the Scrap Metal shall be suitable for export and shall comply with all Relevant Legislation in relation to the export to and import into and use in the destination country
- 8.7 Subject to **Clause 3.12** title to the Scrap Metal shall pass to Ward Recycling on collection at the Collection Site or delivery to the Disposal Site as the case may be.
- 8.8 The Equipment shall be deemed to be in good working order and condition and fit for the Supplier's purpose (save for defects not discoverable by a reasonable examination) except to the extent that the Supplier has notified Ward Recycling to the contrary within three working days of acceptance of the Equipment at the Collection Site.
- 8.9 The Supplier will conform with any statutory enactments and regulations and byelaws and regulations of local or other statutory authorities, which apply to the Equipment.
- 8.10 The Supplier or its employees, subcontractors or agents shall not:
- 8.10.1 overload or overfill the Equipment; or
  - 8.10.2 set fire to the contents of the Equipment; or
  - 8.10.3 interfere with the mechanism of the Equipment; or
  - 8.10.4 add or attach to the Equipment any painting, sign, writing, lettering or advertising; or
  - 8.10.5 do (or allow to be done) howsoever or whatsoever any act which has the effect of reducing the value of the Equipment
- 8.11 All Equipment provided shall remain the property of Ward Recycling and the Supplier will have no rights in the Equipment other than as a mere bailee. The Equipment must only be used by the Supplier and must be kept at the Collection Site. The Supplier shall have no right of lien over the Equipment.
- 8.12 The Supplier shall take reasonable care to keep the Equipment clean and in good condition. When cleaning any Equipment, the Supplier shall ensure that the method used (including cleaning products) does not cause damage or otherwise pollute the Equipment or the Waste or Scrap Metal.
- 8.13 The Supplier has agreed that the Equipment is suitable to contain and transport the Waste and/or Scrap Metal in the quantities specified. Ward Recycling relies on the

Supplier's advice as to the quantity and weight of Waste and/or Scrap Metal involved in the provision of the Service.

- 8.14 Ward Recycling may, at any time, change the type of Equipment provided to the Supplier by replacing it with a reasonable alternative, for example, if Ward Recycling wishes to change the type of Vehicle which collects the Supplier's Waste and/or Scrap Metal.

## 9 LIABILITIES OF THE SUPPLIER

- 9.1 The Supplier shall indemnify and hold Ward Recycling harmless against any injury, demands, action, costs, charges, expenses, loss, fines, sanctions, damage, or liability to any persons or property (including, for the avoidance of doubt, any Equipment) arising from any act, omission or negligence of the Supplier its agents, subcontractors or employees.
- 9.2 The Supplier shall maintain insurance cover in respect of its liability under the Agreement and shall at the request of Ward Recycling provide a copy of the insurance policy as proof of maintaining such cover.

## 10 TERMINATION

- 10.1 If the Supplier commits any breach of the Agreement Ward Recycling may, in addition to its other rights in respect thereof, give notice to the Supplier to terminate the Agreement immediately or, at the sole option of Ward Recycling, after 5 days from the date of such notice if the Supplier shall not have remedied the breach to Ward Recycling's satisfaction during that time.
- 10.2 If the Supplier 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) or if it ceases to trade or has its credit insurance removed then Ward Recycling shall have the option to terminate the Agreement forthwith.
- 10.3 Termination of the Agreement shall be without prejudice to any rights or liabilities of either party which may have accrued to that date.

## 11 SHIPMENTS OF WASTE REGULATION AND RELEVANT LEGISLATION

- 11.1 Ward Recycling and the Supplier will comply with the requirements of the Shipments of Waste Regulation and any other binding Relevant Legislation applicable to the shipment of the Scrap Metal.
- 11.2 Without prejudice to the generality of **Clause 11.1**, the parties shall be obliged to deal in the manner required by Article 18 with any Scrap Metal the recovery of which cannot be completed as intended or the shipment of which is illegal.
- 11.3 In the event that either party is obliged, by virtue of the Shipments of Waste Regulation or other binding Relevant Legislation, to:
- 11.3.1 take the Scrap Metal back; or
  - 11.3.2 ensure its recovery other than in the manner intended; or
  - 11.3.3 provide for its storage in the meantime

the Supplier will indemnify Ward Recycling against all costs, damages, fines, sanctions, charges, expenses or losses incurred by Ward Recycling and in no

circumstances will Ward Recycling be liable to the Supplier for any costs, damages, fines, sanctions, charges, expenses or losses incurred by it.

- 11.4 The Supplier will indemnify Ward Recycling against all costs, damages, fines, sanctions, charges, expenses or losses incurred by Ward Recycling in connection with any failure by the Supplier to comply with the Shipments of Waste Regulation or any other binding Relevant Legislation applicable to the shipment of the Scrap Metal.

## 12 **AMENDMENT**

- 12.1 Ward Recycling reserves the right to amend the Agreement and these General Conditions as it considers necessary to comply with statutory requirements from time to time or any change in legislation governing the collection, transport and disposal of Scrap Metal and will notify any such amendment to the Supplier as soon as practicable.

## 13 **NOTICES**

- 13.1 Any proposal, acceptance, agreement, authority, permission or notice referred to in the Agreement or these General Conditions shall be:
- 13.1.1 in writing; and
- 13.1.2 given to the party for whom it is intended at the address for that party as set out in the Agreement or such address as is notified to the other party for that purpose; and
- 13.1.3 given by post and shall be deemed to have been received two Working Days after the date of posting.

## 14 **GOVERNING LAW**

- 14.1 The Agreement shall be governed by and construed in accordance with the Laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.
- 14.2 Any reference to any Act of Parliament Regulation or Order shall include any re-enactment, amendment, replacement or modification thereof.

## 15 **FOREBEARANCE**

- 15.1 No time indulgence or relaxation on the part of Ward Recycling shown or granted in respect of any of the provisions of the Agreement shall in any way affect, diminish, restrict or prejudice the rights or powers of Ward Recycling under the Agreement or operate as or be a waiver of any breach by the Supplier of the terms of the Agreement.

## 16 **SEVERANCE**

- 16.1 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

