

Esken Renewables Limited – Terms and Conditions of Business

- 1. Definitions**
- 1.1 In these Conditions:
- (a) "Applicable Law" means:
- (i) any Act of Parliament or subordinate legislation, any exercise of the Royal Prerogative, any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, any planning or building permission or regulation (including any development consent order) and any other official request or requirement made by any regulator or statutory authority or other body of competent jurisdiction in respect of which ER or the Company has a legal obligation to comply,
- (ii) any rule of equity or common law or the ruling, judgment or order of any Court; or
- (iii) all orders, rules, regulations, ordinances, notices, guidance notes, schemes, warrants, by-laws, directives, franchises, licenses, permits, circulars and codes of practice issued or raised under or in connection with any of the foregoing;
- (b) "Collection Address" means, where applicable, the address from which the Company instructs ER to collect the Consignment as confirmed in the Order;
- (c) "Consignee" means the person to whom ER is to deliver the Consignment as confirmed in the Order;
- (d) "Consignor" means the person who sends a Consignment to ER as confirmed in the Order;
- (e) "Consignment" means each individual consignment of Goods which ER is to receive and/or collect and/or deliver pursuant to the Contract;
- (f) "Consignment Note" shall be the transport document specifying the Goods to be consigned or received and which shall accompany the Goods;
- (g) "Contract" means the agreement between ER and the Company for the supply of the Services, which shall incorporate these Conditions, together with ER's quotation or estimate and the Company's acceptance (whether in writing, orally or by conduct) (as provided pursuant to Condition 2.2 below);
- (h) "Company" means the party with whom ER makes the Contract with;
- (i) "Controlled Waste" has the meaning given to it in Section 75(4) of the Environmental Protection Act 1990 (as amended);
- (j) "Dangerous Goods" means goods which are listed in Part 3 of Annex A to the European Agreement concerning the International Carriage of Dangerous Goods by Road (as amended);
- (k) "Delivery Address" means the address to which the Company instructs ER to deliver the Consignment as confirmed in the Order;
- (l) "EWC Code" means, in respect of any Controlled Waste, the relevant waste characterisation code as prescribed by the European Waste Catalogue 2002 (as amended);
- (m) "Goods" means the goods that ER agrees to receive, carry or supply under the Contract;
- (n) "Order" means as defined in Clause 2.2 below;
- (o) "Price" shall be the amount determined in the Order or by express confirmation by ER;
- (p) "ER" means Esken Renewables Limited, a company registered in England and Wales with registered number 07042490, registered office at Third Floor, 15 Stratford Place, London, England W1C 1BE;
- (q) "Services" means the services which ER agrees to provide under the Contract;
- (r) "Specification for Collected Goods" means the specification provided by ER and forming part of the Order;
- (s) "Specification for Delivered Goods" means the specification provided by the Company and agreed by ER; and forming part of the Order;
- (t) "Specification for Received Goods" means the specification provided by ER and forming part of the Order;
- (u) "Tonne" means metric tonne;
- (v) "Waste Transfer Note" means a note compliant with Section 34(1)(c) of the Environmental Protection Act 1990 (as amended) and Regulation 35 of the Waste (England and Wales) Regulations 2011 (as amended); and
- (w) "Working Day" means a day on which high street banks in the UK are open for business (except Saturday, Sunday and Public Holidays) and "Working Hours" means the hours falling within 0600 and 1800 on such days.
- 1.2 In these Conditions, a reference to the "Conditions" shall also include, where applicable, the "Contract".
- 2. Introduction**
- 2.1 ER undertakes all Services solely upon the basis of this Contract. These Conditions, or any other terms and conditions of the Contract, may not be varied except with the prior written approval of ER.
- 2.2 The Company shall be bound by the terms of these Conditions by confirming its acceptance of ER's response to their enquiry for the provision of Services orally or in writing. Such oral or written acceptance of ER response to the Company's enquiry shall represent the agreement for the purposes of these Conditions and the Company shall be deemed to have unreservedly and unconditionally accepted these Conditions by accepting ER's response to their enquiry which may have included ER's quotation or estimate and the Company agrees to deal with ER on the basis of these Conditions to the exclusion of all other conditions, warranties, terms, promises, understandings or representations, whether express or implied by statute, a course of dealing or otherwise howsoever (the "Order"). If the Order is concluded, which includes any purchase order or other such documentation containing or referring to any terms and conditions additional to or at variance with these Conditions, then any such additional or varying terms or conditions shall be of no effect and shall not bind ER in any way whatsoever.
- 2.3 The Contract constitutes the entire agreement between the Company and ER.
- 2.4 The Company acknowledges that in entering into the Contract it has not relied upon any representation, promise, understanding or assurance other than those set out in these Conditions.
- 2.5 The Company warrants to ER that it is authorised and has all the necessary capacity to enter into this Contract with SE.
- 3. The Order**
- 3.1 The Order will include details of the Goods to be collected or delivered.
- 3.2 Where the Goods are to be collected by ER, the Company shall ensure that the Goods meet all of the Specification for Collected Goods. In the event that they do not, ER shall not be required to collect the same and where a Price is payable by ER, ER shall not be obliged to pay the Company the Price. In the event that ER collects the Goods which do not meet the Specification for Collected Goods, ER shall charge an amended Price for such collection and that Price shall be payable in accordance with the terms of the Order.
- 3.3 Where the Goods are to be delivered by ER, ER shall ensure that the Goods meet all of the Specification for Delivered Goods. In the event that they do not, the Company may elect not to have the Goods delivered and shall not be obliged to pay ER the Price or ER shall not be obliged to pay the Company the Price in the event that the Company was expecting a Price in return for receiving the Goods. In the event that the Company elects to receive the Goods which do not meet the Specification for Delivered Goods, ER shall agree an amended Price for such delivery and that Price shall be payable in accordance with the terms of the Order.
- 3.4 Where the Goods are to be received by ER, the Company shall ensure that the Goods meet all of the Specification for Received Goods. In the event that they do not, ER shall not be required to receive the same; and where appropriate, ER shall not receive any Price for the same. In the event that ER elects to receive the Goods which do not meet the Specification for Received Goods, ER shall agree an amended Price for such receipt and that Price shall be payable in accordance with the terms of the Order.
- 4. Indemnities**
- The Company shall indemnify ER against any loss, damage, claim, liability, expense, fine, penalty and/or cost suffered or incurred by ER arising out of any breach of any Applicable Law, breach of contract (including these Conditions) or any other term of the Contract implied herein; or tort (including any negligence); or any misstatement, misrepresentation or breach of the Contract and these Conditions by the Company (or its representative) or as a consequence of the Company's willful default or deliberate act or omission (or any negligence, willful default or deliberate act or omission of the Company's representative).
- 5. Cancellation**
- The Company is entitled to cancel the collection or delivery of a Consignment at any time before arrival of ER's vehicle at the Collection Address or prior to departure of ER's vehicle en route to any Delivery Address and shall pay all of ER's reasonable and unavoidable costs arising from such cancellation; including any transit costs incurred; as well as the difference in cost of reselling any Goods that would have been purchased by the Company or the cost of any higher Price charged by another party in respect of similar Goods incurred by ER, but for such cancellation.
- 6. Dangerous Goods**
- 6.1 ER shall not be obliged to store, handle or transport any Dangerous Goods unless ER agrees to do so in writing having first received from the Company written details of the nature of the Goods, the respect(s) in which they are hazardous, dangerous and/or offensive; and any special precautions that are required to be taken by ER while handling such Goods and the reason for special precautions to be taken.
- 6.2 The Company shall ensure that any Dangerous Goods are classified, packed and labelled in accordance with any relevant legislation (including, but not limited to, the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (as amended)).
- 7. Transport of Controlled Waste**
- 7.1 ER shall not be obliged to store, handle, supply or transport any Controlled Waste unless ER agrees to do so in writing having first received from the Company written details of the nature of the Controlled Waste and the Consignment including, but not limited to, the EWC Code, the Collection Address and the Delivery Address.
- 7.2 Where the Company requires ER to receive and/or supply and/or transport any Controlled Waste, the Company warrants that the Collection Address and the Delivery Address, where appropriate, is a site which is permitted under the Environmental Permitting Regulations (England and Wales) 2010 (as amended) to consign or receive Controlled Waste and the Company shall indemnify ER against any and all costs (including legal costs), expenses, claims, fines, penalties or otherwise incurred or suffered by ER as a result of the Collection Address or the Delivery Address, where appropriate, not being so permitted including, but not limited to, any such costs (including legal costs), expenses, claims, fines, penalties or otherwise incurred or suffered by ER as a result of disposing of the Consignment by any alternative means.
- 7.3 Any Consignment requiring Transfrontier Shipment of Waste notification shall be subject to the Consignor obtaining the necessary consent and the Company shall indemnify and hold ER harmless and continue to do so in respect of any loss, damage, claim, liability, expense, fine, penalty and/or cost suffered or incurred by ER in connection with any Consignment that is not in full compliance with this requirement. The Company hereby consents and agrees, without prejudice to the foregoing indemnity, should any Consignment be incapable of being completed for whatever reason; the Company shall accept an obligation to accept the return of the Consignment to it (where the Company is the Consignor) or to be returned to the original place of origin, where the Company is the Consignee of the Goods.
- 8. Loading and unloading**
- 8.1 ER shall endeavor to provide a vehicle that is reasonably suitable for the carriage of the Consignment.
- 8.2 If the Consignment is not ready for loading by the time of the arrival of ER's vehicle at the Collection Address, then ER reserves the right to charge the Company all costs arising from the delayed collection, such charge shall be without prejudice to any other rights and remedies as may be available to ER under these Conditions, the Contract; or otherwise.
- 8.3 Where Goods are to be collected by ER, the Company shall ensure that the Consignment is securely and properly packed and labelled in accordance with any relevant legislation and in such a condition that it is not likely to cause injury or damage to any person or property.
- 8.4 The Company shall, at its own cost, load or arrange and be responsible for the loading and unloading of the Consignment in accordance with ER's driver's directions and instructions. ER shall have no responsibility for loading or unloading of the Consignment.
- 8.5 The Company shall, at its own cost, provide and be responsible for all and any plant, labour, facilities or appliances, which are required in order to load or unload a Consignment.
- 8.6 The Company shall ensure that no loss of or damage to any of ER's vehicles or trailers or any of ER's employees, officers or agents occurs while at the Company's premises and the Company shall indemnify ER and any of its employees, officers or agents against any such loss.
- 8.7 Where the Goods are to be delivered, and the Goods are not capable of being unloaded or are refused at the Delivery Address, then ER reserves the right to charge the Company all costs arising from the delayed unloading and delivery or non-delivery, such charge shall be without prejudice to any other rights and remedies as may be available to ER under these Conditions, the Contract; or otherwise.
- 9. Consignment notes and receipts**
- Consignment Notes, Weighbridge Tickets and Waste Transfer Notes shall accompany the Goods in accordance with the Applicable Law.
- 10. Esken Renewables Charges**
- 10.1 Carriage
- In the case of the provision of carriage services, the Price to be paid by the Company is the Price set out in ER's estimate or quotation as the case may be and included in the Order. In the absence of any quoted Price, the Price shall be ER's standard transit charges in force from time to time. ER shall be entitled to invoice the Company in respect of such services for all amounts due immediately after carriage is at an end.
- 10.2 Goods
- 10.2.1 Any Price payable by the Company shall be determined by ER in the Order and shall be determined by reference to the weight of the Goods, their moisture content and the chemical composition of the same. These factors shall be supplied by ER and may be subject to determination by the Company at the Delivery Address. The results of any sampling and inspection undertaken by the Company shall be copied to ER for its own verification purposes. ER may, in any event, inspect and sample the Goods upon loading the Goods at the point of loading and upon discharge at the Delivery Address. The Company shall notify ER immediately in the event that it considers the Goods are not compliant with the relevant and agreed specification.
- 10.2.2 Any Price payable by or to ER in respect of Goods received by ER shall be determined by reference to the weight of the Goods, their moisture content and the chemical composition of the same. These factors shall be supplied by the Consignor and may be subject to determination by the Company at the Delivery Address. The results of any sampling and inspection undertaken by the Company shall be copied to ER for its own verification purposes. ER may, in any event, inspect and sample the Goods upon loading the Goods at the point of loading and upon discharge at the Delivery Address. The Company shall notify ER immediately in the event that it considers the Goods are not compliant with the relevant and agreed specification.
- 10.3 Variation to Price
- ER's Prices are subject to adjustment at any time by ER to take account of any variation in ER's costs including (but not limited to) variations in wages, the costs of materials, fuel, oil, maintenance costs and/or spare parts, exchange rate fluctuations, alteration of duties, Local Authority rates, National Insurance and other employment costs, Value Added Tax and other costs as well as any variations to the cost of any raw materials in respect of the supply of the Goods; including any increased prices from raw material suppliers; since the date of the Contract; or any event of Force Majeure referred to in Condition 14.
- 10.4 Charges for additional Services
- In the event that ER provides services in addition to those which it originally agreed to provide under the Contract, including (without limitation) providing services outside working hours, making deliveries to locations other than to the Delivery Address or collections from locations other than the Collection Address; or outside the time at which ER is to collect or deliver Goods, then ER shall be entitled to be paid by the Company such additional amount as represents the additional cost incurred by ER as a consequence, together with a management charge and a profit mark-up thereon based on ER's standard rates from time to time.
- 10.5 Value Added Tax
- ER's charges are exclusive of any applicable Value Added Tax.
- 10.6 Payment terms
- (a) The Company shall pay to ER any amounts payable under this Contract within 30 days from the date of the invoice provided by ER and time of payment of any amounts payable under this Contract shall be of the essence. Invoices shall be deemed to have been received within 2 days of them having been sent by post; or immediately where sent by email. The Company shall notify ER immediately upon receipt of the invoice if it considers that the amounts indicated on such invoice are incorrect. Invoices shall be due and payable without the requirement for any supporting documentation.
- (b) ER shall be entitled, without prejudice to any other right under this Contract, to interest at 4% above the Bank of England base rate current from time to time, calculated on a daily basis on all overdue amounts.
- (c) Any invoices issued to ER must include a purchase order number as provided to the Company by ER. Invoices shall be settled within 45 days end of month of a valid invoice.
- 10.7 No set off
- The Company shall not be entitled to withhold, deduct or set off against any amount due to ER any sum which it alleges is due to it from ER under the Contract or any other contract. Any sums paid under the Contract by way of a payment in advance shall be non-refundable.
- 11. Liability**
- 11.1 ER shall not be liable for any injury to any person, loss or deterioration of or damage to or non-delivery or misdelivery of any property (including the Goods) or any other claim in any circumstances whatsoever, howsoever caused in relation to the Contract save to the extent that the same is caused by ER's willful default or gross negligence.
- 11.2 ER shall not be obliged to insure the Goods. The Company shall insure the Goods against all risks for their full insurable value and shall be solely liable for the cost of insuring the Goods.
- 11.3 ER's liability in respect of Condition 11.1, howsoever arising shall in all circumstances be limited to the value of the Goods as evidenced by the applicable Price in respect of the same.
- 11.4 ER shall not be liable for any costs, claims, damages or expenses:
- (a) arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis;
- (b) which arises prior to the commencement of loading of any Goods to be collected or following unloading of any Goods to be delivered;
- (c) to the extent that the same is caused wholly or partly by breach of any condition, term or warranty of the Contract by the Company;
- (d) unless written notice of the Company's claim in respect of the same is received by ER within 7 Working Days (in respect of damage to property, personal injury or non-delivery) and 21 Working Days (in relation to any other claim) of the time of the events giving rise to the claim coming to the notice of the Company. ER shall in any event be discharged from all liability unless proceedings are brought within 1 year of the date on which the Contract terminates; or
- (e) in respect of any loss of profits, loss of income, loss of revenue, loss of value, loss of anticipated savings, loss of production or generation or any loss of any subsidy or incentive tariff of whatever nature linked to production or generation or accruals and/or any indirect and/or consequential losses of whatever kind or nature.
- 11.5 ER shall in any event be discharged from all liability unless proceedings are brought within 1 (one) year of the date on which the Contract expires or terminated in accordance with the provisions of Condition 11 hereunder.
- 11.6 Nothing in these Conditions shall have the effect of excluding or restricting the liability of ER for: (i) death or personal injury resulting from its negligence in so far as the same is prohibited by English Law; or (ii) for fraudulent misrepresentation; or (iii) any other liability which cannot be excluded or limited under Applicable Law.
- 11.7 The aggregate liability of ER arising out of or in connection with the Contract (whether in contract, for negligence, breach of statutory duty or otherwise) for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the lesser of:
- (a) the sums which ER is able to recover from its insurers in respect of the same; and
- (b) the lowest sum payable by ER pursuant to Condition 11.3.
- 12. Term and Termination**
- 12.1 The Contract shall come into existence in accordance with the provisions of Condition 2.2 hereof and shall continue in full force and effect, subject to the provisions of Condition 11.2 hereunder, until such time as the Goods or Services are collected and/or delivered and/or completed as the case may be. Any such Conditions or terms of the Contract which by their nature are intended to survive expiry or termination of the Contract shall continue in full force and effect thereafter.
- 12.2 ER shall be entitled to immediately terminate the Contract if the Company defaults under the Contract or becomes bankrupt, insolvent, or is unable to pay its debts as they fall due; or compounds with its creditors or shall have distress or execution levied upon its property or is wound up or receives a winding up petition which is not defeated within the notice period thereof; or goes into liquidation (except for the purposes of a bona fide reconstruction) or shall have a receiver, administrative receiver or administrator appointed of the whole or any part of its assets or shall suffer the appointment of any similar person under the laws of its domicile.
- 12.3 Following termination of the Contract for any reason, the Company shall forthwith pay to ER all of ER's outstanding invoices in respect of Services provided prior to the date of termination.
- 13. Lien**
- 13.1 ER shall have a general lien against the Company, in respect of Goods which the Company owns. Where the Company is not the owner of the Goods, ER shall have a particular lien against the said owner, allowing ER to retain possession but not dispose of the Goods against the monies due from the Company in respect of the Goods.
- 13.2 Subject to the foregoing, ER shall be entitled to sell any Goods in its possession and tender of the sale proceeds, after deduction of all proper charges and expenses in relation to the sale, to all outstanding sums due to ER in respect of the Contract. In the event that, after deduction of all proper charges and expenses in relation to the sale of the Goods, the proceeds of the sale of the Goods pursuant to clause 13.2 are not sufficient to satisfy all outstanding sums due to ER in respect of the Contract, then the remainder shall be due as a debt from the Company.
- 14. Force Majeure**
- 14.1 ER shall be relieved of its obligations under the Contract and shall not be in breach of the Conditions to the extent that it is prevented from or hindered in performing them by reason of circumstances outside its reasonable control, including, without limitation, Act of God, war, pandemic, act of foreign power, terrorism, requisition or destruction of or damage to property by or under any government or public or local authority, seizure or forfeiture under legal power, riot, civil commotion, strike, lockout, shortage of utilities, fuel or other supplies, general or partial stoppage or restraint of labour.
- 14.2 If ER is prevented or hindered from performing its obligations under the Contract due to any circumstances outside its control and such circumstances persist for a period of 1 (one) month or longer, then ER shall, without prejudice to any other right or remedy, be entitled to terminate the Contract forthwith upon written notice to the Company.
- 15. General**
- 15.1 The time of performance of the Services shall not be of the essence of the Contract and any time frames indicated or accepted by ER as to the performance of the Services are good faith estimates only and are not intended to be legally binding commitments.
- 15.2 All rights and remedies granted to either of the parties under these Conditions shall be cumulative and no exercise of any right under these Conditions shall restrict or prejudice the exercise of any other right granted by the Contract or otherwise.
- 15.3 The failure by ER to enforce at any time or for any period any of its rights arising out of or under the terms and conditions of the Contract shall not be a waiver of such right or in any respect affect ER's subsequent entitlement to enforce or exercise all or any of its rights arising out of or under the Contract.
- 15.4 Any notice required or permitted to be given under the Contract shall be delivered by hand or sent by recorded delivery to the registered office of the recipient. Such notices shall be deemed to be given when actually received or, if recorded delivery mail is returned marked "gone away" or to like effect, on the return of such mail.
- 15.5 The Company may not assign, transfer, sub-contract, novate or otherwise part with any right or obligation arising out of or under the Contract without the prior written consent of ER. ER shall be entitled to assign, transfer or sub-contract the Contract, in whole or in part, without the need to obtain the Company's prior consent.
- 15.6 If ER arranges the carriage of a Consignment by rail, sea, inland waterway or air it does so as the Company's agent and the contract for that part of carriage shall be between the Company and the relevant carrier.
- 15.7 Save in relation to the carriers referred to in Condition 15.6, third parties shall not enjoy any rights under these Conditions or the Contract as consequences of the Contracts (Rights of Third Parties) Act 1999.
- 15.8 In the event of any dispute or difference arising between the Company and ER in connection with the implementation or operation of these Conditions, the party raising such dispute or difference shall notify the chief operating officer (or equivalent) of the other party and that person shall attempt to resolve such dispute or difference amicably with his counterpart within 14 days of receipt of such notice (or such other period as the parties may agree). Where the chief operating officers of the parties fail to reach agreement, Condition 15.9 shall apply.
- 15.9 The Contract shall be governed by English law and any dispute arising out of or in connection with the Contract (including these Conditions) shall, subject to Condition 15.8, be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 15.10 If a competent court or any other competent authority finds any provision of the Contract and/or these Conditions to be invalid, illegal or unenforceable, that provision or part provisions shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract and/or these Conditions shall not be affected.