

SUPPLIER STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

In this Contract, except where the context otherwise requires:

1.1 the following terms shall have the following meanings:

"**Accept**" or "**Accepted**" means (as appropriate):

- (a) the Collection of any Load of On-Specification Product by the Customer or Delivery thereof by the Supplier to the Customer Site; or
- (b) the Commingling or Utilisation of any Consignment of On-Specification and/or Off-Specification Product by the Customer or where the Mode of Supply specified in the Particulars results in Commingling; or
- (c) the Customer fails to serve a Rejection Notice on the Supplier in relation to any Consignment of Off-Specification Product within the Rejection Notice Period;

"**Additional Tonnage**" means tonnage beyond the Contract Tonnage which the Parties agree to make available for Collection and/or Delivery as appropriate pursuant to Clause 7;

"**Affiliate**" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006;

"**Annual Accepted Contract Tonnage**" means the tonnage of Product Accepted in the relevant Contract Year;

"**Business Day**" means a day (other than Saturday or Sunday) on which banks are open for domestic business in the City of London;

"**Change in Law**" means the coming into effect (or, in the case of (b) or (c), the date of publication or making) after the Contract Date of:

- (a) any Legislation;
- (b) any Guidance; and/or
- (c) any applicable judgement of a relevant court of law which changes a binding precedent or creates a binding precedent where none previously existed,

in each case which has the effect of increasing the cost of production of Product;

"**Collect**" means the deposit of Product into a Collection Vehicle and "**Collection**" and "**Collected**" shall be construed accordingly;

"**Collection Point**" means a location at the Supplier Site where the Collection Vehicles can be safely loaded with Product;

"**Collection Vehicle**" means a vehicle of a type approved by the Supplier pursuant to Clause 3.4 used by the Customer to collect Product from the Supplier Site;

"**Contract**" means this agreement, including the Particulars, these Standard Terms and Conditions, and the Schedules (if any);

"**Contract Year**" means, for the duration of the Contract Term, each period of 12 months from the Supply Commencement Date;

"**Commingle**" means combining a Consignment with any other Consignment or other material;

"**Consignment**" means, taken together, all the Product Collected or Delivered on the same day;

"**Contract Date**" means the date specified at the front of this Contract;

"**Contract Term**" means the period starting on the Supply Commencement Date and ending on the Expiry Date;

"**Contract Tonnage**" has the meaning set out in the Particulars and which may be amended in accordance with Clause 7.2.1;

"Contract Tonnage" has the meaning set out in the Particulars and which may be amended in accordance with Clause 7.2.1;

"Customer Event of Default" means any of the following:

- (a) an Insolvency Event occurs in relation to the Customer;
- (b) a failure by the Customer to pay the Supplier within 30 days of formal written demand amounts properly owing and overdue by 30 days which are not subject of a bona fide dispute; and
- (c) unless otherwise agreed by both Parties, the Customer fails to Collect and/or accept Delivery of the Contract Tonnage in any Contract Year,

for which purposes any failure (save in relation to Customer Event of Default (a)) shall be ignored to the extent directly caused by the breach of the terms of this Contract by the Supplier;

"Customer Insurances" means:

- (a) Public Liability (both for the Customer and any haulage contractor used by the Customer to Collect Product): £2 million;
- (b) all applicable statutory insurances; and
- (c) Customer Site: Material Damage All Risks for its full reinstatement value;

"Customer Party" means the Customer, and any of its sub-contractors or agents (in each case of any tier but excluding any Supplier Party), or any director, officer or employee of any of the foregoing;

"Customer Representative" has the meaning set out in the Particulars;

"Customer Site" has the meaning set out in the Particulars;

"Default Interest" means interest becoming payable pursuant to Clause 8.5;

"Default Interest Rate" means 2% above the base rate of Barclays Bank PLC from time to time;

"Delivery" means the point at which the Product is no longer in/on the Delivery Vehicle as it has been delivered in accordance with the Mode of Supply at the Customer Site and "Delivery" and "Delivered" shall be construed accordingly;

"Delivery Day" means a day on which it has been agreed that Product can be Delivered in accordance with the procedure set out in Clause 7;

"Delivery Vehicle" means a vehicle used by the Supplier to deliver Product to the Customer Site;

"Dispute Resolution Procedure" means the procedure set out in Clause 17;

"Excluded Loss" means any special, consequential or indirect losses of any nature, and any loss of opportunity, loss of goodwill, loss of business, and loss of profit or revenue;

"Expiry Date" means the date upon which this Contract expires in accordance with the provisions of Clause 13;

"First Indexation Application Date" is the first date upon which the Indexation of Price first takes effect, as set out in the Particulars;

"Force Majeure Basis" means on the basis as if the Expiry Date had been brought forward to the date of termination, and without any liability of either Party to the other in relation to obligations that could reasonably have been met had the Expiry Date not been brought forward;

"Force Majeure Claimant" has the meaning set out in Clause 12.2;

"Force Majeure Event" means:

- (a) (provided always that the procedure set out in Clause 12 has been followed in relation to such event) any event outside both the reasonable control of a Party, and (in relation to the Customer) any Customer Party or (in relation to the Supplier) any Supplier Party, in each case which directly causes such Party to be unable to comply with all or a material part of its obligations under this Contract, **PROVIDED THAT** an inability to pay shall never be capable of constituting or contributing towards a Force Majeure Event no matter what the cause of such inability to pay; and
- (b) a Change in Law to the extent that Clause 10.3 applies;

"Force Majeure Longstop Period" means 3 months from the date of commencement of the Force Majeure Event;

"Force Majeure Longstop Period" means 3 months from the date of commencement of the Force Majeure Event;

"Funders" means any providers of debt to and/or holders of equity in the Supplier from time to time;

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Supplier (in relation to obligations undertaken by the Supplier) or the Customer (in relation to obligations undertaken by the Customer) under the same or similar circumstances;

"Guidance" means any applicable guidance or directions issued by a Relevant Authority with which the Supplier needs to comply acting in accordance with Good Industry Practice;

"Indexation Base Date" is the date from which the Indexation Indices are applied to adjust the Price, as set out in the Particulars;

"Indexation Indices" is the index or indices (if more than one index is agreed) to be applied to adjust the Price, as set out in the Particulars;

"Indexation Period" is the frequency with which Indexation is applied to adjust the Price, as set out in the Particulars;

"Indexed" or **"Indexation"** means adjusted in accordance with the provisions set out in the Particulars;

"Initial Fixed Term" is the minimum term of the Contract, as set out in the Particulars;

"Insolvency Event" means, in relation to a Party, where:

- (a) a court makes an order that such Party be wound up or a resolution for a voluntary winding-up of such Party is passed except in the case of:
 - (i) winding up proceedings where such application is contested and withdrawn or struck out within 20 Business Days of commencement; or
 - (ii) a voluntary winding up for the purpose of amalgamation, reconstruction, merger or take-over, and in such manner that the resulting entity from such arrangements validly and effectively agrees to be bound by or assume such Party's obligations under this Contract; or
- (b) any receiver and/or manager or administrative receiver in respect of all or a substantial part of the assets of such Party is appointed which appointment is not set aside within 20 Business Days of the date of appointment; or
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act in respect of such Party unless:
 - (i) previously approved by the other Party; or
 - (ii) the voluntary arrangement or scheme of arrangement is made for the purpose of amalgamation, reconstruction, merger or take-over, and in such manner that the resulting entity from such arrangements validly and effectively agrees to be bound by or assume such Party's obligations under this Contract; or
- (d) an administration order is made in respect of such Party which is not discharged within 20 Business Days of the date of the relevant order;

"Legislation" means any act of Parliament or subordinate legislation within the meaning of s21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative and any enforceable community right within the meaning of s2 of the European Communities Act 1972 in each case in the United Kingdom;

"Load" means the Product located within a single Collection Vehicle or Delivery Vehicle upon its presentation to the Weighbridge on its way off the Supplier Site;

"Losses" means (to the extent reasonably and properly incurred and in relation to which the Party claiming the loss can provide supporting evidence to the reasonable satisfaction of the liable Party) all direct losses, liabilities, claims, costs, actions, proceedings, demands, compensation, legal remedies, awards, charges and expenses, but excluding any Excluded Losses, and **"Loss"** shall be construed accordingly;

"Mode of Supply" means the mode of supply set out in the Particulars;

"Month" means a calendar month within a Contract Year;

"Off-Specification" means non-compliant with the Specification;

"On-Specification" means compliant with the Specification;

"Particulars" means the particular set out at the front of this Contract;

"On-Specification" means compliant with the Specification;

"Particulars" means the particular set out at the front of this Contract;

"Party" means the Customer or the Supplier (as appropriate) and **"Parties"** shall mean both the Customer and the Supplier;

"Price" has the meaning set out in the Particulars, as Indexed from time to time;

"Product" means wood pellets provided by the Supplier;

"Proof of Delivery" means the proof of delivery form which the Supplier provides to the Customer where the Supplier Delivers Product;

"Recovery" means the recovery of Rejected Product by the Supplier from the Customer Site;

"Recovery Vehicle" means a vehicle used by the Supplier to recover Rejected Product from the Customer Site;

"Reject" means to reject a Consignment in compliance with the procedure set out in Clause 5, and **"Rejection"** shall be construed accordingly;

"Rejected Consignment Recovery Period" means the period commencing at 5pm on the date upon which a Rejection Notice is served on the Supplier, and expiring at 5pm **seven (7)** Business Days thereafter;

"Rejection Notice" has the meaning set out in Clause 5.5;

"Rejection Notice Period" means the period commencing at 5pm on the date upon which a Consignment is Collected or Delivered (as appropriate), and expiring at 5pm 2 Business Days thereafter;

"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, local authority, inspectorate, minister, ministry, official or public or statutory person of the Government of the United Kingdom or of the European Union;

"Sampling" means the sampling undertaken by the Parties pursuant to Clause 5.1 and the Sampling Protocol;

"Sampling Laboratory" means:

- (a) in relation to the first test if required to be undertaken by the Customer pursuant to Clause 5.1, the Customer's own laboratory (or a laboratory of its choice);
- (b) in relation to the second test if required to be undertaken by the Supplier pursuant to Clause 5.6.1, the Supplier's own laboratory (or a laboratory of the Supplier's choice); and
- (c) in relation to the third test to be undertaken if required to be undertaken pursuant to Clause 5.7.2, an independent laboratory agreed by the Parties (such agreement not to be unreasonably withheld or delayed);

"Sampling Protocol" means the protocol specified in Clause 5;

"Schedule for Collection" means shipments which the Supplier becomes contractually obliged to make available for Collection, and the Customer is obliged to Collect, in accordance with a timetable agreed between the Parties pursuant to the operation of the procedure set out in Clause 7;

"Schedule for Delivery" means shipments which the Supplier becomes contractually obliged to Deliver, and the Customer is obliged to take Delivery of, in accordance with a timetable agreed between the Parties pursuant to the operation of the procedure set out in Clause 7;

"Specification" means the specification set out in the Particulars;

"Supplier Event of Default" means any of the following:

- (d) an Insolvency Event occurs in relation to the Supplier;
- (e) unless otherwise agreed by both Parties, the Supplier fails to supply at least 75% of the Contract Tonnage in any Contract Year;

for which purposes any failure (save in relation to Supplier Event of Default (a)) shall be ignored to the extent directly caused by the breach of the terms of this Contract by the Customer;

"Supplier Insurances" means:

- (a) Public Liability: £2 million;
- (b) all applicable statutory insurances; and
- (c) Supplier Site: Material Damage All Risks for its full reinstatement value;

(b) all applicable statutory insurances; and

(c) Supplier Site: Material Damage All Risks for its full reinstatement value;

"**Supplier Party**" means the Supplier, and any of its sub-contractors, agents, customers or suppliers (in each case of any tier but excluding any Customer Party), or any director, officer or employee of any of the foregoing;

"**Supplier Representative**" has the meaning set out in the Particulars;

"**Supplier Site**" has the meaning set out in the Particulars;

"**Supply Commencement Date**" is the date specified in the Particulars upon which Collections and/or Deliveries of Product are to commence;

"**Supply Day**" means a day on which it has been agreed that Product can be Collected or Delivered in accordance with the procedure set out in Clause 7;

"**Termination Date**" means the earlier to occur of the Expiry Date or the date upon which the contract comes to an end in accordance with its terms;

"**Top-Up Service**" means the top-up service referred to in to Clause 7.9, and details of which are set out in the Particulars;

"**Utilise**" means (in relation to Product) change the physical properties of the Product by whatever means, and "**Utilisation**" shall be construed accordingly;

"**Week**" means a 7 day period within the Term, commencing at 0:00 on Monday and terminating at 24:00 on the following Sunday; and

"**Weighbridge**" means any weighbridge at the Supplier Site used to weigh Product Collected by or supplied to the Customer pursuant to the terms of this Contract;

1.2 any words denoting the singular shall include the plural and vice versa;

1.3 the masculine includes the feminine and the neuter and vice versa;

1.4 the singular includes the plural and vice versa;

1.5 a reference in this Contract to any Clause, Sub-clause is (except where it is expressly stated to the contrary) a reference to such Clause or Sub-clause of this Contract;

1.6 any reference to this Contract or to any contract, document or other instrument shall include (subject to any relevant consents and any other provision of this Contract expressly concerning such contract, document or other instrument) a reference to that contract, document or other instrument as amended, supplemented, substituted, novated or assigned;

1.7 a reference to a person includes firms and corporations and their successors and permitted assignees or transferees;

1.8 references to any statute or statutory provision (including any EU Instrument) shall include:

1.8.1 any subordinate legislations made under it;

1.8.2 any provision which it has modified or re-enacted (whether with or without modification); and

1.8.3 any provision which subsequently supersedes it or re-enacts it (whether with or without modification);

1.9 words preceding include, includes, including and included shall be construed without limitation by the words which follow those words unless inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply;

1.10 the list of contents and the headings to the Clauses and parts of this Contract and to the paragraphs of the Schedules are for the ease of reference only and shall not affect the construction of this Contract;

1.11 the Schedules to this Contract (including any annexes or appendices thereto) are an integral part of this Contract and reference to this Contract includes a reference thereto and reference to any Schedule includes a reference to any annex or appendix of any such Schedule thereto; and

1.12 any reference to a public organisation shall be deemed to include a reference to any successor (public or otherwise) or to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation.

2. PRIMARY OBLIGATIONS OF THE SUPPLIER

The Supplier shall, subject to and in accordance with the terms of this Contract:

2.1 (as appropriate) Deliver and/or make the Contract Tonnage in each Contract Year available for

The Supplier shall, subject to and in accordance with the terms of this Contract:

- 2.1 (as appropriate) Deliver and/or make the Contract Tonnage in each Contract Year available for Collection;
- 2.2 load the Collection Vehicles (as appropriate) presented at the Supplier Site;
- 2.3 issue a weighbridge ticket for each Collection Vehicle or Delivery Vehicle exiting the Supplier Site with a Load; and
- 2.4 at all times act in accordance with applicable Legislation and Good Industry Practice.

3. PRIMARY OBLIGATIONS OF THE CUSTOMER

The Customer shall, subject to and in accordance with the terms of this Contract:

- 3.1 collect the Product made available for Collection at the Supplier Site and/or accept Delivery of the agreed Contract Tonnage in each Contract Year;
- 3.2 pay the Price for each tonne of Accepted Product in accordance with Clause 8; and
- 3.3 at all times act in accordance with applicable Legislation and Good Industry Practice (including without limitation whilst on the Supplier Site, the Supplier's site rules).
- 3.4 use Collection Vehicles (as appropriate) of a type and capacity which have been approved by the Supplier in writing (acting reasonably, having regard inter alia to the requirements of other users of the Supplier Site, any planning conditions, and the loading mechanisms available at the Supplier Site); and
- 3.5 provide the Supplier with sufficient access to the Customer Site to Deliver the Product (as appropriate), having regard to the Supplier's requirements for Delivery which may be communicated to the Customer from time to time; where the Customer fails to comply with this obligation the time for Delivery shall be extended as appropriate and the Supplier may charge the Customer for any additional costs or charges it incurs for any failed or further Delivery.

4. NOT USED

5. SAMPLING, STORAGE AND THE RIGHT TO REJECT

- 5.1 All and any initial sampling and analysis of the Collected Product or any Product for Delivery deemed necessary by the Customer shall be carried out by the Customer at its own expense at the Sampling Laboratory in accordance with the Sampling Protocol.
- 5.2 Each Party shall, upon reasonable written request, supply copies of the results of any tests undertaken by such Party in relation to Product which is Collected or Delivered or is intended to be made available for Collection or is intended to be Delivered, to the other as soon as reasonably practicable once the results are known. Such test results shall comprise Confidential Information of the Party providing the copies for the purposes of Clause 19.
- 5.3 The Customer undertakes that it shall not Commingle any Consignment and shall keep each Consignment protected from the elements and otherwise in all material respects in the same condition as it was at the point of Collection or Delivery from the time of Collection or Delivery of any Product until the earlier to occur of:
 - 5.3.1 the Acceptance of the Consignment of which the Product forms a part;
 - 5.3.2 (in circumstances where a Rejection Notice has not been served on the Supplier during such Rejection Notice Period) the expiry of the Rejection Notice Period;
 - 5.3.3 (in circumstances where a Rejection Notice has been served on the Supplier during the Rejection Notice Period) the expiry of the Rejected Consignment Recovery Period; and
 - 5.3.4 (in circumstances where a Rejection Notice has been served on the Supplier during the Rejection Notice Period and the Supplier Recovers the Rejected Consignment from the Customer) the loading of the Rejected Product into a Recovery Vehicle.
- 5.4 The Customer acknowledges and agrees that where it has Commingled the Consignment, or it has not kept the Consignment protected from the elements and otherwise in all material respects in the same condition as it was at the point of Collection, it will lose its right to serve a Rejection Notice and its right to Reject the Consignment. The Customer acknowledges that where, on Delivery, the Product is transferred from the Supplier's Delivery vehicle directly into the Customer's storage unit (for example where the goods are poured or bulk-blown into the Customer's storage unit), the Product shall immediately become Commingled and be deemed Accepted, and the Customer will lose its right to serve a Rejection Notice and its right to Reject the Consignment.
- 5.5 (Without prejudice to the provisions of Clause 5.4) Product in a Consignment shall be deemed to be Accepted unless the Customer serves a written notice (the "**Rejection Notice**") on the Supplier within the Rejection Notice Period detailing:
 - 5.5.1 the date of the Consignment;

Accepted unless the Customer serves a written notice (the "Rejection Notice") on the Supplier within the Rejection Notice Period detailing:

5.5.1 the date of the Consignment;

5.5.2 the Load(s) Collected and/or Delivered on the date of the Consignment; and

5.5.3 a statement that the Customer is rejecting the Consignment on the basis that the Product in such Consignment is Off-Specification;

and accompanies such written notice with a copy of the results of the sampling undertaken by the Sampling Laboratory (or other evidence reasonably satisfactory to the Supplier) which demonstrates that the Consignment is Off-Specification.

5.6 Upon receipt of the Rejection Notice, and provided that the Customer is entitled to serve a Rejection Notice and it is served within the Rejection Notice Period, the Supplier may:

5.6.1 at any time prior to the expiry of the Rejected Consignment Recovery Period, by written notice to the Customer challenge the Rejection of the Consignment by the Customer and, at its own cost, undertake a further sampling of the Consignment at the Sampling Laboratory (in which event the Rejected Consignment Recovery Period shall be extended by a period equal to the date upon which the challenge notice is served on the Customer until the dispute has been settled or determined in accordance with the Dispute Resolution Procedure); and/or

5.6.2 by agreement with the Customer (both Parties acting reasonably) at its own cost arrange for the Recovery of the Rejected Consignment from the Customer prior to the expiry of the Rejected Consignment Recovery Period, in which event it shall be the responsibility of the Customer to load the Rejected Product into the Recovery Vehicles.

5.7 In the event that the resampling of the Consignment undertaken pursuant to Clause 5.6.1 demonstrates that:

5.7.1 the Consignment is Off-Specification, the Consignment shall be conclusively deemed to be Off-Specification; or

5.7.2 the Consignment is On-Specification, the Parties shall undertake a third sampling of the Consignment at the Sampling Laboratory, the results of which shall be deemed to be conclusive as to whether the Consignment is On-Specification or Off-Specification.

5.8 If the Supplier fails to Recover Rejected Product prior to the expiry of the Rejected Consignment Recovery Period, the Customer shall be at liberty to dispose of such Rejected Product itself and recover the reasonable costs of such disposal from the Supplier unless the Supplier's failure to Recover Rejected Product is due to any (in)action of the Customer which does not enable the Supplier to Recover the Rejected Product. For the avoidance of doubt, any Utilisation of Rejected Product shall be deemed to be an Acceptance of the Rejected Consignment.

5.9 Where the results, further to Clause 5.7.2, show that the Consignment is On-Specification, the Customer shall be liable for any costs incurred by the Supplier in providing any further sampling and/or transportation.

5.10 Where:

5.10.1 the results, further to either Clause 5.7.1 or 5.7.2, show that the Consignment is Off-Specification; or

5.10.2 following receipt of a Rejection Notice, the Supplier does not exercise its rights pursuant to Clause 5.6.1 to challenge the Rejection of the Consignment by the Customer,

the Supplier shall, at the Supplier's discretion, issue a refund to the Customer or replace the Product at no further cost to the Supplier.

6. TITLE AND RISK

6.1 Risk in, and responsibility for, Product shall pass to the Customer upon its deposit into the relevant Collection Vehicle or when Delivered (as appropriate).

6.2 Title to Product shall pass to the Customer when the Customer has paid in full and cleared funds all sums due to the Supplier in accordance with the Contract.

6.3 Risk in Off-Specification Product which is properly Rejected by the Customer shall revert to the Supplier upon its entry into the Recovery Vehicle.

6.4 Title to Rejected Product shall revert to the Supplier:

6.4.1 if the Customer has a Weighbridge at the Customer Site, upon the issue by the Customer of a weighbridge ticket upon the exit of the Product from the Customer Site in a Recovery Vehicle; or

6.4.2 if the Customer does not have a Weighbridge at the Customer Site, upon the deposit of the Product into the Recovery Vehicle.

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7. SCHEDULING AND DELIVERY

7.1 Collections and/or Deliveries will commence on the Supply Commencement Date.

7.2 Prior to the commencement of:

7.2.1 each Contract Year, the Parties will agree a Schedule for Collection and/or a Schedule for Delivery for the Contract Tonnage for that Year, taking account of planned and known unplanned outages (an "**Annual Schedule**");

7.2.2 each Month, the Parties will agree a Schedule for Collection and/or a Schedule for Delivery for the following Month, taking account of planned and unplanned outages and any further requests for Additional Tonnage by the Customer which the Supplier agrees to supply in accordance with its obligations under this Contract (a "**Monthly Schedule**"); and

7.2.3 each Week, and prior to noon on the previous Friday if possible, the Parties will agree a Schedule for Collection and/or a Schedule for Delivery for each day in the following Week (each day on which a Collection or Delivery of Product is to be made hereinafter referred to as a "**Supply Day**"), taking account of planned and unplanned outages and any further requests for Additional Tonnage by the Customer which the Supplier agrees to supply in accordance with its obligations under this Contract (a "**Weekly Schedule**"), based upon the licensed opening times for the Supplier Site, the number of full Collection Vehicles that the Supplier can reasonably be expected to accommodate during such opening hours, and the number of Deliveries that the Supplier can reasonably be expected to make. Partially full Collection Vehicles shall be restricted as far as reasonably practicable to any balancing deliver(ies) at the end of the relevant Contract Year.

7.3 To the extent reasonably practicable (and subject always to planned and unplanned outages), the Parties shall endeavour to agree Annual, Monthly and Weekly Schedules which provide for the Collection and/or Delivery and Acceptance of Product evenly throughout the relevant Contract Year.

7.4 The Annual and Monthly Schedules will be agreed in good faith by the Parties, but will not be contractually binding. The Weekly Collection Schedules will (subject to Clause 3.2 above) be contractually binding in relation to the Contract Tonnage and Additional Tonnage.

7.5 In relation to daily Contract Tonnage and Additional Tonnage of Product scheduled to be Collected and/or Delivered pursuant to a Weekly Schedule, either Party may, by giving no less than 48 hours notice, cancel a scheduled daily Collection and/or Delivery without penalty (but without prejudice to its obligations in relation to the Contract Tonnage over the course of the Contract Year).

7.6 Where the Customer fails to comply with its obligations in Clauses 3.1 and 3.2 above, the Parties shall use reasonable endeavours to reschedule the Collection of Product to make up the shortfall, provided that it is recognised that the Supplier shall not be obliged to inconvenience other customers in so doing. Where the Customer fails to comply with its obligations in Clauses 3.3 or 3.4 above, the Parties shall use reasonable endeavours to reschedule Deliveries to make up the shortfall, and the Customer acknowledges and agrees that the Supplier may charge the Customer for any additional costs or charges it incurs for any failed or further Delivery.

7.7 The Customer shall:

7.7.1 (where Collecting Product) Collect using such Collection Vehicles as are fit for such purpose and adequately covered to prevent any escape of Product;

7.7.2 (where Collecting Product) comply (at its own cost) with such directions as to the regulation of the Supplier Site and working practices within the Supplier Site as the Supplier shall from time to time prescribe. The Supplier will give reasonable prior notice in writing of any proposed change to such regulations;

7.7.3 (where Product is Delivered) provide Supplier with sufficient access in accordance with Clause 3.5 to enable the Supplier to Deliver the Product.

7.8 The Supplier shall:

7.8.1 (where the Customer is Collecting Product) at its cost provide a Collection Point at which the Product can be safely loaded onto its Collection Vehicles;

7.8.2 (where the Customer is Collecting Product) at its own cost provide a Weighbridge to be used by the Collection Vehicles;

7.8.3 (where the Customer is Collecting Product) provide free of charge such reasonable assistance to the Collection Vehicles as they may require whilst at the Supplier Site;

7.8.4 (where the Customer is Collecting Product) procure that each vehicle Collecting Product is weighed and keep proper records of the number and type of vehicles Collecting Product from the Supplier Site;

7.8.5 (where Product is Delivered) issue a Proof of Delivery to the Customer for each Delivery of Product; and

7.8.6 be responsible for the maintenance and calibration of the Weighbridge and shall comply with all statutory requirements with respect to the operation, maintenance and calibration thereof, the results of which shall be made available upon reasonable notice for inspection by the Customer.

7.9 Where the Particulars require the Supplier to provide a Top-Up Service, the Supplier shall, during the term of the Contract or as otherwise agreed by the Parties and subject to compliance by the Customer

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7.9 Where the Particulars require the Supplier to provide a Top-Up Service, the Supplier shall, during the term of the Contract or as otherwise agreed by the Parties and subject to compliance by the Customer of its obligations in clause 7.10, monitor the quantity of Product held by the Customer in its storage facilities, and when the Supplier considers, acting reasonably and at its discretion (taking into account the requirements of the Top-Up Service set out in the Particulars), that the quantity of Product held by the Customer requires topping up, deliver such tonnage of Product to the Customer as set out in the Particulars. Each time the Supplier Delivers Product as part of the Top-Up Service, it shall issue a Proof of Delivery to the Customer and invoice the Customer accordingly.

7.10 The Customer shall provide the Supplier and its employees, agents and sub-contractors reasonable access to its premises and facilities where it stores the Products as reasonably required by the Supplier for the provision of the Top-Up Service.

8. PRICE AND PAYMENT

8.1 The Customer shall pay the Supplier the Price for each tonne of Accepted Product.

8.2 The Supplier shall invoice the Customer for each Consignment of the Product Collected and/or Delivered. Each invoice shall detail the date and tonnage of the Consignments Collected and/or Delivered.

8.3 If any invoice is disputed in good faith by the Customer (including on the grounds that any Consignment(s) have been Rejected), the Customer shall be entitled to withhold the disputed amount until the dispute has been settled or determined in accordance with the Dispute Resolution Procedure.

8.4 Whenever one Party is properly liable under or in connection with this Contract to pay any sum of money to the other Party, it shall be paid in immediately cleared funds within 30 days of the date of presentation of an invoice for such amount.

8.5 If any amount properly owing to a Party is not paid in accordance with Clause 8.4, such Party shall be entitled to recover interest on any monies due at the Default Interest Rate calculated on a daily basis from the due date for payment until the date that payment is received by the Party whether before or after judgement.

8.6 Where the Annual Accepted Contract Tonnage is less than the Contract Tonnage in a Contract Year, or the Supplier believes (acting reasonably) that the Customer will not Collect and/or accept Delivery of the Contract Tonnage in a Contract Year, the Supplier may terminate the Contract and/or the Customer shall pay the Supplier on demand 50% of the Price for the Product (as set out in the Particulars) multiplied by an amount equal to the Contract Tonnage less the Annual Accepted Contract Tonnage in the relevant Contract Year, as liquidated damages. The Parties confirm that the amounts payable by the Customer under this Clause 8.6 represent a genuine pre-estimate of the Supplier's loss that may be caused by fluctuations in the market price for the Product and / or the increased costs of marketing and selling the Product due to seasonal variations in demand for the Product.

8.7 Clause 8.6 shall not apply in circumstances where the Supplier is directly responsible for the Accepted Contract Tonnage being less than the Contract Tonnage for that Contract Year.

9. TAXES

The Price is exclusive of value added tax and the Customer shall pay any applicable value added tax on the Price at the relevant rate applying from time to time. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Product into the country of destination and for the payment of any duties thereon.

10. CHANGE IN LAW

10.1 If a Change in Law occurs, the Supplier shall be entitled to recover its increased cost of production per tonne from the Customer by way of an increase to the Price from the date upon which such increased cost is incurred, provided that the Supplier can demonstrate to the reasonable satisfaction of the Customer that:

10.1.1 the increased costs will be, or have been, reasonably and properly incurred; and

10.1.2 (without the Supplier being required to divulge the prices charged to its other customers) the Customer has not been treated in a discriminatory fashion compared to the Supplier's other customers for Product.

10.2 No change to this Contract shall be implemented to give effect to a Change in Law unless and until the Customer has consented to such changes in writing (such consent not to be unreasonably withheld or delayed).

10.3 In the event that the impact of the Change in Law on the Price cannot be agreed or determined prior to the date upon which the relevant Change of Law comes into effect, the Change of Law shall be deemed to be a Force Majeure Event until its impact is agreed or determined.

11. SUB-CONTRACTORS

11.1 The Supplier shall take responsibility for the acts and omissions of each Supplier Party as if such acts and omissions were those of the Supplier itself.

11.2 The Customer shall take responsibility for the acts and omissions of each Customer Party as if such acts and omissions were those of the Customer itself.

acts and omissions were those of the Supplier itself.

11.2 The Customer shall take responsibility for the acts and omissions of each Customer Party as if such acts and omissions were those of the Customer itself.

12. FORCE MAJEURE

- 12.1 Neither Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party (save in respect of any payment that is or becomes due under the Contract either before or during the Force Majeure Event) nor be liable to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by the occurrence of that Force Majeure Event.
- 12.2 On the occurrence of a Force Majeure Event, the affected Party (the "**Force Majeure Claimant**") shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.
- 12.3 As soon as practicable following a notification under Clause 12.2 the Parties shall (acting reasonably) agree appropriate relief for each Party from their respective obligations under this Contract in relation to matters arising directly as a result of the Force Majeure Event. If appropriate relief is not agreed within 20 Business Days of the date of the Force Majeure Event, then the matter may be referred by either Party to the Dispute Resolution Procedure.
- 12.4 If any Party is unable to comply with all of its material obligations for a period in excess of the Force Majeure Longstop Period as a result of a Force Majeure Event, then, subject to Clause 12.5 either Party may give 20 Business Days' written notice to terminate this Contract on a Force Majeure Basis.
- 12.5 Save to the extent that Force Majeure Event (b) applies, the Force Majeure Claimant shall at all times during which a Force Majeure Event is subsisting take all reasonable steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 12.6 The Force Majeure Claimant shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Contract. Following such notification the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

13. DURATION

- 13.1 This Contract shall commence on the Contract Date and shall (subject to the other terms of this Contract) continue until either Party gives the other Party no less than six months' notice of termination, **PROVIDED THAT** if any notice of termination given pursuant to this Clause 13.1 would result in the termination of the Contract prior to the expiry of the Initial Fixed Term, such notice of termination shall only take effect to terminate this Contract at the expiry of the Initial Fixed Term.
- 13.2 The obligation of the Supplier to make available Product for Collection and/or to Deliver the Product to the Supplier Site, and the obligation of the Customer to Collect and/or accept Delivery of such Product, shall commence on the Supply Commencement Date.

14. TERMINATION

- 14.1 The Supplier shall be entitled to terminate this Contract upon the occurrence of a Customer Event of Default, and the Customer shall be entitled to terminate this Contract upon the occurrence of a Supplier Event of Default in each case through the service of a formal written notice from the terminating Party (a "**Default Notice**"). The Default Notice shall as a minimum specify:
- 14.1.1 the Supplier Event of Default or Customer Event of Default giving rise to the termination right; and
 - 14.1.2 such details in relation to the underlying circumstances giving rise to the default as shall be reasonable in the circumstances.

Upon receipt of a Default Notice, where the default is capable of remedy, the defaulting Party shall have 20 Business Days in which to effect such remedy, failing which this Contract shall terminate.

- 14.2 Any expiry or termination of this Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the continuance in force of any provision of this Contract which is expressly or by implication intended to continue in force on or after such expiry or termination, including without limitation Clauses 1, 3, 6, 8, 9, 15, 19, 20 and 24.
- 14.3 The Parties shall have no rights to terminate this Contract other than as expressly provided for in this Contract.

15. LIABILITY

- 15.1 Subject to the remaining provisions of this Clause 15, the Supplier's liability to the Customer shall be limited to the Losses incurred by the Customer which are directly caused by a breach of the terms of this Contract by the Supplier and shall not exceed in aggregate 100% of the total amounts paid by the Customer to the Supplier in any one Contract Year.

- 15.2 Subject to the remaining provisions of this Clause 15, and to the extent permitted by law, the Supplier shall in no event be liable or responsible to the Customer whether in contract, tort (including

the Customer to the Supplier in any one Contract Year.

15.2 Subject to the remaining provisions of this Clause 15, and to the extent permitted by law, the Supplier shall in no event be liable or responsible to the Customer whether in contract, tort (including for negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent) or otherwise, except in relation to:

15.2.1 a failure to Deliver and/or make the Contract Tonnage available for Collection in a Contract Year; and

15.2.2 a termination of this Contract due to a Supplier Event of Default;

15.3 To the extent permitted by law, the express remedies set out in this Contract shall be the sole remedies of the Parties.

15.4 Neither Party shall be liable for the Excluded Losses of the other Party.

15.5 Nothing in this Contract limits or excludes the liability of either Party for death or personal injury caused by that Party's negligence, or for fraud or fraudulent misrepresentation or for any other liability which cannot be excluded by law.

16. INSURANCE

16.1 The Supplier undertakes, throughout the Term, to take out and maintain the Supplier Insurances.

16.2 The Customer undertakes, throughout the Term, to take out and maintain the Customer Insurances.

16.3 All insurances shall be taken out with reputable insurers.

16.4 Each Party shall provide the other Party with details of the insurance policies taken out and maintained by such Party in compliance with Clause 16.1 or 16.2 (as appropriate) upon request.

17. DISPUTES

17.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then, except as expressly provided in this Contract, the parties shall follow the dispute resolution procedure set out in this Clause (the "**Dispute Resolution Procedure**"):

17.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documentation. On service of the Dispute Notice the Supplier Representative and the Customer Representative shall attempt in good faith to resolve the Dispute;

17.1.2 if the Supplier Representative and the Customer Representative are for any reason unable to resolve the Dispute within 20 Business Days of service of the Dispute Notice, the Dispute shall be referred to the managing director of the Supplier and the managing director of the Customer who shall attempt in good faith to resolve it; and

17.1.3 if the managing director of the Supplier and the managing director of the Customer are for any reason unable to resolve the Dispute within 20 Business Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 20 Business Days after the date of the ADR notice. Unless otherwise agreed by the Parties, the place of mediation shall be nominated by the mediator.

17.2 No party may commence any court proceedings in relation to any dispute arising out of this Contract unless the mediation does not occur, or is not completed within 20 Business Days after the appointment of a mediator.

18. ASSIGNMENT AND SUB-CONTRACTING

18.1 The Supplier shall be entitled to sub-contract part or whole of the performance of its obligations under this Contract. The Customer shall be entitled to sub-contract part or whole of the performance of its obligations under this Contract with the consent of the Supplier, such consent not to be unreasonably withheld and/or delayed, **PROVIDED THAT** the Customer may sub-contract to any of its Affiliates without the prior consent of the other Party.

18.2 The Supplier shall be entitled to charge and/or assign the benefit and/or novate the burden of this Contract in favour of any of its Affiliates or Funders (or their nominee(s)) from time to time, and the Customer agrees, upon the request of the Supplier, to execute such documents as may reasonably and customarily be required to give effect to such charge, assignment and/or novation (as appropriate).

19. CONFIDENTIALITY

19.1 Except as permitted by this Clause, all information of a confidential nature disclosed, whether in writing, orally or by any other means by or on behalf of one Party or its Affiliates to the other (which in the case of a charge or assignment pursuant to Clause 18.2 includes disclosure by the Customer to any person to whom the Contract has been charged, assigned or novated) either before or after the

19.1 Except as permitted by this Clause, all information of a confidential nature disclosed, whether in writing, orally or by any other means by or on behalf of one Party or its Affiliates to the other (which in the case of a charge or assignment pursuant to Clause 18.2 includes disclosure by the Customer to any person to whom the Contract has been charged, assigned or novated) either before or after the commencement of this Contract and in respect of the subject matter of this Contract ("**Confidential Information**") shall be held confidential during the Term and thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other Party. Except as permitted by this Clause each party shall procure that its Affiliates and its and their respective officers, employees, servants and agents shall keep confidential and shall not disclose to any person any of the Confidential Information of the other Party.

19.2 A Party shall be entitled in good faith to divulge any of the other's Confidential Information without the approval of the other Party in the following circumstances:

19.2.1 upon the request of Relevant Authority exercising statutory and/or regulatory powers; or

19.2.2 pursuant to a court order,

but only to the extent necessary to enable such Regulatory Authority to exercise its statutory and/or regulatory power or to fulfil the court order and provided that, and to the extent it is permissible by law to do, such disclosing Party shall:

- (a) to the extent it is reasonably practicable, obtain confidentiality undertakings from the Regulatory Authority or those who have the benefit of any court order equivalent to those agreed between the Parties under this Contract;
- (b) where legally possible prior to disclosure inform the other Party of the proposed disclosure and the information it proposes to disclose; and
- (c) to the extent it is reasonable, require the Regulatory Authority or those who have the benefit of the court order, to destroy or return the Confidential Information on request of the Party whose Confidential Information has been disclosed.

Information disclosed in the circumstances of this Clause shall not cease to be the Confidential Information of the affected Party for all purposes of this Contract.

19.3 Either Party may disclose the Confidential Information to:

19.3.1 any (or any Affiliate's) officer or servant of the Party in question if disclosure is necessary or expedient to enable the Party in question to perform its obligations under this Contract;

19.3.2 any professional advisors or consultants; or

19.3.3 any lender, security trustee, bank or other financial institution from whom such Party is seeking or obtaining finance

(the "**Disclosee**"), provided that the disclosing Party takes all reasonable steps to ensure that the Disclosee keeps such information confidential.

In fulfilling its obligations under this Clause each Party shall only be required to use the same degree of care to prevent unauthorised disclosure of the other's Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature which it considers proprietary or confidential.

19.4 No announcement or circular in connection with this Contract or the existence of this Contract shall be made by or on behalf of either Party without the prior approval of the other (such approval not to be unreasonably withheld and/or delayed), save that in the event that either Party is required, by an applicable law or by applicable Legislation or regulatory body including a recognised Stock Exchange, to make any announcement or issue any circular, it may do so to the extent required by the law or regulatory body, after first consulting the other as to the contents thereof.

19.5 The provisions of this Clause 19 and its associated Clauses shall survive and remain in force upon and following the termination or expiry of this Contract for a period of five years.

19.6 The provisions of this Clause 19 shall not apply to information which:

19.6.1 is or becomes publicly known other than through any act or omission of the Party who receives it from the other Party;

19.6.2 was known by or available on a non-confidential basis to other Party before the disclosure;

19.6.3 is lawfully disclosed to the Party who received it from the other Party by a third party without restriction on disclosure.

20. WAIVER

20.1 No waiver by a Party of any default by the other Party of the performance of any of the provisions of this Contract shall operate or be construed as a waiver of any other or further default whether of a like or different character.

20.1 No waiver or release of any right or remedy by either Party of any default by the other Party of the performance or any of the provisions of this Contract shall operate or be construed as a waiver of any other or further default whether of a like or different character.

20.2 No failure or delay in the exercise or non-exercise by either Party of any of its rights or remedies under or in connection with this Contract nor anything said, done or written by any person, or anything omitted to be said, done or written by any person including any employee, servant and agent of either Party shall in any way affect the rights, or modify, affect, reduce or extinguish the obligations and liabilities, of either Party under this Contract, or be deemed to be a waiver or release of any of the rights or remedies of either Party.

20.3 No single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

20.4 Where in this Contract any obligation of a Party is to be performed in a specified time limit that obligation shall be deemed to continue after that time limit if the Party fails to comply with that obligation within the time limit.

20.5 Any waiver or release of any right or remedy must be specifically granted in writing and shall:

20.5.1 be confined to the specific circumstances in which it is given;

20.5.2 not affect any other enforcement of the same or any other right; and

20.5.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

21. MISCELLANEOUS

21.1 It is agreed between the Parties that:

21.1.1 nothing in this Contract shall constitute or be deemed to constitute a partnership, agency or the relationship of employer and employee;

21.1.2 this Contract contains the entire agreement between the Parties and supersedes any previous agreement between the Parties in relation to the subject matter hereof;

21.1.3 neither Party has relied on or been induced to enter into this Contract by a representation other than to the extent expressly set out in this Contract;

21.1.4 any changes and/or amendments to this Contract must be in writing and signed by both Parties;

21.1.5 if any provision of this Contract is or becomes or is declared invalid, unenforceable and/or illegal by the courts of any jurisdiction to which it is subject to or by order of the commission of the European Communities, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Contract which shall, for the avoidance of doubt, continue in full force and effect notwithstanding such invalidity, unenforceability or illegality; and

21.1.6 each Party shall be responsible for their own costs in the preparation and execution of this Contract.

22. MITIGATION

22.1 Each Party agrees to take all reasonable steps to mitigate any Losses which it may otherwise incur as a result of a breach of this Contract by the other Party. Notwithstanding the foregoing, the Supplier shall be under no duty to mitigate any Losses which it incurs as a result of the non-payment by the Customer of any sums owed to the Supplier by the Customer under this Contract.

22.2 Subject to Clause 22.1, as soon as reasonably practicable upon either Party becoming aware that it will be unable to meet its obligations under this Contract, such Party shall inform the other Party of the circumstances and likely duration of the disruption, in order to afford to the other Party as great an opportunity as possible to mitigate the effects of the disruption on such other Party's business and costs.

22.3 For the avoidance of doubt, nothing in this Clause 22 limits or excludes any liability for fraud or fraudulent misrepresentation.

23. NOTICES

23.1 All notices which are required to be given under this Contract shall be in writing and shall be sent to the Customer Representative or Supplier Representative (as appropriate) at the address stated in the Particulars.

23.2 Any notice served in connection with this Contract may be delivered:

23.2.1 by hand to the Customer Representative or the Supplier Representative (as appropriate);
or

23.2.2 by first-class recorded delivery;

or

23.2.2 by first-class recorded delivery;

and shall be deemed to have been served:

23.2.3 if by hand, when delivered; or

23.2.4 if by first-class recorded delivery, 72 hours after posting.

24. JURISDICTION

This Contract will be governed by and construed in accordance with English law and the Parties agree that the English courts shall have non-exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Contract.

25. THIRD PARTIES

25.1 No person who is not a Party to this Contract (including any Supplier Party or Customer Party) shall have the right to enforce any term of this Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause 25.

25.2 Even if a person who is not a Party to this Contract (including any Supplier Party or Customer Party) has a right to enforce any term of this Contract by virtue of s1 of the Contracts (Rights of Third Parties) Act 1999, the Parties may vary or cancel this Contract by agreement between them without requiring the consent of such third party.