

# HIGHLANDER INTERNATIONAL RECYCLING LIMITED

## TERMS AND CONDITIONS OF BUSINESS – SALE OF GOODS

Correct as of 11<sup>th</sup> March 2019

### **1. DEFINITIONS:**

1.1 **Us/We/Our means** Highlander International Recycling Limited or Highlander International Recycling (Ireland) Limited, of postal address 7-10 Linwood Avenue, East Kilbride, Glasgow G74 5NR.

1.2 **Conditions** mean the conditions of sale set out in this document and any special terms and conditions agreed in writing by us.

1.3 **Contract** means the contract for the sale of the Goods.

1.4 **You/Your** means the person, firm or company buying or agreeing to buy Goods from Us in accordance with the Conditions.

1.5 **Goods** means all recovered materials or any part thereof (together with any services) that we agree to sell to you as detailed on the Sales Order.

1.7 **Price** means the price of the Goods as set out in the Sales Order, excluding VAT (where applicable)

1.9 **Sales Order** means our uniquely numbered, official written order for the Goods as provided to you before the goods are despatched, which shall include any descriptions, specifications, quality requirements, loading requirements, transport provisions, legal requirements and / or special instructions relating to the Goods.

1.10 **Collection / Delivery Date** means the date specified by us when the Goods are to be collected from, or delivered to.

1.11 **Delivery Address** means the place of collection / delivery of the Goods as set out in the Sales Order or as otherwise agreed in writing.

1.12 **Recovered materials** shall mean bales of a minimum weight of circa 400kg and a minimum of 3 cross banding wires. The recovered materials exact quality specifications can be viewed in Highlander International Recovered Materials Load Standards and material quality specifications, for recovered materials (Dated as March 2019, copies of which can be provided by us, on your request).

1.13 **Recovered Materials Load Standards and material quality specifications** shall mean the document provided by us which will regulate the specification and the quality of the goods provided by us to you as part of the Contract. The Recovered Materials Load Standards and material quality specifications shall apply to the Contract to the absolute exclusion of all other specification and quality documentation, including any specification and quality documentation which you may purport to apply under your purchase order or similar document or by any other communication.

1.14 **Charge** shall mean the price paid by you to us, and includes but is not limited to the collection or delivery of recovered materials (where specified on the sales order) and any other bone fide costs incurred by us resulting from the execution of this contract. You may not set off against and deduct from us any charges, from any payment due from you to us under the Contract, the amount of any sum which is or is about to be due from you to us, whether in relation to the Contract or otherwise.

1.15 **Collection contractor** shall mean us or you or a company/organisation nominated and contracted by us or you to provide a service of collection of recovered materials from our collection address to your delivery address {the delivery address}, where specified on the sales order and contract, which shall also clearly state whether you or us are liable for the costs of providing said collection contractor.

1.17 **Normal hours** shall mean 0700 hours to 1700 hours Monday to Friday.

1.18 **Trailer / container** shall mean a trailer or container capable of holding and transporting recovered materials.

1.19 Any reference to an enactment is a reference to it as already amended and includes a reference to any repealed enactment which it may re-enact with or without amendment and to any future re-enactment and / or amendment of it whether taking effect before or after the date of these terms and conditions of business, but so that any retrospective legislation shall increase your liability hereunder.

1.20 The headings used for these terms and conditions of business and the Schedules hereto, are inserted for convenience only and shall not affect the construction or interpretation of these terms and conditions at any time.

1.21 Words and expressions used herein importing the singular number shall include the plural number and vice versa and importing one gender shall include any other and All typographical and clerical errors are subject to correction.

1.22 Any reference to a clause or schedule shall be a reference to such clause or schedule of these terms and conditions of business.

1.23 No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or other provision.

1.24 No failure by us to exercise any power given to us or to insist upon strict compliance by you with any obligation hereunder and no custom or practice of the parties at variance with the terms hereunder shall constitute any waiver of any of our rights under the Contract.

1.25 If any provision(s) of these Conditions is (are) held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby and the invalid provisions shall be replaced or the gaps shall be filled by appropriate regulations.

1.26 Any notice under these Conditions shall be properly given if in writing and sent by first class post, telex, e-mail or facsimile to the address of the intended recipient as stated in the contract or to such address as we and you from time to time notify to each other as their respective addresses for service.

1.27 Except as otherwise provided, nothing in this Contract shall bestow on any third party, any benefit or the right to enforce any terms of this Contract.

1.28 You shall not assign any benefit, liability or any other rights of the contract to any third party, without our prior written consent.

1.29 The GDPR (General Data Protection Regulations) requires us to advise you that your personal information voluntarily submitted in the course of instructing us to sell the Goods, are held on our database(s). Unless requested not to do so we may, from time to time, use these details to send information we believe may be of interest you.

1.30 We reserve the right to assign the benefit of the Contract by prior written notice to you.

## **2. CONDITIONS APPLICABLE AND ORDERS:**

2.1 The Conditions shall apply to the Contract to the exclusion of all other terms and conditions including any terms or conditions which you may purport to apply under your purchase order or similar document or by any other means.

2.2 No variation to the Conditions (including any special terms and conditions agreed between the parties) shall be binding unless agreed in writing between a director of us and representative of you.

2.3 Despatch, collection or delivery of the Goods (whichever the earlier) by Us to You shall be deemed conclusive evidence of your acceptance of the Conditions.

2.4 Except as otherwise provided, no Sales Order which has been accepted by You may be cancelled by You except with Our agreement in writing and on terms that You shall indemnify Us in full, against all loss (including loss of profit) costs, damages, charges and expenses incurred by Us as a result of the cancellation.

2.5 You acknowledge that it shall be your responsibility to notify us of all governmental statutory local authority requirements (or other requirements) relating to the supply of the Goods by Us of which you are aware (or in respect of which it is reasonable for you to be aware).

2.6 We reserve the right to cancel the Contract by prior written notice to You, giving You no less than 24 hours notice before the goods are due to be collected or delivered to the delivery address, with no obligation on us to indemnify you against any loss, howsoever incurred by you, as a result of this cancellation.

### **3. GRANT OF RIGHTS**

In consideration of the goods and services to be provided by us to you for the execution of any contract agreed between us, hereinafter we hereby grant rights unto to you and vice versa, to: -

- 3.1 Provide suitable trailers / containers for the uplift / unloading of Recovered materials from the collection address to the Delivery Address on the agreed Collection and Delivery Dates.
- 3.2 access the Collection and Delivery Addresses during Normal Hours with your / our vehicles or those of your / our collection contractors for the purposes of undertaking your / our obligations in accordance with the agreed Contract between us and you.

### **4. DELIVERY / COLLECTION:**

4.1 Delivery or collection of the Goods shall be made to the Delivery or collection Address as advised by us and confirmed in Our Sales Order, by the collection and Delivery Date, as agreed between us and you.

4.2 Punctual collection / delivery of the Goods is the essence of the Contract. If You fail to provide the trailers / containers for the collection of the Recovered materials (or know or suspect that You will fail to collect / deliver / make available the trailers / containers) in accordance with the Contract to the collection or Delivery Address on the collection or Delivery Dates, then without prejudice to any other right or remedy available to Us: -

(a) You shall notify us twenty-four hours (24 hrs) prior to the collection or Delivery Date of your pending failure or suspected pending failure to collect / deliver / make available the trailers / containers to the collection or Delivery Address on the collection or Delivery Date;

(b) Subject to you notifying us (irrespective of whether or not we receive from you the notice required under clause 4.2(a) above) we may terminate the Contract by giving notice to you. In this event without prejudice to our other remedies you shall promptly cancel all trailers / containers arranged (including but not limited to all sea and / or road trailers / containers) relating to the Contract, with all such cancellation costs to be borne solely by you.

4.3 Where delivery or collection of a quantity of the Goods which correspond to the Contract which is less than the agreed quantity that has been tendered due to Your inability to provide adequate and / or sufficient trailers / containers for collection of said goods and we have not exercised our right of termination under clause 4.2(b) previous we may: -

(a) Reduce the volume of the Goods supplied to you from those which correspond to the Contract and deliver no further goods to you, with all costs associated with this reduction of Goods supplied, borne solely by you;

(b) Or we may require you to promptly deliver sufficient and / or adequate trailers / containers which correspond to the Contract to comply with the quantity required, with all extra costs associated with completion of the contract borne solely by you.

4.4 If for any reason we are unable to provide delivery / arrange collection of the Goods on the Delivery Date We shall notify you accordingly and in such event we shall store the Goods at Your expense and shall safeguard the Goods and take all reasonable steps to prevent their deterioration until actual delivery.

4.5 To satisfy export requirements we will provide loading photographs to be supplied by us to you at our expense in a digital format, sent by us by electronic mail within 48 hours of the date of any such request by you. It will be your responsibility to inform us of any specific requirements apropos the taking of digital loading photographs and all extra costs associated with the incomplete or inaccurate taking of said digital loading photographs which arise as a result of you not providing the loading photograph requirements for specific contracts, will be borne solely by you

4.6 Weighbridge tickets and a bale count as a minimum requirement shall be supplied directly by us to you as proof of loading on the Delivery / collection date and the weight from our weighbridge will take precedence over any weights provided by you from any other weighbridge at all times, unless agreed otherwise by us in writing.

4.7 To satisfy export requirements, where applicable we will provide a completed Annex 7 form for each trailer / container loaded, to be supplied by us at our expense in a digital or faxed format, sent by us within 48 hours of the date of any such request by you. Unless otherwise specified you will supply the blank Annex 7 forms to us in the case of any loads which we sell to you, no later than 48 hours before the agreed delivery date and all extra costs associated with the late supply of any Annex 7 forms, will be borne solely by you.

## **5. PRICE, PAYMENT AND TITLE:**

5.1 We retain title in all goods supplied to you under this or any contract between us, until all debts howsoever arising and owed by you to us, have been settled in full and we reserve the right to seek a return of the goods from the delivery address in the case of late payment and all costs associated with the return of the goods to the collection address will be borne by you.

5.2 Unless otherwise agreed and specified, the price for any good supplied by us to you is inclusive of all packaging, insurance, transportation and collection / delivery costs to the delivery address.

5.3 Subject to any special terms agreed in writing between us and you, payment for the goods is due within twenty-eight (28) days of the date of our invoice supplied by us to you, following delivery of the goods to the Delivery Address and said invoice supplied by us will always be dated as from the date the goods were collected.

5.4 Suitable invoices from Us to You will clearly specify the enclosed details and must be paid within the payment terms stated in clause 5.3 above:

- Container number (Where applicable)
- Trailer number (Where applicable)
- Seal number (Where applicable)
- Grade of material sold
- Price per ton agreed
- Purchase order number(s)
- Weighbridge ticket number
- Other information as reasonably required by either party

5.4 You may not under any circumstances set off against and / or deduct from any payment due to us by you under the Contract, the amount of any sum which is or is about to be due from us to you whether in relation to the Contract or otherwise.

5.5 Except as otherwise provided and unless otherwise agreed by us you acknowledge and agree that all Goods supplied by us to you under the Contract will be paid for based on our provided weight ticket. You shall not deduct or offset any sum due to you, in respect of weight discrepancies between that supplied on our weight ticket and any weight ticket supplied by you.

5.6 Disputes from You pertaining to any invoice received by you from us relating to the provision of Goods under any contract agreed by us, will only be acknowledged and accepted by us provided that said dispute is received by us within 7 days of you receiving our invoice, after which any disputes are invalid.

## **6. WARRANTIES AND LIABILITIES AND REGULATORY REQUIREMENTS:**

6.1 The Goods supplied by Us shall be in accordance with the relevant British European and / or International Standard and in accordance with the Recovered Materials Load Standards and material quality specifications document of which will take precedence at all times during any contracts agreed between us. We shall ensure that all the Goods are of satisfactory quality and fit for the purposes for which you intend the Goods. We do reserve the right to make any changes in specification to the Goods which are required to conform with any applicable safety, quality or other statutory requirement or (where the Goods are supplied to Our specification) which do not materially affect their quality or performance.

6.2 You shall be liable for all specifications and instructions ("Specification(s)") issued by Us to You with any Order or pursuant to the Contract and shall fully indemnify Us and keep Us fully indemnified against all loss directly or indirectly arising out of any error in or omission from such Specifications

6.3 Where We agree to supply Goods of a specified quality We will endeavour that the Goods will comply in all material respects with that quality specified in the sales order and our Recovered Materials Load Standards and material quality specifications, but variations within the variances set out in clause 6.4(a)-(c) inclusive below shall not be deemed to breach the Contract and will not entitle You to make any commercial claim against Us where such variations of the goods occur.

6.4 We shall ensure the quantity and quality of the Goods until such time as you have accepted the Goods at the Delivery Address or any of our premises. In particular:-

(a) We shall ensure that all Goods are delivered to the Delivery Address within a moisture variance not exceeding twelve percent moisture (12%) per bale but variations of plus or minus 2% shall not be deemed to breach the Contract and will not entitle You to make any commercial claim against Us where such variations of the goods occur. In all cases and without exception, any moisture readings supplied by us as part of any claim, will take precedence over any moisture readings as supplied by you and in this endeavour, we will supply a copy of the calibration certificate for our moisture meter, on your request.

(b) Where the goods supplied to you have an average moisture content in excess of twelve percent (12%) per load plus the allowed variances as described in clause 6.4 (a) above, you acknowledge and agree that any consequent commercial claims will be provided fully documented by you, with photographic evidence provided for every moisture meter reading taken. Furthermore you shall provide full details of the moisture meter utilised to take said moisture readings including but not limited to the meter serial number, year of manufacture, make and model and a fully valid calibration certificate for said meter and you acknowledge and agree that in the case where such information is not made available by you, we shall not be deemed to have been in breach of the Contract and will thus, not entitle you to make any commercial claim against us.

(c) Unless agreed otherwise by us before loading where the Goods supplied by us have a short loading weight in respect of the minimum weight detailed in the Sales Order, you acknowledge and agree that we shall not be liable to pay to you any low weight surcharge on the Goods where it is proven that the average weight of the Goods across the entire Contract came within 10% of the minimum weight required by you as stated in the Sales Order. In the case where the average weight of the Goods across the entire Contract is out-with 10% of the minimum weight required by you as stated in the Sales Order, you agree to charge us no more than 3% of the total value of the Goods (excluding VAT) in respect of said short loading weight.

(d) We shall ensure that the correct grades of Recovered material are loaded onto the correct trailer / container. We reserve the right in Our absolute discretion to make a claim against You in cases where You have supplied the incorrect trailer / container for Goods specified on the Sales Order, which may include, but not be limited to, all transport, freight, shipping, insurance costs involved in the resolution of problems arising from loading incorrect materials into containers.

6.5 Where the Goods supplied by Us to You do not allegedly conform to the quantity and / or quality of the Contract specifications in the Sales Order and / or the standards set out in this clause 6 and / or our Recovered Materials Load Standards and material quality specifications, you acknowledge and agree that You will: -

(a) Provide a minimum of 16 digital photographs per individual load for all Goods that allegedly fail to conform to the quantity and / or quality of the Contract specifications in the Sales Order and / or the standards set out in this clause 6, or the standards

outlined in our Recovered Materials Load Standards and material quality specifications document.

(b) Provide a detailed quality report describing the composition of the Goods that allegedly do not conform to the quantity and / or quality of the Contract specifications in the Sales Order and / or the standards set out in this clause 6 or the specification described in our Recovered Materials Load Standards and material quality specifications document, which will include but not be limited to information such as detailed analysis reports with complete breakdowns of the component parts of the alleged non-conforming goods, a methodology statement as to how the analysis report was compiled and the individual measurements of each component part provided, measured to the nearest kilogram. Furthermore, calibration certificates for any measuring devices must be provided by you and must be proven to be valid or all measurements taken will be declared null and void and all related claims made by you shall be declared null and void and all costs associated will be borne by you.

(c) Provide analysis samples from a minimum of 8 random bales per individual load for all goods that allegedly fail to conform to the quantity and / or quality of the Contract specifications in the sales order and / or the standards set out in this clause 6 or the Recovered Materials Load Standards and material quality specifications document. These analysis sample should be posted by you to the collection address in clear plastic sample bags and should be with us within 14 days of the date you notified us of the alleged non-conformance of the goods, otherwise the alleged non-conformance and all associated costs will be declared null and void.

(d) Provide any and all documentary and photographic evidence pertaining to all goods that allegedly fail to conform to the quantity and / or quality of the Contract specifications in the sales order and / or the standards set out in this clause 6. to us within 3 working days of delivery of the goods to the delivery address and in consideration of this, proof of delivery to the delivery address will be required by us to determine the exact delivery date. Failure to comply with any parts of clause 6 will render any commercial, weight, quality, moisture or any other type of claims of this nature invalid, with all costs attached to such claims to be borne solely by you.

(e) By entering into the contract with Us You acknowledge and agree that failure to comply with any parts of clause 6 will render any commercial, weight, quality, moisture or any other type of claims invalid with all costs attached to such claims to be borne solely by You.

(f) In all cases and without exception, any quality and / or non-conformance reports or similar documents supplied by us as part of any claim against us by you, which detail the quality of recovered materials supplied by us to you as part of this contract or otherwise, will take precedence over any quality and / or non-conformance reports or similar documents as supplied by you.

6.6 All risk in and all removal costs and other costs associated with the Goods rejected pursuant to this clause will be borne by you with effect from notice of rejection.

6.7 You shall ensure that the trailers / containers provided comply fully with all relevant legislation by-laws or regulations (including but not limited to Health and Safety legislation by-laws or regulations, TFS regulations, duty of care regulations et al.) applicable in the United Kingdom, the European Union and Internationally, in relation to the delivery address of the goods.

6.8 You warrant that You are fully aware of and (in respect of the Goods) fully comply with the requirements of all relevant European Union and other legislation, regulations or by-laws in force (as amended from time to time) at the Delivery Date including (but not limited to) European Union legislation regulations or by-laws known specifically as or generically referred to as: -

- (a) Trans-frontier Shipment of Waste Regulations (TFS);
- (b) Producer Responsibility Obligations;
- (c) Environmental Protection Act / Duty of Care;
- (d) Environmental Agency Registered Waste Broker / Carrier;
- (e) Council Regulation (EEC) No. 259/93 of 1 February 1993

6.9 You acknowledge that:-

- (a) (For the purposes of these Conditions generally but not always) the Goods are exported for “recovery / recycling” as defined (as appropriate) in the laws European Union and other legislation regulations or by-laws referred to in clause 6.8(a)-(e) inclusive above;
- (b) Unless otherwise agreed in writing you are not entitled to claim PERNs / PRNs on any United Kingdom-sourced packaging waste that we supply to you with the Goods.

6.10 The Goods shall be marked or branded in accordance with your instructions and all lawful requirements and properly packed and secured for delivery to you in an undamaged condition. Furthermore we shall ensure that all bales containing the Goods provided by us under the Contract are prepared for transit (and are in fact at all times while being transported to the Delivery Address) tied with steel baling wire (or plastic and / or string by special agreement only), packaged and loaded in trailers / containers and at all times secured in accordance with applicable Health and Safety legislation by-laws or regulations applicable in that countries jurisdiction or otherwise. We shall not be liable for any direct or indirect claim, loss or damage howsoever arising from the transit of the Goods. It is your responsibility to ensure that all relevant information to ensure compliance with this clause is requested from us in the event that such information is not made available at the time of our placing the Order

6.11 We shall permit you to inspect and test the Goods at the collection Address or any of our premises but only after prior written agreement from us and with no less than 72 hours' notice from the date and time of your request. In the event You are not reasonably satisfied that the Goods comply in all material respects with the Contract and / or the standards set out in this clause 6 and / or the Sales Order and / or our Recovered Materials Load Standards and material quality specifications document, we reserve the right without extra cost to Us to cancel the Contract with You with immediate effect.

6.12 You shall take all reasonable steps to ensure that performance of the Contract does not result in personal injury to, or damage to the property or environment of any persons or at the collection address. You must promptly give us full information about any risk of such damage or injury which at any time you believe to exist in relation to the transportation and storage, handling or use of any Goods supplied. All of your personnel or agents or subcontractors must comply with all reasonable safety instructions whilst on any of our collection addresses. You shall fully indemnify us immediately on demand from time to time, against any loss claim liability or expense suffered by reason of the personal injury or death or loss or damage to property (including pecuniary loss whether directly or consequentially suffered) or harm or injury to any person resulting wholly or in part from any act or default by you, your agents, your subcontractors or any other personnel related to you in relation to the contract or otherwise

6.13 You shall ensure that you are insured on terms reasonably acceptable to us from time to time against all risks of liability for anyone's death personal injury or loss or damage of property.

## **7. REJECTION AND CANCELLATION:**

7.1 We may cancel the Contract at any time prior to delivery of the Goods by giving notice of cancellation at least one (1) working day before the Delivery Date. On giving such notice you shall promptly refund to us any sums paid in respect of the Price. We shall not be liable for any loss or damage whatsoever arising from such cancellation

7.2 Our exercise of any rights under this clause is without prejudice to any other rights which We may have against You and none of Our rights will be adversely affected or deemed to have been waived by any inspection, approval or acceptance of any Goods by Us prior to Our discovery of any breach of Contract to which that right might apply

7.3 Without prejudice to any other right or remedy available to Us, we shall be entitled to cancel the Contract without any liability on Our part at any time in the event that:

(a) You make any voluntary arrangement with Your creditors or become subject to an Administration Order or (being an individual or a firm) becomes bankrupt or goes into liquidation (otherwise for the purposes amalgamation or reconstruction);

(b) An encumbrance takes possession of or a receiver is appointed over any of your property or assets;

(c) You cease or threaten to cease to carry on business;

(d) You breach any of the Conditions;

(e) We reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly.

## **8. MEDIA / MARKETING COMMUNICATIONS**

For all media communication:-

- 8.1 Made by Us or You where references are made to any of the services provided by Us to You or vice versa within the contract then You will incorporate the Our name and or logo and vice versa.
- 8.2 The approval for the use or inclusion of our name or logos to be gained from us by you and vice versa, but not unreasonably withheld by either party.
- 8.3 Any use of our name and / or logo must use only artwork supplied by us to you and vice versa as appropriate.

## **9 INTELLECTUAL PROPERTY**

- 9.1 Any intellectual property created by us in the course of the performance of the Contract or otherwise in the design, manufacture or supply of or otherwise in relation to the Goods or the provision of the Services, shall remain the property of us. Nothing in these Conditions shall be deemed to have given you a licence or any other right to use any of the intellectual property belonging to us.
- 9.2 All logos, trade name or trademarks ('Marks') owned or used by us in the course of its business are the property of us. We reserve all intellectual property rights in relation to the use of such Marks. You may not use, or permit the use of, such Marks or any similar Marks without the prior written permission of us.

## **10 FORCE MAJEURE**

- 10.1 We shall not be in breach of the Contract or otherwise be liable for any failure or delay to deliver the Goods and/or supply the Services arising from circumstances outside our reasonable control including, but not limited to, acts of God, governmental actions or regulations, national emergency, acts of terrorism, protests, riot, civil commotion, strikes, lock-outs, other labour disputes (whether or not relating to either party's workforce), accidents, war, fire, explosion, flood, epidemic, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery, shortage or unavailability of recovered materials, sudden drops in market conditions and the price of the goods or restraints or delays affecting collection contractors.

## **11 LAW & JURISDICTION**

- 11.1 The Contract and any issues, disputes or claims arising out of, or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute regulation or otherwise) shall be governed by, and construed in accordance with, Scottish law.

11.2 All disputes or claims arising out of, or in relation to the Contract shall be subject to the exclusive jurisdiction of the Scottish courts to which the parties irrevocably submit.