



# TERMS AND CONDITIONS GOVERNING THE SUPPLY OF SERVICES BY RED INDUSTRIES LIMITED

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).

**Client:** the person, firm or company who purchases Services from Red.

**Client's Equipment:** any equipment, machinery or facilities provided by the Client and used directly or indirectly in the supply of the Services.

**Collection Point:** means the location of the Waste if this is to be collected by Red.

**Contract:** the Customers purchase order and Red's acceptance of it or the Customers acceptance of the Quote pursuant to condition 2.2.

**Declaration Form:** the form signed by the Client providing full information of the Waste to be disposed of by Red pursuant to the Contract.

**Quote:** Red's quotation for the supply of Services which will form the basis of the Contract, detailing the services to be supplied, the consideration for supplying those services and the details of the Client, Waste and Collection Point (if any), and includes any variation of the Quote as evidenced in writing and signed by a Director of Red.

**Red:** Red Industries Limited (Company Number 05202754).

**Relevant Legislation:** means all legislation, Regulations, Directives, Codes of Practice, Guidance Notes, currently in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it, applicable to both Red and Client for the provision of the Services and Waste.

**Services:** the services to be provided by Red under the Contract as set out in the Quote, which Red provides or agrees to provide to the Client.

**Red's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by Red or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

**Waste:** means solids fluids or gasses, which may be noxious, toxic or harmless.

1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

1.5 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

## 2. Application of conditions

2.1 These Conditions shall:

(a) apply to and be incorporated into the Contract; and

(b) prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Client's purchase order, or the Client's acceptance of a Quote for Services by Red, together with a duly completed Declaration Form in either case, constitutes an offer by the Client to purchase the Services specified in it on these Conditions. No offer placed by the Client shall be accepted by Red other than:

(a) by a written acknowledgement issued and executed by Red; or

(b) (if earlier) by Red starting to provide the Services, when a contract for the supply and purchase of those Services on these Conditions will be established. The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract in any respect.

2.3 Quotes are given by Red on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any Quote is valid for a period of 30 days from the date marked on it, provided that Red has not previously withdrawn it, and is only capable of acceptance after this date by Red.

## 3. COMMENCEMENT AND DURATION

3.1 The Services supplied under the Contract shall be provided by Red to the Client from the date specified in the Quote.

3.2 The Services supplied under the Contract shall continue to be supplied until Red's obligations under the Contract have been fulfilled in accordance with the Quote unless the Contract is terminated in accordance with conditions 5, 10, or 11.

3.3 Any dates or times stated in the Quote are estimates only and such dates or times shall not be of the essence.

## 4. RED'S OBLIGATIONS

4.1 Red shall use reasonable endeavours to provide the Services to the Client in accordance with all material respects of the Quote.

4.2 Red shall use reasonable endeavours to meet any dates specified in the Quote but any such dates shall be estimates only and time shall not be of the essence.

4.3 If Red attends the Client's premises then Red shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under condition 5.1(b), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

## RED INDUSTRIES LIMITED

BOROUGH HOUSE, BERKELEY COURT, BOROUGH ROAD, NEWCASTLE-UNDER-LYME, STAFFORDSHIRE, ST5 1TT  
REGISTERED IN ENGLAND AND WALES: RED INDUSTRIES LTD 05202754



## 5. CLIENT'S OBLIGATIONS

### 5.1 The Client shall:

- (a) be responsible (at its own cost) for preparing and maintaining the Collection Point (if any) in accordance with all Relevant Legislation, before and during the supply of the Services at those premises;
- (b) inform Red of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises;
- (c) comply with all Relevant Legislation and agrees to indemnify Red in respect of any breach of the Relevant Legislation. Upon learning of any breach, or potential breach, the Client must:
  - (i) notify Red immediately and upon notification, Red has a discretion to:
    - (A) remedy the breach at the Client's cost, or;
    - (B) notify the Client to remove the Waste at the Client's own cost and pay Red for any costs incurred up until and including the date of removal.
  - (d) ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all Relevant Legislation;
  - (e) obtain and maintain all necessary or appropriate licences and consents;
  - (f) ensure that, if either a sample or description of the Waste is provided to Red, that the sample or description is a real and proper reflection of the Waste and if not, the Client agrees to either:
    - (i)
      - (A) remove the Waste at its own cost,
      - (B) pay Red for any costs Red has incurred up until and including the date of removal and,
      - (C) pay Red an administration fee being 20% of the Quote, or;
    - (ii) pay Red any additional costs (including a profit element) incurred to dispose of the Waste which does not accord to the sample or description.

**5.2** If Red's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, Red shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

**5.3** The Client shall hold harmless and indemnify Red its Directors Officers and Employees and shall be liable to pay to Red, on demand, all costs, charges or losses sustained or incurred by Red (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, breach of warranty, failure to perform or delay in the performance of any of its obligations under the Contract or Relevant Legislation, subject to Red confirming such costs, charges and losses to the Client in writing.

**5.4** The Client shall not, without the prior written consent of Red, at any time from the date of the Contract to the expiry of twelve months after the last date of supply of the Services or termination of the Contract, solicit or entice away from Red or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of Red in the provision of the Services.

**5.5** Any consent given by Red in accordance with condition 5.4 shall be subject to the Client paying to Red a sum equivalent to 20% of the then current annual remuneration of Red's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee or sub-contractor.

### 5.6 The Client warrants and agrees that:

- (a) at all times the Waste material that the Client presents for removal pursuant to the Contract shall exclude any materials and substances not included in the Waste stream(s) detailed in the Quote**
- (b) all information in the Declaration Form is true and accurate and contains no omissions;**
- (c) there is no metal or other foreign objects in any Waste destined for the shredder.**

## 6. CHARGES AND PAYMENT

**6.1** In consideration of the provision of the Services the Customer shall pay the Prices and Charges as set out in the Quote or as the case may be as set out in condition 6.2 which will apply if Red provides the Service on a time and material basis. The remainder of this Condition shall apply in either case.

**6.2** Where the Services are provided on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Red's standard daily fee rates, as amended from time to time;
- (b) Red's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);
- (c) Red shall be entitled to charge an overtime rate of 200% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 6.2(b);

**6.3** All Prices and Charges quoted to the Client shall be exclusive of VAT which Red will add to its invoice at the appropriate rate. The Client shall pay each invoice submitted to it by Red, in full and in cleared funds, within 30 days of receipt.

**6.4** Without prejudice to any other right or remedy that it may have, if the Client fails to pay Red on the due date, Red may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of HSBC Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and Red may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services until payment has been made in full.

**6.5** Time for payment shall be of the essence of the Contract.

## RED INDUSTRIES LIMITED

BOROUGH HOUSE, BERKELEY COURT, BOROUGH ROAD, NEWCASTLE-UNDER-LYME, STAFFORDSHIRE, ST5 1TT  
REGISTERED IN ENGLAND AND WALES: RED INDUSTRIES LTD 05202754



**6.6** All sums payable to Red under this the Contract shall become due immediately on its termination, despite any other provision. This Condition 6.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

**6.7** Red may, without prejudice to any other rights it may have, set off any liability of the Client to Red against any liability of Red to the Client.

## **7. CONFIDENTIALITY AND RED'S PROPERTY**

**7.1** The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Red, its employees, agents or sub-contractors and any other confidential information concerning Red's business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Client's obligations to Red, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.

**7.2** All materials, equipment and tools, drawings, specifications and data supplied by Red to the Client shall, at all times, be and remain the exclusive property of Red, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to Red, and shall not be disposed of or used other than in accordance with Red's written instructions or authorisation.

**7.3** This Condition 7 shall survive termination of the Contract, however arising.

## **8. LIMITATION OF LIABILITY**

**8.1** This Condition 8 sets out the entire financial liability of Red (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Client of the Services, or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

**8.2** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**8.3** Nothing in these Conditions limits or excludes the liability of Red:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Red; or

**8.4** Subject to Condition 8.2 and Condition 8.3

(a) Red shall not be liable for:

- (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss of corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Red's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

## **9. DATA PROTECTION**

The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of Red in connection with the Services.

## **10. TERMINATION**

**10.1** Subject to Condition 10.3, the Contract shall terminate automatically on completion of the Services in accordance with the Quote:

**10.2** Without prejudice to any other rights or remedies which the parties may have, Red may terminate the Contract without liability to the Client on giving the Client not less than 14 days written notice or immediately on giving notice to the Client if:

- (a) the Client commits a material breach of any of the terms of the Contract; or
- (b) an order is made or a resolution is passed for the winding up of the Client, or circumstances arise which entitle a court of competent jurisdiction to make a windingup order of the Client; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the Client, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Client, or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the Client's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Client, or if any other person takes possession of or sells the Client's assets; or
- (e) the Client makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the Client ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the Client; or
- (h) the Client takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

## **RED INDUSTRIES LIMITED**

BOROUGH HOUSE, BERKELEY COURT, BOROUGH ROAD, NEWCASTLE-UNDER-LYME, STAFFORDSHIRE, ST5 1TT  
REGISTERED IN ENGLAND AND WALES: RED INDUSTRIES LTD 05202754



**10.3** On termination of the Contract for any reason:

(a) the Client shall immediately pay to Red all of Red's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Red may submit an invoice, which shall be payable immediately on receipt;

(b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

#### **11. FORCE MAJEURE**

**11.1** Red shall have no liability to the Client under the Contract if it is prevented from or delayed in performing its obligations under Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Red or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Red's or sub-contractors.

**11.2** If Red's exit route is blocked by any of the circumstances set out in condition 11.1, and no reasonable alternative exit routes are available, Red is entitled to;

(a) return the Waste to the Client and upon doing so, reimburse the Client for any amounts already paid for the provision of the Services under the Quote; and

(b) receive full reimbursement of the costs incurred in order to return the Waste to the Client, being payable on demand.

#### **12. VARIATION**

Notwithstanding any other Condition of this Contract, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by a Director of Red.

#### **13. WAIVER**

**13.1** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

**13.2** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

#### **14. SEVERANCE**

**14.1** If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

**14.2** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

**14.3** The parties agree, in the circumstances referred to in condition 14.1 and if Condition 14.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

#### **15. STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

#### **16. ASSIGNMENT**

**16.1** The Client shall not, without the prior written consent of Red, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**16.2** Red may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### **17. RIGHTS OF THIRD PARTIES**

The Contract is made for the benefit of the parties identified in the Quote and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

#### **18. NOTICES**

Notice given under the Contract to the Client shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party), in the case of Red, sent to its registered office Borough House, Berkeley Court, Borough Road, Newcastle-under-Lyme, Staffordshire and in each case shall be delivered personally, sent by fax or sent by pre-paid, first-class post. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post, 48 hours from the date of posting and, if deemed receipt under this condition 18 is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

#### **19. GOVERNING LAW AND JURISDICTION**

**19.1** The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

**19.2** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

### **RED INDUSTRIES LIMITED**

BOROUGH HOUSE, BERKELEY COURT, BOROUGH ROAD, NEWCASTLE-UNDER-LYME, STAFFORDSHIRE, ST5 1TT  
REGISTERED IN ENGLAND AND WALES: RED INDUSTRIES LTD 05202754