

# Tippling and Collecting Terms

The Buyer's attention is in particular drawn to Condition 6.

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this Condition 1 apply in these Conditions.

**Buyer:** the person who enters into a Contract.

**Buyer's Equipment:** any and all equipment or vehicles provided or used by the Buyer under the Contract, including to deliver the Material to the Company or to store the Material at the Collection Point.

**Collection Point:** the place where the Company agrees to collect the Material from the Buyer.

**Collection Date:** the date agreed between the parties upon which the Company will collect the Materials from the Collection Point.

**Company:** MHH Contracting Limited (CRN: 1921630) of 18 Stalker Walk, Sheffield, South Yorkshire, S11 8NF.

**Company Equipment:** any equipment, including vehicles, plant or facilities, provided by the Company 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.

**Consumer:** a Buyer purchasing Goods and/or Services in their own personal capacity for private use.

**Contract:** any contract entered into by the Buyer with the Company for the purchase of Services in accordance with the Conditions.

**Environmental Laws:** means all laws, regulations, directives and other measures (including codes of practice and guidance notes which are of mandatory effect) imposed or issued by any relevant body insofar as they relate to or apply to the environment including the new contaminated land power enacted by section 57 of the Environment Act 1995.

**Material:** all waste and materials (include by-products of an industrial or other process, unwanted or surplus items) of the Buyer for which the Services are required.

**Services:** the collection and disposal or disposal of Material, together with any other services, such as sorting and recycling, which the Company provides or agrees to provide to the Buyer in a Contract.

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

**Waste Transfer Note:** the document to be completed by the Buyer under the Environmental Laws.

1.2 Reference to a law is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Reference to the masculine includes the feminine and the neuter, reference to the singular includes the plural and, in each case, vice versa and, reference to a person includes companies, firms, corporations and public authorities.

1.4 Headings do not affect the interpretation of the Conditions.

## 2. APPLICATION OF TERMS AND CONTRACT COMMENCEMENT

2.1 The Conditions shall apply to all Contracts and, subject to any variation under Condition 2.2, are the only terms and conditions on which the Company agrees to supply Services to the Buyer to the exclusion of all other terms and conditions.

2.2 No terms or conditions of the Buyer endorsed on, delivered with, or contained in the Buyer's purchase order, order confirmation or other documents form part of the Contract and, subject to Condition 2.2, any attempt by the Buyer to exclude or limit any Conditions shall be void and shall not form part of the Contract.

2.3 Any variation to the Conditions, and any representations about the Services, shall have no effect and shall not form part of the Contract unless agreed in writing by the Company.

2.4 The Buyer acknowledges that it has not relied on any written or oral statement, promise or representation made or given by, or on behalf of, the Company that is not set out in the Conditions.

2.5 The Company will provide the Buyer with an oral or written quotation. A quotation so provided is an invitation to treat by the Company to sell the Services, subject to the Conditions, to the Buyer. A quotation is valid for 30 days from its date, provided that the Company has not previously withdrawn it.

2.6 An acceptance of a quotation, the Buyer placing an order for collection of Material by the Company or delivery of Material to the Company by the Buyer shall be deemed to be an offer, subject to the Conditions, to purchase Services from the Company. No quotation accepted, order placed or delivery by the Buyer shall be deemed to be accepted by the Company until the Company confirms acceptance to the Buyer orally or in writing.

2.6.1 No binding Contract will come into existence until an order acknowledgement is given by the Company in accordance with Condition 2.6 or, if earlier, by the Company commencing performance of the Services.

## 3. COMPANY'S OBLIGATIONS

3.1 The Company shall use reasonable endeavours to provide the Services.

3.2 Prior to accepting the Material or any part thereof the Company shall be entitled to inspect it, and such inspection may involve taking samples for testing.

3.3 The Company shall, where agreed, use reasonable endeavours to collect the Material from the Collection Point on the Collection Date, but any such date shall be an estimate only and time shall not be of the essence in respect of performance of the Services.

3.4 When at the Collection Point, the Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Collection Point and that have been communicated to it, provided that it shall not be liable under these Conditions if, as a result of such observation, it is in breach of any of its obligations under these Conditions.

3.5 The Company is under no obligation to provide the Services in respect of any Material it considers, in its sole discretion, to be:

3.5.1 toxic, poisonous, flammable, radioactive or otherwise dangerous;

3.5.2 likely to cause the Company to incur any liability;

3.5.3 beyond the scope of the licenses held by the Company; or

3.5.4 beyond the expertise of the Company to treat safely and/or in accordance with Environmental Laws.

## 4. BUYER'S OBLIGATIONS

4.1 The Buyer shall at all times:

4.1.1 comply with all relevant policies and requirements whilst on the Company's premises, copies of which are available on request;

4.1.2 ensure that any individuals at the Company's premises on its behalf are suitably trained and attired in protective and high visibility clothing;

4.1.3 comply with all Environmental Laws;

4.1.4 cooperate with the Company in all matters relating to the Services and, in particular, accurately describe the Material by volume, weight and composition (including using the correct European Waste Codes) and provide a completed Waste Transfer Note, or all information the Company may require to assist in the completion of the Waste Transfer Note, and provide any other information requested by the Company;

4.1.5 ensure no part of the Material consists of any hazardous or dangerous material without first identifying this to the Company;

4.1.6 ensure that any containers of the Material are stable, suitably labelled with their contents (including complying with Environmental Laws) and suitably sealed to prevent leakage or spillage of their contents;

4.1.7 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Collection Point;

4.1.8 ensure all Buyer's Equipment is in good working order and suitable for the purpose it is used for under the Contract; and

4.1.9 arrange to collect any Buyer's Equipment provided to the Company under the Contract to transport Material to the Company's premises (e.g. drums/bags) if required within 7 days.

4.2 The Buyer accepts that should it or any person acting on its behalf fail to comply with any of the requirements in Conditions 4.1.1, 4.1.2, 4.1.3 and 4.1.4 the person concerned will be excluded and/or removed from the Company's premises and the Company may charge for such removal.

4.3 Should the Company reject any Material delivered to the Company or already collected by the Company, the Buyer shall collect the rejected Material on the Company's premises within 3 days of rejection. Should the Buyer fail to collect the rejected Material within 3 days the Company shall be entitled, but not obliged to, return the rejected Material or arrange for the return of the rejected Material and charge the Buyer for so doing at its prevailing rates together with any third party costs incurred.

4.4 The Buyer acknowledges that title to the Material shall pass to the Company upon the completion of the Services and the Buyer shall have no claim to the Material or any part of it thereafter.

4.5 The Buyer shall be liable to pay to the Company, on demand, and shall indemnify the Company against, all reasonable costs, charges or losses sustained or incurred by the Company (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 Buyer's fraud, negligence, failure to perform or delay in performing any of its obligations under the Contract.

## 5. CHARGES AND PAYMENT

5.1 In consideration of the provision of the Services by the Company, the Buyer shall pay the charges as set out in the Company's quotation, which shall be based on the Company's prevailing rates (which are subject to change) and minimum quantity of Materials in any load. The Buyer accepts that, should the Buyer have not accurately described the Material, the Company may vary its charges (to include, but not limited to, additional or out of hours work, amending the Waste Transfer Note and any additional Services required) and the Buyer shall pay any such additional charges upon being notified of them.

5.2 Unless agreed otherwise, the Buyer shall pay each invoice issued to it by the Company, in full and in cleared funds, as follows:-

5.2.1 for Buyers which have an account which has not reached its credit limit with the Company, within 30 days of the date of the Company's invoice;

5.2.2 for Buyers without an account, or with an account that has reached its credit limit, on collection of the Material by the Company or delivery by the Buyer to the Company's premises or within 7 days of the date of an invoice from the Company;

5.2.3 for Consumers, on collection of the Materials by the Company or delivery by the Consumer to the Company's premises; and/or

5.2.4 where additional charges are made in accordance with Condition 5.1 within 30 days of the date of the Company's invoice.

5.3 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company any sum due, pursuant to and in accordance with the Contract, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Buyer shall pay the interest immediately on demand and/or to suspend all Services under any other contract until payment has been made in full.

5.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

5.5 Any disputed items raised on an invoice by the Company must be notified in writing to the Company by the Buyer within 14 days of the date of the invoice.

## 6. LIMITATION OF LIABILITY

6.1 This condition 6 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Buyer in respect of any breach of these Conditions (including any deliberate breach), any use made by the Buyer of the Services or any part of them, any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract and any damage to the Buyer's Equipment whether at the Company's premises or elsewhere.

6.2 Subject to Conditions 6.3, 6.4 and 6.5:

6.2.1 the Company'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 Contract Price; and

6.2.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

6.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

6.4 Condition 6.3 shall not apply to a Contract with a Consumer and any statutory Consumer rights are unaffected by these Conditions.

6.5 Nothing in these Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence, or for fraud or fraudulent misrepresentation, or under section 2(3) of the Consumer Protection Act 1987, or for any matter which it would be illegal for the Company to do so.

## 7. DATA PROTECTION

7.1 The Buyer acknowledges and agrees that details of the Buyer'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 the Company.

## 8. TERMINATION

8.1 The Contract governed by these Conditions shall terminate automatically on the later of the completion of the Services or receipt of full payment for the Services.

## 9. WAIVER

9.1 Failure to exercise, or any delay in exercising, any right or remedy provided under these Conditions or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

9.2 A waiver (which may be given subject to conditions) of any right or remedy provided under these Conditions or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

No single or partial exercise of any right or remedy provided under these Conditions or by law shall preclude or restrict the further exercise of any such right or remedy.

## 10. SEVERANCE

10.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract, and the remainder of such provision, shall continue in full force and effect. In the event that such court, tribunal or administrative body of competent jurisdiction decides that such provision is not severable, the parties agree to substitute the relevant provision with a legal, valid, enforceable and reasonable provision which achieves, to the greatest extent possible, the same effect as the original provision.

## 11. ENTIRE AGREEMENT

11.1 These Conditions and the contract governed by them constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of these Conditions.

11.2 Each party acknowledges that, in entering into a contract governed by these Conditions and the documents referred to, it does not rely on any statement, representation, assurance or warranty (**Representation**) of any person other than as expressly set out in these conditions. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

## 12. ASSIGNMENT

12.1 The Company may at any time assign, transfer, charge, mortgage, subcontract, declare a trust or deal in any other manner with all or any of its rights or obligations under these Conditions.

12.2 Each party that has rights under these Conditions is acting on its own behalf and not for the benefit of another person.

## 13. NO PARTNERSHIP OR AGENCY

13.1 Nothing in these Conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 14. FORCE MAJEURE

14.1 The Company reserves the right to defer the date of performance or cancel the Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental action, war or national emergency, act of terrorism, protest, riot, civil commotion, fire, explosion, flood, epidemic, labour disputes (other than in relation to the Company's own workforce), or restraint or delay affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 15. GENERAL

15.1 Rights arising under these Conditions are cumulative and each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.3 The formation, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## 16. COMMUNICATIONS

16.1 All notices sent under the Contract must be in writing. All communications and notices sent, and invoices issued, shall be sent to the other party's registered address, or such other address as is notified in writing, either by hand, first class post, email or facsimile and shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email or facsimile.

16.2 Communications addressed to the Company must be marked for the attention of one of the Company's officers, or senior manager of the Company, or any other authorised person notified as such to the Buyer by the Company.