



## GENERAL TERMS AND CONDITIONS OF PURCHASE

### **1. Definitions**

“**Agreement**” means these terms and conditions and any amendments or additional documents agreed between the Parties and annexed hereto.

“**Contract**” means the separate contract document annexed to these terms and conditions, whether called Purchase Order Form or otherwise (hereinafter referred to as “Purchase Order Form”) including any special conditions, these general conditions and any appendices and/or any agreed amendments and variations to said documents.

“**Force Majeure Event**” means an event including (but not restricted to): acts of God, government action, explosion, earthquake, fire, flood or other natural physical disaster, adverse sea or weather conditions, act of war, riots, strikes, insurrection or other civil disturbances or acts of sabotage.

“**Goods**” means all goods to be delivered by Supplier pursuant to the Work.

“**Party**” shall mean either Supplier or TWMA, and “**Parties**” shall mean both.

“**Services**” means all services supplied or performed by Supplier pursuant to the Contract.

“**Supplier**” means the Party to this Agreement agreeing to furnish the Services, equipment and materials necessary for the performance of the Contract.

“**TWMA**” means Total Waste Management Alliance Limited, a company registered under the laws of Scotland, Company Registration Number: SC203064, having its registered office at Broadfold House, Broadfold Road, Bridge of Don, Aberdeen, AB23 8EE and shall include its affiliates, agents, legal representatives, successors and assignees.

“**Work**” means the Services to be performed and/or goods to be supplied by Supplier (as may be the case) pursuant to the Contract, plus the furnishing of all Services, equipment and materials necessary to complete it.

Any reference herein to a day is a reference to a calendar day.

### **2. Agreement**

This Agreement incorporates the Contract and sets forth the entire Agreement as to the terms governing that Contract between Supplier and TWMA, and no terms, conditions, understanding, or agreement purporting to modify or vary the terms of this Agreement shall be binding unless either (a) specifically stated on the Contract as a special condition and agreed by TWMA or (b) are hereafter made in writing and signed by Supplier and TWMA. In the event of any conflict between any attachments (including the Contract) and the terms and conditions of this Agreement, the terms and conditions of this Agreement as expressly stated herein will take precedence.

### **3. Confirmation of Contract**

Supplier shall confirm the Contract by signing TWMA’s Purchase Order Form and returning it to TWMA. If the signed Purchase Order Form is not received by TWMA by way of return within (21) days of the date stated thereon, TWMA is not bound by the Contract or any of its terms and may terminate it with immediate effect. Supplier agrees that it is not entitled to claim any compensation of whatsoever nature in the event of any termination under this Clause 3.

### **4. Contract Time/Term of Agreement**

Supplier understands that Time is of the Essence and shall complete all the Work within the period specified in the relevant section within the Contract or, in the absence of any designated period, an appropriate period of time as may be determined by TWMA acting reasonably. The term of this Agreement shall end upon TWMA’s final written acceptance of the Work defined herein or, where appropriate, when the Work has been completed, or by termination in accordance with the terms of Clause 24.

### **5. Contract Price**

The price (the Contract Price) shall be the amount as set forth in the Purchase Order Form, exclusive of VAT (unless stated otherwise) and shall be fixed unless otherwise expressly agreed between the Parties. In the case of deliveries charged for on a reimbursable basis, payment shall become due in terms of Clause 8 of this Agreement only when TWMA have had a reasonable time to verify and accept all documentation on which the account is based.

### **6. General Obligations of Supplier**

- (a) Supplier shall ensure that the Work is performed with all necessary diligence, care and attention, and to the customary standards of good workmanship expected within the applicable sector.
- (b) Supplier shall ensure that any Goods delivered comply with the conditions of Clause 9 below.
- (c) Supplier warrants that any of its employees engaged in providing or undertaking the Work (or the employees of any affiliate, subsidiary or agent authorized by TWMA to undertake the Work) possess the necessary qualifications and training to perform the Work and such performance shall be conducted in a safe manner and to the reasonable satisfaction of TWMA.

### **7. Risk and Ownership of Goods**

- (a) Title and Risk in each item of the Goods shall pass to TWMA only on written acceptance of delivery.



- (b) Supplier shall promptly make good at its own cost any loss or damage, howsoever caused, to any Goods before risk therein has passed to TWMA.
- (c) If Supplier has delivered Goods that do not comply with the undertakings set out in Clause 9 herein then, without limiting its other rights or remedies, TWMA reserves the right, whether or not it has accepted the Goods:
  - i. to reject the Goods (in whole or in part) whether or not title has passed and to return them to Supplier at Supplier's own risk and expense;
  - ii. to terminate the Purchase Order or Contract in whole or in part with immediate effect by giving written notice to Supplier;
  - iii. to require Supplier to repair or replace the rejected Goods;
  - iv. to refuse to accept any subsequent delivery of the Goods which Supplier attempts to make;
  - v. to recover from Supplier any expenditure incurred by TWMA in obtaining substitute goods, where necessary, from a third party; and
  - vi. to claim damages for any additional costs, loss or expenses incurred by TWMA arising from Supplier's failure to supply Goods in accordance with Clause 9.

#### **8. Terms of Payment**

- a) Subject always to the requirement that Supplier's obligations under the Contract have been fulfilled, TWMA shall make payment to Supplier within sixty (60) days following receipt of a correct signed invoice containing:
  - i. the Purchase Order number or other TWMA reference as may be requested, and
  - ii. any other necessary information, and covering the Work completed through the end of the previous month
- b) TWMA reserves the right to retain 10% of payments for Work completed, to be released upon TWMA's final acceptance of the Work as per Clause 8(d) below.
- c) No payment of or on account of the Contract Price shall constitute any admission by TWMA as to the quality of Goods and Services or performance by Supplier under the Contract.
- d) Supplier shall submit a final invoice within 60 days of TWMA's written final acceptance of Supplier's delivery, including all claims to be made by Supplier pursuant to the Contract. Any claims for payment not included in the final invoice by Supplier cannot be submitted by Supplier at a later date.

#### **9. Delivery of Goods**

Supplier shall ensure that any Goods delivered pursuant to the Work or otherwise under the Contract shall:

- (a) correspond with any description or applicable specifications;
- (b) be of satisfactory quality and fit for any purpose held out by Supplier or made known to Supplier by TWMA, expressly or by implication, and in such respect Supplier agrees that TWMA relies always on Supplier's skill and judgment;
- (c) where applicable, be free from defects in design, materials and workmanship;
- (d) be delivered complete with all packing lists, advice notes, invoices etc., and in the case of Goods being shipped from outwith the UK, the appropriate certificate of origin and customs invoices.
- (e) Supplier will comply with all applicable legislation regarding the marking of hazardous material.
- (f) Supplier will, where appropriate, advise TWMA of dispatch arrangements within a suitable time prior to dispatch to allow TWMA to prepare for receipt of goods.

Any certificates, notices, advice notes or other documentation required under this Clause 9 and any applicable legislation in relation to any Goods shall be deemed as an inherent part of the delivery of any Goods and invoices shall not be paid by TWMA until such documents have been received.

#### **10. Cancellation of Purchase Order and Changes To Work**

- (a) Supplier agrees that TWMA has the right to cancel the Purchase Order for its own convenience at any time up to delivery of the Work subject to TWMA being liable for the reasonable, directly related, documented and substantiated costs incurred by the Supplier up to the date of notification of cancellation under the relevant Purchase Order. The Supplier shall take all reasonable steps to minimise any costs incurred as a result of such cancellation and shall take all reasonable steps to re-stock all items of off-the-shelf items or component parts capable of such.
- (b) Supplier agrees that TWMA has the right, but not the obligation, to order such reasonable changes to the Work as TWMA may require from time to time. Changes to the Work may include (but are not limited to) an increase or decrease in the quantity, character, method of execution, revised schedules and delivery dates.
- (c) (b) Supplier agrees that it will notify TWMA immediately if any deviation from or amendment to the Work is required by Supplier for whatever reason, and that such deviation or amendment shall be approved by TWMA in writing prior to Supplier commencing such amended Work.

#### **11. Partial Fulfilment**

Supplier agrees that partial deliveries of Goods, or the partial fulfilment of any Services to be provided in relation to the Work or otherwise under the Contract, may be accepted or rejected by TWMA at its sole discretion and shall not be deemed as partial satisfaction of Supplier's obligations under the Contract unless previously agreed in writing by TWMA or as a result of



any termination by Supplier subject to Clause 24 below. In the event that partial delivery of Goods is accepted by TWMA, Supplier shall make a pro rata adjustment to any related invoices for Goods accepted.

#### **12. Non-Performance and consequences thereof**

If Supplier's delivery or fulfilment of the Services under the Contract is delayed for whatever reason (other than a Force Majeure Event), TWMA is entitled to:

- a) terminate the Purchase Order in part or in whole per Clause 24 below; or
- b) to claim liquidated damages amounting to one-and-a-half (1.5%) percent of the Contract Price per day.

Any delay caused by Supplier's negligence or wilful misconduct shall permit TWMA to claim compensation for actual losses suffered due to such delay in lieu of liquidated damages.

If Supplier fails to:

- a) fulfil any of the obligations under the Contract or in relation to the Work (unless prevented by a Force Majeure Event or suspension by TWMA in accordance with Clause 24(d) below); or
- b) rectify any defect within the guarantee period specified in Clause 13 below within fourteen (14) days following the day such defect is brought to its attention by TWMA;

then such failure shall be deemed a material breach of this Agreement and TWMA shall be entitled to one or more of the following:

- i. to demand and receive a new delivery of Goods or performance of any Services by Supplier within a reasonable timeframe, demand a price reduction at its discretion,
- ii. terminate the Contract, and/or
- iii. claim appropriate compensation(s).

#### **13. Warranties**

Supplier warrants that Work shall be free of liens and encumbrances, and for the period ending one (1) year from the date of TWMA's final acceptance (as per Clauses 4 or 7 (a) above), that the workmanship and materials be proper and sufficient for the purpose contemplated. Supplier warrants that the Work shall:

- (a) conform to, perform as set forth in, and meet all requirements of this Agreement;
- (b) be fit, suitable, and sufficient for the purpose(s) set forth in this Agreement or, if not stated or indicated in this Agreement, the purpose(s) for which it was reasonably intended; and
- (c) it shall comply with nationally recognised codes and established industry standards.

Supplier agrees that aforementioned warranties shall be in addition to any other warranties provided by law or offered by Supplier.

#### **14. Assignment**

- (a) Supplier shall not assign this Agreement or any portion thereof without receiving the prior written approval of TWMA. Any attempted assignment in violation of this paragraph shall be null and void and any proposed subcontracts for Work must be submitted to TWMA for prior approval.
- (b) TWMA may, giving Supplier no less than twenty eight (28) days' written notice, assign its rights and obligations under this Agreement to an affiliate, subsidiary or third party.

#### **15. Confidential Information**

Supplier shall not use or disclose to other during or subsequent to the term of this Agreement, except as is necessary in the performance of this Agreement, any information regarding TWMA's plans, programs, plants, sites, processes, products, cost, equipment, operations, or customers which may come within the knowledge or which may be developed by Supplier or its employees in performance hereunder. This provision shall not prevent Supplier from using or disclosing to others information which Supplier can show: a) has become part of the public domain other than by breach of this Section; b) has been furnished to Supplier by third Parties as a matter of right and without restriction on disclosure or use; or c) which was in Supplier's possession at the time it entered into this Agreement.

#### **16. Data Protection**

For the purpose of this Agreement, the terms "Personal Data", "Processor", "Controller", "Data Subjects" and "Processing" shall have the meaning set out in the General Data Protection Regulation EU 2016/679 ("GDPR").

In so far as the Supplier, pursuant to the Work, may be the Processor of Personal Data belonging to Data Subjects contractually connected with TWMA (also referred to for the purposes of this Clause 16 as the Controller), the Parties agree and undertake the following:

- (a) to comply with all applicable laws and regulations, directives and governmental requirements relating in any way to Processing of Personal Data applicable to the Controller and/or the Processor and the GDPR.
- (b) The Controller shall:
  - i. be entitled to give the Processor instructions on the Processing, which instructions shall comply with this Agreement and applicable law;
  - ii. have the right to specify the purpose and means of Processing of Personal Data;



- iii. confirm that it has provided the Processor with necessary information in order for the Processor to perform the Processing in compliance with this Clause 16.
- (c) The Processor shall:
- i. process the Personal Data only on behalf of the Controller and in accordance with documented instructions provided by the Controller, and not for any other purposes;
  - ii. cooperate with the Controller in providing reasonable assistance and information to allow the Controller to perform its obligations under the GDPR;
  - iii. maintain a record of all categories of Processing and provide same if reasonably requested by the Controller;
  - iv. assist the Controller in performing risk assessment if reasonably required;
  - v. assist the Controller in all reasonable and necessary ways to respond to a compliance request from a data protection supervisory authority;
  - vi. not Process or retain Personal data for longer than is necessary to perform Work;
  - vii. ensure its personnel are aware of the obligations under this clause 16 and GDPR;
  - viii. provide the Controller will all information necessary to demonstrate compliance;
  - ix. not sub-contract any of the Processing assigned by the Controller without express prior permission of the Controller and ensuring the sub-contractor is subject to compliance with GDPR and the same rights and obligations as those imposed in this Agreement;
  - x. not transfer Personal Data outwith the European Economic Area without the express prior permission of the Controller and subject to the area having an adequate level of data protection as confirmed by the European Commission;
  - xi. ensure its information security system, policies, procedures, measures and training are suitable to comply with industry standard protection of Personal Data;
  - xii. to notify the Controller within Twenty-four (24) hours upon becoming aware of a Personal Data breach incident and to take necessary and reasonable corrective actions and cooperate with the Controller to prevent and mitigate any such a breach.

#### **17. Health and Safety**

Supplier shall be responsible for initiating, maintaining, and supervising all safety precautions and programs for the employees, subcontractors, vendors, and other persons in connection with the Work. Supplier and its employees shall be familiar with TWMA's site specific Safety and Health Rules and must sign the any relevant safety documentation as requested by TWMA before working at the site. TWMA shall incur no liability for, and Supplier hereby agrees to indemnify TWMA against, any causes of action, claim, liability, or cost, including legal fees, arising in whole or in part out of the furnishing of any first-aid facilities to Supplier's employees or out of the failure to furnish such facilities.

#### **18. Indemnity**

- (a) Supplier agrees to indemnify, defend and hold TWMA (including its officers, directors, employees, agents, affiliates, and customers), harmless from and against any and all liabilities, claims, costs, losses, damages or other expenses (including without limitation, reasonable legal expenses and settlement costs) which TWMA may hereafter incur, become responsible for or pay out as a result of death or bodily injuries to any person, damage to any property, contamination of or adverse effects on the environment, or any violation of laws or regulations, caused in whole or in part, by a breach of any of Supplier's warranties or by any act or omission of Supplier, its employees, agents or its suppliers in the performance of this Agreement, except where such death, bodily injury or property damage was caused by TWMA under the circumstances set forth in Paragraph 18(b) below.
- (b) TWMA agrees to indemnify, defend and hold Supplier (including officers, directors, employees, agents and affiliates of Supplier, harmless from and against any and all liabilities, claims, costs, losses, damages or other expenses (including without limitation, reasonable legal expenses and settlement costs) which Supplier may hereafter incur, become responsible for or pay out as a result of death or bodily injuries to any person, damage to any property, contamination of or adverse effects on the environment, or any violation of laws or regulations, caused solely by the negligence or wilful misconduct of TWMA in the performance of this Agreement.
- (c) TWMA shall indemnify and hold harmless Supplier from TWMA's own indirect losses and damages, and Supplier shall indemnify and hold harmless TWMA from Supplier's own indirect losses and damages, regardless of any liability (whether strict or negligent) in whatever form attributable to either Party. Indirect losses and damages under this Agreement include (but are not limited to): loss of earnings, loss of business opportunity, loss of profit, loss of production, loss due to pollution and loss of goodwill.

#### **19. Independence of the Parties**

Supplier is an independent entity and not an employee, agent, or partner of TWMA. This Agreement and any of the terms of the Contract shall not confer any employee, agent or partner status on Supplier.



## **12. Insurance**

Supplier will maintain in force, with a reputable insurance company having its place of business within the same jurisdiction as Supplier, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with its performance of the Contract and shall, on TWMA's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. The foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit provisions of Clause 18 above.

## **21. Notification**

All notices and other communication required to be given in respect of this Agreement shall be in writing and be given to the representatives of each Party at their respective addresses shown on the Purchase Order Form and Invoice(s).

## **22. Taxes**

For the avoidance of any doubt, Supplier shall have full and exclusive liability for payment of any and all taxes and contributions relating to Supplier's employees and unless specifically agreed to the contrary by the Parties, Supplier shall be liable for all taxes and duties that may be levied upon the manufacture, sale or delivery of the Work, and any materials, equipment, Services or supplies used in performance of Work under this Agreement. Supplier shall further be obliged to ensure that any applicable local taxes are included in any quoted prices, any failure to do so resulting in Supplier bearing any relevant costs incurred from non-inclusion of said taxes.

## **23. Intellectual Property**

All documents, drawings, plans, specifications, and other technical data in whichever format (including copies thereof) prepared by Supplier in the performance of the Work shall become the property of the TWMA. All documents, drawings, plans, specifications, and other technical data in whichever format (including copies thereof) prepared for or provided to Supplier by TWMA for the performance of the Work shall not be used by Supplier for the purpose of the Work and shall be returned to TWMA when the Work is completed. No materials (or copies thereof) under this Clause 23 shall be disclosed to any third Party without TWMA's prior written consent.

## **24. Termination/Suspension**

Either party may, at any time, terminate this Agreement for convenience by giving the other Party no less than twenty eight (28) days' written notice or verbal notice confirmed in writing.

(a) If TWMA terminates for convenience, TWMA will reimburse Supplier:

- i. For all Work performed up to the date of termination; and
- ii. those costs not in excess of the Contract Price which were previously incurred by Supplier in good faith in connection with the Work, including a reasonable allowance for documented necessary expenses incurred by Supplier as a result of such termination.

(b) If Supplier terminates this Agreement for convenience, it shall reimburse TWMA any sums paid in advance by TWMA under the Contract to Supplier for Work that due to termination shall not be wholly completed or remains partially completed (if applicable) or Goods that have not been delivered or remain partially delivered, including where necessary any reasonable allowances for documented necessary expenses incurred by TWMA as a result of such termination.

(c) In the event of any partial delivery of Goods at the time of termination by Supplier under this Clause 24, TWMA shall have the right, but not the obligation, to either:

- i. retain any Goods already delivered with no further charge; or
- ii. return such Goods to Supplier in exchange for full reimbursement (calculated on a unit-by-unit basis) of any amounts paid by TWMA to Supplier for such Goods.

(d) TWMA may suspend the Work in whole or in part at its convenience giving Supplier no less than fourteen (14) days' written notice, documenting the reasons for such suspension. Except for circumstances beyond the reasonable control of TWMA, if the Work is suspended, delayed or interrupted by TWMA and if Supplier is subsequently authorised by TWMA to resume the Work, equitable adjustment may be made to the Contract Price.

(e) Notwithstanding TWMA's right of termination for convenience, if this Agreement is terminated as a result of any Supplier default, TWMA shall have, in addition to remedies available for it at law or in equity, the right to cure any such default and may offset any expense or damages it incurs against any amounts due or to become due to Supplier (including the Contract Price).

## **25. Force Majeure**

Neither of the Parties shall be deemed in breach of any of the provisions of this Agreement or the Contract to the extent that the Party in question can establish that the fulfilment of such an obligation (whether partly or fully) has been prevented by a Force Majeure Event. If such force majeure event continues for a period in excess of sixty (60) days then either party shall be entitled to terminate the Contract.

## **26. Anti-Corruption Warranty**



Supplier warrants that it, its affiliates, subsidiaries, employees, officers and agents has not and shall not act or attempt to act in connection with the Contract or Work in any manner which is inconsistent with or which contravenes any of the provisions of the UK Bribery Act 2010, the United States Foreign Corrupt Practices Act 1977 or any additional anti-bribery or money laundering legislation of any relevant jurisdiction. In the event of any breach by Supplier under this Clause 26, TWMA shall have the right to terminate the Contract with immediate effect, with no compensation of any form due to Supplier.

**27. Waivers**

No waiver by TWMA of any terms, provisions, or conditions hereof shall be valid unless in writing and signed by a duly authorised representative of TWMA. No such waiver shall operate as a waiver of any subsequent violation of the same or any other provision hereof.

**28. Laws and Regulations**

Supplier shall comply with all applicable laws and regulations in performance of the Work. Unless otherwise agreed this Agreement shall be governed and interpreted in accordance with the law of the jurisdiction in which TWMA is registered. Disputes arising in connection with this Agreement shall be settled by mutual agreement in the first instance following good faith discussions between the Parties, failing which settlement shall be achieved by referral to ordinary judicial proceedings within the jurisdiction stated herein.

.....End.....