

# TERMS AND CONDITIONS FOR THE PURCHASE OF METALS FOR RECYCLING

## 1. Interpretation

### 1.1 Definitions:

“Acceptance Criteria”: the acceptance criteria specified by the Customer from time to time in respect of Goods which are bulk ferrous metals.

“Business Day”: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

“Conditions”: the terms and conditions set out in this document as amended from time to time in accordance with condition 12.3.

“Contract”: the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

“Customer”: S. Norton & Co. Limited (registered in England and Wales with company number 01859428).

“Delivery”: delivery of the Goods in accordance with condition 4.4 and cognate expressions shall be interpreted accordingly.

“Delivery Date”: the date on which the Goods arrive at the Delivery Location.

“Delivery Location”: the Customer’s site.

“Goods”: the goods (or any part of them).

“Mandatory Policies”: the Customer’s policies listed in Schedule 1. Copies of these policies are available from the Customer on request.

“Non-conforming Materials”: Goods which do not conform to the acceptance criteria specified from time to time by the Customer and/or the British Metals Recycling

Association and/or in respect of which the Customer shall be entitled to charge sums in addition to the price for appropriate administration and safe handling/waste treatment.

“Supplier”: the person or firm from whom the Customer purchases the Goods.

“Waste Transfer Note”: the written report generated by the Customer following Delivery (save where Delivery is effected by ship into the Delivery Location) specifying the quantity, weight, European Waste Code and description of the Goods, the cost of weighing and/or testing the Goods and the price which the Customer is prepared to pay for them.

## **1.2 Interpretation:**

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(c) a reference to writing or written includes emails.

## **2. Basis of contract**

2.1 These Conditions apply to the Contract and to each Delivery to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 Each Delivery constitutes an offer by the Supplier to sell the Goods to the Customer upon these Conditions.

2.3 The Contract shall come into existence upon generation by the Customer of the Waste Transfer Note, or, in respect of Goods effected by ship into the Delivery Location, upon notification by the Customer by email to the Supplier of the weight discharged from the vessel.

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

### 3. The Goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description as notified to the Customer at or before Delivery;
- (b) comply with all applicable statutory and regulatory requirements relating to the Goods;
- (c) not consist of any Non-conforming Materials; and
- (d) where applicable, meet the Acceptance Criteria.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract, including a waste management licence, scrap metal dealer's licence and waste carrier's licence, and will produce copies of these to the Customer upon request.

3.3 If following Delivery, the Customer considers that the Goods do not conform with condition 3.1, the Customer may charge the Supplier an additional fee for the disposal of the non-compliant element of the Goods. This fee will be that sum which equals the value that would have been payable for such elements of the Goods had it conformed with condition 3.1 multiplied by the following applicable percentage, namely:

- (a) in respect of non-ferrous Goods, 100%;
- (b) in respect of ferrous Goods, 200%.

Such additional fee may be deducted by the Customer from such value of the Goods in question.

3.4 Without prejudice to condition 3.3, the Supplier shall in addition pay to the Customer its charges as specified by the Customer from time to time in respect of:

(a) any Non-conforming Materials; and/or

(b) any Goods which fail to meet the Acceptance Criteria.

3.5 In the event of any dispute between the parties as to whether the Goods comply with condition 3.1, the matter may be referred by either party for determination by an independent expert ("Expert") jointly appointed by the parties or in event of the failure of both parties to agree such joint appointment, as appointed by the President for the time being of the British Metals Recycling Association upon the application of either party. The Expert shall act as an expert and not as an arbitrator. The Supplier and the Customer will co-operate with the expert in enabling her/him to reach a decision. The Expert's decision shall be final and binding on the Supplier and the Customer in the absence of manifest error. Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees shall be borne in such proportions as the Expert determines or, in the absence of such determination, by the Supplier and the Customer in equal shares.

## **4. Delivery**

4.1 The Supplier shall ensure that:

(a) the Goods are properly packed, loaded and secured in such manner as to enable them to reach the Delivery Location in good condition under normal conditions of transportation and shall either be delivered by the Supplier at or despatched for Delivery to the Delivery Location or made available by the Supplier for collection by or on behalf of the Customer at the location and in the manner agreed with the Customer ("Collection Location") for delivery to the Delivery Location;

(b) save in respect of deliveries effected by ship to the Delivery Location, each delivery of the Goods is accompanied by the Supplier's own waste transfer note; The Supplier shall ensure the accuracy of such waste transfer note and shall supply a copy of it to the Customer upon Delivery; and

(c) the Goods are not exposed unnecessarily to wet conditions, including ice and/or snow during transportation to the Delivery Location or the Collection Location, as the case may be, so as not to affect the weight of the load.

4.2 Where the Supplier delivers the Goods to the Delivery Location, it shall do so during the Customer's normal business hours, or as otherwise instructed by the Customer.

4.3 Where the Goods are to be collected by or on behalf of the Customer at the Collection Location, the Supplier shall ensure that the Goods are made available for collection at the Collection Location at the time agreed with the Customer.

4.4 Delivery of the Goods shall be completed on the completion of unloading by the Customer or the Supplier (as the case may be) of the Goods at the Delivery Location and (where applicable) the generation of the Waste Transfer Note.

4.5 The Customer shall in no event be responsible for returning any packages, bags, drums or containers delivered to the Customer or for the cost thereof.

## 5. Title and risk

5.1 Title and risk in the Goods shall pass to the Customer on completion of Delivery. Until such time, the Goods shall remain at the risk of the Supplier and the Supplier shall keep the Goods insured against the risk of loss or damage and ensure that the Customer's interest is noted on the insurance policy.

## 6. Price and payment

6.1 Subject to condition 6.2 (including 6.2A), the price of the Goods shall be the price for that grade of Goods that was last notified by email by the Customer to the Supplier.

6.2 The price of the Goods in respect of which Delivery is effected by ship into the Delivery Location shall be as notified by the Customer for that shipment by email to the Supplier.

6.2A The Customer may, at its discretion, agree to fix the prices for the Goods (**Fixed Price**) for a set period of time (**Fixed Price Period**), provided that the Supplier delivers the agreed volume of Goods during the Fixed Price Period (measured as a whole, **Total Target Volume**) or each week or month during the Fixed Price Period (where a weekly or monthly target is notified to the Supplier by the Customer, **Periodic Target Volume**) (**Target Volume** meaning either or both of the Total Target Volume and Periodic Target

Volume, as the context so requires). The Fixed Price (which may be specified per grade of Goods), the duration of the Fixed Price Period and the Target Volume shall be as set out in email notified by the Customer to the Supplier (**Fixed Price Arrangement**). A Fixed Price Arrangement shall also include a permitted tolerance, being a percentage of the Target Volume (**Permitted Tolerance**). In the event that the Supplier delivers a volume of Goods which is in excess of the Permitted Tolerance above or below either the Periodic Target Volume in any week or month, as the case may be, or the Total Target Volume by the end of the Fixed Price Period, the parties will meet (at a date, time and venue to be agreed) to discuss in good faith the continuing supply of Goods and related pricing and volumes (**Price Review Meeting**). Any changes agreed by the parties at a Price Review Meeting shall be recorded in subsequent email correspondence and shall take effect immediately. In the event that the parties do not agree pricing and volumes of Goods the Fixed Price Arrangement shall automatically and immediately cease and the other provisions of this Contract (including clause 6 – Price and payment) shall continue to apply to all Deliveries from the Supplier to the Customer.

6.3 The price of the Goods excludes amounts in respect of value added tax (VAT), which the Customer shall where applicable additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice but includes the costs of Delivery, packaging, insurance and carriage of the Goods.

6.4 The Supplier may invoice (or procure the generation of an invoice on its behalf by the Customer where the Supplier is a self-billing supplier of the Customer) the Customer for the price of the Goods plus any VAT that is payable on or at any time after receipt of the Waste Transfer Note or, in the case of Goods delivered by ship, email confirmation of the discharged weight from the Customer. The Supplier shall ensure that the invoice includes the date of the Delivery, the waste transfer note number in the case of Goods that are delivered by road, the invoice number, the Supplier's VAT registration number and any supporting documents that the Customer may reasonably require. The Customer shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

6.5 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party may be charged interest on the overdue amount at Barclays Bank plc base rate. This clause shall not apply to payments the defaulting party disputes in good faith.

6.6 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

6.7 If the Supplier fails to comply with any of its obligations under these conditions the Customer shall be entitled to withhold payment of the price.

## 7. Indemnity

7.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

(a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in or the constituency of the Goods, including any claims in relation to damage caused by the Goods in transit to the Delivery Location;

(c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;

(d) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with any Non-conforming Materials being delivered to the Customer by the Supplier; and

(e) any losses suffered by the Customer arising out of or in connection with any Non-conforming Materials being delivered to the Customer by the Supplier.

7.2 This condition 7 shall survive termination of the Contract.

## **8. Insurance**

The Supplier shall maintain in force, with a reputable insurance company, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract with minimum cover of £5 million for any one claim for both product and public liability, and shall, on the Customer'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.

## **9. Compliance with relevant laws and policies**

9.1 In performing its obligations under the Contract, the Supplier shall:

(a) comply with all applicable laws, statutes, regulations from time to time in force including money laundering regulations; and

(b) comply with the Mandatory Policies.

9.2 The Customer may immediately terminate the Contract for any breach of this condition 9.

## **10. Termination**

10.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

(a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing to do so;

(b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is



taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(e) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

10.3 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **11. Force majeure**

The Customer shall not be in breach of the Contract or liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for more than four weeks, the Customer may terminate the Contract by giving seven days' written notice of termination to the Supplier.

## **12. General**

### **12.1 Assignment and other dealings**

(a) The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

(b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.

12.2 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.3 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

12.4 Waiver. Except as set out in condition 2.4, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.6 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 12.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and

at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.

12.7 Third party rights. No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

12.8 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

12.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## **Schedule 1**

### Customer's Mandatory Policies

- Anti-Bribery Policy
  
- Ethics Policy