

1. Interpretation

- 1.1 In these Terms:
- "Acceptable Wood Waste"** has the meaning given to it in the Acceptable Materials Guide in respect of the type of wood waste set out in Price Agreement;
- "Acceptable Material Guide"** means the guide provided with these Terms specifying Acceptable Wood Waste of types A+, A, B or C;
- "Collection Date"** means the date for collection of any containers supplied by the Company to the Customer under the Contract as notified by the Customer to the Company on no less than 72 hours' notice or such date as agreed between the parties from time to time;
- "Collection Site"** means the site from which wood waste is to be collected named as Site Address in the Price Agreement;
- "Company"** means the company named as such in the Price Agreement and being either: Enva Wood Recycling Manchester Limited whose registered office is at Brailwood Road, Bilsthorpe Industrial Estate, Newark, Nottingham, NG22 8UA (company registration number 07462747); Enva Wood Recycling Middlesbrough Limited whose registered office is at Brailwood Road, Bilsthorpe Industrial Estate, Newark, Nottingham NG22 8UA (company registration number 056119726); or Enva Wood Recycling Tilbury Limited whose registered office is at Brailwood Road, Bilsthorpe Industrial Estate, Newark, Nottingham NG22 8UA (company registration number 07680947);
- "Contract"** means the contract for the supply of Services;
- "Price Agreement"** means the Price Agreement set out overleaf;
- "Customer"** means the person named as such in the Price Agreement;
- "Minimum Deposit Amount"** means (where the Customer is required to provide a deposit for the Services) the amount agreed between the parties;
- "Minimum Monthly Amount"** means the minimum monthly amount (if any) to be paid by the Customer for the Services in any one month as agreed between the parties;
- "Minimum Monthly Tonnage"** means the minimum tonnage of waste (if any) to be made available by the Customer for collection by the Company in any one month or the minimum tonnage to be tipped by the Customer at the Tipping Site in any one month as agreed between the parties;
- "Price"** means the gate fee and haulage cost to be paid by the Customer to the Company as set out in the Price Agreement;
- "Services"** means the provision of a service for the disposal of Acceptable Wood Waste in accordance with these Terms;
- "Terms"** means the standard terms set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Customer and the Company;
- "Tipping Site"** means the Enva Site specified in the Price Agreement or such other address as may be notified to the Customer by the Company from time to time;
- "Writing"** and any similar expression, includes facsimile transmission, electronic mail or other forms of electronic communication;
- "Unacceptable Materials"** means any material that is not Acceptable Wood Waste.
- 1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to the provision as amended, re-enacted as the relevant time.
- 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 1.4 Words imparting one gender will be construed as importing any other gender.
- 1.5 Words importing the singular will be construed as importing plural and vice versa
- ## 2. Basis of the Supply of Services
- 2.1 The Company shall supply the Services to the Customer in accordance with the Price Agreement and these Terms, which shall govern the Contract to the exclusion of any other terms.
- 2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4 Any advice or recommendations given by the Company and its employees or agents to the Customer or its employees or agents which is not confirmed in Writing by the Company is followed or acted on entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other documentation issued by the Company shall be subject to correction without any liability on the part of the Company.
- ## 3. Container Collection
- 3.1 The provisions of this clause 3 apply where the waste wood is to be collected by the Company.
- 3.2 Where the Price Agreement states that the Company is to supply collection containers then the Company shall supply the quantity, type and capacity of containers as set out in the Price Agreement or such other quantity, type and/or capacity as may be agreed by the parties in Writing.
- 3.3 Where the Price Agreement states that the Customer is to provide the collection containers then the Customer shall ensure that the containers are of the quantity, type and capacity as set out in the Price Agreement or such other quantity, type and/or capacity as may be agreed by the parties in Writing.
- 3.4 The Customer shall fill the containers at the Collection Site with Acceptable Wood Waste of the type set out in the Price Agreement or such other type of wood waste as may be agreed by the parties from time to time.
- 3.5 The Company shall collect the containers provided and (where the Company supplies containers) replace them with empty containers on the Collection Date or such other date as may be agreed by the parties in Writing.
- 3.6 The Customer shall ensure that the containers are filled to the correct level with Acceptable Wood Waste only and in accordance with any requirements made known to the Customer by the Company from time to time.
- 3.7 The Company shall in delivering and collecting the containers comply with all reasonable operating procedures and safety arrangements made known by the Customer to the Company.
- 3.8 The Customer shall ensure that its authorised representative is available to sign for each collection and such signature shall be evidence that the Service has been carried out in accordance with this Contract and to the satisfaction of the Customer. In the event that the Customer's authorised representative is not available to sign for a collection then the Company shall be deemed to have carried out its obligation under these Terms in respect of that collection.
- 3.9 In the event that any container is unavailable or is not filled to the correct level at the Collection Date then the Company may in its absolute discretion:
- 3.9.1 leave the container on the Collection Site and invoice the Customer in respect of the abortive visit; or
- 3.9.2 remove the container from the Collection Site and invoice the Customer in respect of the shortfall of wood waste material.
- 3.10 The Company may charge the Customer for any loading and waiting time in excess of 1 hour at £50 plus VAT per hour.
- 3.11 In the event that a container is not exchanged a minimum of 4 times in any month then a charge of £30 plus VAT per container per week will be charged in respect of that month.
- 3.12 Where the Customer wishes to cancel any collection he shall give the Company notice in Writing 48 hours before the Collection Date.
- 3.13 The property in the containers shall at all times:
- 3.13.1 remain vested in the Company where the container is provided by the Company; and
- 3.13.2 remain vested in the Customer where container is provided by the Customer.
- 3.14 The risk in the Company containers shall be with the Customer whilst the containers are on the Collection Site and the Customer shall ensure that the Company containers are adequately insured at all times whilst the Containers are in its possession and provide satisfactory documentary evidence of such insurance upon request by the Company. Where the Customer fails to provide evidence of insurance then the Company shall be entitled to put in place such insurance and invoice the Customer in respect of the insurance premium.
- 3.15 The property and risk in all Acceptable Wood Waste deposited in a container shall remain vested in the Customer whilst the container is on the Collection Site and shall pass the Company on collection.
- ## 4. Tipping of Waste Wood
- 4.1 The provisions of this clause 4 shall apply where the waste wood is to be tipped by the Customer at the Tipping Site.
- 4.2 The Customer may tip Acceptable Wood Waste at the Tipping Site during the opening hours for the Tipping Site which will be published on the Company's website from time to time. The Customer should note that opening hours differ between sites and between Summer and Winter.
- 4.3 The Customer shall comply with the Company's operating procedures and safety arrangements made known by the Company to the Customer from time to time.
- 4.4 The Customer shall not tip any wood waste unless first cleared and authorised to do so by the Company and having first been weighed in over the Company weighbridges.
- 4.5 Property in the Acceptable Wood Waste shall pass to the Company on tipping.
- ## 5. Acceptable Wood Waste
- 5.1 The Customer warrants that only Acceptable Wood Waste will be deposited in the containers to be collected by the Company or tipped by the Customer at the Tipping Site.
- 5.2 For the avoidance of doubt Acceptable Wood Waste that is contaminated by Unacceptable material is Unacceptable Material.
- 5.3 In the event that any load contains Unacceptable Material then the Company may, in its absolute discretion;
- 5.3.1 return the load to the Customer in which case the Customer shall indemnify the Company from all costs of reloading and returning the load;
- 5.3.2 reclassify wood waste deposited by the Customer as a lower grade of wood waste than that which should have been provided under this Contract and invoice the Customer accordingly; or
- 5.3.3 dispose of the load in which case the Customer shall indemnify the Company in respect of all costs and liabilities howsoever arising including (without limitation) the cost of any special handling requirements and disposal to landfill or other appropriate means of final disposal.
- 5.3.4 Hazardous waste disposal will be charged at £250 per tonne or part tonne unless this waste can be safely loaded back onto the Customer's vehicle. Reloading must take place within 24hrs of the waste arriving at the Tipping Site. All incidents of hazardous waste will be reported to the EA as part of their requirements under duty of care regardless of which disposal route is taken.
- ## 6. Price
- 6.1 The Customer shall pay to the Company the Price.
- 6.2 The Company reserves the right, by giving Written notice to the Customer at any time, to vary the Price to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any significant increase in vehicle running costs, alteration of duties or significant increase in the costs of labour or any changes in statute or regulations), any change in the Collection Date, quantities or number of containers or any reduction in the price of waste wood material.
- 6.3 The Price is exclusive of any applicable value added tax.

7. Minimum Monthly Tonnage

- 7.1 This clause 7 applies where the Price Agreement provides that this is an agreement for the disposal of the Minimum Tonnage of Acceptable Waste Wood and the payment by the Customer of the Minimum Monthly Amount.
- 7.2 The Customer will for the term of this Agreement make available to the Company the Minimum Monthly Tonnage each month; and pay to the Company the Minimum Monthly Amount.
- 7.3 For the avoidance of doubt, the Customer will pay to the Company the Minimum Monthly Amount for each month of this agreement regardless of whether it has actually made available to the Company the Minimum Monthly Tonnage in that month.
- 7.4 For the avoidance of doubt, rejected loads do not count towards the Minimum Monthly Tonnage.
- 7.5 The Company has a legitimate interest in ensuring that the Customer pays the Minimum Monthly Amount in each month of this Agreement even where it has not made available the Minimum Monthly Tonnage. This is because the Company's costs of handling and disposal of the Minimum Monthly Tonnage are fixed and are incurred whether or not the Customer has provided the Minimum Monthly Tonnage. The Minimum Monthly Amount has been calculated by reference to those fixed costs.
- 7.6 Should these terms not be suitable for the Customer, then the Company will be prepared to quote a spot rate based on individual disposals. However, priority is given to contracted customers and the Company cannot guarantee any continuity of services to spot customers.
- 7.7 In the event that the Company is unable to accept the Minimum Monthly Tonnage at the site then it will (at the Company's cost) use reasonable endeavours to divert any shortfall tonnage to one of the Company group's sites or alternatively to a third party site at the Company's discretion.
- 7.8 In the event that the Customer fails to provide to the Company the Minimum Monthly Tonnage in any month then the Customer will be permitted to make up any shortfall in the following month (but not in any further months). Any tonnage delivered in any month shall first be allocated towards that month's target before being allocated to any shortfall.
- 7.9 Subject to paragraph 7.8, if the Customer disposes of more than the Minimum Monthly Tonnage in any one month then (in the absence of agreement) the Company's then current spot rate will apply to any additional tonnage.
- ## 8. Terms of Payment and Credit Terms
- 8.1 Where the Price Agreement provides that the Customer is to pay the Company then the Company shall Invoice the Customer for any sums due under this Contract at the end of each month.
- 8.2 Where the Price Agreement provides that the Company is to pay the Customer then the Company will notify the Customer of the amount to be invoiced at the end of each month.
- 8.3 The Company shall be entitled to invoice the Customer forthwith in respect of any sums due under clauses 3, 5, or 7.
- 8.4 The Parties shall pay any invoice within 30 days of the date of invoice. The time of payment shall be the essence of the Contract. Receipts for payment will be issued only on request.
- 8.5 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available, the Company may:
- 8.5.1 cancel the contracts or suspend any further collections;
- 8.5.2 appropriate any payment made to such of the Services (or the services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer);
- 8.5.3 charge interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Nat West Bank base rate from time to time, until payment in full is made (a part of a month being treated as full month for the purpose of calculating interest); and/or
- 8.5.4 return to the Customer wood waste of any equivalent weight to the wood waste in respect of which payment has not been made.
- 8.6 The Company may at any time, without notice to the Customer, set off any liability of the Customer to the Company against any liability of the Company to the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 8.7 Where the Company has agreed a credit limit with the Customer then this is subject to change should the Company become aware of any matters which may affect the Customers credit rating.
- 8.8 Failure to keep within credit limit and terms will result in suspension of the Company's obligation to take the Customer's Acceptable Waste Wood but (where this is a contract for the supply of a Minimum Monthly Tonnage) it will not suspend the Customer's obligation to pay the Minimum Monthly Tonnage. This means should the Customer's account be on stop it will still be liable to pay the Minimum Monthly Amount.
- 8.9 Where the Company is not able to give the Customer a credit limit then the Customer will pay to the Company a deposit in respect of any liability that may arise under this Contract (the "Deposit").
- 8.10 At all times the Customer will maintain the Deposit at a sum not less than the Minimum Deposit Amount.
- 8.11 The Company shall be entitled to withdraw from the Deposit such proportion of the Deposit as may be necessary to satisfy any liability under this Contract.
- 8.12 The Customer shall pay such sum as is necessary to ensure that the Deposit is maintained at the Minimum Deposit Amount within 5 days after the Company has notified the Customer that it has made a withdrawal from the Deposit.
- 8.13 In the event that the Customer fails to maintain the Deposit at the Minimum Deposit Amount then the Company shall be entitled to suspend performance under the Contract until payment is made to restore the Deposit to the Minimum Deposit Amount. Should the Customer fail to maintain the Deposit at the Minimum Deposit Amount for a period of 10 days after notice has been given that a withdrawal has been made then the Company may terminate the Contract.
- ## 9. Termination
- 9.1 In the event that the Customer commits a material breach of this agreement (including but without limitation, persistent failure to pay within the agreed payment terms) then the Company will be entitled to terminate this agreement.
- 9.2 In the event of termination as a result of the Customer's breach the Customer will pay to the Company any sums outstanding at the date of termination together with the aggregate of the remaining Minimum Monthly Amounts for the remainder of the term.
- ## 10. Liability
- 10.1 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty condition or other term or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever or in connection with the supply of the Services (including any delay in supplying or any failure to supply the Services in accordance with the Contract or at all), and the entire liability of the Company under or in connection with the Contract shall not exceed £50,000 except as expressly provided in these Terms.
- 10.2 The Company shall not be liable to the Customer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 10.2.1 act of God, explosion, flood, tempest, fire or accident;
- 10.2.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 10.2.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 10.2.4 import or export regulations or embargoes;
- 10.2.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of third party);
- 10.2.6 difficulties in obtaining labour, fuel, parts or machinery;
- 10.2.7 power failure or breakdown in machinery or vehicles.
- ## 11. Insolvency or Customer
- 11.1 This clause 11 applies if:
- 11.1.1 The Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 11.1.3 The Customer ceases, or threatens to cease, to carry on business; or
- 11.1.4 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further collections under the Contract without any liability to the Customer.
- ## 12. General
- 12.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver or any subsequent breach of the same or any other provision.
- 12.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 12.4 The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, 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 Company.
- 12.5 This 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.
- 12.6 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 12.7 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.8 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.