

Biomass Wood Fuel Supply

TERMS AND CONDITIONS

The following terms and conditions are relative to any purchase of biomass woodchip fuel whether by way of a purchase order, telephone order, internet or website order or in any contract of sale for woodchip supplies between the supplier and the end user.

1. Contract

- 1.1. The supplier agrees to supply woodchip to the end user and the end user agrees to purchase from the supplier the woodchip, in accordance with the contract Details and these terms and conditions.
- 1.2. Except:
 - i where the contract details identify that this contract is non-exclusive; or
 - ii as otherwise agreed with the supplier in writing; or
 - iii where the supplier fails to deliver the minimum quantity of woodchip, the end user agrees neither to purchase nor use biomass wood chip fuel from any other source or supplier during the term of this contract.
- 1.3. Where the end user has been supplied biomass woodchip fuel by any other party, the supplier may have its fuel loads tested by an independent test lab. The end user shall be obliged to accept the results of the test lab as being conclusive as to whether the woodchip meets the specification (see clause 2 below), including in respect of Moisture Content (MC) and particle size. The end user shall meet the cost of such tests.

2. Woodchip Specification – Moisture Content

- 2.1. MC - the woodchip shall meet the MC, + or – 5%, based on the relevant BSL standards.
- 2.2. Contaminants such as soil or stones, metal and plastics should be less than 0% by weight of the total woodchip load. This should be nil as we screen the woodchip.
- 2.3. The woodchip shall be as specified to the agreed particle size.
- 2.4. The end user has responsibility for ensuring that the MC and the particle size are appropriate for its own biomass system.

3. Duration of contract

- 3.1. This contract shall endure for the term agreed (when it shall automatically terminate) unless earlier terminated in accordance with this contract.

- 3.2. The parties shall carry out a review, three months after the commencement date, to discuss whether there is a requirement to adjust the terms of the contract and/or the specification. Any adjustments need to be agreed jointly between the end user and supplier, the parties being obliged to act reasonably, failing such agreement either party can terminate this contract by providing three months' written notice, by letter or email.
- 3.3. This contract may be extended by agreement of both parties not less than six months before the end of the term.
- 3.4. Without limiting its other rights and remedies either party may terminate this contract immediately by way of written notice or email if:
 - 3.4.1. the other party commits a material breach of any term of the contract and, if such a breach is remediable, fails to remedy that breach within 30 days of that party being notified in writing to do so; or
 - 3.4.2. the other party commits a material breach of any term which, in the reasonable opinion of the non-defaulting party, cannot be remedied within 30 days; or
 - 3.4.3. the other party 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.

4. Quantity

- 4.1. The end user shall be obliged to order at least the minimum quantity of woodchip as specified at point of order or contract.
- 4.2. Except to the extent that the end user's failure to purchase the minimum quantity of woodchip is caused by the supplier's default or a Force Majeure Event (pursuant to clause 12), if the end user purchases less than the minimum quantity of woodchip, the end user may be charged, at the supplier's sole discretion, the price for the minimum quantity of woodchip.
- 4.3. The end user may request amounts of woodchip in addition to the minimum quantity specified in 4.1 by requesting an additional delivery from the supplier, specifying the quantity required, and the date and time by when the end user requires the delivery of woodchip. If the supplier is able to satisfy the request (it being under no obligation to do so), it shall notify the end user accordingly and deliver the amount requested as soon as is reasonably practicable. The supplier may agree to satisfy the request subject to the following conditions:
 - 4.3.1. the supplier will charge the price plus 1% for any additional delivery made.

- 4.3.2. The supplier may only agree to provide the additional amounts subject to the supplier:
- i being satisfied that the end user can fulfil its obligations under the contract; and/or
 - ii providing such security or other guarantee as may be required by the supplier.

5. Price of woodchip - delivered

- 5.1. The price for the woodchip will be reviewed on a three-monthly basis or earlier in the event that the cost of raw round timber to the supplier increases by more than 3% prior to the date of any review (the period).
- 5.2. In the event that the cost to the supplier of raw round wood in the period increases or decreases, this price increase or decrease will be used to adjust the price.
- 5.3. In all other circumstances the price will be increased or decreased in line with the retail price index.
- 5.4. The increased or decreased price shall be deemed to be the price.

6. Fuel Sources

- 6.1. The woodchip will be derived from the following sources:
 - 6.1.1. licensed harvested forestry timber; or
 - 6.1.2. the parent source of the woodchip is declared as being FSC Certified.

7. Delivery of woodchip

- 7.1. Woodchip will be delivered to the site using the delivery method.
- 7.2. The end user shall not make any changes to the site or any fuel store within the site which would otherwise require a change to the delivery method.

8. Health and Safety

- 8.1. A risk assessment and method statement shall be prepared in advance by the supplier following an initial site visit and discussion with the end user, to take account of any hazards on site and the risks posed to pedestrians, vehicles and property on the site during woodchip delivery and offloading. This shall be formally reviewed annually, or whenever a change to the hazards and risks on site are identified.
- 8.2. On the dispatch of any consignment of woodchip, the supplier shall send a delivery note and a fuel quality declaration and weighbridge ticket to the end user by electronic mail. A paper copy of the delivery note, and weight ticket shall be provided to the end user at the site with the delivery of each consignment of woodchip.

9. Notice Period for Orders

- 9.1. Should the end user require a delivery of woodchip outside of the delivery dates (which have been agreed between the parties in writing, the end user shall provide the supplier with at least three working days' notice (the notice period).
- 9.2. Should the order of woodchip be required before the end of the Notice Period, the supplier:
 - i will attempt to make the delivery on time but will not make any guarantee of such delivery; and
 - ii may apply an additional fee at the supplier's sole discretion, to cover the costs of an emergency delivery.
- 9.3. Responsibility for checking levels of woodchip within the site and informing the supplier of the need for a delivery of woodchip rests with the end user.
- 9.4. Unless otherwise agreed in advance with the end user, deliveries shall be made between the hours of 07.00 and 19.00 between Monday to Friday.
- 9.5. If a delivery cannot be made within the hours specified in this contract and the whole or part of the delivery is not possible due to obstructions on the site, that are beyond the control of the supplier, the supplier will be entitled to recover the cost of transporting the undelivered woodchip and an additional fee of 20% of the value of the woodchip to cover the reduction in resale costs (which both parties agree represents a reasonable pre-estimate of the losses which are likely to be suffered by the supplier), unless the end user informs the supplier of said obstruction five working days prior to the date of delivery.
- 9.6. Upon delivery of the woodchip to the end user, visual checks shall be made by the end user to ensure conformity to the agreed Specification.

10. Quality Control

- 10.1. If checks reveal that the woodchip does not conform to the specification, the end user may reject the load in full. In the event that it is not possible to visually check the woodchip until it is in the fuel silo and the woodchip is subsequently found to not materially conform to the agreed specification, bearing in mind that woodchip may be delivered which is +/- 5% MC than the contracted MC figure and provided that the supplier is notified within 24 hours of delivery, the end user may reject the delivery of the woodchip in whole. The delivery of woodchip which does not conform with the specification will be replaced by, and at the expense of, the supplier. Any such dispute over whether the woodchip complies with the specification will be resolved as per Clause 11.
- 10.2. The supplier shall be responsible for immediately clearing up any woodchip spilt during offloading.

- 10.3. The woodchip shall remain at the risk of the supplier until delivery to the end user is complete (i.e. the woodchip is offloaded into the end user's store), when risk of the woodchip shall pass to the end user.

11. Sampling

- 11.1. The end user may on the date of delivery send a sample of the woodchip for evaluation/analysis/testing in order to test compliance with the specification. The supplier and end user must be present when woodchip samples are taken to ensure the sample is from the supplier's delivery and not from another supplier. All samples must meet the specification. Such tests are to be at the end user's expense. If the fuel does not comply, the end user must notify the supplier within 24 hours of the date of delivery.
- 11.2. The strategy for maintaining the original quality of the woodchip once the supplier has delivered is the responsibility of the end user.

12. Terms of Payment

- 12.1. The supplier will invoice the end user at the time of each delivery of woodchip to the site.
- 12.2. Each of our invoices (which will be denominated and payable in sterling) must be settled in full, immediately following your receipt of it. If it is not, we shall be entitled to charge interest on it (on a daily basis) on the full amount due at the daily published Bank of England base rate plus 4%, and that from the date of invoice until payment (including accrued interest) is made in full.
- 12.3. In the event that any payments are overdue the supplier has:
- i the right to refuse to make further supplies until all outstanding overdue invoices have been settled; and
 - ii may require that guarantees or other forms of security are required in respect of payment.
- 12.4. In the event that the supplier considers that the end user's financial position deteriorates to such an extent that in the supplier's opinion the end user is not capable of fulfilling its obligations under the contract in respect of payment, the supplier may:
- i terminate this contract without penalty; or
 - ii change the payment terms pursuant to clause 12.2 including a requirement to pay in advance for the woodchip to be delivered; or
 - iii terminate this contract without any penalty.

13. Recovery of fees

Fees outstanding for more than one calendar month will normally be passed for formal recovery. In addition to being responsible for any and all interest accrued on such sums outstanding, you will also be liable for any and all costs incurred by us in respect of such recovery, including, but not limited to, Sheriff Officer's fees and court fees.

14. Other terms and conditions

- 14.1. Boiler outage or operational problems of the end user that are a direct result of sub-standard maintenance, boiler misuse/neglect or boiler defects are not the responsibility of the supplier.
- 14.2. In this instance, (i.e. no access to the site for delivery due to maintenance) any cost that is incurred by the supplier as a result of not being able to deliver the woodchip will be charged to the end user.
- 14.3. The supplier will have public liability insurance of £5,000,000.

15. In the Event of a Dispute

- 15.1. Both parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the contract within thirty days of either party notifying the other of the dispute. Initially the party who wishes to bring the dispute to the notice of the other will do so in writing or email. The other party will respond to this in writing or email within five working days of receiving the notification of a potential dispute. Where the potential dispute relates to on-site issues at either the end user or supplier sites, a joint site meeting will normally take place within 10 working days of the potential dispute being brought to the other party's attention.
- 15.2. Where a resolution has been agreed after one or more meetings, including a site meeting (if appropriate), this shall be communicated in writing or email and noted by both parties.

16. Force Majeure

- 16.1. A party, provided that it has complied with the provisions of clause 12.3, shall not be in breach of this contract, nor liable for any failure or delay in performance of any obligations under this contract (and, subject to clause 12.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:
 - i Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - ii war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - iii compliance with any law;

- iv fire, explosion or accidental damage;
 - v extreme adverse weather conditions;
 - vi collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - vii any labour dispute, including but not limited to strikes, industrial action or lockouts;
 - viii non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause);
 - ix interruption or failure of utility service, including but not limited to electric power, gas or water;
 - x in respect of the supplier only unfavourable weather conditions including frost, sleet and snow.
 - xi The corresponding obligations of the other party will be suspended to the same extent as those of the party first affected by the Force Majeure Event.
- 16.2. Any party that is subject to a Force Majeure Event shall not be in breach of this contract provided that:
- i it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
 - ii it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - iii it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
 - iv if the Force Majeure Event prevails for a continuous period of more than six months, any party may terminate this contract by giving 14 days' written notice to the other party. On the expiry of this notice period, this contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this contract occurring prior to such termination.

17. Third Party Rights

The parties hereby confirm the terms of this contract shall not, and shall not purport to, confer on any third party any right to enforce any term of the agreement for the purposes of the Contract (Third Party Rights) (Scotland) Act 2017.

18. Governing Law and Jurisdiction

- 18.1. This 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 Scots Law.
- 18.2. The parties irrevocably agree that the Scottish Courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this contract or its subject matter.