

CLARITY ENVIRONMENTAL LIMITED

STANDARD TERMS AND CONDITIONS FOR PURCHASE OF ePRNs (v1.5)

2. INTERPRETATION

2.1. The definitions and rules of interpretation in this condition apply in these Conditions.

Accredited Exporter: an entity accredited by an Agency to be an exporter of packaging waste materials.

Accredited Reprocessor: an entity accredited by an Agency to be a reprocessor of packaging waste materials.

Agency: Environment Agency, Natural Resources Wales / Cyfoeth Naturiol Cymru, the Scottish Environment Protection Agency or Northern Ireland Environment Agency or any successor to the same.

Clarity: Clarity Environmental Limited, a company incorporated in England and Wales with company no. 4559478 and whose registered office is at 10 Hunns Mere Way, Woodingdean Business Park, Brighton, East Sussex BN2 6AH.

“Awaiting Acceptance” ePRN: an ePRN that the Seller has authorised but is yet to be accepted on the NPWD by the End Receiver.

“Awaiting Authorisation” ePRN: a printed copy of the ePRN that is the subject of the Contract prior to the Seller’s final issuance or authorisation of transfer of such ePRN to the End Receiver.

Conditions: means Clarity Environmental Limited’s Standard Terms and Conditions for Purchase of ePRNs (v1.3).

Confidential Information: information in whatever form relating to the business, services, affairs and finances of Clarity for the time being confidential to Clarity and whether or not such information is marked confidential.

Contract: the agreement between the parties witnessed in the Purchase Order.

Due Date: the date by which the Seller is either to make the ePRN Reference Number available for download or to transfer the ePRNs to the End Receiver’s account on the NPWD and is that date identified as such in the Purchase Order.

End Receiver: an identified producer or compliance scheme and who is the entity identified in the Purchase Order or such entity that Clarity duly notifies to the Seller in writing as being the ultimate user of the ePRN.

ePRN: any electronic packaging waste recovery note or electronic packaging waste export recovery note issued by an Accredited Reprocessor or an Accredited Exporter and agreed in the Contract to be bought by Clarity from the Seller.

ePRN Reference Number: the unique reference number the Seller makes available for download on issuance of the ePRNs to the End Receiver.

NPWD: the National Packaging Waste Database maintained by the Environment Agency, the Scottish Environment Protection Agency and Northern Ireland Environment Agency and hosted for the time being at www.npwd.environment-agency.gov.uk.

Partially Completed ePRN: a printed copy of the ePRN that is the subject of the Contract which includes details of the grade, tonnage and compliance year, but which is not an “Awaiting Authorisation” ePRN or an “Awaiting Acceptance” ePRN.

Purchase Order: Clarity’s written order to purchase the ePRN from the Seller and which incorporates these conditions.

Seller: an Accredited Exporter or an Accredited Reprocessor who offers for sale the ePRN that is the subject of the Purchase Order and who is more particularly identified in the Purchase Order.

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

2.3. Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.

2.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

2.5. Condition headings do not affect the interpretation of these conditions.

3. APPLICATION OF TERMS

3.1. Subject to any variation under condition 2.4, these conditions are the only conditions upon which Clarity is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

3.2. Each Purchase Order evidences the oral agreement between the Seller to sell and Clarity to buy the relevant ePRN subject to these conditions.

3.3. No terms or conditions endorsed upon, delivered with or contained in the Seller’s quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

3.4. These conditions apply to all Clarity’s purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of Clarity.

4. INSPECTION OF A PARTIALLY COMPLETED ePRN OR AN “AWAITING AUTHORISATION” ePRN

4.1. The Seller shall transmit either a Partially Completed ePRN or an “Awaiting Authorisation” ePRN to either Clarity’s facsimile number (0845 129 7178) or the email address info@clarity.eu.com (or such other facsimile number or address as specified in writing by Clarity) within three days of the date of the Purchase Order.

4.2. The Partially Completed ePRN or an “Awaiting Authorisation” ePRN shall be without fault and conform in all respects with the information contained in the Purchase Order and any other specification supplied or advised by Clarity to the Seller.

4.3. Clarity’s rights under these conditions are in addition to the statutory conditions implied in favour of Clarity by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982.

4.4. If the results of such inspection causes Clarity to be of the opinion that the Partially Completed ePRN or an “Awaiting Authorisation” ePRN does not conform or is unlikely to conform with the Purchase Order or to any specifications supplied or advised by Clarity to the Seller, Clarity shall inform the Seller and the Seller shall immediately take such action as is necessary to

ensure conformity.

4.5. Notwithstanding any such inspection, the Seller shall remain fully responsible for a Partially Completed ePRN or an “Awaiting Authorisation” ePRN and the ePRN and any such inspection shall not diminish or otherwise affect the Seller’s obligations under the Contract.

4.6. If a Partially Completed ePRN or an “Awaiting Authorisation” ePRN fails to comply with the provisions set out in condition 3, Clarity shall be entitled to avail itself of any one or more remedies listed in condition 11.

4.7. The Seller shall invoice Clarity upon, but separately from, Clarity’s written confirmation that a Partially Completed ePRN or an “Awaiting Authorisation” ePRN conforms with the Purchase Order.

5. INDEMNITY

The Seller shall keep Clarity indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Clarity as a result of or in connection with any claim made against Clarity in respect of any liability, loss, damage, injury, cost or expense sustained by its employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the ePRNs as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

6. NOTIFICATION OF THE END RECEIVER AND TRANSFER

6.1. In the event that Clarity does not provide the Seller with details of the End Receiver within the Purchase Order then, by no later than 10:00 on the Due Date, Clarity shall notify the Seller in writing of the identity of the End Receiver.

6.2. By no later than 12 noon on the Due Date, the Seller shall, subject to Clarity’s written instructions, as set out in the Purchase Order, either:

6.2.1. provide Clarity with the ePRN Reference Number; or

6.2.2. issue or authorise the ePRN in order that the End Receiver may accept an “Awaiting Acceptance” ePRN.

6.3. Following the steps outlined in Condition 5.2, the ePRN shall be transferred into the name of the End Receiver and the Seller shall ensure that the NPWD reflects this transfer.

6.4. The Seller shall provide Clarity with a copy of the final issued or authorised ePRN within three days of the Due Date.

6.5. The Due Date shall be specified in the Purchase Order or, if no such date is specified, then the transfer shall take place within 28 days of the Purchase Order.

6.6. Time for transfer of the ePRN to the End Receiver shall be of the essence.

6.7. If the Seller does not provide Clarity with the ePRN Reference Number or transfer the ePRN on the Due Date as required under condition 5.2, without prejudice to any other rights which it may have, Clarity reserves the right to:

6.7.1. cancel the Contract in whole or in part;

6.7.2. refuse to accept any subsequent transfer of the ePRN which the Seller attempts to make;

6.7.3. recover from the Seller any expenditure reasonably incurred by Clarity in obtaining the ePRN in substitution from another supplier; and

6.7.4. claim damages for any additional costs, loss or expenses incurred by Clarity which are in any way attributable to the Seller’s failure to transfer the ePRN on the Due Date.

6.8. Where Clarity agrees in writing to accept transfer by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to transfer any one instalment shall entitle Clarity at its option to treat the whole Contract as repudiated.

6.9. The Seller shall not be entitled to cancel an ePRN on the NPWD without the prior written consent of both Clarity and the End Receiver.

7. RISK

An ePRN shall remain at the risk of the Seller until the Seller transfers an ePRN to the name of End Receiver on the NPWD.

8. PRICE

8.1. The price of the ePRN shall be stated in the Purchase Order and unless otherwise agreed in writing by Clarity shall be exclusive of value added tax but inclusive of all other charges.

8.2. No variation in the price or extra charges shall be accepted by Clarity.

9. PAYMENT

9.1. Clarity shall pay the price of the ePRN in accordance with the payment terms specified in the Purchase Order, but time for payment shall not be of the essence of the Contract.

9.2. Without prejudice to any other right or remedy, Clarity reserves the right to set off any amount owing at any time from the Seller to Clarity against any amount payable by Clarity to the Seller under any Contract. If any sum under the Contract is not paid when due then, without prejudice to the parties’ other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Lloyds TSB Bank plc base rate from time to time. The Seller is not entitled to suspend the transfer of an ePRN as a result of any sums being outstanding.

10. CONFIDENTIALITY

10.1. The Seller shall not (except as authorised or required by law or as authorised by Clarity), either during its performance of the Contract or at any time after termination of the Contract (howsoever arising):

10.1.1. use any Confidential Information; or

10.1.2. disclose any Confidential Information to any person, company or other organisation whatsoever.

10.2. The restriction in condition 9.1 does not apply to any Confidential Information which is or becomes in the public domain other than through the Seller’s

unauthorised disclosure.

10.3. The Seller shall :

- 10.3.1. use its best endeavours to prevent the use or communication of any Confidential Information by any person, company or organisation (except in performance of its obligations under the Contract, as required by law or as authorised by Clarity); and
 - 10.3.2. inform Clarity immediately upon becoming aware, or suspecting, that any such person, company or organisation knows or has used any Confidential Information.
- 10.4. The Seller acknowledges that Clarity owns all Confidential Information and the Seller shall, at Clarity's written request, return all Confidential Information on the termination of the Contract.

11. TERMINATION

- 11.1. Clarity shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice and Clarity shall pay to the Seller fair and reasonable compensation for the Seller's management time expended in performance of the Contract subject to the maximum of amount being payable by Clarity to the Seller under this condition being £500 (five hundred pounds).
- 11.2. Clarity shall have the right at any time by giving notice in writing to the Seller to terminate the Contract immediately if:
 - 11.2.1. the Seller commits a material breach of any of the terms and conditions of the Contract;
 - 11.2.2. any distress, execution or other process is levied upon any of the assets of the Seller;
 - 11.2.3. the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller;
 - 11.2.4. the Seller ceases or threatens to cease to carry on its business; or
 - 11.2.5. the financial position of the Seller deteriorates to such an extent that in the opinion of Clarity the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Clarity accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

12. REMEDIES

- 12.1. Without prejudice to any other right or remedy which Clarity may have, if any ePRN is not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract, Clarity shall be entitled to avail itself of any one or more of the following remedies at its discretion:
 - 12.1.1. to rescind the Purchase Order; and/or
 - 12.1.2. at Clarity's option, (a) to allow the Seller, at its own cost and expense, to source and, subject to condition 11.2, supply a replacement ePRN and carry out any other necessary work to ensure that the terms of the Contract are fulfilled; or (b) to pay Clarity a sum equal to the cost of a replacement ePRN (as paid by Clarity to the third party for that replacement ePRN) together with an administration fee, the amount of which shall be calculated in accordance with condition 11.3; and/or
 - 12.1.3. to refuse to accept any further transfers of the ePRN to the End Receiver but without any liability to the Seller; and/or
 - 12.1.4. in the case of an ePRN which is cancelled by the Agency (even if it has been issued and accepted by the Agency) due to suspected or actual fraud, to require the Seller, at Clarity's option, to provide, at the Seller's cost and subject to condition 11.2, a replacement ePRN for the cancelled PRN, or to pay Clarity a sum equal to the cost of a replacement ePRN (as paid by Clarity to the third party for that replacement ePRN) together with an administration fee, the amount of which shall be calculated in accordance with condition 11.3; and/or
 - 12.1.5. to carry out at the Seller's expense any work necessary to ensure the ePRN complies with the Contract; and/or
 - 12.1.6. to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.
- 12.2. Where Clarity opts, under condition 11.1.2 or condition 11.1.4, to allow the Seller to provide a replacement ePRN, this shall be subject to the following conditions:
- 12.2.1. the Seller shall buy the replacement ePRN directly from an Accredited Reprocessor or an Accredited Exporter that Clarity, acting reasonably, considers meets its standards; and
 - 12.2.2. the origin of the replacement ePRN must be previously approved in writing by Clarity (for which email shall suffice), such approval not to be unreasonably delayed or withheld.
- 12.3. Where Clarity opts, under condition 11.1.2 or condition 11.1.4, to accept compensation from the Seller for a cancelled ePRN, the applicable administration fee shall be an amount equal to £10 multiplied by the tonnage stated on the relevant ePRN, capped at a maximum of £10,000. The Seller confirms that such administration fee is reasonable and proportionate in light of the time spent by Clarity in dealing with an ePRN cancelled by the Agency due to suspected or actual fraud.

13. LIMITATION OF LIABILITY

- 13.1. This condition sets out the entire financial liability of Clarity (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Seller in respect of:
 - 13.1.1. any breach of the Contract;
 - 13.1.2. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 13.2. Nothing in the Contract shall limit or exclude the liability of Clarity for:
 - 13.2.1. death or personal injury resulting from negligence; or

13.2.2. fraud or fraudulent misrepresentation.

- 13.3. Without prejudice to condition 12.2, Clarity shall not be liable to the Seller whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, loss or corruption of data or information, or special, indirect or consequential damage or loss suffered by the Seller that arises under or in connection with the Contract.
- 13.4. Without prejudice to condition 12.2 or condition 12.3, Clarity's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited as follows:
 - 13.4.1. for non-payment of invoices for ePRNs purchased, to the amount unpaid, and any interest due on such amount pursuant to condition 8.3;
 - 13.4.2. for termination pursuant to condition 10.1, to £500;
 - 13.4.3. for Clarity exercising its right to terminate pursuant to condition 14, to £500; or
 - 13.4.4. for any other type of liability, to £5,000.

14. COMPLIANCE: ANTI-BRIBERY, ANTI-CORRUPTION AND ANTI-SLAVERY

- 14.1. The Seller shall:
 - 14.1.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 14.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 14.1.3. have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - 14.1.4. notify Clarity (in writing) if it becomes aware of any breach of condition 13.1.1, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract; and
 - 14.1.5. immediately notify Clarity (in writing) if a foreign public official becomes an officer or employee of the Seller or acquires a direct or indirect interest in the Seller and the Seller warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Contract).
- 14.2. For the purpose of condition 13.1, the meaning of **adequate procedures** and **foreign public official** and whether a person is **associated** with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of Condition 13.1, a person associated with the Seller includes but is not limited to any subcontractor of the Seller.
- 14.3. In performing its obligations under the Contract, the Seller shall:
 - 14.3.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - 14.3.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 14.3.3. include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in Conditions 13.3 and 13.4;
 - 14.3.4. notify Clarity as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract;
 - 14.3.5. maintain a complete set of records to trace the supply chain of all ePRNs provided to Clarity in connection with the Contract; and permit Clarity and its third party representatives to inspect the Seller's premises, records, and to meet the Seller's personnel to audit the Seller's compliance with its obligations under this condition 13.3.
- 14.4. The Seller represents and warrants that at the date of the Contract it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 14.5. A breach of this condition 13 shall be deemed a material breach under condition 10.2.1.

15. ASSIGNMENT

- 15.1. The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of Clarity.
- 15.2. Clarity may assign the Contract or any part of it to any person, firm or company.

16. FORCE MAJEURE

Clarity reserves the right to defer the Due Date or date of payment or to cancel the Contract or reduce the volume of the ePRNs ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Clarity including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), the insolvency or bankruptcy of the End Receiver, or restraints or delays affecting carriers.

17. COMMUNICATIONS

- 17.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or e-mail:
 - 17.1.1. (in case of communications to Clarity) to its registered office or such changed address as shall be notified to the Seller by Clarity; or
 - 17.1.2. (in the case of the communications to the Seller) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Seller set out in any document which forms part of the Contract or such other address as shall be notified to Clarity by the Seller.
- 17.2. Communications shall be deemed to have been received:
 - 17.2.1. if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or
 - 17.2.2. if delivered by hand, on the day of delivery; or
 - 17.2.3. if sent by fax or e-mail on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.
- 17.3. Communications addressed to Clarity shall be marked for the attention of David Honcoop.

18. GENERAL

- 18.1. Each right or remedy of Clarity under the Contract is without prejudice to any other right or remedy of Clarity whether under the Contract or not.
- 18.2. 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.
- 18.3. Failure or delay by Clarity in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 18.4. Any waiver by Clarity of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.5. 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.
- 18.6. The Contract shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

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