

CLARITY ENVIRONMENTAL LIMITED
STANDARD TERMS AND CONDITIONS FOR THE SALE OF ePRNs (V 1.1)
(BINDING OFFER TO BUY)

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

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

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

ADR Notice: has the meaning given in clause 13.1.

Agency: means The Environment Agency, Scottish Environment Protection Agency or The Northern Ireland Environment Agency or any successor to the same.

Clarity: Clarity Limited, a company incorporated in England and Wales with company number 04559478 whose registered office is at 10 Hunns Mere Way, Woodingdean Business Park, Brighton, East Sussex BN2 6AH.

“Awaiting Acceptance” ePRN: an ePRN that an Accredited Exporter or an Accredited Reprocessor has authorised but is yet to be accepted by the Buyer on the NPWD.

“Awaiting Authorisation” ePRN: a printed copy of the ePRN that is the subject of the Contract prior to an Accredited Exporter’s or an Accredited Reprocessor’s final issuance or authorisation of Transfer of such ePRN to the Buyer.

Binding Offer: the written binding offer sheet which specifies the details of the Buyer’s offer to buy the ePRN.

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

Buyer: the person, firm or company who buys the ePRN that is the subject of the quotation from Clarity and who is more particularly identified as such in the quotation.

Conditions: means Clarity’s Standard Terms And Conditions For The Sale Of ePRNs (V1.1) (Binding Offer To Buy).

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 contract formed between the Buyer and Clarity when Clarity notifies the Buyer that it has sourced the ePRN.

Dispute: has the meaning given in clause 13.1.

Dispute Notice: has the meaning given in clause 13.1.

ePRN: means any electronic packaging recovery notes or electronic packaging export recovery notes issued by an Accredited Reprocessor or Accredited Exporter and which the Buyer has agreed to buy, and Clarity has agreed to sell, under the Contract.

ePRN Reference Number: the unique reference number the Accredited Exporter or Accredited Reprocessor makes available for download on issuance of the ePRNs to the Buyer.

NPWD: the National Packaging Waste Database 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.

Transfer: transfer of the ePRN into the Buyer’s name on the NPWD.

Transfer Date: the date for Transfer as specified in the Binding Offer.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 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.

1.3 A reference to one gender includes a reference to the other gender and words in the singular include the plural and vice versa.

1.4 Condition headings do not affect the interpretation of these Conditions.

1.5 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.

1.6 Words in the singular include the plural and vice versa.

2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3 these Conditions are the only conditions upon which Clarity is prepared to deal with the Buyer and they shall govern the Contract to the exclusion of all other terms and conditions.

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all Clarity’s sales and any variation to these Conditions and any representations about the ePRN shall have no effect unless expressly agreed in writing and signed by a director of Clarity. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Clarity which is not set out in the Contract.

2.4 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.5 Any typographical, clerical or other error or omission in any sales literature, Binding Offer, price list, acceptance of offer, invoice or other documents or information prepared or issued by Clarity shall be subject to correction without any liability on Clarity’s part.

3. DESCRIPTION

The quantity and description of the ePRN shall be as set out in the Binding Offer.

4. TRANSFER OF ePRN(s)

4.1 Clarity shall use its reasonable endeavours to provide the Buyer with either a copy of an “Awaiting Authorisation” ePRN or a copy of a Partially Completed ePRN prior to the Transfer Date.

4.2 On the Transfer Date or shortly prior to Transfer, Clarity shall:

4.2.1 notify the Buyer of the ePRN Reference Number; or

4.2.2 confirm details of the “Awaiting Acceptance” ePRN.

4.3 It shall be the Buyer’s sole responsibility to accept an “Awaiting Acceptance” ePRN.

4.4 Any Transfer Date specified by Clarity is intended to be an estimate and time for Transfer shall not be made of the essence by notice. Clarity may request that an Accredited Exporter or Accredited Reprocessor Transfers the ePRN to the Buyer in advance of the Transfer Date. If no Transfer Date is so specified, Transfer shall be within a reasonable time.

4.5 Any delay in the Transfer of the ePRN (even if caused by Clarity’s negligence) shall not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days from the date Clarity receives payment in accordance with clause 7.2.

4.6 Clarity may arrange for Transfer of ePRNs by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.7 If Clarity fails to arrange for Transfer of an ePRN (or any instalment of ePRNs) for any reason (other than any reason beyond Clarity’s reasonable control or the Buyer’s fault) and Clarity is accordingly liable to the Buyer, Clarity’s liability shall be limited in accordance with Condition 9.4.3.

4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.9 The Buyer shall not reject an ePRN on the NPWD without the prior written consent of both Clarity and the relevant Accredited Exporter or Accredited Reprocessor.

5. RISK/OWNERSHIP

5.1 Upon Transfer, risk in an ePRN shall pass to the Buyer.

5.2 Notwithstanding Transfer, the beneficial ownership of the ePRN’s shall not pass to the Buyer until Clarity has received, in accordance with Condition 7, the full price of the ePRN.

5.3 Until such time as the beneficial ownership of the ePRN passes to the Buyer,

5.3.1 the Buyer shall hold the ePRN on a fiduciary basis as Clarity’s trustee; and

5.3.2 (provided the Buyer has not resold the ePRN’s), Clarity may at any time on giving the Buyer written notice require the Buyer to re-transfer the ePRN into the name of the issuing account on the NPWD.

5.4 The Buyer may resell the ePRNs before beneficial ownership has passed to it solely on the following conditions:

5.4.1 any sale shall be effected in the ordinary course of the Buyer’s business at the full market value;

5.4.2 any such sale shall be a sale of Clarity’s beneficial property on the Buyer’s behalf and the Buyer shall deal as principal when making such a sale; and

5.4.3 Clarity shall be entitled to the proceeds of any such sale and shall immediately pay such proceeds to Clarity on demand.

5.5 The Buyer’s right to legal title in the ePRN on the NPWD shall terminate immediately:

5.5.1 on the occurrence of any of the events outlined in Conditions 8.2.1 to 8.2.5 inclusive; or

5.5.2 if the Buyer encumbers or in anyway charges any of the ePRN.

5.6 Clarity shall be entitled to recover payment for the ePRN notwithstanding beneficial ownership of any of the ePRN has not passed from Clarity.

5.7 On termination of the Contract, howsoever caused, Clarity’s (but not the Buyer’s) rights contained in this Condition 5 shall remain in effect.

6. PRICE

6.1 Unless otherwise agreed by Clarity in writing, the price for the ePRN shall be the price set out in the Binding Offer.

6.2 The price indicated in the Binding Offer shall be exclusive of any VAT or similar sales tax. The Buyer shall be liable for payment of these additional charges to Clarity.

7. PAYMENT

7.1 Subject to Condition 7.4, the Buyer shall pay the price for the ePRN in accordance with the payment terms specified in the Binding Offer. Time for payment shall be of the essence.

7.2 The Buyer shall make payment by bank transfer (or any other guaranteed method of payment), credit card or cheque. No payment shall be deemed to have been received until Clarity has received cleared funds.

7.3 All payments payable to Clarity under the Contract shall become due immediately on its termination despite any other provision.

7.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Clarity to the Buyer.

7.5 If the Buyer fails to pay Clarity any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to Clarity on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. Clarity reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

- 8. TERMINATION**
- 8.1** Clarity shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Buyer written notice whereupon all work in relation to the Contract shall be discontinued and Clarity shall, subject to Condition 9.4.1, pay to the Buyer fair and reasonable compensation for the Buyer's management time expended in performance of the Contract.
- 8.2** Clarity shall have the right at any time by giving notice in writing to the Buyer to terminate the Contract immediately if:
- 8.2.1** the Buyer commits a material breach of any of the terms and conditions of the Contract;
- 8.2.2** any distress, execution or other process is levied upon any of the assets of the Buyer;
- 8.2.3** the Buyer (being a natural person) 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 Buyer or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
- 8.2.4** the Buyer ceases or threatens to cease to carry on its business; or
- 8.2.5** the financial position of the Buyer deteriorates to such an extent that in the opinion of Clarity the capability of the Buyer adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3** 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.
- 9. LIMITATION OF LIABILITY**
- 9.1** Save for Condition 4.5, the following provisions set out the entire financial liability of Clarity (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 9.1.1** any breach of the Contract; and
- 9.1.2** any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3** Nothing in these Conditions excludes or limits the liability of Clarity:
- 9.3.1** for death or personal injury caused by Clarity's negligence;
- 9.3.2** for any matter which it would be illegal for Clarity to exclude or attempt to exclude its liability; or
- 9.3.3** for fraud or fraudulent misrepresentation.
- 9.4** Subject to Condition 9.2 and Condition 9.3, Clarity's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited as follows:
- 9.4.1** for termination pursuant to Condition 8.1, to £500;
- 9.4.2** for Clarity exercising its right to terminate pursuant to Condition 12, to £500; or
- 9.4.3** for any other type of liability;
- (a) to the excess (if any) of the cost to the Buyer to obtain a similar ePRN (in the cheapest available market) over the Contract price (as indicated in the Binding Offer); or
- (b) if the Buyer can demonstrate to Clarity's satisfaction that no suitable substitute ePRN is available to it, to the Contract price (as indicated in the Binding Offer),
- and, in either case, Clarity shall repay to the Buyer any sums paid to Clarity by it under the Contract.
- 9.5** Clarity shall not be liable to the Buyer for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10. ASSIGNMENT AND SUB-CONTRACTING**
- 10.1** The Buyer shall not be entitled to assign or transfer or sub-contract any of its rights, benefits or obligations under the Contract without the prior written consent of Clarity.
- 10.2** Clarity may assign or transfer or sub-contract any of its rights, benefits or obligations under the Contract.
- 11. CONFIDENTIALITY**
- 11.1** The Buyer 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):
- 11.1.1** use any Confidential Information; or
- 11.1.2** disclose any Confidential Information to any person, company or other organisation whatsoever.
- 11.2** The restriction in Condition 11.1 does not apply to any Confidential Information which is or becomes in the public domain other than through the Buyer's unauthorised disclosure.
- 11.3** The Buyer shall:
- 11.3.1** 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
- 11.3.2** inform Clarity immediately upon becoming aware, or suspecting, that any such person, company or organisation knows or has used any Confidential Information.
- 11.4** The Buyer acknowledges that Clarity owns all Confidential Information and the Buyer shall, at Clarity's written request, return all Confidential Information on the termination of the Contract.
- 12. FORCE MAJEURE**
- Clarity reserves the right to defer the Transfer Date or to cancel the Contract or reduce the volume of the ePRNs ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond Clarity's reasonable control 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), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable ePRNs, provided that, if the event in question continues for a continuous period in excess of 90 days from the date Clarity receives payment in accordance with 7.2, the Buyer shall be entitled to give notice in writing to Clarity to terminate the Contract.
- 13. DISPUTE RESOLUTION PROCEDURE**
- 13.1** If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (a "Dispute") then, except as expressly provided in these Conditions, the parties shall follow the dispute resolution procedure set out in this Condition:
- 13.1.1** either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documentation. On service of the Dispute Notice a director of Clarity and a director of the Buyer shall attempt in good faith to resolve the Dispute;
- 13.1.2** if the parties' respective directors are for any reason unable to resolve the Dispute within 60 days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (an "ADR Notice") to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by Clarity.
- 13.2** The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings.
- 14. COMMUNICATIONS**
- 14.1** 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:
- 14.1.1** (in case of communications to Clarity) to its registered office or such changed address as shall be notified to the Buyer by Clarity; or
- 14.1.2** (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to Clarity by the Buyer.
- 14.2** Communications shall be deemed to have been received:
- 14.2.1** if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or
- 14.2.2** if delivered by hand, on the day of delivery; or
- 14.2.3** 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.
- 14.3** Communications addressed to Clarity shall be marked for the attention of David Adams.
- 15. GENERAL**
- 15.1** 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.
- 15.2** 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.
- 15.3** 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.
- 15.4** Any waiver by Clarity of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5** At its own expense, the Buyer shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as Clarity may require for the purpose of giving full effect to the Contract.
- 15.6** 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.
- 15.7** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.