

EUROPEAN METAL RECYCLING LIMITED

TERMS AND CONDITIONS FOR THE PURCHASE OF SCRAP METAL – DECEMBER 2020

1 INTERPRETATION

- 1.1 Definitions:
Claim: a claim against EMR by a Supplier whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or otherwise.
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.5.
Contract: each contract between EMR and a Supplier for the sale of Material to EMR.
EMR: European Metal Recycling Limited (registered in England and Wales with company number 02954623).
Material: ferrous and/or non-ferrous scrap metal or other material of the type set out in the Specification.
Specification: any specification for Material that is agreed between EMR and the Supplier.
Supplier: the person or firm from whom EMR purchases Material, where purchase includes EMR taking title to the Material but imposing a charge for receipt rather than making a payment.

2 BASIS OF CONTRACT

- 2.1 These Conditions shall govern and apply to every offer, quotation, acceptance and contract for sale between EMR and any Supplier 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 All quotations or offers to purchase made by EMR or on its behalf are subject to these Conditions and are given subject to confirmation by EMR in writing or otherwise at EMR's discretion and no contract shall be concluded until such confirmation is given. Any quotation given by EMR is valid only on the date given unless otherwise indicated in the quotation and is provided on the basis of the exclusive purchase of the Material from the Supplier.

3 QUALITY OF MATERIAL

- 3.1 The Supplier shall ensure that all Material shall correspond with its description and any applicable Specification.
- 3.2 The Supplier shall, as far as reasonably practicable, keep different grades of Material separate and free from contamination with other material.
- 3.3 EMR shall be entitled to refuse to collect or accept delivery of any Material:
- which EMR considers may be toxic, poisonous, explosive, radioactive or otherwise dangerous;
 - the handling of which would cause EMR to incur any civil or criminal penalty;
 - which has been inaccurately described by the Supplier;
 - which contains excessive amounts of dirt, pollutants or foreign matter of any kind, excessive oil, grease, rust or corrosion.
- 3.4 Where the Supplier does not comply with clause 3.1 or 3.2, in the event of clause 3.3, EMR shall be entitled to reject the Material or to accept the Material but recover all resultant losses, costs and expenses from the Supplier and accordingly EMR may make such adjustment to the price or deduction from amounts due to the Supplier for the Material as shall be fair and reasonable.
- 3.5 In order to cover the associated costs of sorting, storage and disposal, EMR shall charge the Supplier £200 per cylinder (or such other charge as may be advised from time to time by EMR) for all cylinders

(including gas cylinders and fire extinguishers) included within the Material.

4 COLLECTION & DELIVERY

- 4.1 Delivery shall be at EMR's premises unless otherwise stipulated or agreed by EMR.
- 4.2 EMR will endeavour to admit the Supplier's vehicles promptly to its sites, but shall not be liable for any delays or waiting time which may occur. Vehicles will only be admitted during the site's normal working hours.
- 4.3 In any of the following circumstances, EMR may refuse entry to the Supplier's vehicle, expel any Supplier's vehicle from site, quarantine any Supplier's vehicle on site pending instructions from the emergency or waste regulatory authorities or refuse to accept any material from any Supplier's vehicle:
- the Supplier's vehicle fails to report to the weighbridge immediately upon entering an EMR site;
 - the Supplier's driver or other personnel fails to provide all the information requested by EMR's personnel;
 - the Supplier's vehicle is not suitable for the purpose intended or is not safely and securely loaded;
 - the Supplier's vehicle is not operated in accordance with EMR's directions or its driver and any other personnel do not act on such directions or in compliance with all rules and regulations applicable to that site;
 - EMR reasonably considers that acceptance of any Material from the Supplier's vehicle might place at risk any person, vehicle, equipment or property.
- 4.4 Where it is agreed that EMR shall collect Material from a Supplier's premises:
- it is the Supplier's obligation to ensure that EMR and the drivers of EMR's vehicles are informed of any hazard and of any rules relevant to safety and conduct on the Supplier's premises; ;
 - any collection dates quoted in EMR documentation are estimates only and not of any contractual effect and, whilst every effort is made to collect or deliver on time, time is not of the essence and EMR will be under no obligation to the Supplier for failure to collect on time;
 - the Supplier warrants that EMR will be provided with access and all necessary facilities at the Supplier's premises to enable EMR to collect Material safely and the Supplier shall be responsible for the safety of any person including the employees and agents of EMR whilst on the Supplier's premises;
 - where the waiting time of any one of EMR's vehicles exceeds 30 minutes from arrival of the vehicle on the Supplier's premises, or where EMR is unable to collect Material due to delays or impediments caused by the Supplier, an additional charge will be made by EMR;
 - EMR does not undertake to collect Material over roads or ground which EMR considers to be unsuitable. Where collection is from a place situated off a public road or where the Supplier undertakes the loading of Material, the Supplier shall indemnify and hold EMR harmless against any losses, costs, damages, claims or expenses which EMR may thereby incur whether as a result of damage to a vehicle, EMR equipment, the property of the Supplier or a third party including damage to the road margin and pavement provided that this

clause shall not operate to exclude liability for death or personal injury caused by the negligence of EMR;

- EMR reserves the right to sub-contract the collection of Material;
- the Supplier shall ensure that damage is not caused to EMR's vehicles whilst on the Supplier's premises, including damage caused by loading or overloading and the Supplier shall be liable for any such damage caused in breach of this provision;
- the Supplier shall ensure that all EMR's vehicles leave the Supplier's premises with all appropriate documentation complete and correct in accordance with all applicable laws and regulations;
- save where agreed in writing by EMR, EMR shall not supply any labour for the loading of the Material.

5 EMR EQUIPMENT

- 5.1 Where EMR provides to the Supplier skips, containers, bins, weighing scales or other equipment for the collection of Material ("Equipment") all such Equipment shall at all times remain the property of EMR and can be removed by EMR at any time, with the right to enter the Supplier's site for this purpose. The Equipment must not be removed from the Supplier's site other than by EMR, or used by any third parties. EMR may at any time change the type of Equipment provided to the Supplier by replacing it with a reasonable alternative.
- 5.2 The Equipment shall be deemed to be in good working order and condition and fit for the Supplier's purpose (except for defects not discoverable by a reasonable examination) except to the extent that the Supplier has notified EMR to the contrary within three working days of the delivery of the Equipment to the Supplier.
- 5.3 The Supplier shall secure the Equipment and any material within it against damage, theft, vandalism or scavenging. The Supplier is liable for and will indemnify EMR against any loss or damage to the Equipment (other than ordinary wear and tear).
- 5.4 In the event that container doors are opened whilst on the Supplier's site, the Supplier shall ensure that the container is loaded in such a way, and sufficient clearance is left around the container, in order to allow the doors to be closed prior to collection.
- 5.5 In the event that the Supplier does or allows to be done, any of the following then EMR may charge the Supplier for any cost it incurs:
- overload, overfill or otherwise unsafely load the Equipment;
 - place in the Equipment any material other than the Material set out in a Contract;
 - set fire to the Equipment or its contents;
 - damage or interfere with any mechanism of the Equipment;
 - add or attach any painting, sign, writing, lettering or advertising to the Equipment;
 - remove, deface or conceal any name plate or mark identifying the Equipment as the property of EMR.

6 TITLE AND RISK

- 6.1 The Supplier warrants that it has title to the Material.
- 6.2 Title and risk in Materials shall pass to EMR on completion of delivery or, where Material is collected, upon collection by EMR or its agent. Provided that EMR shall be entitled to reject or refuse to deal with any Material in accordance with clause 3.4, in which case title shall be deemed to have remained with the Supplier and not passed to EMR.
- 6.3 Title to any property (including personal effects) contained in the Material shall pass to EMR. EMR is not bound to return any such property nor is it liable for its loss or damage.

EUROPEAN METAL RECYCLING LIMITED
TERMS AND CONDITIONS FOR THE PURCHASE OF SCRAP METAL – DECEMBER 2020

7 PRICE AND PAYMENT

- 7.1 Save where otherwise agreed in writing by EMR, the price for Material shall be the prevailing price offered by EMR in force as at the date the relevant Material is collected or received by EMR.
- 7.2 In the event of a dispute as to the weight of Material collected or received by EMR, the weights recorded at EMR's weighbridges or receiving works shall be final and binding.
- 7.3 The price of Materials excludes amounts in respect of value added tax (VAT), which EMR shall additionally be liable to pay to the Supplier at the prevailing rate, subject to receipt by EMR of a valid VAT invoice.
- 7.4 The Supplier shall invoice EMR for the price of Materials net of any collection charge due in accordance with clause 7.5 plus, where applicable, VAT at the prevailing rate on completion of delivery or within six months thereafter. In the event that the Supplier fails to raise an invoice for Material within such six month period, EMR shall cease to be under any obligation to pay for the relevant Material. The Supplier shall ensure that all invoices include the Supplier's VAT registration number (if applicable) and any supporting documents that EMR may reasonably require.
- 7.5 Where EMR collects Material from a Supplier's premises, EMR shall make a charge for each collection made, save as agreed otherwise in writing by EMR. Where EMR has agreed that the price of Materials is inclusive of the collection charge, then in the event that the weight of any load of Material collected in the Equipment is less than the relevant minimum load weight, then EMR shall be entitled to adjust the price on a fair and reasonable basis to recover any additional costs it has incurred. Unless otherwise included in EMR's quotation or offer, the following minimum load weights shall apply:
- 500 kilogrammes for any stillage container,
 - 1.0 tonnes for a chainlift skip
 - 2.0 tonnes for a hooklift container
- 7.6 EMR may adjust the price on a fair and reasonable basis to recover any additional costs it has incurred as a result of a change in law or other governmental decision.
- 7.7 Unless otherwise agreed EMR shall pay correctly rendered invoices net monthly. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.8 EMR may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to EMR against any liability of EMR to the Supplier.
- 7.9 The Supplier must pay all charges or other sums invoiced by EMR together with VAT within 30 days of the date of the invoice. The Supplier may not withhold payment of any invoice or other amount due to EMR by reason of any right of set off or counterclaim which the Supplier may have or allege to have.
- 7.10 If the Supplier fails to make any payment on the due date, then without prejudice to any other right or remedy EMR may:
- a charge interest on unpaid invoice sums at a rate of 4% per annum above the base rate of HSBC Bank plc; and/or
 - b refuse to receive deliveries or make collections of Material until all overdue invoices have been paid in full.

8 LIABILITY & INDEMNITY

- 8.1 EMR shall not in any circumstances whatsoever be liable to the Supplier for any indirect or consequential loss of any kind whatsoever (including, without limitation, loss of profit, market or goodwill) suffered by the

- 8.2 The Supplier shall keep EMR 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 EMR as a result of or in connection with any claim made against EMR by a third party arising out of or in connection with the supply of Materials, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of any Contract by the Supplier, its employees, agents or subcontractors.
- 8.3 Without prejudice to clause 8.1, EMR's total liability arising under or in connection with each Claim or series of connected Claims shall in all circumstances be limited to the sum of £5,000.

9 COMPLIANCE WITH LAWS

- 9.1 In performing their respective obligations under a Contract each of the Supplier and EMR shall at all times comply with all applicable laws and regulations.

10 TERMINATION

- 10.1 EMR may terminate a Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on such Contract.
- 10.2 Without limiting its other rights or remedies, EMR may terminate a Contract with immediate effect by giving written notice to the Supplier if:
- a the Supplier commits a material breach of any term of such 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;
 - 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;
 - 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;
 - 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 EMR's opinion the Supplier's capability to adequately fulfil its obligations under such Contract has been placed in jeopardy.
- 10.3 Termination of a Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 10.4 Clauses that expressly or by implication survive termination of a Contract shall continue in full force and effect.

11 GENERAL

- 11.1 Assignment and other dealings
- a EMR 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 a 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 a Contract without the prior written consent of EMR.
- 11.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under a Contract without the prior written consent of EMR. If EMR consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 11.3 **Force majeure.** Neither party shall be in breach of a Contract nor 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. General.
- 11.4 **Entire agreement.** A 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.
- 11.5 **Variation.** Except as set out in these Conditions, no variation of a Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by EMR.
- 11.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- a waive that or any other right or remedy; or
 - b prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** If any provision or part-provision of a 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.
- 11.8 **Third party rights.** No one other than a party to this agreement and their permitted assignees shall have any right to enforce any of its terms.
- 11.9 **Governing law.** Each Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).