

RECYCLING IN ACTION

sale

Recycling in Action Limited

General terms and conditions of sale

1 **Interpretation**

In these Conditions (unless the context otherwise requires) the following terms have the meanings set out below:

- 1.1 “**Acceptance of Order**” means the seller’s acceptance of an Order;
- 1.2 “**the Buyer**” means the person who agrees to purchase the Goods from the Seller subject to these Conditions;
- 1.3 “**these Conditions**” means the terms and conditions of sale set out in this document;
- 1.4 “**the Contract**” means the agreement between the Seller and the Buyer for the sale and purchase of the Goods;
- 1.5 “**the Delivery Address**” means the address for delivery of the Goods which shall be the Buyer’s principal place of business unless specified overleaf;
- 1.6 “**the Estimated Delivery Date**” means the date on which the Seller estimates that the Goods will be delivered which may be set out overleaf;
- 1.7 “**the Goods**” means the goods which the Seller is to supply to the Buyer in accordance with these Conditions;
- 1.8 “**the Order**” means an order from the Buyer to the Seller for Goods;
- 1.8 “**the Seller**” means Recycling in Action Limited whose principal place of business is at Coleby House, The Water Mill Park, Broughton Hall, Skipton, North Yorkshire, BD23 3AG;
- 1.9 “**Writing**” includes telex, cable, facsimile transmission, electronic mail and comparable means of communication.

2 **Basis of sale**

- 2.1 These Conditions apply to all contracts for the sale of goods entered into by the Seller. By placing an order with the Seller or accepting the Seller’s quotation, the Buyer agrees to deal with the Seller on these Conditions to the exclusion of all other terms, conditions, warranties or representations with the exception of any terms specified in Writing overleaf.
- 2.2 No variation to these Conditions shall be binding unless made in Writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Buyer and the Seller.
- 2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed. The Buyer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.

- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller 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, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 **Orders and specifications**

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by an Acceptance of Order from the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Acceptance of Order.
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods provided by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation
- 3.7 The Buyer shall at its own expense supply the Seller with all necessary data and other information to enable the Seller to perform the Contract. The Buyer shall ensure the accuracy of all data and information.

4 **Delivery**

- 4.1 The Seller shall use its reasonable efforts to deliver the Goods to the Buyer at the Delivery Address on or around the Estimated Delivery Date, but time of delivery shall not be of the essence.
- 4.2 The Seller shall be entitled to deliver the Goods in instalments in which case each instalment shall be treated as an entirely separate contract and any default or breach by the Seller in respect of any such instalment shall not entitle the Buyer to cancel any other instalment or treat the Contract as a whole as repudiated.
- 4.3 If the Goods are damaged on delivery or less than the correct amount of the Goods is delivered, then unless the Buyer notifies the Seller and the carrier (otherwise than by a note on the delivery note) within two days of delivery no claim against the Seller may be made in respect of damage to or short delivery of such Goods.
- 4.4 If the Goods have not been delivered despite receipt by the Buyer of the invoice from the Seller relating to them, then unless the Buyer notifies the Seller within seven days after the date of such invoice no claim against the Seller may be made in respect of non-delivery of those Goods.
- 4.5 The Buyer shall be deemed to accept the Goods on delivery notwithstanding any late delivery by the Seller.
- 4.6 Failure by the Buyer to pay for part delivery of Goods when payment is due shall entitle the Seller to withhold further delivery of Goods.

- 4.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions before the Estimated Delivery Date, then, without prejudice to any other right or remedy available to the Seller, the Seller may:-
- 4.7.1 store the Goods until actual delivery is made and charge the Buyer for the costs (including insurance) of storage; and/or
 - 4.7.2 sell or supply the Goods (whether or not such Goods were manufactured or marked by the Seller pursuant to the provisions of clause 3.4 above) in or to a third party in any country at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract
- and in either case shall be entitled to charge interest (both before and after any judgment) on the price payable for the Goods under the Contract at 4% over the base rate from time to time of Bank of England from the Estimated Delivery Date to the date of actual delivery.

5 **Installation**

- 5.1 If specified overleaf or in the relevant quotation or the Seller's standard documentation for the Goods that the Seller is to install the Goods then, as soon as reasonably possible after their delivery, the Seller shall install them at the Delivery Address.
- 5.2 The Buyer shall give full access to the Delivery Address to the Seller for the purpose of installing the Goods, shall undertake any preparatory work specified by the Seller overleaf, in the relevant quotation or in the Seller's standard documentation and shall compensate the Seller for any additional costs which the Seller incurs by reason of the Buyer's failure properly to undertake any such preparatory work.
- 5.3 The Seller shall procure that its employees who install the Goods comply with all reasonable safety, security and other regulations which are in force or apply at the Delivery Address and the Buyer shall indemnify the Seller against any loss which the Seller may suffer or incur as a result of any injury to its employees or damage to or loss of its property whilst at the Delivery Address resulting from anything other than the negligence of the Seller or its employees or any non-compliance by the Goods with the warranty set out in clause 7 below.

6 **Prices and payment**

- 6.1 The price of the Goods shall be the price set out overleaf or, if not specified, the price quoted by the Seller or, if not specified and no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of the Contract. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time the Seller may alter them without giving notice to the Buyer.
- 6.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 6.3 Unless otherwise stated overleaf or under the terms of any quotation or in any price list of the Seller, all prices are given by the Seller on an ex works basis, and the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance together with any additional expenses, licence fees or duties paid or incurred by the Seller as a result of the Delivery Address not being in the UK.
- 6.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

- 6.5 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for all amounts due under the Contract on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongly fails to take delivery of them, in which case the Seller shall be entitled to invoice the Buyer at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.6 The Buyer shall pay the price of the Goods (without any deduction or right of set off whatsoever) within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.7 All payments shall be applied to invoices and to Goods listed in such invoices in the Order determined in its discretion by the Seller.
- 6.8 If full payment is not received by the Seller by the due date then without prejudice to its rights the Seller shall be entitled:-
- 6.8.1 to sue for the entire price; and/or
 - 6.8.2 appropriate any payment made by the Buyer to such of the Goods and for Services (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or
 - 6.8.3 to charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of Bank of England on the outstanding balance; and/or
 - 6.8.4 to require the immediate return to the Seller of all goods agreed to be sold by the Seller to the Buyer in which the property has not passed to the Buyer in accordance with the provisions of clause 9 below and the Buyer hereby agrees to reimburse to the Seller upon demand the Seller's costs or expenses in recovering such goods.

7 **Warranty and liability**

- 7.1 The Seller warrants that the Goods will correspond with any specifications set out overleaf or in the Seller's quotation or in the Seller's standard documentation at the time of delivery and will be free from defects in material for a period of 30 days from the date of delivery **PROVIDED THAT:-**
- 7.1.1 the Seller shall be under no liability in respect of any defects in the Goods arising from any drawing, design or specifications supplied by the Buyer;
 - 7.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Buyer or persons using the Goods, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), or misuse or alteration or repair of the Goods without the Seller's approval;
 - 7.1.3 the Seller shall be under no liability if the total price of the Goods has not been paid by the due date for payment;
 - 7.1.4 any such defect in or failure to meet any such specification by the Goods shall be notified to the Seller in Writing as soon as reasonably possible after the Buyer discovers such defect or non-conformity; and
 - 7.1.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller and which the Seller hereby assigns to the Buyer so far as it is able.

- 7.2 In the event of any valid claim under clause 7.1 above being made by the Buyer, the Seller shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price as appropriate) but the Seller shall have no further liability to the Buyer.
- 7.3 There are no warranties, conditions, guarantees or representations as to quality or fitness for a particular purpose of the Goods or other warranties, conditions, guarantees or representations whether express or implied, oral or in Writing, except as expressly stated in the Contract.
- 7.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (or their use or resale by the Buyer) and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods except as expressly provided in these Conditions.
- 7.5 Except pursuant to sub-clause 7.4 above, no action, regardless of form, arising out of the transactions under the Contract may be brought by the Buyer more than two years after the cause of action has accrued.

8 **Third party rights**

- 8.1 The Seller shall at its expense defend any action against the Buyer and pay all damages and costs awarded against the Buyer (except to the extent that the Buyer is entitled to recover such sums under any policy of insurance) based on a claim that any of the Goods constitute an infringement of any patent or copyright or other intellectual property rights of the United Kingdom or misuse any confidential information belonging to any third party ("a Claim") **PROVIDED THAT:-**
- 8.1.1 the Seller shall be notified promptly in Writing by the Buyer of any notice of a Claim;
- 8.1.2 the Seller shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise;
- 8.1.3 the Buyer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action; and
- 8.1.4 the Buyer shall take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.
- 8.2 If a Claim is successful or the Seller considers that it is likely to be successful, the Seller may, at its option or as part of a settlement or compromise, procure for the Buyer the right to continue using the Goods, modify the Goods so that they are non-infringing or terminate the Contract in so far as it applies to those Goods subject to the Claim, in which latter case the Seller shall refund to the Buyer the price paid for such Goods less depreciation on a straight line basis over the life of the Goods as determined by the Seller.
- 8.3 In no event shall the Seller have any liability under this clause with respect to any claim based on the use of the Goods in combination with any other product or equipment not supplied by the Seller.
- 8.4 This clause states the entire obligation and liability of the Seller with respect to infringement of intellectual property rights and misuse of confidential information.

9 **Risk and title**

- 9.1 Risk of loss of or damage to the Goods shall pass to the Buyer on delivery and the Buyer shall insure the Goods from that time until ownership of and title to them passes to the Buyer.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods to the Buyer, or any other provisions of this agreement, ownership of and title to the Goods shall not pass to the Buyer and shall be retained by the Seller until the Seller has received in cash or cleared funds payment in full of the price of the Goods and of the price of any other goods supplied to the Buyer by the Seller at any time whether or not the price has become due.

- 9.3 If any of the Goods owned by the Seller is incorporated into other goods and is not identifiable in and separable from the resulting composite or mixed goods, title to the resulting composite or mixed goods shall vest in the Seller and shall be retained by the Seller for so long as and on the same terms as those on which it would have retained title to the Goods in question.
- 9.4 Until ownership of and title to all goods owned by the Seller passes to the Buyer, the Buyer shall hold the goods in the Buyer's possession or control as the Seller's fiduciary agent and bailee and shall keep them separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. The Buyer shall be entitled to resell or use such goods in the ordinary course of its business but shall account to the Seller for the entire proceeds of sale or otherwise of such goods whether tangible or intangible, including insurance proceeds, and shall keep all such amounts separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. The Buyer shall maintain records of the persons to whom it sells or disposes of such goods and of the payments made by such persons for such goods and will allow the Seller to inspect those records and the goods themselves on request. The Seller shall be entitled to trace the proceeds of sale or otherwise of such goods.
- 9.5 For the avoidance of doubt, the Goods, all other goods supplied to the Buyer by the Seller and all goods into which the Goods or such other goods have been incorporated which are in the Buyer's possession shall be presumed to belong to the Seller unless the Buyer can prove otherwise.
- 9.6 Until ownership of and title to any goods owned by the Seller passes to the Buyer (and providing the goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up such goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where such goods are stored and repossess them. The Buyer shall procure that any third party which holds such goods shall permit the Seller to take possession of them and shall indemnify the Seller against any liability which it may incur to such third party in connection with taking or attempting to take possession of them. The Seller shall be entitled to use or dispose of such goods as it wishes. Unless the Seller expressly elects otherwise any contract between it and the Buyer for the supply of the Goods shall remain in existence notwithstanding any exercise by the Seller of any of its rights under this clause.
- 9.7 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any goods which remain the property of the Seller, but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

10 **Laws and regulations**

The Buyer shall comply with all laws and regulations relating to the ownership and use of the Goods including health and safety requirements and export control legislation.

11 **Termination**

- 11.1 The Seller shall be entitled to terminate the Contract forthwith by notice in Writing to the Buyer if:-
- 11.1.1 the Buyer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or
 - 11.1.2 the Buyer makes any 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 solvent amalgamation or reconstruction); or
 - 11.1.3 the Buyer ceases or threatens to cease to carry on business; or
 - 11.1.4 there is at any time a material change in the management, ownership or control of the Buyer; or
 - 11.1.5 the Buyer is resident in a jurisdiction other than England and Wales, if an event similar to any of those specified in clause 11.1.2 occurs to or in relation to the Buyer; or

11.1.6 if the Seller reasonably apprehends that any of the events specified in clause 11.1.2 is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 In the event of termination by the Seller pursuant to clause 11.1 above then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Buyer and, if the Goods have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall be entitled to charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of Bank of England from the time of such cancellation or suspension until the Seller receives payment.

12. **Remedies**

The remedies available to the Seller under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Buyer.

13. **Waiver**

The failure or delay of the Seller to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

14. **Severability**

The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

15. **Notices**

Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at its address set out above or to such other address which it has previously notified to the sending party and shall be deemed to have been given when actually received or, if sent by recorded delivery mail and returned marked "gone away" or to the like effect, on return of such recorded delivery mail.

16. **Assignment**

The Contract is personal to the Buyer and the Buyer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of the Seller except to any company which is its holding company or to any of its wholly-owned subsidiary companies or any wholly-owned subsidiary companies of such holding company within the meaning of Section 736 Companies Act 1985.

17. **Force Majeure**

Neither party shall be liable to the other if its performance of its obligations under the Contract (other than an obligation to pay money) is prevented or hindered due to any circumstances outside its control.

18. **Headings**

Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.

19. **Entire agreement**

The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in Writing, and no representation (unless made fraudulently), undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract.

20. **Variation**

No variation or amendment to the Contract shall be effective unless in Writing signed by authorised representatives of the parties.

21. **Conflict**

In the event of any conflict between the provisions of the Contract and of any other agreement referred to in the Contract, the provisions of the Contract shall prevail.

22. **Law and Jurisdiction**

The construction, validity and performance of the Contract is governed by the law of England and the parties accept the jurisdiction of the English Courts.