

Marches Biogas - Terms and conditions

1 DEFINITIONS AND INTERPRETATIONS

"**Agreement**" means the terms and conditions set out in this agreement and shall include the terms set out on the Marches Biogas Trading Terms Agreement;

"**Business Day**" means a day other than a weekend or public holiday in England;

"**Commencement Date**" means the date of this Agreement;

"**Company**" means Marches Biogas Limited;

"**Confidential Information**" has the meaning given to it in clause 12.1;

"**Contract Term**" means the period during which this Agreement is in full force and effect in accordance with clause 2 (Duration) and clause 9 (Termination);

"**Customer**" means the person, firm, company or organisation to whom the Marches Biogas Trading Terms Agreement is addressed;

"**Due Date**" has the meaning given to it in clause 6.2(a);

"**Expiry Date**" means the date one (1) year from the Commencement Date, or such other date as determined in accordance with the terms of this Agreement;

"**Guidance**" means any applicable guidance or direction with which the Company and/or the Customer is bound to comply;

"**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual or industrial property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Legislation**" means:

(a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;

(b) any exercise of the Royal Prerogative; and

(c) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"**Normal Working Hours**" means 8am to 5pm Monday to Friday (other than a public holiday in England);

"**Relief Event**" means the occurrence of circumstances beyond the reasonable control of that party, including extreme adverse weather conditions;

"**Services**" means:

(a) the services described; and

(b) such other services as the Company may provide to the Customer under or in connection with this Agreement;

determined in accordance with the terms of this Agreement;

"**Marches Biogas Trading Terms Agreement**" means the details of the Services to be carried out;

"**Site**" means the Company's site for undertaking the Services.

1.2 In addition, in this Agreement, unless the context otherwise requires:

(a) words importing the male, female or neuter genders shall include the other genders and words in the singular shall include the plural and vice versa;

(b) the headings are for convenience only and shall not affect the interpretation of this Agreement;

(c) a person includes a natural person, corporate or incorporated body (whether or not having separate legal personality); and

(d) a reference to a party includes its personal representatives, successors or permitted assigns.

2 DURATION

This Agreement shall commence on the Commencement Date and Shall continue thereafter, until either the Expiry Date or until terminated in accordance with clause 9 (TERMINATION).

3 EXCLUSIVITY OF ARRANGEMENTS

3.1 The Customer hereby agrees to appoint the Company as the Customer's exclusive provider of the Services and the Customer hereby agrees that it shall not provide the Services itself, nor shall it appoint or allow anyone other than the Company to provide the Services for the duration of this Agreement.

3.2 In the event of the Customer being in breach of its obligations under clause 3.1 above, the Company reserves the right to terminate this Agreement and to claim compensation in accordance with the provisions of clause 9 (Termination).

4 BASIS OF SERVICE PROVISION

4.1 Throughout the Contract Term the Company shall provide the Services to the Customer and the Customer shall purchase and receive the same in accordance with and subject to the terms and conditions of this Agreement.

5 SERVICE STANDARDS

5.1 The Company shall perform the Services:

(a) with all reasonable care and skill; and

(b) in accordance with good working industry practice.

5.2 If, as a consequence of any inaccuracies or omissions in the Customer's requirements, the Company shall be entitled to adjust the provisions of this Agreement.

6 INVOICING AND PAYMENT

6.1 Invoice

In respect of the Services provided, the Company shall provide an invoice to the Customer as stipulated in the purchase order or associated quotation.

6.2 Payment

The Customer shall pay each invoice submitted by the Company:

(a) within 30 days of the date of the invoice (the **Due Date**); and (b) in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of essence under this Agreement. For the avoidance of doubt, all sums invoiced shall be due to the Company, regardless of any purchase order system that the Customer may have.

6.3 Set off

(a) The Customer shall not be entitled to retain or set off any amount due to the Company by it, where such amount is undisputed.

(b) If the payment of any amount referred to in clause 6.3(a) above is disputed, then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with clause 8 (DISPUTES).

6.4 Interest on late Payments

Without prejudice to any other rights it may have under this Agreement, the Company is entitled to charge interest at a rate of 4 per cent above the base rate from time to time of The Bank of England on any undisputed Fee not paid by the Due Date.

6.5 Non payment by the Due Date

Notwithstanding the rights of the Company to charge interest on late payments in accordance with clause 6.4 above, in the event that the Customer has not paid an invoice:

- (a) by the Due Date, the Company shall be entitled, having given the Customer notice of its intention to do so, to suspend the provision of the Services whilst the sums due to it under this Agreement remain overdue; and
 - (b) within 30 days of the Due Date, the Company reserves the right to exercise its right to terminate in accordance with clause 9 (Termination).
- 6.6 VAT
All amounts payable by the Customer under this Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT).
- 7 COMPLIANCE WITH LEGISLATION**
- 7.1 The Company and the Customer shall perform all their obligations under this Agreement in accordance with all applicable Legislation and Guidance from time to time in force, throughout the Contract Term.
- 8 DISPUTES**
- 8.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 8.
- 8.2 If a dispute arises in relation to any aspect of this Agreement, the Customer and the Company shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 8.3 In the event that the parties cannot come to an agreement in accordance with clause 8.2, the parties agree that a mediator shall be jointly appointed to determine any dispute.
- 8.4 Either party may, within thirty (30) calendar days of the conclusion of any mediation, whether or not a satisfactory outcome is achieved, give notice to the other party of its intention to refer the dispute to the courts of England for final determination.
- 9 TERMINATION**
- 9.1 This Agreement shall terminate upon the expiry of not less than one month's notice from either party provided that such notice: (a) is in writing; and (b) is given to expire no earlier than two (2) months from the first anniversary of the Commencement Date.
- 9.2 This Agreement shall automatically terminate on the Expiry Date, subject to any extensions to that date by virtue of the terms of this Agreement.
- 9.3 The Company may, without prejudice to its other rights or remedies under this Agreement, forthwith terminate this Agreement by notice in writing to the Customer if the Customer:
 - (a) commits a serious breach of any of its obligations under this Agreement;
 - (b) commits a breach under this Agreement, where this Agreement states that the Company has the right to terminate as a result of that breach;
 - (c) becomes insolvent or enters into liquidation or receivership or is the subject of an application for an administration order or suffers an administrative receiver to be appointed in relation to the whole or any part of its assets or makes a composition or arrangement with its creditors or suffers any judgement to be executed in relation to any of its property or assets; or
- 10 INSURANCE**
- 10.1 The Company shall, during the Contract Term, maintain a policy or policies of insurance covering the following risks:
 - (a) Professional indemnity; (b) employer's liability; (c) public liability and (d) product liability.
- 10.2 The Customer shall during the Contract Term maintain a policy or policies of insurance covering the following risks:
 - (a) employer's liability; (b) public liability; and (c) business interruption.
- 11 LIABILITY**
- 11.1 The Customer and the Company shall be liable to the other for losses suffered by the other in respect of:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors; and
 - (b) any fraud or fraudulent misrepresentation.
- 11.2 Save in respect of the Company's liability under clause 11.1 above, which shall not be limited, the Company shall not be liable for any actions, proceedings, demands, losses, costs, claims, damages or expenses:
 - (a) arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis; and
 - (b) to the extent that the same is caused wholly or partly by breach of any condition, term or warranty of this Agreement by the Customer; and
 - (c) unless written notice of the Customer's claim in respect of the same is received by the Company within seven Business Days of the time of the events giving rise to the claim coming to the notice of the Customer. The Company shall in any event be discharged from all liability unless proceedings are brought within twelve Months of the date on which this Agreement terminates.
- 11.3 The Customer agrees that before bringing a claim for the same against the Company, the Customer shall use its best endeavours to recover losses, claims, demands or expenses incurred by it from its insurers instead of the Company.
- 11.4 The total aggregate liability of the Company under or in connection with this Agreement (whether in contract, for negligence, breach of statutory duty or otherwise) for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the value of this Agreement.
- 12 CONFIDENTIALITY**
- 12.1 Subject to clause 12.2, at all times during the Contract Term and for a period of five years thereafter each party shall, and shall procure that it shall keep secret and confidential all technical and commercial know-how, all business and trade secrets, methods of doing business, specifications, inventions, processes or initiatives, customer lists and other confidential information and material disclosed by or obtained from the other in connection with this Agreement (**Confidential Information**). Each party undertakes not to disclose the Confidential Information to any third party other than its responsible employees who require such disclosure where bona fide necessary for the proper performance of their duties under this Agreement and who will individually comply with all obligations of confidentiality imposed upon the parties by the provisions of this clause 12.1. Each party undertakes to take all reasonable steps to minimise the risk of disclosure of the Confidential Information by employees and others.
- 12.2 The obligations of confidentiality under clause 12.1 shall not apply to any information or material which the recipient party can prove:
 - (a) was already known to it prior to its receipt thereof from the disclosing party;
 - (b) was subsequently disclosed to it lawfully by a third party who lawfully obtained the same and who was not bound by any obligation of confidence in respect thereof to the disclosing party;
 - (c) was in the public domain at the time of receipt by the recipient or has subsequently entered into the public domain other than by reason of the breach of the provisions of this clause or breach of any obligation of confidence owed by the recipient or by any of its Associates.
- 13 INTELLECTUAL PROPERTY RIGHTS**
- 13.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 13.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 13.3 Any unauthorised use by the Customer of the Company's Intellectual Property Rights shall be deemed a breach of this Agreement and compensation will be payable.

14 ASSIGNMENT AND SUB-CONTRACTING

14.1 Neither party shall be entitled to assign or transfer this Agreement, whether in whole or in part, without the prior written consent of the other.

14.2 [Notwithstanding clause 14.1, the Company shall be entitled to sub-contract the Services or any of them provided that:

- (a) prior to appointing any sub-contractor the Company shall ensure that the sub-contractor is properly vetted to endeavour to ensure that the sub-contractor will be able to provide services that meet the standards required by this Agreement in respect of the same; and
- (b) the Company shall monitor each sub-contractor's performance and shall provide reports on the same if reasonably requested to do so by Customer.]

15 WARRANTIES

The Customer warrants and represents to the Company that as at the date of this Agreement:

- (a) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Customer, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- (c) [the information provided to the Company in the Credit Check is true and accurate as at the date of this Agreement.]

16 WAIVER

Delay in exercising, or a failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not preclude any other or further exercise of that right or remedy, or the exercise of any other right or remedy. A waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breach.

17 NOTICES

17.1 All notices (including all other documents) to be served under this Agreement shall be in writing and shall be delivered or sent to the relevant party's registered office, [or to such other address as it may have notified in writing to the other party.]

17.2 A notice shall be delivered by hand or sent by prepaid first class recorded delivery.

17.3 A notice shall be deemed to have been received:

- (a) if delivered by hand within Normal Working Hours when so delivered or, if delivered by hand outside Normal Working Hours, at the next start of Normal Working Hours;
- (b) if sent by first class recorded delivery post on a Business Day, at 9.00 am on the second Business Day after posting; or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day after posting.

17.4 E-mail and fax notice shall not be valid for the purposes of this Agreement.

18 ENTIRE AGREEMENT

Each of the parties acknowledges that it is not entering into this Agreement in reliance upon any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of any other party before the execution of this Agreement. Each of the parties waives all rights and remedies which, but for this clause 18, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause 18 shall limit or exclude any liability for fraud.

19 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

20 GOVERNING LAW AND JURISDICTION

20.1 This Agreement is governed by, and shall be interpreted in accordance with, English law.

20.2 Each party irrevocably submits to the exclusive jurisdiction of the English Courts in relation to all matters arising out of or in connection with this Agreement.