



Forwood Production Terms of Sale

The customer's attention is drawn in particular to the provisions of clause 8.

1. Interpretation

1.1 Definitions:

Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.
Contract	the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer	the person or firm who purchases the Goods from the Supplier.
Force Majeure Event	an event or circumstance beyond a party's reasonable control.
Goods	woodchip or any other goods (or any part of them) set out in the Order.
Order	the Customer's order for the Goods, as set out in the Supplier's order form.
Specification	Woodchip that: <ul style="list-style-type: none">varies in moisture content but that has a target moisture content of between 25% and 28% but that will not exceed a moisture content of 32%;Meets the Onorm 17225-4 and P31S Standard;is materially free from any contaminants such as soil or stones, metal and plastics and that will conform to the requirements set out in the Biomass Suppliers List published at the time of the Order; andhas a biomass particle size that complies with BS EN 14961-4.
Supplier	Forwood Production Limited (registered in England and Wales with company number 09553908)

1.2 Interpretation:

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 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.
- 1.2.3 a reference to **writing** or **written** includes emails.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate and that the Specification meets their needs and requirements.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a confirmation of an Order the accepting the relevant Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. Goods and quality

3.1 The Goods are as described in an Order.

3.2 The Supplier warrants that it will use reasonable endeavours to ensure that on delivery the Goods shall conform in all material respects with the Specification; and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements or in the event of a change to British or European regulatory Standards.

3.4 If the Customer considers that the Goods do not materially comply with the Specification or the Order, the Customer must notify the Supplier within 7 days of delivery explaining clearly any alleged defect or issues regarding non-compliance. The Supplier must be given the opportunity to inspect the Goods that are alleged to be defective/non-compliant, and will propose a solution which at the Supplier's absolute discretion will be limited to (i) no action (ii) replacement or (iii) refund. For the avoidance of doubt, the Supplier shall not be liable to the Customer for any defects arising due to defective storage or for any Goods that continue to be used by the Customer after notification of a defect/non-compliance.

3.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

3.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

3.7 Except as provided in this clause 3, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.1.

4. Delivery

4.1 All orders for goods are subject to availability of goods and delivery resources. The Customer is responsible for checking levels of its biomass fuel and scheduling delivery of Goods to meet its needs.

4.2 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the quantity of the Goods, and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.3 The Supplier shall deliver the Goods in loose form to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.4 If required, prior to delivery, the Supplier will prepare and provide to the Customer for approval a risk assessment and method statement to take into account any hazards or risks at the Delivery Location or posed to people, vehicles and property at the Delivery Location. The Customer will:

4.4.1 meet with the Supplier and provide access to the Delivery Site to allow such risk assessment to take place;

4.4.2 notify the Supplier if, following the initial risk assessment, any hazards or risks change on site so that the current risk assessment may be reviewed. In any case, such risk assessment will be reviewed and updated by the Supplier and approved by the Customer on an annual basis;

- 4.4.3 for every delivery of Goods ensure that safe access is provided for the Supplier from the public highway and that the surface over which the Supplier's vehicles must pass to make such deliveries are capable of accepting heavy goods vehicles;
 - 4.4.4 ensure that the silos or stores to which deliveries are to be made are fit for delivery of the type and grade of Goods to be delivered and can be easily inspected if necessary by the Supplier's delivery driver;
 - 4.4.5 observe and perform all applicable conditions relating to any storage licence; and
 - 4.4.6 ensure that appropriate equipment is switched off to enable safe delivery and all sensible fire safety precautions are exercised during any delivery.
- 4.5 Delivery is completed on the completion of unloading of the Goods at the Delivery Location. If delivery is by pipe, then delivery is completed when the Goods pass from the delivery vehicle's pipe connection. If delivery is to be made to more than one store or silo at the Delivery Location, the Customer is responsible for ensuring that the Goods are delivered in a safe manner to the correct store or silo.
- 4.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 4.7 If the Supplier fails to deliver or is delayed for any reason whatsoever in delivering the Goods, the Supplier will not be liable for any loss (including but not limited to loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay or failure in delivery of any Goods.
- 4.8 The Customer shall request a delivery with a minimum of 5 Business Days' notice, and provide the Supplier with at least 5 Business Days' notice of any changes, additions or amendments to an order.
- 4.9 The Supplier shall notify the Customer prior to dispatch specifying the date of delivery. Unless otherwise agreed in writing with the Customer, the Supplier will use reasonable endeavours to make deliveries between the hours of 07:00 and 19:00 on Business days. The Customer acknowledges that legal rest periods and breaks may require deliveries to be made outside of these hours in which case the Supplier will endeavour to provide sufficient notice of any delivery to be made outside of those hours and the Customer shall be available to accept delivery.
- 4.10 If the Customer fails or is unable to take delivery of the Goods and has not given at least 24 hours' notice that it will be unable to accept delivery then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 4.10.1 the Customer shall pay to the Supplier the reasonable costs of return transport of at least £280 plus VAT per failed delivery; and
 - 4.10.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.11 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.12 The Customer is responsible for ensuring it has the capacity, appropriate storage and equipment to accept delivery of the Goods. If the Supplier delivers more or less than the quantity of Goods ordered the Customer may not reject them, but a pro rata adjustment shall be made to the Order invoice.
- 4.13 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.14 The Supplier shall be entitled to suspend any delivery where the Customer is in breach of any payment terms specified in clause 6.

5. Title and risk

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 store the Goods so that they remain readily identifiable as the Supplier's property;
 - 5.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 5.3.3 notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.1; and
 - 5.3.4 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.1, then, without limiting any other right or remedy the Supplier may have:
- 5.4.1 the Customer's right use the Goods in the ordinary course of its business ceases immediately; and
 - 5.4.2 the Supplier may at any time:
 - 5.4.2.1 require the Customer to deliver up all Goods in its possession that have not been used; and
 - 5.4.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them (and if the Goods are indistinguishable, to take possession of Goods of a similar quality and quantity).

6. Price and payment

- 6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price confirmed by the Supplier in any confirmation of Order.
- 6.2 The Supplier may, by giving notice to the Customer at any time 5 Business Days before delivery, increase the price of the Goods and/or delivery to reflect any increase in the cost of the Goods and/or delivery that is due to:
- 6.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 6.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 6.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 6.3 The price of the Goods excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 6.4 Unless otherwise agreed, all invoices are payable on presentation (unless another payment method is agreed in writing by the Supplier). The Supplier reserves the right to require payment prior to delivery. Time for payment is of the essence.

6.5 If the Customer fails to make any payment due to the Supplier under the Contract within one month of presentation of an invoice, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the date one month after presentation of an invoice, until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. Termination

7.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

7.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;

7.1.2 the Customer 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

7.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

7.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

7.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 7.1.1 to clause 7.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

7.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

7.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

7.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

7.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

8. Limitation of liability – the customer's attention is drawn to this condition

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 8.1.2 fraud or fraudulent misrepresentation;
 - 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 8.1.4 defective products under the Consumer Protection Act 1987; or
 - 8.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 8.2 Subject to clause 8.1:
- 8.2.1 the Supplier its employees, agents and subcontractors shall under no circumstances be liable for damages caused by any vehicle that is required to leave the public highway to effect a delivery of Goods;
 - 8.2.2 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 8.2.3 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
- 8.3 The Customer indemnifies the Supplier for any losses suffered by the Supplier, or any claim against the Supplier by any third party, arising as a result of any breach by the Customer of this Contract.

9. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Contract by giving 5 Business Days' written notice to the affected party. If there is a delay resulting from a Force Majeure Event, the obligations of the unaffected party shall be suspended to the same extent as those of the affected party.

10. Disputes

- 10.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 10.2 If any dispute arises in connection with this Contract or Conditions, a director or other senior representatives of the parties with authority to settle the dispute will, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 10.3 If the dispute is not wholly resolved at that meeting, the parties may in good faith either agree to meet again or agree to enter into mediation to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR Notice**) to the other party to the dispute, referring the dispute to mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice.
- 10.4 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract or Conditions until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

11. GENERAL

11.1 Assignment and other dealings.

11.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.1.2 The Customer 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 the Contract without the prior written consent of the Supplier.

11.2 Confidentiality.

11.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.2.

11.2.2 Each party may disclose the other party's confidential information:

11.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and

11.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

11.3 Entire agreement.

11.3.1 This 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.

11.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

11.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.6 **Severance.** If any provision or part-provision of the 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.

11.7 Notices.

- 11.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 11.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 11.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 11.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.