5.1 The Customer shall not be entitled to reject the Treated Materials if the Supplier delivers up to and including any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in any factor beyond the Supplier's control). The Customer recognises that the Supplier may not be able to test and process the Materials delivered to the Supplier for industrial or other purposes and may not be able to test and process the Materials to an equivalent or alternative specification or standard which is the Customer's request.

5.2 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. The Customer shall be entitled to receive the Services as set out in this Order and to withdraw the Order at any time before delivery of the Treated Materials.

5.3 The Customer recognises that the order for the Services is subject to the following: 5.3.1 any request by the Customer to change the delivery date(s), quantities or types of Services ordered; or 5.3.2 the making or 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. DELIVERY

6.1 If the Order states that the Supplier shall deliver the Treated Materials to the Customer on Completion of the Services, then the Customer acknowledges that the Supplier may deliver the Services in more than one delivery.

6.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, which are implied by trade, custom, practice or course of dealing.

6.3 The Customer shall, at the Customer's risk and remain at the Customer's risk whilst in the Supplier's possession. The Customer shall not make any claim against the Supplier and acknowledge and agrees that the Supplier shall not be liable for any loss of or damage to any such Materials, other materials or documents supplied or delivered.

6.4 The price for the Services shall be subject to the addition of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services.

6.5 If the Order states that the Customer shall collect the Treated Materials from the Supplier's premises, the Supplier shall ensure that:

6.5.1 each delivery of the Treated Materials is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Treated Materials and, if the Order is being delivered by instalments, the outstanding balance of the Treated Materials remaining to be delivered;

6.5.2 if the Supplier requests the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request.

6.6 If the Customer makes the Treated Materials available for collection from the Supplier's premises (as notified to the Customer by the Supplier either in the Order or otherwise as agreed in writing between the parties) at any time after the Supplier notifies the Customer that the Treated Materials are ready; and

6.7 The Supplier shall be entitled to reject the Treated Materials if the Supplier delivers up to and including any factor beyond the Supplier's control or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

6.8 If the Customer fails to accept delivery of the Treated Materials or collect the Treated Materials from the Supplier's premises (whether ordered under the same contract or not) to the Customer's premises or collection point, the Supplier shall have no liability for any delivery failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Services or the Treated Materials.

6.9 The Customer shall be liable for any delivery failure in the delivery of the Treated Materials or making the Treated Materials available for collection at any time after the Supplier notifies the Customer that the Treated Materials are ready for collection. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Treated Materials.

8. PAYMENT

8.1 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Services due and payable (whether or not previously paid and, without prejudice to any right or remedy available to the Supplier), the Supplier may:

8.1.1 terminate the Contract or suspend any further deliveries of the materials treated by the provision of the Services by the Supplier (whether ordered under the same contract or not) to the Customer;

8.1.2 charge interest on the amount outstanding from the due date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of 5% above the base lending rate.
12.4 For the purposes of clause 12.3, the relevant events are:

12.4.1 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts when they fall due for payment; or that no satisfaction for the payment of its debts is given when any such demand for payment is made; or the Customer becomes subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may:

12.4.1.1 suspend all further performance of the Services until payment has been made in full; or
12.4.1.2 stop any materials in transit; and
12.4.1.3 exercise a general lien on all materials delivered and paid for by the Customer, exercisable in respect of all such sums lawfully due from the Customer to the Supplier; the Supplier shall be entitled, on the expiry of 14 days’ notice in writing, to dispose of such materials or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding; or
12.4.2 The Supplier reserves the right to require the Customer to make full or part payment in advance prior to the commencement of the Services or in relation to the supply of any such additional materials as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

9. CUSTOMER’S RESPONSIBILITIES

9.1 The Customer shall:

9.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate; and
9.1.2 cooperate with the Supplier in all matters relating to the Services; and
9.1.3 prepare the Customer’s premises for delivery of the processed materials on completion of the performance of the Services by the Supplier; and
9.1.4 ensure that all materials or components provided to the Supplier for the purposes of the Supplier performing the Services are suitable for such a heat treatment process (if applicable) and will cause no loss, damage or injury to any of the Supplier’s property, assets, equipment, employees or representatives; and
9.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects.

9.2 The Customer shall ensure that its employees, agents and subcontractors:

9.2.1 obey all fire and safety regulations and any other statutory or other requirements of the Supplier and of any other competent authority whilst in attendance at or occupation of the Supplier’s premises; and
9.2.2 comply with the Supplier’s instructions in operating any of the Supplier’s equipment or whilst located at the Supplier’s premises; and
9.2.3 observe any rules and regulations of the Supplier from time to time in force; and
9.2.4 cause no loss, damage or injury to any of the Supplier’s property, assets or equipment or to any property, assets or equipment located on the premises of the Supplier or to any servants, employees, agents or subcontractors of the Supplier or any third persons.

9.3 The Customer shall indemnify and keep indemnified the Supplier against any loss or damage incurred in performing the Services in the execution of the Customer’s order. T he Supplier (including the Materials) shall not be such as to cause the Supplier to infringe any of the Intellectual Property Rights.

10. INTELLECTUAL PROPERTY

The Customer warrants that any goods materials equipment designs or instructions furnished or given to the Supplier (including the Materials) for the performance of the Services shall not be such as to cause the Supplier or any of its subsidiary or parent corporations to infringe any of the Intellectual Property Rights in performing the Services in the execution of the Customer’s order. The Customer shall indemnify the Supplier against all and any claims actions costs and expenses made or brought against the Supplier or incurred by the Supplier (whether in the United Kingdom or elsewhere) in respect of the infringement of any such Intellectual Property Rights.

11. CONFIDENTIALITY

11.1 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, data, trade secrets, processes or practices which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business or its products which the Receiving Party has learnt in connection with the Services. The Receiving Party shall remain strictly bound by the terms of this clause and shall cause its employees, agents or subcontractors to observe any of the provisions contained in clauses 9.1 and 9.2.

11.2 The Receiving Party shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Receiving Party’s failure or delay to perform any of its obligations as set out in this clause.

12. TERMINATION

12.1 An Order once accepted by the Supplier cannot be cancelled by the Customer except with the prior consent in writing of the Supplier and on terms that the Customer will reimburse the Supplier the full amount of all costs which the Supplier has incurred will incur in consequence of the Order.

12.2 If the Supplier is entitled to any of its rights or obligations under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of the Terminated Materials delivered to the Customer shall become immediately due.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, Force Majeure Events mean an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 If the Supplier becomes subject to any of the events listed in clause 12.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of the Terminated Materials delivered to the Customer shall become immediately due.

15. GENERAL

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

15.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights and obligations under the Contract unless with the prior written consent of the Supplier.

15.3 Any notice or other communication given to a party under or in connection with the Contract shall be in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, recorded delivery with an expected time of delivery of one Business Day, or by e-mail.

15.4 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.3; if sent by pre-paid first-class post or recorded delivery, at 9.00 a.m. on the Business Day following delivery; or if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

15.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
15.6 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.7 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.8 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.9 A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.10 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer and the Supplier.

15.11 The 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.