



TERMS AND CONDITIONS OF SALE AND HIRE

The customer's attention is drawn in particular to the provisions of clause 12

1 INTERPRETATION

1.1 Definitions:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Commencement Date means the date that the Customer takes delivery of the Equipment;

Conditions means the terms and conditions set out in this document as amended from time to time in accordance with clause 14.3.

Contract means the contract between the Supplier and the Customer for the sale and purchase of the Goods and where applicable the hire of the Equipment in accordance with these Conditions;

Customer means the person or firm who purchases the Goods from the Supplier;

Equipment means the items of equipment to be hired to the Customer as listed in the Quotation but including the silo, control panel, mixer and all electrical cables, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Force Majeure Event means an event or circumstance beyond a party's reasonable control;

Goods means the goods (or any part of them) to be sold to the Customer set out in the Order or Quotation as applicable;

Order means the Customer's order for the Goods and where applicable the Equipment, as set out in the Customer's purchase order form (which must refer to the Quotation) or written acceptance of the Quotation as the case may be;

Price means the price for the Goods and where applicable the hire of the Equipment payable by the Customer;

Quotation means the written quotation supplied by the Supplier for the Goods and where applicable the Equipment on which the Order is based;

Rental Period has the meaning given in clause 4.4;

Site means the Customer's premises as identified in the Quotation or such other location as the Supplier has agreed to supply the Goods and where applicable supply and install the Equipment;

Specification means any specification for the Goods and/or Equipment that are agreed in writing by the Customer and the Supplier;

Supplier means Remix Dry Mortar Ltd (registered in England and Wales with company number 03780780) whose registered office is at C5 Premier Business Centre, Newgate Lane, Fareham, Hampshire, PO14 1TY;

VAT means value added tax or any equivalent tax chargeable in the UK.

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 any obligation on a party not to do something includes an obligation not to allow that thing to be done;

1.2.4 a reference to **writing** or **written** includes letters, faxes and 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 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.

2.3 The Order constitutes an offer by the Customer to purchase the Goods and where applicable hire the Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.4 The Order shall only be deemed to be accepted when the Supplier issues an acceptance of the Order, at which point the Contract shall come into existence.

2.5 A Quotation shall not constitute an offer. The Supplier reserves the right to change a Quotation at any time before the Contract is formed.

2.6 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 or Equipment referred to in them. They shall not form part of the Contract nor have any contractual force.

2.7 All of these Conditions shall apply to both the supply of Goods and the hire of Equipment except where application to one or the other is specified.

3 **GOODS AND EQUIPMENT**

- 3.1 The Goods and where applicable Equipment are described in the Quotation.
- 3.2 The Supplier reserves the right to amend the Specification of the Goods or Equipment if required by any applicable statutory or regulatory requirements.

4 **EQUIPMENT HIRE**

- 4.1 The Supplier shall hire the Equipment to the Customer for use at the Site subject to these Conditions.
- 4.2 The Equipment must only be used in relation to Goods supplied by the Supplier and only the Supplier's authorised personnel are permitted to load and fill any silo.
- 4.3 The Supplier shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Equipment.
- 4.4 The Rental Period starts on the Commencement Date and shall continue until the Equipment is collected by the Supplier. The Supplier will generally collect the Equipment from the Customer within a reasonable time of the Customer completing and submitting to the Supplier a Silo Collection Request Form, but this is subject to the Supplier receiving at least 10 Business Days' notice of the request for the Equipment to be collected. The Supplier reserves the right in any case to collect the Equipment at any time after the termination or completion of the Contract or after the last supply of Goods under the Contract.
- 4.5 The Supplier will not be liable for any damage caused by the removal of the Equipment.

5 **DELIVERY AND INSTALLATION OF EQUIPMENT**

- 5.1 The Supplier shall deliver the Equipment (if any) to the Site or such other location as the Supplier and the Customer may agree. The Supplier shall use reasonable endeavours to deliver the Equipment by the dates and times agreed but time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery or installation of the Equipment that is caused by a Force Majeure Event or the Customer's failure to comply with its obligations under the Contract.
- 5.2 The Supplier shall install the Equipment (if any) at the Site. The Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 5.3 To facilitate Delivery and installation of the Equipment, the Customer shall at its sole expense ensure:
 - 5.3.1 that there is a suitable base available for each silo forming part of the Equipment which should, unless the Supplier has agreed otherwise, be a level concrete base of 4m x 3m per silo, capable of supporting a gross weight of 37.5 tonnes (0.3 N/mm²) and which is consolidated and protected from flooding and subsidence;

- 5.3.2 that there is a power supply connection for each silo forming part of the Equipment solely for use of that silo which complies with the power supply requirements specified by the Supplier to the Customer before delivery.
- 5.3.3 that there is a water supply for each silo forming part of the Equipment which complies with the water supply requirements specified by the Supplier before delivery.
- 5.3.4 that it gives the Supplier full delivery instructions (including such things as restricted access times, road closures etc.) to the Supplier at the time of placing the Order and
- 5.3.5 that there is clear unobstructed access from the highway to the silo bases for rigid or articulated vehicles which require a minimum headroom of 4.2 meters and a minimum width of 3 meters plus turning circles via a hard road or other suitable surface, which is capable of carrying vehicles weighing up to 44 tonnes gross. Consideration should be given to the location of compounds, buildings, overhanging scaffold, material storage points etc., when agreeing the position of silo bases.
- 5.3.6 A site survey will be carried out prior to delivery of any equipment by the Supplier with the Customer's authorised representative in attendance. The Customer's authorised representative will sign to confirm acceptance of the site survey.
- 5.3.7 All Equipment will be commissioned by the Supplier with the Customer's authorised representative present. Instruction/training will be given by the Supplier to the Customer's authorised representative on the safe working and maintenance of the Equipment. The Customer's authorised representative will sign to confirm acceptance of the commissioning of the Equipment.

6 DELIVERY OF GOODS

- 6.1 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 type and quantity of the Goods and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 6.2 Delivery of Goods is completed on the completion of unloading of the Goods at the Site.
- 6.3 To facilitate delivery of the Goods the Customer shall at its own expense ensure:
 - 6.3.1 that it gives the Supplier full delivery instructions (including such things as restricted access times, road closures etc.) to the Supplier at the time of placing the Order and
 - 6.3.2 that there is clear unobstructed access from the highway to the delivery position (please note where a silo is to be filled vehicles must be able to get within 5 meters of the silo) for rigid or articulated vehicles which require a minimum headroom of 4.2 meters and a minimum width of 3 meters via a hard road or other suitable surface, which is capable of carrying vehicles weighing up to 44 tonnes gross.
- 6.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to comply with its obligations under the Contract.

- 6.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 6.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, 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:
- 6.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- 6.6.2 the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 6.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted 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.
- 6.8 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them.
- 6.9 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.

7 CUSTOMER RESPONSIBILITIES

- 7.1 Where Equipment is being hired the Customer shall during Rental Period:
- 7.1.1 ensure that the Equipment (if any) is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions and training provided by the Supplier;
- 7.1.2 ensure that the Equipment is only used in respect of goods supplied by the Supplier and that only the Supplier's authorised representatives are permitted to load or fill any silos forming part of the Equipment;
- 7.1.3 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- 7.1.4 be responsible for ensuring that the Equipment is maintained in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts and making good any damage to the Equipment provided that no repairs or maintenance to the Equipment may be carried out by

anyone other than the Supplier or its authorised representative who shall carry out any necessary repairs or maintenance; unless such repairs or maintenance is covered by the warranty at clause 9 the Supplier will charge the Customer for its reasonable costs associated with such repairs or maintenance;

- 7.1.5 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Supplier;
- 7.1.6 keep the Supplier fully informed of all material matters relating to the Equipment;
- 7.1.7 keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location;
- 7.1.8 permit the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 7.1.9 not, sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 7.1.10 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Equipment and the Customer must take all necessary steps to ensure that the Supplier may enter the Site or any other premises where the Equipment is located, and recover the Equipment both during the term of the Contract and for a reasonable period thereafter (access must comply with the requirements set out in clause 5.3.5, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Equipment and a right for the Supplier to enter onto such land or building to remove the Equipment);
- 7.1.11 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 7.1.12 not use the Equipment for any unlawful purpose;
- 7.1.13 ensure that at all times the Equipment remains identifiable as being the Supplier's property;
- 7.1.14 ensure that the silo legs and the silo base forming part of the Equipment are kept clean and free from obstruction, and that all accidental mortar spillages around the silo area are cleaned up immediately before any spilt mortar has time to set; if accidental spillages are allowed to accrue, it could mean that the Supplier is unable to lift the silo from the base and if this occurs the Supplier will charge the Customer for its reasonable costs associated with such failure;

7.1.15 ensure that when the Equipment is collected by the Supplier it is clean and empty, the Supplier will charge the Customer a fee per tonne for any material returned in silos to the Supplier for disposal to landfill and, if more than 12 tonnes of material is in a silo forming part of the Equipment, collection will not be possible and the Supplier will charge the Customer for its reasonable costs associated with such a failure to ensure the silo is empty such as any repeat collection charges.

7.2 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of the Contract.

8 TITLE AND RISK

8.1 The Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the Contract).

8.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period. This means the Customer is liable for any damage to the Equipment during this time.

8.3 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising during the Rental Period.

8.4 The risk in the Goods shall pass to the Customer on completion of delivery.

8.5 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 respect of which payment has become due.

9 WARRANTIES

9.1 The Supplier warrants that the Equipment shall substantially conform to its specification (as made available by the Supplier), be of satisfactory quality and fit for any purpose held out by the Supplier. The Supplier shall use reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period provided that:

9.1.1 the Customer notifies the Supplier of any defect in writing as soon as reasonable possible after the defect occurs, or it becomes aware of the defect;

9.1.2 the Supplier is permitted to make a full examination of the alleged defect;

9.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel or representatives; and

9.1.4 the defect is directly attributable to defective material, workmanship or design.

- 9.2 If the Supplier fails to remedy any material defect in the Equipment in accordance with clause 9.1, the Supplier shall, at the Customer's request, replace the Equipment.
- 9.3 The Supplier warrants that on delivery the Goods shall:
- 9.3.1 conform in all material respects with their description and any applicable Specification; and
 - 9.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 9.4 Subject to clause 9.3, if:
- 9.4.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 9.3;
 - 9.4.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 9.4.3 the Customer (if asked to do so by the Supplier) allows the Supplier to collect such Goods.
- the Supplier shall, at its option replace the defective Goods, or refund the price of the defective Goods in full.
- 9.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 9.3 in any of the following events:
- 9.5.1 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 9.5.2 the defect arises as a result of negligence, or abnormal storage or working conditions; or
 - 9.5.3 the Goods differ from their description or any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.6 Except as provided in this clause 9, the Supplier shall have no liability to the Customer in respect of the Goods' or Equipment's failure to comply with the warranties set out in this clause 9.
- 9.7 The Contract sets forth the full extent of the Supplier's obligations and liabilities in respect of the Equipment and the Goods. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in the Contract. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.
- 9.8 These Conditions shall apply to any replacement Goods or Equipment supplied by the Supplier.

10 **PRICE AND PAYMENT**

- 10.1 The Price shall be the price set out in the Quotation.
- 10.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the Price to reflect any increase in the cost of the Goods or Equipment that is due to:
- 10.2.1 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);
 - 10.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 10.2.3 any delay caused by the Customer such as a failure to provide proper delivery instructions or access.
- 10.3 The Quotation will specify whether any delivery charges are also payable by the Customer.
- 10.4 The price and the additional charges payable under the Contract exclude 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.
- 10.5 The Supplier may invoice the Customer for the Price on or at any time after the Contract comes into existence. Unless the Customer has been granted credit terms with the Supplier (in which case the credit terms will apply to payment), the Customer must pay the invoice for the Price before delivery. Payment shall be made to the bank account nominated in writing by the Supplier or by credit/debit card. Time for payment is of the essence.
- 10.6 The Customer granted credit terms must pay all other invoices (including those for additional charges payable under clause 7) within a net monthly account basis. (Payment at the end of the month following the date of invoice)
- 10.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time or 4% for any period during which such rate is less than 0%. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.8 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.

11 **TERMINATION**

- 11.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving notice to the Customer if:
- 11.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment;

- 11.1.2 the Customer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 working days after being notified to do so;
- 11.1.3 the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 11.1.4 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986] or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.1.5 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 11.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 11.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company);
- 11.1.8 the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 11.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- 11.1.10 the Customer (being an individual) is the subject of a bankruptcy petition, application or order;
- 11.1.11 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- 11.1.12 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 10.1.4 to 10.1.11 (inclusive);

- 11.1.13 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 11.1.14 the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their affairs or becomes a patient under any mental health legislation.
- 11.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Equipment or 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 11.1.4 to clause 11.1.14, 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 or if the Customer has committed a material breach of the Contract and either the same is irremediable or has not been remedied.
- 11.3 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 and the Supplier may raise an invoice for any Goods or Equipment supplied but for which it has not already invoiced and such invoices shall be payable immediately.
- 11.4 On termination of the Contract, the Supplier's consent to the Customer's possession of the Equipment shall terminate and the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located.
- 11.5 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.
- 11.6 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.

12 **LIMITATION OF LIABILITY**

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 12.1.2 fraud or fraudulent misrepresentation;
 - 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 12.1.4 defective products under the Consumer Protection Act 1987; or
 - 12.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 12.2 Subject to clause 12.1:
- 12.2.1 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, loss or revenue or any indirect or consequential loss arising under or in connection with the Contract; and

- 12.2.2 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 100% of the Price the goods or services provided.

13 **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 four (4) weeks, the party not affected may terminate this Contract by giving written notice to the affected party.

14 **GENERAL**

14.1 **Assignment and other dealings.**

14.1.1 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.

14.1.2 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.

14.2 **Entire agreement.**

14.2.1 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.

14.2.2 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 based on any statement in this agreement.

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

14.4 **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.

14.5 **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.

14.6 **Notices.**

14.6.1 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 fax or email.

14.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.6.1; 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 fax or email, one Business Day after transmission.

14.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.7 **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.

14.8 **Governing law.** 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.

14.9 **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.