

# Terms and Conditions for Supply of Goods & Services

Morris, Corfield & Co. Limited. Registered in England & Wales 7362441

Registered Office: Benthall Works, Benthall Lane, Broseley, Shropshire. TF12 5BB

Updated 17 June 2021

## CONTENTS

---

### CLAUSE

1. Interpretation .....	1
2. Basis of contract .....	2
3. Goods .....	3
4. Delivery of Goods .....	3
5. Quality of Goods .....	4
6. Title and risk .....	4
7. Supply of Services .....	5
8. Customer's obligations .....	5
9. Charges and payment .....	6
10. Intellectual property rights.....	7
11. Data protection .....	7
12. Confidentiality.....	7
13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.	8
14. Termination .....	8
15. Consequences of termination .....	9
16. Force majeure.....	9
17. Complaints.....	9
18. General .....	9
Schedule.....	11

The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.8.

**Conditions:** these terms and conditions for the sale of Goods or for the supply of Services, as amended from time to time in accordance with clause 19.8.

**Consumer:** means a Customer, being an individual who, for the purposes of the purchase, is acting wholly or mainly outside of their trade, business, craft or profession.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions (including for the avoidance of doubt, where applicable, the provision of Supplier Machinery subject to the terms and conditions set out in the Schedule).

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Customer Machinery:** means any machinery sold to the Customer by the Supplier; or any machinery received by the Supplier from the Customer for the purposes of performing Services.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Delivery Location:** has the meaning given in clause 4.1.

**Force Majeure Event:** means any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, storm, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f) collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; and
- g) any labour or trade dispute, difficulty or increased expense in obtaining workers, materials or transport, strikes, industrial action or lockouts;
- h) non-performance by suppliers or subcontractors; and
- i) interruption or failure of utility service.

**Goods:** as the context requires, Machinery and/or Parts (or any part of them) set out in the Order.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Machinery:** means any new or used heavy or light agricultural machinery as set out in the Order.

**New Goods:** means Goods which are not Used Goods.

**Order:** means the Customer's order for the supply of Goods and/or Services either:

- a) as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be; or
- b) if the Customer places an order over the telephone, as set out in the Supplier's written acceptance of the order issued pursuant to the provisions of clause 2.8.

**Parts:** means any parts (including any instalments) sold by the Supplier or used or supplied by the Supplier in connection with the sale of Machinery or the supply of any Services (and **Part** shall be construed accordingly) as set out in the Order.

**Services:** means the service and/or repair of Machinery, including warranty work, breakdown and/or any other services carried out by the Supplier for the Customer as set out in the Order.

**Specification:** any specification for Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Supplier:** Morris, Corfield & Co. Limited registered in England and Wales with company number 07362441.

**Supplier Machinery:** means any machinery provided to the Customer by the Supplier on loan whether as a courtesy whilst Services are to be provided in relation to Customer Machinery or for demonstration purposes.

**Total Charges:** means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Used Goods:** means Goods which are second-hand or used goods which are being purchased by or otherwise transferred to a second or later end user.

**Website:** means <http://www.morriscorfield.co.uk/>.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

## 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 law, trade custom, practice or course of dealing. The Supplier may make revisions to these Conditions from time to time. If there are revisions, the Supplier will publish them on the Website and highlight, on the home page, that revisions have been made. The Customer shall regularly check the Supplier's Website for details of any revisions having been published. Unless the Customer sends a notice in writing of objection to the Supplier within 21 days of any revision to these Conditions being published the revised Conditions shall be binding on the Customer. The Website will identify the date on which the revisions will become effective and (unless the Customer has provided a notice of objection as detailed above) such revisions shall apply to all Orders which are issued on or after that date.
- 2.2 The Customer understands and confirms that any employee or agent of the Supplier has no authority to make any representation about Machinery, Parts or Services nor shall the Supplier be liable for any advice or recommendations given by it or its employees or agents to the Customer as to Machinery, Parts or Services, unless such advice is confirmed by the Supplier in writing.
- 2.3 Any error or omission in any document or information issued by the Supplier or other person relating to Machinery, Parts or Services shall be subject to correction by, and without any liability on the part of, the Company.
- 2.4 The Customer shall be responsible for the accuracy of any Order (including any Specification).
- 2.5 If a manufacturer or supplier (of Goods) discontinues the sale of, or alters the specification of, Machinery or Parts, the Supplier reserves the right (without any further liability on the part of the Company) to:
  - (a) deliver (in satisfaction of the Contract) Goods conforming to the manufacturer's or supplier's specification prevailing at the time of delivery; or
  - (b) fit another Part; or
  - (c) cancel the Contract and refund to the Customer (as applicable) either any deposit or part exchange allowance paid by the Customer to the Supplier.

- 2.6 An Order shall not be cancelled by the Customer, except with the agreement in writing of the Company. In the event of such cancellation, the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs, damages and expenses incurred by the Supplier as a result of cancellation.
- 2.7 The Order constitutes an offer by the Customer to purchase Machinery, Parts or Services in accordance with these Conditions.
- 2.8 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (**Order Confirmation**) or, if earlier, on commencement of the provision of the Services (or any proportion thereof) ordered from the Supplier at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.9 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of Machinery or Parts or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.10 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 law, trade custom, practice or course of dealing.
- 2.11 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.12 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. Goods

- 3.1 The Goods are described on the relevant manufacturer's website as modified by any applicable Specification. The Supplier reserves the right to change specifications of the Goods and their packing and presentation without prior notification. Original equipment part numbers are quoted for reference purpose only and are not intended to infer that equivalent replacements are used as original equipment.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### 4. Delivery of Goods

- 4.1 The Supplier shall deliver Goods to the location set out in the Order or such other location as the parties may agree (**Customer Delivery Location**) at any time after the Supplier notifies the Customer that the Machinery and/or Parts are ready, or if otherwise agreed between the parties, the Customer shall collect the Goods from the Supplier's premises set out in the Order Confirmation or such other location as may be agreed with the Customer before delivery (**Supplier Delivery Location**) within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.2 Delivery of Goods shall be completed on the completion of:
- (a) unloading at the Customer Delivery Location; or
  - (b) loading at the Supplier Delivery Location.
- 4.3 Any dates quoted for delivery of Goods 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 provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of Goods.
- 4.4 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. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 4.5** If the Customer fails to take 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 by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6** 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.
- 4.7** The Supplier may deliver Parts by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.8** Claims for shortages or discrepancies or loss or damage of Parts in transit will not be accepted unless notified to the Supplier and (if appropriate) the Supplier's carriers within 48 hours of receipt and confirmed in writing within 7 days after receipt. Packaging and damaged parts shall be retained for inspection.
- 4.9** Following delivery, the Customer will inspect any Machinery or Parts. Unless the Customer notifies the Supplier within 48 hours of delivery of any defect the Customer will be deemed to have accepted it. After acceptance, the Customer shall not be entitled to reject any item of Machinery or Parts which are not in accordance with the Contract.
- 4.10** Any return of the Goods or part thereof shall be at the risk of the Customer until the Supplier has acknowledged receipt of delivery of such Goods

## **5. Quality of Goods**

- 5.1** New Goods supplied by the Supplier under the Contract have the benefit of a manufacturer's warranty. A copy of the full terms of which are available upon request.
- 5.2** The Supplier shall be under no liability under the warranty referred to in clause 5.1.
- 5.3** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Title and risk**

- 6.1** The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2** 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.
- 6.3** Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - (d) keep the Goods serviced at all relevant service intervals applicable to the Goods;
  - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1(a) to clause 15.1(b); and
  - (f) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
    - (i) the Goods; and
    - (ii) the ongoing financial position of the Customer.
- 6.4** Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

**6.5** At any time before title to the Goods passes to the Customer, the Supplier:

- (a) may by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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.

## **7. Export Terms**

**7.1** Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 7 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provision of these Conditions.

**7.2** In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions and Incoterms and these Conditions, the latter shall prevail.

**7.3** The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

**7.4** Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be supplied EXW.

**7.5** The Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

**7.6** The Supplier shall have no liability for any claim in respect of any damage during transit.

**7.7** Payment of all amounts due to the Supplier shall be made in cleared funds prior to delivery to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

## **8. Supply of Services**

**8.1** The Customer warrants that it is the owner of any Customer Machinery or is duly authorised by the owner to enter into the Contract in order for the Services to be provided in accordance with these Conditions.

**8.2** The Supplier will carry out Services on Customer Machinery only on components for which instructions have been given by the Customer, but reserves the right to carry out any Service to the other components the necessity of which only becomes apparent after dismantling parts of the Customer Machinery, and which would affect the safe operation of the Customer Machinery if not carried out. The Supplier will give the Customer an estimate of the likely cost of such additional Services but such estimates are not to be regarded as binding and the Supplier reserves the right to perform the Service in the manner it thinks most suitable. The Customer agrees to pay for such additional Services.

**8.3** The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

**8.4** The Supplier reserves the right to amend the Service provision if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

**8.5** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

**8.6** Where the Supplier has agreed to supply the Customer with any Supplier Machinery, the provisions set out in the Schedule forms part of the Contract and shall have effect as if set out in full in these Conditions and any reference to these Conditions includes the Schedule.

## **9. Customer's obligations**

**9.1** The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) 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 complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (g) comply with all applicable laws, including health and safety laws.

**9.2** If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **10. Charges and payment**

**10.1** The Supplier may require a deposit under the Contract.

**10.2** The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery;
- (b) unless otherwise agreed in writing exclude VAT (defined below) or any other tax or levy on the supply or importation of the Goods; and
- (c) shall be exclusive of all costs and charges of packaging, insurance, loading and transport of the Goods, which shall be invoiced to the Customer.

**10.3** The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's hourly fee rates, as set out in its current price list at the date of the Contract; and
- (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

**10.4** The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- (a) manufacturer of a Machinery or supplier of any Parts increasing their prices;
- (b) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (c) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (d) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

**10.5** In respect of Parts, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

**10.6** Unless otherwise agreed in writing prior to delivery of Parts or completion of the Services, the Customer shall pay each invoice submitted by the Supplier:

- (a) within 7 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- (c) time for payment shall be of the essence of the Contract.

**10.7** In respect of Machinery, the Supplier shall be at liberty to invoice the Customer on or at any time after the Commencement Date.

**10.8** Unless otherwise agreed in writing prior to delivery of Machinery, payment for the sale of Machinery shall (shall subject to presentation of invoice) be made prior to, or on the date of, delivery of Machinery whereupon the Customer shall pay such invoice submitted by the Supplier (if in cash (up to an amount of £1,000) and the balance (if any)) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

**10.9** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, 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 or Goods at the same time as payment is due for the supply of the Services or Goods. The provisions of this clause 9.9 shall also apply to "VAT only" invoices issued in respect of Goods and Services being paid for by third party insurers, who will not cover the payment of VAT elements of the price for such Goods and Services.

**10.10** If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.10 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%. Furthermore, such overdue sums may be passed to our debt collection agency, Sinclair Goldberg Price Ltd. All such overdue sums, without exception, will be subject to a surcharge of 15% plus vat to cover our costs in recovery. These overdue sums will also be subject to any legal costs incurred in obtaining settlement.

**10.11** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **11. Intellectual property rights**

**11.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

**11.2** The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **12. Data protection**

**12.1** Both parties will comply with all applicable requirements of the Data Protection Legislation.

**12.2** The Supplier will only use personal details in line with its privacy policy notice at <https://morriscorfield.claas-dealer.co.uk/legal-information>, a hard copy of which is available on request.

## **13. Confidentiality**

**13.1** 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 or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.

**13.2** Each party may disclose the other party's confidential information:

- (a) 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 the 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 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



**13.3** 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 the Contract.

**14. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

**14.1** The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

**14.2** The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

**14.3** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

**14.4** Subject to clause 14.3, the Supplier's total liability to the Customer shall not exceed the Total Charges.

**14.5** This clause 14.5 sets out specific heads of excluded loss:

- (a) Subject to clause 14.3, the types of loss listed in clause 14.5(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded:
  - (i) loss of profits;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of use or corruption of software, data or information;
  - (vi) loss of or damage to goodwill; and
  - (vii) indirect or consequential loss.

**14.6** The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**14.7** This clause 14 shall survive termination of the Contract.

**15. Termination**

**15.1** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party 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), obtaining a moratorium, 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; or
- (b) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

**15.2** Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:

- (a) fails to pay any amount due under the Contract on the due date for payment; or
- (b) commits a material breach of any term of the Contract.

**15.3** Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to

pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1(a) to clause 15.1(b), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **16. Consequences of termination**

### **16.1 On termination of the Contract:**

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose.

**16.2** Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**16.3** Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **17. Force majeure**

The Supplier shall not be liable to the Customer for breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event. In any such circumstances the Company shall be entitled at any time without prejudice to its other rights to cancel the contract or as its option to effect partial delivery or performance without incurring any liability whatsoever to the Customer. In circumstances where the Goods have been specially obtained for the Customer and there is no readily available market for them, the Supplier shall be entitled to charge the Customer reasonable costs and expenses incurred by the Supplier (howsoever arising) in respect of the Goods.

## **18. Complaints**

### **18.1 Complaints must be submitted to the Supplier in one of the following ways:**

- (a) in writing to: The Sales Director, Morris, Corfield & Co. Limited, Benthall Works, Broseley, Shropshire, TF12 5BB; or
- (b) by email to: [accounts@morriscorfield.co.uk](mailto:accounts@morriscorfield.co.uk)

**18.2** The Supplier will try to resolve written complaints as soon as reasonably practicable. However, if it an in-depth investigation is required, the Supplier will provide the Customer with an initial response within five Business Days of receipt of complaint, whereafter the Supplier will aim to provide a final response within 40 Business Days. If for whatever reason this is not considered possible (by the Supplier, acting reasonably) the Supplier will aim to contact Customer to explain the reasons why and advise (providing a best estimate of time, which shall neither be binding nor of the essence) as to how long the investigations are likely to take.

## **19. General**

### **19.1 Assignment and other dealings**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

### **19.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the address specified in the Order or as otherwise specified by one party to the other.
- (b) Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
  - (ii) 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 or at the time recorded by the delivery service; and
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 19.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**19.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 19.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**19.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**19.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**19.6 Entire agreement.**

- (a) The 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**19.7 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**19.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**19.9 Consumers.** Where the Customer is acting as a Consumer, nothing in the Contract is intended to exclude or limit the Customer's rights under the Consumer Rights Act 2015 or any other applicable statutory rights.

**19.10 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.

**19.11 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 the Contract or its subject matter or formation.

## Schedule (clause 8.6)

### The Customer's attention is particularly drawn to the provisions of paragraph 19.

1. The following definitions and rules of interpretation apply in this Schedule.
  - a) **Delivery:** the transfer of physical possession of the Supplier Machinery to the Customer at the Site.
  - b) **Rental Period:** the period of hire as set out in paragraph 3.
  - c) **Site:** the Customer's premises to where the Supplier has transported the Supplier Machinery, as requested by the Customer.
2. The Customer shall hire the Supplier Machinery subject to the following terms and conditions set out herein.
  3. The Rental Period starts on the date of Delivery and shall continue for the duration agreed between the parties or until the Contract is terminated earlier in accordance with the terms of this Schedule.
  4. The Supplier Machinery shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Supplier Machinery (save the right to possession and use of the Supplier Machinery as provided herein).
  5. The risk of loss, theft, damage or destruction of the Supplier Machinery shall pass to the Customer on Delivery. The Supplier Machinery shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Supplier Machinery is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Supplier Machinery is redelivered to the Supplier.
  6. Unless otherwise agreed with the Supplier, during the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
    - a) insurance of the Supplier Machinery to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
    - b) insurance for such amounts as a prudent owner or operator of the Supplier Machinery would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Supplier Machinery; and
    - c) insurance against such other or further risks relating to the Supplier Machinery as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer.
  7. All insurance policies procured by the Customer shall be endorsed to provide the Supplier with at least twenty Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on the Supplier's request name the Supplier on the policies as a loss payee in relation to any claim relating to the Supplier Machinery. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
  8. The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Supplier Machinery arising out of or in connection with the Customer's possession or use of the Supplier Machinery.
  9. If the Customer fails to effect or maintain any of the insurances required under this agreement, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
  10. The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.
  11. The Customer shall during the Rental Period:
    - a) ensure that the Supplier Machinery 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 provided by the Supplier;
    - b) 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 Supplier Machinery is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
    - c) maintain at its own expense the Supplier Machinery in good and substantial repair in order to keep it in as good an operating condition as it was on the date of Delivery (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Supplier Machinery;
    - d) make no alteration to the Supplier Machinery and shall not remove any existing component (or components) from the Supplier Machinery;
    - e) keep the Supplier fully informed of all material matters relating to the Supplier Machinery;
    - f) if taking, or permitting the use of, the Supplier Machinery off Site, ensure that the use or operation of the Supplier Machinery (by the Customer or any other person) complies with all applicable laws (including but not limited to the Road Traffic Regulations Act 1984 and the Road Traffic Offenders Act 1988), codes, guidance and regulations;

- g) permit the Supplier or its duly authorised representative to inspect the Supplier Machinery at all reasonable times and for such purpose to enter on the Site or any premises at which the Supplier Machinery may be located, and shall grant reasonable access and facilities for such inspection;
  - h) maintain operating and maintenance records of the Supplier Machinery and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
  - i) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Supplier Machinery or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  - j) not suffer or permit the Supplier Machinery to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Supplier Machinery 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 Supplier Machinery and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  - k) not use the Supplier Machinery (or allow the Supplier Machinery to be used) for any unlawful purpose, or otherwise contrary to law;
  - l) ensure that at all times the Supplier Machinery remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Supplier Machinery;
  - m) deliver up the Supplier Machinery at the end of the Rental Period or on earlier termination of the Contract at such address as the Supplier requires, or if necessary, allow the Supplier or its representatives access to the Site or any premises where the Supplier Machinery is located for the purpose of removing the Supplier Machinery; and
  - n) not do or permit to be done anything which could invalidate the insurances referred to in paragraph 6.
12. The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Supplier Machinery arising out of or in connection with the Customer's possession or use of the Supplier Machinery.
13. 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 the Customer:
- a) commits a material breach of any term of this Schedule;
  - b) 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), obtaining a moratorium, 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; or
  - c) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
14. The Customer will be responsible for all fuel, oil, and other consumables during the period of time the Supplier Machinery is in the possession of the Customer and will also be responsible for the cost of puncture repairs and lost keys.
15. The Supplier Machinery will only be driven by the Customer or a driver authorised by the Customer (with prior consent of the Supplier). All drivers must have a full valid UK driving License and be covered by full comprehensive insurance.
16. The Supplier Machinery will not be driven by any person under the influence of alcohol or drugs.
17. The Customer acknowledges that during the Rental Period and for the purposes of all applicable legislation, the Customer shall be liable as the owner of the Supplier Machinery, for any offences of whatsoever nature committed by the Customer or any other persons authorised by the Customer to drive the Supplier Machinery.
18. The Customer will return, or make available to, the Supplier Machinery to immediately upon notice given by the Supplier to the Customer.
19. The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Supplier Machinery arising out of or in connection with any negligence, misuse, mishandling of the Supplier Machinery or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of, or in connection with any failure by the Customer to comply with the terms of this Schedule.