



## General Terms and Conditions

NTC-1017





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## 1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 These Terms and Conditions (the “Conditions”) constitute the conditions on which Nomix Enviro Limited (the “Company”) is willing to supply goods (the “Goods”) and/or services (the “Services”) to any person (including sole traders, companies and partnerships) to whom a quotation, confirmation of order or contract is addressed, from whom a telephone order is received or who receives the Goods and/or Services (the “Customer”). A reference to Customer in these Terms and Conditions shall include the Customer’s personal representatives, successors and assigns. The Conditions shall prevail over any terms and conditions in the Customer’s purchase order, confirmation of order or other document issued by the Customer. Nomix Enviro Limited is a company registered in England and Wales. Reg. No: 10887479.
- 1.2 No employee or agent of the Company has any authority whatsoever to alter, vary or waive the Conditions in any way unless expressly authorised in writing by a Director of the Company. Paragraphs in these Conditions referring to “Goods” shall apply to all goods supplied by the Company. The headings throughout these Conditions are neither binding nor form part of these Conditions.
- 1.3 No employee or agent of the Company has any authority to make or give any representation or warranty whatsoever in relation to either the Goods or the Services and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a Director of the Company.
- 1.4 Each order for Goods and/or Services by a Customer (whether verbal or written) shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions. Each order for Goods and/or Services shall be deemed to be a separate contract subject to these Conditions and any applicable Supplementary Conditions (a “Contract”). No order placed by a Customer shall be accepted by the Company until confirmed unequivocally by the Company (whether verbally or in writing). Any quotation is given on the basis that no Contract will come into existence until an order (whether verbal or written) is received from the Customer which is accepted by the Company. Following acceptance of an order from a Customer, the Company may carry out credit checks in relation to the Customer and the Contract is in all respects conditional on the receipt of satisfactory results of such credit checks. In the event that the results of such credit checks are not to the Company’s satisfaction the Company may terminate the Contract, without liability to either party.

- 1.5 Depending on the type of Goods and/or Services, supplementary conditions (“Supplementary Conditions”) may also apply in addition to these Conditions. In the event of conflict between the Conditions and any Supplementary Conditions for specific Goods and/or Services, the Supplementary Conditions shall prevail.
- 1.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 1.7 The description of the Goods shall be as set out in the order acknowledgement sent by the Company and the Goods shall comply in all material respects with such description. All information contained in the Company’s catalogues or advertising is issued or published for the sole purpose of giving an approximate idea of the goods described therein and will not form part of the Contract or be deemed to constitute a representation as to the accuracy of such matters.
- 1.8 The Customer agrees to inform the Company of any changes to its business which may be relevant to the Contracts (including, without limitation, changes to company structure, ownership or name).

## **2. AVAILABILITY**

- 2.1 All sales of imported Goods are subject to supplies being made to the Company by the normal supplier with whom the contract for their supply has been placed. In the event of failure of supplies from abroad and the Goods not being replaceable from other sources at a price no greater than that charged in any contract for the supply of the Goods to the Company current from time to time, the Contract will be deemed to be cancelled without liability to either party provided that notice of such failure is given by the Company as soon as reasonably possible. The Company shall have no liability as a result of failure to deliver the Goods for the reasons stated in this Clause.
- 2.2 The Company reserves the right to cease to supply or provide any or all Goods and/or Services under any Contract without prior notice for any reason, without liability to the Company or the Customer, subject to the Company’s obligations under any pre-existing contracts between the Company and the Customer.

### **3. PRICES**

- 3.1 Save where a quotation has been given to a Customer by the Company for the supply of Goods and/or Services (whether verbally or in writing), the prices listed in the Company's current catalogue or price list will apply to all Contracts from time to time agreed between the parties. Prices quoted by the Company whether verbally, in writing or given in a price list or catalogue may be withdrawn by the Company at any time prior to a Contract being entered into.
- 3.2 The Company reserves the right to increase the prices of the Goods or the Services to reflect any increase in cost to the Company due to any change in law or regulation applicable to the Company, the Goods or the Services or tax, duty, levy or other payment whatsoever imposed upon the Goods or the Services after the date of the applicable Contract by the European Union or any national government. The Company also reserves the right to terminate, without liability, any Contract the performance of which, as a result of any change in such law or regulation or imposition of such duty, will have a material adverse effect on the Company which cannot be resolved by an increase of the prices of the Goods or Services.
- 3.3 All prices are subject to the addition of VAT where applicable.

### **4. SPECIFICATIONS**

The "Specification" means the technical description and/or drawings of the Products delivered to or by the Customer contained in or referred to in or annexed to the confirmation of order acceptance or otherwise together with the specifications and standards and instructions contained in any written instructions supplied with the Product, whether or not specifically entitled specifications.

## 5. PAYMENT

- 5.1 Payment shall be received by the Company in full and cleared funds by the date specified on the Company's invoice save where alternative payment terms have previously been agreed in writing between the parties. The Company reserves, at its discretion, the right to require payment before delivery. Time for payment by the Customer shall be of the essence.
- 5.2 If the Customer fails to make payment for Goods or Services on the due date under any Contract then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled, at its discretion, to do any of the following :-
- (i) cancel the Contract and any other Contract between the Company and the Customer or suspend further deliveries to the Customer;
  - (ii) appropriate payment made by the Customer to such of the Goods or Services (or Goods or Services supplied under any other Contract) as the Company may think fit notwithstanding any purported appropriation by the Customer;
  - (iii) sell or otherwise dispose of any Goods whether appropriated to the Contract or not;
  - (iv) charge the Customer an amount equal to 2% of the amount outstanding under the Contract each month until payment is made, the first such charge being on the day following the due date for payment and subsequent charges being on a monthly basis. The Customer shall not be entitled to any reimbursement of such charges as a result of payment of the amount outstanding being made part way through a month;
  - (v) to sue for the price of the Goods even though title in them may not have passed to the Customer.
- 5.3 Payment will be made in full without deduction or delay in respect of any set-off, counterclaim or dispute unless accepted by the Company in writing.

## **6. DELIVERY**

- 6.1** Unless otherwise agreed, delivery of the Goods shall take place at the Company's place of business. The Customer will take delivery of the Goods within the time period set out in the Contract for the sale of the Goods.
- 6.2** If the Company agrees to deliver the Goods at any place other than the Company's premises:
- (i)** and if the Goods shall be required to be stored in a particular manner whether pursuant to statute, manufacturer's instructions or otherwise then it shall be a condition of the Contract that the Customer shall provide, at the place to which the Goods are to be delivered, storage facilities complying with such requirements and shall make arrangements to ensure that the Company's delivery operative has access to such facilities at the time of actual delivery. The Company shall be entitled to treat failure to make due provision in accordance with the terms of this sub-clause as failure to take delivery of the Goods;
  - (ii)** the Customer shall provide staff to enable the Goods to be offloaded and provide suitable access to the point of unloading; and
  - (iii)** delivery shall be deemed to have taken place immediately upon offloading of the Goods at their destination.
- 6.3** The Company's liability in respect to any total failure to deliver the Goods for any reason, other than any cause beyond the Company's reasonable control (including non-availability of Goods from suppliers and non-availability of transport services) or as a result of the Customer's fault, shall be limited to the excess (if any) over the price of the Goods of the price of similar goods to the Customer (in the cheapest available market) to replace those not delivered, provided always that written notice of non-delivery is given by the Customer within 14 days of the last day of the time period for delivery set out in the Contract. This clause relates strictly to non-delivery and not to late delivery which is dealt with in Clause 6.4.
- 6.4** Time shall not be the essence of the Contract either in relation to the delivery of the Goods or the completion of the Services and the Company shall not be liable for any loss (including loss of profit), damage, costs, charges or expenses howsoever arising directly or indirectly from any delay in the delivery of the Goods or completion of the Services by the date specified in the Contract.



- 6.5 The Company shall be entitled to deliver the Goods within any agreed period in one or more consignments. Unless otherwise expressly agreed, each delivery or consignment shall stand as a separate contract (each a Contract). The Company shall be entitled to render its invoice for those Goods which have been delivered and to receive payment therefore in accordance with the Contract and these Conditions notwithstanding that the remainder of the Goods have not been delivered.
- 6.6 In the event that the Customer will not accept delivery of any of the Goods (whether by collection from the Company's place of business or by delivery at any other place agreed between the parties) or the Company is unable to deliver because the Customer has failed to give the Company adequate delivery instructions or appropriate authorisations within the time period for delivery set out in the Contract (otherwise than by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company:-
- (i) risk in the Goods will pass to the Customer and the Customer shall remain liable for the price of the Goods unless and until sold in accordance with (iv) below;
  - (ii) the Company may store the Goods until actual delivery and charge the Customer the reasonable costs (including insurance) of storage and of any failed delivery of the Goods by the Company to the Customer and of any return of the Goods to the Company;
  - (iii) the Company shall not be liable for any deterioration of the Goods after the time period for delivery set out in the Contract; and
  - (iv) the Company may sell the Goods at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract, together with any reasonable expenses incurred in relation to such sale, and the Company shall have no further liabilities under the Contract with the Customer.

## **7. LOSS OR DAMAGE IN TRANSIT**

Where delivery of the Products is to be made by the Company, the Company will either repair, replace free of charge or credit the Products lost or damaged in transit to UK Customers, provided that the Customer notifies both the carrier and the Company in writing within 4 days of receipt of the damaged Products or within 10 days of receipt of the Company's advice of despatch.

## **8. QUANTITIES**

- 8.1 Where Goods are sold in bulk delivery of a shortage or surplus not exceeding 5% of the quantity of the Goods ordered shall, at the Company's option, be considered to be due execution of the Contract and the Customer shall not be entitled to object to or reject the Goods by reason of such surplus or shortfall. The Company shall have the right to the return of any surplus over the amount of Goods ordered.
- 8.2 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

## **9. RISK/OWNERSHIP**

- 9.1 The Goods are at the risk of the Customer from the time of delivery or, if earlier, as provided in clause 6.6.
- 9.2 The Company shall remain the sole and absolute owner of the Goods until such time as the price of the Goods and all other monies which are or which become due to the Company from the Customer have been paid to the Company by the Customer in cash or cleared funds. Until such time the Customer shall:
- (i) be the bailee of the Goods for the Company;
  - (ii) store the Goods separately from the Customer's own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company;
  - (iii) hold the proceeds of any insurance on trust for the Company and not mix with any other money.
- 9.3 Until such time as ownership passes to the Customer, the Customer shall be entitled to re-sell or use the Goods in the ordinary course of business until such time as permission to do so is withdrawn in writing by the Company.

9.4 The Customer's right to possession of the Goods shall cease at whichever is the earliest of the following dates: -

- (i) on the failure by the Customer to perform its obligations under any Contract with the Company or under these Conditions; or
- (ii) on the Customer being the subject of any one of the events listed in Clause 16.1 of these Conditions.

9.5 The Customer grants the Company, its agents and employees an irrevocable licence to enter any premises where the Goods are stored to inspect them or, where the Customer's right to possession has terminated, recover them.

9.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) immediately become due and payable.

## 10. INSPECTION

The Customer must carefully examine the Goods on delivery and shall, other than for defects in bulk deliveries, within 2 business days of delivery of the Goods give notice in writing to the Company of any short or over delivery or any defects reasonably discoverable on careful examination. In the case of such defects in Goods delivered in bulk, notice must be given verbally to the Company before the load has been discharged. In the absence of receipt of such notice, the Company shall be discharged from all liability in respect of defects reasonably discoverable on careful examination on delivery or short or over delivery. In the event that the Customer establishes that the goods are defective, the Customer's sole remedy shall be limited, as the Company may elect, to the replacement of the defective Goods or a refund of the price of the Goods on return of the Goods to the Company. Notwithstanding Clause 17.1, arbitration proceedings must be claimed in relation to defects reasonably discoverable on careful examination within 28 days from the date of delivery of the Goods.

## **11. WARRANTIES FOR GOODS AND STANDARD OF SERVICES**

- 11.1 Save as set out in any Supplementary Conditions, all warranties or terms and conditions implied by statute or otherwise, including, without limitation, in relation to quality, fitness, correspondence with sample or description in relation to the Goods are hereby excluded to the fullest extent permissible by law.
- 11.2 All Services of an advisory nature including, without limitation, advice on markets, seed varieties or the use and application of chemicals or fertilizers are carried out by the Company with all reasonable skill and care and on the basis of best information available to the Company at the time such Services are provided. Save as set out above, no warranty or representation of any nature is given by the Company in relation to the Services or the accuracy or completeness of information, recommendations or advice provided by the Company, its employees or agents and all warranties, terms or conditions, express or implied by statute or otherwise, are hereby excluded to the fullest extent permissible by law.
- 11.3 Any Products provided by the Company to apply chemicals (“Applicators”) which fail to comply with the Specification and/or are not fit for the uses approved in the Specification, will at the option of the Company be replaced or repaired free of charge, provided that the Customer gives notice of such failure within 30 days of delivery for visible defects and within 30 days of the defect becoming apparent for latent defects. Any Applicators in respect of which no such notification is given to the Company shall be deemed to be in all respects in accordance with the contract and the Customer shall be deemed to have accepted the same.
- 11.4 In addition the Company will repair or at its option replace free of charge any defective Applicators within a period of one year from the date of delivery, provided that only herbicide complying with the specifications on the label for the chemical supplied by the Company are used with such Applicators.
- 11.5 Product claims shall be subject to the following conditions :-
- (i) the Customer if so requested shall return the Applicator (carriage paid) to the works of the Company or to an authorised repairer nominated by the Company for this purpose together with sufficient details in writing to enable the Application and the alleged defect or failure to be clearly identified. If the Company accepts the claim as justified the return carriage charges will be refunded and the repaired Applicator delivered free of cost to the Customer;

- (ii) if the claim is not accepted, the Company will so notify the Customer and hold the Applicator for 14 days for the Customer's instructions, failing receipt of which the Company shall then be entitled to dispose of the Applicator or store at the Customer's expense without incurring any liability to the Customer;
- (iii) the environmental/storage/user conditions and the operational/maintenance instructions laid down by the Company have been strictly complied with;
- (iv) repairs, alterations or modifications have not been made or attempted by anyone other than the Company or the authorised repairer of the Company;
- (v) any identification numbers or marks have not been altered defaced or removed.

## **12. LIMITATION OF LIABILITY**

12.1 Subject to the provisions of Clause 10 of these Conditions, in the event that the Goods do not comply with the express terms of the Contract then the Company shall at its option, either:

- (i) replace the defective Goods free of charge to the Customer; or
- (ii) refund up to maximum of the total payments made by the Customer to the Company under the Contract in respect of the defective Goods provided that notice of any defect shall have been given to the Company as soon as reasonably possible in accordance with Clauses 10 and 17.1. This shall be the sole remedy of the Customer in relation to any breach of warranty or the failure of the Goods to comply with the express terms of the Contract.

12.2 Subject to Clause 12.6, all liability of the Company for loss or damage, direct or indirect, arising in respect of the provision of Services of an advisory nature (excluding advice on the use and application of chemicals) shall be limited to a sum equivalent to the net price paid for the Services under the Contract. In relation to Services that are of an advisory nature provided by the Company in relation to the use or application of chemicals, the Company shall have no liability to the Customer in relation to such advisory Services unless it is proved that any chemical recommended by the Company for a particular purpose is not recommended by the manufacturer of such chemical for use for such purpose and the Services were not carried out with reasonable care and skill. Any such advisory Services are subject to the relevant Supplementary Conditions.

- 12.3 It is acknowledged by the Company and the Customer that after the Goods have been delivered to the Customer, the Company cannot exercise any control over either the storage, handling, mixing, application and use of the Goods supplied or the weather conditions prevailing before, during and after application or use, all or any of which may affect the performance of the Goods. It is also acknowledged that failure, whether total or partial, of any crop may depend on many natural and other factors beyond the Company's control. Accordingly, the Company's liability in respect of defective Goods or Services, in contract, tort or otherwise, is strictly limited as set out in Clause 11 and this Clause 12.
- 12.4 It shall be a condition of the Company's liability hereunder that the Customer has followed strictly the instructions for use furnished to it in respect of the Goods by the manufacturer of the Goods or the Company including, without limitation, instructions on storage, handling, mixing and application and has records in safekeeping to show that the Customer has done so. The Company shall have no liability as a result of the Customer's failure to produce the appropriate aforementioned records.
- 12.5 Subject to Clause 12.6, the Company's aggregate liability for breach of contract or the warranties contained herein or in tort (including negligence and misrepresentation) shall be limited to four times the net price paid for the Goods or Services under the Contract.
- 12.6 The Company shall be under no liability whether in contract, tort (including negligence) or otherwise for any loss of profit whatsoever suffered by a Customer or any other person in connection with Goods or Services supplied by the Company.
- 12.7 The Company shall be under no liability whether in contract, tort (including negligence) or otherwise for any loss of goodwill whatsoever suffered by a Customer or any other person in connection with Goods or Services supplied by the Company.
- 12.8 The Company shall be under no liability whether in contract, tort (including negligence) or otherwise for any consequential loss or damage whatsoever suffered by a Customer or any other person in connection with Goods or Services supplied by the Company.
- 12.9 The Company shall be under no liability whether in contract, tort (including negligence) or otherwise for any loss of production whatsoever suffered by a Customer or any other person in connection with Goods or Services supplied by the Company.

- 12.10 Nothing herein contained shall be deemed to exclude or restrict any liability which cannot be excluded or restricted under the provisions of any statute, including the Unfair Contract Terms Act 1977, and in particular the Company does not exclude any liability for death or personal injury resulting from the Company's negligence.

### **13. CANCELLATIONS AND RETURNS**

No order which has been accepted by the Company may be cancelled by the Customer and no Goods which have been supplied may be returned by the Customer to the Company (other than Goods which are proved defective under Clause 10) except with the agreement in writing of the Company and on the following terms:-

- (i) any Goods returned must be returned no more than one calendar month after the date of delivery and in any event no return of Goods will be accepted after the end of the applicable planting season;
- (ii) no Goods will be accepted for return if the Goods supplied are no longer on the Approved List of the Department for Environment, Food and Rural Affairs as at the date of return;
- (iii) no Goods will be accepted by the Company as returned Goods unless the Goods are in their original packaging unopened and in undamaged condition; and
- (iv) in all cases, where an order is cancelled by the Customer or Goods are returned by the Customer, the Customer shall pay the Company a handling charge of 10% of the invoiced price.

### **14. INDEMNITY**

14.1 The Customer shall indemnify and hold the Company harmless against any liability arising as a result of actions, claims or demands by third parties whether arising in contract, from breach of statutory duty or in tort (including negligence) or otherwise howsoever arising either directly or indirectly from:-

- (i) the use of the Goods or Services supplied by the Company other than in accordance with the manufacturers or the Company's instructions or in breach of Clause 16; or
- (ii) any failure by the Customer to obtain any permissions, consents or licences which may be necessary for use of, or possession of, the Goods.

- 14.2 The Customer will indemnify the Company, on demand, for all costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person) arising directly or indirectly from the Customer's fraud, negligence or breach of these Conditions and/or any Supplementary Conditions.
- 14.3 All claims for infringement or alleged infringement of any third parties, patent or other intellectual property rights, and all costs and expenses incurred in connection therewith, arising from the execution of the Customer's order in accordance with the Customers' designs, plans or specifications.
- 14.4 All claims for personal injury, loss or damage to property brought against the Company by third parties arising from the presence or use of the Products unless such injury, loss or damage is solely attributable to the negligence of the Company, its employees or agents.

## **15. FORCE MAJEURE**

The Company shall not be responsible for failure to perform its obligations under the Contract occasioned by any act beyond the reasonable control of the Company including, without limitation, act of God, act of terrorism, war, adverse weather, action by Government or Government authority whether at Port, Local, National or European Union level, strike-out, combination of workman accident or breakdown of plant or machinery, power failure, crop failure, fire, pandemic or epidemic (a "Force Majeure Event") provided that the Company dispatches written notice to the Customer within 7 consecutive days of its knowledge of the occurrence or not later than 7 days after the beginning of the contract period, whichever is later. If the Force Majeure Event continues for more than 30 consecutive days, the Customer shall have the option of cancelling the unperformed portion of the Contract if the subject Goods are not already in course of transit by giving to the Company written notice to that effect but shall not be entitled to any compensation in respect of such cancellation. A further extension of 30 days may be mutually agreed if requested by the Company. If performance under this Clause be prevented during the extension periods the Contract or any unfulfilled part thereof shall be cancelled. The Customer shall have no claim against the Company for non-performance or otherwise under this Clause.



## 16. INSOLVENCY

### 16.1 If the Customer:

- (i) (being a company (or other incorporated body)) is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986 or convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a receiver, administrative receiver or similar officer is appointed over all or a substantial part of its business or affairs or a meeting is convened for the purpose of considering a resolution or other steps are taken for winding up of such other party (whether by the presentation of a winding up petition or otherwise) or for the making of an administration order (other than for the purposes of solvent reconstruction or amalgamation);
- (ii) (being an individual) is unable to pay its debts within the meaning of s.268 of the Insolvency Act 1986 or a petition is presented for its bankruptcy or it makes an arrangement or compromise for the benefit of its creditors whether pursuant to the provisions of Part VIII Insolvency Act 1986 or otherwise (a "Personal Insolvency Event"); or
- (iii) (being a partnership) is unable to pay its debts or a petition is presented for its winding up under the provisions of the Insolvent Partnerships Order 1994 whether or not involving individual insolvency proceedings against the Customer's partners and presented by creditors or by the partners themselves or such a petition is presented against it in conjunction with bankruptcy or individual insolvency or petitions against any partner or if the Customer enters into any composition, scheme or arrangement or voluntary arrangement including its business and assets or the share of any partner or in the event of action for a partnership account and/or a winding up of or a dissolution of the Customer under the Partnership Act 1890 or if any partner suffers a Personal Insolvency Event the provisions of Clauses 16.2 and 16.3 shall apply.

16.2 In the circumstances set out in Clause 16.1, notwithstanding any previous arrangements with the Company for deferred payments, the full remaining price for any Goods delivered or Services supplied by the Company shall become immediately payable.

- 16.3 The Company shall have the right, without prejudice to any other rights and remedies available, to cancel and/or suspend or to refuse to accept any further deliveries and/or terminate the Contract at any time after becoming aware of any circumstances listed in Clause 16.1, provided that when exercising any of the above rights, the Company shall inform the Customer in writing of its intention to exercise such right or rights within 28 days of the relevant occurrence.
- 16.4 Whenever any of the rights set out in this Clause 16 exercised by the Company, the Company will not be liable to pay any compensation to the Customer in respect of such exercise.

## **17. DISPUTE RESOLUTION**

### **General**

- 17.1 Subject to Clause 10, all claims relating to the supply of Goods and/or Services by the Company must be notified by the Customer to the Company in writing within 30 days of when the Customer became aware of the subject matter of such a claim or should reasonably have been so aware and no claim may be made unless thereafter a reasonable opportunity is given to the Company, its employees or agents to carry out such inspections and/or investigations in relation to the said claim which the Company reasonably regards as necessary or desirable. Additionally the Company, its employees or agents will not be liable in respect of any claim unless the Customer has taken every opportunity to minimise such a claim. Subject to the provisions of Clause 10, arbitration proceedings must be claimed within 90 days from the last day of the Contract. The Company shall have no liability in relation to any claim not made within the time limits set out above.
- 17.2 Any dispute which remains unresolved (other than a claim for an unpaid debt which shall be dealt with in the courts) shall be referred for settlement by arbitration in England under the rules of the Agricultural Industries Confederation (AIC) of which all the parties shall be deemed to have knowledge.
- 17.3 If, in any dispute between the parties subject to arbitration, it is reasonably apparent to either party that the manufacturer of the Goods supplied which are the subject matter of the arbitration should be a party to the proceedings, the arbitration proceedings shall be stayed to enable Court proceedings to be taken with the manufacturer as a party.

- 17.4 These Conditions and any Contracts with Customers are governed by the laws of England and Wales and in respect of all disputes arising from the Contract (save those which are to be referred to arbitration in accordance with the provisions of this Clause) the parties agree to submit to the jurisdiction of the Courts of England and Wales.

#### Quality Claims

- 17.5 The Company reserves the right to demand samples of any Goods in relation to which the Customer is making a quality claim, whether pursuant to Clause 12, Clause 11 or otherwise. The Company and the Customer shall jointly appoint an independent person to be the official analyst for the purpose of the Contract who shall act as an expert and not as an arbitrator. If the Customer and the Company are unable to agree on the identity of the independent expert such expert shall be appointed by AIC. The results of such analysis shall be final and binding on the Company and the Customer. The costs of the independent expert shall be borne by the Customer in cases where no quality claim is payable, but by the Company if the Customer is entitled to a quality claim.

### **18. CUSTOMER'S DUTY TO APPLY CORRECTLY**

- 18.1 All directions, warnings, or notices as to applying, sowing or otherwise using the Goods contained on or in the Goods supplied to the Customer by the Company or the manufacturer are to be complied with by the Customer. The Company will accept no liability whatsoever for damage or loss (whether direct or indirect) suffered by the Customer where the Customer fails to comply with such instructions, warnings or notices.
- 18.2 Where the Goods supplied to the Customer by the Company contain any recommendations, instructions or directions as to methods of storage or, in any other case, where the horticultural and/or agricultural industries recognise and recommend certain means of storage for such Goods, failure to comply with such recommendations, instructions or directions in respect of the Goods supplied will absolve the Company from all liability whatsoever in respect of damage or loss suffered by the Customer whether direct or indirect.

## **19. CONDITIONS OF HIRE**

When sprayers, granular applicators or other equipment (“Equipment”) is hired from the Company, in addition to such Supplementary Conditions of hire as shall apply, the Customer warrants that all materials used through such Equipment shall be purchased from the Company whether they are of the Company’s manufacture or brand or not and further undertakes that all such Equipment will be used by qualified personnel and that it will be responsible for the notification of any faulty Equipment to the Company.

## **20. DATA PROTECTION**

- 20.1** The Company may hold personal data about you and your business. These details may be retained and shared with other associated companies and joint venture entities in which it holds an interest. Some administrative activities may be carried out by third parties who may be provided with any information the Company holds about you and your business. In particular, you should note that the Company may from time to time pass details including account conduct data to credit reference agencies, insurance companies and Bankers as part of their credit approval process and that they may retain a record of that and share information with other users. The Company may from time to time use your data to send you details about services and products, offers or promotions, which may be of interest to you. If you do not wish to receive this information please notify us in writing.
- 20.2** The Company will process the Customer’s personal data only in accordance with the Contract and the Customer’s instructions and will ensure that it has taken steps to ensure the reliability of those of its employees who are used to process such personal data.
- 20.3** The Company warrants that it has appropriate technical and organisational processes and procedures in place to safeguard against any unauthorised or unlawful processing and against accidental loss or destruction of, or damage to the Customer’s personal data.

## **21. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 21.1** For the purposes of this Clause 21 “Intellectual Property Rights” means all intellectual property rights subsisting anywhere in the world, whether registered or unregistered and all applications for intellectual property rights, including (without limitation) patents, rights to inventions, know-how, confidential information, copyright, rights in software, database rights, design rights, trade marks, business names, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off and unfair competition.
- 21.2** The Company retains all right, title and interest in and to those of its Intellectual Property Rights existing prior to, and used in connection with, the delivery of the Goods and/or Services (the “Pre-Existing IPRs”).
- 21.3** As between the Customer and the Company, all Intellectual Property Rights arising from the delivery of the Goods and/or the performance of the Services (the “Deliverables IPRs”), including (without limitation) those subsisting in all and any reports, contents, graphics, maps, photographs, computer programs, data and specifications (including drafts) and all other deliverables forming part of the Services (together the “Deliverables”) shall be owned by the Company or its licensors.
- 21.4** The Company grants to the Customer free of charge and on a non-exclusive, personal, worldwide licence right to use the Pre-Existing IPRs, the Deliverables and the Deliverable IPRs to such extent as is necessary to enable the Customer to make reasonable use of the Goods and/or Services for the purposes for which they were delivered and/or performed. This licence will continue indefinitely unless and until the Company terminates the licence on to the Customer and/or expressly terminates the Contract pursuant to which the applicable Intellectual Property Rights are licensed. The Customer acknowledges and agrees the Pre-Existing IPRs and Deliverable IPRs remain the property of the Company and it will not make them available and will not make the Deliverables available to any third party without the prior written consent of the Company.
- 21.5** The Customer acknowledges that the Company may use sub-contractors to deliver certain elements of the Deliverables and, to the extent it does so, the Customer’s use of such Deliverables and the Deliverable IPRs subsisting in connection with them, is subject to the licence terms of its sub-contractor.

- 21.6 During the course of the provision of the Goods and/or Services the Company may collect certain information about the Customer's business including, without limitation (the "Customer Information"). The Customer agrees that it provides and/or permits access to the Customer Information to the Company without restriction and/or need for further licence, consent or authorisation from the Customer for its further use by the Company for its own purposes, including those set out in Clause 21.7 below.
- 21.7 The Customer hereby acknowledges and agrees that the Company is entitled to use the Customer Information for the following purposes:-
- (i) the provision of the Services and future services to the Customer;
  - (ii) using it in anonymised form for statistical analysis, benchmarking, onward provision through the supply chain and for other purposes, including (but not limited to) the supply of such anonymised information to selected third parties; and
  - (iii) aggregating it with other customer information and using and disclosing it in that aggregated form for statistical comments, benchmarking and other services for the Customer and third parties.
- 21.8 The Customer undertakes that it shall not at any time without the prior written consent of the Company disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives of the Company which are of a confidential nature, including the Pre-existing IPRs and Deliverable IPRs, that have been disclosed to the Customer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Customer may obtain.
- 21.9 The parties recognise that under the Contract they may receive each other's trade secrets and/or confidential or proprietary information of the other party. All information belonging to or relating to a party including without limitation information concerning business plans, customers, supplies, services, and/or financial results received by the other party as a result of entering into or performing the Contract which is designated as confidential by the disclosing party or is otherwise clearly confidential in nature constitutes "confidential information".

- 21.10 Subject to Clauses 21.6 and 21.7, each party agrees not to use confidential information for any purpose other than the purpose for which it is supplied under the Contract and agrees not to divulge confidential information received from the other party to any of its employees who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the disclosing party except to its professional advisers or as may be required by law or any legal or regulatory authority.
- 21.11 Each party will use a reasonable degree of care which in any event will not be less than the same degree of care which the receiving party uses to protect its own confidential information to keep and ensure its employees and agents keep any and all such information confidential. This obligation will survive the termination of the Contract or, in respect of a particular item of confidential information, until such earlier time as that item of confidential information reaches the public domain other than through the receiving party's own default.
- 21.12 The Company shall have the right, without prejudice to any other rights and remedies available, to cancel and/or suspend or to refuse to accept any further deliveries and/or terminate the Contract immediately on written notice if the Customer commits any breach of this Clause 21. Whenever any of the rights set out in this Clause 21.10 are exercised by the Company, the Company will not be liable to pay any compensation to the Customer in respect of such exercise.

## **22. DRAWINGS AND CONFIDENTIALITY**

Unless otherwise specified in the quotation of the Company, all specifications, drawings and particulars of weights and dimensions submitted therewith are approximate only, and the descriptions and illustrations contained in the catalogue, price list and other advertisement matter of the Company are intended to present a general idea of the Product described therein, and none of these shall form part of the contract. All specifications, drawings and technical descriptions submitted with or in connection with the quotation of the Company are copyright of the Company. All such copyright materials, and all information and "know-how" whenever supplied shall at all times be treated by the Customer as confidential and shall not without the written consent of the Company be used by the Customer except for the purposes of the operation of the equipment supplied thereunder, nor shall they without like consent be communicated to third parties save insofar as may be necessary for the purposes of such operation.

## **23. ANTI-BRIBERY AND CORRUPTION**

**23.1** Each party agrees to comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (all of the aforesaid being “Relevant Requirements”).

**23.2** Each party further agrees:

- (i) not to offer, promise, give or receive any improper financial payment and/or other improper advantage to or from any person, customer or supplier;
- (ii) not to make or offer, directly or indirectly, any payment, gift or other advantage to a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business;
- (iii) not to do, or omit to do, any other act which constitutes a breach of the Relevant Requirements;
- (iv) it shall have and maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- (v) on request by the other party certify to the other party in writing signed by one of its officers, compliance with this Condition 23.2 and all persons associated with it and shall provide to the other party such supporting evidence of compliance as the other party may reasonably request.

**23.3** The Company shall have the right, without prejudice to any other rights and remedies available and without liability to the Customer, to cancel and/or suspend or to refuse to accept any further deliveries and/or terminate the Contract immediately on written notice if the Customer commits any breach of Clauses 23.1 and/or 23.2.

## **24. SLAVERY ACT**

The Seller shall in all respects comply with the Modern Slavery Act 2015 in their supply of goods to the Company.



## **25. EFFECTS OF TERMINATION**

If the Company terminates any Contract with the Customer for any reason, the Company shall have the right, without prejudice to any other rights and remedies available and without liability to the Customer immediately to terminate any other Contracts (including the Contract) and/or order for Goods and/or Services between the Company and the Customer.

## **26. SEVERABILITY**

If these conditions shall be or become void in whole or in part, the other provisions shall remain valid and enforceable.

## **27. RIGHT TO ASSIGN THE CONTRACT**

The Contract is entered into between the Company and the Customer as principals and the Customer shall not be entitled to assign the benefit or burden of it or with any interest in it without the prior written consent of the Company. The Company shall be able to sub-contract the whole or part of its obligation under the Contract and to assign its interest in the Contract.

## **28. THIRD PARTIES**

A person who is not a party to the Contract (a "third party") shall have no rights pursuant to the Contract (Rights of Third Parties) Act 1999 (the "Act") to enforce any of these conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

## **29. PUBLICITY**

The Products may not be advertised or exhibited by the Customer without the prior consent of the Company except on the Customers premises.

### **30. EXERCISING ANY RIGHT OF REMEDY**

A failure by the Company to exercise, or a delay in exercising, any right of remedy under this Contract shall not constitute a waiver of the right or remedy or a waiver of any other right or remedies which the Company may otherwise have and no single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of any right or remedy or the exercise of any other right or remedy. Equally, any waiver by the Company of a breach of any of the terms of this Contract or of any default under this Contract shall not be deemed a waiver by the seller of any subsequent breach or default and shall not affect the other terms of this Contract.

### **31. NOTICES**

Any notice hereunder shall be in a permanent readable form and shall be deemed properly given if addressed to the party concerned at its principal place of business or last known address.

### **32. RISK, OWNERSHIP AND INSURANCE**

- 32.1 Risk in the Equipment will pass to the Customer on delivery of the Equipment or collection of the Equipment by the Customer (as appropriate) and risk in the Equipment will not pass back to the Company until the Equipment is delivered by the Customer to the Company or collected by the Company (as appropriate).
- 32.2 Ownership of the Equipment remains with the Company at all times and the Customer shall acquire no right, title or interest in the Equipment, except the right to hire the Equipment in accordance with these Supplementary Conditions and the Conditions.
- 32.3 The Customer agrees that it shall not deal with the ownership or any interest in the Equipment. This includes, without limitation, selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending.

### **33. CARE OF EQUIPMENT**

The Customer shall:

- 33.1 not deface or remove any labels from and/or interfere with the Equipment, its working mechanisms or any other parts of it;
- 33.2 take reasonable care of the Equipment and keep it properly maintained and only use it for its proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to the Customer and any applicable law or regulations (including any Institution of Electrical Engineers (IEE) regulations);
- 33.3 notify the Company immediately and in any event within 24 hours after any breakdown, loss and/or damage to the Equipment or of any accident resulting in death, personal injury or damage to property;
- 33.4 take adequate and proper measures to protect the Equipment from theft, damage and/or other risks;
- 33.5 notify the Company of any change of the Customer's address and upon the Company's request provide details of the location of the Equipment;
- 33.6 permit the Company at all reasonable times to inspect the Equipment including procuring access to any property where the Equipment is situated;
- 33.7 keep the Equipment at all times in its possession and control and not remove the Equipment from the United Kingdom without the Company's prior written consent;
- 33.8 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Equipment required by any legislation, best practice and/or operating instructions, except to the extent that the Company has agreed to provide them;
- 33.9 not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Equipment;
- 33.10 not continue to use Equipment where it has been damaged;

- 33.11 where the Equipment requires fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Equipment is properly installed by a qualified and competent person.
- 33.12 return the Equipment in good working order and condition (fair wear and tear excepted) in a clean condition together with all licences, registration and other documents relating to the Equipment.
- 33.13 check the calibration of the Equipment on each occasion before use. Final determination of the suitability of the Equipment for the Customer's specific use is the Customer's responsibility and the Customer assumes all risk and liability in this regard.

#### **34. LOSS OR DAMAGE TO THE EQUIPMENT**

- 34.1 If the Equipment is returned in damaged, unclean and/or defective state (except where due to fair wear and tear and/or an inherent fault in the Equipment) the Customer shall be liable to pay the Company for the cost of any repair and/or cleaning required to return the Equipment to a condition fit for re-hire.
- 34.2 The Customer will pay to the Company the replacement cost of any Equipment (on a new for old basis) which is lost, stolen and/or damaged beyond economic repair during whilst at the Customer's risk.
- 34.3 The Customer will pay the Company any costs which it may incur in tracking or recovering any lost or stolen Equipment.
- 34.4 The Customer shall be responsible for all expenses, loss (including loss of charges) and/or damage suffered by the Company arising from any breakdown of the Equipment due to the Customer's negligence, misdirection and/or misuse of the Equipment.









**Nomix Enviro Limited**

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