



Designers and manufacturers of balers, conveyors and MRFs.

TERMS & CONDITIONS:

1 Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with clause 0.
"Contract"	the contract between the Supplier and the Customer for the sale and/or purchase of the Goods or the provision of the Services in accordance with these Conditions.
"Customer"	the person or firm who purchases the Goods and/or the Services from the Supplier.
"Deliverables"	the deliverables (if any) set out in the Order produced by the Supplier for the Customer.
"Force Majeure Event"	has the meaning given in clause 13.
"Goods"	the goods (or any part of them) set out in the Order for Goods.
"Intellectual Property Rights"	all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world
"Order for Goods"	the Customer's order for the Goods, as evidenced by the Customer's purchase order, the Customer's written acceptance of the Quotation for Goods, or otherwise in writing (including E mail), as the case may be.
"Order for Services"	the Customer's order for the Services, as set out in the Customer's purchase order form, the Customer's written acceptance of the Quotation for Services, or otherwise in writing (including E mail), as the case may be.
"Quotation for Goods"	the quotation provided by the Supplier for the supply of Goods
"Quotation for Services"	the quotation provided by the Supplier for the supply of Services
"Services"	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.
"Specification"	any specification for the Goods or the Services, including any related plans and drawings, that is agreed or accepted by the Customer and the Supplier.
"Supplier"	Whitham Mills Engineering Limited (registered in England and Wales with company number 03722162).
"Supplier's Materials"	has the meaning set out in clause 5.1.9

1.2 Construction. In these Conditions, the following rules apply:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

2 Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 An Order for Goods or an Order for Services constitutes an acceptance by the Customer to purchase the Goods and/or the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order for Goods and/or the Order for Services, and any applicable Specification, are complete and accurate.
- 2.3 Subject to clause 2.6, an Order for Goods or an Order for Services shall be deemed to be accepted when the Supplier receives this from the Customer (this shall be regarded as acceptance of the Quotation for Goods or the Quotation for Services, at which point the Contract shall come into existence).
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

Whitham Mills Engineering Limited – Whitbrook Way, Middleton, M24 2SS

:

T 0044 (0) 1706 811880 (Sales)
F 0044 (0) 1706 811881

Website: www.whithammills.com
Email: info@whithammills.com
sales@whithammills.com
service@whithammills.com
projects@whithammills.com



Designers and manufacturers of balers, conveyors and MRFs.

- 2.5 Other than those contained in the Specification, any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's literature or on its website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A Quotation for Goods and/or a Quotation for Services shall constitute an offer; they shall remain valid for a strict period of 20 Business Days, unless otherwise agreed by the Supplier.

3 Supply of Goods and the performance of Services

Goods

- 3.1 The Goods are as described in the Specification or otherwise in the Quotation for Goods
- 3.2 The Customer shall indemnify and hold the Supplier harmless from for and 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 and other professional costs and expenses) suffered or incurred by the Supplier 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 requirements, or to ensure that that the Goods are fit for purpose.

Services

- 3.4 The Supplier shall supply the Services to the Customer in accordance with the Specification.
- 3.5 The Supplier shall use its reasonable endeavours to meet any performance dates specified in the Order for Services, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.7 The Supplier agrees with the Customer that the following services are to be included in the price payable by the Customer for the Goods:
- 3.7.1 Up to four site visits per annum at the Delivery Location to ensure that (but not limited to):
- 3.7.1.1 there are no defects in the Goods and that they are working correctly; and
- 3.7.1.2 the Goods have been correctly maintained.

4 Delivery

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order for Goods or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods.
- 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 or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Customer fails to accept delivery of the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 4.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.4.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5 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 (but shall not be obliged to) 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.
- 4.6 The Supplier may deliver the Goods 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.
- 4.7 The delivery and installation of the Goods or Services will be quoted as though performed on a business day and any work to be completed outside of these hours will be invoiced at the applicable rate from time to time.

5 Customer's Obligations

- 5.1 The Customer shall:
- 5.1.1 ensure that the terms of the Order for Goods and/or the Order for Services (including the Specification) are complete and accurate;
- 5.1.2 co-operate with the Supplier in all matters relating to the Services and/or the supply of Goods;

Whitham Mills Engineering Limited – Whitbrook Way, Middleton, M24 2SS

:

T 0044 (0) 1706 811880 (Sales)
F 0044 (0) 1706 811881

Website: www.whithammills.com
Email: info@whithammills.com
sales@whithammills.com
service@whithammills.com
projects@whithammills.com



Designers and manufacturers of balers, conveyors and MRFs.

- 5.1.3 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;
- 5.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and/or the Services, and ensure that such information is accurate in all material respects;
- 5.1.5 prepare the Customer's premises for the supply of the Services and the delivery of the Goods particularly ensuring that the Supplier has clear access to the premises (this specifically shall include an obligation upon the Customer to ensure that the floor at the location where the Goods are to be installed is level (irrespective of the outcome of a site visit by the Supplier) to enable the Goods to perform correctly). Should the Customer fail to perform its obligations under this clause 5.1.5 and the Supplier is unable to modify the Goods at the Delivery Location to accommodate it, the Customer shall be liable for all and any costs or liabilities incurred by the Supplier as a result (including without limitation costs of storage, insurance, and any modification required to the Goods themselves costs);
- 5.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 5.1.7 ensure that the desired ultimate location for the Goods has an adequate supply of electricity (and other utilities) as specified by the Supplier in the Specification;
- 5.1.8 ensure that all and any of its employees, agents, subcontractors or other personnel that use the Goods are adequately trained in the use of, and all health and safety matters relating to the Products; and
- 5.1.9 keep and maintain all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

6 Quality

- 6.1 Subject to the Customer's obligations contained in clause 6.3, the Supplier warrants that on delivery, and for the period of 12 months or 2,000 running hours (whichever comes sooner) from the date of delivery of the Goods from the date of delivery ("**warranty period**"), the Goods and (where relevant) the Services shall:
 - 6.1.1 conform with their description and any applicable Specification;
 - 6.1.2 be free from material defects in design, material and workmanship; and
 - 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 6.1.4 be fit for any purpose held out by the Supplier in the Contract
- 6.2 Subject to clause 6.3, if:
 - 6.2.1 the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
 - 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods;

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. The Customer acknowledges that the Goods contain numerous processes that are interdependent upon each other and may require a reasonable (but not insignificant) amount of operational time from the date that they are installed to become fully functional; during this time the Supplier may be required to attend at the Customer's premises to resolve issues that arise.

- 6.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
 - 6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;
 - 6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or good trade practice regarding the same;
 - 6.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - 6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 6.3.5 The Customer permits any untrained employees, agents, subcontractors or other personnel to use the Goods;
 - 6.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 6.3.7 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
 - 6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
 - 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
 - 6.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- ### 7 Title and Risk
- 7.1 The risk in the Goods shall pass to the Customer on delivery.
 - 7.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
 - 7.2.1 the Goods; and
 - 7.2.2 any other goods or services that the Supplier has supplied to the Customer.
 - 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 7.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

Whitham Mills Engineering Limited – Whitbrook Way, Middleton, M24 2SS

:

T 0044 (0) 1706 811880 (Sales)
F 0044 (0) 1706 811881

Website: www.whithammills.com
Email: info@whithammills.com
sales@whithammills.com
service@whithammills.com
projects@whithammills.com



Designers and manufacturers of balers, conveyors and MRFs.

- 7.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 7.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.2; and
- 7.3.6 the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods 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.
- 8 **Price and Payment**
- 8.1 The price of the Goods shall be the price set out in the Order for Goods and price for the Services shall be contained in the Order for Services.
- 8.2 The Supplier may, by giving notice to the Customer at any time up to ten Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 8.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 The Supplier will invoice the Customer for the Goods in the following manner (unless otherwise agreed by the Supplier in the Quotation for Goods or otherwise in writing):
- 8.5.1 30% of the price upon receipt of the Order for Goods to be paid within 5 days of the date of the invoice;
- 8.5.2 60% of the price when the Goods are confirmed by the Supplier to the Customer to be ready for delivery to be paid within 5 days of the date of the invoice, then
- 8.5.3 10% upon completion of the installation of the Goods as confirmed by the Supplier to be paid within 5 days of the date of the invoice.
- 8.6 The charges for the Services (**Charges**) shall be on a time and materials basis:
- 8.6.1 the Charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Quotation for Services or as otherwise advised in writing by the Supplier;
- 8.6.2 the Supplier's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- 8.6.3 the Supplier shall be entitled to charge an additional overtime rate of fifty per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 8.6.2 or on a Saturday; should the Services be provided on a Sunday, then the Supplier shall be entitled to charge an additional overtime rate that is one hundred per cent of the standard daily fee rate, and
- 8.6.4 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, but not limited to, 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.
- 8.7 The Supplier shall invoice the Customer on completion of the Services.
- 8.8 The Customer shall pay invoices in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier or by such other method agreed by the Supplier and the Customer. Time of payment is of the essence.
- 8.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Royal Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8.11 Should the Customer require credit facilities to enable it to pay any sums due under the Contract it shall use its best endeavours to ensure that this is in place before the Contract is entered into or otherwise performed by the Supplier.



Designers and manufacturers of balers, conveyors and MRFs.

9 Intellectual Property Rights

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the supply of the Goods or the provision of the Services shall be owned by the Supplier.
- 9.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 9.3 All Supplier Materials are the exclusive property of the Supplier.

10 Confidentiality

A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11 Termination

- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered or Services supplied to the Customer shall become immediately due.

- 11.2 For the purposes of clause 11.1, the relevant events are:

- 11.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 11.2.3 (being a company or limited liability partnership) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 11.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 11.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 11.2.6 (being a company or limited liability partnership) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 11.2.7 (being a company or limited liability partnership) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 11.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 11.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.8 (inclusive);
- 11.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 11.2.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 11.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

- 11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12 Limitation of Liability

- 12.1 The Customer and the Supplier have entered into the Contract after due consideration and in the knowledge that the liability of the Supplier is to be limited in accordance with these Conditions and that the prices have been set accordingly.
- 12.2 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 12.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

Whitham Mills Engineering Limited – Whitbrook Way, Middleton, M24 2SS

:

T 0044 (0) 1706 811880 (Sales)
F 0044 (0) 1706 811881

Website: www.whithammills.com
Email: info@whithammills.com
sales@whithammills.com
service@whithammills.com
projects@whithammills.com



Designers and manufacturers of balers, conveyors and MRFs.

- 12.2.2 fraud or fraudulent misrepresentation;
- 12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 12.2.4 defective products under the Consumer Protection Act 1987; or
- 12.3 Subject to clause 12.1:
- 12.3.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- 12.3.1.1 loss of profit,
- 12.3.1.2 loss of anticipated savings
- 12.3.1.3 loss of business
- 12.3.1.4 any defects in the Goods that arise out of the use of the Goods that are not provided for in the Specification
- 12.3.1.5 direct or indirect losses suffered or incurred by the Customer by the delay in the delivery of the Goods
- 12.3.1.6 direct or indirect losses that arise out, of or in connection with, any law, regulation, treaty or otherwise pertaining to the use or application of the Goods, that could not have been in the contemplation of the parties (acting as reasonably) when the Contract was formed, or
- 12.3.1.7 any indirect or consequential loss arising under or in connection with the Contract; and
- 12.3.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods or the Services.
- 12.4 The Supplier is supplying the Goods and providing the Services based upon an assessment made in good faith of the Customer's requirements as expressed in the information supplied by the Customer before the Quotation for Goods or the Quotation for Services was supplied by the Supplier to the Customer. The Supplier shall not be liable for any failure to provide or any defect in the Goods or Services to the extent that such failure or defect is caused by an admission, error, inaccuracy or ambiguity in the expression of a Customer's requirements, in the information provided by the Customer.
- 13 **Force Majeure**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network (including loss of a cargo at sea), acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 14 **General**
- 14.1 **Assignment and other dealings.**
- 14.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 14.2 **Notices.**
- 14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 0; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.3 **Severance.**
- 14.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.



Whitham Mills
ENGINEERING

Designers and manufacturers of balers, conveyors and MRFs.

- 14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.6 **Costs of Enforcement:** the Customer undertakes to indemnify and hold the Supplier harmless from for and against all costs, liabilities, fees and expenses incurred by the Supplier in enforcing the Contract
- 14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 14.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 14.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Signed:

On behalf of (Customer):

Date:

Whitham Mills Engineering Limited – Whitbrook Way, Middleton, M24 2SS

:

T 0044 (0) 1706 811880 (Sales)
F 0044 (0) 1706 811881

Website: www.whithammills.com
Email: info@whithammills.com
sales@whithammills.com
service@whithammills.com
projects@whithammills.com