



## **Fette Compacting America, Inc. General Terms and Conditions of Sale and Delivery**

### **1. Preamble**

1.1 The following General Terms and Conditions of Sale and Delivery ("General Terms and Conditions") apply to all sale, purchase and/or delivery of goods by Fette Compacting America, Inc. ("Fette Compacting") to its customers (hereinafter "customer"). Deviating, opposing or supplementary terms and conditions of the customer shall only be part of the contract if Fette Compacting has expressly consented to their application in writing.

1.2 Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these General Terms and Conditions.

1.3 Fette Compacting's order confirmation (the "Order Confirmation") and these Terms and Conditions (collectively, the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and Conditions and the Order Confirmation, these Terms and Conditions shall govern.

1.4 These Terms and Conditions prevail over any of customer's general terms and conditions regardless whether or when customer has submitted its request for proposal, service order or statement of work ("Order"). Any Order issued in response to Fette Compacting's offer or following delivery of these Terms and Conditions to customer shall be deemed customer's acceptance of these Terms and Conditions and rejection of any other terms and conditions, regardless of any reference to such other terms in the Order. Provision of Services to customer does not constitute acceptance of any of customer's terms and conditions and does not serve to modify or amend these Terms and Conditions. Fette Compacting reserves the right to decline any Orders by customer.

### **2. Contract**

2.1 All offers by Fette Compacting, including the selling prices stated in its price lists, are subject to change and are non-binding, unless expressly designated as binding. All offers are subject to confirmation, and a binding contract shall only be concluded when Fette Compacting issues an Order Confirmation, confirming the exact quantity of goods, specifications for such goods as well as the delivery period for an individual order in writing. An Order Confirmation is considered issued, and the Agreement is considered in full force and effect, at such time as (a) the Order Confirmation is issued in writing by Fette Compacting, or (b) Fette Compacting commences any production of the specific goods under an Order. The written form requirement for the Order Confirmation shall also be met if the Order Confirmation is transmitted in text form by way of remote data transmission (e.g. e-mail) or fax.

2.2 The Order Confirmation will include the quantities and specifications of the goods to be purchased, as well as the expected delivery period or "Project Schedule". The Project Schedule shall include all individual project steps, each of which shall be specified with the expected date of achievement ("Milestones"). These Milestones and any expected delivery period or delivery date are non-binding unless otherwise set forth in the Order Confirmation. In addition to the Milestones, the Project Schedule shall also contain a binding date of the design freeze, after the occurrence of which the customer can no longer unilaterally make changes to the specifications of the goods to be purchased ("Design Freeze"). From this point in time, the customer's requests for changes shall be governed by section 3.1.

2.3 Documents such as images, drawings, marketing materials, as well as measurements and output data are for illustration purposes only. They are not binding for contractual purposes, for purposes of construction and technical performance and shall not be deemed a representation or warranty by Fette Compacting.

### **3. Changes to the Scope of Supply**

3.1 The customer is entitled to request changes to the confirmed quantities or specifications of the goods until Acceptance, as defined in Section 6. Request for changes shall be submitted to Fette Compacting in writing and shall contain an exact description of the change. In order for a change to be effective, both parties shall mutually agree in writing to a change request. Changes could be, inter alia, the following:

- Changes to the agreed specifications after Design Freeze, and
- Changes to the agreed and ordered quantities.

3.2 Both parties agree that changes quantities or specifications may lead to delays and additional costs. Said costs would have to be reimbursed by the customer separately and the delay could have an impact on the project schedule.

### **4. Delivery and Delay in Delivery**

4.1 Delivery periods and delivery dates not explicitly denoted as mandatory in the Order Confirmation shall always be deemed estimates. They refer to the estimated time of dispatch and are complied with upon notification of readiness for dispatch. Delivery periods do not begin before Fette Compacting received an advance payment if such a payment was agreed by the parties. Fette Compacting shall not be liable for any delays, loss or damage in transit.

4.2 Unless otherwise set forth in the Order Confirmation or otherwise agreed between the parties, delivery shall be made FCA Fette Compacting's facility in Schwarzenbek (Incoterms® 2020).

4.3 To meet the delivery period, all technical and commercial details must have been clarified and the customer must have complied with all of its duties hereunder or under applicable law. If this is not the case, the delivery period shall be extended by a reasonable period. This shall not apply if Fette Compacting is responsible for the delay. Customer shall take delivery of the goods within three (3) days of Fette Compacting's written notice that the ordered goods have been delivered to the delivery location per Section 4.2 above.

4.4 Furthermore, in the event the Order Confirmation includes a project plan, the parties agree that all information and documentation listed in the project plan must be submitted to the other party within the time period mentioned therein. All consequences resulting from the delay delivery of information and documentation shall be borne by the party responsible for the delay.

4.5 Should Fette Compacting be in delay with the Factory Acceptance Test, with the delivery of the goods or with the Site Acceptance Test or should Fette Compacting's delivery become impossible, Fette Compacting shall be liable for damages only according to Section 10. Damages caused by delay, if Fette Compacting has to compensate for them, shall be limited to 0.5% of the value of the products not delivered or only partly delivered, for each complete week Fette Compacting is in delay. However, the damages shall not exceed a maximum of 5% of the value of the same delivery. Section 11 remains unaffected.

4.6 Fette Compacting is entitled to make partial deliveries of goods, with each shipment constituting a separate sale and entitling Fette Compacting to payment for such goods delivered.

## **5. Factory Acceptance Test**

5.1 If so requested by customer and set forth in the Order Confirmation, Fette Compacting will conduct a Factory Acceptance Test ("FAT") prior to shipment of the goods. Fette Compacting shall be responsible for the FAT; provided it shall allow for the participation of the customer's personnel. If the customer decides not to participate in the FAT, then Fette Compacting shall, at its own discretion, either complete the FAT on its own and issue the testing report, or reschedule the FAT. If the Customer fails to participate in the FAT, even though it has been duly summoned to do so, he shall not be entitled to any claims for damages resulting from a delay in the FAT or any resulting delay in delivery.

5.2 If the FAT shows, that the good does not comply with the specifications set forth in the Order Confirmation, Fette Compacting shall remedy such Defects within a reasonable period. A new test can then be carried out, unless the Defect was insignificant.

## **6. Installation at the Customer's Site and Acceptance of Goods**

6.1 Unless otherwise agreed between the parties, the contractual obligation of Fette Compacting does not include installation of the goods at the customer's site.

6.2 Once the goods have been installed at customer's site, a Site Acceptance Test ("SAT") shall be carried out, unless otherwise agreed between the parties. If the SAT was successful, the parties shall sign a SAT acceptance or commissioning protocol. The SAT acceptance or commissioning protocol shall confirm that the goods delivered by Fette Compacting are in good and working order. The SAT acceptance or signed protocol constitute the start of the warranty period under Section 7.1. Minor defects, which do not affect the efficiency, shall not prevent the acceptance and the start of the warranty period.

6.3 If the SAT shows, that the good does not comply with the Specification, Fette Compacting shall remedy such Defects pursuant to Section 7.3 within a reasonable period. A new test can then be carried out, unless the defect was insignificant.

6.4 The customer shall provide free of charge any power, lubricants, water, fuel, raw material and other material required for the SAT.

6.5 The customer is not entitled to use the goods or any part thereof before issuance of the SAT acceptance or commissioning protocol.

## **7. Defects, Warranty and Warranty Period**

7.1 Fette Compacting warrants that that during the warranty period, the goods delivered hereunder will materially conform to the specifications set forth in the Order Confirmation. The warranty period shall be 12 months after signing of the SAT or Commissioning protocol, but no longer than 15 months from delivery to customer. Fette Compacting's failure to comply with the foregoing warranty shall be referred to herein as a "Defect." EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 7.1, FETTE COMPACTING MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

7.2 The customer must carefully inspect the delivered goods, even if samples or specimens have been previously sent, immediately upon delivery thereof.



7.3 If a Defect is discovered, Fette Compacting must be informed of this in writing without undue delay within 10 days after the signing of the SAT or Commissioning protocol at the latest. For Defects reported in due time, the customer shall be entitled, at Fette Compacting's discretion, to have Fette Compacting repair or replace the good ("subsequent performance"). The customer must give Fette Compacting the time necessary to carry out the subsequent performance. In the case of a replacement delivery, the customer shall return the Defective goods to Fette Compacting. Replaced parts become property of Fette Compacting upon receipt by Fette Compacting. Subsequent performance does not include reinstallation if Fette Compacting was not originally contracted for installation. THE REMEDIES SET FORTH IN SECTION 7.3 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND FETTE COMPACTING'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 7.1.

7.5 If Fette Compacting is responsible for the Defect, Fette Compacting shall bear the costs of examination, subsequent performance, transportation, labor and material; provided Fette Compacting shall not be responsible for disassembly and reassembly, or the costs associated therewith. If Fette Compacting is not responsible for a defect, Fette Compacting can claim compensation from the customer for the costs arising from the unjustified request for the remedy of defects.

7.6 For defects caused by inappropriate or improper use, faulty installation or commissioning by the customer or third parties, normal wear and tear, faulty or negligent handling, warranty claims are excluded and Fette Compacting shall not be responsible for such defects. The warranty set forth in Section 7.1 shall not apply to wear parts. Wear parts are in particular, inter alia but not limited to, the following:

- compression rollers,
- filling cams,
- dosing head,
- ejector,
- lifting cam,
- upper and lower punch, die turrets, segment turrets.

Furthermore, Fette Compacting shall not provide a warranty for defects if:

- the good was installed or put into operation in a manner which does not correspond to Fette Compacting's instructions;
- Fette Compacting's operating and maintenance instructions were not followed, or
- the good was handled improperly in another manner.

7.7 Fette Compacting does not assume third party warranties, unless they are expressly agreed. Products manufactured by a third party are not covered by the warranty in Section 7.1. For the avoidance of doubt, FETTE COMPACTING MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT.

## **8. Price and Payment Terms, Set-Off, Assignment**

8.1 Customer shall purchase the goods from Fette Compacting at the prices set forth in the Order Confirmation, or, if such is silent, Fette Compacting's price list valid at the time the goods are delivered (and subject to Section 2.1 above). Unless otherwise agreed in writing, the prices shall be understood



EXW (Incoterms® 2020), exclusive of packaging, freight and any sales, use, value-added and excise taxes or other similar taxes, duties and charges.

8.2 The payment terms are set out in the Order Confirmation, or, if such is silent, all invoices for deliveries (or other services) are payable net within 30 days from date of invoice. Invoices can be transmitted in written form, in text form by way of remote data transmission (e.g. e-mail), or by fax. The timeliness of the payment is determined by the receipt of the funds by Fette Compacting. Failure to pay by the expiry of this period, the customer shall be considered in default of payment.

8.3 Once the customer is in default of payment, Fette Compacting has the right, without notice or reminder, to charge interest. The right to claim further damages or any other remedy hereunder or at law is not excluded by this clause. If the customer does not make payments which are due and payable hereunder, Fette Compacting may, in its sole discretion, set a reasonable period for payment together with a requirement of advance payments for future business. If the customer does not make payments by expiry of this period, Fette Compacting can terminate the Agreement in addition to any other remedies hereunder or at law.

8.4 Once the customer is in default of payment, even if it is just one installment, or if Fette Compacting becomes aware of circumstances that may cast justified doubt on the credit worthiness of the customer, the price for any and all outstanding orders hereunder and any other amounts payable hereunder to Fette Compacting shall immediately become due and payable. The foregoing also applies if those circumstances already existed at the time of the order of the goods, but were not known to Fette Compacting. Furthermore, in such cases, Fette Compacting is entitled to demand payment in advance for all outstanding orders; the customer is obliged to pay in advance.

8.5 Offsetting with counterclaims of the customer or the retention of payments due to such claims, is only permitted if the counterclaims are uncontested or ultimately determined by a final, unappealable determination by an authority having jurisdiction over the parties.

8.6 Fette Compacting may set off claims against the customer that Fette Compacting's affiliates, particularly its parent company, affiliated companies and subsidiary companies, are entitled to including such claims of customer's affiliates against Fette Compacting or its affiliates, to the extent legally admissible.

8.7 The customer is not entitled to assign claims arising under this Agreement to third persons without the prior written consent of Fette Compacting.

## **9. Retention of title and Security Interest**

9.1 The following retention of title terms and security interest serve to secure all of Fette Compacting's existing current and future claims against the customer from the ongoing business relationship existing between the parties, including all current account balance claims (hereinafter "secured claims").

9.2 All goods delivered by Fette Compacting remain its property until full payment of all secured claims related to such goods. Goods and the goods taking their place covered by the retention of title according to the following provisions are hereinafter referred to as "reserved goods." If, for any reason, title is transferred to customer and any secured claims remain outstanding, as collateral security for the secured claims, including payment of the price of the goods, customer hereby grants to Fette Compacting a lien on and security interest in and to all of the right, title and interest of customer in, to and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

9.3 All goods are subject to retention of title and may neither be pledged to third parties nor handed over as security until the secured claims related to such goods have been paid in full. The customer shall inform Fette Compacting without delay in writing if an application is filed for commencement of insolvency proceedings or in the event of attachment, seizure or other act of access to the reserved goods by third parties.

9.4 The customer shall store the reserved goods for Fette Compacting free of costs. The customer is obliged to treat the reserved goods with reasonable care, clearly identifying them as Fette Compacting's property. In particular, the customer is obliged to sufficiently insure the reserved goods at its own expense against fire, water and theft at replacement value. If maintenance and inspection work is necessary for the proper maintenance of the reserved goods, the customer must perform this at its own expense.

9.5 The customer is entitled to sell the delivered reserved goods or any goods subject to a purchase money security interest in the ordinary course of business if Fette Compacting's secured claims related to such goods shall be fully paid immediately as a result thereof.

9.6 If the law of the country in which the good is located does not permit a right of retention of title or purchase money security interest but permits the vendor to reserve other rights in the good, Fette Compacting may exercise all rights of this sort. The customer shall cooperate with the measures, which Fette Compacting wants to take in order to protect its right of title - or another right in the goods in place of the right of title.

9.7 In case Fette Compacting terminates the Agreement under Section 8.4 or terminates, rescinds, withdraws from the Agreement in accordance with applicable law, the right of the customer to possession of the reserved goods lapses and Fette Compacting can demand the surrender of the reserved goods; In such case, Fette Compacting is entitled after consultation with the customer to enter the business premises of the customer and to take possession of the reserved goods at the expense of the customer and, without prejudice to the payment and other obligations of the customer, to recover them as best possible by way of private sale or by way of auction; the recovery proceeds will be credited to the customer's liabilities after deduction of the costs incurred; Fette Compacting will pay out any remaining surplus to it.

## **10. Liability; Intended Use of Goods; Technical Advice**

10.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE, IN NO EVENT SHALL EITHER PARTY, IRRESPECTIVE OF THE LEGAL BASIS (CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY LIABILITY, MISREPRESENTATION, INDEMNITY OR ANY OTHER AREA OF LAW), BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES, LOSS OF PROFIT OR REVENUE, LOSS OF USE OR LOSS OF PRODUCTION, LOSS OF DATA, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, PROPERTY DAMAGE EXTERNAL TO THE CONTRACTUAL PRODUCTS AND ANY DAMAGE, EXPENDITURE OR LOSS ARISING OF SUCH DAMAGE, OR ANY OF THE FOREGOING SUFFERED BY ANY THIRD PARTY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT FETTE COMPACTING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL FETTE COMPACTING'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY GOODS, SERVICES OR SOFTWARE SUPPLIED HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO FETTE COMPACTING HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

10.2 For the avoidance of doubt, the limitation of liability set forth in this Agreement shall not apply



- Damages resulting from gross negligence or willful misconduct;
- to the injury to life or health by a Party; or
- to such cases where strict liability under law applies (e.g. Product Liability).

10.3 With the exception of claims arising from tortious acts, and to the extent permitted by applicable law, claims for damages of the customer for which liability is limited under this provision shall lapse one year from the start of the statutory limitation period.

10.4 The delivered goods are intended exclusively for legal purposes. Liability for any other usage is excluded. Fette Compacting tries to give technical advice concerning the utilization of its goods to the best of its knowledge. This advice is free of charge and does merely constitute its experienced data that is not to be considered as warranted; the advice does not create claims against Fette Compacting, namely not concerning protected privileges of third parties. In particular, the customer is not discharged from examining the qualification/adequateness by himself. Customer shall indemnify and hold Fette Compacting harmless from any act or omission of customers, including use of the goods, contrary to applicable law.

## **11. Force Majeure**

11.1 Neither party shall be liable to the other for any damages nor shall either party be entitled to exercise any remedy otherwise available to it, if one party's performance of any of its obligations is delayed or prevented by events outside of their reasonable control, including, but not limited to, the following: natural disasters, strikes, lock-outs, sabotage, export or import restrictions, industrial dispute, war, civil war or warlike operations, epidemics or pandemics, threats of terrorism or strikes of terrorists, civil commotions, usurpation of civil or military government, restrictions in the use of power and delays in deliveries by subcontractors or sub-suppliers caused by any such circumstances referred in this clause or any other circumstances which are beyond the reasonable control of the party affected (hereinafter referred to as "Force Majeure"), regardless of whether the occurrence of such circumstance has been foreseeable or not. An event of Force Majeure, however, shall not excuse the failure of payment of moneys due by either party to the other.

11.2. The party claiming to be affected by an event of Force Majeure shall notify the other party in writing without delay of the occurrence and on the cessation of such circumstance. If Force Majeure prevents Fette Compacting from fulfilling its obligations in time, the delivery period shall be extended for the duration of the hindrance and a reasonable start-up time.

11.3 If the performance of the contract or a portion thereof is prevented, hindered or delayed for a period of more than six (6) months, the parties will attempt to develop a mutually satisfactory solution.

## **12. Software**

**12.1 To the extent that software is included in the scope of delivery, as expressly as set forth in the Order Confirmation, to the extent the software is owned or licensable by Fette Compacting, Fette Compacting hereby grants the customer a revocable, non-exclusive, non-sublicensable and non-transferable license to use the software supplied and its documentation solely for use of the goods supplies and solely for internal purposes. Use of the licensed software shall be limited to a single authorized user within customer's organization. The customer shall have no claim to the related object or source code. To the extent use of software which is not owned or licensable by Fette Compacting is necessary for use with the goods, customer shall be solely responsible for obtaining any license thereto.**



12.2 The customer undertakes not to remove information relating to the manufacturer – in particular copyright notices – without Fette Compacting's prior written consent. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to customer or any third party any intellectual property rights or other right, title, or interest in or to the software or documentation. As between the parties, any and all suggestions, recommendations, developments or modifications to the software shall be Fette Compacting's sole property.

12.3 Customer shall not use the software or documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, customer shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Software or the Documentation, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the software or the documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the software, in whole or in part; (iv) remove any proprietary notices from the software or the documentation; or (v) use the software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. The customer must itself take measures to protect against computer viruses and other destructive data. The customer has a duty to test the software provided for computer viruses before running it and opening files.

12.4 Fette Compacting shall not be obliged to provide the customer with updated versions of the software.

12.5 THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND FETTE COMPACTING HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. FETTE COMPACTING SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FETTE COMPACTING MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

### **13. Final Provisions**

13.1 The place of performance for all delivery and payment obligations shall be as set forth in the Order Confirmation.

13.2 The laws of the state of New Jersey (U.S.A.) excluding the UN Convention on Contracts for the International Sale of Goods (CISG), applies to these General Terms and Conditions, the Agreement and to the contractual relationship between Fette Compacting and the customer.

13.3 All disputes arising out of or in connection with the Agreement or these Terms and Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The seat of the arbitration is New York, New York. The language of the arbitration shall be English.

13.4 It will be without prejudice to the rest of the clauses, if individual clauses of these General Terms and Conditions or of the contract are or become invalid. In place of the invalid clause, a clause that corresponds to its purpose and meaning is deemed to be agreed. The same applies to possible loopholes in the contract.





13.5 Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, or the transactions contemplated hereby.

13.6 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

13.7 The Agreement may only be amended or modified in a writing stating specifically that it amends these Terms and Conditions, signed by each party.