

# Re Mixers, Inc.

## TERMS AND CONDITIONS OF SALE / USE

### 1. The Agreement

THESE TERMS AND CONDITIONS OF SALE/USE shall apply to all orders placed by (and samples provided to) customer ("Customer") with RE MIXERS, INC., a Wisconsin corporation ("ReMixers"). ReMixers will accept Customer's orders, provide Product Samples, sell Products, and do business only on the terms and conditions of this Agreement. Customer, upon placing any order with ReMixers for the purchase of Products (or requesting or using Product Samples), shall be deemed to have accepted all of the terms and conditions of this Agreement without modification. Unless otherwise agreed to in a writing signed by an authorized representative of ReMixers, any term or condition contained in any Customer purchase order or other form or correspondence that purports to add to, or is in any way inconsistent with, this Agreement is expressly rejected. Herein, Re Mixers and Customer may be individually referred to as the "Party" or collectively as the "Parties" as required by context.

### 2. Definitions

"Agreement" means these Terms and Conditions of Sale/Use and any terms or conditions stated by ReMixers in a written quotation or sales acknowledgement relating to the Products ordered by Customer. "Products" collectively mean all tangible items being sold by ReMixers to Customer (or provided by ReMixers to Customer as a Product Sample), whether finished goods, equipment, parts, materials, products to be manufactured and/or installed or any combination thereof. "Product Samples" collectively mean any Products provided by ReMixers to Customer at no cost for evaluation uses and purposes.

### 3. Orders

Customer's orders for Products may be submitted to ReMixers via email at [eric.ronning@remixers.com](mailto:eric.ronning@remixers.com) or other method acceptable to ReMixers. ReMixers may, in its sole discretion, accept or reject any order. ReMixers may accept any order by written confirmation or by commencing performance of the order, whichever occurs first. No order is binding on ReMixers unless accepted by ReMixers as provided in this Agreement. If Customer wishes to make any changes to an accepted order, it shall notify ReMixers in writing of such changes, which ReMixers may accept or reject in its sole discretion. No change to an accepted order will be binding on ReMixers until accepted pursuant to a written document manually-executed by an authorized representative of ReMixers. If a change accepted by ReMixers causes an increase or decrease in the price, or the time required for performance, an equitable adjustment shall be made to the price or the proposed delivery date for the Products and the applicable order shall be modified accordingly.

### 4. Title & Delivery

ReMixers shall ship all Products F.O.B. ReMixer's plant or facility. Title to and all risk of loss or damage to the Products shall pass to Customer upon delivery of the Products to the carrier for shipment. Unless Customer provides shipping instructions, ReMixers is authorized to make shipping arrangements on Customer's behalf and Customer shall be responsible for all costs and expenses associated therewith. Notwithstanding the foregoing sentence, Product Samples will be shipped at ReMixer's cost and expense unless otherwise agreed to by the Parties. Notwithstanding anything in this Agreement to the contrary, any timeframe provided by ReMixers is a good faith estimate of the expected delivery date for Products. ReMixers will use commercially reasonable efforts to fill Customer's orders within the time stated but in no event shall ReMixers be liable for any damages associated with ReMixer's inability to meet any such timeframes or deadlines.

### 5. Prices & Taxes

Any price quoted by ReMixers on the face hereof or in any separate document shall be good only for a period of thirty (30) days or such other time period stated in ReMixer's quote. Thereafter, the price for Products sold hereunder shall be ReMixer's price in effect as of the date ReMixers accepts Customer's order. All prices are stated and payable in U.S. dollars. Except as otherwise agreed in writing, ReMixer's prices are net prices and are exclusive of any associated additional costs, including (but not limited to) charges for freight, packing, or carriage. Additionally, the prices for Products do not include foreign, federal, state or local sales, use, value-added, excise or other similar taxes or any tariffs, duties or other charges imposed on or measured by the use or sale of the Products (collectively, "Taxes"). Customer shall pay, and reimburse ReMixers if it pays, any and all Taxes, except for those based on ReMixer's income. If ReMixers is required by any governmental authority or agency to collect and pay any Taxes on Customer's behalf, ReMixers may invoice Customer for such amounts, which Customer shall pay in accordance with the terms of this Agreement. Tax-exempt certificates must accompany any order to which the same applies.

### 6. Inspection, Order Acceptance

Customer shall inspect all Products within ten (10) days after delivery. Customer must notify ReMixers in writing of its intent to reject any shipment of Products prior to the expiration of such ten (10) day period. Customer's written notice shall specifically identify the Products rejected, including a detailed description of the grounds for the rejection and what, if any, defects Customer alleges exist. If Customer has not delivered a written notice of rejection to ReMixers within ten (10) days after delivery, Customer shall be deemed to have accepted the Products.

### 7. Terms of Payment

Customer shall pay each invoice, without deduction or setoff, within thirty (30) days of the invoice date. Any "prompt payment discount" offered by ReMixers is contingent on Customer's complete payment of all invoices previously issued by ReMixers. Interest will be added to all amounts outstanding more than thirty (30) days after the invoice date at the rate of 1.5% per month or the maximum rate of interest allowed by applicable law, whichever is lower. Visa and MasterCard are acceptable forms of payment only if the payment is received when the order is shipped; prompt payment discounts are not eligible on purchases made using credit card.

In the event Customer is in default of any of the terms or conditions of this Agreement, including, without limitation, payment of any amounts owed to ReMixers in a timely manner, ReMixers may: (a) defer or suspend further shipments of Products until Customer reestablishes satisfactory credit; (b) cancel the unshipped or unperformed portion of any order and invoice Customer for incurred costs (including, but not limited to, attorney's fees) and reasonable profit without any liability for ReMixer's failure to ship or provide the Products; (c) make shipment of the Products to Customer on a C.O.D. or cash in advance basis; or (d) pursue any other remedy available under this Agreement or at law or equity.

### 8. Force Majeure

ReMixers shall not be liable for any delay in the performance of this Agreement by reason of any of the following: acts of God, acts of war or terrorism, laws, regulations, acts or requests of governmental agencies, strikes, lockouts or other labor conditions, shortages of raw materials, fire, flood, explosion, or other damage to plant or facilities, or absence of normal transportation or any other cause which is beyond the reasonable control of ReMixers. In the event of any such delay, ReMixer's performance hereunder shall be postponed by such length of time as may be reasonably necessary to compensate for the delay; provided, however, if the excused delay in ReMixer's performance exceeds ninety (90) consecutive days, Customer may cancel any order affected by the delay by serving written notice upon ReMixers before the cause(s) of the delay abate. ReMixers reserves the right to allocate its inventory of Products in any manner it may determine from time to time, in its sole discretion.

### 9. Compatibility & Functional Application Testing

It shall be the sole responsibility of the Customer to test and determine that the Products are compatible with the chemical contents that the Customer intends to use and for fitness for the Customer's intended purpose and application. Such testing by the Customer shall include mechanical suitability, chemical compatibility, surface preparation, and shelf life and mixing performance with relevant two-component adhesives, coatings, and pastes.

Customer is to make all preparations and incur all expenses for all such compatibility and functional application testing. ReMixers will have the right of representation at said inspection and testing but will make no charge for the expense of such representation. By placing an order for Products, Customer acknowledges and agrees that it has confirmed that the Products are compatible with the chemical contents that the Customer intends to use and the Products are fit for the Customer's intended purpose and application.

### 10. Cancellation

Except as set forth in the [Section 8](#) above, Customer may not cancel an accepted order without ReMixer's prior written consent, which it may withhold in its sole discretion.

### 11. Ownership of Intellectual Property

a. ReMixers shall retain all rights in its intellectual property, including all rights under any Product, Work Product (defined below in [Section 11\(b\)](#)), patent, patent application, copyright, trademark, trade dress, trade secret, confidential information, or other intellectual property rights owned by or licensed to ReMixers which may be protected by state, federal or common law, and nothing in this Agreement shall be deemed or construed to be a transfer or license of any of ReMixer's intellectual property.

b. In the event that ReMixers or its employees, agents, or subcontractors conceive of, create, author or otherwise develop any designs, illustrations, drawings, specifications, ideas, innovations or improvements, alone or with others (including, but not limited to with Customer), in connection with the design and/or manufacture of the Products, including but not limited to, any prototypes or custom-made Products (collectively, "Work Product"), shall be the sole and exclusive property of ReMixers without regard to whether such Work Product is patentable, copyrightable, registerable, or otherwise protectable. The Parties acknowledge and agree that no Work Product shall be: (i) considered a "work made for hire" as that term is defined by applicable laws, or (ii) deemed to have been developed pursuant to an arrangement whereby ownership of the Work Product, or any part thereof, was intended to transfer to Customer. If for any reason a court of competent jurisdiction determines any Work Product constitutes a "work made for hire," Customer shall and hereby does, without additional consideration, assigns all of its rights, title and interest in and to such works to ReMixers. Should any Work Product qualify for protection under any United States or foreign patent, trademark or copyright laws and if ReMixers wishes to apply for intellectual property protection in the United States or any foreign countries, Customer, at the request and expense of ReMixers, shall provide all reasonable assistance to obtain such protection, including, without limitation, executing and delivering all documents or

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instruments deemed necessary by ReMixers for the filing and prosecution of such applications..

### 12. Confidentiality

All non-public, confidential or proprietary information of ReMixers, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by ReMixers to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by ReMixers in writing. Upon ReMixer's request, Customer shall promptly return all documents and other materials received from ReMixers. ReMixers shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

### 13. Limited Warranty

ReMixers warrants to Customer for a period of one (1) year from the date of delivery, that the Products shall be free of defects in material and workmanship, provided the Products are installed, activated, used, and maintained in accordance with any operating instructions, instruction manuals, and technical guidelines supplied by ReMixers. As a prerequisite to making any claim under this limited Product warranty, Customer must give written notice to ReMixers of any suspected defect in the Products prior to the expiration of the above-referenced warranty period. Such notice shall specifically identify the suspected defect, the original delivery date, complete customer identification and location information, and invoice number. ReMixers shall not be liable for any warranty claim if Customer fails to give such written notice prior to the expiration of the warranty period. ReMixer's sole obligation, and Customer's exclusive remedy, for any breach of the limited Product warranty stated in this Section 13 shall be for ReMixers, at its option, to (a) repair; (b) replace; or (c) refund the purchase price paid by Customer for any Product or Product part, component, or assembly that, in ReMixer's sole opinion, is defective. Any repaired or replacement Products shall be warranted for a period of one (1) year from the date that the repair is completed or the replacement is provided. Notwithstanding anything in this Agreement to the contrary, this limited Product warranty shall not apply to: (x) normal wear and tear, abuse, neglect or other improper use, installation or repair of the Products; (y) any unauthorized alteration or modification of the Products; or (z) any Products that have not been maintained in accordance with the operating instructions, instruction manuals, or technical guidelines provided by ReMixers. **NOTWITHSTANDING THE FOREGOING IN THIS SECTION 13, ALL PRODUCT SAMPLES ARE PROVIDED "AS IS", WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF OR RELATED TO THE USE OR PERFORMANCE OF A PRODUCT SAMPLE, INCLUDING, BUT NOT LIMITED TO, ANY SYSTEMS CUSTOMER DESIGNS OR USES WITH THE PRODUCT SAMPLE (IF ANY).**

EXCEPT AS SET FORTH ABOVE IN THIS SECTION 13, REMIXERS HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS AND SERVICES, USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 14. Indemnification

a. Customer shall defend, indemnify and hold ReMixers and its affiliates and subsidiaries and its and their respective officers, directors, owners, employees, agents, successors, and assigns harmless from and against any and all claims, causes of actions, lawsuits, proceedings, injuries, penalties, losses, judgements, damages, liabilities, and expenses, including, without limitation, reasonable attorneys' fees and other costs and expenses of litigation arising out of or otherwise connected with any of the following: (i) bodily injury, death or property damage in connection with Customer or its employees' or agents' acts or omissions with respect to the Products; (ii) any failure by Customer or its employees or agents to comply with any applicable laws; (iii) any design, requirement, specification, material or other component supplied by Customer for the design and manufacture of any Product, including, without limitation, any third-party claim that such design, requirement, specification, material or other component infringes upon or misappropriates any patent, patent application, copyright, trademark, trade dress, trade secret, or other intellectual property right; (iv) any alterations or modifications made to Products by Customer or its employees or agents, (including but not limited to, partially removing and reinserting mixing inserts, shortening mixing inserts to reduce back pressure, or any other alterations or modifications); and (iv) any breach of the terms and conditions of this Agreement by Customer or its employees or agents.

### 15. Limitation of Liability

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL REMIXERS OR ANY OF ITS AFFILIATES OR SUBSIDIARIES BE LIABLE TO CUSTOMER OR ANY

OF ITS AFFILIATES OR SUBSIDIARIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE), WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. REMIXER'S CUMULATIVE LIABILITY FOR ALL CLAIMS RELATING IN ANY MANNER TO ANY PRODUCTS FURNISHED UNDER THIS AGREEMENT, REGARDLESS OF THE TYPE OR NATURE OF THE ACTION, SHALL BE LIMITED TO THE GREATER OF: (A) THE AMOUNT ACTUALLY PAID TO REMIXERS BY CUSTOMER FOR THE PRODUCTS WHICH ARE THE SUBJECT OF THE APPLICABLE CLAIM, OR (B) TEN THOUSAND DOLLARS (\$10,000) (UNLESS THE PRODUCTS ARE PRODUCT SAMPLES, UPON WHICH THE AMOUNT SET FORTH UNDER THIS SECTION 15(B) SHALL BE ONE HUNDRED DOLLARS (\$100)). REMIXERS HAS RELIED ON THE FOREGOING LIMITATION AND CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THIS PROVISION IS ESSENTIAL IN THE ESTABLISHMENT OF THE PRICING OF THE PRODUCTS. THE LIMITATIONS ON, AND EXCLUSIONS FROM, LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### 16. Miscellaneous

a. Subcontractors. ReMixers retains the right to subcontract all or any portion of the work outlined hereunder.

b. Independent Contractor. 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.

c. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of ReMixers. Any purported assignment or delegation in violation of this Section is null and void. No permitted assignment or delegation relieves Customer of any of its obligations under this Agreement.

d. Severability. If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall be construed in a manner so as to give the maximum valid and enforceable effect to the intent of the Parties expressed in this Agreement.

e. Waiver. Any delay or failure of ReMixers to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time shall in no way affect the validity of this Agreement, or any part, and shall not constitute a waiver of the right of ReMixers thereafter to enforce any and each such provision.

f. Notice. All notices, demands or other communications between the Parties shall be given in writing.

g. Attorneys' Fees. In the event ReMixers is required to retain legal counsel or to initiate litigation to enforce or interpret the terms and conditions of this Agreement or to collect any sums due ReMixers under this Agreement, Customer shall, upon demand, pay or reimburse ReMixers for all reasonable attorneys' fees and costs and expenses of litigation incurred by ReMixers.

h. Governing Law. This Agreement shall be construed and governed under the laws of the State of Wisconsin, without application of conflict of law principles. All actions or counterclaims regarding the enforcement or interpretation of the Agreement shall be initiated and prosecuted exclusively in the state and federal courts located in Dane County, State of Wisconsin and those courts hearing direct appeals therefrom. Customer and ReMixers both consent to the jurisdiction and venue of such courts and expressly waive objections based on the doctrines of personal jurisdiction or forum non conveniens. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

i. Entire Agreement. This Agreement, together with the exhibits, schedules and attachments specifically referenced herein, embodies the entire agreement and understanding between ReMixers and Customer and, except as otherwise specifically state herein, there are no other contracts, agreements, and understandings either oral or written.