

# ACTION DRY EMERGENCY SERVICES LTD TERMS AND CONDITIONS OF SERVICE

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CONDITION 9.1 (REGARDING THE DIRECT PAYMENT MANDATE) AND CONDITION 13 (OUR LIABILITY).

IF YOU ARE A CONSUMER YOU HAVE A RIGHT TO CANCEL THE CONTRACT WITHIN 14 DAYS EXCEPT IF YOU REQUIRE SERVICES IN AN EMERGENCY, AND YOU WILL HAVE TO PAY US FOR ANY SERVICES YOU ASK US TO PROVIDE IN THE 14 DAY PERIOD.

These terms and conditions set out:

- your legal rights and responsibilities
- our rights and responsibilities; and
- certain key information required by law.

In these terms and conditions:

- **'The Supplier'**, **'we'**, **'us'** or **'our'** means Action Dry Emergency Services Limited, a company registered in England and Wales with company number 04632049.
- **'You'** or **'your'** means the person buying services from us (either as consumer or as a business).

## 1. DEFINITIONS & INTERPRETATION

To make these terms easy to read we have defined some of the words. If a word begins with a capital letter, that means that the word has been defined. A list of the defined words is set out below:

- **Charges:** the charges payable by you for the supply of the Services in accordance with Condition 8 (Charges and payment).
- **Conditions:** these terms and conditions.
- **Contract:** the contract between us and you for the supply of Services which is formed in accordance with Condition 3 of these Conditions.
- **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
- **Customer Default:** has the meaning set out in Condition 5.3.
- **Customer Materials:** all documents, information, items and materials in any form, whether owned by you or a third party, which are provided by you to us in connection with the Services, including the items provided pursuant to Condition 6.1.4.
- **Data Protection Legislation:** all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018, the UK General Data Protection Regulation or any successor legislation.
- **Direct Payment Mandate:** our direct payment mandate from time to time as set out in Schedule 2.

- **Intellectual Property Rights:** patents rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- **Location:** the location where the Services are to be provided.
- **Milestone:** a date by which a part or all of the Services is to be completed, as set out in a Specification.
- **Offsite Assistance:** provision of any Services away from the Property including but not limited to removal, restoration, storage and disposal.
- **Order:** your order for Services as set out in your purchase order form or other written correspondence.
- **Property:** the structure, contents, equipment, machinery or documentation in respect of which the Services are to be provided.
- **Repair Work:** has the meaning set out in Condition 4.6.1.
- **Services:** the services supplied by us to you as set out in the Specification.
- **Specification:** the description of the Services provided in writing by us to you.
- **Standard Mould Remediation Service (or "SMRS"):** has the meaning given in Condition 10.
- **Strip Out:** Permanent or temporary removal or alteration or other actions in relation to fixtures and fittings at the Location to facilitate the provision of the Standard Mould Remediation Service and actually performed to do so.
- **Significant Strip Out:** Strip Out that in our sole opinion acting reasonably might be reasonably expected to constitute an unusually high proportion of the time or cost of the Services forming part of the SMRS.
- **Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by us to you and used directly or indirectly in the supply of the Services.
- **VAT:** value added tax chargeable under the Value Added Tax Act 1994.

## 2. INTRODUCTION:

2.1. These terms and conditions apply to your purchase of any Services from us.

2.2. Please read these terms and conditions carefully. You will need to accept these terms and conditions before we will accept your Order or provide services to you. If you have a query about these terms and conditions or do not accept them please contact us at [info@actiondry.co.uk](mailto:info@actiondry.co.uk).

2.3. When we use the words 'writing' or 'written' in these terms, this includes email.

2.4. If you purchase Services from us you agree to be legally bound by these Conditions.

2.5. If you are a **business customer** this is our entire agreement with you. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these terms and conditions, and that you shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

### 3. BASIS OF CONTRACT

3.1. This section sets out how a legally binding contract will be formed between you and us.

3.2. Our acceptance of your Order will take place when we tell you that we are able to provide you with the Services or in accordance with Condition 3.3 below, at which point a contract will come into existence between you and us. The Contract shall continue until we have completed the Services.

3.3. If you give us instructions to perform Services before you have sent an Order to us, these instructions will be deemed an offer to purchase or receive services. Our arrival at the Location will be considered acceptance of your offer, at which point a contract will come into existence between us.

3.4. **If we cannot accept your order.** If we are unable to accept your order we will inform you of this and we will not charge you for the Services. This will usually be because:

3.4.1. we are unable to provide the Services requested;

3.4.2. we cannot authorise your payment; and/or

3.4.3. there has been a mistake on the pricing or description of the Services.

3.5. If you require Repair Work, we shall, except where we agree otherwise in the Specification, subcontract such Repair Work to a sub-contractor in accordance with Condition 4.2. We will confirm the price for this Repair Work in accordance with Condition 8 and include this in our invoice to you.

3.6. **Your job number.** We will assign a job number to your Order and tell you what that is when we accept your Order. It will help us if you can tell us the job number whenever you contact us about your Order.

3.7. If you wish to make changes to the Services please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Services, their timing or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

3.8. If you are a **business customer**, any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in any materials produced by the Supplier, are issued or published

for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract or have any contractual force.

- 3.9. If you are a **business customer**, these Conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by law (to the extent that the law permits), trade, custom, practice or course of dealing.
- 3.10. We may make minor changes to the Services:
- 3.10.1. to reflect changes in the relevant laws and regulatory requirements;
  - or
  - 3.10.2. to implement minor technical adjustments and improvements. These changes will not affect your use of the Services.
- 3.11. In addition we may make more significant changes to the Services and these terms, but if we do so we will notify you. You may then contact us to end the contract and receive a full refund before the changes take effect.

#### 4. OUR OBLIGATIONS AND RIGHTS

- 4.1. We shall use reasonable endeavours to perform the Services in a timely manner and meet any performance dates or Milestones specified in the Specification. Any such performance dates or Milestones will be an estimate only.
- 4.2. We may use a subcontractor of our choosing to perform any part of the Services. We will remain responsible for the Services provided to you by such sub-contractor.
- 4.3. We will carry out the Services using reasonable care and skill, and we will be under no obligation to restore the Property to meet any particular specification unless we have agreed this in writing.
- 4.4. We will try to avoid or minimise damage to the Property.
- 4.5. If you are a **business customer** we will use reasonable endeavours to observe all health-and-safety and security requirements that apply at the Location and that have been communicated to us provided that we shall not be liable for any breach of this Contract as a result of such observation.
- 4.6. Unless otherwise agreed in the Specification, the Services do not include:
- 4.6.1. decoration of the Property following completion of the Services, re-plastering, re-flooring, replacement of ceilings, the removal or alteration of any fixtures or fittings, or any other construction work ("**Repair Work**");
  - 4.6.2. removal of any dangerous or hazardous waste which cannot be removed in compliance with the Control of Substances Hazardous to

Health Regulations 2002, Control of Asbestos at Work Regulations 2002 or that require a special licence or specific health-and-safety precautions;

4.6.3. supervision of Supplier's Equipment;

4.6.4. replacement or reinstatement of any supplies and services disrupted prior to or during the provision of the Services; or

4.6.5. leak detection or any other examination of the cause or source of a past or ongoing escape or ingress of water. To the extent that the Services do include such examinations, they will be for indicative purposes only and we do not guarantee that we will detect any or all leaks or find any or all defects, causes or sources of a past or ongoing escape or ingress of water.

4.7. After we have completed the Services, and if agreed in the Specification, we may issue a certificate of drying or certificate of hygiene with such caveats that we reasonably consider to apply in the circumstances.

## 5. OUR RIGHT TO SUSPEND PERFORMANCE OF THE SERVICES

5.1. We may suspend performance of the Services for the following reasons:

5.1.1. to resolve technical issues and make minor technical changes to the Specification and equipment used in the performance of the Services;

5.1.2. to amend the Specification and implement any such changes which are necessary as a result of changes in relevant laws or regulatory requirements;

5.1.3. to amend the Specification and implement any such changes in response to a request by you;

5.1.4. to amend the Specification and implement any changes if we discover or become aware of something which concludes that the Specification is unsuitable;

5.1.5. if you fail to pay us any amount due under the Contract on or before the due date for payment; or

5.1.6. if you are a business customer and you become subject to any of the events listed in Condition 16.2.2 to 16.2.4 or we reasonably believe that you are about to become subject to any of them.

5.2. Our carrying out of the Services might be affected by events beyond our reasonable control. If so, there might be a delay before we can start or restart the Services, having made reasonable efforts to limit the effect of any of those events and having kept you informed of the circumstances, but we will try to start or restart the Services as soon as those events no longer affect our ability to carry out the Services.

5.3. If you are a **business customer** and our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation ("**Customer Default**"), without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our

obligations in each case to the extent the Customer Default prevents or delays our performance of any of our obligations.

- 5.4. We shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations pursuant to Condition 5.1 or 5.3, and you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.
- 5.5. Except in the case that Condition 5.1.3 applies, we shall contact you as soon as is reasonably practical to communicate that we are suspending performance of the Services under Condition 5.1 or 5.3.
- 5.6. If we suspend performance of the Services for a period in excess of fourteen days (which begins on the day following the day we contact you) you may end the agreement and shall inform us in writing that is what you intend to do. You will be liable to us for the cost, including VAT, of any Services performed prior to such suspension.

## **6. BUSINESS CUSTOMER OBLIGATIONS**

- 6.1. If you are a business customer you shall at your own expense:
  - 6.1.1. ensure that the terms of the Order and any information you provide are complete and accurate to the best of your knowledge;
  - 6.1.2. co-operate with us in all matters relating to the Services;
  - 6.1.3. provide us, our employees, agents, consultants and subcontractors with access, or use all reasonable endeavours to procure the provision of their access to, the Property, Location or any other facility as reasonably required by us;
  - 6.1.4. whether owned by you or a third party, provide us with such accurate and complete information, including but not limited to information detailing the location of known asbestos at the Location, materials in any form, storage facilities, water and electricity as required under the Specification or otherwise reasonably required by us in order to perform the Services;
  - 6.1.5. prepare or procure the preparation of the Property in a timely manner for the supply of the Services in accordance with any reasonable request made by us;
  - 6.1.6. obtain before the date on which the Services start and maintain for the duration of the provision of the Services all necessary licences, permissions and consents which may be required for us to be able to perform the Services;
  - 6.1.7. obtain before the date on which the Services start and maintain for the duration of the provision of the Services all necessary licences, permissions and consents and comply with all applicable laws, including health-and-safety laws, applicable to the Location, the Property or the Services;
  - 6.1.8. inform us prior to the commencement of the Services (or as soon as reasonably practical if performance of the Services has already begun) of any health-and-safety and security requirements applicable to the

Property or Location or any other regulations or specifications, that you expect us to observe;

- 6.1.9. keep all materials, Supplier's Equipment, documents and other property belonging to us ("**Supplier Materials**") and which are at the Location in safe custody and at your own risk, maintain the Supplier Materials in good condition until returned to us, and not dispose of or use the Supplier Materials other than in accordance with our written instructions or authorisation;
  - 6.1.10. comply with any additional obligations set out in the Specification or as communicated by us;
  - 6.1.11. maintain a valid public liability insurance policy for the duration of the Services;
  - 6.1.12. maintain a valid insurance policy providing adequate cover against loss or damage in respect of or caused by any items that in the course of performance of the Services are removed from the Location by any person for Offsite Assistance; and
  - 6.1.13. inform us by sending an email to [info@actiondry.co.uk](mailto:info@actiondry.co.uk) or by calling +44 (0)1708 501581 as soon as is reasonably practical after the discovery of any problem of any kind that, in your reasonable opinion, has arisen as a result of the Services performed by us or which may affect either of our abilities to comply with our obligations under the Contract;
- 6.2. You and any natural person that enters or purports to enter into a Contract or supplies any information to us on your behalf pursuant to the Contract, warrant that they have the legal capacity to do so.
- 6.3. We are not responsible for any accident and damage, whether at the Location or elsewhere, caused by or arising out of the condition or nature of the Property not disclosed to us and not apparent on reasonable examination by us.
- 6.4. You agree that if, by signing an inventory produced by us or by giving some other verbal or written authorisation, you instruct us to dispose of any Property at the Location or remove any Property from the Location for disposal you are the owner of such Property or have the consent of its owner to do so. If you give such instructions without having such consent, and you are a **business customer**, you agree to indemnify us against any claims or cost or expense incurred by us in respect of loss of or damage to such Property.
- 6.5. If we provide 360° or 3d-scanning services at the Property, whether such services form all or part of the Services or are incidental to the Services:
- 6.5.1. unless we agree otherwise in writing, we shall remain the owner of any images or other files produced as part of the Services;
  - 6.5.2. you warrant that our creation and use of the images and files created in connection with our 360° or 3d-scanning services, including the transmission of such images and files to third-party service providers,

does not infringe any third party rights, including intellectual property rights and privacy rights and that you have reviewed the Location before allowing us to provide the Services and have removed from view anything that you do not wish to appear in the images or other files produced as part of the Services, including, but not limited to, confidential information, personal data, and security information.

- 6.5.3. if you are a **business customer**, you agree to indemnify us and our Affiliates against any claims or cost or expense incurred by us in respect of loss of or damage to any third party arising out of our provision of such services and for any costs incurred by us or our Affiliates arising out of your breach of clause 6.5.2;
- 6.5.4. if, as part of the Services, we have uploaded any images or other files relating to such services to a website, whether owned or operated by you or a third party, we may remove or, as the case may be, procure that the owner or operator of such website removes, such images or other files from such website if a third party has threatened or commenced legal action against us or any of our Affiliates in relation to the use of such images or other files or if we, acting reasonably, consider it is reasonably likely that some third party will do so;
- 6.5.5. if you have uploaded any images or other files relating to such services to a website, whether owned or operated by you or a third party, you will use your best endeavours to immediately remove and keep removed or, as the case may be, procure that the owner or operator of such website removes and keeps removed, such images or other files from such website that we direct upon our notification to you in writing that any legal action has been commenced or threatened against us or our Affiliates in relation to the use of such images or other files; and
- 6.5.6. in case of removal of images or other files pursuant to clauses 6.5.4 or 6.5.5, we shall, where applicable and subject to the other conditions of the agreement, refund any monies paid in settlement of the part of the Charges in respect of the Services relating to such images or other files.

## **7. CONSUMER OBLIGATIONS**

- 7.1. If you are a consumer the following obligations shall apply:
  - 7.1.1. You will cooperate with us so we can provide the Services to you.
  - 7.1.2. We may request certain information from you so that we can supply the Services which may include details of any known asbestos at the Location or the location of electrical or water points. If you do not give us that information within a reasonable time of us asking for it or if you give us incorrect or incomplete information, we will not be responsible for any subsequent delay in providing Services to you.
  - 7.1.3. You will let us know by email to [info@actiondry.co.uk](mailto:info@actiondry.co.uk) or by calling +44 (0)1708 501581 as soon as is reasonably practical if you discover any problem, structural defect or anomaly which may affect our ability to provide the Services.
  - 7.1.4. You will have obtained all necessary permissions to allow us to access the Property at the Location prior to our attendance at the Location in

connection with this contract except if agreed in writing between us and you.

- 7.1.5. You will provide us with or assist us in providing ourselves with the necessary power, lighting and heating necessary for the Services to be carried out.
- 7.1.6. If you do not allow us access to your Property at the Location to perform the Services as arranged (and you do not provide us with reasonable notice and/or a valid reason for this) we may charge you additional costs incurred by us as a result. If despite our reasonable efforts, we are unable to contact you to rearrange access to your Property at the Location, we may end the contract.
- 7.1.7. We will not take responsibility for accidents and damage to Property at the Location where it is caused by the condition or nature of the Property, Location or any part of it which has not been notified to us or is not obvious on reasonable inspection by us.

## **8. CHARGES AND PAYMENT**

- 8.1. You agree to pay our Charges. We will let you know the basis of calculating the charges for the Services to the fullest extent that we reasonably can when you place an Order with us.
- 8.2. Our Charges will be calculated in accordance with our price list which will be amended from time to time.
- 8.3. We will send you a cost appraisal containing your expected charges for the Services within a reasonable time after our visit to the Location. The cost appraisal may also contain further terms and conditions which will be incorporated into the Contract if it has been provided to you before the Contract is formed. You agree that on our first visit to the Location, we may undertake work on that visit that may be necessary to mitigate damage to the Property and agree to pay our costs for this work, which will be detailed in the cost appraisal, such costs to be calculated in accordance with our price list which we have made available to you.
- 8.4. Our cost appraisal is usually valid for twenty-one (21) working days. If we receive an Order from you in relation to a particular cost appraisal after more than twenty-one (21) working days starting on the working day after the day on which we sent the cost appraisal to you, we may reject this Order and require you to provide access to the Property and other reasonable assistance in order for us to complete another cost appraisal before carrying out any Services to the Property.
- 8.5. We may require that you pay us a deposit prior to carrying out the Services with the balance payable on completion of the Services, which you will pay in full and in cleared funds to a bank account nominated in writing by us or by credit or debit card.

- 8.6. If **you are a consumer** or a **business which does not have an account with us** you must pay each invoice in accordance with the payment terms stated on that invoice or **if you are a business with an account with us** in accordance with the credit terms agreed with you in full and in cleared funds to a bank account nominated in writing by us.
- 8.7. If you are a **consumer**, the Charges for the Services are in pound sterling (£)(GBP) and include value added tax (VAT) chargeable at the applicable rate.
- 8.8. If you are a **business customer** all amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable (VAT). Where any taxable supply for VAT purposes is made under the agreement by us to you, you shall, on receipt of a valid VAT invoice from us, pay us such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services. You must pay all amounts due to us under these terms in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.9. If your payment is not received by the due date, we may charge interest on any balance outstanding at the rate of 4% above the Bank of England's base rate.

## **9. INSURANCE CLAIMS**

- 9.1. Where the Services are provided for you in respect of a loss which is covered by a valid insurance policy, you agree to the Direct Payment Mandate. Any insurance excess which may apply to your insurance policy will not in any way affect the amount due to us or the terms of payment applicable under this Contract.
- 9.2. If your insurance company requires an independent report concerning your insurance claim, this will not alter the requirement for or content of our report and will not affect the amount due to us under the Contract. You agree that we may create such report, send it to your insurance company or their appointed loss adjustor and discuss its contents and any other matters ancillary to the Services.

## **10. STANDARD MOULD REMEDIATION SERVICE**

- 10.1. If we and you agree that the Specification shall include our Standard Mould Remediation Service (SMRS), we shall complete the following activities as part of the SMRS unless we advise you in writing in the Specification that we will exclude any of them from the SMRS:
- 10.1.1. conduct a moisture survey and initial investigations to identify, to the extent reasonably practical, the extent and cause of the presence of visible mould in the Property and, to the extent that it is identifiable by our measurement tools, the gross airborne and settled particulate matter in the Property except in cases where we reasonably think that

environmental factors may confound the use of such data in classifying that the Property, where the Property is a structure, meets the goal in Schedule 1, in which case we shall test to identify the presence of airborne mould;

- 10.1.2. remove visible mould from areas agreed by you and us, including conducting any Strip Out necessary to facilitate this, subject to clause 10.2;
- 10.1.3. reduce the number of particulates in the air at the Location;
- 10.1.4. remove what we in our reasonable opinion consider to be contents with visible mould or suspected contamination by mould spores for disposal in accordance with our protocols in operation from time to time;
- 10.1.5. subject to Condition 10.6, where the Property is a structure, conduct post-remediation evaluation after completion of steps 10.1.1 to 10.1.4 and further remediation if necessary so that, in our sole and reasonable opinion, we achieve the remediation goal of the SMRS in relation to the Property, as set out in Schedule 1, as amended from time to time; and
- 10.1.6. provide recommendations, to the extent that we consider it necessary and reasonably possible to do so, that we consider may reduce the chances visible mould will return to the Property.

10.2. In order to achieve the remediation goal referred to in Schedule 1, we may recommend the following services which shall, unless otherwise agreed in writing, form part of the SMRS except that they shall incur charges in addition to those for the SMRS. You agree to pay any Charges, additional to those otherwise due for the SMRS, for such activities:

10.2.1. removal of contents with visible mould or contamination by mould spores for restoration or storage in accordance with our protocols in operation from time to time and restoration or storage of such contents; and

10.2.2. Strip Out to the extent that it is Significant Strip Out.

10.3. If you do not agree to pay the Charges for any Services listed in Condition 10.2 and recommended by us, we are under no obligation, as part of the SMRS, to achieve the remediation goal referred to in Schedule 1 and, if you are a **business customer**, to issue our warranty pursuant to Condition 10.6.

10.4. If you have agreed that the Services are to include Significant Strip Out and the time actually taken to complete the Strip Out is less than anticipated by us at the time of preparing the Specification, we will not include on our invoice any hours of work quoted above the number of hours that the work actually took. If such number of hours was sufficiently low that the Strip Out does not meet the definition of Significant Strip Out, we will exclude charges for Significant Strip Out from our invoice.

10.5. We may undertake other activities, including but not limited to the following, as part of the Services in addition to the SMRS. Such activities shall not, unless otherwise agreed in writing between us and you, form part

of the SMRS and you agree to pay any Charges, additional to any Charges due for the SMRS, which we have agreed with you for such activities:

- 10.5.1. works to dry or remediate water damage at the Property other than mould proliferation, and testing and remediation works, other than those that we deem reasonably necessary to perform the SMRS and provision of a report with commentary on any works or testing conducted;
- 10.5.2. post-remediation verification of works conducted by other contractors;
- 10.5.3. consulting, including the preparation of such reports for you or third parties and correspondence as we deem necessary; and
- 10.5.4. testing and remediation works in pursuit of a remediation goal agreed between you and us other than that referred to in Schedule 1.

**The following Conditions apply if you are a business. They also apply if you are a consumer save that nothing in the following Conditions shall apply so as to limit your legal rights as a consumer:**

- 10.6. Subject to Condition 10.7 we warrant that, if the Services include the remediation of visible mould from the Property as part of the SMRS and we remediate such visible mould, the part of the Location in which such remediation took place shall not deteriorate in appearance due to further proliferation of visible mould compared to its appearance at the time at which we left it upon completion of the Services for a period of one year beginning on the day after the day on which we completed the part of the Services related to mould remediation.
- 10.7. In accordance with Condition 10.11, we shall be entitled, at our discretion, to not issue the warranty in Condition 10.6 or to issue the warranty subject to conditions that must be fulfilled in order for us to be bound to complete our obligations under Condition 10.10.
- 10.8. Notwithstanding Condition 10.1, we shall have no obligation to remediate nor subsequent obligations pursuant to Condition 10.10 in relation to visible mould that is not reasonably accessible to us prior to the completion of the Services including, but not limited to, visible mould in cavity walls, voids or boxing, or under floorboards except if the Specification specifically provides for us to access such areas.
- 10.9. Pursuant to Condition 10.7, we shall be entitled, at our discretion, to not issue the warranty in Condition 10.6 if:
  - 10.9.1. we do not consider, in our reasonable opinion, that we were given access to the entire Location or a sufficient part of the Location in which to conduct our mould remediation works, including air treatments, and we informed you of such in the Specification or, if we were not granted access at the time of completing the works having previously expected to have been so, as soon as reasonably practical after conducting the works;
  - 10.9.2. we consider, in our reasonable opinion, that there is some inherent issue involving moisture or some other circumstance at the Location which provides or contributes to what we, acting reasonably, consider are

the conditions for visible mould to proliferate after we complete the part of the Services related to mould remediation and remediation of which, in our reasonable opinion, cannot form the subject of a condition pursuant to Condition 10.7;

10.9.3. we do not consider, in our reasonable opinion, that we are able to complete the Services according to the Specification or that we are able to follow our normal mould-remediation protocols when carrying out the Services; or

10.9.4. another person is responsible for any drying of the Property that we, in our reasonable opinion, consider is or may be necessary at the time of the Services, and we are not permitted to conduct such moisture checks that we consider necessary following the completion of such drying.

10.10. In case of breach of the warranty in Condition 10.6 you agree that your sole remedy is that we will conduct what, in our reasonable opinion, we consider to be a suitable remediation programme in order to remediate visible mould and achieve the remediation goal set out in Schedule 1, at no Charge to you, subject to Conditions 10.11 and 10.12.

10.11. We shall have no obligation under Condition 10.10 if:

10.11.1. we did not issue a warranty in accordance with Condition 10.7;

10.11.2. we issued the warranty in Condition 10.6 subject to conditions, in accordance with Condition 10.7, and you did not, in our reasonable opinion, fulfil any or all of such conditions, whether or not such non-fulfilment may have caused the conditions that give rise to our obligation under Condition 10.10;

10.11.3. you notify us of a breach of Condition 10.6 more than one year after the day on which we completed the part of the Services related to mould remediation;

10.11.4. there has been an event at any part of the Location since we completed the part of the Services related to mould remediation which, in our reasonable opinion, may have caused a part of the Location in which the remediation of visible mould took place to deteriorate in appearance due to further proliferation of visible mould, such as but not limited to flooding or an escape or ingress of water to the Location or damage to or destruction of any fixture or fitting at the Location or disrepair, defect or non-operation for some other reason of equipment such as fans or heat-recovery ventilators at any point following the completion of the Services, whether or not the event is continuing at the time at which you notify us of a breach of Condition 10.6;

10.11.5. there have been alterations or repairs, since we completed the part of the Services relating to the remediation of visible mould, to the parts of the Location in which you claim there has been a deterioration in appearance due to further proliferation of visible mould; or

10.11.6. you did not pay all the Charges in accordance with the terms on any of our invoices or committed some other material breach of the Contract.

10.12. If we attend the Location following notification of a breach of the warranty in Condition 10.6 and do not find a deterioration in appearance due to further proliferation of visible mould compared to the Location's appearance at the time at which we left it upon completion of the Services, or find that you have not met any conditions on which we issued the warranty pursuant to Condition 10.7, we shall be entitled to make a charge to you in accordance with Condition 8 (Charges and Payment) and you shall pay such charge in accordance with Condition or 8.8, as applicable.

## **11. INTELLECTUAL PROPERTY RIGHTS**

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

11.2. You grant to us a fully paid-up, non-exclusive, perpetual, irrevocable royalty-free, non-transferable licence to copy and modify any Customer Materials for the term of the Contract for the purpose of providing the Services to you.

11.3. You agree to not engage in any activity that may constitute a breach of our Intellectual Property Rights and to notify us of and cooperate with us for the purposes of protecting us from any actual or threatened infringement of our Intellectual Property Rights.

11.4. Any cost appraisal, estimate, inventory, report or other document produced by us in the provision of the Services shall remain our intellectual property and shall be protected by our Intellectual Property Rights. You agree that such documents are confidential and any provision of such documents by us to you shall be on the basis that you will not, unless expressly agreed otherwise, share or make available such documents in any form to any other person. Where such express permission is granted, whether or not expressly agreed, you shall only share such documents in full and in accordance with data protection legislation.

## **12. DATA PROTECTION For business customers only**

12.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Condition 12, Applicable Laws means Domestic UK Law; and Domestic UK Law means any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018, the UK General Data Protection Regulation or any successor legislation.

12.2. The parties acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor

(where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

- 12.3. Without prejudice to the generality of Condition 12.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data (as defined in the Data Protection Legislation) to us for the duration and purposes of the Contract.
- 12.4. Without prejudice to the generality of Condition 12.1, we shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under the Contract:
- 12.4.1. ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of our systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 12.4.2. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 12.4.3. not transfer any Personal Data outside of the European Economic Area unless your prior written consent has been obtained or it is necessary for the performance of the Services and the following conditions are fulfilled:
- 12.4.3.1. you or us has provided appropriate safeguards in relation to the transfer;
- 12.4.3.2. the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- 12.4.3.3. we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 12.4.3.4. we comply with reasonable instructions notified to it in advance by us with respect to the processing of the Personal Data;

### **For consumers and business customers**

We only use your personal information as set out in our Privacy Policy. You can find our Privacy Policy at [www.actiondry.co.uk](http://www.actiondry.co.uk).

## **13. OUR LIABILITY**

### **13.1. OUR LIABILITY TO YOU IF YOU ARE A CONSUMER**

13.1.1. Except for any legal responsibility that we cannot exclude in law (such as for death or personal injury) or arising under applicable laws relating to the protection of your personal information, we are not legally responsible for any losses that:

13.1.1.1. were not foreseeable to you and us when the contract was formed; or

13.1.1.2. that were not caused by any breach on our part;

13.1.1.3. business losses; and

13.1.1.4. losses to persons who are not a party to the agreement.

## 13.2. OUR LIABILITY TO YOU IF YOU ARE A BUSINESS

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

13.2.1.1. death or personal injury caused by negligence;

13.2.1.2. fraud or fraudulent misrepresentation; and

13.2.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.2.2. Subject to Condition 13.2.1, our total liability to you shall not exceed the contract Charges, as set out on the cost appraisal. Our total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

13.2.3. Subject to Condition 13.2.1, the types of loss listed in this Condition 13.2.3 are wholly excluded by the parties:

13.2.3.1. Loss of profits;

13.2.3.2. Loss of opportunity, sales or business;

13.2.3.3. Loss of agreements or contracts;

13.2.3.4. Loss of anticipated savings;

13.2.3.5. Loss of use or corruption of software, data or information;

13.2.3.6. Loss of or damage to goodwill;

13.2.3.7. Indirect or consequential loss; and

13.2.3.8. Wasted expenditure

13.2.4. We have given commitments as to compliance of the Services with relevant specifications in Condition 4 (Our Obligations and Rights). In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.2.5. We shall have no responsibility to you in respect of the standard of work carried out by a contractor not party to this Contract.

13.2.6. If we become aware of any defects in the Property in the course of carrying out the Services, we may note such defects and report them to you but we shall have no obligation in respect thereof and shall not be liable for any loss arising out of our failure to do so.

13.2.7. Notwithstanding the other provisions of this Condition 13, we shall in no circumstances be liable for losses arising out of:

13.2.7.1. us not accepting the Order;

- 13.2.7.2. us not accepting the Order or performing all or any part of the Services in a particular timeframe, whether or not expressly agreed by the parties;
- 13.2.7.3. damage caused by pre-existing defects to the Property, whether or not we or you were at any time aware of them;
- 13.2.7.4. the accuracy or completeness or otherwise of any documents produced by you in relation to or as part of the Services;
- 13.2.7.5. damage to the Property or Location as a result of us moving or removing goods, fixtures or fittings under your express instructions or if doing so is, in our reasonable opinion, reasonably necessary for the performance of the Services; and
- 13.2.7.6. our failure to identify the full extent or cause of moisture or mould proliferation at the Location.
- 13.2.8. We shall not be liable for any losses suffered by you as a result of a contract between you and any other person with whom you have contracted following a recommendation or suggestion by us to do so.
- 13.2.9. Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The "notice period" for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire ONE month from that date. The notice shall be communicated to us in writing and shall identify the event and the grounds for the claim in reasonable detail.
- 13.2.10. Each sub-Condition within this Condition 13, including each head of loss in sub-Condition 13.2 shall be construed separately and shall be severable and continue to apply even if any other sub-Condition is held to be unenforceable.
- 13.2.11. This Condition 13 shall survive termination of the Contract.

#### **14. YOUR RIGHTS TO END THE CONTRACT IF YOU ARE A CONSUMER**

- 14.1. You can always end your contract with us. Your rights when you end the contract will depend on the Services you have bought, how we are performing and when you decide to end the contract:
  - 14.1.1. if you want to end the contract because of something we have done or have told you we are going to do, see Condition 14.2; or
  - 14.1.2. if you have just changed your mind about the Services, see Condition 14.3. You may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions.
- 14.2. If you are ending a contract for a reason set out at 14.2.1 and 14.2.5 below the contract will end immediately and we will refund you in full for any Services which have not been provided. The reasons are:
  - 14.2.1. we have told you about an upcoming change to the Services or these terms which you do not agree to;
  - 14.2.2. we have told you about an error in the price or description of the Services you have ordered and you do not wish to proceed;
  - 14.2.3. there is a risk that supply of the Services may be significantly delayed because of events outside our control;

14.2.4. we have suspended supply of the Services for technical reasons, or notify you we are going to suspend them for technical reasons, in each case for a period of more than fourteen days; or

14.2.5. you have a legal right to end the contract because of something we have done wrong.

**14.3. Exercising your right to change your mind.** For most products bought over the telephone or by exchange of emails you have a legal right to change your mind within 14 days and receive a refund. If you want to exercise that right you must notify us in accordance with Condition 14.4 below. If you wish us to start to provide the Services within that 14-day period then you will then lose your right to cancel when we have provided the Services in full.

14.4. To end the Contract with us, please let us know by calling customer services on +44 (0)1708 501581 or emailing us at [info@actiondry.co.uk](mailto:info@actiondry.co.uk).

14.5. We will refund you the price you paid for the Services including delivery costs by the method you used for payment. However, we may make deductions from the price, as described below.

14.6. If you are exercising your right to change your mind, we may deduct from any refund an amount for the supply of the Services for the period for which they were supplied, ending with the time when you told us you had changed your mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the Contract.

14.7. We will make any refunds due to you as soon as possible. If you are exercising your right to change your mind then your refund will be made within 14 days of your telling us you have changed your mind.

## **15. OUR RIGHTS TO END THE CONTRACT IF YOU ARE A CONSUMER**

15.1. We may end the Contract for at any time by writing to you if:

15.1.1. you do not make any payment to us when it is due and you still do not make payment within two days of us reminding you that payment is due;

15.1.2. you do not within a reasonable time of us asking for it, provide us with the necessary information for us to carry out the Services; or

15.1.3. you do not, within a reasonable time, allow us access to the Location to supply the Services.

15.2. If we end the Contract in the situations set out in Condition 15.1 we will refund any money you have paid in advance for Services we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.

## **16. TERMINATION RIGHTS IF YOU ARE A BUSINESS**

16.1. Without affecting any other right or remedy available to it, either party may terminate the Contract prior to the commencement of the Services by giving the other party reasonable notice in writing.

- 16.2. Without affecting any other right or remedy available to it, either party may terminate the Contract following the commencement of the Services with immediate effect by giving written notice to the other party if:
- 16.2.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within a reasonable time of that party being notified in writing to do so;
  - 16.2.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 16.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 16.2.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 16.3. Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect at any time by giving written notice to you if:
- 16.3.1. you fail to pay any amount due under the Contract on the due date for payment;
  - 16.3.2. you undergo a change of control;
  - 16.3.3. a Customer Default continues for a period of seven days beginning from the day after the day on which we notify you of the Customer Default.
- 16.4. On termination of the Contract:
- 16.4.1. you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied or expenses incurred in relation to the Services but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt; and
  - 16.4.2. you shall return all of the Supplier Materials belonging to us or allow us access, or use all reasonable endeavours to procure our access, to the Location or any other facility in order for us to collect them. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and shall not use them for any purpose not connected with the Contract.
- 16.5. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any

breach of the Contract which existed at or before the date of termination or expiry.

16.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

16.7. Without affecting any other right or remedy available to us, we will, within a reasonable time of receiving notice under Condition 16.2, refund you, in full and in cleared funds to a bank account nominated in writing by you, any sums paid in respect of Services that have not been carried out.

## 17. **FORCE MAJEURE**

This Condition applies if you are a **business customer**.

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

17.1.1. acts of God, flood, drought, earthquake or other natural disaster;

17.1.2. epidemic or pandemic;

17.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

17.1.4. nuclear, chemical or biological contamination or sonic boom;

17.1.5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

17.1.6. collapse of buildings, fire, explosion or accident;

17.1.7. non-performance by suppliers or subcontractors other than by companies in the same group as the party seeking to rely on this Condition; and 17.1.8; and

17.1.8. interruption or failure of utility service.

17.2. Provided it has complied with Condition 17.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

17.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

17.4. The Affected Party shall:

17.4.1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than two days from the later of its start or when it first becomes aware of it, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the

effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and  
17.4.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

17.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than fourteen days beginning on the day after the day on which the Affected Party notifies the party not affected by the Force Majeure Event under Condition 17.4, either party may terminate the Contract by giving written notice to the other Party.

## 18. OTHER IMPORTANT TERMS

18.1. You may not transfer any of your rights under the Contract to any other person.

18.2. We may transfer any of our rights under the Contract to any person or ask any person to fulfil any aspect of it so long as the performance of the Contract is not affected.

18.3. No one other than a party to this Contract has any right to enforce any term of this Contract.

18.4. If you are a consumer then nothing in the Contract will affect your statutory rights.

18.5. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Services, we can still require you to make the payment at a later date.

18.6. If any court or relevant authority decides that any part of the Contract is illegal or unlawful, the remaining paragraphs will remain in full force and effect.

18.7. The Contract is governed by English law and you can bring legal proceedings in respect of the Services in the English courts.

18.8. If you are a **business customer**, any dispute or claim arising out of or in connection with a contract between us 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 and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

## **Schedule 1: Standard Mould Remediation Service Remediation Goal**

Where we provide our Standard Mould Remediation Service (SMRS), the remediation goal for the purposes of Condition 10.1 of the Contract shall be that the Property is:

- ‘an indoor environment that may have settled spores, fungal fragments or traces of actual growth whose identity, location and quantity are reflective of a normal fungal ecology for similar indoor environment.’

Condition ‘1’ (Normal Fungal Ecology), ANSI/IICRC S520-2015 Standard for Professional Mold Remediation.

## **Schedule 2: Direct Payment Mandate**

I HEREBY AUTHORISE ACTION DRY EMERGENCY SERVICES LTD ( THE COMPANY ) AND ITS AGENTS TO PERFORM THE NECESSARY CLEANING, DISPOSALS, SANITISING, DRYING OUT AND OTHER DETAILED WORKS RESULTING FROM THE CLAIMED INCIDENT. I HEREBY EXPRESSLY AUTHORISE MY INSURER(S), THEIR AGENT(S), LOSS ADJUSTER(S) OR THE APPOINTED MAIN CONTRACTOR TO COMMUNICATE FREELY WITH THE COMPANY ON MY BEHALF REGARDING ANY ISSUES RELATING TO THEIR INVOLVEMENT, PAYMENT OR ACTIONS. I FUTHER HEREBY EXPRESSLY AUTHORISE MY INSURER(S), THEIR AGENT(S), LOSS ADJUSTER(S) OR MAIN CONTRACTOR TO MAKE PAYMENT DIRECTLY TO THE COMPANY FOR UNDERTAKING THE WORKS UNDERTAKEN AND THAT THE COMPANY NAME BE PLACED ON THE PAYMENT CHEQUE(S). I FURTHER UNDERSTAND AND ACCEPT THAT I AM LIABLE FOR ANY COST NOT COVERED BY MY INSURANCE POLICY, POLICY EXCESS, CONTRIBUTION AS SPECIFIED BY THE INSURERS OR THEIR AGENT OR LOSS ADJUSTER OR VAT ELEMENT (IF VAT REGISTERED).