

1. Interpretation

The following definitions and rules of interpretation apply in these Terms.

1.1 Definitions:

Breathe Pure: Breathe Pure Limited, a company registered in England and Wales with company number 16135260, whose registered address is 101 New Cavendish Street, 1st Floor South, London, United Kingdom, W1W 6XH.

Business Customer: a person buying Products or Services wholly or mainly for use in connection with that person's trade, business, craft or profession.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: has the meaning given in clause 3.3.

Consumer: an individual purchasing Products or Services for reasons wholly outside that individual's trade, business, craft or profession.

Contract: the contract between Breathe Pure and the Customer for the supply of Products or Services in accordance with these Terms.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

Customer: the Consumer or Business Customer who buys the Products or Services from Breathe Pure under these Terms.

Dehumidifier: the IW25-5 On-Wall Dehumidifier or the IW25-5 In-Wall Dehumidifier.

Delivery Location: means either the address specified by the Business Customer for the delivery of the Products or the address specified by Breathe Pure for collection of the Products, in either case pursuant to clause 5.3.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Group Company: means at any relevant time, in relation to a Business Customer, an entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that entity, where "control" means holding, directly or indirectly, a majority of the voting rights in it, or the power to direct or cause the direction of its management, policies or operations (whether through holding of voting rights, by contract or otherwise).

Installer: the third party individual or business that shall carry out the Services.

Order: the Customer's order for the supply of Products or Services.

Products: the dehumidifiers, pumps and accessory products featured on Breathe Pure's Website.

Services: the installation by an Installer of Dehumidifiers under these Terms.

Terms: these terms and conditions as amended from time to time in accordance with these Terms.

Warranty Period: has the meaning given in clause 6.1.

Website: www.breathepure.co.uk.

1.2 Interpretation:

- (a) A **person** includes a natural person (i.e. an individual), corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- (f) A reference to **writing** or **written** excludes fax but not email.

2. **Business Customers and Consumers**

- 2.1 Clauses 1 – 18 of these Terms apply to Orders placed by Business Customers.
- 2.2 Clauses 1, 2, 6, 7, 9 and 19 of these Terms apply to Orders placed by Consumers.

3. **Basis of contract**

- 3.1 The Order is an offer by the Business Customer to buy Products or Services in accordance with these Terms.
- 3.2 Business Customers may place Orders for Products online via the Website, by email or by phone. Business Customers may place Orders for Services by filling out an order form on the Website.
- 3.3 The Order shall only be deemed to be accepted when Breathe Pure gives written acceptance of the Order. At that point and on that date the Contract shall come into existence (**Commencement Date**). In some cases, Breathe Pure will need to cancel orders made by Business Customers. Where this happens, Breathe Pure will refund any sums paid by Business Customers.
- 3.4 Any samples, drawings, descriptive matter or advertising issued by Breathe Pure and any descriptions of the Products or Services or photographs, illustrations or oral or written descriptions of the Products or Services given by any member of Breathe Pure's staff, contained in Breathe Pure's catalogues or brochures or on the Website are given only for the purpose of giving an approximate idea of the Products or Services described in them. They shall not form part of the Contract or have any contractual force.
- 3.5 These Terms apply to the Contract to the exclusion of any other terms that the Business Customer tries to impose or incorporate, or which are implied by law (save for those that cannot be excluded at law), trade custom, practice or course of dealing.

3.6 Any quotation given by Breathe Pure shall not constitute an offer, and is only valid for a period of 14 days from its date of issue.

3.7 All of these Terms shall apply to the supply of both Products and Services except where application to one or the other is specified.

3.8 The Business Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Business Customer that is inconsistent with these Terms.

4. Products

4.1 The Products are described in Breathe Pure's catalogues and brochures or on the Website.

5. Delivery of Products

5.1 Breathe Pure shall ensure that:

(a) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, the contract number, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any), installation and maintenance instructions for the Products, and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and

(b) if Breathe Pure requires the Business Customer to return to Breathe Pure any packaging materials, that fact is clearly stated on the delivery note. The Business Customer shall make any such packaging materials available

for collection at such times as Breathe Pure shall reasonably request. Returns of packaging materials shall be at Breathe Pure's expense.

5.2 When placing an Order for Products, the Business Customer shall specify whether it wishes to have the Products delivered to an address the Business Customer specifies or to collect the Products from an address nominated by Breathe Pure.

5.3 Where the Business Customer chooses to have the Products delivered to an address the Business Customer specifies, Breathe Pure shall deliver the Products to that location at any time after Breathe Pure notifies the Business Customer that the Products are ready. Where the Business Customer chooses to collect the Products, the Business Customer shall collect the Products from C/O LHT Logistics Limited, 13 The I.O Centre, Lea Road, Waltham Abbey, EN9 1AS or such other location as may be agreed with the Business Customer before delivery (**Collection Address**) within three Business Days of Breathe Pure notifying the Business Customer that the Products are ready.

5.4 Where the Products are delivered by Breathe Pure to an address specified by the Business Customer, delivery of the Products shall be completed on the completion of unloading the Products at the Delivery Location. For the avoidance of doubt, where the Delivery Location is as specified by the Business Customer, delivery shall be kerbside only, and Breathe Pure shall not be responsible for taking the Products into the Business Customer's premises or assisting the Business Customer in doing so.

- 5.5 Where the Products are delivered by Breathe Pure to an address specified by the Business Customer, the Business Customer shall inspect the Products carefully before signing for them and shall refuse delivery of any damaged Products. Thereafter, the Business Customer shall contact the Breathe Pure customer services team and provide a description of the damage.
- 5.6 Where the Products are collected by a Business Customer from the Collection Address, delivery of the Products shall be completed on the completion of loading of the Products at the Collection Address.
- 5.7 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. Breathe Pure shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Business Customer's failure to provide Breathe Pure with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.8 If Breathe Pure fails to deliver the Products to a Business Customer, Breathe Pure's liability shall be limited to the costs and expenses incurred by the Business Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. Breathe Pure shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Business Customer's failure to provide Breathe Pure with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.9 If the Business Customer fails to (as relevant) take or accept delivery of the Products within three Business Days of Breathe Pure notifying the Business Customer that the Products are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by Breathe Pure's failure to comply with its obligations under the Contract in respect of the Products:
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Breathe Pure notified the Business Customer that the Products were ready; and
 - (b) Breathe Pure shall store the Products until actual delivery takes place, and charge the Business Customer for all related costs and expenses (including insurance).
- 5.10 If ten Business Days after the day on which Breathe Pure notified the Business Customer that the Products were ready for delivery the Business Customer has not (as relevant) taken or accepted actual delivery of the Products, Breathe Pure may resell or otherwise dispose of part or all of the Products and charge the Business Customer for any shortfall below the price of the Products.
- 5.11 Breathe Pure may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Business Customer to cancel any other instalment.

6. Quality of Products

6.1 Breathe Pure warrants that for the period of 60 Calendar Months for Dehumidifiers and 12 Calendar Months for pumps, from the date that Breathe Pure notifies the Customer that the Products are ready for delivery, **(Warranty Period)**, those products shall be free from material (i.e. not incidental or consequential) defects in material and workmanship. This warranty does not apply to any other product sold by Breathe Pure or to any consumable elements of the Products.

6.2 Subject to clause 6.3, if:

- (a) the Customer notifies Breathe Pure in writing during the Warranty Period and within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 6.1; and
- (b) Breathe Pure is given a reasonable opportunity to examine such Products; and
- (c) the Customer pays in advance the costs of labour as notified to the Customer by Breathe Pure before any repair work takes place; and
- (d) the Customer (if asked to do so by Breathe Pure and at the Customer's cost including without limitation all and any packaging and transportation costs) returns such Products to Breathe Pure at such a location as Breathe Pure will specify,

Breathe Pure shall, at the Customer's option (but subject always to Breathe Pure's

discretion), repair the Products that do not correspond to the warranty given at clause 6.1 or replace those component parts of the Products that have caused the Products not to comply with the warranty given at clause 6.1.

6.3 For the avoidance of doubt the Customer shall not send any Product to Breathe Pure under clause 6.2 unless and until Breathe Pure specifically authorises the Customer to do so.

6.4 If the Customer wishes to replace component parts of the Products, Breathe Pure shall send the replacement component parts to the Customer at an address that the Customer shall specify. Where the Customer chooses to replace component parts, Breathe Pure's liability under clause 6.1 shall be limited to sending the Customer replacements of the component parts. For the avoidance of doubt, Breathe Pure shall not be liable for the cost of any labour or for the replacement of any refrigerant or piping.

6.5 Where the Customer wishes for the Product to be repaired, the Customer shall (subject to clause 6.2(d)) return the Products to Breathe Pure.

6.6 Breathe Pure shall not be liable for the Products' failure to comply with the warranty set out in clause 6.1 if:

- (a) the Products were not bought from Breathe Pure;
- (b) the Customer makes any further use of Products after giving notice in accordance with clause 6.2;
- (c) the defect arises out of accident, neglect, misuse, unauthorised

- dismantling or contamination of the Products;
- (d) the Products have been modified, interfered with or tampered with in any way;
- (e) the Products' failure to comply with the warranty given at clause 6.1 arises because the Products or any part or component of the Products is damaged during the delivery process or during handling or installation or as a consequence of misuse, or the Customer failed to follow Breathe Pure's oral or written instructions as to the handling, storage, commissioning, installation, use or maintenance of the Products or (if there are none) good trade practice regarding the same;
- (f) the defect arises as a consequence of corrosion, freezing or acts of nature, flooding, fire, water damage, power surges or storm damage;
- (g) the Products have been operated beyond Breathe Pure's rated capacity as set out in the operations manual that accompanies the Products;
- (h) the Customer alters or repairs such Products without the written consent of Breathe Pure;
- (i) the Products' failure to comply with the warranty given at clause 6.1 arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (j) the Products' failure to comply with the warranty given at clause 6.1 is to refrigerant or piping elements of the Products.
- 6.7 Where Breathe Pure replaces any component part of a Product pursuant to this clause 6, the Warranty period for the replacement component part shall be limited to the unexpired portion of the Warranty Period on the Product in question.
- 6.8 Except as provided in this clause 6 (but subject to clause 6.12), Breathe Pure shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 6.1.
- 6.9 These Terms shall apply to any repaired Products or replacement component parts of the Products supplied by Breathe Pure.
- 6.10 Save for Customers' rights to return defective Products pursuant to clause 7 (and subject to clause 6.12), the remedies set forth in this clause 6 represent the Business Customer's sole and exclusive remedy for breach by Breathe Pure of clause 6.1.
- 6.11 Customers acknowledge and agree that, where Breathe Pure no longer has a contractual relationship with the manufacturer of the Products, Breathe Pure may be required to provide Customers' contact details in order for Customers to access their warranty rights pursuant to clause 6. This will require Breathe Pure to send Customers' contact details to the United States of America, in accordance with the Breathe Pure privacy policy, which can be found [here: https://breathepure.co.uk/privacy-policy](https://breathepure.co.uk/privacy-policy).

6.12 This clause 6 shall not affect Consumers' statutory rights.

7. Returns, amendments and cancellations

7.1 This clause 7 sets out the terms that relate to returns of Products.

7.2 Consumers have the right to a 14 day "cooling off" period. Consumers who wish to use that right, should refer to clauses to 19.16 – 19.22. Nothing in these Terms is intended to deprive Consumers of their rights under clauses 19.16 – 19.22 and if there is any conflict between clauses 19.16 – 19.22 and any other Term, clauses 19.16 – 19.22 shall prevail.

7.3 Where a Customer wishes to return a Product, the Customer will receive a full refund or replacement of the Products subject to compliance by the Customer with clause 7.4, to this clause 7 generally and the following specific provisions:

- (a) where the Customer has ordered the incorrect Product, or changed their mind, clause 7.10;
- (b) where the Customer wishes to return defective Products, clause 7.11;
- (c) where the Customer wishes to return damaged Products, clause 7.12;
- (d) where the Customer has received the incorrect Product, clause 7.13.

7.4 The Customer shall:

- (a) contact the Breathe Pure customer services team within the relevant timeframe set out for the clauses corresponding to the reason for the return;

(b) pack the Products the Customer wishes to return securely in the original packaging, including all paperwork, parts and accessories and the completed return form that the Breathe Pure customer services team will provide to the Customer;

(c) not write on or place shipping labels directly over the manufacturer's packaging; and

(d) send the return package using the courier of the Customer's choice to the address listed on the return form within 30 days of delivery.

7.5 Breathe Pure will inspect returned Products on arrival and may reject any returned Products that are not in the condition stated on the return form.

7.6 Customers may not return and Breathe Pure will not accept the return of any Products that have been installed or attempts have been made to install the same.

7.7 Breathe Pure will make any refund payments by the same payment method used to purchase the Products. Refunds will typically be paid approximately 4 – 5 Business Days following receipt by Breathe Pure of the returned Products, though for the avoidance of doubt time shall not be of the essence in respect of any such payment.

7.8 Where the Customer wishes to have the Products replaced rather than receiving a refund the Breathe Pure customer services team will explain the process when the Customer contacts them about a return.

7.9 Products that are not eligible for the Breathe Pure returns policy will be labelled "Non-Returnable" on the Website, or any Breathe Pure catalogue or brochure. Where a

	Business Customer places an Order by phone, Breathe Pure staff will advise the Business Customer if any of the Products are non-returnable.		Customers shall not be responsible for the cost of the return up to 30 days from Delivery.
7.10	Where Products are returned because the Customer has ordered the incorrect Product or the Customer no longer requires the Product:	7.14	Customers can make changes to an Order after it has been accepted but before the Products have been shipped. Customers can contact Breathe Pure customer services to make changes to an Order, quoting their Order number. Customers may not change Orders after Products have been shipped, but may make use of the other return options available under this clause 7.
	(a) the Customer shall return the Products brand new, in their original packaging;		
	(b) the Customers shall be responsible for all shipping charges associated with the return of the Products; and	7.15	Customers can cancel Orders after they have been accepted but before the Products have been shipped. Customers can cancel orders in these circumstances by contacting Breathe Pure customer services. If the Products have already been shipped, the Customer must set up a return in accordance with this clause 7, and the relevant terms shall apply to such return.
	(c) the Product(s) must be returned within 30 days of the date of delivery to the Customer.		
7.11	Where a Customer has received and wishes to return defective Products:	7.16	This clause 7 shall not affect Consumers' statutory rights.
	(a) the Customer shall notify Breathe Pure within 30 days of receipt;	8. Title and risk	
	(b) Breathe Pure will pay the freight costs of the return of defective Products;	8.1	The risk in the Products shall pass to the Business Customer on completion of delivery.
	(c) Where the Customer wishes to replace any defective Products ordered, Breathe Pure will bear the shipping costs of returned and replacement Products.	8.2	Title to the Products shall not pass to the Business Customer until Breathe Pure receives payment in full (in cash or cleared funds) for the Products and any other Products that Breathe Pure has supplied to the Business Customer, in which case title to the Products shall pass at the time of payment of all such sums.
7.12	Where a Customer wishes to return damaged Products, the Customer shall notify Breathe Pure within 24 hours of receipt. Breathe Pure will pay the freight costs of the return of damaged products.		
7.13	Where incorrect Products have been delivered and the Customer wishes to return them, the Customer shall notify Breathe Pure within 5 days of receipt of the Products.	8.3	Until title to the Products has passed to the Business Customer, the Business Customer shall:

- (a) store the Products separately from all other products held by the Business Customer so that they remain readily identifiable as Breathe Pure's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Breathe Pure's behalf from the date of delivery;
- (d) notify Breathe Pure immediately if the Business Customer becomes subject to any of the events listed in clauses 14.2(c)– 14.2(n); and
- (e) give Breathe Pure such information as Breathe Pure may reasonably require from time to time relating to:
 - (i) the Products; and
 - (ii) the ongoing financial position of the Business Customer.

9. Supply of Services

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| <p>9.1 The Services shall be provided to Customers by Breathe Pure via a subcontracted third party Installer.</p> <p>9.2 Consumers wishing to Order Services may do so via the Website. Consumers will then be sent a confirmation form which the Consumer should complete and return to finalise the Order.</p> <p>9.3 Business Customers wishing to order Services may do so using an order form.</p> | <p>9.4 Customers may place an order for Services either at the same time as placing an Order for Products or after placing an Order for Products, but an Order for Services shall in any event constitute a separate Contract to any Order for Products.</p> <p>9.5 Customers shall not confirm to Breathe Pure the date on which the Services are to be carried out until after all the Products to be installed are in the Customer's possession. If the Installer attends an appointment to carry out the Services and there are either no Products to install or a different number of Products to install than the Customer indicated on the Order, this shall constitute a failed installation in respect of which the Customer shall pay the sum of £100 plus VAT to arrange a return visit by the Installer.</p> <p>9.6 Breathe Pure shall confirm the identity of the Installer and provide other details on or after acceptance of the Order.</p> <p>9.7 On or following acceptance of an Order for Services, Breathe Pure shall provide the Customer with conditions that must be met and any information that is required for the Installer to carry out the Services. It is the Customer's responsibility to ensure that such conditions are met and any requested information is provided accurately. If the Installer attends the Customer's premises to carry out the Services and discovers that any of the conditions have not been met or any information provided is inaccurate, the Customer shall pay to Breathe Pure the sum of £100 plus VAT to arrange a return visit by the Installer.</p> <p>9.8 The following materials shall be included in the cost of the Services: wall fittings, hoses, clips, a conduit and connectors. Any further</p> |
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- materials will be subject to separate, additional charges. The Customer will be informed of any additional materials required or other charges that may be incurred before the Installer commences carrying out the Services.
- 9.9 Breathe Pure shall use all reasonable endeavours to meet any stated performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.10 Breathe Pure reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services. Breathe Pure shall notify the Customer in any such event.
- 9.11 Breathe Pure shall not be liable for any cosmetic damage to walls, ceilings and other surfaces that may occur in the course of the Installer carrying out the Services (including without limitation, drilling, cutting or access holes), or for any necessary remedial works, redecoration or repairs, to the extent required to address such cosmetic damage.
- 9.12 Breathe Pure shall notify the Customer of the necessary electrical and structural requirements for the Services to be carried out in advance of the appointment at which the Services shall be carried out. The Customer shall ensure that the premises meet the necessary requirements.
- 9.13 The Customer shall:
- (a) prepare the premises for the supply of the Services in accordance with any instructions provided by Breathe Pure/the Installer (including any set out or referred to in these Terms); and
 - (b) provide to the Installer clear and safe access to all areas of the premises at which the Services shall be carried out and other facilities necessary for the Services to be carried out.
- 9.14 Where any delays or additional work are necessary because of any failure by the Customer to comply with its obligations under this clause 9, Breathe Pure reserves the right to charge the Customer for such delays or additional work.
- 9.15 Customers may cancel or reschedule an appointment for the Services by giving no less than 48 hours' notice. Any cancellations on less than 48 hours' notice will incur a charge of £100 plus VAT.
- 9.16 The Customer shall inform Breathe Pure of any relevant parking restrictions, or restrictions that will prevent the Installer parking their vehicle within 50 metres of the premises at which the Services are to be carried out. Parking fees, congestion charges or similar charges shall be payable by the Customer.
- 9.17 Hardwiring shall not be included in the Services. Where the Customer requires hardwiring, this shall be subject to separate terms.
- 9.18 Where the Installer experiences rude, abusive, threatening or inappropriate behaviour in the course of carrying out the Services, Breathe Pure reserves the right to terminate the Contract for Services without

penalty and charge the Customer for any sums payable for the Services to that point.

- 9.19 This clause 9 shall not affect Consumers' statutory rights.

10. Business Customer's obligations

- 10.1 The Business Customer shall:

- (a) ensure that the terms of any Order are complete and accurate;
- (b) co-operate with Breathe Pure in all matters relating to the Services;
- (c) use, maintain and (where installing the Products themselves) install the Products in accordance with Breathe Pure's instructions, which are included in the packaging of the Products;
- (d) not use any of the Products in conjunction with any other product or connect the Products to any other product;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (f) comply with all applicable laws, including health and safety laws; and
- (g) comply with any additional obligations in respect of the Products or the Services as Breathe Pure may make the Business Customer aware of from time to time.

- 10.2 If Breathe Pure's performance of any of its obligations under the Contract is prevented

or delayed by any act or omission by the Business Customer or failure by the Business Customer to perform any relevant obligation (**Business Customer Default**), then, in addition and without prejudice to any other right or remedy available to Breathe Pure either pursuant to these Terms or at common law:

- (a) Breathe Pure shall have the right to suspend performance of the Services until the Business Customer remedies the Business Customer Default, and to rely on the Business Customer Default to relieve Breathe Pure from the performance of any of its obligations in each case to the extent the Business Customer Default prevents or delays Breathe Pure's performance of any of its obligations;
- (b) Breathe Pure shall not be liable for any costs or losses sustained or incurred by the Business Customer arising directly or indirectly from Breathe Pure's failure or delay to perform any of its obligations as set out in this clause 10.2; and
- (c) the Business Customer shall reimburse Breathe Pure on written demand for any costs or losses sustained or incurred by Breathe Pure arising directly or indirectly from the Business Customer Default.

11. Charges and payment

- 11.1 The price for Products:

- (a) shall be the price set out on the Website or as otherwise agreed with the Business Customer; and
 - (b) shall include all costs and charges of packaging of the Products, but shall exclude the cost of transport and insurance except where stated otherwise in these Terms.
- 11.2 The charges for Services shall be the price set out in the order form.
- 11.3 Without prejudice to any other rights Breathe Pure has to increase the costs of the Products or Services under these Terms, Breathe Pure reserves the right to increase the price of the Products or Services, by giving notice to the Business Customer at any time before delivery of the Products or provision of the Services, to reflect any increase in the cost of the Products or the Services to Breathe Pure that is due to:
 - (a) any factor beyond the control of Breathe Pure (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Business Customer to change the delivery date(s), quantities or types of Products ordered; or
 - (c) any delay caused by any instructions of the Business Customer in respect of the Products or Services or failure of the Business Customer to give Breathe Pure adequate or accurate information or instructions in respect of the Products or Services.
- 11.4 Breathe Pure shall invoice the Business Customer on or at any time after completion of delivery of the Products or completion of the Services.
- 11.5 Business Customers shall pay each invoice submitted by Breathe Pure:
 - (a) Within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Breathe Pure, and

time for payment by the Business Customer shall be of the essence of the Contract.
- 11.6 All amounts payable by the Business Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any VAT is payable on the Products or Services in respect of an Order made by a Business Customer, Breathe Pure will provide the Business Customer with a VAT invoice.
- 11.7 The Business Customer shall pay to Breathe Pure any additional amounts in respect of VAT at the same time as payment is due for the supply of the Products or Services.
- 11.8 If the Business Customer fails to make a payment due to Breathe Pure under the Contract by the due date, then, without limiting Breathe Pure's remedies under clause 14, the Business Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.8 will accrue each day at 4% a year above the Bank of England's base

- rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 11.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 12. Data protection**
- 12.1 The following definitions apply in this clause 12:
- (a) **Personal Data:** as defined in the Data Protection Legislation.
 - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*).
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13. Limitation of liability**
- 13.1 The limits and exclusions in this clause reflect the insurance cover Breathe Pure has been able to arrange and the Business Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 13.2 References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 The Business Customer may not benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.4 Nothing in the Contract limits any liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any liability that legally cannot be limited.
- 13.5 Subject to clause 13.3 and clause 13.4, Breathe Pure's total liability to the Business Customer shall not exceed:
- (a) 100% of the amount charged by Breathe Pure to the Business Customer for the supply of the Products under the Contract; or
 - (b) 100% of the amounts charged by Breathe Pure to the Business Customer for the supply of the Services under the Contract.
- 13.6 The caps on Breathe Pure's liability under clause 13.5 shall be reduced by amounts

- awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 13.7 This clause 13.7 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 13.3 and clause 13.4, clause 13.7(b) excludes specified types of loss.
 - (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of revenue;
 - (iv) loss of agreements or contracts;
 - (v) loss of management time;
 - (vi) loss of anticipated savings;
 - (vii) loss of use or corruption of software, data or information;
 - (viii) loss of or damage to goodwill; and
 - (ix) indirect or consequential loss.
- 13.8 Breathe Pure has given commitments as to compliance of the Products and the Services with relevant specifications in clause 6 and clause 9. 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.
- 13.9 This clause 13 shall survive termination of the Contract.
- 14. Termination**
- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 3 months' written notice.
- 14.2 Without affecting any other right or remedy available to it, Breathe Pure may terminate the Contract with immediate effect by giving written notice to the Business Customer if:
- (a) the Business Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
 - (b) the Business Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - (c) the Business Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the

- Insolvency Act 1986 or (being an individual) is deemed either unable to pay their debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Business Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the Business Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Business Customer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Business Customer (being a company, partnership or limited liability partnership);
 - (h) the holder of a qualifying floating charge over the assets of the Business Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over all or any of the assets of the Business Customer or a receiver is appointed over all or any of the assets of the Business Customer;
 - (j) the Business Customer (being an individual) is the subject of a bankruptcy petition, application or order;
 - (k) a creditor or encumbrancer of the Business Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Business Customer's assets and such attachment or process is not discharged within 14 days;
 - (l) any event occurs, or proceeding is taken, with respect to the Business Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events

mentioned in clause 14.2 (d) to clause 14.2 (l) (inclusive);

- (m) the Business Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (n) the Business Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- (o) the Business Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation.

14.3 Without affecting any other right or remedy available to it, Breathe Pure may terminate the Contract with immediate effect by giving written notice to the Business Customer if:

- (a) the Business Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) where there is a change of Control of the Business Customer.

14.4 Without affecting any other right or remedy available to it, Breathe Pure may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Business Customer and Breathe Pure if the Business Customer fails to pay any amount due under the Contract on the due date for payment, the Business Customer becomes subject to any of the events listed in clauses 14.2(d) to

14.2(l) inclusive or Breathe Pure reasonably believes that the Business Customer is about to become subject to any of them.

15. Consequences of termination

15.1 On termination of the Contract:

- (a) the Business Customer shall immediately pay to Breathe Pure all of Breathe Pure's outstanding unpaid invoices and interest and, in respect of Products and/or Services supplied but for which no invoice has been submitted, Breathe Pure shall submit an invoice, which shall be payable by the Business Customer immediately on receipt;
- (b) the Business Customer shall return all of the Products which have not been fully paid for. If the Business Customer fails to do so, then Breathe Pure may enter the Business Customer's premises and take possession of them. Until they have been returned, the Business Customer shall be solely responsible for the safe keeping of the Products and will not use them for any purpose not connected with the Contract.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and 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.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

16. Confidentiality

16.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.2.

16.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

17. Force majeure

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Contract by giving not less than 90 days' written notice to the affected party.

18. General

18.1 Assignment and other dealings

(a) Breathe Pure may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Business Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Breathe Pure.

18.2 Notices.

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (if a

- Business Customer that is not a company) or the delivery address given in the Order or the order form (provided that this shall not in any circumstances be the Collection Address); or
- (ii) sent by email to the address stated by the Business Customer in the Order and the email address for Breathe Pure given on the customer services page on the Website.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

18.4 **Waiver.**

- (a) Except as set out in clause 3.8, a waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

- 18.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 18.7 **Third party rights.** The Business Customer acknowledges that Breathe Pure may enforce the terms of a Contract against any Group Company. Save as to that, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.8 **Variation.** Except as set out in these Terms, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 18.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 18.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
19. **Terms that relate to Consumers**
- 19.1 The terms in this clause 19 relate to purchases of Products or Services by Consumers.
- 19.2 All the information about the Products is available on the Website. All information about the Services is set out on the Website or on the order form. The Products may vary slightly from the photographs on the Website. Services are provided through Installers, who are third parties, subcontracted by Breathe Pure to provide the Services.
- 19.3 Consumers may only place Orders for Products online via the Website. Consumers wishing to purchase Services, should contact the Breathe Pure customer services team to request an order form. Consumers can Order Services only via such an order form. Consumers should only place an Order for Services after the Products they wish to be installed have been delivered.
- 19.4 Where a Consumer purchases Services, this shall constitute a different Contract to any Contract to buy the Products.
- 19.5 Breathe Pure will contact Consumers to confirm that the Order is accepted. Sometimes Breathe Pure will cancel Orders. Where this happens, Consumers will be told as soon as possible and any sums paid will be refunded.

- 19.6 Breathe Pure will deliver the Products or carry out the Services within a reasonable time of the Consumer placing the Order.
- 19.7 The Consumer may choose either to collect the Products at an address that Breathe Pure will confirm to the Customer or to have the Products delivered to an address that the Consumer must specify. Where the Consumer chooses to have the Products delivered, delivery shall be kerbside only.
- 19.8 Where the Consumer asks for the Products to be delivered, the Consumer should inspect the Products carefully before signing for them and refuse delivery of any damaged Products. The Consumer should then contact the Breathe Pure customer services team and provide a description of the damage.
- 19.9 The Consumer shall make payment for the Products or the Services at the point of placing an Order. The Prices for the Products can be found on the Website. Prices for the Services are set out on the order form. VAT at the prevailing rate will be charged in addition to the advertised cost of the Products and the Services.
- 19.10 Where Breathe Pure is unable to collect from a Consumer any payment a Consumer owes to Breathe Pure, Breathe Pure will charge interest on the overdue amount at the rate of 4% a year above the Bank of England base rate from time to time or 4% where the Bank of England base rate is below 0%. This interest accrues on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Consumer will pay Breathe Pure the interest together with any overdue amount.
- 19.11 Breathe Pure may change the Products or these Terms:
- (a) to reflect changes in relevant laws and regulatory requirements; or
 - (b) to make minor technical adjustments and improvements, for example to address a security threat. These are changes that don't affect the use of the Products.
- 19.12 Breathe Pure may also suspend the supply of the Products and the Services to:
- (a) deal with technical problems or make minor technical changes;
 - (b) update the Products to reflect changes in relevant laws and regulatory requirements; or
 - (c) make changes to the Products under clause 19.11.
- Breathe Pure will try to inform Consumers in advance of when the Products or Services will be suspended unless the reason is urgent or an emergency. If Breathe Pure suspends the supply for more than 28 days, Consumers can contact the Breathe Pure customer services team (details are on the Website) to end the Contract, and Breathe Pure will refund any sums paid.
- 19.13 Where Breathe Pure stops providing a Product or the Services, Breathe Pure will let Customers know as soon as possible and will refund any sums paid for Products or Services that will not be provided.
- 19.14 Breathe Pure will use any Personal Data Consumers give to Breathe Pure in accordance with the Breathe Pure privacy

- policy, a copy of which can be found at: <https://breathepure.co.uk/privacy-policy>.
- 19.15 If Breathe Pure's supply of the Products or Services is delayed by a Force Majeure Event. Breathe Pure will contact the Consumer as soon as possible to let them know and Breathe Pure will try to reduce the delay. As long as Breathe Pure do this, it won't compensate Consumers for the delay, but if the delay lasts for over 90 days Consumers can contact the Breathe Pure customer services team to end the Contract and receive a refund for any Products or Services the Consumer has paid for in advance, but not received.
- 19.16 In addition to other statutory rights available to Consumers, Consumers have the legal right to change their mind about Products or Services, to end the Contract and receive a refund of any money paid in addition to standard delivery costs (though not including any extra sums a Consumer has paid for express delivery or delivery at a particular time).
- 19.17 Consumers who wish to change their mind must do so by contacting the Breathe Pure customer services team within 14 days of:
- (a) the date the Product is delivered where the Consumer is changing their mind about Products; or
 - (b) the date of the Order where the Consumer is changing their mind about Services.
- 19.18 Consumers may not change their mind about Services once those Services have been completed. Consumers will have to pay for any Services received before they changed their mind.
- 19.19 Breathe Pure's customer services team will explain how to return the Products to Consumers who want to exercise their right to change their mind. Consumers shall be responsible for the costs of returning the Products.
- 19.20 Breathe Pure will reduce the refund available to a Customer if the Customer has handled a Product in such a way as the value of the Product is reduced. For example, Breathe Pure will reduce the refund if the Product's condition is not "as new", packaging has been damaged or certain parts are missing. In some cases, depending on the way that a Consumer has treated a Product, no refund may be given. Breathe Pure's customer services team can advise on whether Breathe Pure is likely to offer a refund.
- 19.21 **Timing of Refund where Consumers have changed their mind.** If the refund is for Services or Products that have not been delivered, refunds will be paid no later than 14 days from a Customer telling Breathe Pure they have changed their mind. If the refund is for Products that the Customer is returning, Breathe Pure will typically pay the refund within 4-5 Business Days of receipt by Breathe Pure of the returned Products and in any event within 14 days of receipt by Breathe Pure of the returned Products.
- 19.22 Refunds will be paid using the method used for payment and no fees will be charged for the refund.
- 19.23 **When Breathe Pure can end Contracts with Consumers.** Breathe Pure can end a Contract with a Consumer and claim compensation due to Breathe Pure if:
- (a) The Consumer does not make payment to Breathe Pure when

- payment is due and still does not make payment within 14 days of Breathe Pure reminding the Consumer that the Payment is due;
- (b) The Consumer does not, within a reasonable time of Breathe Pure asking, provide the information, cooperation or access Breathe Pure or the Installer needs to provide the Products or Services;
 - (c) The Consumer does not, within a reasonable period of time, either take delivery of the Products or accept provision of the Services.
- 19.24 Breathe Pure does not compensate Consumers for all losses caused by the Products or the Services. In particular, Breathe Pure is not responsible for losses Consumers suffer by Breathe Pure breaking the Contract where the loss is:
- (a) **Unexpected.** It was not obvious that it would happen and nothing the Consumer said to Breathe Pure before Breathe Pure accepted the Order meant Breathe Pure should have expected it (so, in law, the loss was unforeseeable).
 - (b) Caused by a delaying event outside Breathe Pure's control.
 - (c) **Avoidable.** Something the Consumer could have avoided by taking reasonable action.
- 19.25 The Contract will come to an end (as relevant) at: (i) the date that the Products have been delivered; or (ii) the date that the Services have been completed.
- 19.26 The Contract is between Breathe Pure and the Consumer. Nobody else can enforce it and neither Breathe Pure nor the Consumer need to ask anybody else to sign off on ending or changing it.
- 19.27 A Consumer may not transfer the Contract to another person.
- 19.28 If a Court invalidates some of the Contract, the rest will still apply.
- 19.29 Breathe Pure may not immediately chase the Consumer for not doing something, or for doing something that the Contract does not allow the Consumer to do, but that does not mean that Breathe Pure cannot do that later.