

BEATSON CLARK LTD

GENERAL CONDITIONS OF CONTRACT

1. INTERPRETATION

"The Company"	Beatson Clark Ltd or other member of the Beatson Clark Group with which the contract is made
"Order"	The Order for the supply of goods or services (or goods and services) to the Company and/or to any other member of the Beatson Clark Group
"Seller"	The person firm or company to whom the order is given for the supply of goods
"Contractor"	The person firm or company to whom the order is given for the supply of services.
"Supplier"	The Seller or Contractor or both (as the case may be).
"Contract"	(a) The agreement between the Company and the Seller for the supply of Goods or (b) The agreement between the Company and the Contractor for the supply of services or (c) The agreement between the Company and the Supplier for the supply of both Goods and services, as the case may be
"The General Conditions"	The terms and conditions set out herein.
"The Special Conditions"	The terms and conditions (if any) contained or expressly referred to in the Order.
"The Specifications"	Any specifications drawings samples descriptions or information furnished by the Company to the Supplier prior to the Contract or furnished by the Supplier to the Company and accepted in writing by the Company (whether in the Order or otherwise).
"Goods"	Chattels of any description any plant and machinery whether or not affixed or annexed to land.
"Servicing"	(In relation to goods) includes any processing, treatment and/or repair of goods.
"The Beatson Clark Group"	Beatson Clark Ltd and its subsidiaries (within the meaning of section 736 of the Companies Act 1985).

The masculine includes the feminine and the neuter and vice versa and the singular includes the plural and vice versa.

2. COMPANY'S CONDITIONS TO PREVAIL

(1) Unless otherwise expressly agreed in writing by the Company: -

- (a) The Conditions (together with terms implied by law) shall constitute the whole of the Contract and shall be the sole terms and conditions thereof.
- (b) The Conditions supersede any previous terms and conditions appearing in the Supplier's sales literature, catalogues or elsewhere and shall override any terms or conditions stipulated incorporated or referred to by the Supplier in negotiations or acceptance of the Order so far as the same are additional to, or inconsistent with, the Conditions

or seek to limit or exclude liability of the Supplier, its agents or sub-contractors or its employees for any matters arising under or pursuant to the Contract whether such liability arises under the Conditions or by statute or common law.

- (2) In the event of any conflict between the Special Conditions and the General Conditions, the Special Conditions shall prevail.
- (3) Any written acceptance of the Order, or delivery of any of the Goods to which the Order relates, or supply of any of the services to which the Order relates by or on behalf of the Supplier shall constitute acceptance by the Supplier of the Contract.

3. VARIATION OF TERMS

No variation of the Contract or any of the Conditions shall become binding unless confirmed in writing by the Company.

4. PRICE

- (1) The price stated in the Contract is a fixed price and shall not be increased for any reason unless expressly agreed in writing between the Company and the Supplier.
- (2) The price specified in the Order, or otherwise in the Contract shall (unless the contrary is expressly stated therein) include all costs and charges of the Supplier for its due performance of the Contract and all its obligations thereunder.
- (3) Unless otherwise agreed, the Company shall pay the Suppliers invoices within 60 days after the end of the month of receipt, or if later, after acceptance of the Goods and/or service.
- (4) The Company shall be entitled to set off against any price any sums due to the Company by the Supplier on whatever account.

5. TIME

The time (if any) specified in the Contract for the supply of goods or services shall be of the essence of the Contract.

6. SELLERS TITLE

The property in the Goods including any components or raw materials incorporated in the Goods shall pass to the Company on delivery.

7. DELIVERY AND PACKAGING OF GOODS

- (1) The Seller shall be responsible for the delivery of the Goods to the Company at the place specified for delivery in the Order otherwise in the Contract (or, if none is specified at the Companys principal place of business) and all costs of carriage, insurance and freight shall be borne by the Seller.
- (2) The Company shall not be charged for packaging unless the Special Conditions otherwise expressly provide. If the Special Conditions do so provide then: -

- (i) Such charge shall be on terms that the Company is given full credit therefore on return of the packaging in good condition (fair wear and tear excepted) and
- (ii) The Companys delivery note or other receipt signed by or on behalf of the Seller shall be conclusive evidence that the packaging has been returned in good condition.

8. SPECIFICATIONS

- (1) All goods and services supplied pursuant to the Contract shall conform in all respects to the Specifications.
- (2) All such Goods shall be fit for the purposes for which at the time of the Contract the Company requires them and shall be fit for use in the countries in which the Goods (or any products made therefrom) are, at that time intended to be processed or sold and shall comply with any statutory or other regulations in force in those countries regarding the safety or standard of goods of that description. The company will, at the Sellers written request whether prior to the contract (or upon reasonable notice) at any time during the performance of the Contract notify the seller of the purposes and countries in question; and in the absence of such request the Seller shall be deemed to have notice thereof.
- (3) Any specification supplied by the Company to the Supplier in connection with the Contract together with all or any intellectual property therein remains the exclusive property of the Company. The Supplier shall not disclose or use any such specifications except to the extent that it becomes public knowledge through no fault of the Supplier or as required for the purpose of the Contract.
- (4) If the Goods or services are not in accordance with the Specification, the Company shall be entitled to cancel the Order and require repayment of any price paid or obtain equivalent goods or rectification from a suitable source, the costs being payable immediately on demand by the Supplier to the Company.

9. DEFECTIVE GOODS

If any goods shall fail to comply with the provisions of Condition 8, the Company may at its option return the same to the Seller at the Sellers risk and expense or retain the same and correct or endeavour to correct such defect at the Sellers expense. If the Company shall retain such goods and endeavour to correct such defect but it shall subsequently prove impracticable or uneconomic so to do, the Company shall remain entitled to return the same at the Sellers risk and expense. The foregoing right shall be without prejudice to any other right or remedy that the Company may have.

10. DEFECTIVE SERVICING

If the Servicing of any goods by the Contractor fails to conform to the Specifications or is otherwise defective then: -

- (a) If the defect can be properly and economically remedied within 7 working days, the Company shall at its option be entitled either to require the Contractor to remedy it as soon as possible or itself remedy the defect or procure it to be remedied at the Contractors expense.
- (b) If the defect cannot be properly and economically remedied within 7 working days, the Company shall be entitled to invoice the Goods to the Contractor at the full value of such Goods before

Servicing, and upon payment in full of the amount of such invoice the goods shall become the property of the Contractor, but the Company shall not be liable for the safe custody thereof.

The foregoing rights shall be without prejudice to any other right or remedy that the Company may have.

11. (1) CONTRACTORS RISK

Goods despatched by the Company to the Contractor for Servicing shall remain from the time they leave the Companys premises until re-delivery as instructed by the Company at the absolute risk of the Contractor in regard to any loss or damage, except only inherent vice and fair wear and tear.

(2) CONTRACTORS OBLIGATION TO INSURE

Further and without prejudice to the Contractors aforesaid responsibility the Contractor shall at its own cost insure all goods despatched to it by the Company from the time they leave the Companys premises until re-delivery as instructed by the Company for their full value against loss, damage or destruction resulting from any insurable risk (other than inherent vice and fair wear and tear) which can reasonably be contemplated as affecting the Goods. The Contractor shall if requested by the Company effect such insurance in their joint names. The Contractor shall upon request produce for the Companys inspection the policy of insurance and receipts for premiums.

(3) CONTRACTOR WORKING AT COMPANYS PREMISES

(a) Where pursuant to the Contract the Contractor undertakes work at the premises of the Company or some other member of the Beatson Clark Group then before the commencement of any such work the Contractor shall:-

(i) Provide to the Company evidence of its insurance against Employers Liability and Public and products Liability in the form prescribed by the Company from time to time duly completed by or on behalf of the insurers and

(ii) Agree for the benefit of the Company and (if different) such other member of the Beatson Clark Group to be bound by the "Conditions Applicable to Contractors and sub-Contractors working at Beatson Clark Ltd" and deliver to the Company the duly completed forms of acknowledgement thereof (copies of which conditions and form are available on request

(b) If the premises at which such work is undertaken are not the premises of Beatson Clark Ltd paragraph (a) (ii) of this condition shall apply as if the references therein and the conditions there mentioned to Beatson Clark Ltd were references to the Company or other the member of the Beatson Clark Group on whose premises they are.

(c) If any Sub-Contractor engaged by the Contractor shall undertake any such work the Contractor shall procure that the Sub-Contractor agrees (for the benefit of the Company and, if different, the member of the Beatson Clark Group whose premises they are) to be bound by all the provisions of this paragraph (3) as if it were the Contractor and shall procure that the Sub-Contractor carries out its obligation hereunder.

12. INDEMNITY IN RESPECT OF INJURY TO PERSONS AND PROPERTY

The supplier agrees with the Company for the benefit of the Company and (if different) every other member of the Beatson Clark Group on whose premises work is undertaken by the Supplier or its Sub-Contractor to indemnify and keep indemnified the Company and every such other member of the Beatson Clark Group against any liability, loss, claim or proceedings whatsoever in respect of personal injury to or death of any person or any loss of or damage to property real or personal (including loss or damage suffered by the Company itself) howsoever arising whether directly or indirectly out of or in connection with the performance by the Supplier of the Contract or any defect in the Goods or services supplied thereunder by the Supplier or any breach by the Supplier of its obligation whether imposed by the Conditions or by law.

13. INFRINGEMENTS OF PATENTS ETC.

The Supplier shall indemnify and keep indemnified the Company against all actions, demands, costs claims and expenses for which the Company may become liable or incur by reason of any infringement or alleged infringement in any country of any letters, patent, registered design, trade mark, trade name or copyright by reason of the use or sale of Goods supplied by the Seller or by reason of the Servicing of goods by the Contractor or the use or sale of goods so serviced. The Supplier shall be responsible for determining that the Specifications will not cause any such infringement and accordingly the foregoing indemnity shall apply notwithstanding that the infringement or alleged infringement arises from the terms of the Specification.

14. FORCE MAJEURE

The Company may suspend for such period as it thinks fit or at its option may cancel the delivery of any undelivered balance of Goods and the supply of any services provided for in the Contract if the works of the Company or any other member of the Beatson Clark Group or any part of such works are temporarily or permanently closed down during the currency of the Contract, or the process of manufacture of the Company or such other member of the Beatson Clark Group is stopped, delayed or impeded by fire, flood explosion, strike, lockout, war, hostilities, civil disturbance, Government or other duly authorised demand, regulation or prohibition, or by force majeure or any other cause beyond the control of the Company. In such event, no liability shall attach to the Company by reason of such modification or cancellation of the Order.

15. INSTALMENT CONTRACTS

If the Contract provides for the delivery of the Goods by the Seller by instalments and the Seller makes default in delivery of any one or more instalments, the Company shall be entitled to treat the Contract as repudiated, without prejudice to any other right or remedy that the Company may have.

16. ASSIGNMENT AND SUB-CONTRACTING

The Contract shall be personal to the Supplier and the Supplier shall not assign or sub-contract the whole or any part of the Contract without the prior written consent of the Company. The giving of such consent shall not release the Supplier from any of its obligations under the Contract.

17. INSPECTION OF GOODS OR SERVICES BEFORE DELIVERY

- (1) The Company shall at all responsible times during and after the manufacture, processing or preparation of Goods to be purchased from the Seller and at all reasonable times during and after the Servicing of goods to be serviced by the Contractor be entitled to inspect and test, on the premises of the Supplier or the premises of any Sub-Contractor of the Supplier, any of the Goods situated at such premises. The Supplier shall procure that any such sub-Contractor agrees to and permits inspection and testing of Goods in accordance with this condition.
- (2) If upon such inspection or testing the Goods do not correspond with the Specification or other provision of the Contract in description, quality, fitness or quantity, the Company shall thereupon be entitled at its option and without prejudice to any other right or remedy that the Company may have:-
 - (i) To treat the Contract as repudiated by the Supplier or
 - (ii) If the Contract is for the purchase of Goods, to reject such defective Goods and require the Seller either to remedy the defect or supply other goods in place of the defective goods
 - (iii) If the Contract is for the Servicing of goods to require the Contractor to remedy the defect or cause it to be remedied; and if the Contractor does not do so, or does not do so in 7 days, or if it is impracticable or uneconomic to remedy such defect, then the Company shall be entitled to invoice the same to the Contractor at the full value of such goods before Servicing, and in that event and upon payment in full of the amount of such invoice the goods shall become the property of the Contractor, but the Company shall not be liable for the safe custody thereof.
- (3) Failure of the Company to exercise its right to inspect and test Goods, or (if the Company does not inspect and test Goods) failure by the Company to exercise rights conferred upon it by paragraph (2) of this condition, before delivery of the goods or re-delivery of the serviced Goods shall not affect the rights of the Company under condition 9 or condition 10.
- (4) No such inspection or test nor any failure to exercise rights conferred on the Company by paragraph (2) of this Condition shall constitute or imply acceptance of the Goods or any of them.

18. INSOLVENCY ETC. OF SUPPLIER

If the Supplier becomes insolvent or being a body corporate has passed a resolution for its winding up (except when solely for the purpose of reconstruction) or has suffered an order for its compulsory winding-up to be made or has had a receiver appointed or, being an individual or partnership, has or have suspended payment of his or their debts in whole or in part or has or have entered into any composition or agreement with his or their creditors or has or have a receiving order made against him or them, then the Company shall be entitled forthwith either to terminate the Contract by note in writing to the Supplier or any other person in whom the Suppliers interest under the Contract has become vested or (at its option) by such notice in writing to suspend the Contract for so long as any of the aforesaid circumstances exist.

19. WAIVER OF BREACH

The Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Supplier and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any other breach.

20. CANCELLATION OR MODIFICATION BY THE COMPANY

- (1) If for any reason other than force majeure or other circumstance mentioned in Condition 14 or a breach of Contract by the Supplier, the Company wishes to cancel or modify the Order it shall by notice in writing to the Supplier, be at liberty to do so, but in doing so will take over and pay at the agreed price for any Goods the manufacture or Servicing of which is completed in accordance with the terms of the Contract.
- (2) In relation to raw materials not processed but which are established to the satisfaction of the Company to have been irrevocably allocated by the Supplier for the purpose of the Contract, the Company will on cancellation use its reasonable endeavours to assist the Supplier to dispose of such raw materials by alternative use, disposal on the open market or (if the Company so agrees) by the Company purchasing such raw materials at their then current market value.
- (3) Save as herein expressly provided, no obligation or liability shall attach to the Company by reason of such cancellation.

21. CONFIDENTIALITY

The Supplier, its sub-Contractors (if any) and their respective servants and agents shall during the performance of the Contract and at all times thereafter keep confidential and not, except so far as necessary in the due performance of the Contract, disclose to any person, any trade secret or manufacturing process of the Company or any other member of the Beatson Clark Group or any confidential information concerning the business or finances of the Company or any other member of the Beatson Clark Group or any of its or their dealings, transactions and affairs which may come to the Suppliers or its sub-Contractors knowledge during the performance of the Contract or in any negotiation therefor.

22. RIGHTS AND REMEDIES OF COMPANY

- (1) If the Supplier fails to comply with any of these Conditions or otherwise commits any breach of the Contract, then (whether or not the Goods or services or any part of them have been accepted by the Company) the Company shall be entitled to any, or (so far as not mutually exclusive) to any one or more of the following remedies, namely to:
 - (a) Rescind the Contract.
 - (b) Return to the Seller the Goods or any part thereof, at the Sellers expense.
 - (c) Require the Seller at the Sellers expense to replace, repair or reinstate the Goods so that they comply with the terms of the Contract
 - (d) Refuse, without any liability to the Seller, to accept any further deliveries or instalments of the Goods or any part thereof.
 - (e) Carry out at the Sellers expense such work as may be necessary or expedient to make the Goods or any part thereof comply with the terms of the Contract.
 - (f) Carry out at the Contractors expense such work as may be necessary or expedient to complete the Services (whether to Goods or otherwise) to which the Contract relates
 - (g) Claim such damages as the Company may have sustained or may sustain in consequence of any breach of Contract on the part of the Supplier.

- (2) The foregoing rights shall be in addition and without prejudice to any other right or remedy which the Company may have under the Contract or otherwise.
- (3) Where, by reason of any breach of the Contract by the Supplier, the Supplier is under a liability to make any payment to the Company, the Supplier shall not be entitled to set off any sum due or allegedly due from the Company to the Supplier under or pursuant to any other contract or transaction between the Company and the Supplier.

23. CONSTRUCTION AND PROPER LAW

- (1) The construction, validity and performance of the Contract shall be governed by the Law of England and subject to the jurisdiction of the English Courts.
- (2) Headings are for purpose of reference only and shall not affect the construction of these Conditions.

24. The provisions of The Contracts (Rights of Third Parties) Act 1999 are hereby excluded and shall not apply.