



CLAYTON THERMAL PROCESSES LIMITED
CONDITIONS OF BUSINESS
PRODUCTS AND SERVICES



A **DEFINITIONS**

1 In these Conditions the following words have the following meaning:-

"the Company"	means Clayton Thermal Processes Limited
"the Contract"	means the contract between the Company and the Customer for supply and Installation of the Products and/or the provision of the Services which is made subject to these Conditions.
"the Customer"	means the individual, firm, company or other party with whom the Company contracts.
"Deliver" or "Delivery"	means delivery of the Products to the Customer at the Premises.
"Equipment"	means the equipment on which the Company has agreed to provide the Services (whether or not such equipment was originally supplied by the Company).
"Installation"	means the installation by the Company of the Products at the premises designated by the Customer for that purpose including any commissioning tests and trials of the Products.
"Normal Working Hours"	means Monday to Friday 08.00 hours to 17.00 hours.
"Possession"	means physical possession of the Products by the Customer or its agents.
"the Premises"	means the premises designated by the Customer

and agreed by the Company as the premises at which the Products are to be first delivered to the Customer or the Services are to be performed.

"the Products"

means the whole or any instalment of the products which the Company has agreed to supply to the Customer under the Contract.

"Services"

means the services which the Company has agreed to provide to the Customer under the Contract.

B PRODUCTS

1 Specification, Instructions and Design

1.1 If the Products are made to a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer, then:-

- (a) the suitability and accuracy of that specification, instruction or design will be the Customer's responsibility; and
- (b) the Customer will indemnify the Company against any infringement or alleged infringement of any third party's intellectual property rights including but not limited to patent, design right, registered design, trademark, trade name or copyright and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country; and
- (c) the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the Products being made to such specification, instruction or design.

2 Delivery

2.1 Unless otherwise agreed, the Company will Deliver the Products during Normal Working Hours at the Premises and the Customer will accept Delivery of the Products from the Company at the Premises, and will have the right to attend at Delivery. If agreed the Company will carry out the Installation of the Products during Normal Working Hours at premises designated by the Customer.

2.2 If it is agreed that the Customer will take Delivery of the Products at the Company's premises or those of its agents, then the Company will inform the Customer of the date on which Possession of the Products may be taken and the Customer will ensure that it takes Possession on that date during Normal Working Hours.

2.3 Unless otherwise agreed any loading and unloading of the Products and any variations to the agreed delivery schedule shall be at the Customer's expense.

- 2.4 If the Customer requests the Company to Deliver and (where applicable) carry out the Installation of the Products prior to the estimated Delivery date and the Company agrees to such a request, then the Company shall be entitled to levy an extra charge on the Customer to cover any costs incurred.
- 2.5 If the Delivery and/or Installation of the Products is suspended or delayed beyond the estimated or agreed Delivery date as a result of any act or default of the Customer then:-
- (a) the Company shall be entitled to terminate or suspend the Contract without incurring any liability to the Customer for any loss or damage arising therefrom but without prejudice to any rights accrued to the Company in respect of deliveries already made; and/or
 - (b) the Customer will indemnify the Company in respect of any loss or damage suffered by the Company as a result of the suspended or delayed delivery or the termination or suspension of the Contract by the Company.
- 2.6 Whilst the Company will endeavour to Deliver the Products and (where applicable) complete the Installation by any date or within any period estimated or agreed upon, such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to Deliver the Products or complete the Installation by such a date or within such a period. Time for Delivery of the Products and for the completion of the Installation shall not be of the essence of the Contract. Moreover, the Company shall be entitled to defer Delivery until any monies due from the Customer are paid.

3 **Risk In The Products**

- 3.1 Where the Products are delivered to the Customer at the Premises then (subject to clause 3.2) risk in the Products will pass to the Customer upon Delivery and prior to unloading of the Products at the Premises.
- 3.2 Where it is agreed that the Customer will take Delivery of the Products at the Company's premises or those of its agent then risk in the Products will pass to the Customer as soon as the Products have been positioned by the Company to the point from which the Customer has agreed to take possession of them and prior to unloading (notwithstanding that Delivery to the Customer may take place subsequently).

4 **Retention of Title**

- 4.1 The following provisions shall apply to all Products which under the Contract, the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice, limit or extinguish the Company's rights under this clause.
- (a) Upon Delivery of the Products the Customer shall hold the Products solely as bailee for the Company and the Products shall remain the property of the

Company until such time as the Customer shall have paid to the Company and the Company shall have cleared funds for the full purchase price of all goods or services supplied, whether under the Contract or otherwise. Until such time the Company shall be entitled to recover the Products or any part thereof and for the purposes of exercising such rights, the Customer hereby grants a licence to the Company, its employees and agents with appropriate transport to enter upon the Customer's premises and any other location where the Products are situated and remove the Products.

- (b) The Customer is hereby granted a licence by the Company to incorporate the Products in any other products.
- (c) The licence granted under sub clause (a) hereof shall extend to detaching the Products from any property to which they are attached or into which they have been incorporated or from any other products or goods to which they have been attached pursuant to the licence granted under sub clause (b) hereof.
- (d) The Customer is hereby licensed to agree to sell on the Products and any products incorporating any of them, on condition that the Customer shall inform its customer of the provisions of the sub clauses (a) to (c) hereof.
- (e) The Customer shall maintain all appropriate insurance in respect of the Products from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring whilst the Products remain the property of the Company, the Customer shall immediately on receipt of the insurance monies remit to the Company the full purchase price of the Products lost or damaged, less any part thereof which has already been paid and until such amount has been so remitted, shall hold such amount as trustee and agent for the Company.
- (f) The licence granted under sub clauses (b) and (d) above shall be terminable forthwith at any time upon notice by the Company to the Customer.

5 **Installation**

5.1 If it is agreed that the final off-loading and/or Installation of the Products will be carried out by or under the supervision of the Company, the Customer warrants that it will:

- (a) lay all necessary foundations and make all necessary preparations to the Premises by such date as may be specified in the Contract or the agreed date of Delivery or as otherwise reasonably required by the Company.
- (b) provide suitable access to the Premises and the site of Installation
- (c) provide a safe working environment for the Company's employees, agents or sub-contractors and any other facilities reasonably required;

- (d) obtain any necessary consents to enable the Company to perform its obligations.
- 5.2 The Company reserves the right to sub-contract the Installation of the Products.
- 5.3 If the Company is requested to perform any tests on the Products other than those tests required for the Installation of the Products, the Company will be entitled to charge for any additional costs incurred.
- 5.4 If the Company agrees that any tests (whether part of the Installation services or not) are to be carried out in the presence of the Customer or its representative then the Company will notify the Customer by reasonable notice of the date on which such tests will be carried out. The Customer will ensure if it so wishes that its representative attends the premises at which the tests are to be carried out. If a representative of the Company fails to attend, the Company may proceed with the tests in his absence and the Customer will be bound by the results.

6 **Drawings**

- 6.1 All drawings, manuals and other technical documents relating to the Products or their manufacture which may be submitted by the Company to the Customer either prior to or subsequent to the formation of the Contract will remain the property of the Company.
- 6.2 Any such drawings, manuals or other technical documents submitted by the Company to the Customer shall not unless otherwise agreed by the Company be used by the Customer for any purpose other than the installation, commissioning, operation or maintenance of the Products. The Customer will not copy or reproduce such drawings, manuals or other technical documents nor disclose them to any third party without the consent of the Company.
- 6.3 Unless specifically agreed by the Company, the Company will not be required to supply drawings, manuals or other technical documents to the Customer.
- 6.4 The Company gives no warranty as to the accuracy of any information included in the drawings, manuals or other technical documents.

7 **Use And Safe Handling**

- 7.1 The Customer warrants that it will pass on to all third parties to whom it may supply the Products or any of them all information as to the use and safe handling of the Products as may have been provided to the Customer by the Company.

8 **Quotation and Prices**

- 8.1 The Company shall be entitled at any time prior to Delivery of the Products to increase the quoted or agreed price for the Products to take into account:
 - (a) any increase in the direct cost to the Company of purchasing the Products or any part thereof from its suppliers (whether due to currency fluctuation, suppliers price increases, or any other reason) from the costs in force at the date the price to the

- Customer was quoted or agreed; or
- (b) any modification to the Products carried out by the Company as a result of a change in specification, instructions or designs made by the Customer.

9 **Warranties**

- 9.1 Subject to clause 9.2 the Company warrants to the Customer that:-
- (a) the Products will comply with any description, performance or specifications which the Company has agreed in writing will form part of this Contract in relation to the supply of such Products;
- (b) unless otherwise agreed, the Products will for a period of six months from Delivery be free from defects in design, workmanship, parts or materials.
- 9.2 The warranty in clause 9.1 will not apply and the Company will have no liability to the Customer whatsoever:-
- (a) in respect of any defect in the Products arising as a result of materials, specifications or designs specified by the Customer;
- (b) in respect of any defect in the Products caused as a result of a failure to use the Products in accordance with normal operating procedures;
- (c) in respect of any defect in the Products caused as a result of accidental or malicious damage, faulty maintenance or repair, incorrect installation and/or alterations carried out without the consent of the Company;
- (d) in respect of any defect in the Products resulting from fair wear and tear;
- (e) unless the Customer notifies the Company of the alleged breach in accordance with clause 9.3 and complies in all other respects with clause 9.3;
- (f) if any monies due to the Company under the Contract have not been paid.
- 9.3 The Customer will notify the Company within 7 days after becoming aware of any breach of the warranties in clause 9.1 (unless the breach is such that damage may occur in which case notice shall be given immediately) such notice to give full details of the alleged breach. The Customer will allow the Company's employees or agents access to inspect the Products and if necessary to remove the Products for further testing and analysis.
- 9.4 Provided that the Customer complies with clause 9.3 the Company will as soon as reasonably practicable investigate any alleged breach of warranty and if satisfied that a breach of warranty has occurred shall remedy the same free of charge by either (at its absolute discretion):-
- (a) carrying out such repairs, modifications or alterations to the Product as may be necessary and/or
- (b) replacing the Products or any component part.
- 9.5 If the Company is required to repair or replace a Product or any part thereof under clause 9.4 then the following provisions will apply:-

- (a) Repairs will be carried out at the place where the Product is located unless the Company considers it necessary that the defective Product or part thereof is returned for repair.
 - (b) The Customer will at its expense carry out any dismantling and re-installation of the Product or any part unless such dismantling and re-installation requires specialist knowledge in which case it will be performed by the Company. If such specialist knowledge is not required, the Company has fulfilled its obligations in respect of any defect when the Company delivers to the Customer a duly repaired or replaced part.
 - (c) If any equipment other than the Product needs to be dismantled or re-assembled then the Customer will perform this at its expense.
 - (d) The reasonable cost of ordinarily transporting the Products or any part thereof or any replacements from and to the Premises will be paid by the Company.
 - (e) The Customer will reimburse the Company in respect of any extra costs incurred by the Company in relation to the repair, replacement, dismantling, installation and transport of the Products or replacement Products caused as a result of the Product being located at a place other than the Premises.
 - (f) Defective Products or parts thereof which are replaced will be made available to the Company and will become the property of the Company.
- 9.6 Except as otherwise stated in these Conditions the Company will have no other or further liability to the Customer whatsoever and whether for breach of contract, negligence or otherwise in respect of any loss or damage suffered by the Customer arising from or in connection with any failure of the Products to comply with the terms of clause 9.1.
- 9.7 If the Customer issues a notice under clause 9.3 and following investigation it transpires that a breach of warranty has not occurred for which the Company is liable than the Customer agrees to indemnify the Company for any costs and expenses incurred in investigating the alleged breach.
- 9.8 Where the Company agrees to repair or replace the Products in accordance with the foregoing provisions of this clause then any time specified for delivery under the Contract will be extended for such period as the Company may reasonably require and the Company will have no liability to the Customer for late delivery.
- 9.9 All Products supplied by the Company are supplied with the benefit of the terms implied by Section 12 of the Sale of Goods Act 1979. Subject thereto all other conditions, warranties and other terms express or implied statutory or otherwise relating to the sale of the Products are expressly excluded except those which are contained in these Conditions of Business or those which are otherwise agreed by the Company in writing as applying to the Contract.

C **SERVICES**

1 **Extent of Services**

1.1 The Services included are those as quoted and agreed and unless otherwise stated shall exclude:-

- (a) the cost of any spare parts required; or
- (b) the repair of any worn or damaged mechanical parts; or
- (c) the replacement of defective parts; or
- (d) all consumables

2 **Customer's Responsibilities**

2.1 The Customer shall ensure that the Equipment is in a suitable state and in a safe isolated condition and is readily accessible for the Company to commence the Services at the place, time and date agreed.

2.2 The Customer will ensure that the Equipment is available for the duration of the Service.

2.3 The Customer shall provide a safe working environment for the Company's employees, agents or sub-contractors and any other facilities reasonably required.

2.4 The Customer shall obtain any necessary consents to enable the Company to perform its obligations.

2.5 If the Services are to be carried out at the Company's premises, the Customer will at its cost deliver the Equipment to the Company's premises and collect the Equipment from the Company's premises once the Services have been completed.

2.6 If the Customer fails to collect the Equipment from the Company's premises on the date notified by the Company, then the Company will be entitled to charge the Customer for the cost of storage of the Equipment.

2.7 The Customer will ensure that all Equipment despatched to the Company is suitably packaged having regard to its manufacturing tolerances, quality and inherent value of the Equipment in question. The Company will use the same packaging in order to package the Equipment for return to the Customer after completion of the Services. If any additional packaging is required whether requested by the Customer or deemed necessary by the Company in order to properly protect the Equipment, then the Company will be entitled to charge the Customer for the extra costs incurred. The Company does not accept responsibility for the return of cases, cartons or pallets but it will endeavour to return these with the Equipment where possible.

3 **Completion**

3.1 Unless otherwise agreed, the Company will provide the Services at the Premises.

3.2 Although the Company will use its reasonable endeavours to carry out the Services by any date or within any period agreed upon, such dates and periods are estimates only, given in

good faith and the Company will not be liable for any failure to complete the Services by such dates or within such periods. Time for completion of Services will not be of the essence of the Contract.

- 3.3 If the Customer requests the Company to provide Services outside any Normal Working Hours and the Company agrees to such a request, then the Company will be entitled to levy an extra charge to the Customer to cover any additional costs incurred. The Company will also be entitled to charge the Customer for any travel and subsistence costs and overnight allowance costs in respect of its employees involved in carrying out the Services.

4 **Insurance**

- 4.1 The Customer shall be responsible for the insurance of the Equipment. Risk in the Equipment will remain with the Customer at all times.

5 **Warranties**

- 5.1 The Company warrants to the Customer that it will carry out the Services with reasonable care and skill.
- 5.2 The Customer will notify the Company within 7 days after becoming aware of any breach of the warranty in clause 5.1 and in any event not later than six months after completion of the Services.
- 5.3 Provided that the Customer complies with clause 5.2 the Company will as soon as reasonably practicable investigate any alleged breach of warranty and if satisfied that a breach of warranty has occurred shall use its reasonable endeavours to remedy the breach by carrying out such further Services as may be reasonably necessary.
- 5.4 Except as otherwise stated in these Conditions the Company will have no other or further liability to the Customer whatsoever and whether for breach of contract, negligence or otherwise in respect of any loss or damage sustained by the Customer arising from or in connection with any failure of the Company to comply with the terms of clause 5.1.
- 5.5 Where the Company performs such further Services in accordance with the foregoing provisions of this clause or otherwise then any time specified for completion of the Services under the Contract will be extended for such period as the Company may reasonably require and the Company will have no liability to the Customer for late completion of the Services.
- 5.6 All conditions, warranties and other terms express or implied statutory or otherwise relating to the supply of the Services are expressly excluded except those which are contained in these Conditions or those which are otherwise agreed by the Company in writing as applying to the Contract.

D **PRODUCTS AND SERVICES**

1 **Payment**

- 1.1 The price and invoicing terms in respect of the supply and Installation of the Products will be as agreed between the parties at the time the Contract is entered into.
- 1.2 Unless otherwise agreed, invoicing for the provision of Services shall be made immediately upon completion of the Services.
- 1.3 All prices which are quoted or agreed are exclusive of Value Added Tax which (if applicable) will be payable by the Customer in addition.
- 1.4 The Company will be entitled to levy an additional charge to cover packaging, insurance and carriage of the Products.
- 1.5 The Customer will pay all taxes and Government charges which are applicable in relation to the use of the Products.
- 1.6 Unless otherwise agreed, all invoices issued by the Company to the Customer for the supply of and Installation of the Products are payable on receipt and all invoices issued by the Company to the Customer for the provision of the Services or any other item will be paid by the Customer in full no later than 30 days following the date of invoice. Time of payment will be of the essence of the Contract.
- 1.7 Whatever the means of payment used, payment shall not be deemed to have been effected until the Company's account has been fully and irrevocably credited.
- 1.8 If the Customer fails to pay by the stipulated date, without prejudice to any other rights of the Company, the Company will be entitled to charge interest from the date payment was due. The rate of interest will be 4% above Barclays Bank plc base rate in existence from time to time.

2 Failure to Pay, Cancellation or Deferment

- 2.1 If there shall be an Intervening Event the Company may within a reasonable time thereafter, defer or cancel any further deliveries of Products or stop any further Services or stop any Products in transit and treat the Contract of which these Conditions form part as terminated, but without prejudice to its rights to the full purchase price of the Products delivered and the Services performed and damages for any loss suffered as a consequence of such termination.
- 2.2 An Intervening Event shall be any of the following:-
 - (i) failure by the Customer to make payment when it becomes due;
 - (ii) breach by the Customer of any of the terms or conditions of the Contract;
 - (iii) the Customer's proposal for or entry into any composition or arrangement with creditors;
 - (iv) the presentation against the Customer of any petition for a Bankruptcy Order, Administration Order, Winding-up and/or similar process;
 - (v) the appointment of an Administrative Receiver or Receiver in respect of the business or any part of the assets of the Customer;

- (vi) the Company forming the reasonable opinion that the Customer has become or is likely in the immediate future to become unable to pay his debt (adopting in the case of a Company the definition of that term set out in Section 123 of The Insolvency Act 1986).
- 2.3 Cancellation of the Contract by the Customer will only be accepted at the discretion of the Company and in any event on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a Director.
- 2.4 Any costs incurred by the Company due to the suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting or giving instructions for the Delivery of any Products will be payable by the Customer forthwith on demand.

3 **Limitation of Liability**

- 3.1 Subject to clause 3.2 the Company shall have no liability to the Customer whatsoever in respect of any loss or damage suffered by the Customer arising directly or indirectly from the negligence or wilful default of the Company or the negligence or wilful default of the Company's employees or agents.
- 3.2 Subject to clause 3.5 the Company accepts the following liability to the Customer:-
 - (a) unlimited liability for death or injury resulting from the negligence or wilful default of the Company or its employees or agents;
 - (b) liability limited to £1 million per occurrence in respect of liability for damage to the property of the Customer resulting from the negligence or wilful default of the Company or its employees or agents;
 - (c) unlimited liability in respect of any loss or damage suffered by the Customer arising from any breach by the Company of Section 12 Sale of Goods Act 1979;
 - (d) liability under the Consumer Protection Act 1987.
- 3.3 Subject to clause 3.4 the Company's entire liability to the Customer in respect of any loss or damage suffered by the Customer arising from a breach of the Contract by the Company shall be limited to damages of an amount equal to the total price payable by the Customer to the Company under the Contract except that:-
 - (a) if the breach is a breach of clauses B9.1 or C5.1 then liability will be limited as set out in clauses B9 and C5; or
 - (b) if the Customer has made time of the essence for the Delivery of the Products and the Product is not delivered at the time specified in the Customer's notice then the Company's liability will be limited to liquidated damages at the rate of 0.5% of the Contract price for each complete week of delay subject to a limit of 7.5% of the Contract price. If the Delivery of only part of the Product is delayed the liquidated

damages will be calculated on the part of the Contract price which is attributable to that part of the Product the Company will have no other liability to the Customer for late delivery or non delivery;

- (c) If the breach is a failure by the Company to comply with its obligations under clause B9.4 to remedy a breach of warranty under clause B9.1 then:-
 - (i) if the defect in the Product which has not been rectified is not substantial the Company's liability to the Customer for compensation will be proportionate to the reduced value of the product and in any event limited to 15% of the Contract price; or
 - (ii) if the defect in the Product which has not been rectified is so substantial as to significantly deprive the Customer of the benefit of the Contract the Customer may terminate the Contract on written notice to the Company but the Company's liability to the Customer for compensation will be limited to 15% of the Contract price.

3.4 The Company will not be liable to the Customer under any circumstances (and whether arising from breach of Contract or the negligence or wilful default of the Company or its employees, agents or otherwise) for any Product recall, loss of production, loss of profits, loss of contracts or goodwill or any type of consequential or special indirect or consequential loss suffered by the Customer even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

4 **Force Majeure**

4.1 Each party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous as a result of industrial disputes or any other circumstances beyond the control of the parties including without limitation fire, war (whether declared or not), extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays of deliveries by sub-contractors, caused by any such circumstances referred to in this clause. A circumstance referred to in this clause which had not occurred prior to the formation of the Contract shall give a right to suspension only if its affect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

4.2 The party claiming to be affected by force majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If force majeure prevents the Customer from fulfilling its obligations, it shall compensate the Company for expenses incurred in securing and protecting the Product.

4.3 Each party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under clause 4.1 for more than six months.

5 **Notices**

- 5.1 Notices to be served hereunder shall be sent by post, telex or telefax with the correct answer back code to each party at its last known address. Notices shall be deemed served by post five working days after posting and by telex or telefax when either is received.

6 **Law and Arbitration**

- 6.1 The Contract will be governed by English law.
- 6.2 All disputes arising shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. Arbitration shall be in London before a single Arbitrator and the proceedings shall be conducted in the English language.

7 **General**

- 7.1 No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any Contract made between the Company and the Customer shall be subject to these conditions and no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any Contract except on the basis of them; any such term representation or Contract will bind the Company only if in writing and signed by a Director.
- 7.2 Unless otherwise agreed in writing by the Company these conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.
- 7.3 Any information data and other descriptions contained in the Company's catalogues, price lists or manuals or other advertising material shall not form a representation or be part of the Contract unless the Company has specifically agreed in writing that they will form part of the Contract.
- 7.4 Where the Company has not given a written acknowledgement of the Customer's order these conditions will nonetheless apply to the Contract provided that the Customer has had prior notice of them.
- 7.5 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
- 7.6 If any provision of these Conditions is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.
- 7.7 Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of the provisions of these Conditions.