



1. DEFINITIONS

In these Conditions, the following definitions apply:

Company	means Clarkson Industrial Contractors Inc. DBA Beck & Pollitzer USA; 135 North Church Street, Suite 320, Spartanburg, South Carolina, 29306, United States
Company Personnel	means all employees, staff, officers, contractors and sub-contractors, workers, agents and consultants, of the Company who are engaged in the provision of the Services, from time to time;
Conditions	means these terms and conditions;
Contract	means the written agreement for the supply of Services, that includes these Conditions, the Estimate and (if applicable) the Purchase Order and Purchase Order acknowledgement;
Customer	means the entity that purchases the Services from the Company, unless otherwise stated in the Contract;
Customer Personnel	means all employees, staff, officers, contractors, engineers, workers, agents and consultants, of the Customer who are engaged in the receipt of or otherwise connected with, the Services, from time to time;
Default	means any breach by the Customer of the terms and conditions of the Contract or any other default, act, omission, negligence or misstatement of the Customer or Customer Personnel, in connection with or related to the subject-matter of the Contract;
Excused Cause	means: an act of God; mechanical or electrical breakdown or derangement; wear, tear or gradual deterioration; corrosion, erosion, rust, oxidation, mildew (however the same may arise); disappearance or shortage revealed when a routine inventory is made or is not traceable to an individual event or occurrence; pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds; the cost of maintenance; contamination of asbestos or asbestos dust; the wilful, reckless or grossly negligent act of the Customer, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; any weapon of war employing atomic or nuclear fission or fusion or like reaction or radioactive force or matter; war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalization or requisition or destruction of or damage by or under the order of any government de jure or de facto or public or local authority; any act of terrorism or any action taken in controlling preventing or suppressing or in any way related to any act of terrorism; the failure of any electronic systems, loss or damage to data, virus, unauthorized access to electronic systems, interruption or interference with any electronic means of communication arising if the Machinery: is in transit by sea or air; due to the Machinery being in a defective condition or any defect in design, plan, specification, materials or workmanship after the Machinery has been handed over to or placed in use by the Customer; which contains refractory linings; or any other cause whatsoever which is excluded by the Company's own insurance policy or policies;
Losses	means any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses including legal fees and other professional costs;
Machinery	means all machinery or other property handled or dealt with by the Company pursuant to the Contract;
Property and Premises	means all property other than the Machinery
Purchase Order	means the Customer's purchase order for Services;
Payment Terms	has the meaning given in the Quotation (as amended in the Contract if applicable);
Price	means the price stated in the Quotation (as amended in the Contract if applicable);
Schedule	has the meaning given in the Quotation (as amended in the Contract if applicable);
Quotation	means the Company's quotation for the Services;

Scope of Work	has the meaning given in the Quotation (as amended in the Contract if applicable);
Services	means the services (if any) described in the Contract and provision of materials ancillary to the provision of or performance of, the Services;
Site	means the building(s) or location(s) where the services are to be performed; and
Warranty-Limited	Company warrants that it will perform Services in a good and workmanlike manner and that Services provided by Company will be free from defects in parts supplied by the Company and workmanship for a period of six (6) months following the completion of the Services. Company will promptly correct any failure of Services or parts to conform to the Contract requirements at no cost to Customer. With respect to equipment, parts and materials supplied by Company, whether procured by Customer or Company, the respective manufacturers' warranties shall apply, and Company makes no warranty with respect thereto. <u>CUSTOMER'S SOLE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE REPAIRS OR CORRECTIONS WITH RESPECT TO THE SERVICES MADE BY THE COMPANY AS MAY BE REQUIRED TO CAUSE THE SAME SUBSTANTIALLY TO CONFORM TO THIS LIMITED WARRANTY AS PROVIDED IN PARAGRAPH 9.1.</u>

DISCLAIMER OF ALL OTHER WARRANTIES

OTHER THAN THE LIMITED WARRANTY SET FORTH HEREIN, COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

2. BASIS OF CONTRACT

- 2.1 Each Quotation constitutes an offer by the Company to provide Services to the Customer on and subject to these Conditions.
- 2.2 These terms and conditions of the Contract supersede any other terms or conditions the Customer seeks to impose or incorporate, or which are, or may be, implied by any trade, custom, practice or course of dealing.
- 2.3 If these Conditions are inconsistent with any of the terms and conditions of the Contract, these Conditions will control unless expressly provided otherwise in the Contract.
- 2.4 The Company is an independent contractor. Nothing in the Contract or these Conditions shall be construed as creating a contract of employment, partnership, or joint venture.

3. SUPPLY OF SERVICES

- 3.1 The Company will supply the Services to the Customer in accordance with the Scope of Work in all material respects. The Services will be provided using reasonable skill and care.
- 3.2 While on Site the Company and the Company's Personnel will comply with reasonable rules and policies of the Customer related to the Site that are provided in writing to the Company in advance of the commencement of Services.
- 3.3 Company shall perform the Services in a workmanlike manner. Company shall comply with all applicable federal, state, and local laws, regulations and ordinances, and any safety requirements of Customer (the "Applicable Laws") in the performance of the Services.
- 3.4 If the Services require goods or components to be purchased for incorporation into the work, such purchase will be made by the Company as an agent of the Customer and any warranty concerning such goods or components will be the warranty (if any) provided by the manufacturer or supplier.

4. DELIVERY OF SERVICES

- 4.1 The Services will be performed at the Site(s) specified in the Contract, on the date or within the time specified in the Contract.
- 4.2 The Company will use reasonable efforts to meet performance dates specified in the Contract; however, any such dates are only estimates.

5. MACHINERY

- 5.1 The Company's total liability for loss of or damage to the Machinery will be limited to \$500,000 where the loss or damage is attributable to the negligence or failure to exercise reasonable skill or care by the Company. In all other circumstances, the risk of loss or damage remains with the Customer.
- 5.2 The Company will not be liable for loss of or damage to the Machinery caused directly or indirectly by or in consequence of and Excused Cause.
- 5.3 The Company will be entitled to a lien on the Machinery for payment of all monies due and outstanding from the Customer on any account.



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5.4 The Customer warrants that it is either the owner of the Machinery or is authorized by the owner to accept these Conditions on the owner's behalf and that any information it provides in connection with this Contract is accurate and may be relied upon.

6. RISK AND TITLE

6.1 Risk in the Services will pass to the Customer upon delivery of the Services in accordance with these Conditions.

6.2 Title to any item provided or to be provided by the Company to the Customer in the performance of the Services will not pass to the Customer until the Company receives payment in full (in cash or cleared funds). If the Customer takes beneficial use of the equipment Machinery (e.g. takes control over the Machinery or starts to use the equipment Machinery before or without formal handover between the Company and the Customer) then handover and acceptance is deemed to have occurred with all consequences arising therefrom and the risk of loss or damage to the Machinery shall pass to the Customer.

7. CUSTOMER OBLIGATIONS

7.1 The Customer will:

7.1.1 ensure that any information provided to the Company is complete and accurate;

7.1.2 co-operate with the Company and Company Personnel in all matters relating to the Services;

7.1.3 provide the Company and Company Personnel, with free and unhindered access to the Site, office accommodation and other facilities as reasonably required by the Company and/or Company Personnel;

7.1.4 provide the Company and Company Personnel with such information and materials as the Company and/or Company Personnel may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

7.1.5 provide a safe working environment and ensure that all property, facilities, buildings and Machinery relevant to the Contract are and will continue to be safe and without risk to any person connected with the Contract;

7.1.6 all known risks will be clearly identified to the Company and marked by the Customer;

7.1.7 prepare the Site for the supply of the Services;

7.1.8 ensure that, at all times, it has and maintains all licences, permissions, authorizations, consents and permits necessary for it to perform its obligations under the Contract and for the Customer to receive the Services from the Company.

7.1.9 inform the Company of all licences, permissions, authorizations, consents and permits necessary for it to provide the Services to the Customer.

7.1.10 comply with all applicable laws, including health and safety laws and environmental laws;

7.1.11 keep all materials, equipment, documents and other property of the Company and Company Personnel (**Company Materials**) at the Customer's premises or the Sites in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company or Company Personnel (as the context requires), and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorization;

7.1.12 the Customer will notify the Company immediately should the Customer become aware of any circumstances that will or may have an adverse impact on the Company's ability to perform the Services in accordance with the Contract;

7.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any Default:

7.2.1 without limiting or affecting any other right or remedy available to it, the Company will have the right to suspend performance of the Services until the Customer remedies the Default, and to rely on the Default to relieve it from the performance of any of its obligations in each case to the extent the Default prevents or delays the Company's performance of any of its obligations;

7.2.2 the Company will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Paragraph 7.2; and

7.2.3 the Company is entitled to be paid for the value of all Services carried out and all costs incurred, including cost for demobilization and remobilization and the cost of future activities together with reasonable allowances for overhead and profit and the Customer will reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Default.

8. PRICE AND PAYMENT

8.1 The price of the Services will be as stated in the Contract. The Price will be invoiced in US dollars in immediately available funds unless agreed otherwise in the Contract.

8.2 The Company may at any time revise the Price to take account the increase or imposition of any tax, duty or other levy and any variation in exchange rates.

8.3 The Price will be exclusive of value added tax and other taxes and duties, unless otherwise agreed in the Contract.

8.4 The Company may invoice the Customer for the Services at any time on or after completion of the Services or a part thereof, unless otherwise agreed in the Contract.

8.5 Invoices will be paid in full and in cleared funds with no deductions, counterclaims or set-off to a bank account nominated in writing no later than 30 days from the date of issuance of the Company's invoice, unless otherwise agreed in the Contract.

8.6 Invoices are due and payable on receipt. If payment is not received by the Company within 30 days from the date of the invoice, interest will be charged on the unpaid balance at the rate of 1.5% per month until paid in full.

9. LIABILITY

9.1 If any Services are not supplied or do not comply in all material respects with the terms of the Contract, the Customer will be entitled as its sole and exclusive remedy (other than where the Customer has accepted the relevant Services) the repair, replacement or correction of the Services.

9.2 **NO CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THESE TERMS AND CONDITIONS, THE CONTRACT, OR PROVIDED FOR UNDER ANY APPLICABLE LAW, THE COMPANY SHALL NOT, IN ANY EVENT, BE LIABLE, EITHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF FUTURE REVENUE, INCOME OR PROFITS, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH HEREOF, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN.**

9.3 Subject to the limitations set forth in this Paragraph 9, the liability of the Company for property and premises (other than the Machinery) damage will be limited to \$1,000,000. The Company's liability for Machinery damage is as detailed in Paragraph 5. The Company's total liability for all other issues, (including costs and expenses) arising under or in connection with the Contract, whether arising in contract, tort or restitution, or for breach of statutory duty or misrepresentation, for all defaults (when taken together and not for each and every default) will in all circumstances unless excluded and/or limited elsewhere be limited to \$500,000 or the original Contract value, whichever is less.

9.4 The Customer will indemnify the Company against all claims or demands made in excess of the Company's liability under this Contract.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by the Customer or Customer Personnel) will be owned by the Company.

10.2 The Customer grants to the Company, or will procure the direct grant to the Company of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and use any materials provided by the Customer or Customer Personnel for the purpose of receiving and using the Services and the Deliverables.

10.3 The Customer will not sub-license, assign or otherwise transfer the rights granted in Clause 10.2.

10.4 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer and Customer Personnel to the Company and/or Company Personnel for the term of the Contract for providing the Services to the Customer.

11. INSURANCE

11.1 During the term of the Contract, the Company will maintain general liability insurance in the amount of \$1,000,000.00 with respect to the Services except for Machinery, in which case the Company's liability is governed by Paragraph 5. The Company will not be liable unless loss or damage is caused by a negligent act or omission by the Company.

11.2 The Customer shall provide and pay for insurance of Company Materials that insures against all risk of loss or damage. The Company will not be liable for any loss of or damage to the Company Materials however caused.

12. CONFIDENTIALITY

12.1 Each party to the Contract agrees that it will not at any time, either during the Contract or after its termination or completion, disclose to any person any confidential information concerning the business affairs, customers, clients, suppliers or product formulations and processes of the other party (**Confidential Information**) except:

12.1.1 to its employees, officers, agents, subcontractors or contractors who need to know such information for the purposes of carrying out the party's obligations under the Contract; or

12.1.2 as may be required by law, court order or any legal or regulatory authority.

13. TERMINATION

13.1 The Company may terminate the Contract by written notice to the Customer at any time prior to the commencement of performance of the Services.

13.2 The Company may immediately terminate the Contract at any time if: (i) the Customer is in breach of any of its obligations (other than immaterial obligations) under the Contract; (ii) the Customer becomes insolvent, is unable to pay its debts, ceases to trade or has an administrator appointed or has a receiver appointed over the whole or any part of its assets or enters into any arrangements with its creditors for the rescheduling of its debts or a petition is filed or a resolution is passed for winding up, or there is the occurrence of any event in respect of the Customer that is analogous to any of the preceding events, in any jurisdiction.

13.3 The provisions that relate to termination or cancellation will apply to a termination or cancellation of all or any part of the Contract.

13.4 Upon termination or cancellation of the Contract:



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- 13.4.1 the Customer will immediately return all specifications supplied by the Company or Company Personnel and any other information or materials which belong to or were supplied by the Company or Company Personnel, including any Confidential Information of the Company;
- 13.4.2 Paragraphs 5, 9 and 11 of these Conditions and any other paragraphs which expressly or by implication have effect after termination or cancellation of the Contract, will continue in full force and effect; and
- 13.4.3 the Company is entitled to be paid for the value of all Services carried out to the date of termination or cancellation and all costs incurred, including the cost of demobilization and together with reasonable allowances for overhead and profit and the Customer will reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the termination or cancellation; and
- 13.4.4 the accrued rights, remedies, obligations and liabilities of the parties as at termination or cancellation, will not be affected, including the right to claim damages in respect of any breach of the Contract, which existed at or before the date of termination or cancellation.

14. FORCE MAJEURE

If the Company is prevented, hindered or delayed in or from performing any of its obligations under the Contract by any circumstance not within the Company's control, the Company will not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations will be extended accordingly. The corresponding obligations of the Customer will be suspended, and the Customer's time for performance of such obligations extended, to the same extent as those of the Company.

15. NON-SOLICITATION

The Customer will not employ nor seek to employ employees or self-employed workers of the Company, but if any such employee or self-employed worker accepts employment with the Customer, directly or indirectly and whether under a contract of service or contract for services or otherwise, during the period of the Contract or within 6 months thereafter, the Customer will pay to the Company an amount equal to 40% of the employee's or self-employed worker's gross annual wage in recognition of the disruption that such employment would cause to the efficient conduct of the Company's business.

16. MISCELLANEOUS

- 16.1 Notices. All notices and other communications shall be in writing and shall be deemed given if delivered personally or by pre-paid overnight or same-day commercial messenger or courier service or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of completed transmission).
- 16.2 Waiver. No Party shall be deemed to have waived any provision of the Contract or the exercise of any rights held under the Contract unless such waiver is made expressly and in writing. Waiver by any Party of a breach or violation of any provision of the Contract shall not constitute a waiver of any other subsequent breach or violation.
- 16.3 Headings. The subject headings of the sections and subsections of the Contract are included for the purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions.
- 16.4 Jurisdiction and Venue. Any dispute arising from the Contract shall be resolved in the courts of the State of South Carolina. The parties' consent to venue in Spartanburg County, South Carolina.
- 16.5 Entire Agreement; Modification; Waiver. The Contract and exhibits and schedules constitute the entire agreement between the parties pertaining to the subject matter contained herein and supersede all prior or contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of the Contract shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of the Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 16.6 Successors and Assigns. The Contract shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and/or assigns. The Contract shall not be assignable by any party hereto without the prior written consent of the other.
- 16.7 Severability. In the event that any provision of the Contract or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of the Contract will continue in full force and effect. The parties further agree to replace such void or unenforceable provision of the Contract with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.
- 16.8 Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the state of South Carolina.
- 16.9 The Customer shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under the Contract, nor purport to do so, nor sub-contract any or all of its obligations under the Contract without the Company's prior written consent.
- 16.10 The Company may, at any time and without limiting any of its other rights or remedies, set off any liability of the Customer to the Company against any liability of the Company to the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 16.11 The Customer will, promptly at the Company's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the

Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract.

- 16.12 Disputes Should the parties to the Contract have a dispute, the parties will first attempt to resolve the dispute informally in good faith through the use of a certified mediator. If the parties are unable to resolve the dispute through mediation, the parties' consent to a trial to the court (bench trial) without a jury.

17. COVID-19

- 17.1 **Right to negotiate or terminate**. If a Covid-19 Trigger Event occurs, Beck & Pollitzer may:
 - 17.1.1 Require the other party to negotiate in good faith an amendment to the agreement to alleviate the Covid-19 Trigger Event; and
 - 17.1.2 if the parties fail to agree in accordance with clause 17.1.3 below within ten (10) calendar days of the date of the Covid-19 Notice, Beck & Pollitzer may terminate the agreement by giving the other party not less than five (5) calendar days written notice
 - 17.1.3 Beck & Pollitzer may initiate a negotiation under clause 17.1.1 by a notice (Covid-19 Notice) giving reasonable details of the relevant Covid-19 Trigger Event. Beck & Pollitzer may, at any time, serve a new Covid-19 Notice. On delivery of a Covid-19 Notice:
 - 17.1.3.1 the parties shall meet within five (5) days of the date of the Covid-19 Notice and as reasonably necessary thereafter to discuss in good faith amendments to this agreement;
 - 17.1.3.2 any amendments to the agreement shall be recorded in writing and signed by the parties
- 17.2 **Covid-19 Trigger Event** means any of the following events caused directly or not by the Coronavirus disease named "Covid-19" causing or being accountable for:
 - 17.2.1 a negative impact on Beck & Pollitzer's ability to perform to the contract agreement, terms & conditions, and or the law
 - 17.2.2 an increase in the costs incurred by Beck & Pollitzer in performing to the agreement of at least five percent (5%) since the price for the services and or supplies subject of the agreement were last agreed
- 17.3 **Performance after a Covid-19 Notice**. After delivery of a Covid-19 Notice, until this agreement is varied under clause 17.1 or terminated, the parties shall, unless prohibited by law, continue to comply with the terms of this agreement, save Beck & Pollitzer needs only use reasonable endeavours to comply with its obligations insofar as they are affected by the relevant Covid-19 Trigger Event.