

WINGET LIMITED - CROKER PRODUCTS GENERAL CONDITIONS OF BUSINESS

1. Interpretation

In these conditions "the Company" means WINGET Limited; "the Specified Service" means the goods and/or service to be supplied to the Customer; "Conditions" means the standard conditions for the supply of Specified Service and/or services set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company. "Customer" means the person for whom the Company has agreed to supply the Specified Service in accordance with these conditions; "Contract" means a contract under the terms of which the Company is to supply the Specified Service. "Specified Service" means the service to be provided by the Company for the Customer (including the supply of goods) and "Writing" includes communication by fax and E-Mail.

2. Supply of the Specified Service

(a) The Company shall supply the Specified Service to the Customer subject to these Conditions. Any changes or additions to the Specified Service or these Conditions must be agreed in writing by the Company and the Customer.

(b) The Company's employees or agents are not authorised to make any representations concerning the Specified Service unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

(c) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. Orders and Specifications

(a) No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.

(b) The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Specified Service within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

(c) The quantity, quality and description of and any specification for the Specified Service shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company).

(d) If the Specified Service requires goods to be manufactured or any process is to be applied to the goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.

(e) The Company reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory or EC requirements or, where the goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

(f) No order which has been accepted by the Company may be cancelled or varied by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such cancellation or variation.

4. Price

(a) The price of the Specified Service shall be the Company's quoted price or, where no price has been quoted, (or a price quoted is no longer valid) the price listed in the Company's published price list current at the date of supply to the Customer. Where goods are supplied for export from the United Kingdom, the Company's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they can be altered by the Company without notice to the Customer.

(b) The Company reserves the right, by giving notice to the Customer at any time before or during supply, to increase the price of the Specified Service to reflect any increase in the cost to the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the cost of labour (including increases caused by working outside normal working hours), materials or other costs of manufacture and overtime working) and any change in delivery dates, quantities or specifications for the Specified Service which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information, instructions or to comply with clause 12 of these Conditions..

(c) Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Customer and the Company, all prices are given by the Company on an ex works basis and where the Company agrees to deliver goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance. Labour and equipment for unloading shall be provided by the Customer at the Customer's cost.

(d) The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

(e) The cost of pallets, stillages and returnable containers will be charged to the Customer in addition to the price of the goods, but full credit will be given to the Customer provided they are returned undamaged to the Company before the due payment date.

(f) The Company's estimates for repairs are provisional and subject to the Company's findings when the goods to be repaired have been dismantled and examined.

5. Terms of Payment

(a) Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Specified Service following the end of each month in which the Specified Service is provided.

(b) Subject to sub-paragraph (c) and (d) below, the Customer shall pay the price of the Specified Service within 30 days of the date of the Company's invoice. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

(c) If it is a term of the Contract that payment of the Company's invoices are subject to the certification of a third party as a precondition to payment, the Customer shall pay the invoice within 14 days from the date of issue of the relevant certificate.

(d) If the Company has granted a credit facility for the supply of parts to the Customer, the Company shall be entitled to withdraw the credit facility at any time without giving any reason for so doing or thereby incurring any liability to the Customer. If the Customer exceeds its credit limit, the Company shall be entitled to require payment on demand of the excess over the credit limit.

(e) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- cancel the contract or suspend any further deliveries to the Customer;
- appropriate any payment made by the Customer to such part of the Specified Service (or goods and/or services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 2 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (as a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

(a) Any dates quoted for the supply of the Specified Service are approximate only and the Company shall not be liable for any delay in supply of the Specified Service however caused. Time for supply shall not be of the essence of the Contract unless previously agreed by the Company in writing.

(b) If the Company is required to supply goods, delivery of the goods shall be made by the Customer collecting the goods at the Company's premises at any time after the Company has notified the Customer that the delivery of the goods are ready for collection or, if some other place for delivery is agreed by the Company, by the company delivering the goods to that place. The Company may deliver by instalments.

(c) If the Company fails to deliver goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) to replace those goods not delivered.

(d) It is a condition precedent to any liability on the part of the Company for non-delivery or shortage in delivery that (a) Non-delivery: the Company and the carrier are both notified within 14 days of issue of the Company's despatch advice note or despatch of the goods from the Company's premises, whichever is the later, (b) Shortage in delivery: the Company and the carrier are both notified within 3 days of delivery to be followed by a detailed claim to both the Company and the carrier within 14 days of delivery.

(e) If the Customer fails to take delivery of the goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

- store any goods to be supplied until actual delivery and charge the Customer for the reasonable cost (including insurance) or storage;
- sell the goods to be supplied at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7. Risk and property

(a) Risk of damage to or loss of goods supplied for the Specified Service shall pass to the Customer:

- in the case of goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the goods are available for collection; or
- in the case of goods to be delivered otherwise than at the Company's premises at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the goods.

(b) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions, the property in the goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.

(c) Until such time as the property in the Goods passes to the Customer, the Customer shall hold the goods as the Company's fiduciary agent and bailee, and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.

(d) Until such time as the property in the goods passes to the Customer (and provided the goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the goods are stored and repossess the goods.

(e) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

8. Warranties

8.1 Batching Plants

Subject to the conditions set out below the Company warrants that Batching Plants will correspond with their specification at the time of delivery will be free from defects in material and workmanship and will be fit for any purpose specified in writing by the Company for a period of 6 months from the date of delivery, or, where the Company erects the plant, the date when the Company advises the Customer that the plant is ready for start up.

8.2 Mixers

Subject to the conditions set out below the Company warrants that mixers will correspond with their specification at the time of delivery and will be free from defects in material and workmanship and will be fit for any purpose specified in writing by the Company for a period of 6 months from the date of delivery.

8.3 Parts

Subject to the conditions set out below the Company warrants that replacement parts will correspond with their specification at the time of delivery and will be free from defects in material and workmanship and will be fit for any purpose specified in writing by the Company for a period of 6 months from the date of their initial use or 9 months from delivery, whichever is the first to expire, whether the part or accessory is delivered with finished goods, purchased as a replacement part or fitted during the course of service work.

(a) The above warranties are given by the Company subject to the following conditions:-

- the Company shall be under no liability in respect of any defect in the Specified Services arising from any drawing, design or specification supplied by the Customer;
- the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), failure to service goods supplied in accordance with the Company's instructions, misuse or alteration or repair of goods supplied without the Company's approval including (but without prejudice to the foregoing) any failure by the Customer to comply with the recommendations of the Company as to the storage and handling of goods;
- the Company shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price for the Specified Service has not been paid by the due date for payment;
- the above warranties do not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the company.

(b) Any claim by the Customer which is based on any defect in the quality or condition of the Specified Service or their failure to correspond with specification shall be notified to the Company in Writing within 7 days after discovery of the defect or failure.

(c) Where any valid claim in respect of any of the Specified Service which is based on any defect in the quality or condition of goods supplied or their failure to meet the specification is notified to the Company in accordance with these Conditions, the Company shall repair or replace the goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer. In respect of goods being exported the Company will provide replacement goods or parts but not labour. The Company reserves the right to require the Customer to return any faulty goods or parts to the Company before replacement or reimbursement is made.

(d) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Specified Service, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Specified Service, except as expressly provided in these Conditions.

(e) The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Specified Service, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

- Act of God, explosion, flood, tempest, fire or accident;
- War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- import or export regulations or embargoes;
- strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- power failure or breakdown in machinery.

9. Indemnity

(a) If any claim is made against the Customer that goods supplied infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Customer, the Company shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:

- the Company is given full control of any proceedings or negotiations in connection with any such claim;
- the Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
- except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);
- the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- the Company shall be entitled to the benefit of, and the Customer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- without prejudice to any duty of the Customer at common law, the Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this clause.

10. Termination or Suspension of the Contract

(a) This clause applies if:

- any debt is due and payable by the Customer to the Company but it is unpaid;
- the Customer has failed to provide the Company with an acceptance letter of credit, bill of exchange or any other security as required by the Contract;
- the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- the Customer ceases, or threatens to cease, to carry on business; or
- the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

(b) If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further performance under the Contract without any liability to the Company, and if goods and/or services have been delivered and/or provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. Site Access

(a) Unless the contract provides otherwise, the choice and preparation of a suitable site for goods supplied pursuant to the Specified Service including but not limited to the installation of adequate foundations and mains services shall be the sole responsibility of the Customer, notwithstanding that the Company may have provided drawings and/or a specification for the Customer to work to.

(b) The Customer shall without cost to the Company provide:

- uninterrupted and unimpeded access and an area of handstanding adjacent to the site where the Specified Service is to be provided;
- such unskilled labour as the company may reasonably require in connection with its work on site;
- such unloading cranes and haulage facilities on site as the Company may reasonably require;
- adequate dry secure storage facilities for the company's material and plant;
- such supplies of water and electricity as the Company may reasonably require.

(c) The Company contracts on the basis that all consents/permissions and approvals necessary to enable the Company to perform the contract have been or will be obtained by the Customer and the Company shall have no obligation to obtain them.

(d) Where experience on site leads the Company to conclude that it is either necessary or desirable to modify or add to the goods the subject of the contract to a minor degree in the interests of the Customer, the Company shall be at liberty so to do and the cost of so doing shall be added to the contract price.

(e) The Customer shall be responsible for ensuring that the goods and services provided under this contract are adequately guarded as required by statute and regulation when installed and incorporated into other works.

12. General

(a) Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

(b) The rights of the Company or the Customer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

(c) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

(d) The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.

(e) Notwithstanding any other provision of these Conditions nothing in these Conditions confers any right to enforce any of their terms on any person who is not a party to them.