

## Chapman Brack (Contractors) Limited Group Conditions of Contract (Engineering Works, Repair, Maintenance and Partial Rebuilds)

These Terms and Conditions (Conditions) shall govern all supply of works to Customer. The Company and the Customer are the parties named on the Order.

**ATTENTION IS DRAWN TO THE PROVISIONS OF CONDITIONS 7 (PERFORMANCE DATES), 10 (HOT WORK), 11 (CONFORMITY, INSPECTION & DEFECTS), 12 (LIMITATION OF THE COMPANY'S RESPONSIBILITY) AND MORE GENERALLY TO TEXT IN BOLD**

**1. General:** In the contract and in these Conditions: -

"The Company" means the Chapman Brack (Contractors) Limited Group Company named on the Order.

"The Contract" means the contract between the Company and Customer for the supply of works formed in accordance with Condition 2.

"Contract Price" the price paid and/ or payable to the Company by the Customer in accordance with the Contract in respect of works actually supplied or to be supplied by the Company whether or not invoiced to the Customer at the relevant time.

"Order" the Customer's order for the works, as set out in the Customer's purchase order form.

"Site Materials" all unfixed materials, plant, machinery and goods delivered to and placed on or adjacent to the works which are intended for use with or incorporation therein

**2. Applicability:** These Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is purported to be accepted or Order is purported to be made by Customer. These Conditions supersede any terms and conditions contained in Customer's request for quote, purchase order, invoice, order acknowledgement, delivery stamp, or similar document or notation. These Conditions may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement, signed by a Director of the Company and an authorised representative of the Customer. The Company's acknowledgement of the Customer's Order shall not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described. **The Company accepts the Customer's Order on condition that the Customer assents to these Conditions and any terms included on the Company's quotation. The Customer's assent to these Conditions and waiver of any differing terms is evidenced either by the Customer's Order which constitutes an offer by the Customer to buy on these Conditions (any contrary terms or conditions of which shall be disregarded) and which shall be accepted by the Company by written confirmation issued by the Company's authorised representative or (if earlier) by the Company providing the works.**

**3. Quotations:** Quotations do not constitute an offer by the Company to carry out the work specified there-in and no Order placed in response to a quotation will be binding on the Company unless accepted by the Company in writing or by performance as per Condition 2. All such acceptances will be subject to availability of the necessary labour and materials and to the Company being able to obtain any necessary authorisations and/or licences and to the same remaining valid.

**4. Prices:** Unless otherwise specified in the Contract the rates applicable to day work contracts to be performed in the United Kingdom or abroad will be based on the Company's current list of charges for the country where the works are to be performed and the appropriate price or rate shall be charged accordingly. The appropriate price or rate shall be charged for every day (without limitation) including travelling days, rest days, weekends and holidays. Unless specifically agreed there shall be added to the price all travelling and hotel costs and subsistence expenses and allowances which shall be for the account of the Customer. Where works are specified in the Company's quotation, additional works or any variations to the scope of works requested by the Customer or necessitated due to the age or deteriorated condition of the furnace or ancillaries which are not included in the Company's quotation ("Variation") shall be additionally charged, these include without limitation any changes included in the Customer's technical documentation which have an impact on the works or the Company's costs of providing the works.

If between the conclusion of the Contract and the final completion of the work, the costs on which the prices are based increase due to a Variation or due to additional costs to deal with Health & Safety requirements for Covid 19 related matters (required by the Customer or law generally), the Company shall be entitled to adjust the prices mentioned in the Order and recover these adjusted prices from the Customer. Prices in the Order may also be adjusted by the Company if the costs on which the prices are based increase due to an event of Force Majeure (see Condition 7).

**5. Payment:** The Customer shall pay the Contract Price at the times and in the manner expressly stated in the Contract or if none is specified, on net monthly account terms. Any sum payable which is in addition to the price stated in the Order shall be paid on net monthly account terms. Time shall be of the essence of the Contract in relation to all payments due to the Company hereunder. In the event of failure by the Customer to pay any sum on the due date or where genuine doubts arise as to the Customer's financial position, then the Company may exercise all or any of the following rights without incurring liability (which are in addition to and without prejudice to any rights of the Company in law):

(a) to cancel or suspend the Contract;

(b) to withhold or suspend the work to be performed under the Contract;

(c) to reschedule the times for carrying out such work;

(d) to charge interest from when the overdue sum became due until it is paid on all overdue accounts which will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;

(e) notwithstanding any credit terms previously agreed (either in the Contract or elsewhere) to require payment in full or security for payment and to suspend any works without liability on the part of the Company until payment or security for payment has been provided.

All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**6. Customer Materials:** The Company will endeavour to take reasonable care of the Site Materials during the execution of the works, but the Company accepts no responsibility for any damage howsoever arising to any such Site Materials.

**7. Performance Dates:** The Company will use its reasonable endeavours to perform the Contract in the time stated when placing the Order but the dates for carrying out the work specified in the Contract are approximate only and, unless otherwise expressly stated and agreed in writing by a Director of the Company, time is not of the essence and shall not be regarded as binding on the Company. (The following provisions are all subject to the provisions for Force Majeure below): If the Company shall have expressly agreed in writing a sum for liquidated damages for delay to apply to the Contract, a reduction in the Contract Price to take account of such liquidated damages shall be the sole and exclusive remedy of the Customer for any such delay. Otherwise, if time for delivery of the works shall be made of the essence expressly by agreement in writing at any time, or (subject to Condition 10) if the Customer gives not less than 5 days written notice to the Company requiring works that are in delay of the estimated delivery date be delivered, failing any express provision agreed in writing in respect of liquidated damages for delay, the Customer hereby agrees that the Company's sole liability and the Customer's sole remedy for any delay in such circumstances shall be a reduction in the Contract Price due to the Company of 0.5% per day of delay up to a maximum reduction of 10% (20 full days of delay). For the avoidance of doubt, liquidated damages shall be paid in lieu of any costs, losses, expenses or damages (direct, indirect or consequential) suffered or incurred by the Customer as a result of any such delay, and which are hereby excluded. Delays in delivery shall in no circumstances give rise to cancellation or termination of any Contract unless either (i) the maximum number of days expressly agreed in writing for liquidated damages for delay to apply (if any), is exceeded; or (ii) liquidated damages for delay applies as per this Condition 7 and 20 full days of delay is exceeded, or (iii) in the case of Condition 10, the Customer gives not less than 5 days written notice that it requires works in delay to be delivered and the Customer shall fail to deliver such works. In the event that the Customer makes a valid cancellation or termination of the Contract for delay, the sole liability of the parties to one another shall be (in such proportional amount fairly determined by the Company taking into account any liquidated damages deduction due to the Customer (if any)) (1) the Company shall be entitled to be paid the Contract Price in respect of works already performed by the Company up to the cancellation or termination date, which shall be paid within 30 days of the Company invoice date; or (2) (if sums have already been paid to the Company) the Company will refund to the Customer any part of the Contract Price already paid to the Company in relation to any works that have not been delivered by the Company as at the cancellation or termination date. Provided always that any binding times are subject always to the following provisions of this Condition 7 and the provisions at Conditions 10 and 12.

In any case, the delivery time for the whole of the works shall be reasonably extended:

-if the information required by the Company for performance of the Contract is not received in good time or if the Customer subsequently changes it;

-if agreed terms of payment are not met;

-if the Customer fails to meet any of its obligations;

- where an extension of time for completion of works is required due to any Variation; and/ or

- in the event of Force Majeure (defined below).

**The Company will not be in breach of this Contract or otherwise liable in any circumstances for the consequences of any delay in carrying out, or failure to carry out the work if the delay or failure is due to any events of force majeure or occurrences or hindrances which cannot be prevented by the Company, despite using the required care and include events that affect the Company, the Customer, any sub-contractor, supplier or any other third party which directly or indirectly impacts the Company. Such hindrances or force majeure events shall entitle the Company to postpone delivery and shall include acts of God, fire, flood, inclement or exceptional weather conditions, natural catastrophes, industrial action (whether on the Company's premises or elsewhere), hostilities, war, epidemics, pandemics, mobilization, breakdowns, shortage of labour, labour conflicts, shortage of materials, power or other supplies, accidents, governmental order or interventions (whether or not having the force of law), Brexit or any other cause whatever beyond the Company's reasonable control or of an unexpected or exceptional nature which delays or otherwise renders performance impracticable ("Force Majeure").**

If either party's performance of the Contract is affected by Force Majeure it will give written notice to the other party as soon as reasonably practicable following the Force Majeure event coming to the attention of the party, specifying the nature and extent of the Force Majeure. The Company will use its reasonable endeavours to mitigate any impact on the Contract Price during the Force Majeure and will keep the Customer informed of any impact on the Contract Price as a result of the Force Majeure. If the Force Majeure in question continues for more than two weeks or the impact on the Contract Price as a result of the Force Majeure becomes in excess of ten percent of the total Contract Price, the Customer may give to the Company not less than seven days notice in writing to terminate the Contract on a specified termination date. The Customer shall remain responsible to pay the Contract Price for works performed and any additional costs and expenses incurred by the Company in relation to the Contract as a result of the Force Majeure up to the date of termination and also any costs and expenses incurred by the Company as a result of the early termination of the Contract which the Company is not reasonably able to avoid.

**Without prejudice to the foregoing, the Company shall be entitled to cancel or terminate the Contract by notice to the Customer at any time before the due date for the commencement of works at site in the event of Force Majeure.** In such circumstances (a) the Company will give such prior notice as it is reasonably able; (b) the cancellation or termination shall be deemed valid; and (c) neither party will have any liability to the other party for any costs or expenses incurred up to the date of, or as a result of, termination.

**8. Foundations etc.:** Irrespective of whether the Contract provides for the Company to install any goods or equipment in any building or premises the Customer is solely responsible for the suitability of the site for the installation of goods or equipment, for obtaining all necessary consents and approvals under planning and building regulations and bye-laws and for the preparation of the site, the construction of foundations and the provision of services so that the site is suitable to receive the goods or equipment. The Company will, if requested, provide drawings and specifications showing the site requirements for the goods or equipment based on normal requirements in suitable location but does not thereby warrant that the site as prepared by the Customer will be suitable or satisfactorily prepared.

**9. Work on Site:** It is the responsibility of the Customer to advise the Company of prevailing site conditions with respect (inter alia) to physical characteristics, availability of services, normal working hours, availability of labour and any local or national labour arrangements or practices which might affect the work, and any other relevant factors or restrictions. The Customer will at its own expense, if requested by the Company, make available on-site lifting tackle and crane (with operators) heavy tools and hand tools (other than special tools to be provided by the Company) power and other services including welders and welding equipment, lock up storage and security, workshop facilities and labouring assistance. The Customer shall ensure that the work can be carried out uninterrupted during normal working hours. Any overtime or additional costs caused by any interruption or delay not attributable to the Company or its employees shall be charged extra to the Customer. Unless the Contract otherwise expressly provides, the Contract Price does not include any production or other services, electric cabling, switches or other apparatus, piping or drainage, greases, oils or other consumable items or test pieces, and if the Customer requires any of these facilities, services or materials, the cost thereof to the Company (including an

appropriate allowance for profit) will be charged extra to the Customer. Time spent in testing and operator training over and above any provision thereof in the Contract (including as appropriate allowance for profit) will also be charged extra to the Customer.

The Customer shall also be responsible for providing a safe and healthy working environment for the Company employees and the Company's subcontractors and their employees and shall bear (or reimburse the Company against) any loss, damage or compensation due to any person in relation to any death or personal injury or destruction or damage to property except to the extent that the same is due to the negligence of the Company and the Customer shall, except as aforesaid, keep the Company fully indemnified in respect thereof.

**10. Hot Conditions:** Whilst every effort will be made to carry out the work satisfactorily it must be understood and accepted by the Customer that the success of repair work undertaken on a working furnace or a furnace on stand-by cannot be guaranteed due to the potential difficulties which may be encountered. **No liability whatsoever will be accepted by the Company in the event of failure to achieve an effective repair and all time used in the attempt will be chargeable at the agreed rates.**

#### 11. Conformity, Inspection & Defects

##### This Condition 11 is subject to Condition 10 (Hot Conditions)

As soon as the work has been completed by the Company the Customer will immediately carry out an inspection of the works and perform the appropriate checks of conformity and suitability verification of any works including notify the Company in writing of the rectification of defective works or damage required to be performed by the Company. Following satisfactory inspection of the works the Customer will immediately sign the acceptance document. Defects, damages, deficiencies or non-conformities in the works ("Defect(s)") which would have been apparent on such inspection on completion of the works and which have not been notified by the Customer shall be deemed to be accepted and approved by the Customer ("Accepted"). Such acceptance means that the Customer is satisfied with the works performed and, therefore, no claim shall be accepted by the Company after such acceptance, save for Defects that could not have been discovered at the time the works were Accepted. If on completion of the works the Customer fails to carry out the inspection or fails to notify the Company of any Defects in the works the Defects which would have been apparent on reasonable inspection shall be deemed Accepted irrespective of any failure by the Customer to sign any acceptance documentation.

If Defects in the works appears within 30 days after completion of the works the Customer shall immediately inform the Company and upon the Company's request allow the Company, or its appointed third party, all reasonable access to carry out the investigation, take samples, make an endoscopic search or take any measures the Company reasonably deems appropriate in its sole discretion to find out the origin of the problem. **The Company shall have no liability whatsoever for Defects unless:**

- (i) the Defects have been reported to the Company where reasonably practicable within 7 days of their coming to the Customer's attention and in all cases without undue delay; and
- (ii) the Customer allows the Company, or its appointed third party, upon the Company's request all reasonable access to carry out the investigation, take samples, make an endoscopic search or take any measures the Company reasonably deems appropriate in its sole discretion to find out the origin of the problem.

**No claim can be brought against the Company for Defects which appear more than 30 days after completion of the works, unless:**

- (a) the Customer proves that such Defect is exclusively and directly due to the gross negligence of the Company; and
- (b) the Customer complies with 11 (i) and (ii) above.

The Company's sole obligation (and the Customer's sole remedy) shall be in relation to works where the Company finds there to be Defects, and shall be at the Company's election, (1) the re-performance/repair of the Contract works which the Company determines require to be re-performed / repaired as a result of the Defects, within a reasonable period (as determined by the Company having regard to the circumstances and in any event not later than within three months of receiving the written notification), or (2) a reduction in the Contract Price that the Company determines to be fairly attributable to the Contract works which would require to be re-performed as a result of the Defects, or (3) (if the Contract Price has already been paid by the Customer to the Company) to refund the amounts already paid by the Customer that the Company determines to be fairly attributable to the Contract works which would require to be re-performed as a result of the Defects.

For the avoidance of doubt, the Company is not responsible for:

- Defects arising as a result of the drawings, design, specification or methodology provided by the Customer;
- works Accepted by the Customer;
- the materials supplied by the Customer including any defects in, or Defects caused by, the materials supplied by the Customer;
- willful damage, negligence, misuse by the Customer or failure by the Customer to comply with any good practice operating conditions which apply to the furnace or any Defects caused by excessive operating, excessive temperatures or exceeding known tolerances or other abnormal operating conditions;
- repairs or modifications by the Customer or any third party without prior agreement of the Company; and/ or
- fair wear and tear.

In the event that the Company shall repair or re-perform the works, the Customer will provide the Company with all reasonable and clear access to perform the works which may include removal of material or structures as well as supplying any equipment, materials or structures necessary to allow the Company to perform the works, perform the works safely and perform the works in accordance with local regulatory requirements.

**SUBJECT ALWAYS TO CONDITION 12, THE PROVISIONS OF THIS CONDITION 11 ARE THE SOLE AND EXCLUSIVE LIABILITY OF THE COMPANY AND THE SOLE AND EXCLUSIVE REMEDY OF THE CUSTOMER FOR DEFECTS AND IS IN LIEU OF OTHER WARRANTIES, REPRESENTATIONS, AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, WHICH ARE EXPRESSLY DISCLAIMED BY THE COMPANY.**

#### 12. Limitation of the Company's Responsibility: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION 12.

(WITHOUT PREJUDICE TO BUT NOTWITHSTANDING THE SOLE AND EXCLUSIVE LIABILITY OF THE COMPANY FOR (a) DELAY, AT CONDITION 7; AND (b) DEFECTS, AT CONDITION 11) THE TOTAL AGGREGATE LIABILITY OF THE COMPANY WITH RESPECT TO THE CONTRACT, OR ANY BREACH OF THE CONTRACT, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) INDEMNITY, STRICT LIABILITY, UNDER STATUTE, CODE OR OTHERWISE, (INCLUDING LIABILITY FOR RECOVERY OF SUMS PAID BY THE CUSTOMER AND FOR ALL DAMAGES, COSTS, LOSSES, FEES, EXPENSES AND PROCEEDINGS) SHALL NOT EXCEED AS FOLLOWS:

1. Any liability of the Company in respect of any loss or damage to the real property or tangible personal property of the Customer and any third party arising out of, or in the course of or by reason of the carrying out of the works (which shall include the occurrence and any occurrence arising directly or indirectly out of the occurrence) resulting from legal negligence on the part of the Company or its agents employees or subcontractors (howsoever arising, whether in contract, tort or otherwise) will be limited to the payment of compensation for such loss or damage not exceeding the Public and Product Liability Insurance £5,000,000 per event or in aggregate indemnity limit that operates within Chapman Brack insurance program.
2. Any liability of the Company in respect of any loss or damage to the Contract Works, arising out of an insured event or series of events, will be limited to the payment of compensation for such loss or damage not exceeding the applicable Contract Works Insurance per event or in aggregate indemnity limit that operates within Chapman Brack insurance program applicable to the Contract and which in no event shall exceed in the aggregate of any and all claims the Contract Price.
3. Subject to the indemnity limits that operate within the Chapman Brack insurance program for liability for loss or damage at condition 12 sub-condition 1 and sub-condition 2, and subject to the below provisions of this Condition 12, the total liability of the Company for any and all other liabilities, claims, losses, expenses, damages (whether liquidated or otherwise), costs fees and proceedings shall not exceed in aggregate the total amount paid by the Customer to the Company in relation to the Contract Price.

**NOTWITHSTANDING CONDITION 12 SUB-CONDITIONS 1,2 AND 3, IN NO EVENT SHALL THE COMPANY BE LIABLE FOR:**

- (i) LOSS OF USE (WHETHER DIRECT OR INDIRECT);
- (ii) LOSS OF ACTUAL OR ANTICIPATED PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT);
- (iii) LOSS OF REVENUE, LOSS OF PRODUCTION, OR LOSS OF BUSINESS (IN EACH CASE, WHETHER DIRECT OR INDIRECT);
- (iv) LOSS OF AGREEMENTS OR CONTRACTS (IN EACH CASE, WHETHER DIRECT OR INDIRECT)
- (v) LOSS OF GOODWILL, LOSS OF REPUTATION, OR LOSS OF OPPORTUNITY (IN EACH CASE WHETHER DIRECT OR INDIRECT);
- (vi) LOSS OF ANTICIPATED SAVINGS OR LOSS OF MARGIN (IN EACH CASE, WHETHER DIRECT OR INDIRECT);
- (vii) ANY SPECIAL, INDIRECT, CONSEQUENTIAL LOSS OR DAMAGE OR PUNITIVE DAMAGES OF ANY KIND, OR
- (viii) (SUBJECT TO TO CONDITION 12 SUBCONDITIONS 1 OR 2) ANY AMOUNT IN EXCESS OF THE TOTAL AMOUNT PAID TO THE COMPANY IN RELATION TO THE CONTRACT PRICE, HOWSOEVER CAUSED INCLUDING, WITHOUT LIMITATION, BY NEGLIGENCE AND/OR ARISING FROM BREACH OF, OR DEFECT OR DELAY IN PERFORMANCE OF, ANY OF THE COMPANY'S OBLIGATIONS UNDER THESE CONDITIONS.

Where, and to the extent that, it is prohibited by any law applicable to the Contract to exclude or restrict the Company's liability in relation to the following, nothing in these Conditions 1 to 18 (inclusive) shall operate to exclude or restrict the Company's liability, if any, for: (i) death or personal injury resulting from its negligence or the negligence of any person for whom it is vicariously liable, (ii) fraud or fraudulent misrepresentation or for the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable, or (iii) breach of its obligations relating to title; or (iv) any other matter for which (and to the extent to which) it is so prohibited.

The Company's prices are determined on the basis of the limits of liability set forth in these Conditions. The Customer may by written notice to the Company request the Company to agree to a higher limit of liability. In the event the Company agrees to a higher limit of liability it shall be contingent upon insurance coverage for such higher limit being obtained, the Company shall use reasonable endeavours to effect insurance up to such limit and the Customer shall pay upon demand the amount of all premiums. The Customer shall disclose such information as the insurer(s) shall require. Nothing in these Conditions shall entitle the Customer to any double coincidence of recovery against the Company howsoever arising. The Customer shall be responsible to take reasonable steps to mitigate its loss.

**13. Severance:** If any of these Conditions or part thereof shall be determined by any court or competent authority to be void, invalid, unenforceable or illegal in whole or in part, the relevant provision or part provision shall, to the extent required, be deemed to be deleted from these Conditions and such determination shall not affect the validity and enforceability of the remaining Conditions. If any void, invalid, unenforceable or illegal provision of these Conditions would be valid, enforceable and legal if some part were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable. **14. Entire Agreement:** The Contract constitutes the entire agreement between the Company and the Customer with respect to the performance of the works and supersedes all prior negotiations, representations or agreements relating thereto, whether written or oral, except to the extent that they are expressly incorporated in the Contract. No changes, alterations or modifications to the Contract shall be effective unless the same shall be in writing and signed by both parties.

**15. Patents etc.:** The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any alleged infringement of any patent, registered design, copyright, trade mark, or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether expressed or implied.

**16. Third Party Rights:** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**17. Applicable Law and Dispute:** Unless (and to the extent only) as otherwise required by a mandatory law of the territory in which Company is located, or of the country in which the works are performed, which cannot be excluded from the Contract as a matter of public policy or otherwise:

- (i) the Contract (and any non-contractual disputes/claims arising out of or in connection with the Contract) shall in all respects be governed by and construed in accordance with English Law without regard to choice or conflicts of law principles;
- (ii) the Company shall have the right (at its sole discretion) to bring an action to collect unpaid balances in the local courts in the territory in which Company's principal office is located, in the English Courts; or in the local courts in the territory where the works are performed; and
- (iii) (subject to (ii) above) the parties hereby submit to the exclusive jurisdiction of the English Courts.

**18. Language and Translations:** English shall be the legal language of this Contract, and all parties waive any right to use and/or rely upon any other language, translation or interpretation. The parties specifically agree that in the case of any inconsistencies or interpretation disputes, the English language version shall control.