

GENERAL TERMS AND CONDITIONS OF SALE

1. Definitions and Structure

In this Agreement:-

- 1.1 "Agreement" means these Terms and Conditions.
- 1.2 "Customer" means the person, company, partnership or undertaking named as the customer in the Schedule.
- 1.3 "BAKER E.L.S." means BAKER ENVIRONMENTAL LINING SERVICES whose office is at Unit 14 Court Farm, Stutton Road, Brantham, Manningtree, Essex CO11 1PW.
- 1.4 "Goods" means the services, materials, products, goods and articles of all kinds to be provided by BAKER E.L.S. to the customer under the Agreement together with any goods provided as part of the services or otherwise.
- 1.5 "Intellectual Property Rights" means all rights in the nature of patents, designs, copyright, trademarks, utility models and all other rights of a similar nature (whether registered or unregistered or capable of registration or not) in the goods or arising out of the services.
- 1.6 "Party" means a party to this Agreement.
- 1.7 "Price" means the sums specified in the Schedule as the price of the goods and price of the services.
- 1.8 "Schedule" means all invoices, quotations and other documentation relating to the supply of goods and services.
- 1.9 "Services" means the work and services (if any) to be performed by BAKER E.L.S. for the customer under this Agreement as detailed in the Schedule.

2. General

- 2.1 BAKER E.L.S. shall supply the goods and provide the services indicated in the Schedule upon the terms and conditions set out in this Agreement and in consideration of the payment of the price by the customer.
- 2.2 The acceptance of any quotation is on the basis of the following terms and conditions and of the further conditions (if any) stated in the quotation.
- 2.3 BAKER E.L.S. reserves the right at its absolute discretion to make minor variations and changes and any improvements to the goods or services or to specification of the goods or services provided that such variations, changes or improvements shall not increase the price.
- 2.4 In entering into this Agreement the customer acknowledges that there are no representations upon which it has relied other than those produced in writing.

3. Price, Payment and Retentions

- 3.1 The price is "ex works" and does not include the cost of carriage, customs duties, taxes (including without limitation value added tax), insurance or any other similar item all of which will be payable in addition by the customer.
- 3.2 BAKER E.L.S. shall be entitled to raise an invoice for the services or for a part of the services when the services of that part of the services (as the case may be) have been provided.
- 3.3 Unless otherwise agreed in writing with the Company terms of payment shall be net monthly. Net monthly payment requires the customer to pay within 30 days of date of issue of invoice.
- 3.4 Any invoice outstanding beyond this period will be referred to Daniels Silverman Limited and will be subject to a surcharge of 15% plus vat to cover the collection costs incurred. This surcharge together with all other charges and legal fees incurred will be the responsibility of the customer and will be legally enforceable.
- 3.5 If the customer fails to pay any monies on the due date then, without prejudice to any other right or remedy available, BAKER E.L.S. shall be entitled to charge the customer interest calculated on a daily basis (after as well as before any Judgment) on the outstanding monies at a rate equal to 4% above the Lloyds Bank Plc base rate from time to time prevailing.
- 3.6 Unless otherwise agreed in writing between the customer and BAKER E.L.S., the price for the goods is ex-works and even where delivery takes place pursuant to clause 4, BAKER E.L.S. shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979.
- 3.7 The customer shall provide, in writing, details of any intention to withhold monies by way of retention or to apply any discounts or other deductions howsoever arising prior to issuing an order for works. Any retentions, discounts or other deductions cannot be applied retrospectively; and any unauthorized withholding of monies due to us will be treated as a default of this Agreement and the appropriate action sought to recover these monies.

4. Delivery of Goods

- 4.1 BAKER E.L.S. shall arrange for the delivery of the goods to the address of the customer or if different to the delivery address indicated on the Schedule.
- 4.2 Any transport undertaken engaged to make such delivery shall be deemed to be the agent of the customer.
- 4.3 Without prejudice to the previous clause 4.2, because such transport undertaken is an independent undertaking, BAKER E.L.S. shall not be liable for any expense or loss (including without limitation consequential loss as defined in clause 9.7) incurred by the customer as a result of any delay in delivery or as a result of any damage, howsoever caused in the course of delivery.

5. Supply of Information and Assistance to BAKER E.L.S.

- 5.1 The customer shall promptly provide BAKER E.L.S. whenever requested by BAKER E.L.S. with all information, instructions and assistance that BAKER E.L.S. may reasonably require.
- 5.2 BAKER E.L.S. shall be entitled to rely upon all information, instructions and assistance provided by the customer. BAKER E.L.S. shall not be liable for any fault in the goods or the services attributable in whole or in part to an error in such information, instructions or assistance.

6. Supply of Information by BAKER E.L.S.

- 6.1 All drawings and particulars or quantities and dimensions submitted by BAKER E.L.S. are approximate only. Any descriptions and illustrations of the goods and services or any component thereof contained in BAKER E.L.S. brochure and other advertisement material are intended merely to present a general idea of the same and no representation contained therein shall form part of this Agreement.

7. Delivery Date

- 7.1 Any date quoted for the provision of the goods or services, whether described as a target date, delivery date, completion date, installation date or by another description is an estimate only and BAKER E.L.S. shall not be liable for any delay in the provision of the goods or services howsoever caused.

8. Facilities of the Customer

- 8.1 The customer shall promptly permit BAKER E.L.S. access to the premises of the customer at all reasonable times upon demand in order for BAKER E.L.S. to fulfill its obligations under this Agreement.

- 8.2 BAKER E.L.S. shall not be liable if the physical conditions at the address at which the goods are to be used are not of the standard required to operate the goods or if such physical conditions cause damage or deterioration to the goods.

9. Liability

- 9.1 BAKER E.L.S. charges to the customer are determined on the basis of the following limitations and exclusions of liability. The customer expressly agrees that these limitations are reasonable because of, amongst other conditions, the likelihood that the quantum of damages which may be awarded to the customer by any breach of BAKER E.L.S. of this Agreement will be disproportionately greater than the price.
- 9.2 The following provisions set out by BAKER E.L.S. entire liability to the customer (including any liability for the acts and omissions of its employees, agents or sub-contractors) in respect of:
 - 9.2.1 any breach of contractual obligation
 - 9.2.2 any tortious act or omissions
 - 9.2.3 any action arising out of misrepresentation arising out of or in connection with this Agreement.
- 9.3 To the maximum extent permissible in law all conditions and warranties which are to be implied by statute, common law or otherwise into this Agreement or relating to the goods and/or the services are hereby excluded.
- 9.4 Where defects appear in the goods or faulty workmanship is apparent in the provision of the services:
 - 9.4.1 within a period of six months after the provision of the goods or the services (as the case may be) and;

- 9.4.2 the goods have been properly used, cared for and maintained by the customer, and;
- 9.4.3 the defect or faulty workmanship arises solely from the faulty design, materials or workmanship of BAKER E.L.S. then BAKER E.L.S. shall repair, or at BAKER E.L.S. option, replace the goods or services so affected. The obligation in this clause shall be in addition to any obligation under clause 9.5 but shall be without prejudice to provisions of clause 5.2.

- 9.5 So far as BAKER E.L.S. is reasonably able to do so BAKER E.L.S. shall upon the written request and at the cost of the customer assign to the customer the benefit (so far as the same exist) of all warranties and conditions relating to quality, suitability, fitness for purpose or quiet possession contained in any contract for the purchase by BAKER E.L.S. of any produce included within the goods.

- 9.6 BAKER E.L.S. total liability in respect of any one event or series of events shall not exceed the price.

- 9.7 BAKER E.L.S. shall in no circumstances be liable to the customer for any consequential loss. In this clause "consequential loss" shall include loss in respect of loss of profit or loss of business.

- 9.8 Without prejudice to clause 10 nothing in this Agreement shall limit BAKER E.L.S. liability to the customer for:-

- 9.8.1 death or personal injury caused by the negligence of BAKER E.L.S., its employees, agents or subcontractors, or;

- 9.8.2 damage suffered by the customer as a result of any breach by BAKER E.L.S. of the condition as to title or the warranty, as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

- 9.9 Nothing in this clause 9 shall confer any right or remedy upon the customer to which it would not be otherwise entitled.

- 9.10 Provisions of this clause 9 shall survive any termination of the whole or any part of this Agreement.

10. Indemnity

- 10.1 If any process is to be applied to the goods or the services by BAKER E.L.S. in accordance with a specification or direction (as the case may be) submitted by the customer, the customer shall indemnify and hold harmless BAKER E.L.S. from and against all loss, damages, costs and expenses awarded against or incurred by BAKER E.L.S. in connection with or paid or agreed to be paid by BAKER E.L.S. in settlement of any claim or infringement or alleged infringement of any intellectual property rights of any person which results from BAKER E.L.S. use of the customer's specification or from BAKER E.L.S. complying with the customer's directions as the case may be.

11. Retention of Title and Risk

- 11.1 The goods shall continue to be in the ownership of BAKER E.L.S. until the customer has paid for the goods and the services in full.

- 11.2 Whilst the goods are owned by BAKER E.L.S. the customer shall keep and store the goods at the customer's premises in such a way as to keep them clearly identified as being the property of BAKER E.L.S. and shall take such care of them (including effecting all proper insurance) as a careful businessman would take care of his own property.

- 11.3 Whilst BAKER E.L.S. remains the owner of the goods, BAKER E.L.S. shall be entitled to the return of the goods and BAKER E.L.S. may enter on to the customer's premises for the purposes of removing the goods (the cost incurred in doing so being borne by the customer). The foregoing rights of BAKER E.L.S. are in addition to and not in lieu of any other rights it may have at common law or by statute including the right to payment for the goods and the right to recover the goods.

- 11.5 Risk in the goods shall pass to the customer upon confirmation of goods and/or services to be supplied in the Schedule.

- 11.6 The provisions of this clause 11 shall survive any termination of this Agreement.

12. Assignment and Agreement

- 12.1 BAKER E.L.S. shall be free as it sees fit from time to time to assign the whole of this Agreement, to sub-contract the manufacture of the whole or any part of the goods, or to sub-contract the undertaking of the whole or any part of the services.

- 12.2 This Agreement supersedes all prior discussions between the parties and all prior memoranda of intent or understanding and all previous documentation.

- 12.3 The failure of either party at any time to enforce any provision of this Agreement shall not be deemed a waiver of any such provision or of any other provision or of such party's right thereafter to enforce any provision on this Agreement.

13. Force Majeure

- 13.1 Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation to the extent that such delay or failure is caused by an event (including without limitation an event such as a strike, lock out or other industrial action or trade dispute) outside the control of that party and which that party is not reasonably able to prevent or to circumvent.

14. Interpretation

In this Agreement:

- 14.1 The use of the plural shall include the singular and the use of the singular shall include the plural.

- 14.2 The clause headings used are for reference purposes only and shall not be taken into account in the construction of this Agreement.

- 14.3 Reference to a clause is to a clause of this Agreement.

15. Governing Laws and Disputes

- 15.1 The construction, validity and performance of this Agreement shall be governed in all respects by English law.

- 15.2 All disputes arising in any way out of or affecting this Agreement shall be subject to the non-exclusive jurisdiction of the English Courts to which the parties agree to submit.

16. Additional Terms and Conditions

- 16.1 BAKER E.L.S. use solvent based materials, mainly styrene. Styrene emissions will contaminate certain foodstuffs both liquid and solid, raw and finished (herein called "sensitive items"). It is at all times the responsibility of the customer to remove all sensitive items from the locality, including any adjacent areas where fumes may permeate. BAKER E.L.S. will always provide appropriate air movers or fume extractors and carry out the works with the utmost care. If in doubt please discuss any concerns with the BAKER E.L.S. Project Manager. As detailed in clause 5.2 it is essential that accurate and comprehensive details of any chemical environment be passed to BAKER E.L.S.. This would include without limitation items such as concentrations, operating temperatures, cleaning agents and machinery fluids and other chemicals which may be introduced to the work area. Any product failure, due to the customer's oversight in accurately describing the environment, must remain the responsibility of the customer.

- 16.3 In the event that preparation (i.e. gritblasting) should reveal a previously latent defect, BAKER E.L.S. reserve the right to charge the customer in accordance with any related additional works. Alternatively the customer may withdraw from the contract and BAKER E.L.S. will amend its invoice to cover all completed works, dispersions and other related costs.

- 16.4 Where facilities operate at high temperatures thermal shock should be avoided. For example where liquids are stored or used above 55 degrees centigrade in a vessel, temperatures need to be increased gradually.

- 16.5 The issuing of any form of tender or quotation by BAKER E.L.S. must not be interpreted as acceptance of any terms, conditions or any form of pre-contract acceptance of special clauses (or otherwise) or conditions whatsoever. Such matters remain subject for negotiation and will be committed to by way of the Schedule in a and authorised by both parties.

- 16.6 BAKER E.L.S. reserve the right to impose standing time charges at a rate of £98 per hour per two man team where the customer is responsible for delays.