

## ASHBROOK TERMS AND CONDITIONS OF CONTRACT ("Company Terms") - Revision 3

The following terms and conditions "Company Terms" are the standard terms and conditions on which each of the companies in the ASHBROOK group trade. No variation or amendment to these terms and conditions shall be effective unless made by specific written agreement of a director of the Company (as defined below). All such variations must be agreed in writing before commencement of the Contract and in the event of no such written agreement being made such variation(s) shall be deemed not to have taken effect. All contracts are deemed to have commenced on receipt of an order or instruction to proceed.

### **A. DEFINITIONS AND INTERPRETATION**

A1. The terms "Company" and "Owner" shall both mean whichever of:

- a) J K Ashbrook Ltd, company number 05479796
- b) Ashbrook (Warrington) Ltd, company number 10499303
- c) Ashbrook (Bangor) Ltd, company number 10499723

is providing or intends to provide the goods or services stated overleaf and/or in the attached correspondence, being the Company and/or Owner also stated overleaf and/or in the attached correspondence.

A2. The terms "Hirer" and "Customer" means the person or persons who enter into the Contract with the Company.

A3. The "Contract" means these terms and conditions combined with the Company's written quote overleaf or annexed hereto.

A4. Unless a director of the Company agrees otherwise in signed writing these terms shall be deemed to be agreed, to the exclusion of any other terms and conditions, and the Contract formed by the Customer procuring the services, purchasing the goods, hiring the plant or issuing an instruction to proceed with any activity including but not limited to the ordering of materials.

### **B. LIABILITY**

B1. Subject to clause B3 the Company shall under no circumstances be liable for any direct, indirect, special or consequential losses (including loss of anticipated profit or third party claims) howsoever arising either from breach or non-performance of any of its obligations under the Contract or from the supply of or the intended use of the goods or services even if the Company has been advised of the possibility of such potential loss.

B2. Further and without prejudice to any other term of this Contract where liability is limited to a lesser amount the liability of the Company whether in contract, in tort, for negligence, breach of statutory duty or otherwise shall not exceed the amount of one hundred thousand pounds sterling (£100,000).

B3. Nothing in this contract is intended to exclude or limit liability which cannot be limited by law, specifically liability for loss arising from death or personal injury resulting from the proven negligence of the Company and for any liability arising from fraudulent misrepresentation of the Company.

B4. Whilst the Company will use all reasonable endeavours to fulfil its contractual obligations hereunder, it shall not be liable for any delay, failure to perform or breach of contract brought about or attributable to circumstances beyond the reasonable control of the Company including but not limited to war, civil strife, strikes by labour force, inclement weather, flood, fire, toxic chemicals, radiation, blockades, embargoes, shortages of materials or any other recognized force majeure event.

B5. Without prejudice to any other exclusion or limitation of liability in this Contract, such liability of the Company for any claim or claims shall be limited to such sum as would be just and equitable for the Company to pay having regard to the extent of its responsibility for the loss or damage suffered as a result of the occurrence or series of occurrences in question ("the loss and damage") and on the assumption that:

B5.1 all other contractors, sub-contractors and consultants shall have provided contractual undertakings on terms no less onerous than those of this Contract to the Customer in respect of the carrying out of their obligations;

B5.2 there are no exclusions of or limitations of liability nor joint insurances or co-insurance provisions between the Customer and any other party referred to in this clause and any such other party who is responsible to any extent for the loss and damage is contractually liable to the client for the loss and damage; and

B5.3 all other contractors, sub-contractors and consultants have paid to the Customer such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

B6. The Company shall have no liability for any claims relating to tree felling, underground services, pollution & contamination or terrorism.

### **C. GROUNDWORKS, SITE WORKS AND PAVING**

C1. All sites will be assumed to have good access for large articulated vehicles. Before commencement of the Contract the site is to be prepared by others and in our opinion be ready for excavation and erection machinery to travel on. An area must also be available for site materials and equipment. If clearance and access to the site has to be done by the Company it will be charged under clause D6 as extra works.

C2. The site is assumed to have good ground bearing capacity, to be suitable for plant to safely operate and have no ground water problems. If any of the foregoing prove to be untrue works undertaken to remedy such issues will be deemed to be extra works and charged under clause D6 accordingly.

C3. Concrete must be left for a minimum of 28 days to cure before any load can be applied to it unless specified by a manager or director of the Company. Repairs for any damage caused by the Customers default or neglect of this condition shall be charged accordingly.

C4. If the Company causes damage to any cables, water, gas or electricity mains, sewers, drains or any other underground services, the existence of which and precise location of which have not been disclosed to the Company in writing prior to the commencement of the Contract then in any such event the Company shall have no liability for loss or damage of whatsoever kind caused to the Customer.

C5. Our rates do not allow for traffic control/management, which if required would be the subject of additional charge, dependant upon the level of involvement necessary; the Company reserves the right to require the Customer to appoint a separate traffic management system.

C6. Title to all goods and materials shall not pass to the Customer until payment has been received in cleared funds of the full contract price. In the event of non-payment the Company reserves the right to re-enter the site or any of the Customer's premises to repossess the goods, materials and/or proceeds of sale to the value outstanding from the Customer.

C7. The risk for any loss or damage to the goods or materials delivered to the site rests with the Customer once delivered to site and it is the Customers responsibility to insure against such risk regardless of whether title in the goods or materials has yet to pass to the Customer under clause C6.

C8. Where the Company is delivering or removing materials or goods from the Customers site or premises the risk for such goods and materials in transit rests with the Customer.

### **D. PAYMENT**

D1. Upon completion or where the Company requires a stage payment a detailed account will be forwarded by the Company to the Customer and the Customer shall make payment within 14 days from invoice date unless other payment terms are agreed in signed writing by an authorised representative of the Company. For the avoidance of doubt payment must be made in accordance with this clause D1 regardless of whether the services, goods, works, repairs or hire forms part of a larger contract or whether the Customer is in any other way awaiting payment from a third party. The Customers attention is drawn to the fact that pay-when-paid is now illegal under the Construction Act.

D2. In the event of any dispute regarding the payment due, the admissibility of any invoice or of any variation to the contract the whole matter shall be referred by the Company to a qualified Quantity Surveyor, whose decision is final and binding.

D3. The Company reserves the right to require an advance payment of the fee upon the commencement of the Contract. Where no account has previously been opened by the Customer with the Company or satisfactory references are unavailable the Company reserves the right to operate only on a payment in advance basis.

D4. If any payment due under this Contract is not paid in full 14 days after the invoice (or other due date agreed in signed writing under clause D1), interest and administrative charges will be charged in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the due date to the date of payment at the rate of Bank of England base rate plus 8%.

D5. Time is of the essence for any payments to the Company under this Contract.

D6. Extra or additional works shall be based on a rate of double the normal hourly rate for each operative engaged on the site. The cost of all materials shall be the current local costs. The sum total of the foregoing material costs shall incur an additional charge of 15% to cover overheads and profit.

D7. Where applicable VAT, or any similar replacement tax, will be charged in addition to the quoted fee at the rate prevailing at the time of the invoice.

D8. Whilst the Company takes every care preparing quotations, costings or similar documents they are based on current day rates and costs. All quotations are therefore only valid for 30 days and the Company reserves the right to pass on increases in labour or material costs which are notified to the Company during the Contract.

D9. Where there are undue delays to the commencement of the contract, caused by or attributable to the actions or defaults of the Customer all increase in labour and materials shall be passed on to the Customer.

D10. The Company's costings and quotations assume free use of all on-site services.

D11. In addition to clauses C1 and C2 the Company's rates do not allow for any other hazards or unforeseen circumstances not disclosed to the Company in advance of the Company's quotation or for any subsequent increase in the depth or height of the works and the Customer acknowledges that the above circumstances will lead to an increased fee.

D12. Our rates for paving services are based upon undertaking the whole of the works and services in one visit to site, unless otherwise stated, during normal working hours Monday to Friday. Where we are required to undertake work outside this period an extra charge under clause D6 is payable.

D13. Main contractor discounts can only be agreed by a director of the Company.

D14. In the event that the quantity of work upon which the Company's quoted rates are based, is reduced in size or scope, the Company reserves the right to reappraise the affected items. For the avoidance of doubt where the size or scope of works is reduced the quoted rates will not be reduced on a pro-rata basis due to the effect of economies of scale and mobilisation/delivery costs.

D15. Where the Company is given a written contract specification to quote on by the Customer or Customer's agent or representative it is not implied that we agree with its suitability for the intended purpose. The Company can not and does not accept any responsibility or liability for any aspects of overall design or foundation weakness, drainage and design falls efficiency.

D16. Any quotation or offer made by the Company is subject to the availability of labour, plant, fuel and materials and we do not accept any responsibility for programme delay due to non or restricted availability of these items.

### **E. HIRE OF PLANT**

E1. Where plant is required as part of the groundworks, site works or paving services or hired in separately to any other commission then the Construction Plant Hire Association's (CPA) Model Conditions for the Hiring of Plant (2011) apply. Where there is a conflict between the CPA Model Conditions and these Company terms then these Company terms will prevail.

E2. The Customer confirms he is aware that additional terms apply for:

- Contracts involving crusher hire, concrete pumping, crane hire, construction hoists or lifting
- Contracts where the Customer is a consumer
- Contracts relating to shoring works, railway or airside work
- Contracts relating to works in salt water or other corrosive or deleterious environments

**E3. Where any of the circumstances identified in clause E2 exist it is the Customer's responsibility to notify the existence of such circumstances to the Company.**

E4. As far as is permissible by law the Customer agrees to waive any claim against the Company and to indemnify the Company against any claims, losses or damages resulting from the Customer failing to notify the Company of the circumstances listed in E2.

E5. For the avoidance of doubt the Company does not offer any insurance waiver or contract lifting services. Where contract lifting services are required the Customer should appoint a separate specialist.

E6. The Customer confirms he is aware of and accepts the Construction Plant Hire Association's Model Conditions for the Hiring of Plant (2011) and understands he has a duty to notify the Company if he is unfamiliar with any such terms so that the Company can provide such terms to the Customer.

E7. Delivery of Plant will be deemed completed:

- E7.1 where the parties agree that the Owner will transport, or arrange to transport, the Plant to the Hirer's site, at the time that the transport carrying the Plant arrives at the site and always prior to unloading; or
- E7.2 where the parties have agreed that the Hirer will collect the Plant from the Owner's depot or other agreed location, at the time that the parties agree the Plant will be made available for collection at the depot or other agreed location and always prior to loading.

### **F. GENERAL TERMS**

F1. In the event of a material breach of this Contract by either party the other party shall be entitled by written notice to terminate this Contract subject to all payments due to date being paid to the Company.

F2. Where the Customer is insolvent, unable to pay its bills as they fall due or enters into any arrangement with its creditors the Company reserves the right, without prejudice to the Company's rights to seek payment of all payments due, and to terminate this Contract immediately.

F3.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

F3.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

F4. The Company reserves the right to sub-contract in whole or in part the services or plant hire without the written agreement of the Customer.

F5. The benefit herein cannot be transferred or otherwise assigned by the Customer without the written agreement of the Company.

F6. This Contract shall be governed by and construed in accordance with English law.

F7. This Contract constitutes the entire understanding between the parties and supersedes and replaces all prior agreements, negotiations and discussions between the Company and the Customer

F8. In no event shall any delay, neglect or forbearance on the part of the Company in enforcing either in whole or in part any provision of this Contract be deemed to be a waiver thereof or a waiver of any other provision or shall in any way prejudice the rights of the Company under this Contract.

### **G. TRANSPORT**

G1. If the Company contracts separately to other services to provide transport services this will be done under the Road Haulage Association Conditions of Carriage 2009 ("RHA Conditions"). Where there is a conflict between the RHA Conditions and these Company terms then these Company terms will prevail.

G2. Delivery on transport services contracts by the Company will be deemed completed at the time that the Company transport arrives at the site and always prior to unloading.