



Express Contract Drying Ltd – Terms and Conditions

For the sale of contract spray drying and blending services and supply of food ingredients

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

"Buyer"	the person, firm or company who purchases the Products from the Company.
"Company"	Express Contract Drying Ltd, 1 Station Road, Tregaron, SY25 6HX, Ceredigion, Wales and/or its subsidiary or associated companies
"Contract"	any contract between the Company and the Buyer for the sale and purchase of the Products and Services, incorporating these conditions.
"Delivery Point"	the place where delivery of the Products or resultant Products manufactured as a result of the services is to take place under condition 4.
"Products"	any contract spray drying, contract blending service or any Products and Services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
"Sale Order Confirmation"	the purchase or call off for a delivery of the Products and Services issued by the Company to the Buyer.
" Product Recall"	the process by which a product is removed from the market, where the product has reached consumers and they are advised to return or destroy products supplied to them
" Product Withdrawal"	the process by which a product is removed from the market, up to and including the retail stage and including action by producers, manufacturers, packers, distributors, wholesalers and retailers, as appropriate, but where consumers are not asked to return or destroy the product
" Emergency Procedures"	documented procedures that are in place to control and/or monitor issues relating to the safety and quality of product, which require the intervention of the Buyer's management team

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Products by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Products subject to these conditions.

2.5 It is the duty of the Buyer to ensure an order placed by the Buyer has been accepted by the Company .

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches a Sale Order Confirmation to the Buyer.

3. DESCRIPTION

The quantity and description of the Products shall be as set out in the Company's quotation or the Sale Order Confirmation only.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, all deliveries made under these Conditions shall be in accordance with the relevant Incoterm as laid down by the International Chamber of Commerce and set out in the Sale Order Confirmation.

4.2 Any dates specified by the Company for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products caused by a supplier of the Products to the Company and which is therefore outside the reasonable control of the Company, nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days from date of receipt or unless otherwise agreed in writing between the parties.

4.4 Where the Company is required to take out foreign exchange cover ("**FX Cover**") in relation to the purchase and subsequent supply of Products to the Buyer, the Buyer shall be liable for all costs charges or penalties in relation to the FX Cover and suffered by the Company in relation to any delay or cancellation of the contract caused either directly or indirectly by the Buyer.

4.5 If for any reason (except for loss or damage caused by the Company's own negligence) the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because of any default on behalf of the Buyer:

4.5.1 risk in the Products shall pass to the Buyer;

4.5.2 the Products shall be deemed to have been delivered; and

4.5.3 the Company may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Products and adequate storage facilities for the Products.

4.7 If the Company delivers to the Buyer a quantity of Products of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such products at the pro rata Contract rate.

4.8 The Buyer shall not be deemed to have accepted any Products until it has had 24 hours to inspect them following delivery. After the expiry of such 24 hour period, the Buyer will be deemed to have accepted the Products.

5. ACCELERATED DELIVERY

5.1 The Buyer may, subject to the availability of the Products, request that the delivery date be brought forward by:

5.1.1 sending to the Company a written request to bring the delivery date forward;

5.1.2 the Company sending an amended Sale Order Confirmation to the Buyer; and

5.1.3 the Buyer signing and returning a copy of the amended Sale Order Confirmation scanned by email or by fax.

6. NON-DELIVERY

6.1 The quantity of any consignment of Products as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

6.2 Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

7. RISK AND TITLE

7.1 The Products are at the risk of the Buyer from the time of delivery.

7.2 Ownership of the Products shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Products; and

7.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

7.3 Until ownership of the Products has passed to the Buyer, the Buyer shall:

- 7.3.1 store the Products (at no cost to the Company) separately from all other products of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- 7.3.3 maintain the Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

7.4 The Buyer may resell the Products before ownership has passed to it solely on the following conditions:

- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 7.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.4.3 the Buyer makes it known they do not yet have title to the Product

7.5 The Buyer's right to possession of the Products shall terminate immediately if:

- 7.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 7.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.5.3 the Buyer encumbers or in any way changes any of the Products.

7.6 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.8 Where the Company is unable to determine whether any Products are the products in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all products of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.

8. PRICE

Unless otherwise agreed by the Company in writing, the price for the Products shall be the price set out in the Quotation

9. PAYMENT

9.1 Subject to condition 9.4, payment of the price for the Products is due in the currency and by the payment date stated in the Quotation. In the event of a payment date not being mentioned, the buyer agrees to pay the Company within 30 days from date of invoice which are the normal payment terms of the Company

9.2 Time for payment shall be of the essence.

9.3 No payment shall be deemed to have been received until the Company has received cleared funds.

9.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

9.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 For the purposes of this clause, "Intellectual Property Rights" shall mean: patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names/rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

10.2 All copyright and other Intellectual Property Rights in all work, including all work of a preparatory or design nature, or developed or created from such work in carrying out on the behalf of the Buyer shall be the undisputed property of the Company.

10.3 In the event of the Company supplying to the Buyer any material in which the Company owns the copyright or any other Intellectual Property Rights such material shall be supplied by the Company: (i) under a non-exclusive, non-transferable/ nonsublicensable licence which may be terminated by the Company on immediate notice; and (ii) to be used only by the Buyer.

11. CONFIDENTIALITY

11.1 For the purposes of these terms and conditions "Confidential Information" shall mean: information in whatever form (including, without limitation, in written, oral, visual, electronic or other form and wherever located) relating to: (i) the business, customers, products, affairs and finances of the Company, a member of the Company group or their clients; and (ii) trade secrets including, without limitation, technical data and know-how relating to the business of the Company, a member of the Company's group or its clients or any of their suppliers, customers, agents, distributors, shareholders, management or business contacts, and Confidential Information shall include (without limitation) information that the Buyer (or its personnel) creates, develops, receives or obtains in connection with its engagement pursuant to these terms and conditions, whether or not such information is marked confidential.

11.2 The Buyer shall not (except in the proper course of its or his duties), either during the term of these Terms and Conditions or at any time after the termination, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information.

This restriction does not apply to:

- a. any use or disclosure authorised by the Company or required by law; or
- b. any information which is already in, or comes into, the public domain otherwise than through the Company.

12. QUALITY

12.1 The Company warrants that (subject to the other provisions of these conditions) on delivery the Products shall:

- be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- be reasonably fit for any particular purpose for which the Products are being bought if the Buyer had made known that purpose to the Company in writing.

12.2 The Company shall not be liable for a breach of any of its warranties in condition 12.1 unless:

- the Buyer gives written notice of the defect to the Company within a reasonable period not exceeding 30 calendar days from delivery of goods; and
- the Company is given a reasonable opportunity after receiving the notice of examining such Products and the Buyer (if asked to do so by the Company) returns such Products to the Company's place of business at the Company's cost for the examination to take place there.

12.3 The Company shall not be liable for a breach of the warranties in condition 12.1 or otherwise if:

- the Buyer makes any use of the Products after it is aware or would have been aware had it inspected/tested the Products in accordance with good commercial practice that the Products do not comply with the warranties in condition 10.1 and/or the Products do not comply with the description in the Sale Order Confirmation; or
- the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage or use of the Products or (if there are none) good trade practice.

12.4 Subject to condition 12.2 and condition 12.3, if any of the Products do not conform with any of the warranties in condition 12.1 the Company shall at its option replace such Products or refund the price of such Products at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return such Products.

12.5 If the Company complies with condition 12.4 it shall have no further liability for a breach of any of the warranties in condition 12.1 in respect of such Products.

13. PRODUCT RECALL, PRODUCT WITHDRAWAL AND EMERGENCY PROCEDURES

13.1 Where either party reasonably believes that the Products may be generally defective in such a way that is prudent to implement a Product Recall or Product Withdrawal, that party shall promptly inform the other of the relevant circumstances.

13.2 If the Company reasonably believes that a Product Recall or Product Withdrawal is necessary, then the Buyer shall take such steps as are necessary to implement such a Product Recall or Product Withdrawal, will be fully co-operative at all times and comply with any instructions issued by the Company.

13.3 In the event of a serious customer complaint, the Buyer shall promptly notify the Company and shall provide all relevant data and necessary assistance to allow the Company to fully investigate the incident.

13.4 The Buyer have in place clearly defined Emergency Procedures. It is the responsibility of the Buyer to ensure relevant representatives are available at all times.

14. LIMITATION OF LIABILITY

14.1 Subject to condition 4, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- any breach of these conditions;
- any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and
- any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

14.3 Nothing in these conditions excludes or limits the liability of the Company:

14.3.1 for death or personal injury caused by the Company's negligence; or

14.3.2 under section 2(3), Consumer Protection Act 1987; or

14.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

14.3.4 for fraud or fraudulent misrepresentation.

14.4 Subject to condition 11

14.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price as set out in the Sale Order Confirmation; and

14.4.2 the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

15. ASSIGNMENT

Neither party may assign the Contract or any part of it to any person, firm or company.

16. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Products ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

17. GENERAL

17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

18. TERMINATION OF CONTRACT, ORDER AND TERMS AND CONDITIONS

18.1 Without prejudice to any other rights or remedies to which the Company may be entitled, it shall be entitled to terminate or suspend any Contract or Order (whether in whole or in part) immediately, without liability in the event that;

- the Buyer commits any breach of any provisions of these Terms and Conditions, or any other provision of the Contract or Order;
- the Buyer commits any act of insolvency;
- the Buyer has in the reasonable opinion of the Company brought the name or business of the Company into disrepute;
- the Buyer has a receiver or administrator appointed of the whole or any parts of its assets;
- the Buyer has an order made or resolution passed for the winding up of its business;
- the Buyer is subject to any equivalent event or proceedings under the laws of any other jurisdiction.

18.2 These Terms and Conditions may be terminated, by either party for any reason and without notice being given; however, the reason for the termination shall be given in writing within 24 hours of the termination.

19. COMMUNICATIONS

19.1 All communications between the parties about the Contract shall be in writing and delivered by hand, sent by pre-paid first class post or sent by fax or email:

19.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

19.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

19.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or

19.2.4 if sent by email on a working day prior to 4.00pm on the day of transmission provided that the email is acknowledged by the other party prior to 5.00pm on that day, otherwise on the working day the other party acknowledged the email.

provided that in each case where delivery by hand or by fax occurs after 5.30pm on a working day or on a day which is not a working day, service shall be deemed to occur at 9am on the next following working day.

To be completed by an authorised signatory on behalf of The Buyer.

By signing these Terms and Conditions, the Buyer has confirmed that they have read and understood the Terms and Conditions and has had the opportunity to discuss the Terms and Conditions with any person or professional advisor they consider necessary before signing.

Company Name:

Registered Number:

Signatory's Position:

Signatory's Name

Signature:

Date: