

Plastic Surgeon – Terms and Conditions of Agreement – Updated October 2008

Interpretation - In these Conditions:

'CLIENT' means every person to whom the Supplier agrees to provide the Specified Service to in accordance with these Conditions

'CONTRACT' means every contract between the Client and the Supplier for the provision of the Specified Service

'DOCUMENT' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data

'SPECIFIED SERVICE' means all cosmetic repairs to household fixtures and fittings services to be provided by the Supplier to the Client

'SUPPLIER' means Plastic Surgeon Ltd, Blue Waters House, Pottery Road, Bovey Tracey, Devon TQ13 9DS

'SUPPLIER'S CHARGES' means the charges agreed between the Supplier and the Client

The headings in these Conditions are for convenience only and shall not affect their interpretation.

1 Supply of the Specified Service

1.1 The Supplier shall provide the Specified Service to the Client subject to these Conditions. Any changes or additions to the Specified Service or these Conditions must be agreed in writing by authorised signatories of the Supplier and the Client. This does not apply to Householder clients.

1.2 The Client shall at its own expense supply the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Supplier to provide the Specified Service in accordance with the Contract.

1.3 The Client shall be responsible for the content of all documents or other materials and shall ensure the accuracy of all data or other information provided to the Supplier in the course of this Contract.

1.4 The Client shall, at its own expense, retain duplicate copies of all documents or other material and data or other information provided to the Supplier and shall insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, howsoever caused.

1.5 The Client shall ensure that the Supplier is accorded sufficient access to any of the Client's premises, information, data or personnel and use of any equipment that is reasonably necessary for the completion of the Specified Service. Where the Supplier requires access to any third party premises, information, data or personnel the Client will make all reasonable efforts to arrange this for the Supplier.

1.6 All contracts for the Specified Service shall be provided as agreed between the Supplier and Client.

1.7 The Supplier may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

2 Charges

Subject to any special terms agreed, the Client shall pay the Supplier's Charges and any additional sums which are agreed, between the Supplier and the Client for the provision of the Specified Service or which in the Supplier's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.

2.1 The Supplier reserves the right to revise the Supplier's Charges in the light of any changes to the Specified Service. The Supplier will inform the Client of any proposed changes in the Supplier's Charges in writing and these changes will not be valid until accepted in writing by the Client. The Supplier will not be under any obligation to continue to provide the Specified Service until such written acceptance has been received.

2.2 All charges quoted to the Client for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

2.3 The Supplier shall be entitled to invoice the Client following completion of the specified service or at other times agreed with the Client.

The Supplier's Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days from the month end in which the invoice was dated (the "Due Date"). This does not apply to Householder clients or clients without an account.

2.4 If payment is not made on the Due Date, the Supplier shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 8% per annum above the base rate from time to time of Nat West Bank plc from the due date until the outstanding amount is paid in full. Such interest will begin to accrue 30 days after the Due Date, and will continue to accrue until judgment or sooner payment.

3 Warranties and Liability

3.1 The Supplier warrants to the Client that the Specified Service will be provided using reasonable care and skill. Where the Supplier supplies in connection with the provision of the Specified Service any goods supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier. All warranty and liability terms are non assignable and non transferable.

3.2 Subject to the conditions set out below the Supplier warrants that the Specified Service will be free from defects in material and workmanship for a period of 2 years from the date of the provision of the Specified Service (the "2 year period"). This does not apply to Householder clients.

3.3 Subject to the conditions set out below the Supplier warrants that the Specified Service to Householder clients will be free from defects in material and workmanship for a period of 12 months from the date of the provision of the Specified Service (the "12 month period").

3.4 The above warranty is given by the Supplier subject to the following conditions:

3.4.1 The Supplier shall be under no liability in respect of any defect in the Specified Service arising from any drawing, design or specification supplied by the Client;

3.4.2 The Supplier shall be under no liability in respect of any defect arising from use of strong cleaners and or solutions on any material the subject of the Specified Service, fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Specified Service without the Supplier's approval;

3.4.3 The Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total of the Supplier's Charges have not been paid by the Due Date;

- 3.4.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Client shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier;
- 3.4.5 Subject as expressly provided in these Conditions, and except where the Specified Service is supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 3.4.6 Any claim by the Client which is based on any defect in the quality or condition of the Specified Service shall be notified to the Supplier promptly and in any event within 7 days from the date of the provision of the Specified Service or (where the defect or failure was not apparent on reasonable inspection but was discovered within the "2 year period") promptly, and in any event within 3 business days after discovery of any such defect or failure. If the Client does not notify the Supplier accordingly, the Supplier shall have no liability for such defect or failure. This does not apply to Householder clients.
- 3.4.7 Any claim by the Householder Client which is based on any defect in the quality or condition of the Specified Service shall be notified to the Supplier promptly and in any event within 7 days from the date of the provision of the Specified Service or (where the defect or failure was not apparent on reasonable inspection but was discovered within the "12 month period") promptly, and in any event within 3 business days after discovery of any such defect or failure. If the Client does not notify the Supplier accordingly, the Supplier shall have no liability for such defect or failure.
- 3.4.8 Where any valid claim in respect of any Specified Service which is based on any defect in the quality or condition of the Specified Service is notified to the Supplier in accordance with these Conditions, the Supplier shall be entitled to make good any defect free of charge or, at the Supplier's sole discretion, refund to the Client the Supplier's Charges (or a proportionate part of the price), but the Supplier shall have no further liability to the Client.

4 Limitation of Liability

- 4.1 The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 4.2 Subject to Clause 3 above, the following provisions set out the entire financial liability of the Supplier (including liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of any breach of these Conditions and any representation, statement or tortious acts or omission including negligence arising under or in connection with the Contract.
- 4.3 All warranties, conditions and other terms implied by statute or common laws are, to the fullest extent permitted by law, excluded from the Contract.
- 4.4 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

The Client's attention is in particular drawn to the provisions of Condition 4.5

- 4.5 Subject to Conditions 4.3 and 4.4:

- 4.5.1 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Supplier's Charges; and
- 4.5.2 The Supplier shall not be liable to the Client for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 4.6 The Supplier shall not be liable to the Client 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 Supplier's obligations in relation to the Specified Service, if the delay or failure was due to any cause beyond the Supplier's reasonable control.

5 Termination

- 5.1 The Client shall be entitled to terminate the Contract at any time by giving not less than **30 days** written notice to the Supplier.
- 5.2 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within **30 days** after being required by written notice to do so, or if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.
- 5.3 The Supplier may terminate this Contract
- 5.3.1 By giving the Client **7 days** written notice if the Client is in default of any agreed payments under this Contract and has failed to remedy that default within **7 days** of receiving a written demand from the Supplier; or
- 5.3.2 By giving the Client 7 days' written notice if the Client fails to accord the Supplier the reasonable access to premises, equipment, personnel or other information required for the Supplier to perform the Specified Service.
- 5.4 In the event that this Contract is terminated before the completion of the Specified Service, the Supplier shall be entitled to payment by the Client for any part of the Specified Services performed on a quantum meruit basis.

6 General

- 6.1 These Conditions constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 6.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the 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.
- 6.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 6.4 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.
- 6.5 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts. A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from this Act.