



Conditions for the use of King Sheet Piling (KSP[®]) System

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1. CONDITIONS

These Conditions govern the terms of the Licence.

2. DEFINITIONS

In these Conditions the following definitions and rules of interpretation shall apply: -

Client; means the client referred to in the Licence.

Conditions: means these terms and conditions as published on the KSP website at least 14 days prior to submission of a request for a Licence or, for parties other than the Licensee, 14 days prior to complying with any submission requirement stipulated in the Licensor's Permit to Use published on the KSP website at least 14 days prior to said submission.

Effective Date: means the date that the Licensee makes payment of the Initial Fee under the Licence.

KSP Retaining Walls: means the King Sheet Piling (KSP[®]) retaining wall system, which falls within the scope of any of the claims of any of the Patents and/or in any pending patent applications referable to or in connection with any of the Patents. References in the Licence or the Conditions to use of KSP Retaining Walls or "KSP walls" or of the KSP System shall be taken to be synonymous with use of the rights protected by the Patents.

Licence: means the licence agreement between the Licensor and the Licensee granting a licence to the Licensee to construct the Licenced Works such licence agreement comprising together (1) the completed Licence Request (Form B) signed by the Licensee together with any documents referred to therein (2) the completed Licence Approval signed by the Licensor together with any further documents referred to therein and (3) the Conditions

Licence Approval: means the [licence approval](#) to be completed and signed by the Licensor.

Licensed Fee: means the licence fee referred to in the Conditions and defined in the licence approval.

Licence Request (Form B): means the licence request ([Form B](#)) to be completed and signed by the Licensee.

Licensed Rights: means the non-exclusive right granted to the Licensee by the Licensor under the Licence to construct the Licenced Works.

Licensed Works: means one or more KSP Retaining Walls (as more particularly described in the Licence).

Licensee: means the licensee named in the Licence.

Licensor: means Balfour Beatty Civil Engineering Limited, being the party named as licensor under the Licence, acting as agent for Balfour Beatty plc, the owner of the Patents.

Patents: means the patents and patent applications, short particulars of which are set out in Annex A.

Payment Schedule: means the Payment Schedule as Annex B.

Project: means the project referred to in the Licence at which the Licenced Works are to be constructed.

3. LICENCE

With effect from the Effective Date, the Licensor grants to the Licensee the Licensed Rights to construct the Licensed Works in accordance with the Licence and the Conditions.

4. SUITABILITY OF DESIGN & CONSTRUCTION

4.1 The Licensee shall be solely responsible for satisfying itself of the safety, adequacy, suitability and/or applicability of any design and/or construction of the Licensed Works undertaken by or on behalf of the Licensee utilising in any way the Licensed Rights.

4.2 The Licensee or any party acting on its behalf shall, in undertaking any activities utilising the Licensed Rights, exercise all due skill, and care, consistent with good and up to date industry practice.

5. LICENCE FEE

5.1 The Licence Fee payable under the Licence shall be calculated in accordance with the Payment Schedule and shall be stipulated in the Licence.

5.2 The Licensee shall pay to the Licensor the Licence Fee in the manner and at the times specified in the Payment Schedule. The Licence Fee shall be paid together with VAT where due, free and clear of any deductions or withholdings.

5.3 In the event of any delay in paying any sum due in respect of the Licence Fee by the due date, the Licensee shall pay to the Licensor interest (calculated on a daily basis) on the overdue sum from the date when such sum was due to be paid to the date of actual payment at a rate of 4% over the base rate of Barclays Bank plc from time to time.

6. PROTECTION OF THE PATENTS

6.1 The Licensee shall immediately notify the Licensor in writing (such notice to include reasonable details) if it becomes aware of any potential infringement of any of the Licensed Rights or if the Licensee receives notice from any third party challenging the Licensed Rights, opposing any of the Patents or claiming that they are invalid for any reason. The Licensor shall, in its absolute discretion, be free to decide what action, if any, to take in respect of any such Licensee notification.

6.2 Nothing in the Licence or in these Conditions shall constitute any representation or warranty by the Licensor as to the validity of any of the Patents.

7. LIABILITY, INDEMNITY AND INSURANCE

7.1 To the fullest extent permitted by law, the Licensor shall not be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential and whether economic or other) arising from the Licensee's exercise of the Licensed Rights.

7.2 The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages or losses (including any direct or indirect consequential losses), loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with:

7.2.1 The Licensee's exercise of the Licensed Rights;

7.2.2 Any claim made against the Licensor by a third party for death, personal injury or damage to property arising out of or in connection with the use by the Licensee its employees, agents, sub-licensees or subcontractors of the Licensed Rights; or

7.2.3 Any enforcement of the Licence.

8. SUB-LICENSING, ASSIGNMENT AND OTHER DEALINGS

8.1 The Licensee shall not grant sub-licences under the Licence.

8.2 The Licensee shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Licence without the prior written consent of the Licensor (such consent not to be unreasonably withheld or delayed).

9. DURATION AND TERMINATION

9.1 Unless terminated earlier in accordance with clause 0, the Licence shall remain in force until the earlier of the expiry of all the Patents and any other expiry date set out in the Licence.

9.2 Without prejudice to any rights or remedies of the Licensor that may have accrued under or in connection with the Licence, the Licensor may terminate the Licence immediately by giving written notice to the Licensee if any of the following circumstances occur: -

9.2.1 the Licensee fails to pay any sum due under the Licence on the due date for payment and remains in default not less than sixty days after being notified in writing to make such payment;

9.2.2 the Licensee commits any other material breach of the Licence which breach is irremediable or (if such breach is remediable) which the Licensee fails to remedy that breach within a period of 14 days after being notified in writing to do so;

9.2.3 the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

9.2.4 the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;

9.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding-up of the Licensee (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;

9.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Licensee (being a company);

9.2.7 the holder of a qualifying floating charge over the assets of the Licensee (being a company) has become entitled to appoint or has appointed an administrative receiver;

9.2.8 a person becomes entitled to appoint a receiver over the assets of the Licensee or a receiver is appointed over the assets of the Licensee;

9.2.9 a creditor or encumbrancer of the Licensee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

9.2.10 the Licensee challenges the validity of any of the Patents.

10. CONSEQUENCES OF TERMINATION

10.1 On expiry or termination of the Licence for any reason and subject to any express provisions set out elsewhere in the Conditions:

10.1.1 all outstanding sums payable by the Licensee to the Licensor under the Licence shall immediately become due and payable;

10.1.2 the Licensed Rights granted pursuant to the Licence shall cease forthwith.

10.2 Any provision of the Licence that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Licence shall remain in full force and effect.

10.3 Termination or expiry of the Licence shall not affect any rights, remedies, obligations or liabilities of the parties under the Licence that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any antecedent breach of the Licence.

10.4 Should any of the Patents be revoked for any reason subsequent to the issue of the Licence or commencement of construction of the Licensed Rights, such revocation shall not give the Licensee the right to withhold any fees due under the Licence nor shall the Licensee be entitled to recover any fees paid in accordance with the Licence.

11. ENTIRE AGREEMENT

The Licence and the documents expressly referred to therein constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12. VARIATION

No variation of the Licence shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13. THIRD PARTY RIGHTS

No one other than a party to the Licence, their successors and permitted assignees, shall have any right to enforce any of its terms.

14. NO PARTNERSHIP OR AGENCY

Nothing in the Licence is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

15. GOVERNING LAW

The Licence 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 the law of England and Wales.

ANNEX A - SCHEDULE – THE PATENTS

All patents & patent applications are titled “Retaining wall”.

Country	Publication no	Application no	Date filed	Date granted
UK	GB2463079	GB0815961.8	02.09.08	20.02.13
Canada	2 732 905	2,732,905	20.08.09	16.1.18
China	102144065	ZL200980134925.2	20.08.09	20.11.13
Hong Kong	1160672	12100875.6	31.01.12	23.5.14
India	311165	1446/CHENP/2011	20.08.09	12.4.19
Singapore	169171	201101427-1	20.08.09	24.11.14
USA	US10,829,902 B2	13/055,839	20.08.09	10.11.20

ANNEX B - PAYMENT SCHEDULE

1. EVALUATION OF THE LICENCE FEE

The Initial Assessment of the Licence Fee, evaluated on Fee Basis A, B or C as set out below, shall be made by the Licensor and advised to the Licensee after receipt of Licence Request (Form B) and shall be stipulated in the Licence. Unless otherwise agreed prior to issue of the Licence, Fee Basis A (the default basis) shall apply. The Final Assessment of the Licence Fee shall be assessed and paid as set out below.

1.1. FEE BASIS A

Fee Basis A is calculated by reference to the saving in steel cost (the “**Steel Cost Saving**”) generated by the use of the KSP Retaining Walls that are the subject of the Licence. The methodology for assessing the Steel Cost Saving is explained below.

The Steel Cost Saving is the difference between the cost of steel contained in each KSP Retaining Wall and the cost of steel in an equivalent continuous sheet pile wall or “SP” wall in which all sheet piles are the same in section size and pile length as the full-length piles or “kings” contained in the KSP Retaining Wall.

For each linear section of the KSP Retaining Wall with kings of common section size and length [throughout], the Steel Cost Saving is assessed as follows:

- a) Assess the cost of the steel in the linear section of the KSP Retaining Wall (kings & intermediates) = KSP Cost.
- b) Assess the cost of steel in an equivalent linear section of sheet pile wall of the same pile length and section size as the kings* = SP Cost
- c) Steel Cost Saving for linear section = (SP Cost – KSP Cost)
- d) Total Steel Cost Saving = sum of Steel Cost Savings for all linear sections of KSP Retaining Wall.

** For each section of wall with a common section size and depth of kings, apply the SP Cost/linear metre of wall to the actual length of the KSP Retaining Wall section to assess the SP Cost. Where section size or pile length of adjacent kings differs along a single wall, for the purposes of applying the appropriate SP Cost/linear metre, it shall be assumed that the change between the two differing linear sections of KSP Retaining Wall occurs mid-way between the two kings.*

The Licence Fee on Fee Basis A is a sum equivalent to 30% (Thirty Per Cent) of the Steel Cost Saving.

1.2. FEE BASIS B

Fee Basis B is calculated by reference to the cost of the steel (the “**Steel Cost**”) used in the Licensed Works.

The Licence Fee on Fee Basis B is a sum equivalent to 20% (Twenty Per Cent) of the Steel Cost.

1.3 FEE BASIS C

The Licence Fee on Basis C is calculated in the same way as Fee Basis B save that the Licence Fee is a sum equivalent to 15% (Fifteen Per Cent) of the Steel Cost.

1.4 FEE EVALUATION CRITERIA COMMON TO METHODS A, B AND C

- A KSP Retaining Wall may have more than one king adjacent to one another for various reasons, including changes of wall direction or at the end of a wall to suit the required wall extent. Short lengths of adjacent kings within a KSP Retaining Wall are not treated as lengths of conventional SP walls for fee evaluation purposes. [*3D effects mean that, geotechnically, the short lengths act together with the adjacent lengths of KSP Retaining Wall.*]
- Assessment of the Steel Cost shall include the cost of delivery of the steel to the Project site.
- The cost of any re-used or re-cycled steel (whether re-allocated from another project or otherwise) shall be [assessed at the market value for equivalent new steel at the date of assessment].

2. PAYMENT OF THE LICENCE FEE

- 2.1** An initial assessment (the “Initial Assessment”) of the Licence Fee payable under the Licence shall be made by the Licensor based on the planned KSP Retained Walls to be constructed on the Project (i.e. the Licenced Works). The Initial Assessment will be recorded in the Licence and upon completion by the parties of the Licence the Licensee shall pay to the Licensor an Initial Fee of 80% (eighty per cent) of the Initial Assessment.
- 2.2** Within 14 days of completion of the Licensed Works the Licensee shall provide the Licensor with details of the Licenced Works as constructed, to permit final assessment (the “Final Assessment”) of the Licence Fee by the Licensor. The Licensee shall provide such supporting evidence, including drawings, as the Licensor may reasonably require, to enable it to make an accurate Final Assessment. The Final Assessment shall be on the same Fee Basis (i.e. A, B or C used for calculation of the Initial Assessment) and once assessed and agreed by the parties, the Licensor shall notify the Licensee of the Final Assessment.
- 2.3** The Licensee shall, within 28 days of the date of notification of the Final Assessment under clause 2.2 pay to the Licensor (as a debt) the difference between (i) the amount paid by the Licensee in respect of the Initial Fee and (ii) the amount of the Final Assessment in full and final satisfaction of the Licence Fee under the Licence. Should the Final Assessment be an amount that is less than the amount paid by the Licensee in respect of the Initial Fee at the date of notification under clause 2.2, the Licensor shall refund to the Licensee the difference within 28 days of the date of such notification.
- 2.4** Should the Licensee fail to provide the details required of him under clause 2.2 above and such failure continues for a further 7 days following written notice from the Licensor, the Licensor (acting reasonably) shall be entitled to make the Final Assessment in the absence of such details. Such assessment shall be notified to the Licensee and after a further period of 14 days (unless otherwise agreed by the Parties) shall be deemed to be the Final Assessment for the purposes of calculating the final amount of Licence Fee due or refundable (as the case may be) under clause 2.3 above.