

## Masch

### Terms and Conditions of Business

These terms of contract set out the basis on which the offer is made. Specific clauses may be varied at the request of the Client in writing (see Condition 4 below). Where the Client has set out a specimen contract in the Terms of Reference, Masch agrees to abide by the clauses in the contract unless otherwise stated in the proposal.

#### 1. Definitions

1.1 In these Terms and Conditions ("the Conditions") the following words and phrases shall have the meaning or meanings set out below:

- (a) "Masch" includes, unless the context otherwise requires, their subcontractors, agents and employees;
- (b) "Client" means the contracting party for whom Services are performed by Masch;
- (c) "Contract" means the contract between Masch and the Client for the performance of Services and incorporating the Conditions;
- (d) "Proposal" means the document in writing in which Masch offers to carry out Services for the Client;
- (e) "Services" means any activity or service provided by Masch.

1.2 Headings have been included for convenience only and shall not affect the construction or interpretation of the Conditions.

#### 2. Masch's Assurance

2.1 Masch shall exercise all reasonable skill, care and diligence in the performance of the Services in accordance with the provisions of the Proposal.

2.2 Masch intends to employ the methods, procedures, techniques, personnel and sources of information set out in the Proposal but reserves the right to vary these at its discretion. Any significant variations will be undertaken in consultation with the Client.

2.3 Except as provided in Condition 9, the scope of the Services will not be materially altered by Masch without the Client's consent. In respect of some Services, it may be difficult to specify the precise nature of the activities required to perform the Services prior to the commencement of the work. In the event that Masch considers during the provision of the Services that a material change or addition will be required in order for it to perform the Contract, it shall notify the Client of such change and enter into negotiations with the Client in good faith concerning any changes to the terms of the Proposal of Contract.

#### 3. Confidentiality

3.1 All reports, surveys, opinions and other documents produced or commissioned by Masch will be treated by Masch as confidential to the Client for whom they were prepared and will not be disclosed or passed to any third party without the prior consent of the Client, unless the same shall have already been made public by the Client or otherwise shall have entered the public domain otherwise than through a breach by Masch of this Condition.

3.2 All such reports, surveys, etc referred to in Condition 3.1 will be prepared and made exclusively for the Client and Masch will accept no liability of whatsoever nature for claims from third parties to whom the contents of such reports, surveys, etc are made known directly or indirectly by the Client, in respect of which claims the Client shall indemnify Masch against any loss, damage, costs or expenses of whatsoever nature suffered by Masch.

3.3 Unless otherwise directed in writing by the Client, Masch retains the right to include references to the Services in its promotional material. Such references shall not include confidential material.

#### 4. Application of Conditions

4.1 Save as otherwise expressly agreed in writing signed by a Director of Masch, the Conditions shall be deemed to be incorporated in the Contract and shall apply to the total exclusion of any terms and conditions of the Client.

4.2 In the event that the Conditions are not expressly accepted by the Client they shall be deemed to have been accepted by the Client upon the making of any application to Masch for the provision of Services.

4.3 In the event of any conflict between the Conditions and any special conditions referred to in the proposal, the terms of the Proposal shall apply.

#### 5. Limitation of Masch's Liability

5.1 In the event that any of the Services are materially deficient as a result of Masch failing to provide the same in accordance with its assurance contained in Condition 2.1, the extent of Masch's liability shall be limited to the re-performance of the Services at its own cost up to the amount paid by the Client under the Contract.

5.2 Save as provided otherwise in these Conditions, Masch shall not be liable for any loss (including indirect and consequential loss), damage, delay, loss of market, costs or expenses of whatsoever nature or kind and howsoever sustained or occasioned.

5.3 Masch's liability to the Client under a Contract shall cease upon the expiry of one year from the completion of the Contract save in respect of any claims notified in detail to Masch in writing prior to the expiry of such period.

#### 6. Intellectual Property Rights

The intellectual property rights of any materials, courses or literature developed, remains the sole property of Masch whether or not commissioned by the Client.

#### 7. Force Majeure, etc

7.1 Masch shall not be liable to the Client if the provision of the Services is delayed or prevented by any one or more of the following circumstances:

- (a) The Client's failure to provide facilities, access or information;
- (b) Fire or storm or tempest;
- (c) Unavailability of labour, materials or services;
- (d) Process shutdown;
- (e) Acts of God or the public enemy;
- (f) Riot or civil commotion or war;
- (g) Strikes or labour disputes or industrial action;
- (h) Act or regulations of any governmental or other agency.

7.2 In any of those events Masch and the Client shall enter into negotiations in good faith with a view to agreeing such amendments or variations to the Contract as shall be acceptable to them.

#### 8. Disputes

8.1 If any dispute or difference shall arise between Masch and the Client concerning the meaning or effect of these Conditions or of any Contract between them to which the Conditions apply then if the same cannot be settled amicably within 30 days of the dispute or difference arising it shall be referred to the Arbitration of a single arbitrator to be agreed by the parties within 15 days or the expiry of the 30 day period referred to or in default of agreement within that period to be appointed by the President for the time being of the Law Society in London. The costs of any such arbitration shall be in the discretion of the Arbitrator whose award shall be considered and taken by Masch and the Client as final and binding.

#### 9. Notices

9.1 Any notice to be given under the Contract of the Conditions shall be in writing and sent by facsimile transmission or forwarded by first class prepaid post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the facsimile transmission or on the day following that on which the notice was posted.

#### 10. Governing Law

10.1 The Contract and these Conditions shall be governed by English Law and the Client consents to the exclusive jurisdiction of the English Courts in all matters regarding the Contract or the Conditions.