

## **Masper General Building Terms and Conditions of Trading**

1. **DEFINITIONS:** In these terms and conditions "the Company" means Masper General Building, "the Customer means the person, firm or company to whom this document is addressed, "the Goods", means all or any of the goods, works, materials and equipment to be supplied by the company and "the Services" means the services to be purchased by the Customer under the contract in which these terms and conditions are incorporated  
(Referred to herein as the contract)
2. **APPLICATION:** (a) No terms or conditions other than the Conditions of Trading shall be binding on the Company unless expressly agreed by in writing (b) The Company reserves the right to accept or reject any order and no binding contract shall exist until the Customer's order is acknowledged by the Company in writing
3. **VALIDITY** (a) Quotations are valid for a period of 30 days from the date of despatch of the Quotation The Company reserves the right to increase prices quoted according to increases in cost of Labour, Materiel's, Transport and any other matters outside its control taking effect between Quotation and delivery (b) Estimates are guide prices only based upon the information available to us at the time the estimate is provided Estimates are subject to cost variations when the final requirements are known by the Company as outlined in item no 4 below
4. **ADDITIONAL GOODS OR SERVICES, VARIATIONS & EXTRA COSTS:** Any additional goods or services, or variations to our specification or any cost incurred not included form this Quotation/Estimate (or subject to a separate Quotation/Estimate) will be charged for additionally on a Day work basis defined as follows:
  - (a) Goods and Services will be charged at the Company's current rate of charges in respect of (i) the current hourly call-out rates for a tradesman and or mate (ii) the Company's current charge for transport, (iii) the manufacturer s recommended selling price to the Trade for materials plus the Company's customary percentage increase for overheads and profit, (iv) the plant hire supplier's current charges for equipment or plant provided for the execution of the work plus the Company's customary percentage increase for overheads and profit and/or the Company's own equipment or plant charged at equivalent rates to relevant plant hire suppliers' charges plus the Company's customary percentage increase for overheads and profit.
  - (b) (i) The Company calculates the tradesman's and mate's time employed on behalf of the Customer as being the duration of hours from leaving the Company's premises to returning to the premises on completion of the performance of the contract. Therefore all travelling time to and from the Customer's premises is chargeable at the Company's current hourly charge-out rate for a tradesman or mate (ii) Whilst the Company endeavours to stock tradesman's vehicles with basic materials the Customer will be charged for the tradesman's time and transport at the Company's current charge-out rate for the travelling time and transport incurred in collecting any item of materials fixtures or fittings from a Trade merchant
5. **OVERTIME:** This Quotation/Estimate is based on the Contract being performed during the recognised normal working hours specified in the National Agreement (published by the particular trade organisation concerned). Overtime authorised by the Customer, his architect or other agent shall be an additional charge and be paid for at the Company's current rates at the date the Contract is performed
6. **PRICE FLUCTUATION:** The Quotation/Estimate is based on the market prices and rates of materials, labour and transport ruling at the date of Quotation/Estimate The Company reserve the right to amend the Quotation/Estimate to meet any variations in these prices and rates due to manufacturers price increases or legislation, Government orders, Regulations or Directions, changes in the National agreement covering wages and conditions in the industry or any other course beyond the Company's control occurring between the dispatch date of the Quotation/Estimate and completion of the performance of the Contract.
7. **TERMS OF PAYMENT & PROPERTY IN MATERIALS:** (a) Where the Customer has yet to be granted credit account status, a position of which he will be notified in writing, payment shall, at the discretion of the Company, be by cash or within 7 days from date of invoice For Customers with an approved credit account, payment shall be strictly net within 30 days from the date of invoice except for monthly progress or interim applications which shall be paid within 14 days of application date
  - (b) Failure on the part of the Customer to pay in accordance with the terms of the Contract shall entitle the Company at its option to withhold further deliveries or services until such payment has been made and further payments secured to its satisfaction In addition, interest will be charged on amounts outstanding beyond these terms at 2% above Lloyds Bank base rate ruling at the time payment becomes overdue In the event that part of an approved credit account becomes overdue, then the whole of the account shall be considered due.
  - (c) The property (both legal and equitable) in the Goods supplied shall not pass to the Customer until: (i) the purchase price of the Goods has been played in full; and  
(n) payment is made in full to the Company of any sum which is at the date of the Contract or may thereafter become due or owing from the Customer to the Company
  - (d) Unti<sup>1</sup> property in the Goods has passed to the Customer the Customer will hold the Goods in a fiduciary capacity, will not obliterate any identifying mark on the Goods or their packaging and will keep the Goods separate from any other goods.
  - (e) Where the Company is unable to determine whether any goods are the Goods the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
  - (f) The Company may at any time after payment for the Goods has become due take possession of the Goods (which for the avoidance Of doubt will include the right to stop the Goods in transit) and remove them and the Customer shall be deemed to have granted irrevocable authority to the Company to enter upon the Customer s premises or other premises where the Goods may be by its employees or agents to take possession of the Goods and (if necessary) to dismantle the Goods from anything to which they are attached Should it have been necessary to hire Equipment from a third party the Company shall be given full irrevocable authority by the Customer to enter his premises or at the premises where the equipment may be for its employees or agents to remove the said equipment
  - (g) The Company will have the right to maintain an action against the Customer for the price of the Goods notwithstanding that property in the Goods has  
Not passed.
  - (h) Nothing in the contract will constitute the Customer the agent of the Company in respect of any re-sale of the Goods by the Customer so as to confer  
Upon a third party rights against the Company
  - (i) In the event that payment is not received within the above stated terms, the Company shall be entitled to take such action as is considered necessary to secure payment Any additional costs of such recovery action shall be charged to the account of the Customer
  - (j) The Company reserves the right to make such enquiries considered necessary to establish customer creditworthiness and shall be entitled to vary credit limits in accordance with the conduct of account and/or financial risk.
8. **FORCE MAJEURE - DELIVERY & COMPLETION:** The Company will endeavour to meet delivery and or completion dates quoted but the Company shall have no liability in respect of failure to deliver or perform or delay in delivering or performing any obligations under the Contract due to any cause whatsoever nature outside its reasonable control whether arising out of any act or omission of the Company or otherwise.
9. **LIABILITY FOR RISK & INSURANCE:** (a) The Company shall not be liable to the Customer for any loss of or damage to Goods howsoever occurring after delivery to the Customer All Goods on site fixed or unfixed and all Services performed are at the sole risk of the Customer and in the event of any of the same being damaged, destroyed or stolen the Company shall be entitled to full payment in respect of the cost of replacing any such Goods and for reinstating or performing any such Services which shall be charged as an extra under clause 4 hereof.
  - (b) The Customer shall insure against loss or damage to the existing structures (together with the contents owned by him or for which he is responsible) and all unfixed Goods intended for, delivered to, placed on or adjacent to the works and intended therefore by fire , lighting , explosion, storm, tempest, flood, bursting or overflowing of water tanks apparatus or pipes, earthquake, aircraft and other Arial devices or articles dropped therefrom, riot and commotion If any loss or damage as referred to in this clause occurs then the Customer shall issue instructions for the reinstatement and making good of such loss or damage and such instructions shall be valued under clause 4 hereof.

(c) The Company shall exercise reasonable care and skill in the performance of the services (and shall comply with any site safety rules and procedures of the Customer notified to it in advance in writing). The Customer shall be responsible for insuring its property against physical damage suffered by any reason of any act omission neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agents.

**10. GUARANTEES AND EXCLUSION CLAUSES:** (a) Where the Company is not the manufacturer of the Goods or does not itself perform the services the Company will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company

(b) In respect of Goods manufactured by the Company itself the Company will free of charge within a period of 3 months from the date of despatch of the Goods or the date of the Company's invoice for such Services as appropriate, repair or at its option replace any Goods which are proved to the reasonable satisfaction of the Company to be defective in material or workmanship and perform or at its option remedy any Services which are proved to the reasonable satisfaction of the Company to be defective in Workmanship provided that these obligations will not apply where:

- (i) the Goods have been altered in any way whatsoever or have been subjected to misuse or unauthorised repair; or
- (ii) the Goods have been improperly installed or connected (unless the Company carried out such installation and connection); or
- (iii) the Customer has failed to observe any maintenance requirements relating to the Goods, or
- (iv) the Customer has failed to notify the Company of any defect or suspected defect within 14 days of the same coming to the knowledge of the Customer, or;
- (v) the Customer in breach of this or any other contract made with the Company

Any Goods replaced will belong to the Company any repaired or replacement Goods or Services performed or remedied will be guaranteed on these terms for the unexpired portion of the 3 month period.

(c) The Company shall not be liable to the Customer for any damage to the Customer's property which the Customer shall be responsible for insuring in accordance with condition 9(c).

(d) The Company shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its servants or agents, in a sum which is greater than the Contract price

(a) The Company shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any indirect or consequential (including economic) loss of any kind which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agents.

Notwithstanding the foregoing nothing in this Condition shall operate so as:

- (i) To exclude the Company's non-excludable liability in respect of death or personal injury caused by the negligence of the Company its servants or agents.
- (ii) to affect the statutory rights of the Customer where Goods are sold or Services are supplied to a Customer dealing as a consumer within the meaning of Unfair Contract Terms Act; or
- (iii) to exclude the application of section 12 of the sale of Goods Act 1979;
- (iv) to exclude liability for fraudulent misrepresentation

**11. TESTING & INSPECTION:** Any tests required by the Customer other than those normally carried out by the Company must previously be agreed separately in writing and any additional costs incurred by other tests required by the customer will be charged for extra in accordance with clause 4 hereof

**12. FIRE RISK EXEMPTION:** Notwithstanding anything contained in clause 9 hereof the Customer shall be solely responsible for all loss or damage to the contract works arising from fire howsoever caused including unfixed materials on site for the purpose of carrying out the contract works and shall indemnify the Company against such loss or damage

**13. CONTRACT CONDITIONS a MISREPRESENTATION:** The Customer acknowledges that there are no terms or conditions to this Contract other than those set out herein and this Contract was not entered into in reliance on any representation whether written or oral other than those set out in this Contract The Customer acknowledges that by accepting the offer made in our Quotation/Estimate the Customer accepts the terms and conditions of this Quotation/Estimate which form the basis of the Contract between the Company and the Customer

**14. LEGAL COMPLIANCE:** Acceptance of this Quotation/Estimate constitutes a warranty and representation by the Customer that he has complied with every applicable statute order in Council Regulation or Direction Bye-Law or other Lawful requirements, whether of the Government or any local or other lawful Authority and in particular that he has lawfully obtained every necessary licence, permit or authority that may be required in connection with the work

**15. GOODS:** The Goods included in the Company's Quotation/Estimate are selected from the Company's current merchant's range The Company reserves the right to make amendments in matters of detail to include Goods of similar specification if the Goods referred to in the Quotation/Estimate should no longer be available.

**16. NOTICES:** Any notice purported to be given under the Contract, or with regard to the Quotation/Estimate shall be deemed to have been duly served and have been received by the Customer in the course of post if sent by the Company by pre-paid letter addressed to the Customer at the Customer's last known address.

**17. THE TERMS OF THE CUSTOMER'S ORDER:** Any terms and conditions contained within the Customer's official written order shall be deemed to be superseded and made void by the terms and conditions as contained herein which invalidate the terms and conditions of the Customer's purchase order

**18. LEGAL CONSTRUCTION:** The contract shall be constructed as an English Contract and be governed by English Law and subject to the jurisdiction of the English Courts.

**19. GENERAL (a)** The headings to the clauses do not form part of these terms and Conditions of Trading and shall not be taken into account in their interpretation

(b) The terms and conditions as set out in this contract shall apply not only to this Quotation/Estimate (if accepted) but to all orders subsequently placed with us by or on behalf of the Customer in connection with the same or other work

(c) All Quotations/Estimates are strictly net and do not provide for any discounts

(d) Unless expressly stated otherwise all prices are exclusive of VAT which shall be charged at the rate and in the manner prescribed by law from time to time (\*) Notwithstanding any Contract term allowing the Customer credit payment shall become due and payable to the Company immediately upon the termination of the Contract.

(f) Where the Customer makes default under the Contract or any other Contract with the Company in payment on the due date of any sum due to the Company the Company without liability may postpone any delivery or may cancel the Contract or any other contract between the Company and the Customer but without prejudice to any right or remedy which the Company may have against the Customer in respect of such default

(g) The Contract will terminate immediately upon service of written notice of termination by the Company on the customer on the happening of any one or more of the following, namely, that the customer has suffered or allowed any execution whether legal or equitable to be levied on his/its property or obtained against him/it has failed to observe or perform any of its obligations or duties under the contract or any other contract between the Company and the Customer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the customer has ceased to trade

(h) The Company will (without prejudice to any other remedy available to it) have in respect of an unpaid debt due from the Customer a general lien on all property of the Customer in the possession of the Company for whatever purpose and whether worked upon or not and be entitled on the expiration of **not less than 14 days' notice in writing to the Customer to dispose of such property and to apply the proceeds towards the satisfaction of such debts** (l) The Company will be entitled to assign sub-contract or sub-let the contract or any part thereof.