



MMD Terms & Conditions

DEFINITION

MMD means 'Macon Management & Design Ltd.'

The client means 'the party which is entering into a contract with MMD'

The Proposal means 'the offer of work to be carried out in accordance with the clients enquiry'

Third Party Equipment means 'any equipment supplied to MMD by any third party for use in any product supplied by MMD to the client.'

PRICE

In consideration of MMD undertaking the work set out in the proposal the client agrees to pay the fees, costs and all expenses as set out in the proposal. The estimate of MMD charges and expenses is valid for three months from the date of submission, unless otherwise stated in the proposal. MMD normally invoices monthly and charges are payable within thirty days of the date of invoice. Charges cover work done on customer site, MMD offices, or elsewhere. It is the policy of MMD to review its daily rate each year on 31st March. All prices are subject to VAT at the ruling rate. Prices do not include duty of freight charges unless otherwise stated. Overdue accounts may be subjected to an interest charge at the rate approved by the Law Society.

TERM

1) This agreement is effective from the day that the acknowledgment of order is issued and thereafter shall continue unless and until terminated by one party giving to the other not less than three months notice to that effect, however it is agreed between the parties that all orders already acknowledged at the date of termination are still effective.

2) Where such cancellation renders abortive preparatory work or expenditure by MMD to meet the clients requirements a fair and reasonable cancellation charge should be payable.

3) If the client:

(a) fails to pay when due any sum payable under this agreement including any sum required by way of deposit.

(b) fails to observe or perform any of the provisions of this Agreement.

MMD may (without prejudice to any other right or remedy) after notice summarily cancel the contract and or withhold delivery of services and or stop any equipment in transit, and the payment of the price of any equipment delivered shall become immediately due.

CONFIDENTIALITY

1) For the purposes of this clause Confidential Information shall mean all information or data including all oral and visual information or data and all information or data recorded in writing or in any other medium or by any other method) disclosed to or obtained by one party from the other party or by a third party on behalf of the other party and without prejudice to the generality of the foregoing definition the term "Confidential Information" shall include but not be limited to:

(a) Any information ascertainable by the inspection or analysis of samples

(b) Any information recorded in writing and signed by the parties as having been disclosed prior to date hereof.

(c) Any information relating to a party's Operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customer and business affairs.

2) In consideration of any mutual exchange and disclosure of confidential information each party undertakes in relation to the other party's confidential information.

Macon Management and Design Limited
Unit 4, Quakers Coppice, Crewe, Cheshire, CW1 6FA, UK

(a) To maintain the same in confidence and to use it only for the purposes of this agreement and for no other purpose, and in particular but without prejudice to the generality of the foregoing, not to make any commercial use thereof or use the same for the benefit of itself or any third party other than pursuant to this Agreement, or a further Agreement with the other party.

(b) Not to copy, reproduce or reduce to writing any part thereof except as may be reasonably necessary for the aforesaid purposes and that any copies, reproductions or reductions in writing so made shall be the property of the disclosing party.

(c) Not to disclose the same whether to its Employees or to third parties except in confidence to such of its employees or Directors who need to know the same for the aforesaid purpose and provided that:

Such employees and Directors are obliged by their Contracts of Employment of Service not to disclose the same and

The receiving party shall enforce such obligations at its expense and at the request of the disclosing party insofar as breach thereof relates to the disclosing party's confidential information.

(d) To be responsible for the performance of sub-clauses (a), (b), and (c) above on the part of its employees or directors to whom the same is disclosed pursuant to sub clause (c) above.

(e) To apply thereto no lesser security measures and degree of care than those which the receiving party applies to its own confidential or proprietary information and which the receiving party warrants as providing adequate protection of such information from unauthorised disclosure, copying or use.

3) Nothing in this definition of confidential information shall be construed to limit each party's use or dissemination of information that

(a) Was in the lawful possession of the receiving party at the time of disclosure by the disclosing party without an obligation to keep confidential.

(b) Was in the public domain at the time of receipt or disclosure or subsequently becomes so, Is not Identified in writing as being proprietary or confidential pursuant to clause 2 hereof.

(c) Was originally considered proprietary under this clause but which subsequently became part of the public knowledge or literature through no fault of the receiving party.

(d) Is developed by or for the receiving party at any time independently of the information disclosed to it by the disclosing party.

(e) Has been or hereafter may be rightfully acquired from third parties without obligation to keep confidential.

(f) Consists solely of generalised ideas, concepts, know-how or techniques relating to the proposal.

4) Neither party makes any representations in respect to or warrants any confidential information provided to the other party but shall furnish the same in good faith to the best of its knowledge and ability. Without restricting the generality of the foregoing neither party makes any representations or warranties as to the merchantability or fitness for a particular purpose, or as to whether or not the exploitation of any such confidential information will infringe any patent or other rights of any other person.

5) The parties agree to keep confidential the terms of this agreement and neither shall make any announcement in relation to or otherwise publicise its contents.

WARRANTIES

1) MMD warrants that all items delivered under this Agreement will be free from defects in material and workmanship, conform to the applicable specifications as defined in the proposal, and drawings and, to the extent that detailed designs have not been furnished by the client, will be free from design defects and suitable for the purposes intended by the client. The clients approval of designs furnished by MMD shall not relieve MMD of its obligations under any provisions of this agreement including the warranty.



2) MMD warranties hereunder extend to any defect or nonconformity arising or manifesting itself within one year after delivery. With respect to items not in accordance with any such warranties the client without waiving any rights or remedies provided by law and or elsewhere under this Agreement may require MMD

(a) To correct or replace such items at MMD's risk and expense or

(b) To refund such portion of the price as shall be equitable under the circumstances. Items corrected or replaced shall be subject to the provisions of this Agreement in the same manner as those originally delivered hereunder if MMD refuses or fails promptly to correct or replace such items when requested by the client the client may itself or through any agent or sub-contractor or otherwise correct or replace such items and MMD agrees to reimburse the client for the costs incurred thereby. All warranties shall survive acceptance and payment.

3) The client will indemnify MMD against all claims in respect of any loss or damage of whatsoever nature suffered by MMD or any subsidiary or associated company, or by any employee, former employee beneficiary or contingent beneficiary of MMD or of any other person or institution arising from the use of any product supplied under this Agreement by or for the client where and to the extent that

(a) The client supplies or uses incomplete or incorrect information or fails to verify any data input on its behalf by MMD or

(b) The results of program or calculation routines have been corrupted by malfunction of telecommunication or computer or terminal equipment or programs not supplied by MMD or

(c) The client uses material supplied hereunder otherwise and strictly in accordance with the specifications and instructions of MMD and or where appropriate, the equipment manufacturer or

(d) The client allows any person who has not been trained in working with the product to operate the product or any part thereof or

(e) The client permits any person other than authorised representatives of MMD to effect any modifications or changes to the product unless expressly authorised by MMD.

LIABILITY

1) The product shall conform to the product specification. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into these terms and conditions or the Agreement to which they relate, except insofar as the same form part of a schedule hereto bearing the signature of MMD and the client

2) Except for the express warranties set out above, MMD grants no other warranties relating to defects in the design, workmanship or materials of the goods, and all other conditions warranties, stipulations or other statements whatsoever, whether express or implied, by statute at common law or otherwise howsoever, relating to such defects in the goods are hereby excluded, in particular, but without limitation to the foregoing, MMD grants no warranties (other than as provided in the warranties set out above) regarding the fitness for the purpose, performance, use, quality or merchantability of the goods, whether express or implied by statute at common law or otherwise howsoever.

3) Save as provided in this clause MMD undertakes no liability and gives no warranty in relation to defects in the third party equipment, and in particular, but without prejudice to the generality of the foregoing, it shall have no such liability regarding the fitness for purpose, quality or merchantability of the third party equipment whether express or implied statutory or otherwise, MMD shall make reasonable efforts to extend to the client if requested the benefit of any guarantee conditions or warranty concerning the third party equipment given to MMD provided that any expense reasonably incurred by MMD in extending such benefit shall be reimbursed to it by the client unless otherwise agreed in writing.

4) Neither MMD or any of its employees agents or sub-contractors shall be considered in breach of this Agreement or under any liability whatsoever to the client for non-performance, part performance, defective performance or delay in the performance of any services supplied or to be supplied or work carried out or to be carried out by MMD, its employees agents or sub-contractors hereunder, which is directly or indirectly caused by or as a result of any circumstances beyond its reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as such circumstances:

- (a) Acts of God, explosion, flood, lightning, tempest, fire or accident.
 - (b) War hostilities (whether war be declared or not) invasion, acts of foreign enemies.
 - (c) Rebellion revolution insurrection military or usurped power or civil war.
 - (d) Riot, civil commotion or disorder.
 - (e) Acts, restrictions, regulations, bye laws, refusals to grant any licences or permissions prohibitions or measures of any kind on the part of any governmental authority.
 - (f) Import or export regulations or embargoes.
 - (g) Strikes, lock outs or other industrial action or trade disputes of whatever nature whether involving employees of the Contractor or a third party.
 - (h) Defaults of suppliers or subcontractors for any reason whatsoever.
 - (i) Incompleteness or inaccuracy of any technical information which it is the responsibility of the client to provide.
 - (j) Any failure, default, delay in performance or any act or omission of any nature whatsoever on the part of the client or its employees, agents suppliers or sub contractors.
- 5) In any event not withstanding anything contained in this Agreement in no circumstances shall MMD be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof:**
- (a) For any increased costs or expenses.
 - (b) For any loss of profit, business, contracts, revenues or anticipated savings or
 - (c) For any special indirect or consequential damage of any nature whatsoever.

INTELLECTUAL PROPERTY RIGHTS

1) 'Intellectual Property' means United Kingdom and foreign patents registered and unregistered design rights, copyrights, trademarks and trading names (whether or not registered) and all other rights which may subsist in any part of the world in know how and inventions.

2) Nothing in this agreement shall be construed as:

- (a) Requiring a party to file any patent application, to secure any patent or to maintain any patent in force, or constituting a warranty or representation as to the validity or scope of any patent or other intellectual property right.
- (b) Constituting an agreement to bring or prosecute actions or suits against third parties for infringements of any intellectual property rights.
- (c) Conferring any rights to use in advertising, publicity or otherwise any name, trade name or trademark, or any contraction, abbreviation or simulation thereof.
- (d) Conferring by implication estoppel or otherwise upon a party any licence or other right (including a right of access) in or to any information or know-how or under any intellectual property rights, except the licences and rights expressly granted to such party pursuant to this Agreement.
- (e) Limiting, " any manner either party's right to discontinue or change the design or characteristics of any of its products or services at any time without notice and without liability.

3) All intellectual property rights in all original drawings designs, proposals reports and other written matter whether made



pursuant to the proposal or otherwise remain vested in MMD but MMD may grant to the client subject to such terms that it considers reasonable, full licence in respect of the application or field of use specified in or covered by the proposals to use such drawings designs, proposals, reports or other written matter for the client's own purposes. It is agreed and declared between the parties that whereas MMD shall use all its relevant knowledge and experience for the benefit of the client, it shall not be prevented from using the same in pursuance of other contracts.

PROPERTY

1) Property both legal and beneficial in the goods comprised in this contract shall remain in MMD until all sums owing to MMD whether under this contract or any other contract between MMD and the client ('the indebtedness') shall have been paid in full. Until such time the client shall hold the goods as Bailee for MMD.

2) The client unless otherwise notified by MMD or on the happening of any of the events specified in paragraph 4 ('the events') shall have the power ('the power') only to sell the goods and pass property in them in the ordinary course of business ('the resale') the client's obligations as Bailee of the goods are set out in paragraph 3 below ('the stipulations').

3) The stipulations are that until the indebtedness has been fully discharged:

(a) The goods shall not be converted into another product or admixed with other goods to make another product ('the new product') nor will the client sell the new product and pass property in it ('the sale') but if the client in breach of the above provision does convert or admix the goods property in the new product shall at the earliest moment that such vesting is possible vest and remain in MMD whether or not MMD's property in the goods is at that moment extinguished.

(b) The resale or the sale shall be for the account of MMD but unless MMD by written notice requires the payment to it of the proceeds of the resale or the sale ('the proceeds') in which case the client shall forthwith on receipt of such notice or as soon thereafter as it shall receive the proceeds make such payment the client shall retain the proceeds in a separate bank account to the order of MMD and shall not mix them with any other monies.

(c) In the event of a breach by the client of its obligations under paragraph (b) above MMD shall have the right to trace the proceeds into other monies which they may have mixed and the client shall indemnify MMD on a full indemnity basis against loss, damage costs or expenses incurred in such tracing.

(d) Until the resale or the sale MMD shall have the right to repossess the goods or take possession of the new product at any time and for this purpose shall have the right to enter on to any premises or land in the ownership or possession of the client and remove the goods and/or the new product notwithstanding that they are affixed to such premises or land and the client shall indemnify MMD on a full indemnity basis against all loss damage costs or expenses so arising including loss damage costs or expenses in respect of third party claims.

(e) The goods and the new products shall until their resale or sale be stored separately and shall be clearly marked as the property of MMD.

4) The events are:

(a) Receiver or Manager, Administrative Receiver, Administrative Supervisor or Nominee is to be or has been appointed over any of the property or assets of the client or that a petition to wind up the client is to be or has been presented or that an application for an Administration Order is to be or has been made or of any notice of a resolution to wind up the client (save for the purpose of a bona fide reconstruction or amalgamation).

(b) A decision by the client that the client intends to make any arrangements with its creditors generally.

(c) Where the client becomes insolvent or appears to be unable to pay the Debtor or appears to have no real prospect of being able to pay a debt pursuant to section 123 or 268 of the Insolvency Act 1986.

(d) Any distress or execution levied or threatened to be levied on any property or assets of the client.

(e) The inability of the client to pay its debts as they fall due.

5) The receipt of notification from MMD under paragraph 2 above or on the happening of any of the events the power of the client shall cease and the client shall immediately deliver the goods and the new property in which is then reserved to or



vested in MMD to such address as MMD shall specifically in default of which or in the alternative MMD shall have the right to enter on to any premises or land in the ownership or possession of the client and remove the goods and the client shall indemnify MMD on a full indemnity basis against all loss damage costs or expenses so arising including loss damage costs or expenses in respect of any third party claims.

ACCESS TO EQUIPMENT

MMD shall at all times have reasonable access to the equipment to carry out its obligations hereunder. The engineers and staff of the client will render full cooperation to assist MMD in carrying out its obligations hereunder. The customer will provide adequate working space and facilities to enable MMD to carry out its obligations under this contract.

INSPECTION AND TESTS

MMD products are carefully inspected and where practicable, submitted to MMD standard tests at MMD works before dispatch. If tests other than those specified in MMD's tender and/or specification are required, these will be charged for. In the event of any delay on the clients part in attending such tests or in carrying out any inspection required by the client after seven days notice that MMD is ready, the tests will proceed in the clients absence and shall be deemed to have been made in the clients presence and the inspection will be deemed to have been made by the client. In the case of tests being carried out on site, they shall be carried out within 2 weeks after delivery and 14 days notice in writing shall be given to MMD so that MMD's representative may have reasonable opportunity of witnessing these tests if MMD so desire. Should the result of these tests not come within the margin specified the tests shall, if required by MMD, be repeated within 2 weeks of the date when the equipment is ready for retest, and MMD shall repay to the client all reasonable expenses incurred by such tests.

PERFORMANCE

If the performance figures obtained on any such test provided in the contract are outside the rejection limits specified therein, the client will be entitled to reject the goods.

Before the client becomes entitled to reject the goods MMD is to be given reasonable time and opportunity to rectify their performance. If the client becomes entitled to reject goods, MMD will repay the client any sum paid by the client to MMD on account of the contract price thereof.

The client assumes responsibility that goods stipulated by the client are sufficient and suitable for the purpose save in so far as the client's stipulations are in accordance with MMD advice.

RISK

Unless otherwise specified in the proposal the price of goods or work is ex-works and the goods shall be at the sole risk of the client from the time they leave MMD's premises which shall be the time of delivery. Where MMD deliver goods to the client's premises or elsewhere as directed by the client the goods shall be at the sole risk of the client at the time of delivery.

PERSONNEL

In the event that the client offers any resource (who was introduced to the client by MMD) permanent employment, and the resource accepts that offer of employment from the client, then the client agrees to pay MMD 15% of the first years salary as paid by the client to the resource.

ARBITRATION

In the event of any dispute arising between the company and the client as to the terms and conditions of this contract, such dispute shall be referred to an arbitrator acting under the Arbitration Act 1950. The arbitrator will be appointed by agreement between MMD and the client, or in default of the agreement will be appointed by the President of the Institution of Electrical Engineers.

LAW

This contract will be governed for all purposes by the laws of England.

ENTIRETY OF CONTRACT

This contract embodies the entire agreement between the parties and may be waived amended or supplemented only in writing, executed jointly by MMD and the client.

DELIVERY

Time shall not be of the essence in relation to the liabilities and duties of the parties to this Agreement unless otherwise specifically stated in the agreement.

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