

# MBC TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1. "The Company" and "MBC" shall mean MBC Environmental Solutions Limited, or any agents or employees thereof.
- 1.2. "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from MBC.
- 1.3. "Products and Services" shall mean all products, goods, services and advice provided by MBC to the Client or the hire of MBC equipment on a temporary or interim basis by the Client.
- 1.4. "Fee" shall mean the cost of the Products and Services as agreed between MBC and the Client.
- 1.5. "Agreement" means the terms and conditions contained herein, those specified in the 'Terms and Conditions of Trade' and any other terms agreed upon by both parties.
- 1.6. "Acceptance" means acceptance of a quote or estimate provided or any instructions received by MBC from the Client for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 2. INTRODUCTION

- 2.1. These terms will apply to the relationship of the Company to you, the Client.
- 2.2. These terms may not be varied without the written consent of a Director of The Company
- 2.3. Any verbal representations made before or after the signing of this Agreement will be of no effect.

## 3. FEE

- 3.1. The Fee will be quoted plus any applicable goods and services tax.
- 3.2. Where no Fee is stated in advanced the Products and Services shall be deemed to be provided at the current amount as such Products and Services are sold or provided by MBC at the time of service being carried out.
- 3.3. The Company reserves the right to change the Fee in the event of any variation from the plan of scheduled Products and Services. The Company will advise the Client of any change to the Fee in writing.

## 4. PAYMENT

- 4.1. Payment for Products and Services shall be made by the Client within seven days of the date of invoice ("the due date"), unless otherwise agreed with the client, in writing, in advance of works commencing.
- 4.2. The Company reserves the right to request payment, in part or full, in advance of works commencing. Should the works be cancelled or delayed by the Client, any payment paid may be retained by The Company. Any refunding of a prepayment will be entirely at the discretion of The Company.
- 4.3. The Company may at its option delay commencement or suspend provision of the Products and Services until payment has been made in full.
- 4.4. The Company reserves the right to withhold reports and certificates until payment is made in full.

## 5. DEFAULT

- 5.1. Interest on any unpaid Fee, or part thereof, shall accrue daily from the date when payment of the Fee becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month, calculated daily, after as well as before any judgment.
- 5.2. Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.3. Any disputes over price need to be raised within seven (7) days of receipt of invoice, otherwise the client is deemed to have accepted the Fee.
- 5.4. If any account remains overdue after thirty (30) days then an amount of ten percent (10%) of the amount overdue (up to a maximum of five hundred dollars (\$500.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 5.5. If the Client defaults in payment of any Fee, or part thereof, when due, the Client shall indemnify The Company from and against all costs and disbursements incurred by The Company in pursuing the debt including, without limitation, legal costs on a solicitor and client basis and any debt collection agency costs.
- 5.6. Without prejudice to any other remedies The Company may have, if at any time the Client is in breach of any obligation (including the obligation to pay the Fee), The Company may, at its election, suspend or terminate the supply of Works to the Client and any of its other obligations under the terms and conditions. For the avoidance of doubt, The Company will not be liable to the Client for any loss or damage the Client suffers because The Company has exercised its rights under this clause.

## 6. SCOPE OF WORKS & QUOTES

- 6.1. Any written services, including quotes, estimates and pricing issued by MBC for Products and Services:
  - 6.1.1. Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue or for period otherwise agreed by both parties; and
  - 6.1.2. The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.2. Where Products and Services are required in addition to the quotation the Client agrees to pay for the additional cost of such Products and Services.
- 6.3. The Client will set out in writing (unless otherwise agreed by The Company) the Scope of Works which it requires The Company to provide. The Company will then confirm (either in writing or otherwise) that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions, and where requested provide a quote. Engagement occurs upon The Company and the Client agreeing to what Scope of Works are to be performed and acceptance of the estimate or quote. Any subsequent changes or additions must be made out in writing and agreed to by both parties.
- 6.4. The Client cannot cancel or delay the request for services without the consent of The Company and in such cases the Client will be liable to pay all costs and expenses incurred by The Company in fulfilling the order or request for services to the date of cancellation or delay; and if the request for services cannot be cancelled or delayed the Client will be held liable for the costs incurred by The Company in relation to the order or request for services.

## 7. LIABILITY

- 7.1. MBC shall not be liable for any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by MBC to the Client; and

- 7.2. The Client shall indemnify MBC against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of MBC or otherwise, brought by any person in connection with any matter, act, omission, or error by MBC its agents or employees in connection with the Products and Services.
- 7.3. Asbestos Sampling and Surveying - MBC offers services related to the taking and/or analysis of samples which could contain asbestos fibres. The Company and its employees and agents shall not be liable to the Client and the Client's agents for any claim for breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law for any losses or damages whether general, exemplary, punitive, direct, indirect or consequential in respect of any claim, arising out of or loss or damage as a result of reliance upon the asbestos sampling and/or analysis services provided under this Agreement and any instruction received. The Client's sole remedy against The Company will be limited to breach of contract and The Company's liability for such claim shall be limited to the Fee for the services provided.

## **8. CONFIDENTIALITY**

- 8.1. The Company will keep confidential the terms of this Agreement and the fact that the Client has sought the Services.

## **9. CONSUMER GUARANTEES ACT**

- 9.1. These terms and conditions are subject to the Consumer Guarantees Act 1993 ("the Act"). To the extent that these terms and conditions apply to a "Consumer" as defined by the Act, and are inconsistent with Act, the provisions of the Act shall prevail.
- 9.2. If the Client is acquiring or otherwise being supplied with Products and Services for the purpose(s) of a trade or business, the Client acknowledges that the provisions of the Act do not apply to the supply of those Products and Services by The Company to the Client

## **10. REASONABLE ACCESS**

- 10.1. The Client will ensure that The Company is legally entitled to have reasonable and unobstructed access to the location of works that is the subject of the Products and Services.
- 10.2. The Client will ensure that the Company has exclusive access to the location of works, including a suitable buffer zone, to allow for the Products and Services to be safely provided, unless otherwise agreed with the Company, in writing, in advance of works commencing.

## **11. MISCELLANEOUS**

- 11.1. If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 11.2. Every effort will be made by The Company to carry out the assignment, however The Company will not be liable to the Client or be deemed to be in breach of the agreement by reason of any delay in performing or any failure to perform any obligations in relation to the provision of services if the delay or failure was due to any event of force majeure.
- 11.3. The Client agrees that should they be taken over, amalgamated or cease trading, then any outstanding debts owed to The Company will be honoured by the Client's parent company or associated companies or liquidators
- 11.4. Where the Client is comprised of more than one person the persons who are party to this Agreement will be jointly and severally liable to The Company but their rights against The Company will be held jointly.
- 11.5. The Client may not set off against the fees payable to The Company any amount which the Client asserts is owing by The Company to the Client.

11.6. The Company will not be liable for any delay or failure to perform the Services arising from an act of God, war terrorism, industrial action, fire, flood, storm or other event beyond The Company's reasonable control.

11.7. The Client may not assign or transfer its rights under this Agreement.