

# Modern Facade Solutions

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## Revision History

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# Modern Façade Solutions (MFS) Terms and Conditions (“the Terms”)

## 1.0 Interpretation

- 1.1 “Contract” means the contract for the manufacture, sale, supply and purchase of the Goods or the supply of services.
- 1.2 “Customer” means the person who accepts MFS’s Written quotation for the entering into Contract with MFS “Goods” means the goods described in the Contract.
- 1.3 “Terms” means these MFS Terms and Conditions as set out in this document including any special terms and conditions agreed in writing between MFS and the Customer.
- 1.4 “MFS” means MFS whose registered office is at Unit 3 Hurworth Road, Newton Aycliffe Industrial Estate, County Durham DL5 6UD a company registered in England and Wales with company registration number 16015888
- 1.5 “Writing” and/or “Written” includes any letter, telex, facsimile and Email transmission.
- 1.6 “Order” means either MFS’s Written quotation and/or the Customer’s Written order.
- 1.7 “Price” means the Price of the Goods excluding Value Added Tax.
- 1.8 “Price of the Goods” includes any costs and/or charges and/or any other matters as referred to under clause 4 below.
- 1.10 “CEDR” and/or “CEDR Solve” means Centre for Effective Dispute Resolution, 70 Fleet Street, London EC4Y 1EU.

## **2.0 Entire Agreement**

- 2.1 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 2.2 These Terms form the entire understanding and agreement between MFS and the Customer.
- 2.3 These Terms exclude any other terms and conditions which the Customer might seek to impose even though such terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms and conditions inconsistent to them or may be contained in any offer, acceptance or counter offer made by the Customer.
- 2.4 In entering into contract with MFS the Customer agrees to these Terms.
- 2.5 No order shall be binding on MFS unless or until accepted by MFS in Writing.

### 3.0 Basis of Sale

- 3.1 MFS shall sell and the Customer shall purchase the Goods in accordance with MFS's Written quotation (if accepted by the Customer), or the Customer's Written order (if accepted by MFS) subject in either case to these Terms.
- 3.2 Employees and/or agents of MFS are not authorised to make any representations concerning the Goods unless confirmed by MFS in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.
- 3.3 Any advice or recommendation given by MFS or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by MFS is followed or acted on entirely at the Customer's own risk and accordingly MFS shall not be liable for any such advice or recommendation which is not so confirmed.
- 3.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by MFS shall be subject to correction without any liability on the part of MFS.

### 4.0 Price of Goods

- 4.1 All prices and/or estimates and/or quotations accepted by the Customer are subject to revision where at any time before delivery of the Goods there is an increase in the cost of raw materials and/or labour and/or circumstances arise before delivery which makes revision necessary. Such increases might include a change in delivery date(s), quantities and/or specification for the Goods requested by the Customer and/or any delay caused by an instruction by the Customer and/or failure of the Customer to give MFS adequate information or instruction(s).
- 4.2 All prices and/or estimates and/or quotations are valid for 30 days from the date thereof.
- 4.3 All prices and/or estimates and/or quotations are exclusive of VAT.
- 4.4 All prices and/or estimates and/or quotations are ex-works. Where MFS agrees to deliver the Goods otherwise than at MFS's premises, the Customer shall be liable to pay MFS's charges for transport, packaging and insurance. In addition, the cost of pallets and/or returnable containers will be charged to the Customer, but full credit of these costs will be given back to the Customer upon return, before the overdue payment date, undamaged.

## 5.0 Orders and Specifications

- 5.1 The Customer shall be responsible to MFS for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving MFS any necessary information relating to the Goods within a sufficient time to enable MFS to perform the Contract in accordance with these Terms.
- 5.2 The quantity, quality and description of the Goods and any specification for them shall be as set out in MFS's Written quotation (if accepted by the Customer) or the Customer's order (if accepted by MFS).
- 5.3 If the Goods are to be manufactured or any process is to be applied to the Goods by MFS in accordance with a specification submitted by the Customer, the Customer shall indemnify MFS against all loss, damages, costs which may be suffered by MFS.

## 6.0 Payment

- 6.1 MFS shall be entitled to invoice the Customer for the Price at any time after MFS has notified the Customer that the Goods are ready for collection or where MFS has delivered the Goods.
- 6.2 MFS reserves the right to render interim invoices as the Contract progresses and to require payment of the same before continuing with the Contract.
- 6.3 MFS shall not be bound to deliver the Goods until the Customer has paid the Price in full for them.
- 6.4 Payment of invoice(s) and/or interim invoice(s) shall become due at the date of the invoice(s).
- 6.5 Payment shall become overdue at the expiry of 30 days from the date of invoice and/or interim invoice, unless agreed otherwise in writing, after which MFS shall be entitled to recover the Price, notwithstanding whether delivery has been made either in whole or in part and/or whether the title in the property of the Goods has passed to the Customer or not.
- 6.6 The time for payment shall be of the essence. Any payment owing to MFS which has not been paid by the overdue date shall be subject to interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date the payment should have been made until the date payment is made. Furthermore, if the Customer fails to make any payment by the overdue date then, without limiting any other right or remedy available to MFS, MFS may cancel the Contract altogether or alternatively, suspend any further deliveries to the Customer until such payment overdue is paid together with interest accrued therein.
- 6.7 MFS may appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between MFS and the Customer) as MFS may think fit (notwithstanding any purported appropriation by the Customer).
- 6.8 This contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in

full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.

## 7.0 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer;
- 7.1.1 in the case of goods to be delivered at MFS's premises, at the time when MFS notifies the Customer that the Goods are available for collection, or
- 7.1.2 in the case of Goods to be delivered otherwise than at MFS's premises, at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods, at the time when MFS has made delivery of the Goods.
- 7.2 Goods remain the property of MFS until payment has been made in full. Title to the Goods comprised in the Order shall not pass until the Customer has paid the Price of the Goods in full.
- 7.3 Until such time as the property to the Goods passes to the Customer, the Customer shall hold the Goods as MFS's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as MFS's property.
- 7.4 Until such time as the property in the Goods passes to the Customer, MFS may at any time require the Customer to deliver up the Goods to MFS and, if the Customer fails to do so, MFS may enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of MFS.

## 8.0 Delivery

- 8.1 Delivery of the Goods shall be made by the Customer collecting the Goods at MFS's premises at any time after MFS has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by MFS, by MFS delivering the Goods to that place.
- 8.2 Where the delivery of the Goods takes place other than MFS's premises, the Customer shall provide at its own expense, all unloading facilities required for delivery including labour and any special equipment and ensure that the site will have adequate access for all vehicles and equipment necessary for off-loading and a suitable hard standing surface for the purposes of off-loading.
- 8.3 The Customer shall be responsible for ensuring that all licences, consents, permits or other necessary permissions have been obtained prior to delivery of the Goods.
- 8.4 The Customer shall be responsible for ensuring that MFS has full uninterrupted right of access to the place for delivery.
- 8.5 Any dates quoted for delivery of the Goods are approximate only and MFS shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by MFS in Writing. The Goods may be delivered by MFS in

advance of the quoted delivery date on giving reasonable notice to the Customer. Later performance does not entitle the Customer to do any of the following;

- 8.5.1 Reject the Goods
  - 8.5.2 Terminate the contract
  - 8.5.3 Withhold payment of any part of the Price
- 8.6 If MFS fails to deliver the Goods (or any instalment) for any reason other than any cause beyond MFS's reasonable control or the Customer's fault, and MFS is accordingly liable to the Customer, MFS's liability shall be limited to the excess, if any, of the cost to the Customer, in the cheapest available market, of similar goods to replace those not delivered over the price of the Goods.
- 8.7 If the Customer fails to take delivery of the Goods or fails to give MFS adequate delivery instructions at the time stated for delivery (other than by reason of any cause beyond the Customer's reasonable control or by reason of MFS's fault) then, without limiting any other right or remedy available to MFS, MFS may;
- 8.7.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
  - 8.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 8.8 Where extra transport costs are chargeable, it shall be at the rate of £2 per mile, each way.

## 9.0 Liability

- 9.1 Should any of the Goods become faulty or fail to operate in accordance with their specification MFS undertakes to replace or repair them at its sole discretion without charge provided that MFS is satisfied that the failure is due to a defect of workmanship and/or material in manufacture and provided also that the Goods have been used solely in a manner for which they are designed and/or is normal for their type and have not been misused or abused either in storage or in their fixing and provided also that the faulty Goods are returned carriage paid to MFS with written notice of the defect within 7 days of the date of delivery or where the defect or failure was not apparent, on reasonable inspection, within 3 days after discovery of the defect or failure. MFS shall not be liable for the cost of removal of the faulty Goods nor the cost of reinstatement and/or re-fixing of the repaired and/or replaced Goods. MFS will deliver at its expense the replacement or repaired Goods to the Customer.
- 9.2 If delivery is not refused and the Customer does not notify MFS in accordance with clause 9.1 the Customer shall not be entitled to reject the Goods and MFS shall have no liability for such defect or failure, and the Customer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract. Time shall be of the essence for the purposes of this clause 9.2.
- 9.3 MFS shall not be liable to the Customer by reason of any misrepresentation or by reason of any implied warranty, condition or other term, or any duty at common law, or under the Terms for any special or consequential, direct or indirect loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of MFS, its employees or agents or otherwise) which arise under, out of or in connection with this Contract (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of MFS under, out of or in connection with the Contract shall not exceed the Price of the Goods except as expressly provided in these Terms.
- 9.4 MFS shall not be liable to the Customer for any consequential, direct and/or indirect loss suffered by the Customer whether the loss arises from any breach of duty in contract or tort or in

any other way, and shall not be liable for any damages (whether or not consequential, direct and/or indirect) arising from stoppage or breakdown of the Goods for any reason whatsoever or in any other way for the performance of the Goods in operation. For the avoidance of doubt such consequential, direct and/or indirect loss include, inter alia, delays suffered by the Customer, prolongation costs, increased site overheads, increased office overheads, wasted management time, disruption costs, loss of profit, finance charges, loss of bonus, sums paid in settlement of third party claims, costs of claim collation, and the like.

- 9.5 Under no circumstances shall MFS be liable for;
- 9.5.1 failure by the Customer to comply with the instructions or advice of MFS; and/or
  - 9.5.2 Goods which have been adjusted, altered, adapted or repaired by any party other than MFS.
- 9.6 MFS shall not be liable to the Customer (other than liability for death or personal injury resulting from MFS's negligence) for any loss or damage of any nature;
- 9.6.1 arising from any breach of any express or implied warranty or condition of the Contract; and/or
  - 9.6.2 any negligence, breach of statutory or other duty on the part of MFS; and/or
  - 9.6.3 in any other way under, out of or in connection with the performance or purported performance of or failure to perform the Contract.
- 9.7 MFS shall not accept responsibility if the Goods are the subject of any patent registered or unregistered design, trademark, copyright or any other industrial or intellectual property rights and the making of the Contract shall be considered as an undertaking by the Customer to indemnify MFS against any loss in respect of infringement of any such patent registered or unregistered design, trademark, copyright or any other industrial or intellectual property rights of any third party.
- 9.8 MFS reserves the right to make any changes in the specification of the Goods which may be required to conform to any applicable statutory or EU requirements and which do not materially affect their quality or performance.
- 9.9 MFS shall not be liable for any failure to deliver the Goods or implement any of these conditions arising from the circumstances outside MFS's control. Non-exhaustive examples of such circumstances include acts of God, war, strikes, fire, embargoes, refusals to grant licences and abnormal weather conditions etc.

## 10 Cancellation

- 10.1 Where a Contract is cancelled by a Customer the following payment(s) fall due to MFS by the Customer;
- 10.1.1. Where cancellation is prior to the commencement of the manufacture of the Goods a sum to compensate MFS for all costs incurred prior to or resulting from such cancellation in addition to such other remedies as it may have.
  - 10.1.2. Where cancellation is subsequent to commencement of the manufacture of the Goods such sum as represents a proportion of the order sum in respect of the manufacture of the Goods performed executed up to the date of receipt of notice of cancellation plus the sum equivalent to 50% of the difference between the proportionate sum and the Price by way of liquidated damages for any actual or anticipated loss or profit and administrative costs in addition to such other remedies as it may have.

## 11 Damages

- 11.1 The total liability of MFS to pay damages which may arise under the Contract shall not in any way and in any event exceed a sum equal to the Price payable by the Customer to MFS

## 12 Designs and Drawings

- 12.1 Where designs are prepared by MFS for the Customer's requirement the Terms of the Contract are conditional on such designs having been previously discussed with and fully approved by the Customer.
- 12.2 Where the Goods are manufactured to design submitted by the Customer, MFS will provide them in conformity with such designs but accept no responsibility for the correct functioning of the Goods

## 13 Assignment

- 13.1 The Contract is between MFS and the Customer and shall not be assigned by the Customer without the express consent of MFS.

## 14 Insolvency of Customer

- 14.1 If the Customer makes a voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or an encumbrancer takes possession, or a receiver is appointed or the Customer ceases, or threatens to cease, to carry on Than

## 15 Disputes

- 15.1 If any dispute arises in connection with this Contract, directors or other senior representatives of the parties with authority to settle the dispute will, within 14 days of a written request from one party to another, meet in good faith effort to resolve the dispute.
- 15.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation the parties must give notice in writing ('ADR notice') to the other party(ies) to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve.

- 15.3 Notwithstanding clause 15.2, either party has the right at any time to refer the dispute to arbitration in accordance with the Arbitration Act 1996 and the CEDR Solve's Arbitration 125 Rules (2011 Edition or as amended), which Rules are deemed to be incorporated by reference to this clause, by an sole arbitrator appointed by CEDR Solve. Nothing in this clause shall prevent any party seeking a preliminary injunction or other judicial relief at any time if, in its judgment, such an action is necessary to prevent irreparable damage.

## **16 General**

- 16.1 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business.
- 16.2 No waiver by MFS of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 16.4 The laws of England and Wales govern this Contract and the resolution of any dispute(s) arising out of or in connection with it shall be subject to the exclusive jurisdiction of the courts of England and Wales. MFS and the Customer agree that these Terms are not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

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