

MAC SURFACING LIMITED TERMS & CONDITIONS OF SALE

The Customer's attention is particularly drawn to the provisions of clause 10.

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with these Conditions.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.8.

Contract: the contract between MAC and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from MAC.

Delivery: the transfer of physical possession of the MAC Equipment to the Customer at the Site.

MAC: MAC Surfacing Limited registered in England and Wales with company number 05021380.

MAC Equipment: has the meaning set out in clause 6.1(g) and shall include the equipment hired by the Customer from MAC as set out in the Order.

Order: the Customer's purchase order form, or the Customer's written acceptance of a quotation by MAC, or overleaf, as the case may be.

Services: the services, including the hire of MAC Materials, supplied by MAC to the Customer as set out in the Specification.

Site: the location where the MAC Equipment are to be provided as set out in the Order.

Specification: the description or specification of the Services provided in writing by MAC to the Customer.

1.2 Construction. In these Conditions, the following rules apply:

(a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes faxes and e-mails.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when MAC issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, advice, promise or representation made or given by or on behalf of MAC which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by MAC, and any descriptions or illustrations contained in MAC's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by MAC shall not constitute an offer, and unless stated otherwise on quotation is only valid for a period of 30 days from its date of issue.

2.7 The Customer shall ensure the terms of the Order and any applicable specification are complete and accurate.

2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance or offer, invoice or other documents or information issued by MAC or shall be subject to correction without liability on the part of MAC.

3. Supply of Services

3.1 MAC shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 MAC shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 MAC shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and MAC shall notify the Customer in any such event.

3.4 MAC warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Supply of Personnel

4.1 Where the Order includes the supply of workers of MAC:

(a) MAC shall supply a person competent in operating the MAC Equipment;

(b) the worker supplied shall be under the direction and control of the Customer;

(c) the workers supplied shall not operate any equipment other than that identified by the Customer in the Order or agreed in writing by MAC;

(d) the workers supplied shall for all purposes during their supply be regarded as the servants or agents of the Customer. For the avoidance of doubt, MAC shall not be responsible for any defects in workmanship or losses suffered by the Customer caused by MAC's workers when under the supervision and control of the Customer;

(e) the Customer shall be responsible for all claims arising in connection with the operation of any equipment or work carried out by the workers supplied by MAC under these Conditions.

5. MAC Equipment

5.1 MAC shall hire the MAC Equipment set out in the Order to the Customer for use at the Site subject to the terms and conditions of this agreement and the Construction Plant Hire Association Model Conditions for the hiring of plant in force from time to time available [on our website www.macsurfacing.co.uk].

5.2 If there is any conflict between the provisions of these Conditions and the Construction Plant Hire Association Model Conditions for the hiring of plant, the terms of these Conditions shall prevail.

6. Customer's obligations

6.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

(b) co-operate with MAC in all matters relating to the Services;

(c) provide MAC, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by MAC;

(d) provide MAC with such information and materials as MAC may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

(e) ensure the Customer's premises for the supply of the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;

(g) keep and maintain all materials, equipment, plant, machinery, documents and other property of MAC (MAC Equipment) at the Customer's premises in safe custody at its own risk, maintain MAC Equipment in good condition until returned to MAC, and not dispose of or use MAC Equipment other than in accordance with MAC's written instructions or authorisation;

(h) not to make any alteration to the premises, including the use of the same, between the date of the quotation and the date of performance of the Services;

(i) provide MAC with all health and safety information and procedures from time to time in force at the Customer's premises;

(j) ensure that the MAC Equipment are kept and operated in a suitable environment used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;

(k) take such steps (including compliance with all safety and usage instructions provided by MAC) as may be necessary to ensure, so far as is reasonably practicable, that the MAC Equipment are at all times safe and without risk to health when they are being set, used, cleaned or maintained by a person at work;

(l) maintain at its own expense the MAC Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on Delivery (fair wear and tear only excepted) including replacement of worn, damaged or lost parts, and shall make good any damage to the MAC Equipment;

(m) make no alteration to the MAC Equipment and shall not remove any existing component(s) from the MAC Equipment;

(n) keep MAC fully informed of all material matters relating to the MAC Equipment;

(o) keep the MAC Equipment at all times at the Site and shall not move or attempt to move any part of the MAC Equipment to any other location without MAC's prior written consent;

(p) permit MAC or its duly authorised representative to inspect the MAC Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the MAC Material may be located, and shall grant reasonable access and facilities for such inspection;

(q) maintain operating and maintenance records of the MAC Equipment and make copies of such records readily available to MAC, together with such additional information as MAC may reasonably require;

(r) not, without the prior written consent of MAC, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the MAC Equipment or allow the

creation of any mortgage, charge, lien or other security interest in respect of it;

(s) not without the prior written consent of MAC, attach the MAC Equipment to any land or buildings so as to cause the MAC Equipment to become a permanent or immovable fixture on such land or building. If the MAC Equipment do become affixed to any land or building then the MAC Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the MAC Equipment from any land or building and indemnify MAC against all losses, costs or expenses incurred as a result of such affixation or removal;

(t) not do or permit to be done an act or thing which will or may jeopardise the right, title and/or interest of MAC in the MAC Equipment and where the MAC Equipment have become affixed to any land or building, the Customer must take all necessary steps to ensure that MAC may enter such land or building and recover the MAC Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of MAC of any rights such person may have or acquire in the MAC Equipment and a right for MAC to enter onto such land or building to remove the MAC Equipment;

(u) not suffer or permit the MAC Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the MAC Equipment are so confiscated, seized or taken, the Customer shall notify MAC and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the MAC Equipment and shall indemnify MAC on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

(v) not use the MAC Equipment for any unlawful purposes;

(w) ensure that at all times the MAC Equipment remain identifiable as being MAC property and wherever possible shall ensure that a visible sign to that effect is attached to the MAC Equipment;

(x) deliver up the MAC Equipment at the end of the period of hire or on earlier termination of this agreement at such address as MAC requires, or it necessary allow MAC or its representatives access to the Site or any premises where the MAC Equipment are located for the purpose of removing the MAC Equipment; and

(y) not do or permit to be done anything which could invalidate the insurances referred to above.

6.2 The Customer shall not, for a period of 12 months from the Commencement Date (except with the prior written consent of MAC) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of MAC, any employee of MAC who is employed or engaged in any services which are relevant to the Contract.

6.3 The Customer shall not be in breach of clause 6.2 as a result of running a national advertising campaign open to all and not specifically targeted at any of the staff or the Customers of MAC.

6.4 If the Customer commits any breach of clause 5.2, the Customer shall, without prejudice to any other rights or remedies of MAC, on demand, pay to MAC a sum equal to one year's salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by MAC in replacing such person.

6.5 If MAC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

(a) MAC shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays MAC's performance of any of its obligations;

(b) MAC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from MAC's failure or delay to perform any of its obligations as set out in this clause 6.5; and

(c) the Customer shall reimburse MAC on written demand for any costs or losses sustained or incurred by MAC arising directly or indirectly from the Customer Default.

7. Cancellation

7.1 No Order which has been accepted by MAC may be cancelled by the Customer except with the agreement in writing of MAC and on the terms that the Customer shall indemnify MAC in full for all loss (including without prejudice to the generality of the foregoing) loss of profit, costs (including the cost of all labour and materials used) damages, charges, expenses incurred by MAC as a result of cancellation.

7.2 Without prejudice to the above, the Customer shall be entitled to amend the date for the provision of the Services (but not cancel the Order) without liability to MAC on the following terms:

(a) if a force majeure event has occurred; and

(b) the Customer informs MAC in writing of the request to amend the performance date by no later than 3.00 pm on the last Business Day preceding the due date for performance.

8. Charges and payment

8.1 The Charges for the Services shall be on a time and materials basis and shall be set out in the Order;

(a) the Charges shall be calculated in accordance with MAC's standard daily fee rates;

(b) the minimum charge shall be based upon a ten hour shift.

8.2 MAC reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. MAC will give the Customer written notice of any such increase 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify MAC in writing within 14 days of the date of MAC's notice and MAC shall have the right without limiting its other rights or remedies to terminate the Contract by giving one week's written notice to the Customer.

8.3 MAC shall invoice the Customer on completion of the Services.

8.4 The Customer shall pay each invoice submitted by MAC:

(a) within 30 days of the end of the month in which the invoice is issued; and

(b) in full and in cleared funds to a bank account nominated in writing by MAC, and time for payment shall be of the essence of the Contract.

8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by MAC to the Customer, the Customer shall, on receipt of a valid VAT invoice from MAC, pay to MAC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

8.6 Without limiting any other right or remedy of MAC, if the Customer fails to make any payment due to MAC under the Contract by the due date for payment (Due Date), MAC shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

8.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against MAC or any member of its Group in order to justify withholding payment of any such amount in whole or in part. MAC may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by MAC to the Customer.

9. Confidentiality

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

10. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

10.1 Nothing in these Conditions shall limit or exclude MAC's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10.2 Subject to clause 10.1:

(a) MAC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) MAC's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), or breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid for the Services.

10.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.4 The Customer acknowledges that MAC shall not be responsible for any loss of or damage to the MAC Equipment arising out of or in connection with any negligence, misuse, mishandling of the MAC Equipment or otherwise caused by the Customer or its officers, employees, agents and contracts and the Customer undertakes to indemnify MAC on demand against the

same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this agreement.

10.5 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party (being an individual) is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(i) (inclusive);

(k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

(l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 Without limiting its other rights or remedies, MAC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

11.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 3 months' written notice.

11.4 Without limiting its other rights or remedies, MAC shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and MAC if the Customer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(i), or MAC reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

12. Consequences of termination

On termination of the Contract for any reason:

(a) the Customer shall immediately pay to MAC all of MAC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, MAC shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of MAC Equipment which have not been fully paid for. If the Customer fails to do so, then MAC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall survive the effect of the Contract and shall include the right to claim damages in respect of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. General

13.1 Force majeure:

(a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of MAC including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of MAC or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors or any weather conditions making it unsafe or unsuitable to perform the Services.

(b) MAC shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents MAC from providing any of the Services for more than 24 weeks, MAC shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

13.2 Assignment and subcontracting:

(a) MAC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to a third party or agent.

(b) The Customer shall not, without the prior written consent of MAC, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.3 Notices:

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above, or if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

(c) This clause 13.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

13.4 Waiver:

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

(c) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(d) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if in whole or in part were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by MAC.

13.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.