

3mse Ltd Conditions of Sale 2015

1. Definitions

In these Conditions:

"Anti-Corruption Policy" means standards at least equivalent to those in our bribery and corruption policy and any other policy and procedure of ours in relation to corporate gifts, entertainment, and bribery issued or made available to you by us from time to time.

"Client" means the customer of 3mse.

"Conditions" shall mean this document headed 3mse Ltd Conditions of Sale 2015 including 3mse's proposal and any other documents referred to therein.

"Force Majeure" means act of god, including tempest, fire or natural disaster, war, civil commotion, sabotage or act of terrorism, labour disputes or other industrial action.

"Goods" means any item or items (including parts thereof) supplied by or on behalf of 3mse hereunder.

"Insolvent" shall mean as defined in Section 113 of the Housing Grants, Construction and Regeneration Act, 1996.

"Malpractice" means any malpractice including any fraud or breach of Anti-Corruption Policy.

"3mse" means 3mse Ltd.

"Services" shall mean any services provided by or on behalf of 3mse and may include but shall not be limited to monitoring and control of energy efficiency, engineering, writing of software, project management and commissioning.

2. General

Unless otherwise agreed in writing by 3mse, the Conditions shall apply in any contract between 3mse and the Client for the supply of goods and/or the supply of services. The express terms of this agreement shall apply to the exclusion of any conditions contained in or attached to the Client's order or any other written or oral information which conflict or purport to modify the Conditions and in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law. Any such other conditions shall not form part of the contract between the Client and 3mse except as agreed in writing by 3mse. Notwithstanding the foregoing, the Client hereby warrants to 3mse that all technical details, specifications, drawings and other information supplied to 3mse are accurate and 3mse shall be entitled to rely upon the same.

3mse shall, at its absolute discretion, be entitled to reject any order or forthwith terminate any contract if unsatisfactory credit references are obtained prior to any substantive works having been commenced. If any provision of the Conditions shall be held by a court of competent jurisdiction to be invalid or voidable then such provision only shall be struck out and the remaining provisions hereof shall remain valid with full force and effect.

3. No waiver

No relaxation, forbearance, delay or indulgence by 3mse in enforcing any of the Conditions hereof shall prejudice 3mse's rights to insist upon the strict compliance with the Conditions nor shall the same constitute a waiver or estoppel.

4. Prices

Prices shall be those ruling as quoted in writing at the date of 3mse's proposal provided that acceptance in writing is received by 3mse within 30 days of the date of proposal or such other period as is specified in the proposal. Where the Client cannot satisfy this condition, 3mse reserves the right to charge prices ruling at the date of despatch or service delivery should there be any change in costs or exchange rates. All prices quoted are net and are subject, where appropriate, to the addition of Value Added Tax ruling at the date of invoice/application.

5. Carriage

Unless and to the extent that delivery is stated as being included within 3mse's proposal, 3mse shall have the right at its sole discretion to make reasonable charges for carriage in addition to any agreed price.

6. Packing

Packing will be charged where special packing is ordered. Packing in accordance with 3mse's standard practice is included in the prices charged.

7. Risk

Goods shall be at the Client's risk immediately on delivery to the Client or upon delivery to a third party as directed by the Client and the Client shall effect and maintain adequate insurance cover against such risk. Notwithstanding delivery and passing of risk in the Goods, or any other provision of the Conditions, property in the Goods shall not pass to the Client until 3mse has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by 3mse to the Client for which payment is then due.

Until such time as the property in the Goods passes to the Client, the Client shall hold the Goods as 3mse's fiduciary agent and bailee and shall keep the Goods separate from those of the Client and identified as the property of 3mse, but it shall be entitled to resell or use the Goods in the ordinary course of the Client's business. Until such time as the property and the Goods passes to the Client (and provided these Goods are still in existence and have not been resold) 3mse shall be entitled at any time to require the Client to deliver up the Goods to 3mse and if the Client fails to do so, to enter upon the premises of the Client or any other third party where the Goods are stored and repossess the Goods. Where the Client resells or uses the Goods in the ordinary course of business the Client shall pay into a separate account specifically designated as a trust account all proceeds of the sale of the Goods and all other Goods supplied to it by 3mse equal to the total amount owing to 3mse from time to time in respect of the Goods and all other Goods supplied to it by 3mse.

8. Payment

All payments due from the Client to 3mse shall be made in full without deduction, abatement or set-off. Payment terms shall be net monthly and payment must be received not later than the last working day of the month following date of invoice/application or such other payment terms agreed in writing by 3mse. In the event of default in payment by the date specified, the Client shall pay simple interest on the amount outstanding at the rate of 8% per annum above the base rate of the Bank of England, current at the date that the debt became overdue for payment. The foregoing provision shall be in addition to and without prejudice to any other remedies available to 3mse for non-payment.

9. Delivery

While 3mse will make every effort to affect delivery in accordance with prearranged dates, deliveries may be suspended or delivery dates extended in the event of any circumstances whatsoever beyond 3mse's control. For the avoidance of doubt, time is not the essence of the contract. Subject as above, delivery shall be taken by the Client within the period (if any) named in the proposal or order and such full details as may be necessary (or required by 3mse) to enable 3mse to complete the delivery within such period shall be supplied by the Client. If, for any reason, the Client is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, 3mse may, if its storage facilities permit, store the Goods at the risk of the Client and take reasonable steps to prevent their deterioration until the actual delivery and the Client shall be liable to 3mse for the reasonable cost (including insurance) of its so doing. Such storage shall be without prejudice to any of 3mse's rights in respect of the Client's failure to take delivery at the appropriate date. It shall be a condition precedent to future deliveries that all payments already due to 3mse (whether under this or any other contract) shall have been made and, if such payments shall not have been made and future deliveries are withheld, then (notwithstanding any other agreement between the parties) 3mse shall not be liable to the Client in respect of any matter arising out of or in connection with such non-delivery howsoever caused. Delay in delivery of any Goods shall not entitle the Client to rescind the contract nor to treat the contract as having been repudiated. Where a delay in the delivery of any Goods is as a result of Force Majeure and such delay extends for a period of 3 months or more, either party may by written notice forthwith terminate this contract. Such termination shall in no way relieve the Client from its obligations under these Conditions to make payment to 3mse for any goods provided.

10. Loss or damage in transit

3mse will repair or, at its option, replace free of charge, Goods lost or damaged in transit provided that 3mse receives written notification of such damage within three working days of delivery or, if lost, within fourteen days of 3mse's invoice/application. In the case of orders for shipment abroad, 3mse will not be responsible for loss or damage to Goods which have left 3mse's premises.

11. Guarantee

Subject to these Conditions, 3mse will replace or repair free of charge all Goods which are or become faulty within a period of 12 calendar months from the date of delivery, the fault being directly attributable to the use of defective materials in the manufacture of the Goods or by reason of defective workmanship in the manufacture of the Goods, provided that the Client has notified 3mse in writing of the fault within 12 months from delivery. The Client shall, as soon as practicable after discovering any such defect or fault, return the defective Goods carriage paid to 3mse. If the Client requires 3mse to attend site, then travelling and labour may be charged if it is found that 3mse is not liable for the fault which has arisen. 3mse shall have no liability to the Client in respect of any Goods where any unauthorised person has attempted to repair them or where such Goods have been installed otherwise than in accordance with the recommendations of 3mse from time to time in force relating to such Goods including, but not limited to those recommendations set out in data sheets produced by or on behalf of 3mse. Where delivery has been delayed for any reason beyond 3mse's control the 12 month period specified above shall be deemed to have commenced on the programmed delivery date, irrespective of the actual date of delivery.

12. Liability

Notwithstanding any other provision of these Conditions maximum liability for loss, damage or expense for any matter arising out of or in connection with the Goods shall not exceed £50,000.00 in total or the contract sum whichever is the lesser, including any contractual liability (including but not limited to any implied contractual terms, statutory or otherwise) tort (including but not limited to negligence, trespass and nuisance) or breach of statutory duty. Notwithstanding the foregoing, nothing in this clause 12 shall be taken as excluding liability for death or personal injury resulting from negligence by 3mse.

13. Returns

Goods supplied in accordance with the Conditions but returned within 60 days of delivery will receive a credit of 75% where the Goods returned are still unopened as delivered. All returns must be referenced to our invoice or acknowledgement number. There will be a minimum charge of £50. Goods specifically manufactured or ordered from third parties may not be accepted back for credit except at the sole discretion of 3mse.

14. Extensions of time/loss & expense

3mse shall not be liable to the Client or deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of 3mse's obligations in respect of the Goods, if the delay or failure was due to any cause beyond 3mse's reasonable control and the Client shall grant 3mse an extension or extensions of time to the completion date for any such delay and in respect of the ordering of any variation thereto. In addition the Client shall pay to 3mse any costs incurred by 3mse as a result of the said failure or delay, where such failure or delay is caused by any act, omission, neglect or default of the Client, its principals or any party for whom the Client is responsible.

15. Application of goods

The Client must rely on its own skill and judgement in relation to the Goods and shall satisfy itself that the Goods specified are suitable for the Client's intended purpose and 3mse accepts no liability for fitness of purpose of the Goods unless and to the extent that 3mse has agreed in writing within its proposal or by reference to a particular specification that the Goods are so fit.

16. Suspension and determination

Without prejudice to any other right or remedy available to 3mse, 3mse may, if the Client is in breach of any of its obligations to 3mse under this or any other contract, suspend any further deliveries under this or any other contract or suspend the supply of all or any part of the Services to the Client under any other contract. If any goods have been delivered or any services supplied by 3mse to the Client under any contract between 3mse and the Client but not paid for, the price for such goods or services shall immediately become due and payable notwithstanding any previous arrangement to the contrary. If the breach is capable of remedy the Client shall, if 3mse so elects and gives written notice of such an election, have 7 days to effect a remedy during which time 3mse may suspend or continue its obligations hereunder without thereby accepting such breach. 3mse may forthwith determine the contract without notice if the Client shall fail to remedy any such breach as aforesaid under this or any other contract or if the Client becomes Insolvent. The Client may, by notice in writing, determine the contract if 3mse is in material breach and has not rectified such breach

within 30 days of receipt of a previous notice in writing identifying the breach and instructing 3mse to remedy the same.

17. Governing law

The law of England and Wales shall be applicable to these Conditions and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales except that where clause 18 hereof applies this will be subject to the provisions of clause 28 hereof.

18. Provision of Services

Where 3mse provides Services in addition to or instead of Goods then the following clauses 19-29 should also form part of the Conditions and shall take precedence over any other part of the Conditions within clauses 1-17, which may be at variance or in conflict.

19. Additional definitions

In relation to clauses 20-29 hereunder:

“**Works**” shall mean the supply of Goods and/or Services provided by 3mse to the Client

“**Adjudication Rules**” shall mean the Adjudication Rules described in the Scheme for Construction Operations referred to in the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act, 2009

“**Specified Perils**” shall mean fire, lightning, explosion, storm, tempest, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion.

20. Additional liability

The provisions of clause 12 in respect of liability also apply to the Works, although 3mse will not be responsible for the cost of any restoration of the Works and replacement or repair of any Goods that are lost or damaged or for the removal and disposal of any resultant debris caused to the extent that such loss or damage has been caused by any of the Specified Perils (whether or not caused by the negligence, breach of statutory duty, omission or default of 3mse or any party for whom 3mse is responsible under the contract). 3mse shall not be liable for any loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered in connection with the contract howsoever caused.

21. Design/selection of materials/performance specification

3mse will exercise all reasonable skill and care in the design of the Works insofar as the Works have been or will be designed by 3mse; in the selection of materials and Goods for the Works, insofar as such materials and Goods have been or will be selected by 3mse; and the satisfaction of any performance specification or requirement insofar as such performance specification/or requirement is included or referred to in 3mse’s proposal.

22. Risk

Notwithstanding the provisions of clause 7 above 3mse shall take responsibility for the protection on site of any Goods installed by 3mse or any of 3mse’s sub-contractors until such time as they have become fully and finally incorporated into the Works. For the purposes of this clause 22 and for the avoidance of doubt any Goods shall be deemed to have become fully and finally incorporated once they have been fixed to the structure.

23. Extension of time/loss & expense

The provisions of clause 14 in relation to the extensions of time/loss and expense also apply to the Works. 3mse shall be entitled to an extension of time to the completion date of the Works and to reimbursement of any direct loss and/or expense caused by reason of any delay caused by any act, omission or default of the Client, its principals (if any) and any other party for whom it is responsible; and the carrying out of any variation to the Works.

24. Variations

No variation shall vitiate this agreement. The Client may make a variation to the Works and 3mse shall be paid for any additional costs arising out of or in connection with the variation and shall be entitled to

extend/postpone the agreed delivery dates or period for completion to take account of the variation. The additional costs referred to herein shall be calculated at rates analogous to 3mse's proposal, however effect shall be given to the quantities, timing and particular circumstances related to any such variation. Where rates analogous cannot reasonably be applied such additional costs shall be calculated at reasonable market rates.

25. Payment

Where the agreement includes the provision of Services by 3mse the following terms shall apply, in lieu of clause 8 herein:

- a) The price shall be paid to 3mse in monthly instalments calculated on the basis of the value of the Works carried out by 3mse during each calendar month and the Works shall be valued by the Client accordingly.
- b) The first and every subsequent application shall be submitted by 3mse by the 28th day of each calendar month valued to the end of each calendar month and shall include the value of works that 3mse has carried out during that period, less any amounts included in previous applications, provided that if 3mse shall fail to submit an application for payment in the manner described herein, such failure shall not in any way affect the Client's obligation to value the Works and make payment as provided for herein. Nothing contained in these Conditions, save as provided for in clauses 25 and 26, shall be construed as affecting the value of the sum due to 3mse.
- c) Payment shall become due to 3mse (the "Due Date") within 5 days from the date of the application (or in the absence of an application, the date that the application should have been submitted). Payment will be discharged to 3mse within 30 days of the Due Date (the "Final Date").
- d) In respect of any payments which are not paid by the Final Date for payment, simple interest shall be payable at the rate of 8% per annum over the base rate of The Bank of England, current at the Final Date of payment.
- e) Within 5 days of the Due Date for payment the Client will notify 3mse in writing of the sum considered to be due and payable by the Final Date for payment together with the basis of calculation. Where the Client does not notify 3mse as aforesaid, the application referred to in clause 25 (b) shall thereupon become the Default Notice referred to in clause 25 (f) and, subject to clause 26, the sum applied for shall become the sum due.
- f) Where the Client fails to issue the notice referred to in clause 25(e) and 3mse has not submitted an application for payment in accordance with clause 25(b) or has failed to issue such notice in the timescales prescribed for or has issued a notice without providing the required basis of calculation or that calculation is disputed by 3mse, then 3mse shall be entitled to issue a further notice in writing to the Client ('the Default Notice') specifying the sum 3mse considers to be due and the basis of calculation. Subject to clause 26 any sum properly calculated and notified to the Client shall be the sum due to 3mse, although the Final Date of payment related thereto shall be deferred by the period of time between the date of the Client's notice under clause 25(e) (or the date such notice should have been issued) and the date of 3mse's Default Notice.
- g) 3mse shall submit an invoice for the sum due within the period beginning with the date that notification of the sum due should have been issued by the Client and the date 5 days prior to the Final Date of payment to which it relates, although, should 3mse fail to issue any invoice as aforesaid this shall in no way relieve the Client from the obligation to pay 3mse the sum due by the Final Date of payment, or relieve the Client of any liability for interest contained herein.
- h) Where 3mse and the Client have agreed that the payment mechanism will not be on the basis of application(s), all references to applications in this clause 25 shall be deemed to have been amended to read invoice(s) and sub-clause (g) shall not apply.
- i) Without affecting 3mse's other rights and remedies, if the Client fails to pay 3mse the sum due in full by the Final Date of payment as required by these Conditions and the failure continues for 7 days after 3mse has given notice to the Client of its intention to suspend all or part of its obligations

under this contract and the ground or grounds on which it is intended to suspend performance, 3mse may suspend all or part of such performance until payment is made in full. Where 3mse has suspended all or part of its performance pursuant to this clause 25, 3mse shall be entitled to an extension of time and reimbursement of all reasonable costs incurred and any such suspension period shall be treated as an act, omission, neglect or default of the Client under clause 14.

26. Pay Less Notice

If the Client disagrees with the sum that 3mse considers to be due as detailed in the Default Notice pursuant to clause 25 it shall be entitled to issue a Pay Less Notice. This notice shall be issued no later than 5 days prior to the Final Date of payment and shall state the sum to be paid and the basis of calculation and must also state any sums to be withheld, quantified in detail and with reasonable accuracy and the ground or grounds for such withholding and, if there is more than one ground, the sum attributable to each ground. Any right to withhold any sums is subject to the Client having incurred such sums prior to the date of the notice and being due to any act, omission, neglect or default of 3mse. If the Client fails to issue a timely Pay Less Notice within the prescribed timescales or if the notice fails to fully identify the basis on which the sum due is calculated, it will pay the sum otherwise due by the Final Date of payment.

27. Determination

If the Client fails to make payment in accordance with the contract, 3mse may give the Client a notice specifying the default or defaults and if such default or defaults continues for 10 days after receipt of such notice then 3mse may by a further notice determine its employment under the contract. Where 3mse so determines its employment under the contract, 3mse will, within a reasonable time, render its final account to the Client and the Client shall thereupon make payment to 3mse of such sums as are due to 3mse in accordance with clause 25 as if the final account was an application under clause 25(c) save that any payment will include any retentions held by the Client under the contract.

28. Adjudication provisions

Subject to clause 17 herein if any dispute or difference arises out of or in connection with the Works either 3mse or the Client may give notice in writing (the "Notice to Refer") requiring the dispute or difference to be referred to an adjudicator who shall be appointed and act in accordance with the Adjudication Rules. The Notice to Refer may be given at any time save that the Notice to Refer issued by the Client must be addressed to the Company Secretary, 3mse Ltd at the address detailed in 3mse's proposal. The Adjudication Rules shall form part of these Conditions where clause 18 applies. The parties to any adjudication shall pay their own costs and the adjudicator shall be empowered to determine which party will pay his costs based upon the outcome of the adjudication. The adjudicator shall be entitled to correct clerical or typographical errors arising by accident or omission within 5 days of issuing his decision to the parties.

29. Bribery

You will comply, and use all reasonable endeavours to ensure your representatives comply with the Anti-Corruption Policy and with all applicable anti-bribery and anti-corruption legislation. Where you have reasonable grounds to believe that there has been any Malpractice by you, any of your representatives, or by any of our representatives, you will promptly notify us. Without prejudice to any other remedy we may have, if we have reasonable grounds to believe that you or any of your representatives has breached this clause, we may suspend the supply of Goods and/or Services with immediate effect by notice to you.

30. Exclusion of third party rights

Notwithstanding any other term, this agreement confers a benefit only on the Client and 3mse and only the Client and 3mse may enforce its terms.