



Mining And Surface Certification CC

STANDARD CONTRACT TERMS AND CONDITIONS – ANNEXURE 3

This “Annexure” also forms part of the Permit (Mark scheme) in respect of the contractual agreement between the Permit holder and MASC.

1. VALIDITY OF QUOTATION:

- 1.1 In general all quotes are valid for four weeks, except if otherwise indicated on the quotation.
- 1.2 If a quote is not accepted within the first two weeks, it may influence the quoted turn-around-time. (Where applicable).

2. ACCEPTANCE OF QUOTATION:

- 2.1 A Quote is accepted by signing the relevant section on the quote and faxing it back to MASC with an appropriate order (official company order) for the quoted work.
- 2.2 A signed and returned quote is seen as a contractual agreement for acceptance of the quote and the terms and conditions contained in this agreement.
- 2.3 The terms and conditions contained in this agreement takes precedence to any terms and conditions set out on any order or similar document and shall not be binding to MASC unless accepted in writing.
- 2.4 A job will not be started unless the quote is accepted and all relevant equipment and documentation is submitted.
- 2.5 Should modifications, queries arise from information on the quotation, this should be communicated in writing to the responsible MASC personnel.

3. FINANCIAL:

- 3.1 Payment is strictly 30 days from date of invoice, free of any bank or other charges. However, first time clients are required to pay the full quoted amount upfront, before testing commences.
- 3.2 MASC maintains the right to change credit terms without notice.
- 3.3 Interest will be charged at prime + 2% for payments after 30 days from date of invoice, with a minimum of 15%. 20% interest will be charged for outstanding amounts after 60 days.
- 3.4 Quoted amounts do not contain VAT unless specifically indicated on the quotation.
- 3.5 Banking details may be obtained from our office.

- 3.6 Quoted amounts do not cover unforeseen costs that may be incurred, for instance collection, delivery and insurance (where applicable) of equipment, materials etc. This will be additionally quoted.

- 3.7 Quoted amounts are fixed for the work specified in the quotation. Additional services or changing the specification or scope of work will be additionally quoted and work will not commence until the new quotation is agreed on / accepted as described in this document.

- 3.8 Quotations including a daily rate shall be for a seven and a half hour day and any additional work, requested by the client, shall be charged at accepted overtime rates.

- 3.9 MASC maintains the right to terminate or hold back information on a current job if the client is unable to pay its debts when due, or its ability to pay is doubtful, considering bankruptcy, insolvency, financial administration, repossession of assets, ceasing of business activities, or any similar process, either at initiation stage or in progress. Termination of the job / project follows the process described in “jobs / projects”.

- 3.10 MASC shall be entitled to recover all costs incurred up to the date of termination of the project as described in these terms and conditions, plus a disruption charge of 10% of the quoted amount, additional expenses, legal fees, and cost of collection.

4. JOBS / PROJECTS:

- 4.1 Turn around times, whether in the quotation or otherwise communicated, are estimates and should not be construed as fixed under this agreement.

- 4.2 Turn-around-times may be influenced by unforeseen events outside the control of MASC.

- 4.3 Delayed feedback, documentation, equipment etc. required from the client may cause delays and an increase in quoted amounts when the job / project has to be taken up especially after significant delays, unless organized with MASC in writing.

- 4.4 If no reaction on requests/enquiries from MASC is received in three weeks, the job / project may be closed and invoiced appropriately to the time spent and costs incurred by MASC, including the profit margin and a 10% disruption fee. Re-opening the job / project will lead to additional costs and may be re-quoted at the discretion of MASC.



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- 4.5 No new jobs will commence until payments have been resolved on terminated jobs / projects and overdue payments.
- 4.6 Equipment (batch testing), not complying with supplied documentation, may be rejected and a quote will be forwarded for re-evaluation, re-testing and / or updating of the certification.
- 4.7 Witnessing of tests may be allowed when organised well in advance with the relevant technical specialist. This may lead to additional costs because of the additional scheduling and staffing arrangements required.

5. EQUIPMENT:

- 5.1 Although we take all reasonable precautions, MASC do not take responsibility for damage, theft or similar to equipment, documentation, belongings etc. submitted to, left in the possession of MASC personnel or on MASC premises or during transport by MASC personnel or during testing, inspection or any other activity or circumstance. It is the client's responsibility to insure any valuables against any foreseen or unforeseen events.
- 5.2 All equipment not collected within four weeks of completion of the job will be disposed off in any way as seen suitable by MASC.

6. MASC PROPERTY RIGHTS and COPYRIGHT, CONFIDENTIALITY and USE of MASC DOCUMENTATION

- 6.1 No person / organization shall use documentation or a product from MASC, including test reports, certificates, letters, the MASC permit, etc. to knowingly create a false impression of the product(s) and / or its certification, the scope of the mark scheme, etc. on advertising material, during tenders, to clients etc.
- 6.2 All MASC copyrighted materials may only be copied, distributed or handed over to a third party when written permission is obtained from MASC.
- 6.3 If a report / certificate is published or reproduced it shall be reproduced in full, i.e. the reproduction shall contain the printed as well as the typed parts of the report, nothing excluded. An abridged form of the report or certain parts of it may only be published or reproduced, provided that it is approved in writing by any two members of Mining And Surface Certification CC before publication or issue.

- 6.4 Proposals, checklists, quotations, guidance documents etc. as part of this agreement or not and whether in anticipation or after acceptance, is confidential. It may not be copied and given or shown to any third party for any reason including to obtain other quotations. The copyright material in these documents remains the property of MASC and shall be returned on request.
- 6.5 MASC maintains strict confidentiality. This encompasses any proprietary information and material submitted by or otherwise obtained from clients for purposes of approvals or certification. MASC also undertakes not to disclose any information or results of testing, inspections and assessments to any third party unless the client has granted specific written permission or it is required by law or the accreditation of MASC.
- 6.6 The permit issued to a mark holder and a type certificate remains the property of MASC and may be revoked as a result of just cause as determined by MASC, in some instances following recommendations from the Department of Minerals and Energy and / or the Department of Labour. The failure to pay outstanding mark fees, refusing to have mark inspections conducted etc. may be seen as just cause for revoking the mark holder permit.
- 6.7 The client only obtains the right to use, display or depend on any approval, including test reports and certificates, after the outstanding amounts for the job / project are paid in full.

7. CLIENT'S RESPONSIBILITY

- 7.1 In order for MASC to deliver the services as quoted for, the client needs to observe his responsibilities including specific aspects, but not limited to the aspects elaborated on in this clause. These responsibilities are for the account of the client. MASC will not be held responsible / liable for failing to deliver on a job / project as a result of failure of the client to adhere to his responsibilities required to enable MASC to deliver the service.
- 7.2 All documentation, equipment and materials are to be delivered in a useable format to MASC, for the attention of the relevant technical specialist, before or on the agreed date. The format should be agreed on between the technical specialist and the client. Documents must be in English.
- 7.3 Any accessories required to operate / open the equipment or relevant documentation, e.g. instruction manuals, should accompany the submission.
- 7.4 Any special instructions, e.g. MASC not to open expensive electronic equipment by themselves, shall accompany the submission in writing and for the attention of the relevant technical specialist.



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- 7.5 Equipment supplied to MASC shall be clean and safe, commensurate with the service to be delivered by MASC. MASC may refuse to do work if the equipment is deemed to be unsafe, a threat to the environment and / or infrastructure. The client shall verbally and in writing (in submission documentation) warn the relevant MASC technical specialist(s) of any specific unsafe condition / health hazard of any product or process that the MASC personnel may be subjected to in delivering the service.
- 7.6 At least one contact person, with or appointed by, the client organization should be available on a day to day basis.
- 7.7 Responses to requests from MASC should be timely. Requests include updating / amendment of documentation, additional samples, modification of a sample etc.
- 7.8 It is the client's responsibility to keep copies of all documentation, software, data, information etc. submitted to MASC.
- 7.9 It is the client's responsibility to have the equipment insured against possible damage, loss or any associated event while in the possession of MASC. See equipment clause.
- 7.10 The client shall comply with the requirements in terms of this agreement.
- 7.11 The client shall return the original copy of the permit and / or type certificate, should MASC revoke these under the terms of this agreement. All references to these documents shall be removed and no impression in any form whatsoever shall be created that these still exist.
- 7.12 The client shall allow access to MASC personnel to conduct the service, whether an onsite inspection, surveillance audit or similar. The client shall provide the required safety equipment, instructions etc. as required by the applicable health and safety legislation, to ensure the protection and safety of MASC personnel.
- 8. WARRANTIES, LIMITATIONS OF REMEDY, LIABILITIES and SCOPE OF AGREEMENT**
- 8.1 Services provided by MASC under this agreement are conducted with reasonable skill and care as required by MASC's accreditation and the relevant standards applicable. MASC will not accept responsibility, liability for expenses or damage as a result of services delivered unless under the law MASC has been proven to be grossly negligent.
- 8.2 A test report relates only to the actual item submitted for the test and relating to the conformance requirements indicated. It furnishes or implies no guarantee whatsoever in respect of any similar / identical items that has not been tested and does not cover the performance of the tested equipment outside the scope of the test report.
- 8.3 While every endeavour will be made to ensure that a test is representative and accurately performed, and that a report is accurate in the quoted results and conclusions drawn from the test, MASC or its member/employees shall in no way be liable for any error made in carrying out the test or for any erroneous statement, whether in fact or in opinion, contained in a report issued pursuant to a test. MASC's liability is only to the extent covered by law as to the quality of the service delivered or its fitness for purpose. All other warranties, implied or expressed, are excluded.
- 8.4 Nothing in this agreement should be considered a warranty for issuing a certificate (whether a permit for the MASC marks or a type certificate).
- 8.5 A certificate, test report or any other documentation from MASC should not be considered to cover more than is stated in the documentation, for instance the functional performance of products are not covered by MASC documentation.
- 8.6 The remedies in this agreement shall be the sole and exclusive remedies.
- 8.7 MASC will not be held liable for delays or for non-performance due to causes beyond its reasonable control or any direct, indirect and consequential losses not covered in this agreement.
- 8.8 MASC will under no circumstance be liable for an amount larger than the quoted amount for the service as indicated in the quotation and covered by this agreement.
- 8.9 The client hereby agrees to indemnify MASC, its employees and subcontractors from any claim against any of these parties as a result of damage, loss, liabilities, actions, expenses etc. arising from services delivered by MASC or the client's failure to perform its obligations under this agreement.
- 8.10 The laws of South Africa will govern disputes arising from this agreement. All parties agree to submit to the jurisdiction of the South African courts.
- 8.11 If exception to any part of this agreement is taken, only that part will be negotiated and depending on the outcome, in writing and signed by a representative of both parties, will be amended / deleted. All other aspects of this agreement will remain intact.
- 8.12 This agreement constitutes the full agreement between MASC and the client relating to services under this agreement. This agreement supersedes any other communication, representations or other terms and conditions. Unless in writing, the client's different terms and conditions will not apply.

This document is issued based on Mining And Surface Certification's Standard Contract terms and conditions available on request.

While every endeavour is made to ensure that a test / assessment is representative and accurately performed, and that a report is accurate in the quoted results and conclusions drawn from the test / assessment, MASC or its members/employees shall in no way be



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liable for any error made in carrying out the test / assessment or for any erroneous statement, whether in fact or in opinion, contained in a report issued pursuant to a test / assessment.

MASC takes no responsibility for any non-conformances, exclusions or any results / assessments not in compliance with the standards. By marking the equipment in accordance with the documentation / standard, the manufacturer attests on his own responsibility that the equipment has been constructed in accordance with the applicable requirements of the relevant standards and that the routine verifications and routine tests have been successfully completed and the product complies with the documentation and standard(s).

This document is only for use and application in South Africa. It is issued based on National interpretations and accepted practises.

No rights or obligations may be assigned under this agreement by any of the parties, without the prior consent of the other party.

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