

BMSA Affiliated Services Terms & Conditions

The following Standard Terms and conditions will regulate between **BMSA Affiliated Services** and the **Customer** in Respect of all Work Effected in terms of this Agreement.

1. DEFINITIONS

- 1.1. **BMSA** - Shall mean BMSA Affiliated Services, an Independent BMSA Affiliated Services contracted by the customer to effect the work in terms of this agreement.
- 1.2. **Customer** - shall mean the owner, or occupier of the property at which the work is to be performed, alternatively the owner's agent who warrants that he is duly authorized to bind the owner in this agreement.
- 1.3. **Property** – Shall mean the customer's property at which the work is to be effected and shall be deemed to be at the address Reflected on the face hereof, unless the contrary is stated.
- 1.4. **Work** – shall mean all work to be effected in terms of this agreement by BMSA at the property as specified on the face hereof, it being understood that no additional work shall be deemed to form part of this agreement unless it is specifically recorded in an addendum hereto.
- 1.5. **Contract Price** – Shall be the amount Payable in terms of this agreement as specified on the face hereof in respect of the work to be effected at the property as quoted for in the signed quotation.
- 1.6. **Drawings** - Shall mean architectural drawings prepared in respect of the work, if the work requires such drawings, which shall be supplied by the customer unless BMSA is specifically instructed to have the drawings prepared by an architect, at such additional fees as may be agreed upon.
- 1.7. **Practical completion** - Shall mean the date on which the work has been completed and handed over to the customer together with BMSA final invoice in respect of the work so completed.
- 1.8. **Materials** - Shall mean any and all materials, appliances and apparatuses to be installed, or used in the execution of the work.
- 1.9. **Equipment** - Shall mean such tools and machinery as may be necessary to execute the work.

2. AGREEMENT

- 2.1. The customer agrees that (a) this Agreement represents the entire Agreement between the customer and BMSA and that any alterations or additions to this Agreement may not be effected unless agreed to by both parties, reduced to writing and signed by the customer and BMSA; (b) this Agreement will govern all future contractual relationships between the parties, notwithstanding receipt or acknowledgement of the customer's own order form or conditions; (c) this Agreement is applicable to all existing debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or resolute conditions; (e) and conflicting terms, conditions or agreements without prejudice to any securities or guarantees held by BMSA and; (f) this Agreement applies to all employees and sub BMSA 's of BMSA.
- 2.2. The Sub-Contractor hereby binds himself in his personal capacity as Shareholder (in the case of a company), Member (the case of a close corporation) or Owner, Partner, or Proprietor, as co-principle debtor jointly and severably for the full amount due to BMSA and agrees this agreement will apply in the same way to him as soon as any work is excepted.
- 2.3. Notwithstanding the provisions of clause 2.1 above, all orders or contracts of sale, or agreed variations thereto, whether oral or in writing, shall be binding and subject to this agreement and may not be cancelled by the customer.
- 2.4. The customer hereby gives his/her consent for a credit check.
- 2.5. The invalidity of any part of the Agreement shall not affect the validity of any other part.

3. APPOINTMENT

- 3.1. The customer appoints BMSA to effect the work at the property and agrees that the terms and conditions as set out herein shall be the Agreement between the parties in respect of the work to be effected.

4. QUOTATION

- 4.1. All quotations will remain valid for a period of fourteen (14) days from the date of the quotation, or until the date of issues of any new price list, whichever occurs first, or unless specified in writing by BMSA.
- 4.2. Delivery and performance times quoted are estimates and are not binding on BMSA Affiliated Services.
- 4.3. All quotations are subject to the availability of input goods or services and subject to correction of good faith errors by BMSA, and the prices quoted are subject to any increase in the cost price, including currency fluctuations, to BMSA before acceptance of the order.
- 4.4. In the event of the customer disputing the amount of the cost increase in clause 4.3 above, the said amount may be certified by an independent auditor and such certificate shall be final and binding on the customer.
- 4.5. All variations to the original quotation accepted by the customer must be verified with the official BMSA call centre and only on receipt in writing from BMSA call centre will this be accepted as legal and binding.

5. PROVISION OF MATERIALS AND EQUIPMENT

- 5.1. Unless the contrary is specified on the face hereof, BMSA shall provide all materials and equipment necessary for the proper execution of the work. All materials shall be of the kind and quality as described on the face hereof, alternatively in terms of the architect's specifications, if applicable and BMSA shall upon the request of the customer furnish him with vouchers to prove that the materials are of such standard.
- 5.2. BMSA reserves the right, at its sole discretion, to provide alternative products at the prevailing prices to those ordered by the customer, should those products have been superseded, replaced or otherwise become unavailable.
- 5.3. Products are sold "As is" with no warranty against latent defects. All guarantees, including common law guarantees, are hereby specifically excluded.
- 5.4. If the customer supplies any materials, or equipment, and or, accessories to be utilized in the work, BMSA shall not be responsible for any defects thereto, nor is the quality thereof, it being agreed that BMSA shall accept such materials, and accessories, in the condition in which it delivered to be utilized in the execution of the work. Extra costs incurred through the use of defective materials or equipment supplied shall be for the customer's account.
- 5.5. All fixed and unfixed materials purchased by BMSA shall be deemed to be under the control of BMSA and subject to his lien for payment of any amounts which may become owing in terms of the Agreement. It is recorded that any materials which have been purchased by BMSA and affixed to the property shall remain the property of BMSA Affiliated Services until payment in full has been effected by the customer. Once payment in terms of the agreement has been effected in full, all materials which have been fixed to the property shall become the sole and exclusive property of the customer and all unfixed materials shall be removed from the property, the unfixed materials being deemed to be property of BMSA.

6. LAWS, BYLAWS AND REGULATIONS

- 6.1. BMSA shall comply with any Act of Parliament, regulations and bylaws of any local authority and/or any public service company, or authority relating to the work, as may be applicable and required, provided that if any fees are payable to any statutory body, or similar entity, the costs thereof shall be for the customer's account, it being recorded that the contract price stipulated on the face hereof is exclusive of any additional fees, charges, or taxes that may be payable pursuant to this particular clause.
- 6.2. There shall be no obligation upon BMSA to ensure that the work as directed by the customer and/or the architect do not encroach on building regulations, or building lines, the customer, or his agent, being solely responsible to ensure compliance in this regard.

7. EXECUTION OF WORK IN ACCORDANCE WITH AGREEMENT AND DRAWINGS

- 7.1.** BMSA shall not make any variation to the drawings, if applicable, and shall effect the work strictly in accordance with the drawings, alternatively the specifications of the work as recorded on the face hereof. Any deviation from the drawings or specifications on the face hereof shall only be effected if it is properly recorded and signed by BMSA and the customer, or his architect if applicable, and without such written variation in respect of the work, BMSA shall not be obliged to give effect to any additional requirements, or instructions from the customer.
- 7.2.** If the customer requires any additional work, variations, or alterations from the work as specified on the face hereof, he shall advise BMSA thereof and BMSA shall, within Forty-Eight (48) hours, inform the customer of the cost and time implications occasioned by such a variation. If the customer accepts the additional costs and time implications, an written acknowledgement specifying the additional costs and time required for purposes of completion of the work, shall be prepared by BMSA and presented to the customer for his signature. On an acceptance signature by the customer. BMSA shall immediately proceed to give effect to the customer instructions, as varied by the written acknowledgement.

8. ACCESS TO THE WORK SITE

- 8.1.** The customer shall afford BMSA access to the property to perform the work in accordance with BMSA obligations. In this regard, it is specifically agreed and recorded that BMSA shall have access to the property from 08H00 to 16H00 from Mondays to Fridays and from 09H00 to 14H00 on Saturdays to perform the work and the customer shall make available, at his cost, the necessary water, sanitary facilities and electricity required by BMSA to give effect to its obligations in terms of this agreement
- 8.2.** BMSA shall further, at the same times specified above, have access to any part of the work already completed and handed over to the customer for occupation as a rite of passage through such occupied parts for purposes of reaching the work site on the property.

9. PRACTICAL COMPLETION

- 9.1.** On the date of practical completion, BMSA shall hand the work on the property over to the customer and render a final invoice in respect of the contract price. The customer shall be obliged to accept the work and the final invoice, subject to the customer rights to insist on the repair of any defects that may manifest itself as set out in this agreement.

10. TIME TO COMPLETE WORK

- 10.1.** BMSA shall commence the execution of the work on a date mutually suitable to the parties, and if such date is specified on the face hereof, then on such date as specified.
- 10.2.** The work shall be completed within a reasonable period from the date of commencement; it being recorded that the customer shall have no right in respect of any penalties if the work is not completed within a specified period of time.

11. INDEMNITY

- 11.1.** BMSA indemnifies the customer against any liability, loss, claim, or proceedings of whatever nature arising in common law, or by statute consequent upon personal injuries to, or the death of any person, or employee of BMSA arising out of, or in the course, or caused by the execution of the work, unless such loss, injury, or death is due to any act, or commission of the customer, or his servants, or any agent acting in the interests of the customer.
- 11.2.** BMSA indemnifies the customer against any liability, loss, claim, or proceedings consequent upon the loss of, or damage to any moveable, or immovable property arising out of, or in the course of the execution of the work due to any wilful, negligent, or reckless act, or omission by BMSA, his agents, or servants provided however that BMSA shall be entitled to act on any reasonable instructions by the customer and that the execution of such an instruction shall not lead to any liability in terms of this clause.
- 11.3.** Where any loss, or damage is insurable by a policy insuring structural damage, fire, riots, strike, damage and special perils, BMSA does not indemnify the customer against such loss of, or damage to any structure being altered, or added, it being deemed that the customer will have suitable and adequate structural insurance against the risk against losses in this regard.

12. EXCLUSION OF LIABILITY

- 12.1.** When any loss results as a result of war, invasion, riot, warlike operations, civil unrest, acts of God, or any other act which is beyond BMSA control (vis major), BMSA shall not be liable for any losses which may result because of such action, notwithstanding any clause herein which may have indemnified the customer against the risk of damages and/or loss.

13. DELAY IN COMPLETION OF WORK

- 13.1.** If the work is delayed by an act of God, vis major, exceptionally inclement weather, or any other cause beyond the reasonable control of BMSA, BMSA shall be entitled to an extension for the completion of the work, notwithstanding that the time of completion may have been specified as being of the essence, it being agreed that the time for performance will be extended for such a period as the work may have been interrupted for one of the reasons set out in this clause.

14. SUSPENSION OF WORK

BMSA shall be entitled to suspend performance of the work in terms of this agreement in the event of:

14.1. A breach by the customer to include, but not be limited to:

- 14.1.1.** Non-payment of any interim invoice, or amounts on the date on which it may be owing in terms of this agreement.
- 14.1.2.** the failure by the customer to supply any material in terms of its obligations that may be reasonably required for the performance of the work by BMSA
- 14.1.3.** The customer not granting BMSA access to the work, or any part thereof.
- 14.1.4.** The customer not making available any electricity, or water which may be required for purposes of the execution of the work.
- 14.1.5.** The customer not making available any drawings by an architect, or not arranging for the appointment of an engineer, where required, for the performance of the work.
- 14.1.6.** Where the customer fails to remedy its obligations to enable BMSA to proceed with the work.

14.2. In the event of BMSA having to suspend performance of the work in terms of this agreement BMSA shall be entitled to immediately:-

- 14.2.1.** Cancel this agreement and retain all amounts paid.
- 14.2.2.** Insist on payment of the balance of the contract price as stipulated on the face hereof.
- 14.2.3.** Remove all unfixed materials from the premises without any compensation to the customer.
- 14.2.4.** Remove any machinery and equipment from the premises.
- 14.2.5.** Exercise his lien in respect of payment for all amounts that may be due and owing in terms of the agreement and without prejudice to any of the above or other rights BMSA may have in Law, to lock the customer out until such payment has been effected.

15. PAYMENT

15.1. The customer shall pay to BMSA the amount as stipulated on the face hereof together with all additional costs in respect of additional work, or additional services rendered pursuant to the execution of the work on the dates specified for payment.

- 15.1.1.** By accepting BMSA quotation the customer accepts BMSA Terms and Conditions.
- 15.1.2.** BMSA shall not be binded to customer payment terms, unless otherwise agreed by BMSA and the customer in a dated written and signed document format.

15.2. The risk of payment by cheque through the post or by electronic funds transfer rests with the customer.

- 15.3.** The customer shall under no circumstances be entitled to withhold payment, for any reason whatsoever. Withholding of payment shall be deemed to be a material breach of the agreement which would entitle BMSA the remedies set out in clause 14.2 above.
- 15.4.** The customer is not entitled to set off any amounts due to BMSA by the customer against its indebtedness to BMSA.
- 15.5.** BMSA shall be entitled to invoice each delivery or performance separately when executed.
- 15.6.** The customer shall pay to BMSA the full amount as stipulated in the invoice within a maximum period of five (5) days on receipt of invoice.
- 15.6.1.** The customer will be charged a 10% interest on outstanding amounts not paid within seven (7) days of date of invoice every seven (7) days or part thereof until handed over to debt collecting agent or paid in full.
- 15.6.2.** The customer must notify BMSA within a maximum period of five (5) days of date of invoice with a written letter by the customer explaining payment delay reasons with a written arrangement agreement supplied to the customer in terms of BMSA acceptance of new payment date arrangement.
- 15.6.3.** The customer shall pay the full charged amount issued by a debt collector agency, lawyer firm or third party for collection of late payments.
- 15.7.** The customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 15.6 above, BMSA is entitled to (i) forward a letter of demand using a third party demanding full and final payment.
- 15.8.** Outstanding accounts are subject to default listings on a national credit bureau database. On payment of the outstanding debt the default listing will be adjusted to read "Paid Default" until legislation demands complete removal.
- 15.9.** BMSA reserves the right to provide a national credit bureau with updated personal information.
- 15.10.** The customer also consents that BMSA may use a national credit bureau database for tracing, should the customer abscond.
- 15.11.** In the event of any payment not being made on due date, the amount then outstanding shall bear interest as prescribed in terms of the Usury Act with interest calculated daily and compounded monthly from the date of acceptance of the order.
- 15.12.** 12 In the event of default, all payments shall firstly be appropriated towards interest and costs and thereafter in respect of the capital amount payable in terms of this agreement.
- 15.13.** The customer shall be liable to BMSA for all legal expenses incurred by BMSA on the attorney-and-own client scale in the event of (a) any default by the customer or (b) any litigation in regard to the breach, validity or enforceability of this agreement. The customer is liable for all tracing, collection or valuation fees incurred as well as for any costs including stamp duties, for any form of security that BMSA may demand.
- 15.14.** Only payments made into the bank account on the invoice / quotation documents, as per the details reflected on the original quote submitted from BMSA office via e-mail will be recognized and accepted as formal payment. Only electronic fund transfer payments, cleared bank cheques, cash or deposits will be accepted.

16. GUARANTEES AND WARRANTIES

- 16.1.** BMSA shall complete the work to the reasonable satisfaction of the customer according to acceptable standards of workmanship. All work shall be guaranteed against latent defects as a result of defective workmanship for a period of twelve (12) months from date of practical completion. Superficial cracks that may appear as a result of materials drying shall not be regarded as defects. Any claims in respect of defective materials shall be directed by the customer to the supplier and BMSA shall assist in lodging the claim without assuming any liability.

17. CLAIMS

- 17.1.** Any defects to the work shall be communicated to BMSA within seven (7) days from the date of practical completion. BMSA shall be afforded an opportunity to within fourteen (14) days from receipt of such claim inspect the defects and/or workmanship which does not meet with the customer's approval and;
- 17.1.1.** If BMSA is of the view that the work is of acceptable standard, it shall notify the customer, in writing, of its findings as well as the reasons therefore.
- 17.1.1.1.** If the customer does not accept BMSA findings, he shall be entitled, within a period of fourteen (14) days from the date of notification by BMSA, to refer the matter to arbitration to resolve the complaint. BMSA may in its own discretion be entitled appoint an architect of no less than ten (10) years' experience in the Building and Construction Industry as an arbitrator. All costs in this instance will be for the customer's account.
- 17.1.1.2.** If the matter is referred to arbitration, the arbitrator shall be requested to complete his findings within a period of thirty (30) days and his finding shall be final and binding upon both parties.
- 17.1.2.** If BMSA is of the view that the work is of unacceptable standard then any defects in the workmanship, BMSA supplied materials, or damage to the work, or the premises which is as a result of defective material supplied by BMSA, or inadequate workmanship shall be repaired by BMSA, within a period of fourteen (14) days, to the reasonable satisfaction of the customer, at BMSA costs.
- 17.2.** If the customer does not notify BMSA within seven (7) days of any defect in the workmanship and material, it shall be deemed to have been completed to the reasonable satisfaction of the customer and the customer shall have no further right of recourse against BMSA in respect of any repairs, or defects.
- 17.3.** If the customer has a claim as a result of latent defects, he will address such a claim to BMSA, in writing, within the warranty period of twelve (12) months, setting out in detail the nature and extent of the latent defects.

18. SUB BMSA Affiliated Services

- 18.1.** BMSA shall be entitled to employ the services of any sub BMSA provided that the amounts payable to the sub BMSA are paid by BMSA and that the sub BMSA performs his mandate in terms of the same or similar conditions to that contained herein.

19. GENERAL

- 19.1.** The agreement shall be governed in all respects by the Laws of the Republic of South Africa.
- 19.2.** The terms and conditions contained herein, read with the nature and extent of the work and the costs reflected on the face hereof, shall constitute the entire agreement and shall not be varied unless same is reduced to writing, duly signed by, or on behalf of BMSA and the customer.
- 19.3.** The customer consents in terms of Section 45 of the Magistrate's Court Act, 32 of 1944, to BMSA instituting any action, or proceedings for enforcing any of its rights under this agreement in the Magistrate's Court of any district having competent jurisdiction by virtue of Section 28 of the same Act. The aforesaid shall however not preclude BMSA Affiliated Services from instituting action in any division of the High Court which may exercise competent jurisdiction.
- 19.4.** BMSA shall be entitled to cede and assign any of its rights, or obligations under this agreement to any third party without prior notification to, or any consent of the customer.
- 19.5.** The parties choose their addresses specified on the face hereof as its addresses for service of all legal process and any notice delivered by hand shall be deemed to be received on the day it is so delivered, alternatively if same is posted by prepaid registered post, then within four (4) days of date of actual posting of the notice.