

## Frequently asked questions – Model Forms of General Conditions of Contract

#### Disclaimer:

Please note, these questions and answers do not constitute legal advice but are for guidance purposes only.

1)

#### Q: What Model Form should I use?

**MF/1** is suitable for lump sum contracts for the supply of electrical, electronic or mechanical plant with erection in the UK or overseas. The erection work may include minor civil works. It is also widely used on material handling contracts. Several sets of additional suggested Special Conditions are also included.

**MF/2** is a key industry Model Form for the supply of electrical, electronic or mechanical plant in the UK or overseas. It excludes any erection work by the Contractor, this being the responsibility of the Purchaser, but it does include a form of Supervision Contract for use where the Purchaser wishes to use the expertise of the Contractor to assist in erection, testing or commissioning of the Plant. In addition to its 'General Conditions' it also includes sets of additional unique 'Special Conditions'.

**MF/3** is a key industry Model Form of General Conditions of Contract to cover the main conditions for UK contracts for the supply of electrical and mechanical goods – without erection. MF/3 is a lump sum contract intended for use where there is no design work that requires the approval of the Purchaser or an Engineer or installation or commissioning by the Contractor. It can be used as a set of neutral terms where the parties would otherwise use their standard terms of purchase/supply.

2)

### Q: Why are there two supply contracts?

MF/2 is suitable for supply of complex items of plant, which will typically be manufactured to a bespoke design approved by the Purchaser's Engineer. The design and/ or performance of the plant will frequently be specified in some detail by the Purchaser.

MF/3 is suitable for procurement of goods, typically standard products for which the Specification and performance will normally be defined by the Vendor. This contract does not include a role for the Purchaser's Engineer.

Q: Why does supply contract MF/2 include for supervision by the Contractor? Although MF/2 is a contract for supply only and where installation is the responsibility of the Purchaser, it is recognised that in some instances the Purchaser may wish to utilise specialist supervisors provided by the Supplier to oversee the installation, testing and putting into service of the Plant. The MF/2 Model Form therefore includes

a separate form of contract covering the duties to be performed by such supervisors. The combination of Supply and Supervision Contracts is most likely to be used in non- EU markets. Although the Supervision Contract was intended to be used with MF/2 it could be used with a different set of Supply Only conditions provided that professional advice is taken to ensure that there is no conflict between the two contracts intended to be used.

4)

#### Q: How is MF/1 administered?

MF/1 uses an 'Engineer' who is engaged by the Purchaser to administer the contract on behalf of the Purchaser. The Engineer is an individual or a firm responsible for issuing certificates, giving approvals and consents, taking certain decisions and making determinations on valuations.

5)

#### Q: Is MF/1 appropriate for projects which are externally financed?

MF/1 can be used as a starting point for projects which are externally financed, although there are likely to be some additional provisions which the provider of finance will want to include.

6)

### Q: Is MF/1 suitable for use on a "turnkey" contract?

MF/1 is suitable for use on turnkey contracts where the construction elements of the project are relatively simple and with minimal risk associated with the construct element. However, where a project includes a significant construction element, e.g. ground and soil surveys, extensive ground works and foundations, complex building works etc., a Model Form designed specifically for turnkey construction should be used.

7)

# Q: Could I modify MF/1 to make it suitable for more complex turnkey projects? With suitable additions and modifications MF/1 has been used successfully as a basis for turnkey construction projects. If this approach is contemplated it is

recommended that professional advice is obtained.

8

#### Q: Can I use the Model Forms in all jurisdictions?

MF/1 and MF/2 are intended to be used both in the UK and internationally, though outside the UK some amendments may be necessary to misapply the specifically UK statutes mentioned therein and to consider issues of applicable law and disputes provisions.

9)

### Q: Why is there no commentary available for MF/3?

A: MF/3 is an easy to use, straight forward supply contract and therefore does not require any commentary on the clauses provisions.

10)

### Q: Is MF/4 suitable for all types of consultancy contract?

MF/4 was produced in response to request from members of the Institutions who wanted a simple form of consultancy contract suitable for a broad range of projects, but where the services to be provided are primarily the giving of professional advice. Where more specialised or extensive consultancy services are involved, other forms may be more appropriate.

11)

### Q: Can MF/1 be used where it is proposed that the role of the Engineer is to be performed by an employee of the Purchaser?

Yes, there is no requirement that the Engineer has to be an independent professional appointed to undertake the task: it can be done by an employee and in the majority of cases it usually is. It must be recognised however that in carrying out certain aspects of his role, even when he is an employee of the Purchaser, the Engineer is required to exercise his discretion reasonably and fairly and not merely represent the best interests of his employer.

12)

Q: Although some provisions of MF/1 apply to construction contracts and some do not, the adjudication provisions apply to all cases. Why is this? Adjudication seemed to work reasonably well and it was therefore considered to be an appropriate means of resolving disputes. There are few reported cases of disputes occurring under the Model Forms reaching the courts or arbitration and it was considered that a move towards adjudication would reduce even that small trickle of cases.

13)

### Q: If there is any provision of the Model Forms which I want to change, is there any copyright or other issue preventing it?

The forms are called "Models" as it is anticipated that changes may be required to reflect the specific needs of the parties or the Contract. However, care should always be taken in making any amendments to ensure that there are no unintended consequences.

14)

### Q: Why are individual payment terms left to be determined between the parties?

It is increasingly common for the parties to specify payment by reference to milestones and these differ and vary according the type of products used. The MF/1 approach allows the parties flexibility to agree any mechanism for the flow of the contact price from Purchaser to Contractor and merely regulates the timing of the fulfilment of any payment obligations and the consequences of a late or non-payment.

15)

### Q: I have heard that MF1 favours the interests of Purchaser over those of the Contractor. Is that true?

No, the IET and IMechE have always strived to ensure a fair balance of risk and responsibility between the parties, being neither biased in favour of the Contractor

nor Purchaser. The contrary view, that the forms are contractor-friendly, is occasionally voiced also. The IET and IMechE draw their members from all parts of the contracting spectrum and this diversity is reflected in the make-up of the drafting panel and also the approval process adopted by the Institutions.

16)

## Q: Why do the Model Forms permit a Purchaser to give prior approval to a valuation, approval or the performance by the Engineer of any other of his duties?

When it became evident that Purchasers were routinely placing such limitations on the power than could be exercised by those appointed to act as Engineer, it was considered that if such qualifications applied, the Contractor should be aware in advance of signing a contract which, if any, duties of the Engineer would be subject to the Purchaser's prior approval.

17)

### If a Purchaser is dissatisfied with the conduct of the Engineer can a substitute by imposed on the Contractor?

Provided an Engineer is named in the Special Conditions or, if not named in the Special Conditions at the time of signature of the Contract has been named subsequently, the person so named cannot be changed without the Contractor's agreement.

18)

#### Who is Responsible for Design?

The Contractor is responsible for the detailed design of the Plant and of the Works in accordance with the Specification. The Specification is thus a vital part of the Contract. The Specification may be more or less detailed in terms of general and detailed design requirements, but will as a minimum define the Plant in terms of its basic performance parameters e.g. capacity, output, ratings, compliance with recognised international standards etc. At the pre-contract stage a specification may be proposed by the Contractor, in response to a non-specific enquiry from the Purchaser, or the Purchaser may provide a comprehensive specification which will define the design in more or less detail against which bidders will submit offers. In practice the Specification used in the Contract is likely to be made up of design parameters furnished by both parties. In accepting the Contract, of which the Specification is a part, the Contract takes responsibility for the design in compliance with the Specification.

19)
Is the Contractor responsible for a detailed design provided by the Purchaser?
Provided a detailed design is given in writing by the Purchaser or Engineer the
Contractor is responsible unless he disclaims responsibility by giving notice to the
Engineer within a reasonable time.

20)

### If the Contractor is responsible for the design of the Plant and Works is he liable if either fail to meet the Purchaser's requirements?

If Plant and Works fail to comply with the Specification, including failing to pass any tests in the factory, Tests on Completion or Performance Tests, the Contractor is

responsible for rectification, as he will be for defects that arise within the Defects Liability Period. However the Contractor does not in general warrant that the Works as described in the Specification will satisfy the Purchaser's wider requirements. Clearly, the Contactor does not normally have knowledge of all factors that could influence the success of the Purchaser's venture or able to foresee all circumstances that might influence the Works. However, the Model Forms recognise that in certain circumstance the parties may agree on a form of warranty that extends the Contractor's liability beyond simply completing the Works in accordance with the Specification.

21)

What if the Purchaser supplies the Contractor with drawings that are in error? The Purchaser is responsible for errors, omissions and discrepancies in drawings and written information that he or the Engineer supplies to the Contractor.

22)

Is there a conflict between the Contractor needing to disclaim responsibility for a detailed design provided by the Purchaser and the Purchaser being responsible for errors in drawings and written information that he or the Engineer provides?

No, on issues of detailed design of the Plant or Works the Contractor is deemed to have the knowledge to judge whether a requirement of the Purchaser is practical and reasonable.

23)

### Can the Purchaser use the provisions for variation of the Works to adjust the Programme?

No, the Purchaser may add to, modify or omit parts of the Works using the variation provisions but cannot use these provisions to change the Programme. As a consequence of additions or modifications to the Works it may be necessary to extend the Time for Completion but if the Purchaser otherwise wishes to delay progress he must use the provisions for suspension of the Works.

24)

#### Why can the Purchaser suspend the Works but not the Contractor?

The Model Forms provide for the Contractor to be granted extensions of time where progress is delayed for reasons that are beyond the reasonable control of the Contractor. The power to suspend the Works, or any part of it, permits the Purchaser to adjust the programme should, for example, other parts of a project be delayed, but the period for which a suspension may apply is time limited and the Contractor is entitled to receive compensation if a suspension causes him to incur additional costs.