 **M Group Manchester Terms & Conditions**

**1 Definitions**

*“Business Days”* means any day except for a Saturday, Sunday or public holiday in the jurisdiction the Products or Services are being supplied.

*“Customer Materials*” means any document, goods or material provided by the Customer or on behalf of the Customer to Chubb in relation to this Agreement.

*“Customer's Personnel”* means any subcontractor, employee, agent or officer of the Customer or such other person engaged by or representing the Customer from time to time.

*“Completion Date*” means the earliest of the date on which the Term (as extended in accordance with this Agreement) expires or the Works have been completed.

*“Fees”* means the Fees specified in the Details (as adjusted in accordance with this Agreement).

Force Majeure means an event beyond the control of M Group Manchester, including but not limited to strikes, industrial disputes, fire, flood, acts of God, war, insurrection, vandalism, sabotage, riot, national emergency, piracy, hijack, terrorism, embargoes or restraints, extreme weather or traffic conditions, temporary closure of roads, changes in Legislative Requirements.

*“Products”* means the products described in the quotation issued by M Group Manchester to the Customer.

*“Services”* means the services described in the quotation issued by M Group Manchester to the Customer.

*“Site”* means the land or premises specified in the Details.

*“Term”* means the term of this Agreement as specified in the Details and as extended in accordance with this Agreement or otherwise by agreement between the parties.

*“Variation”* means an increase or change to the Products or Services to be supplied, including a change to any specification or Customer Materials.

**2 General obligation**

1. M Group Manchester agrees to provide the Customer with the Products and Services, and the Customer agrees to pay M Group Manchester the Fees, in accordance with:

(i)  service-specific terms described in the quotation issued by M Group Manchester to the Customer, if applicable;

(ii)  the Details;

(iii)  these terms and conditions;

(iv)  remaining schedules, forms, specifications and other referenced documents (if any),

(together, “this Agreement”).

(b) If there is an inconsistency between the documents listed in clause 2(a), the order of precedence will be the order that the documents are listed in 2(a) to the extent of the inconsistency.

**3 Fees for the Works**

1. Unless otherwise agreed in writing, the Fees:

(i) are based on the Works being carried out from 08:30 to 17:00 on Business Days (subject to alteration by M Group);

(ii) are based on having continuous, uninterrupted, and unhindered access to the required people, equipment, facilities, utilities, and areas where the Works are to be carried out;

(iii) are based on current workplace agreements;

(iv) do not cover extraneous work, including but not limited to patching/painting, carpet lifting or refitting, building work or decoration and emergency service call-outs; and

(v) do not cover any costs associated with the discovery of unforeseen conditions or any other event beyond the reasonable control of M Group Manchester.

(b) Any additional costs arising from a change in the assumptions set out in clause 3(a) will be treated as a Variation under clause 5.

(c) Should M Group Manchester agree to carry out extraneous work of the kind set out in clause 3(a)(iv), at the request of the Customer, then M Group Manchester shall not be liable for any damage arising from carrying out this extraneous work provided that M Group Manchester uses reasonable skill and care and taking into consideration the age and condition of the existing land or premises to which the extraneous work is performed.

(d)  M Group Manchester may adjust the Fees on an annual basis in respect of an increase/fall in the cost of any annual services and increased/decreased costs. Should the Customer object to M Group Manchester’s proposed adjustment of Fees, the Customer may terminate this Agreement in accordance with clause 16(e).

(e)  If it becomes necessary to pay any additional site allowances, other than a State or Federal award, or amounts in excess of any current workplace agreement applicable to the type of work being performed, these costs will be added to the Fee.

(f)  Emergency service call-outs will be charged in accordance with M Group Manchester’s standard fees for such emergency services. These fees can be provided on request.

**4 Delivery**

(a)  M Group Manchester shall use reasonable endeavours to complete the delivery of the Works by the Completion Date.

(b)  The Customer acknowledges that delivery dates or periods quoted are estimates only and are subject to prompt receipt of all Customer Materials necessary to allow M Group Manchester to proceed with the delivery of the Works.

(c)  M Group Manchester accepts no liability whatsoever for any loss or damage suffered by the Customer as a consequence of any delay in the delivery of the Works.

(d)  Risk in the Products shall pass to the Customer upon delivery of the Products to the Customer. Title to and ownership of the Products shall pass to the Customer upon receipt by M Group Manchester of payment in full for those Products.

**5 Variations**

1. The Customer shall pay for any Variation as follows:

(i)  if M Group Manchester has quoted an amount for such Variation, the amount quoted; or

(ii)  if M Group Manchester has not given any quote, an amount calculated for the Variation by M Group Manchester in accordance with M Group Manchester’s standard rates for such Works applicable at that time; and

(iii)  M Group Manchester is entitled to charge the Customer for any design, management, overhead and profit for each Variation carried out.

**6 Delays**

The Customer agrees that M Group Manchester will be entitled to an extension of time to any Completion Date or other delivery date and associated additional costs where M Group Manchester has been delayed as a result of:

(a)  a breach of this Agreement by the Customer;

(b)  an act or omission by the Customer or the Customer's Personnel;

(c) delays caused by the Customer or the Customer's Personnel;

(d) delays caused under clause 3(a)(ii), clause 4(b) and clauses 7(a) to 7(b);

(e) a Variation; and  
(f) a Force Majeure event.

**7 Customer’s specific obligations**

1. The Customer shall:

(i)  provide M Group Manchester with sufficient access to the Site as reasonably required for the purpose of allowing M Group Manchester to perform its obligations under this Agreement;

(ii)  ensure that the Customer and the Customer's Personnel:

*(A)  do not interfere with or disrupt, delay or hinder M Group Manchester, its employees, agents, subcontractors or other persons engaged by M Group Manchester or prevent them from carrying out the Works or cause them to incur additional cost; and*

*(B)  reasonably cooperate with M Group Manchester and its employees, agents and subcontractors;*

(iii)  advise M Group Manchester of the existence of any conditions affecting the Site, including but not limited to, concealed pipes, wires and cables for water, gas, electricity, telephone, or asbestos, and shall confirm the location of such conditions to M Group Manchester’s engineers before work commences. In the absence of such notice M Group Manchester accepts no liability for any loss or damage as a result of such conditions and the Customer agrees to indemnify M Group Manchester against any claim whatsoever for any loss or liability under this clause;

(iv)  provide the Customer Materials as required by M Group Manchester for the delivery of the Products and/or performance of the Services by the date agreed between the parties or otherwise within a reasonable time after the date of this Agreement;

(v)  provide M Group Manchester, within a reasonable time of a request made by M Group Manchester, any further data, specifications and information required by M Group Manchester to fulfil its obligations under this Agreement;

(vi)  provide adequate facilities at the Site at no cost to M Group Manchester, including but not limited to parking, power, lifting equipment, scaffolding, scissor lifts, rubbish removal skips and lockable storage; and

(vii)  ensure that the Site is at all times a safe working environment and complies with all applicable WHS Law. The Customer acknowledges that M Group Manchester has not been engaged as the principal contractor for the purposes of WHS Law in carrying out the Works.

1. If M Group Manchester considers that the Site is unsafe, it may delay or cease delivery of the Works until the Site is restored to a safe condition. In addition to any of M Group Manchester’s rights under this Agreement, the Customer acknowledges that any such delay or cessation of the Works:

(i) will not constitute a breach of this Agreement; and

(ii) will not entitle the Customer to the payment of liquidated damages or a financial penalty or any other damages.

1. The Customer indemnifies M Group Manchester against any claims (including claims made by third parties) for:

(i)  the failure of equipment due to events beyond M Group Manchester reasonable control, including but not limited to the failure of telecommunication carrier lines, power supply, and servers;

(ii)  costs relating to emergency services charges; and

(iii)  the relocation of equipment.

**8 Warranty and Product Returns**

(a)  The Customer must inspect all Products upon delivery and, within 5 Business Days of delivery, give written notice to M Group Manchester if any of the Products delivered are not in accordance with this Agreement.

(b)  M Group Manchester will replace or rectify (at M Group Manchester’s option) any Products that are:

(i)  not provided in accordance with this Agreement, provided that the Customer has complied with its obligations under clause 8(a); and

(ii)  defective, provided that the Customer has notified M Group Manchester of the defect in accordance with clause 8(a), or, in circumstances where the defect was not identifiable on a reasonable inspection of the Products upon delivery, the defect is notified to M Group Manchester during the Warranty Period,

1. M Group Manchester has no obligation to replace or rectify any Products under clause 8(b)

(i) where the Customer has failed to comply with clause 8(a) or 8(b)(ii).

(i) Notwithstanding anything in this clause, M Group Manchester can elect to reimburse the Customer for the cost of any defective Products supplied to a maximum total value of the Fees paid by the Customer under this Agreement for the Products.

(c) If a defect in the Product or Service appears within 12 months, the Customer is entitled to submit a warranty claim by submitting a written request to M Group Manchester.

(d)  The Customer must provide the original or a copy of the proof of purchase and, where possible, include an explanation of the problem.

(e)  If M Group Manchester elects to repair the Product:

(i)  Products presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Product; and

(ii)  if the Products are capable of retaining user- generated data, the repair of the Product may result in the loss of the data.

**9 Publicity**

M Group Manchester may utilise for marketing purposes logo’s or other images relating to the business where works were completed. These images or logo’s will be used solely for the purpose of demonstrating M Group Manchester’s working experience and client base and will not be shared with any third-party companies. By accepting M Group Manchester’s terms and conditions you are offering your consent for M Group Manchester to utilise such materials, if you do not consent to the use then we ask you to submit in writing or via email a request not to.

**10 Intellectual Property Rights**

(a)  M Group Manchester retains all rights, title and interest subsisting in any design, documentation, diagrams, plans, or other information and materials supplied to the Customer in relation to this Agreement.

(b)  All intellectual property rights in Customer Materials supplied by the Customer for the purposes of this Agreement remain the property of the Customer but the Customer Grants M Group Manchester a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify the Customer’s Materials for any purpose related to this Agreement.

(c)  The Customer agrees to accept full responsibility for the Customer Materials and to indemnify M Group Manchester for any action, claim, liability, cost or expense arising out of any claim in relation to any intellectual property infringement arising out of M Group Manchester’s use of the Customer Materials.

**11 Quotation validity**

Unless otherwise agreed in writing, a quotation provided by M Group Manchester may be accepted up to 30 days from the quotation date, after which M Group Manchester reserves the right to amend or withdraw it.

**12 Credit Information**

(a) The Customer acknowledges and agrees that if M Group Manchester requires financial information about the Customer for any credit application which attracts the operation of the Privacy Act 1988 (Cth), M Group Manchester may:

(i)  disclose and collect commercial credit information about the Customer (and if the Customer is a company, about its directors and officers) for the purpose of determining the Customer’s credit worthiness;

(ii)  obtain a credit report from a credit reporting agency (which may contain personal credit information, information about commercial activities or commercial worthiness) for the purpose of assessing an application for credit and any later request for credit;

(iii)  provide to, or obtain from any credit provider(s) named in a credit report information about the

Customer’s personal or commercial credit arrangements (including information relating to credit worthiness, credit standing, credit history and credit capacity); and

(iv) disclose personal information about the Customer to a credit provider other than M Group Manchester or to a credit reporting agency, for the purpose of collecting outstanding amounts owed by the Customer to M Group Manchester.

(b) M Group Manchester’s obligations under this Agreement are subject to satisfactory credit evaluation. M Group Manchester reserves the right to withdraw any quotation, cancel the services, and terminate this Agreement under clause 16(a) should the Customer's credit evaluation be or become unsatisfactory.

**13 Privacy**

The Customer agrees that M Group Manchester may collect and use the Customer’s personal information in accordance with M Group Manchester’s privacy policy which may be viewed at [www.mgroupmanchester.com](http://www.mgroupmanchester.com)

**14 Payment**

(a) For performing its obligations under this Agreement M Group Manchester is entitled to be paid the Fees by the Customer.

(b) The Customer shall pay M Group Manchester the Fees specified in the invoice within 30 days of the date of the invoice without set-off, deduction or discount of any kind.

(c) If the Works extend over a period greater than one month, M Group Manchester shall be entitled to submit claims for payment to the Customer for Works provided up to that date  
(including materials purchased for Works not yet delivered) by providing a tax invoice setting out details of the amount due to M Group Manchester (*Payment Claim*).

(d) The Customer shall pay M Group Manchester the amount specified in the Payment Claim within 30 days of the date of the Payment Claim without set-off, deduction or discount of any kind.

(e) The Customer acknowledges and agrees that this clause 14 creates a security interest in the Products and in all proceeds of those Products as security for the payment of all moneys owing by the Customer to M Group Manchester, and for the performance of all of the Customer’s obligations to M Group Manchester.

(f) The Customer agrees at M Group Manchester’s request to promptly sign any documents, provide all necessary information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) and do anything else reasonably required by M Group Manchester to ensure that any security interest constitutes a perfected “Purchase Money Security Interest” for the purposes of the Personal Property Securities Act 2009.

(g) Should the Customer fail to make payment by the due date for payment of an invoice or Payment Claim, the Customer will pay interest calculated daily on the overdue amount at 2% above the 30-day bank base rate specified by the Bank of England at the relevant time and may suspend work.

(h) The Customer acknowledges that an invoice can include the full cost of materials or equipment purchased, and/or labour expended on work in progress and to place into storage materials which cannot be accepted for delivery on Site.

(i)  The Customer will be liable for the payment of all expenses reasonably incurred by M Group Manchester in the recovery of any payment, including legal costs to the extent permitted by law.

(j)  Payment of Fees by the Customer within the specified period is an essential term of this Agreement, and failure to pay M Group Manchester by the due date will constitute a material breach under clause 16(a).

(k)  M Group Manchester may set off any amounts that M Group Manchester reasonably considers is due to M Group Manchester from the Customer against any amounts payable by M Group Manchester to the Customer under this Agreement.

**15 Liability**

(a)  Nothing in this Agreement excludes, restricts or modifies the application of the provisions of any statute (including the Competition and Consumer Act 2010 (Cth)) where to do so would contravene that statute or cause any part of this Agreement to be void.

(b)  To the extent permitted by law, the Customer agrees that:

(i)  subject to the consumer guarantees and other provisions of the Competition and Consumer Act 2010 (Cth) (if applicable), M Group Manchester will have no liability for any statements, representations, guarantees, conditions or warranties that are not expressly contained in this Agreement;

(ii)  where M Group Manchester breaches its obligations under this Agreement, M Group Manchester shall, at its election, re-supply the Products or Services or pay to have those Services supplied again or the replacement, repair or repayment of the Products to a maximum total value of the Fees paid by the Customer under this Agreement;

(iii)  any liability of M Group Manchester will be reduced to the extent that any loss, damage or expense was caused by the Customer, the Customer's Personnel or a third party including as a result of a breach of this Agreement, negligence, fault, lack of reasonable care or through any other act or omission of the Customer, the Customer's Personnel or a third party;

(iv)  M Group Manchester’s total aggregate liability to the Customer, however arising at law, in equity, under statute, or otherwise, in respect of all claims arising out of or in connection with this Agreement, will be limited to the total value of Fees received by M Group Manchester from the Customer under this Agreement; and

(v) M Group Manchester will not be liable to the Customer for any claims not notified to M Group Manchester in accordance with clause 16(a) within three months of the Completion Date (except for claims made under clause 8).

(c) Notwithstanding anything else in this Agreement, neither party will be liable to the other party for any indirect, consequential, special or economic loss, cost, liability, damage or expense howsoever arising; and/or loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss of reputation, cost of capital or other financing costs howsoever arising.

(d) The Customer acknowledges and agrees that it is reasonable for M Group Manchester to limit its liability under this Agreement and that the Fees charged by M Group Manchester are based solely on the value of the Works supplied.

**16 Termination**

(a) If a party is in material or persistent breach of its obligations under this Agreement, or if the Customer is in breach as set out in clause 14(j), the other party must provide a written notice to the party in breach specifying the alleged material or persistent breach and, where the breach is capable of remedy, provide the party with a reasonable period to remedy the breach.

(b) A party may terminate this Agreement by a further written notice to the party who committed the breach after expiry of the period stated in the notice given under clause 17(a).

(c) If a party to this Agreement becomes insolvent as defined by the Corporations Act 2001 (Cth), or commits an act of bankruptcy as defined by the Bankruptcy Act 1966 (Cth), the other party may terminate this Agreement immediately upon written notice.

(d) M Group Manchester may terminate this Agreement at its convenience on the provision of 10 Business Days' written notice to the Customer.

(e) If the Customer is a consumer for the purposes of the Competition and Consumer Act 2010 (Cth), the Customer may terminate this Agreement at its convenience on the provision of 20 Business Days’ written notice to M Group Manchester.

(f) If the Customer terminates in accordance with (b) or (e) above, the Customer must pay M Group Manchester for:

(i)  Works carried out prior to the date of termination;

(ii)  the cost (including freight and storage charges) of Products ordered by M Group Manchester for the Works; and

(iii)  the cost of removing from the Site all labour, equipment, appliances and other things in connection with the Works.

(g) The parties agree that if the Works continue beyond the Term, this Agreement will remain in force for such further Term until a party gives notice to terminate in accordance with (d) or (e) above.

**17 Dispute resolution**

1. The parties agree that:

(i) any dispute is to be initially notified to the other party in writing (*Notice of Dispute*) and the Notice

of Dispute will include particulars of the nature of the dispute and amount claimed, if relevant and the remedy sought;

(ii)  the parties will use all reasonable endeavours to resolve the dispute within 10 Business Days of the date of the Notice of Dispute;

(iii)  if the parties are unable to resolve the dispute within that time frame specified in clause 17(a)(ii), the dispute must be referred in writing to an executive officer or person with authority to settle the dispute from each party for executive negotiation; and

(iv)  the parties will use all reasonable endeavours to resolve the dispute through executive negotiation within a further 10 Business Days or such other reasonable period agreed between the parties.

(b)  Where the matter is not resolved under clause 17(a) either party may refer the dispute to litigation.

(c)  The parties must continue to perform their obligations under this Agreement notwithstanding the referral of a dispute to any form of dispute resolution under clause 17.

(d)  Nothing in this Agreement shall prejudice the right of either party to institute proceedings to seek injunctive or urgent declaratory relief.

**18 Force majeure**

Neither party will be in breach of this Agreement if it fails to perform or is in delay in the performance of an obligation (other than an obligation to make payment) as a result of a Force Majeure event.

**19 General**

(a) M Group Manchester may assign, novate, or subcontract this Agreement without the consent of the Customer. M Group Manchester will give the Customer prior notice of its intention to assign, novate or subcontract this Agreement.

(b) This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law. The terms, provisions and conditions of this Agreement may only be varied by agreement in writing and signed by the parties.

(c) No right under this Agreement will be deemed to be waived except by notice in writing and signed by each party, and any failure by M Group Manchester to enforce any clause of this Agreement will not be construed as a waiver of M Group Manchester’s rights under this Agreement.

(d) A provision of this Agreement must not be construed to the disadvantage of a Party merely because that Participant was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

For and on behalf of M Group Manchester Ltd  
 Signed Director  Andrew Foden Date: September 2018