

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS:

"Macs" means Macs Builders Merchants Limited Company Number 095761C whose Registered Office is at Main Road, St. Johns, Isle of Man, IM4 3LU.
 "Buyer" means any person, firm or company purchasing or ordering Goods from Macs.
 "The Goods" means the goods, materials, equipment or services (as applicable) including any instalment thereof or parts for them being sold or agreed to be sold by Macs to the Buyer.

2. SCOPE:

- (a) These conditions apply to all and any contracts agreements or transactions between Macs and The Buyer. They prevail over any conditions contained or referred to in any documents of the Buyer and any provision to the contrary is hereby excluded.
- (b) These conditions together with any Macs sales or delivery confirmations or advices and invoices represent the complete agreement between Macs and the Buyer. Save as specifically agreed in writing by the Directors of Macs no-one is authorised to accept any further liability or obligations on Macs' behalf and the Buyer must not rely on any other documents or any oral representations.

3. BASIS OF THE SALE:

- (a) Macs employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Macs in writing. In entering into the contract the Buyer acknowledges that it does not rely on any such representation which are not so confirmed.
- (b) Any advice or recommendation given by Macs or its employees or agents to the Buyer or its employees or agents as to the storage, application, use or suitability to a particular purpose of the Goods which is not confirmed in writing by Macs is followed or acted upon entirely at the Buyer's own risk and accordingly Macs shall not be liable for any such advice or recommendation which is not so confirmed.

4. PRICE:

- (a) Save as otherwise specifically agreed the price shall be as stated in the Invoice sent to the Buyer by Macs or in the case of cash sales in the sales or advice note. Unless otherwise stated, Value Added Tax is not included and will be added to the price.
- (b) Prices indicated in Macs' catalogues, price lists and point of sale literature are for guidance only and Macs reserves the right to withdraw or revise such prices at any time.
- (c) Unless otherwise expressly agreed in writing, Macs reserves the right to revise any agreed prices to take account of fluctuations in exchange rates, increase or imposition of any tax duty or levy and clerical or administrative errors or of any increase in Macs' costs including but not limited to the costs of raw materials, freight, shipment, haulage, labour, fuel and insurance.
- (d) All quotations, unless contrary intention appears on the face thereof, are open for acceptance for a period of twenty eight days thereof. Any acceptance received late may be accepted by Macs in its discretion, in which case it shall be binding upon the Buyer.

5. PAYMENT:

- (a) Unless otherwise agreed in writing, payment shall be due in full not later than the last day of the month following the month of delivery. If any payment becomes overdue Macs may charge interest at 4% above Lloyds TSB's base rate from the due date until payment. In addition the Buyer shall pay Macs' reasonable legal costs incurred in calling in overdue payments.
- (b) Macs reserve the right to suspend or stop deliveries and to withdraw or restrict credit provisions if any payment becomes overdue or if Macs has reason to believe that the Buyer may be unable or unwilling to pay for the Goods.
- (c) Any sums due and owing to the Buyer from Macs may at any time be offset by Macs against any sums due and owing to Macs from the Buyer.

6. QUANTITIES:

- (a) All quantities specifications and correspondence with sample shall be subject to reasonable commercial variation and Macs accepts no responsibility for variations falling within this tolerance.
- (b) Quantities are subject to out turn in respect of imported Goods sold prior to landing.

7. SPECIAL ORDERS:

- (a) Macs may on request manufacture machine or treat the Goods in accordance with the Buyers drawings, designs, sample sections, specifications or instructions. The Buyer accepts full responsibility for the accuracy of the same and indemnifies Macs against all liability arising from Macs' compliance with the Buyers drawings, designs, sections, specifications or instructions.
- (b) The Buyer is responsible for ensuring that any licences consents or permissions required by statute by law or otherwise are obtained.
- (c) No order which has been accepted by Macs may be cancelled by the Buyer except with the agreement in writing of Macs and on terms that the Buyer shall indemnify Macs in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by Macs as a result of the cancellation.
- (d) Macs reserves the right to reject an order on giving written notice thereof to the Buyer within seven days of the receipt of the order. In the event of such rejection, no liability shall accrue to Macs.

8. DELIVERY:

- (a) Where the Goods are sold on a collect basis, delivery to the Buyer occurs immediately the Goods are loaded on to the Buyer's vehicle save where that vehicle is equipped with loading equipment which is to be used to load the Goods whereupon delivery occurs in the instant prior to loading.
- (b) Where Macs agrees to deliver the Goods, or where the Goods are sold on an ex quay basis or are due to be delivered direct from Macs' supplier, delivery to the Buyer occurs in the instant prior to loading save where the delivery vehicle is equipped with loading equipment which is to be used to unload the Goods whereupon delivery to the Buyer takes place in the instant following unloading.
- (c) Macs may deliver the Goods in one or more instalment and each instalment shall be treated as a separate contract. Failure by Macs to make any delivery or part delivery shall not entitle the Buyer to reject the balance of the Goods.
- (d) The Buyer must give instructions for delivery in good time to allow them to be carried out upon arrival of the Goods. The Buyer is responsible for any costs arising from his failure to give proper instructions or to provide transport as agreed or to unload any craft or vessel within the agreed time.
- (e) Where Goods are to be collected by the Buyer or where the Buyer elects to delay delivery, Macs will store them rent free for a period of fourteen days from the date on which notice to collect is given to the Buyer. Thereafter the Buyer shall pay rent at a reasonable rate (as determined by Macs). In such circumstances risk passes to the Buyer at the expiry of the rent free period.
- (f) Times and dates quoted for delivery are estimates only and are not binding on Macs.
- (g) A delivery charge will be added to the total price of the Goods according to area in which they are to be delivered. Macs will on request quote delivery charge at time of ordering.

9. RISK AND TITLE:

- (a) Risk passes to the Buyer on collection, or where Macs agrees to arrange carriage at the moment the Goods pass into the control of the carrier.
- (b) Where the Goods are delivered direct to the Buyer by Macs' supplier, property in the Goods passes to

Macs on delivery to the Buyer.

- (c) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until Macs has received in cash, or cleared funds, payment in full or the price of the Goods and all other Goods agreed to be sold by Macs to the Buyer for which payment is then due.
- (d) Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Macs' fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Macs' property, but shall be entitled to re-sell or use the Goods in the ordinary course of its business.
- (e) Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) Macs shall be entitled at any time to require the Buyer to deliver up the Goods to Macs and, if the Buyer fails to do so, forthwith to enter upon the premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- (f) If any of the Goods are incorporated in or are used as material for other Goods before payment, the property in the whole of such Goods shall be and remain with Macs until payment has been made, or the other Goods sold by way of bona fide sale at full market value and all Macs rights in the Goods shall extend to those other Goods.
- (g) Until payment in full is made by the Buyer to Macs in respect of any indebtedness arising other than from a failure to pay the Goods, the subject matter of this order, ownership of the Goods shall remain with Macs.
- (h) The Buyer shall, pending payment to Macs in full, retain the proceeds of sale of the Goods, or any item incorporating the Goods, in a separate account. Such proceeds of sale shall be and shall remain the property of the seller until payment is made.
- (i) Notwithstanding the foregoing, Macs may at its election and in its absolute discretion by notice in writing to the Buyer, transfer the property in the Goods to him.

10. RETURNS:

- (a) The Buyer may return Goods to Macs within 7 Days of delivery but the Buyer shall be liable to pay a collection charge and a restocking fee equivalent to 10% of the price of the Goods returned to Macs.
- (b) Goods specifically ordered by the Buyer are non-returnable.

11. DEFECTS:

- (a) Macs warrants the Goods against defects in materials or workmanship for a period of six months from the date of delivery to the Buyer. Macs' obligations under the warranty are limited to repair, replacement on an exchange basis or refunding the cost of the Goods or of those parts of the Goods which are defective, at Macs' option and do not extend to cost of labour incurred in correcting the defects.
- (b) The above warranty is given in lieu of and replaces, excludes and extinguishes all and every condition, warranty, term or representation as to quality, fitness for purchase, merchantability, delivery or otherwise which may be implied or imposed by statute, common law, trade usage or by any other means.
- (c) Notice of any defect or shortfall must be given to Macs in writing within one work day of discovery of the same and Macs must be given an immediate opportunity to inspect the Goods failing which all claims shall be deemed to be absolutely barred. Macs shall have no liability if bulk is broken pending settlement of any claim or if the Goods cannot clearly be identified as Goods supplied by Macs.
- (d) Macs shall not be liable to repair replace or make good any loss in respect of defects caused by incorrect handling, machining, installation, storage, treatment or use by the Buyer or any third party or by normal wear and tear.

12. LIABILITY:

- (a) Save as set out in condition 11, Macs shall have no liability to the Buyer for any damages or losses direct or indirect resulting from defects from any act or default of Macs.
- (b) Macs shall have no liability for any indirect or consequential losses or expenses, howsoever caused, including but not limited to loss of or damage to anticipated profits, contracts, reputation or goodwill, labour costs or losses or expenses arising from third party claims.
- (c) Subject to condition 13(a) in no circumstances shall Macs' total liability in contract, tort or otherwise exceed the invoice price of the particular Goods giving rise to the liability.
- (d) If the person who supplies Macs with the Goods validly excludes restricts or limits his liability to Macs, then liability of Macs to the Buyer in respect of those Goods shall be correspondingly excluded restricted or limited. Macs will on request supply the Buyer with details of any such exclusion, restriction or limitation.
- (e) Where the Goods are to be manufactured, machine treated or installed by Macs, Macs reserves the right to sub contract such operations to a third party in which case they should be carried out on the standard terms and conditions of the third party. Macs will on request obtain for the Buyer a copy of any such terms and conditions.
- (f) All sales of Goods to be imported are subject to shipment and safe arrival. Where Macs procures Goods from a foreign vendor and the price to Macs is varied or the contract with Macs is cancelled or altered by the vendor (whether lawfully or otherwise) the Buyer may either accept such cancellation or alteration or may cancel his contract with Macs provided that Macs shall have no liability towards the Buyer and the Buyer shall indemnify Macs against any costs or expenses incurred by Macs in procuring or trying to procure the Goods for the Buyer.

13. FORCE MAJEURE:

Macs shall not be liable for failure or delay in fulfilling any of its obligations where fulfilment thereof is prevented frustrated impeded delayed or rendered uneconomic by circumstances or events beyond Macs' reasonable control.

14. STATUTE:

- (a) Nothing in these conditions shall be interpreted as excluding or restricting Macs' liability for death or personal injury.
- (b) To the extent that any condition herein would by virtue of the Misrepresentation and Unfair Contract Terms Act 1980, an Act of Tynwald, be of no effect against a person dealing as a consumer, that condition shall not apply to a person so dealing.

15. WAIVER:

The rights of Macs shall not be prejudiced or restricted by any indulgence or forbearance extended by Macs to the Buyer and waiver of any particular breach shall not operate as a waiver of any subsequent breach.

16. SEVERANCE:

If any condition or part of a condition is found to be invalid for any purpose, it shall for that purpose be deemed to have been omitted without prejudice to the effectiveness of all other conditions or parts of conditions.

17. LAW/JURISDICTION

These conditions and all agreements between Macs and the Buyer shall be governed by and construed in accordance with the law of the Isle of Man and any dispute shall be subject to the exclusive jurisdiction of the Courts of the Isle of Man.