



**STANDARD
CONDITIONS
OF
PURCHASE**

STANDARD CONDITIONS OF PURCHASE

1. Definitions

1.1 In these Conditions of Purchase the following words and phrases shall have the following meanings, unless the context otherwise requires:-

“Conditions” means these Conditions of Purchase;

“Contract” means the Contract by which the Seller has agreed to sell and the Purchaser has agreed to buy Goods, consisting of the Order and the Seller’s acceptance;

“Date of Delivery” means the date by which the Goods are to be delivered and the services to be performed as specified in the Order or as may later be agreed between the Seller and the Purchaser or as may be specified by the Purchaser;

“Delivery” means completion of the delivery of the Goods to the Purchaser’s premises specified in the Order and of carrying out the services specified in the Order (and “delivered” is to be construed accordingly);

“Goods” means the Goods to be purchased by the Purchaser as set out in the Order;

- “Order” means the Order submitted by the Purchaser to the Seller forming part of the Contract [set out overleaf];
- “Purchaser” means MacScott Bond Limited, a company incorporated under the Companies Acts in Scotland (company number SC 054745) and having its registered office at PO Box 1, Hunter Avenue, Loanhead, Midlothian, EH20 9SP;
- “Seller” means the Seller under the Contract; and
- “Services” means the Services to be provided by the Seller as set out in the Order.

- 1.2.1 References to clauses by number are to clauses of these Conditions.
- 1.2.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted, provided that such amendment, extension or re-enactment does not in the case of a defined word or meaning alter the substance of the definition.
- 1.2.3 Words denoting the singular number only shall include the plural and vice versa.
- 1.2.4 References to any one gender shall include both other genders.
- 1.2.5 All warranties, representations, agreements and obligations given or entered into by one or more person are given or entered into jointly and severally.

1.2.6 The headings of these Conditions are inserted for convenience only and shall not affect their construction.

2. Purchase and Sale

2.1 The Contract incorporates these conditions. Accordingly the Goods shall be sold and the services provided by the Seller and bought by the Purchaser on the terms and conditions stated in these Conditions and on the terms and conditions stated in the Contract, but declaring that if anything in the Contract is inconsistent with these Conditions then these Conditions shall prevail unless that which is inconsistent is contained in any document issued by the Purchaser or in any document issued by the Seller the terms of which have been expressly accepted by the Purchaser as varying these Conditions.

2.2 Neither the Contract nor these Conditions may be varied except by agreement in writing signed by persons having authority to do so on behalf of the Seller and the Purchaser.

3. Price

3.1 The price stated in the Order is (save only as provided in Condition 3.2) the total price payable by the Purchaser to the Seller under the Contract and assumes Delivery of the Goods and performance of the Services will have been carried out by the Seller in strict conformity with the Contract.

3.2 The Purchaser shall in addition pay VAT on the price at the appropriate rate where the same is properly chargeable but only where it has first received from the Seller

an invoice valid in all respects for VAT purposes.

3.3 Without prejudice to the generality of clause 3.1:-

3.3.1 the price includes all the Seller's costs in delivering the Goods to the Purchaser's premises including carriage and insurance;

3.3.2 the price is stated in Sterling and shall not be subject to any increase for any reason whatever.

4. Delivery of Goods and performance of Services

4.1 The Seller shall notify the Purchaser at least seven days before the anticipated transportation of the Goods to the Purchaser's premises so the Purchaser can prepare for the arrival of the Goods.

4.2 Completing the Delivery of the Goods and (including performance of the Services) by the Date of Delivery is of the essence of the Contract. Any lateness in Delivery may be dealt with by the Purchaser in accordance with clause 8.1 and/or clause 10.

4.3 A delivery note shall accompany all Goods which have been delivered, such note to be conspicuously marked with the Purchaser's Order number.

4.4 When delivered, the Goods shall comply with all legal requirements, including without prejudice to the foregoing generality any requirements relating to packaging, the marking of place or country of manufacture and any health and safety features or notices.

- 4.5 The Goods shall comply with all and any specifications stipulated in the Order.
- 4.6 The Seller shall perform the Services specified in the Order. Where those Services are to be performed on or after the date when Goods arrive at the Purchaser's premises, the Purchaser shall make available at the Seller's cost such facilities as may reasonably be required by the Seller and the Seller shall indemnify the Purchaser against any cost, loss or damage the Purchaser suffers as a result of the Seller carrying out the Services.
- 4.7 When the Services are being performed (whether at the Purchaser's or the Seller's premises or anywhere else), the Purchaser shall have the right to inspect the Goods which are the subject of such Services and check performance of the Services and the Seller shall remedy any defects reported by the Purchaser. The Purchaser may, if the Goods or the Services are in the Purchaser's view materially deficient, notify the same to the Seller. If the Seller does not remedy such deficiency forthwith to the Purchaser's satisfaction, the Purchaser may cancel the Contract reserving any claim it may have for damages.
- 4.8 Once the Goods have been delivered and the Services performed to the Purchaser's satisfaction in accordance with the Order, the Purchaser shall give written confirmation to the Seller to that effect. Such confirmation shall have no effect unless it is signed by a duly authorised representative of the Purchaser. Until such confirmation is given the Purchaser shall not be deemed to have accepted the Goods or the performance of the Services and even if that confirmation is given the Purchaser can still reject the Goods and/or the Services if it discovers any latent defect at any time thereafter, without prejudice to the Purchaser's rights to claim damages.

5. Payment

5.1 The Seller may render to the Purchaser its invoice for the price once Delivery has taken place, **but not before the date specified for delivery in the Purchaser's Order.**

5.2 The Purchaser shall pay such invoice together with any VAT properly charged thereon in accordance with clause 3.2 within [thirty] days of the end of the month after the month in which the invoice is received by the Purchaser or, if later, of the end of the month after the month in which the Purchaser delivers to the Seller the confirmation referred to in condition 4.8 (provided that if such confirmation is delivered by the Purchaser after the Date of Delivery but the Purchaser accepts the Goods as at that date without comment or need for action by the Seller, then the date for payment shall be calculated from the date of receipt of the invoice and not from the date when the Purchaser delivers the confirmation).

5.3 The Purchaser may set-off against any invoice rendered by the Seller any sum due by the Seller to the Purchaser under the Contract or under any other contract or arrangement between the Seller and the Purchaser.

6. Risk

6.1 The risk of any loss or destruction of or any damage to the Goods shall pass to the Purchaser as soon as Delivery takes place.

7. Title

- 7.1 Except where clause 7.2 applies, title to the Goods will pass to the Purchaser when Delivery takes place.
- 7.2 Notwithstanding clause 7.1, title to the Goods will pass to the Purchaser before Delivery at the time of payment, if payment is for any reason made by the Purchaser for the Goods prior to the Date of Delivery. If the Goods are delivered or paid for in instalments then the provisions of clauses 7.1 and 7.2 shall apply to each instalment so that title will pass to the Purchaser in each instalment or item of the Goods so delivered or paid for.
8. Liability, warranties and indemnity
- 8.1 Where clause 4.2 applies the Purchaser **reserves the right to rescind the contract where Delivery is delayed for a period of [5] working days** without prejudice to condition 10 and any other legal rights it may have in respect of such breach of contract.
- 8.2 Without prejudice to any implied warranties about the Goods or the Services implied by law, the Seller warrants to the Purchaser that:-
- 8.2.1 the Goods will be delivered and the Services performed in exact compliance with the Order and any specification forming part of the Contract;
- 8.2.2 the Goods will be of satisfactory quality, fit for the purpose for which the Purchaser intends to use them as disclosed in the Contract or for their normal purposes if none is disclosed and in accordance with any sample

shown to or seen by the Purchaser prior to making the Order.

8.3 Without prejudice to the Purchaser's rights at law and under clause 8.2, the Seller shall indemnify the Purchaser on demand for any cost, loss or damage incurred by the Purchaser as a result of:-

8.3.1 any breach by the Seller of clause 8.2;

8.3.2 any failure on the Seller's part to perform the Contract in accordance with its terms;

8.3.3 any liability which may be claimed against the Purchaser in respect of the Goods or the Services under the Consumer Protection Act 1987.

8.4 Without prejudice to clause 4.7, 8.2 and 8.3, but as an alternative to its remedy under clause 8.3 if the Seller is in breach of clause 8.2, the Purchaser may:-

8.4.1 if the Goods are reparable, or if the failure in performance of the Services is remediable:

(a) give the Seller an opportunity so to repair or remedy them, but so that clause 8.1 applies if the consequence is that Delivery is not effected to the Purchaser's satisfaction by the Date of Delivery; or

(b) repair the Goods, or remedy the failure in performance, and recover their costs from the Seller.

8.4.2 if any repair or remedy under clause 8.4.1 is not completed to the Purchaser's satisfaction within 7 days or if the Goods are irreparable, or the failure in performance of the Services is not remediable the Purchaser may reject the Goods or Services and require the Seller to uplift any Goods in the Purchaser's possession and repay any part of

the price already paid with interest from the date it was paid by the Purchaser until it is repaid at 4% above Bank of Scotland base rate.

9. Intellectual Property

9.1 Except in relation to any specification for the Goods given by the Purchaser, the Seller shall indemnify the Purchaser on demand against any damage, loss or expense suffered or incurred by the Purchaser as a result of or arising out of any claim by any other person that the Goods or any aspect of the Goods breaches or infringes any patent, copyright, design right, moral right, trade mark or any other intellectual property right of any other person.

9.2 Where the Contract includes any specification for the Goods, the information for which is given by the Purchaser, then the Purchaser will indemnify the Seller on demand against any damage, loss or expense suffered or incurred by the Seller as a result of or arising out of any claim by any other person that anything included in that specification breached or infringed any patent, copyright, design right, moral right, trade mark or any other intellectual property right. This indemnity may only be claimed by the Seller if it complies with the following conditions -

9.2.1 it gives notice to the Purchaser within seven days of any claim of breach or infringement by any person including full details of the claim and the circumstances surrounding it;

9.2.2 it allows the Purchaser to conduct negotiations and defend any proceedings on the Seller's behalf and it assists and provides all relevant information to the Purchaser as required in connection with such negotiations and proceedings; and

9.2.3 it does nothing to prejudice the negotiations or the defence of said proceedings.

9.3 Where the Purchaser supplies any specification or information to the Seller which contains any confidential information know-how or any drawing, diagram, computer programme or design in which the Purchaser or any third party may have copyright or design right or any other intellectual property right, the Seller shall keep the same confidential and not disclose the same to any person and shall return the same to the Purchaser at the conclusion of the Contract or its earlier termination. The Seller shall only disclose such specification or information to those of its employees or agents who need to know the same for the purpose of implementing the Contract and shall procure that any of its employees or agents to whom such specification or information is disclosed keep the same confidential and do not disclose the same to any other person.

10. Termination

10.1 Without prejudice to any rights it may have under any law to terminate the Contract and without prejudice to rights it may have for damages or compensation, the Purchaser may terminate the Contract by notice to the Seller if:-

10.1.1 the Seller fails to deliver the Goods or any item thereof or to perform the Services or any part thereof by the due Date of Delivery in terms of the Contract or otherwise breaches or fails to perform any obligation of the Contract to be performed on its part or the Purchaser has reasonable grounds to believe that the Seller is not or will not be able to complete its performance of the Contract; or

10.1.2 the Seller becomes apparently insolvent or being a company is unable to pay its debts or summons a meeting of creditors to pass any resolution for winding-up or has a petition for liquidation presented against it or has a receiver or an administrator appointed to it or to any part of its assets.

11. Miscellaneous

- 11.1 Any notice to be given by either party to the other under the Contract shall be in writing and may be delivered by hand or sent by first class recorded delivery post to the address of the other party as given in the Contract or to such other address as may have been intimated to the other party in terms of this Clause. The notice shall be deemed to have been served on the day of delivery, or in the case of posting, on the second day following the date of posting.
- 11.2 No waiver by the Purchaser of any breach of this Contract shall bar the Purchaser from taking steps in respect of any subsequent breach of this Contract by the Seller.
- 11.3 If any clause of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall remain in full force and effect and shall not be affected.
- 11.4 The Contract shall be governed by Scots law and the Purchaser and Seller submit to the non-exclusive jurisdiction of the Scottish Courts.