

DRAFT STANDARD CONDITIONS OF PURCHASE ORDERS

1. DEFINITIONS

1.1 In the terms and conditions, the following words shall have the following meanings: -

“Agreement”	means the agreement, verbal or written, between the Company and the Supplier for the purchase of the Goods, incorporating these Terms, including the contents of any Purchase Order (as hereinafter defined) issued by the Company;
“Company”	means McLean Buchanan & Wilson Limited (registered in Scotland with company number SC079393);
“Goods”	means the material, articles, works and services described in the Purchase Order;
“Normal Business Hours”	means the hours of 9am to 5pm Monday to Friday (excluding Scottish public and bank holidays);
“Purchase Order”	means the Company’s purchase order, to which these terms and conditions shall apply exclusively;
“Supplier”	means the person(s), firm or company from whom the Company purchases the Goods including for the avoidance of doubt, any subcontractor whom the person(s), firm or company may seek to employ; and
“Terms”	means these standard conditions of purchase.

2. APPLICATION OF TERMS

- 2.1 These Terms apply to all sales and quotations of any Supplier to the exclusion of any other terms and conditions (including any terms or conditions which the Supplier purports to apply under any purchase order, confirmation specification or other document even when referred to in the Agreement).
- 2.2 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Company (who shall, in absence of written confirmation from a director to the contrary, be a director of the Company) and the Supplier.
- 2.3 Any enquiry for Goods placed by the Company with the Supplier shall not be deemed to be an offer by the Company to purchase Goods unless this Agreement is entered into exclusively by the Supplier.
- 2.4 All representations, statements or warranties made or given by the Supplier, its servants and agents (whether orally in writing or in any of the Supplier’s brochures, catalogues and advertisements) regarding the quality and fitness for purpose of any goods or services shall be deemed to be express conditions of the Agreement.
- 2.5 Where the Supplier has not given a written acknowledgment of the Company’s order these Terms will nonetheless apply to the contract provided that the Supplier has had prior notice of them.
- 2.6 The Company reserves the right to correct any clerical or typographical error made by its employees at any time.

3. QUALITY AND TESTING

- 3.1 The Supplier warrants that the Goods shall:
- (i) conform in every respect with the provisions of the Agreement;
 - (ii) be capable of all standards of performance specified in the Agreement;
 - (iii) be fit for any purpose made known to the Supplier expressly or by implication and in this respect the Company shall rely on the Supplier’s skill and judgement;
 - (iv) be new (unless otherwise specified on the Purchase Order) and be of sound materials and skilled and careful workmanship;
 - (v) correspond with their description or any samples, patterns, drawings, plans and specifications referred to in the Agreement;
 - (vi) be of satisfactory quality; and
 - (vii) comply with any current legislation and all applicable British Standards, ISO’s and legal requirements concerning the design, manufacture, processing, storage and testing of Goods.
- 3.2 Subject to reasonable prior written notice delivered by the Company to the Supplier, the Company shall be entitled to inspect, or to arrange inspection on its behalf by a third party, the goods at the Supplier’s premises during Normal Business Hours.
- 3.3 If the Supplier agrees that any tests (whether special tests of the Company’s standard tests) shall be carried out in the presence of the Supplier or his representative the Company shall notify the Supplier of the date from which it is or will be ready to carry out such tests. The Supplier undertakes that he or his representative will, by prior appointment, attend at the premises where the Goods are situated within 14 days after such date for the purpose of witnessing such tests and agrees that in default of such attendance the Company may proceed with the tests in his absence and he shall be bound by the results thereof.

4. BASIS OF QUOTATION

- 4.1 The quantity of Goods specified in any Purchase Order issued by the Company to a Supplier is deemed to be of the essence. The Supplier shall ensure that the terms of any specification in a Purchase Order is fulfilled accurately. A failure on the part of the Supplier to fulfil the correct specification will result in the Company, at its sole discretion, being entitled to terminate or rescind the Agreement.

5. DELIVERY

- 5.1 Any dates or periods for delivery of Goods, or any rate of delivery specified in the Purchase Order must be adhered to. A failure on the part of the Supplier to fulfil the date, period or delivery rates will result in the Company, at its sole discretion, being entitled to terminate or rescind the Agreement. The timing of delivery shall be of the essence.
- 5.2 Without prejudice to any other right which the Company may have against the Supplier, the Supplier shall be liable to the Company for any loss (including loss of profit), costs, damages or expenses caused directly or indirectly by any delay in the supply of the Goods to the Company.
- 5.3 The Goods shall be supplied by the Supplier in good condition. Any failure on the part of the Company to notify the supplier of any defect in the Goods shall not be deemed to be an admission of satisfaction and/or acceptance of the Goods.
- 5.4 All carriage charges are deemed to have incorporated into the price quoted in the Purchase Order for the Goods. Any additional or unforeseen expenses incurred in delivery are the sole responsibility of the Supplier.
- 5.5 The Goods shall be properly packed, secured and despatched at the Supplier’s expense to arrive in good condition at the time or times and the place or places specified in the Agreement.
- 5.6 If the Supplier or the Supplier’s carrier delivers any Goods at the wrong time or to the wrong place then the Company may deduct from the price any resulting costs of storage or transport.

6. LATE DELIVERY

If the Goods or any part of them are not delivered by the time or times specified in the Agreement then the Company may by written notice cancel any undelivered balance of the Goods. The

Company may also return the Goods for full credit and at the Supplier’s expense any Goods that in the Company’s opinion cannot be utilised owing to this cancellation. In the case of services, the Company may have the work performed by alternative means and any additional costs reasonably so incurred shall be at the Supplier’s expense. This shall not affect any other rights that the Company may have.

7. SAFETY

The Supplier shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous goods and the provision of data sheets for hazardous materials.

8. HEALTH & SAFETY

- 8.1 Whilst on the Company premises, the Supplier’s personnel, agents and subcontractors shall at all times conduct themselves in full compliance with the Company site, safety and security regulations.
- 8.2 The Supplier is aware of obligations imposed upon it by the Health & Safety at Work Act 1974 (as amended) and subsequent regulations and codes of practice to ensure, as far as practicable that Goods are safe and without any risk to health when properly used. The Supplier hereby undertakes to ensure that its employees, agents and subcontractors are informed of the protective clothing, protections, handling requirements and conditions necessary to ensure that the Goods are properly used and handled safely and without risks to health.

9. PACKAGING

Unless otherwise stated in the Agreement, all packaging shall be non-returnable. If the Agreement states that packaging is returnable, the Supplier must give the Company full disposal instructions before the time of delivery. The packaging must be clearly marked to show to whom it belongs. The Supplier must pay the cost of all carriage and handling for the return of packaging. The Company shall not be liable for any packaging lost or damaged in transit.

10. RISK AND PROPERTY

- 10.1 Risk of damage or loss of the Goods shall pass to the Company as specified in the Purchase Order or, in the event that the same is not specified in the Purchase Order, on delivery (where delivery shall be deemed to be completed following off-loading of the Goods at the place of delivery).

11. PAYMENT TERMS

- 11.1 Unless otherwise stated in the Purchase Order, payment will be made within 60 days from date occurring at the end of the month in which the Company receives the Supplier’s correct and valid invoice or, if later, the date upon which all of the Goods have been correctly delivered and the Company has accepted them.
- 11.2 All requested certification will be deemed to be part of the Agreement and payment will not be made by the Company until all certification has been received and accepted by the Company.
- 11.3 Value Added Tax, where applicable, shall be shown separately on all invoices that must comply with local regulatory requirements.

12. LOSS OR DAMAGE OF GOODS IN TRANSIT

- 12.1 Without prejudice to any other right which the Company may have against the Supplier, the Supplier shall be solely and irrevocably liable for any loss or damage or partial loss or damage to Goods in transit, provided that the Company notifies the Supplier in writing as soon as is reasonably practicable following discovery of the relevant loss or damage.
- 12.2 The Supplier shall make good and free of charge to the Company any loss of or damage to or defect in the Goods where the Company gives notice in compliance with clause 12.1.
- 12.3 The Supplier shall uplift any faulty, incorrect or surplus Goods received within 7 days of the Company reporting same (“the Collection Period”). Uncollected Goods will be disposed of at the Supplier’s expense on the expiration of the Collection Period.

13. ACCEPTANCE

- 13.1 The Company shall have the right, without prejudice to any other right which the Company may have against the Supplier, to reject the Goods (or any of them) within a reasonable time of their delivery and to cancel this Purchase Order if the Goods (or any of them) are not in conformity with the Agreement or the terms and conditions of the Purchase Order. The making of payment shall not prejudice the Company’s right of rejection, nor shall the acceptance of part of the Goods prejudice the Company’s right to reject the remainder of the Goods.

13.2 Unless within a reasonable time of following receipt of notice of rejection the Supplier collects the relevant Goods the Company may dispose of them as the Company shall think fit (provided that if the Company sells such Goods the Company shall account to the Supplier for the net proceeds of such sale).

14. VARIATIONS

- 14.1 The Supplier shall not alter or vary the Goods, except as agreed in writing by the Company. The Company shall have the right, from time to time during the execution of the Agreement, by notice in writing, to direct the Supplier to add to or to omit, or otherwise vary, the Goods. Where the Supplier receives any such direction from the Company which would occasion an amendment to the Agreement, the Supplier shall, without delay, advise the Company in writing of the alteration in price, provided that such price alteration is determined at the same level of pricing as that contained in the Purchase Order.
- 14.2 Provided the Company accepts in writing any variation in price given in accordance with clause 14.1 or any alteration to the delivery or performance schedule, the Supplier shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the previous Purchase Order.

15. CANCELLATION

- 15.1 In addition to the Company’s other rights of cancellation under this Agreement, the Company may cancel the Purchase Order and any amendment thereto at any time by sending the Supplier a notice of termination up to and including 7 days after receipt of the Goods or such later period as agreed between the Supplier and the Company.
- 15.2 If there shall be an Intervening Event, the Company may within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any goods in transit and treat the contract of which these Conditions form part as determined but without prejudice to its rights to damages for any loss suffered in consequence of such determination.
- 15.3 For the purposes of this clause 15 “an Intervening Event” shall be any of the following:
- (a) breach by the Supplier of any of the terms or conditions of the contract;
 - (b) the Supplier’s proposal for or entry into any composition or arrangement with creditors;
 - (c) the presentation against the Supplier of any petition for a bankruptcy order, administration order, winding-up order or similar process;
 - (d) the appointment of an administrative receiver or receiver in respect of the business of any part of the assets of the Supplier; and
 - (e) the Company forming the reasonable opinion that the Supplier has become or is likely in the immediate future to become unable to pay his, her or its debts (adopting, in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1988).
- 15.4 Cancellation by the Supplier will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting in the Company by reason of such cancellation will be paid by the

	Supplier to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a director of the Company.	22.6	Words and expressions defined in these Terms shall, unless the context otherwise requires, bear the same meaning in the Agreement.
16.	INTELLECTUAL PROPERTY RIGHTS	22.7	The headings in these Terms are for convenience only and are not for the purpose of interpretation.
16.1	The Supplier will fully indemnify the Company without limitation against any claim for infringement of intellectual property rights (including, but not limited to, any patent registered design trade mark copy right or other protected right) in connection with any Goods supplied by the Supplier to the Company and against any and all costs, expenses and damages which the Company may incur or become liable for such infringement. The Company shall give to the Supplier prompt notice in writing of any claim being made or action threatened or brought against the Company and will permit the Supplier, at the Supplier's own expense, to conduct any litigation that may ensue and all negotiations for a settlement of the claim.	22.8	Any reference in the Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
		22.9	If any provision of these Terms (or of any other conditions or other terms that may be agreed in writing between the Company and the Supplier) is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.
16.2	If the Agreement involves design and/or development work:	22.10	Failure by the Company to enforce strict compliance with these terms and conditions by the Supplier will not constitute a waiver of any of the provisions of these Terms.
	(a) All rights in the results of work out of or deriving from this Agreement, including inventions, designs, copyright and knowledge shall be the Company's property and the Company shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.	22.11	References to clauses are to clauses of these Terms, unless stated otherwise.
	(b) The Supplier shall promptly communicate to the Company all such results and shall if requested and at the Company's expenses do all acts and things necessary to enable the Company or the Company's nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to the Company or the Company's nominee.		
	(c) The Supplier shall ensure that all technical information arising out of or deriving from this Agreement is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Agreement.		
17.	NON-OBSERVANCE OF CONDITIONS		
	If the Supplier breaches or fails to observe any provision of this Agreement the Company may give the Supplier written notice of such breach or non-observance and the Supplier shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Should the Supplier fail to rectify the breach or non-observance, then the Company shall have the right to give the Supplier written notice terminating the Agreement with immediate effect.		
18.	ASSIGNATION AND SUB-CONTRACTING		
	The Supplier shall not subcontract or assign any part of this Agreement without the Company's prior written consent, which shall not be unreasonably withheld.		
19.	WARRANTY AND INDEMNITY		
19.1	The Supplier shall indemnify the Company against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which the Company may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of the Company or of any person for whom the Company is responsible) which shall have occurred in connection with any work executed by the Supplier under this Agreement or shall be alleged to be attributable to some defect in the Goods.		
19.2	The Supplier will indemnify the Company against all loss, costs, claims, demands, expenses and liabilities whatsoever (if any) which the Company may incur, either at common law or by statute (other than as a result of any default or neglect of the Company or of any person for whom the Company is responsible), in respect of personal injury to or death of any of the Suppliers or the Company's employees, agents, sub-contractors or other representatives while on the Company's premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment.		
19.3	The Supplier will indemnify the Company against any and all loss, costs, expenses and liabilities caused to the Company whether directly or as a result of the action, claim or demand of any third party by reason of any breach by the Supplier of these conditions or of any terms or obligations on the Supplier's part implied by statute or statutory provisions relevant to the Agreement or to Goods or work covered thereby.		
19.4	The Supplier shall hold satisfactory insurance cover with a reputable insurer to fulfil the Supplier's insurance obligations for the duration of this Agreement including public liability insurance cover of at least £2M (two million pounds sterling). The Supplier shall effect insurance against all those risks arising from the Suppliers indemnity. Satisfactory evidence of such insurance and payment of current premiums shall be shown to the Company upon request.		
19.5	The Supplier shall as soon as reasonably practicable repair or replace all Goods without additional cost to the Company which are or become defective and, where such defects occur under proper usage. Repairs and replacements shall themselves be subject to the foregoing obligations including after reinstallation or passing of tests (if any) whichever is appropriate. Neither the above nor anything contained in these Terms shall limit or impair any statutory or any other rights that the Company may have.		
20.	GENERAL CONDITIONS IN THE TENDER		
	No conditions submitted or referred to by the Supplier when tendering, shall form part of the Agreement unless otherwise agreed to in writing by both parties.		
21.	CONFIDENTIALITY		
	The Supplier undertakes that it and the Supplier's, personnel, agents and permitted subcontractors will fully respect the confidentiality of the Company's internal business affairs. The Supplier hereby undertakes to treat as confidential all information obtained from the Company or communicated to the Supplier pursuant to this Purchase Order (or through discussions or negotiations prior to the Purchase Order being placed) or acquired in the performance of the Purchase Order, and will not divulge such information to any person (except to its own employees and then only to employees who need to know the same) and will use such information solely in connection with performing its obligations under this the Purchase Order and not for its own benefit or for the benefit of any third party, provided that this clause shall not extend to information:-		
	(a) which is rightfully in its possession prior to the commencement of the negotiations resulting in the contract; or		
	(b) which is already public knowledge or becomes so at a future date (other than as a result of breach of this clause); or		
	(c) which is communicated or disclosed to the Supplier by a third party lawfully in possession thereof and entitled so to disclose it.		
22.	CONSTRUCTION OF CONTRACT		
22.1	The Agreement shall be governed by and construed in accordance with the law of Scotland and the parties submit to the exclusive jurisdiction of the Scottish Courts.		
22.2	No amendment to the Agreement or the supply of Goods shall be of effect unless agreed in writing by the Company.		
22.3	Notices hereunder shall be in writing addressed to the parties as stated on the Agreement and shall be effective on delivery.		
22.4	Failure of the Company to enforce compliance with any term of the Agreement shall not constitute a waiver of such term.		
22.5	If any provision of the Agreement is determined invalid, unlawful or unenforceable to any extent such provision shall be severed from the Agreement and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.		