

## TERMS & CONDITIONS OF SALE

### 1. INTERPRETATION

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

“Agreement”	means the agreement, verbal or written, between the Company and the Buyer for the sale and purchase of the Goods, incorporating these terms and conditions;
“Buyer”	means the person(s), firm or company who purchases the Goods from the Company;
“Company”	means McLean Buchanan & Wilson Limited (Registered in Scotland with company number SC079393);
“Goods”	means any goods supplied by the Company to the Buyer pursuant of the Agreement and
“Terms”	means these terms and conditions of sale.

### 2. APPLICATION OF TERMS

2.1 These Terms apply to all sales and quotations of the Company to the exclusion of any other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation specification or other document even when referred to in the Agreement). Unless otherwise agreed in writing by the Company (which shall include anything contained in any quotation delivered by the Company to the Buyer) these conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Buyer in his order or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing. Any general description contained in the Company's catalogues or other advertising material or otherwise shall not form a representation or be part of the contract.

2.2 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Company and the Buyer.

2.3 Any enquiry for Goods placed by a Buyer with the Company shall be deemed to be an offer by the Buyer to purchase Goods subject exclusively to these Terms.

2.4 The Company reserves the right to correct any clerical or typographical error made by its employees at any time.

### 3. BASIS OF QUOTATION

3.1 Any enquiry for Goods must be in writing and shall be deemed to be accepted by the Company upon written acknowledgement by the Company.

3.2 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

### 4. PRICE

4.1 Subject to clause 4.3, unless otherwise agreed with the Company in writing, the price of the Goods plus the cost of carriage, if provided by the Company, will be set out in the Agreement.

4.2 When an order or enquiry is received for a quantity less than quoted for, or where delivery is required in instalments smaller than those specified in the Agreement, prices may be subject to an increase as determined by the Company.

4.3 Unless otherwise agreed in writing, the Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing, working on or supplying any goods (including, but not limited to, any such increase arising from any error or inadequacy or change to any specification, instructions or design provided by the Buyer, any modification carried out by the Company at the Buyer's request or any change in taxes, customs duties, freight charges, insurance premiums or exchange rates) and such increased prices ruling at the date of dispatch by the Company shall be substituted for the previous contract price. In particular, but without prejudice to the generality of the foregoing, if the contract price is specified or payable in the Euro or in a currency other than pounds sterling (“the Payment Currency”), the Company shall be entitled to increase the contract price to take account of any change in the exchange rates between pounds sterling and the Payment Currency (as evidenced by the exchange rates quoted by Bank of Scotland) which is to the detriment of the Company and which occurs between the acceptance of the order and the actual payment of the contract price.

4.4 All prices are quoted are exclusive of VAT and the Buyer shall pay any and all taxes, duties and other governmental charges payable in respect of the goods.

### 5. PAYMENT TERMS

5.1 The Buyer shall pay for the Goods within 30 days of the date of the invoice rendered by the Company to the Buyer.

5.2 The Company reserves the right to suspend performance of any Agreement entered into with the Buyer when the Buyer's account is overdue. The Company reserves the right to charge interest at a rate of 5% above the base lending rate of Bank of Scotland as applicable from time to time on all overdue accounts.

5.3 The Company shall have a right of lien over all of the Buyers' Goods which are in the possession of the Company for all sums due to the Company under the Agreement.

5.4 No deduction shall be made by the Buyer for or on account of anything whatsoever including, but not limited to, any set-off, counter-claim or present or future taxes and the time of payment shall be the essence of this agreement.

### 6. DELIVERY

6.1 Unless otherwise specified in writing by the Company:

- the Company shall deliver the Goods, by the means most convenient to the Company, to the address or addresses specified by the Buyer on or prior to the Agreement being entered into (provided that, in the event that the Buyer fails so to specify an address, the Company shall be entitled, but shall not be obliged, to deliver the Goods to any address at which the Buyer resides or carries on business); and
- the prices quoted by the Company shall include packaging and UK delivery (and any any special aspects of inspection, packaging, insurance and overseas delivery shall be charged separately and over and above the price for the Goods).

6.2 Any dates or periods for delivery of Goods, or any rate of delivery quoted by the Company are an approximate estimate only and the Company shall not be liable for any delay in delivery of Goods. The timing of delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon the giving of 24 hours notice to the Buyer. If no dates are specified within the Agreement, the supply of the Goods will be within a reasonable time.

6.3 The Company shall not be liable for any loss (including loss of profit), costs, damages or expenses caused directly or indirectly by any delay in the supply of the Goods nor will any delay entitle the Buyer to terminate or rescind the Agreement. The Company shall be entitled to defer delivery until any monies due from the Buyer have been received.

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions on or prior to the Agreement being entered into then, without prejudice to any other rights or remedies available to the Company, the Company may:-

- store the Goods until actual delivery takes place and charge the Buyer for all of the reasonably incurred costs of such storage (including insurance); and
- sell the Goods at the best price reasonably available and (after deduction of all reasonably incurred storage and selling expenses) account to the Buyer for the excess over the price under the Agreement or charge the Buyer for any shortfall below the price under the Agreement.

6.5 A schedule (an order requesting delivery of Goods to be spread over a specified period) shall constitute unqualified authority for stockholding by the Company and shall define the Buyer's liability. Scheduling of an order shall permit the Company to complete delivery of the whole order within 12 to 24 months from receipt of the order except by mutual agreement between the Company and the Buyer. Such scheduled orders shall be deemed to constitute contract for the purposes of payment, therefore payment, to the Company's conditions of sale, shall be a precedent to further delivery of the Goods.

### 7. PACKING

Where receptacles of any nature are used by the Company to send Goods to the Buyer, these receptacles remain the property of the Company and require to be returned to the Company at the cost of the Buyer.

### 8. CANCELLATION

Unless otherwise agreed in writing with the Company, cancellation of Agreements will not be accepted.

### 9. BUYER'S OBLIGATIONS AND ACKNOWLEDGEMENTS

9.1 The Buyer shall: -

- (if appropriate) use the Goods in accordance with their specification and purpose as set out in the Agreement; and
- where the Company has supplied the Goods to the Buyer accompanied by a test certificate, the Buyer shall maintain a record of the identity of such Goods from the date of delivery until such time as the Goods are installed/incorporated into other items; and
- pass on to all third parties to whom it may supply the Goods of any of them all information as to the use and safe handling of such Goods as may have been provided to the Buyer by the Company.

9.2 If Goods are made to a specification, instruction or design supplied by the Buyer or any third party on behalf of the Buyer then:

- the suitability and accuracy of that specification, instruction or design will be the Buyer's responsibility; and
- the Buyer will indemnify the Company against all infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country; and
- the Buyer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the Goods being made to such specification, instruction or design.

9.3 If the Buyer modifies the Goods the provisions of clause 10.8 shall not apply and the Company shall have no liability in respect of any loss or damage arising from or in connection with any defect of failure in the Goods or any error regarding weight, dimensions, capacity.

### 10. LIMITATION OF LIABILITY

10.1 The Company will have no liability for damage in transit, shortage of delivery or loss of Goods unless the Buyer shall have given to the Company written notice of such damage, shortage of loss (together with reasonable particulars thereof) within 7 days of receipt of the Goods or (in the case of total loss) the receipt of the invoice or other notification of dispatch. The Company's liability, if any, shall be limited to re-supplying or (in its discretion) repairing such Goods and it shall be a condition precedent to any such liability that the Buyer shall, if so requested, provide authority for the company's employees or agents to inspect any damaged Goods within 14 days of such request.

10.2 The Company will have no liability for any direct or consequential loss (including but not limited to loss of profits, loss of business or other economic loss) arising out of any damage in transit shortage of delivery or loss of Goods.

10.3 The Company may supply fasteners with a protective coating only at the request of the Buyer, but such process shall be considered to be a modification and shall absolve the Company of any damage caused to the Goods by the application of the finish.

10.4 No plating process will guarantee complete freedom from hydrogen embrittlement. The Company will not be liable for any loss of damage of whatever nature which occurs as a result of product failure caused by hydrogen embrittlement.

10.5 The Company shall be under no liability in respect of any defect in the Goods arising from drawing, designs or specifications supplied by the Buyer.

10.6 The Company shall have no liability where the Goods have been subjected to undue wear and tear, accident, misuse, improper application, modification, neglect or over-loading. In no circumstances shall the Company be liable for loss or damage of any kind, either indirectly or directly caused by or arising from Goods supplied for any accident or injury to personnel or damage to property howsoever arising from or in the course of using such Goods.

10.7 The Company shall not be liable for any part of equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to the Company.

10.8 (a) The Company's liability in respect of any defect in or any failure of Goods or work done is limited to re-supplying (with new Goods) or (at its discretion) repairing or paying for the repair or re-supply of Goods, in the case of defects apparent upon inspection, within 14 days of delivery and, in the case of defects not so apparent, within 12 months of delivery to the Buyer, by reason of fault or incorrect design, workmanship, parts or materials are found to be defective or fail or are unable to perform in accordance with the contract.

(b) Without prejudice to clause 3, the Goods shall not be deemed to be defective by reason that they are not fit for their purpose unless the Buyer and the Company have undertaken as part of the contract to be solely responsible for providing the Goods for the exact purpose.

(c) In the event of any error in any weight, dimension, capacity, performance or other description which has formed a representation or is part of a contract, the Company's liability in respect of any direct loss or damage sustained by the Buyer as a result of such error shall not exceed the price of the Goods in respect of which the description is incorrect.

(d) Conditions precedent to the Company's liability hereunder shall be that the Buyer shall have given to the Company reasonable notice of the defect, failure or error and shall have provided authority for the Company's servants or agents to inspect the Goods.

(e) The Company shall have no other or further liability in respect of any direct or consequential loss (including but not limited to loss of profits, loss of business or other economic loss) or damage sustained by the Buyer arising from or in connection with any such breach, defect, failure or error as aforesaid.

10.9 Where the Company repairs or re-supplies Goods in accordance with the foregoing provisions of this clause 10 or otherwise, any time specified for delivery shall be extended for such period as the Company may reasonably require.

10.10 All Goods supplied by the Company are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto, and whether or not the contract is a contract of

	sale, all other conditions, warranties and other terms, express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing provided that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this clause will not apply to any such term.	17.3	Any indulgence or forbearance to the Buyer shall not prejudice the Company's rights and remedies and no waiver by the Company of any breach by the Buyer shall operate as a waiver of any subsequent breach.
		17.4	Notices hereunder shall be in writing addressed to the parties as stated on the Agreement, and shall be effective on delivery.
10.11	(a) In the event of any negligence or wilful default on the part of the Company, its employees, agents of sub-contractors in or in connection with the supply of any Goods or the design or in connection with the supply of any Goods or the design or manufacture thereof or in the carryout out of any work, the Company shall have no liability to the Buyer save as otherwise provided in these Terms. (b) For the purposes of sub-clause 10.11(a), the expression "the carrying out of any work" shall, without prejudice to its generality include the carrying out of all work done in or in connection with the design, manufacture, treatment, testing, delivery, erection, installation, repair or servicing of any Goods or in the preparation or provisions of any information of advice. (c) This clause and these Terms shall have effect subject to the provisions of section 2(1) of the Unfair Contract Terms Act 1977. (d) The Buyer shall not in any circumstances be entitled to withhold payment for monies due whether as a means of setting off monies owed to it by the Company or otherwise.	17.5	If any provision of the Agreement is determined invalid, unlawful or unenforceable to any extent such provision shall be severed from the body of the Purchase Order and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.
		17.6	Words and expressions defined in these Terms shall, unless the context otherwise requires, bear the same meaning in the Agreement.
		17.7	The headings in these Terms are for convenience only and are not for the purpose of interpretation.
		17.8	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.
		17.9	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 Buyer) is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.
10.12	The price for the Goods is determined on the basis of the exclusions from and limitations for the liability contained in these Terms. The Buyer expressly agrees that these exclusions and limitations are reasonable.	17.10	Failure by the Company to enforce strict compliance with these Terms by the Buyer will not constitute a waiver of any of the provisions of these Terms.
10.13	Save in respect of clauses 10.3 and 10.4, nothing in these Terms excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.	17.11	References to clauses are to clauses of these Terms, unless stated otherwise.
11.	<b>RISK AND PROPERTY</b>		
11.1	Risk of damage or loss of the Goods shall pass to the Buyer:-		
	11.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or		
	11.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, immediately prior to the Goods being unloaded at the address nominated by the Buyer.		
11.2	The Buyer agrees with and warrants to the Company that the Buyer will fully insure the Goods for their replacement value with immediate effect upon notification that the Goods are available for collection. In the event of any loss or damage occurring while the Goods remain the property of the Company the Buyer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company. For the avoidance of doubt the provisions of this clause do not affect the Buyer's obligations under clause 6.		
11.3	Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these Terms, the property of the Goods shall not pass to the Buyer until the Company has received in cash or in cleared funds, payment in full of the price of the Goods together with all other sums due to the Company under other Agreements.		
12.	<b>RETENTION OF TITLE</b>		
12.1	Upon delivery of the Goods the Buyer shall hold the Goods solely as bailee for the Company and the Goods shall remain the property of the Company until such time as the Buyer shall have paid to the Company and the Company shall have cleared funds for the full purchase price of all Goods and supplies, whether under the contract or otherwise. Until such time the Company shall be entitled to recover the Goods or any part thereof and, for the purpose of exercising such rights, the Buyer hereby grants a licence to the Company its employees and agents (together with appropriate transport) to enter upon the Buyer's premises and any other location where the Goods are situated and remove the Goods.		
12.2	The Buyer is hereby granted a licence by the Company to incorporate the Goods in any other products.		
12.3	The licence granted under clause 12.1 shall extend to detaching the Goods from any property to which they are attached or into which they have been incorporated or from any other products or Goods to which they have been incorporated or from any other products or Goods to which they have been attached pursuant to the licence granted under clause 12.2 hereof.		
12.4	The Buyer is hereby licensed to agree to sell on the Goods and any products incorporating any of them on condition that the Buyer shall inform its Buyer of the provisions of clauses 12.1 to 12.3. The Buyer acts as the Company's bailee in respect of any such sale and shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 6 remit to the Company the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.		
12.5	The licences granted under clauses 12.2 and 12.4 shall be terminable forthwith at any time upon notice by the Company to the Buyer.		
13	<b>HEALTH &amp; SAFETY</b>		
	The Company 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 Buyer 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 used and handled safely and without risks to health.		
14	<b>CONFIDENTIALITY</b>		
	The Buyer agrees that it and its employees and agents will keep confidential all drawings and designs supplied by the Company and will not use, copy or reproduce the same save as specifically authorised by the Company in writing.		
15	<b>FORCE MAJEURE</b>		
	The Company shall not be liable to the Buyer or deemed to be in breach of contract by reason of any delay or failure in performing any of the Company's obligations to the Buyer, in relation to the Goods, if the delay or failure was due to any cause beyond the reasonable control of the Company.		
16.	<b>ASSIGNATION AND SUB-CONTRACTING</b>		
16.1	The Buyer shall not be entitled to assign the Agreement or any part of it without the prior written consent of the Company.		
16.2	The Company may assign or sub-contract the Agreement or any part of it to any person, firm or company.		
17	<b>CONSTRUCTION OF CONTRACT</b>		
17.1	Scottish Law shall govern the construction, validity and performance of the Agreement.		
17.2	In the event that any of these Terms shall become or shall be declared by any court or competent jurisdiction to be invalid or unenforceable, in any way, such invalidity or unenforceability shall in no way impair or affect any of the other conditions hereof all of which shall remain in full force and effect.		