



*the vital ingredient*

Reg Number: 31780 Scotland

August 2017

Macphie Ltd

VAT Number:

552 9806 18 GB

Standard Terms and Conditions of Sale

Macphie Ltd  
Terms and Conditions of Sale

## 1. Terms and Conditions of Sale

These terms and conditions will apply to the sale of any goods by Macphie. Acceptance of delivery of the Goods will be deemed to effect acceptance by the Purchaser of these terms and conditions. They will apply to the exclusion of any other terms or conditions, notwithstanding the date or dates of issue of those other terms or conditions, except for any variation in quantity, price, date of delivery or specification of the Goods which has been agreed by Macphie.

## 2. Definitions

In these terms and conditions:-

*"Macphie"* - means Macphie Limited, having its registered office at Glenbervie, Stonehaven AB39 3YG.

*"the Purchaser"* - means the purchaser of the Goods and/or any person who orders goods from Macphie;

*"the Price"* - the price of the Goods quoted by Macphie or, if no such price is quoted, the price of the Goods specified in Macphie's most recent price list or such other price for the Goods agreed between Macphie and the Purchaser, together with any additional transport, freight and/or insurance costs specified by Macphie;

*"the Goods"* - means such goods as Macphie shall supply, or any part thereof;

*"in writing"* - means, in relation to Macphie, signed by a director of Macphie.

Headings are given for convenience only and will not affect the interpretation of these conditions.

## 3. Cancellation by the Purchaser

If after making an order to purchase goods from Macphie but before those goods are delivered the Purchaser cancels that order in whole or part then the Purchaser will pay Macphie the cancellation charge specified by Macphie.

## 4. Price and Payment

- (a) The Purchaser will pay the Price to Macphie without deduction. The Price may be increased by Macphie at any time before delivery to reflect any increase in cost beyond Macphie's control (such as, but not limited to, foreign exchange fluctuation, currency regulation, significant increase in the cost of labour, materials and other costs of manufacture).
- (b) If the Purchaser fails to return any pallets and/or returnable containers in accordance with Macphie's instructions from time to time then the Purchaser will reimburse to Macphie the cost of such pallets and/or containers.
- (c) All payments to Macphie are due and payable on or before the 15<sup>th</sup> of the calendar month following the calendar month during which Macphie issues an invoice in respect thereof. If the Purchaser fails to make payment on the due date then the Purchaser will pay Macphie interest on all sums due but unpaid at the rate of four percent over the base rate of the Governor and Company of the Bank of Scotland from time to time from the due date until the actual date of payment. In addition Macphie may cancel or suspend any further supplies or deliveries to the Purchaser.
- (d) Price are shown exclusive of value added tax which will be payable to Macphie in addition where applicable.

## 5. Delivery

- (a) Any date for delivery of the Goods is an indication given by Macphie in good faith of the date upon which the Goods will be available for delivery but is not binding on Macphie.
- (b) The Purchaser will be deemed to have accepted the Goods on the expiry of twenty four hours of their delivery.
- (c) If the Purchaser fails to take delivery of the Goods or fails to give Macphie adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to it, Macphie may:-
  - (i) store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage; or
  - (ii) treat the order for the Goods as having been cancelled by the Purchaser.

## 6. Risk in and Title to the Goods

- (a) Risk of damage to or loss of the Goods will pass to the Purchaser at the time of delivery of the Goods to the Purchaser (where the Goods are so delivered in the United Kingdom) or at such time as shall be agreed between Macphie and the Purchaser (in all other cases). Sub sections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall apply subject to such agreement.
- (b) Title to the Goods will remain with Macphie until such time as all sums due from the Purchaser to Macphie are paid in full, notwithstanding delivery and/or acceptance of the Goods.

## 7. Macphie's Obligations

- (a) Macphie will supply the Goods to the Purchaser in accordance with these terms and conditions.
- (b) Macphie warrants that it has the right to sell the Goods, free from any charge or encumbrance.
- (c) Macphie warrants that the Goods will comply with Macphie's specification for such goods from time to time (which is subject to change by Macphie).
- (d) Except as set out in paragraphs (a)-(c) above Macphie shall owe no further obligation to the Purchaser in relation to the supply of the Goods (except insofar as Macphie has otherwise agreed in writing).
- (e) Except as set out in paragraphs (a)-(c) above any terms, conditions and/or warranties implied by law or otherwise into any contract for the sale of the Goods by Macphie to the Purchaser are excluded (save insofar as such exclusion is prohibited by law or has been waived by Macphie in writing).
- (f) Without prejudice to the above Macphie acknowledges that Macphie makes no warranty or representation as to the quality or fitness of the Goods for any particular purpose, it being the Purchaser's responsibility to ensure that goods of the specification referred to in Clause 7(c) above are suitable for the purpose for which the Goods are used or to be used.

## 8. Storage and Use

- (a) Macphie's advice and recommendation as to storage, application and use of the Goods which are set out in the technical service sheets for the Goods published by Macphie, together with any other advice and recommendations made by Macphie in writing, must be followed by the Purchaser. Macphie shall not be liable for the consequences of the Purchaser's failure to do so.
- (b) Any advice or recommendation given by Macphie or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is neither confirmed in writing by Macphie nor set out in the technical service sheet in relation to the Goods published by Macphie is followed or acted upon entirely at the Purchaser's own risk and accordingly Macphie shall not be liable for any such advice or recommendation which is not so confirmed.
- (c) Macphie's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Macphie in writing. The Purchaser acknowledges that it does not rely on any such representations which are not so confirmed.
- (d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Macphie shall be subject to correction without any liability on the part of Macphie.

## 9. Limitation of Liability

- (a) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Macphie, Macphie shall be entitled to replace the Goods (or the part of the Goods in question) free of charge or, at Macphie's sole discretion, refund to the Purchaser the price of the Goods (or a proportionate part of the price), but Macphie shall have no further liability to the Purchaser.
- (b) Except in respect of death or personal injury Macphie's liability for breach of any duty owed in the performance of its obligations to the Purchaser and/or for its negligence shall be limited, on the basis that each limitation is separate, independent and severable from each other limitation, as follows:-
  - (i) Macphie shall have no liability for consequential or collateral loss;
  - (ii) One month after the best before date specified by Macphie in relation to the Goods; and
  - (iii) The total liability of Macphie in relation to the Goods shall in no circumstances exceed the purchase price of the Goods.

## 10. Cancellation by Macphie

If:-

- (a) the Purchaser shall fail to pay any sums due to Macphie on their due dates;
  - (b) the Purchaser becomes apparently insolvent or bankrupt;
  - (c) any security holder or mortgagee takes steps to realise or enforce his security over any asset of the Purchaser;
  - (d) control (as defined in Section 840 of the Income and Corporation Taxes Act 1988) of the Purchaser shall change; or
  - (e) the Purchaser or any subsidiary or holding company of the Purchaser or any subsidiary of such holding company (a "Relevant Company") shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with its creditors or if a Relevant Company shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of a Relevant Company or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps (including the presentation of a petition) are taken for the winding up of a Relevant Company or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) (where the words "subsidiary" and "holding company" shall have the meaning given to them in the Companies Act 1985 as modified, supplemented or replaced from time to time);
- then Macphie may cancel or suspend any further deliveries of the Goods.

## 11. Data Protection Act

Macphie reserves the right to consult whomsoever it considers appropriate for the purpose of Trade References and will record information in respect of such opinions which will be made available to other businesses for the continuing assessment of credit risk.

## 12. Law

These terms and conditions and the sale of the Goods by Macphie to the Purchaser shall be governed by and construed in accordance with the law of Scotland and Macphie and the Purchaser, for the benefit of Macphie, hereby prorogate the jurisdiction of the Court of Session and the Sheriff Court of Grampian, Highland and Islands at Stonehaven.