



the Vital ingredient

June 2018 Macphie Ltd

Reg Number: 31780 Scotland VAT Number: 552 9806 18 GB

Standard Terms and Conditions of Purchase

Macphie Ltd
Terms and Conditions of Purchase

We, the Company, only purchase goods, rights and services (“Deliverables”) on these terms and conditions (“the Terms”). If you accept our order it will be on these Terms and no other standard terms. If you act in a manner calculated to appear as an acceptance of our order, that will act as an acceptance and you will be bound by our Terms, regardless of any inconsistency in your own small print. If you wish to reject our order and make a counter-offer you MUST therefore reply to our order in words explicitly and clearly indicating rejection. Equally, if you make a counter-offer which is not clearly labelled as such (or as a rejection of our order) no subsequent behaviour of ours, in accepting Performance, can be taken to imply any acceptance by us of that counter-offer. These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Company. These Terms are important and should be studied carefully.

These Terms are available from us in 12 point type size on request.

1. The Contract

- 1.1 Our contract with you, our supplier, will comprise our express written order, these Terms, anything else we expressly agree under section 1.2, any content imposed by law, but nothing else.
- 1.2 If you want us to accept a term of yours, or accept a particular responsibility, or if you wish to rely on a representation we have made, you must therefore obtain our express agreement to that. That means express written agreement, signed by a director or other senior officer of the Company and referring expressly to these Terms. We will deal with you in reliance on these Terms, so be aware that our acceptance of contractual performance by you does not imply acceptance of any terms that are different to our Terms. You must indemnify us against any consequence of your seeking to rely on any contractual terms, or any statement, understanding or representation which is not contractually agreed as set out in this section 1. For purposes of this section, written agreement can be communicated by pre-paid post, fax or email, save that we never accept small print terms communicated by fax, on grounds of uncertain legibility.
- 1.3 If any of the terms of the contract conflict with or contradict each other those terms will over-ride each other in the following order of priority: (1) any express written agreement from us; (2) our order; (3) these Terms
- 1.4 We are not contractually bound until we place a formal order and then only to the extent of the issues specifically covered by that order or in writing signed by a director. We will only be contractually bound to you when you accept our order with a formal order acknowledgement in writing or (if later) when we accept Performance by you (see below).

2 Price

- 2.1 The price of the Deliverables will be as stated in our order and, unless otherwise stated, will be:
 - 2.1.1 exclusive of any applicable VAT (which will be payable by us subject to receipt of a valid VAT invoice);
 - 2.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of Deliverables to or at the delivery address, and of any duties or levies other than VAT;

- 2.1.3 payable in pounds sterling; and
- 2.1.4 fixed for the duration of the Contract.
- 2.2 We will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by you in comparable circumstances.
- 2.3 If we will be reliant on you for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Deliverables (“Follow-on Deliverables”) then you will provide those Follow-on Deliverables or procure them to be provided, for at least 36 months following full Performance, at fair and reasonable prices which take no advantage of our dependence on you for their supply.

3 Payment

- 3.1 Invoices for the Deliverables may be sent to us on, or after, completion of Performance (as defined in section 4.1). Each invoice must quote the number of our Purchase order. No sum may be invoiced more than six months late.
- 3.2 Unless otherwise stated in the order, we will pay the contract price within 60 days of the end of the month in which we receive the invoice.
- 3.3 We will be entitled to set off against the price any money owed to us by you.

4 Specifications

- 4.1 if we order goods, then unless otherwise stated the order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those goods, necessary to enable the Company to use them for their intended purposes. If we order services then, unless otherwise stated, our order includes the complete performance of those services including any employee instruction, manuals, explanations or certifications necessary to enable the Company to benefit from them for their intended purposes. If we order goods or services then, unless otherwise stated, our order includes any legal rights necessary to use those goods or services for their intended purposes. As for those intended purposes, see section 6.3. References in these Terms to “Performance” are to complete performance of all your contract obligations as described in these Terms.
- 4.2 The Quantity, quality and description of Deliverables will be as specified in our order and these Terms or as agreed by us in writing, subject to which then in full accordance with your representations (see section 6.1)
- 4.3 You have sole responsibility for complying with all applicable regulations and other legal and regulatory requirements concerning performance of the contract, and for ensuring that we can, in compliance likewise, fully utilise the Deliverables for their intended purposes.
- 4.4 We will be allowed to inspect any contract goods during (and your premises for) manufacture and storage so long as we request an inspection by reasonable notice. If, as a result of the inspection, we are not satisfied that the quality of the goods or the standards of their manufacture, storage or handling conforms with the contract, you will take such steps as are necessary to ensure compliance, if, after that, we are still not satisfied we can cancel the contract without penalty
- 4.5 If, before Performance has occurred in the relevant respect, we notify you in writing of any change in desired specification (including as to quality and time frame) you will respond as follows. We appreciate that a change may affect the contract price, or may even be unachievable. If the change would reduce your costs, the contract price will reduce to fairly reflect that saving. If the change would increase your costs you may notify us promptly, in writing, of a proposed revision of the contract price fairly and proportionately reflecting any unavoidable such increased cost: you and we will then use our reasonable efforts to agree the revised terms in full, including as to price, pending which the contract variation will not take effect. If the change would for any reason be unachievable you may notify us of that promptly and in writing, with reasons: again, both parties will then use reasonable efforts to reach a mutually acceptable contract variation.

- 4.6 Failing notice under one of the two preceding sentences our proposed change will be deemed to have been accepted, and the contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no price increase. What amounts to “prompt” notice for this purpose will depend on feasibility for you and urgency for us, but not in any case later than 48 hours (excluding hours of days which are Saturdays, Sundays or are recognised bank holidays in England) from our notice of proposed change. In no event, agreed or not, will we be liable to you in respect of any contract variation for more than a reasonable and proportionate reflection of such increased costs as you could not reasonably have been expected to avoid. The contract price will not in any circumstance increase except with our express written agreement under, or referring explicitly to, this sub-section.
- 4.7 To protect our business, we may need, sometime urgently, information as to precisely how Deliverables were performed, and as to all relevant activities of any suppliers or sub-contractors of yours. You will meet any reasonable such request as soon as reasonably possible, and will keep records adequate for that purpose for at least two years after completion of Performance. Without limitation, these records must provide full traceability for all goods comprised in, or used in making, any contract goods which are in any respect safety-critical. They must also demonstrate compliance of the contract work with all legal or regulatory requirements and with all contractually binding quality and Performance standards.
- 4.8 You will comply with any reasonable requirements we may have as regards the packaging and packing of any contract goods, and as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Subject to that, you will ensure that all packaging, packing labelling and documentation is such as to ensure full compliance with legal requirements throughout the scheduled delivery process

5 Delivery and risk

- 5.1 Any goods will be delivered to, and any services performed at, the address and on the date stated in the order, or else under section 5.2, during usual business hours.
- 5.2 If we specify the date or delivery address after ordering, we will give you reasonable notice of the details. Failing a date, supply will be as soon as reasonably possible.
- 5.3 The date of delivery of any goods or rights, and the performance of any services, will be of the essence of this contract.
- 5.4 A packing note quoting the number of the purchase order must accompany each delivery or consignment of goods and must be displayed prominently. Where Deliverables are to be supplied in instalments, the contract is still to be treated as a single contract. If you fail to deliver or perform any instalment we may treat the whole contract as repudiated.
- 5.6 We may reject any Deliverables which are not fully in accordance with the contract. Acceptance does not occur until we have had a reasonable time to inspect or consider the relevant Deliverables following supply and, in the case of latent defect, a reasonable time after the defect becomes apparent.
- 5.7 We will not be bound to return to you any packaging or packing material, but if any relevant requirement for packaging recycling applies, you will take materials back free of charge on request.
- 5.8 If any Deliverables are not supplied on or by the agreed date then, in addition to any other remedies available to us, we will be entitled to deduct 1% of the overall contract price for those Deliverables, for every week's delay.
- 5.9 Risk of damage to or loss of any goods passes to us on delivery.
- 5.10 Property and ownership of any goods will pass to us on delivery unless we have paid in whole or in part for the goods in advance. In that case it will pass to us as soon as the goods have (or, if goods are being assembled for us, each successive component of the goods has) been appropriated to the contract.
- 5.11 If we supply any articles to you, e.g. for modification or copying, they stay our property at all times. Those articles must be kept confidential and

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