April 2017 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.

5.5 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

secure and we can enter your premises at any time on reasonable notice to ensure that this is so. While those articles are in your custody you must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of our contract. We retain copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which we supply to you. You must indemnify us against any loss caused to us and account to us for any profit which you make, through breach of this provision.

5.12 If any Performance occurs on our premises this sub-section will apply. You will ensure that best industry standards are adopted for the health and safety both of your personnel and of any other individuals affected by your actions. We may refuse or terminate access to any individual whom we reasonably consider undesirable to have on our premises. Your personnel must, while on our premises, comply with our reasonable requirements as to security, health and safety routines, times and areas of access, and otherwise. You will be responsible to us on a full indemnity basis for all damage and injury caused by your staff.

5.13 If the contract terms refer to terms such as F.O.B and C. & F. which bear defined meanings in the current edition of Incoterms, those defined meanings will apply unless expressly stated otherwise.

5.14 Any goods provided by us to you on a free issue basis will remain our absolute property throughout, and will be at your risk while the goods are, or are supposed to be, in your possession. You are not to part with possession (save to us) unless with our express prior consent.

6 Warranties and Liability

6.1 You promise that:

6.1.1 the quantity, quality, description and specification for the Deliverables will be those set out in our order, apart from which then of the best standards reasonably to be expected in the market for that kind of Deliverable: and

6.1.2 any goods will be free from defects in material and workmanship; and

6.1.3 any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply; and

6.1.4 all claims made by you about any Deliverables, and all apparently serious claims in your advertising and promotional material are correct and can be relied upon; and

6.1.5 any services will be performed by appropriately qualified and trained personnel; and

6.1.6 neither the sale and supply of any Deliverable, nor its proper use by us for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.

6.2 All warranties, conditions and other terms implied by statute or common law in our favour will apply to any Deliverables bought from you.

6.3 It is your responsibility to find out from us the purposes that we intend the Deliverables to be put to (including any applicable deadline affecting us). You promise that they will be suitable for those intended purposes, save only for any unsuitability which you have, as soon as might reasonably have been expected of you (and in any case before starting Performance) expressly notified to us.

6.4 You will indemnify us and keep us indemnified immediately upon our written demand against any cost, claim, expense or liability arising from any risk for which you are responsible under this contract.

6.5 If you fail to comply with any obligation under the contract we will be entitled, at our discretion, to reject any Deliverable and you will not be entitled to receive payment for that Deliverable.

6.6 If any contract goods do not comply with all contact requirements we can demand that you repair them or supply replacement goods within seven days or, at our sole discretion, we can reject the goods and demand the repayment of any sum already paid for them.

6.7 We will not be liable to you for any delay or failure to perform any of our obligations under this contact if the delay or failure was due to a cause beyond our reasonable control.

6.8 If any contract goods or rights were bought or obtained by you from a third party then any benefits or indemnities that you hold from that other party, in respect of those items, will be held on trust for us.

6.9 You will insure yourselves, and keep insured until Performance is complete, against all normal insurance risks relevant to your work for or with us, on terms and for amounts consistent with normal business prudence. You will demonstrate to us the terms and currency of any such insurance on request.

7 Rights

7.1 Any rights which you are contracted to supply must be provided to us in accordance with sections 7.2 or 7.3 as applicable.

7.2 This sub-section will apply to the following types of contract right: where the contract expressly identifies particular rights as covered by it; where the rights in question are evidently not unique to our Deliverable (for instance you evidently supply the same thing, in the relevant respect, to others); or if those rights evidently derive from a third party of whom the same would be true (for instance you supply software on what you have told us is a proprietary third party platform). In those cases we are not to expect full ownership of those rights. You will however validly licence those rights to us, or procure them to be validly licensed to us, on the following terms: assignable; royalty-free; covering usage for any likely intended purpose; and free of any obligation on us save such as we expressly agree in the contract or as are the minimum reasonably necessary for the maintenance of the right in question.

7.3 This sub-section will apply to all contract rights to which section 7.2 does not. In that case you will transfer to us, or procure to be transferred to us, with full title guarantee the ownership of those rights to the full extent (including as to territory) that we reasonably need them for our intended purposes, and to the full extent of any wider rights available to you. You will execute any documents and make any declarations reasonably required by us, now or in future, to transfer those rights, you will not exploit those rights save for us or with our written consent, and you will (to the extent not yet legally transferred) hold all such rights on trust for us absolutely for the maximum permitted period of eighty years. We have your irrevocable power of attorney to execute any such documents and make any such declarations on your behalf if you fail to do so promptly on request.

7.4 If you carry out any development work at our request and wholly or primarily at our expense we will own all intellectual property rights generated by that work, and section 7.3 will apply to those rights.

7.5 You will do anything reasonably required by us, during or after performance, to perfect any transfer or licence of rights to us under this section or to assist us in registering or authenticating (but not at your cost enforcing or defending) those rights.

8 Termination

8.1 If goods have been offered by you as, or if they are, standard or stock items we can, by notice to you, at any time up to delivery cancel our commitment to buy them. Any other commitment of ours to receive and pay for Deliverables may be cancelled by us as follows. We will be bound to reimburse you for all irrecoverable costs incurred, or unavoidably committed, by you up to the point of cancellation. By "costs" is meant for this purpose the direct costs to you of Performance, to an aggregate amount not exceeding 80% of the purchase price for the cancelled commitment. We will be entitled, if we wish it, to the benefit of the part-finished Deliverables in question.

8.2 We may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the contract without any liability to you if you breach its terms, or if your business fails.

8.3 Your business will be treated for this purpose as having failed if:

8.3.1 You make any voluntary arrangement with your creditors;

8.3.2 (being an individual or firm) you become bankrupt;

8.3.3 (being a company) you become subject to an administration order or go into liquidation;

8.3.4 Any third party takes possession of, or enforces rights over, any of your property or assets under any form of security;

8.3.5 You stop or threaten to stop carrying on business;

8.3.6 You suffer any process equivalent to any of these, in any jurisdiction; or

8.3.7 We reasonably believe that any of the events mentioned above is about to occur and we notify you accordingly.

8.4 Any right of cancellation or suspension under this section is additional to any rights available to us under the law of any relevant jurisdiction.

9 Enforcement

9.1 You will keep strictly confidential all information which you learn about us or our customers, and use that information only for the performance, in good faith, of your contractual obligations to us. By way of illustration only, you may not use such information to help our competitors, poach our staff or disparage our reputation. This restriction will apply until the fifth anniversary of the contract date, and does not apply to information which was demonstrably public knowledge at the time of usage by you.

9.2 Our relationship is as independent contractors only, not as partners or as principal and agent. The contract is non-assignable by you. It is assignable by us only to a group company that is a company in the same ultimate beneficial ownership. You may sub-contract or delegate Performance in particular respects but not generally and not as regards your responsibility to us, nor our direct contact with us, in any respect.

9.3 You will procure that none of your associates behaves in a way which, had the behaviour been yours, would have breached the contract. We hold the contract on trust for ourselves and all associates of ours, and the contact is made for the benefit of all of them so that you will be liable for damage caused to our associates as well as ourselves. Our respective associates for this purpose are any parent company or ultimate controlling shareholder and any company owned by either.

9.4 No wavier by us of any breach of contract by you will be considered as a wavier of any subsequent breach of the same or any other provision, or as a release of the provision which you breached. No delay by us in enforcement, and no toleration shown by us, is to imply any waiver or compromise of our rights.

9.5 If any provision of these Terms is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.

9.6 Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by fax then on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that email route).

9.7 The contract will be governed by the law of Scotland, and you submit to the non-exclusive jurisdiction of the Scottish courts.