



MacGregor Industrial Supplies

TERMS AND CONDITIONS OF SALE

1. VALIDITY

Unless other terms and conditions are expressly accepted by the Seller by means of a specific written amendment hereto signed by a Director or Branch Manager of the Seller the contract ("the Contract") will be on the terms and conditions set out below and overleaf ("the Contract Terms") to the exclusion of any other terms and conditions (except those implied in favour of a seller which are not inconsistent with the Contract Terms) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Buyer to the Seller. Any reference overleaf to the Buyer's order, specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect to the exclusion or amendment of the Contract Terms.

2. DELIVERY

2.1 Delivery of the goods to be supplied under the Contract ("the Goods") shall be made by the earlier of:

2.1.1. the Buyer collecting the Goods at the Seller's premises;

2.1.2. the Seller notifying the Buyer that the Goods are ready for collection; or,

2.1.3. if an alternative delivery address is agreed by the Seller, by the Seller delivering the Goods to that place. Where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Seller shall be under no obligation under Section 32(2) of the Sale of Goods Act 1979.

2.2. Any dates quoted for delivery of Goods are indicative only and the Seller shall not be liable for any delay in such delivery howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Seller may deliver Goods in advance of any quoted delivery date on giving reasonable notice to the Buyer.

2.3. Where the Goods are to be delivered in bulk, the Seller shall have the right to deliver up to 10 per cent more or 10 per cent less than the exact quantity ordered. A pro-rata charge at the price quoted will be made to cover any such adjustments.

2.4. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any instalments in accordance with these Conditions or any claim by the Buyer in respect of any instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

2.5. If the Seller is unable to deliver the Goods (or any instalment) for any reason beyond the Seller's reasonable control, the Seller will be entitled to request that the Buyer sources the Goods from elsewhere and the Seller shall have no liability to the Buyer as a consequence..

2.6. If the Buyer fails to give the Seller adequate delivery instructions or fails to take delivery of the Goods at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

2.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;

2.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price; or

2.6.3 return the Goods to the supplier/manufacturer and render the Buyer liable for any handling and restocking charges which the Seller incurs as a consequence.

3. RETURNS

- 3.1. Subject to the Seller's prior agreement in writing, the Buyer may, within 28 days of delivery, return unopened Goods to Seller's premises provided that Goods have not been discontinued nor purchased or manufactured specifically for the Buyer.
- 3.2. When Goods are returned in accordance with Condition 3.1, the Buyer must also provide:
 - 3.2.1. Buyer details;
 - 3.2.2. Order or Quotation number;
 - 3.2.3. a description and quantity of the Goods being returned;
 - 3.2.4. reason for the return of the Goods.
- 3.3. Where Goods are returned under this Condition and subject to Condition 5.6, Seller will provide credit, less a 20% re-stocking charge to the Buyer's account.

4. ORDERS

- 4.1. No order for Goods submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller.
- 4.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order.
- 4.3. The quantity, quality and description of the Goods and any specification for them shall be as set out in any quotation or order (if accepted by the Seller in writing).
- 4.4. The Seller reserves the right to make any changes in the specification of any Goods which are required to conform with any applicable statutory requirements or, where Goods are to be supplied to Seller's specification, which do not materially affect their quality or performance.
- 4.5. No order or accepted quotation may be cancelled or varied by the Buyer except with the Seller's written agreement and on terms that the Buyer shall indemnify the Seller in full against all costs (including the cost of any labour, plant, tools and materials used) and expenses incurred by the Seller prior to or as a result of cancellation. The Buyer shall pay any increased costs arising from a variation of an order or quotation.

5. GUARANTEE AND EXCLUSION CLAUSES

- 5.1. Where the Seller is not the manufacturer of the Goods the Seller will use reasonable endeavours to make over to the Buyer the benefit of any warranty or guarantee given by the manufacturer.
- 5.2. In respect of Goods manufactured by the Seller, subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the date of delivery and will be free from defects in material and workmanship for a maximum period of 12 months from such date.

The warranty contained in this Condition 5.2 will not apply where:

- 5.2.1. defects arise from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Seller's approval;
- 5.2.2. the Price has not been paid in full;
- 5.2.3. unless otherwise agreed in writing by the Seller, parts, materials or equipment are not manufactured by Seller where Condition 5.1 will apply.

- 5.3. Save where otherwise provided in these Conditions, or where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, terms or other conditions implied by statute or common law are excluded to the fullest extent permitted by law and in particular the Seller does not make any warranty, express or implied, as to the Goods, materials or other items supplied under the Contract.
- 5.4. Where Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the Buyer's statutory rights are not affected by these Conditions.
- 5.5. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the warranty provided under this Condition 5 shall not apply and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
- 5.6. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller may, at the Seller's sole discretion, replace the Goods (or the defective part thereof) free of charge or refund to the Buyer the Price (or a proportionate part of the Price), in which case Seller shall have no further liability to the Buyer.
- 5.7. Except in respect of death or personal injury caused by the Seller's negligence (where such exclusion is prohibited by law) or as expressly provided for in these Conditions, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, punitive or consequential loss or damage (whether for loss of profit, business or otherwise), costs, expenses or other claims for compensation (whether caused by negligence of the Seller, its employees, agents or otherwise) which relate to, arise out of or in connection with the Contract or the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer.
- 5.8. The Seller's liability under the Contract shall not, whether based on breach of contract, negligence or otherwise, exceed an amount equal to the Price.
- 5.9. The limitations on liability in this Condition 5 shall survive termination or expiration of the Contract, and to the extent permitted by law, shall apply whether in contract, delict, or otherwise, even in the event of the fault, negligence, strict liability or breach of contract of the party released or whose liabilities are limited, and shall extend to the partners, principals, shareholders, directors, officers, employees and agents of such party and its affiliates.
- 5.10. The parties represent and warrant to each other that it is a legal entity duly formed, validly existing under the laws of its jurisdiction, and has full power and authority to execute, deliver and perform the Contract and to carry out the transactions contemplated therein.

6. PROPERTY IN THE GOODS AND RISK

- 6.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
- 6.1.1. where the Goods are delivered to the Buyer at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 6.1.2. where the Goods are to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

- 6.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price and the price of any other goods sold by the Seller to the Buyer for which payment is due.
- 6.3. Until ownership of and title to the Goods has passed to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller may, at any time, require the Goods to be returned failing which the Seller shall be entitled to enter the Buyer's premises, or those of any third party where the Goods are stored to take possession of the Goods (and the Buyer shall procure such third party to allow Seller access) without prejudice to the Buyer's obligation to make payment for the Goods and to any other rights available to the Seller by statute or at common law.
- 6.4. Until ownership of and title to the Goods has passed to the Buyer, the Buyer shall hold the Goods as the Seller's agent and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's Goods, until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds, properly stored, protected and insured.
- 6.5. Until ownership of and title to the Goods has passed to the Buyer, the Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to other right or remedy of the Seller) become immediately due and payable.

7. **PRICE**

- 7.1. The Buyer shall pay to the Seller the Price and any additional sums which are agreed between the Seller and the Buyer for the Goods.
- 7.2. The Price shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the Order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 7.3. The Seller reserves the right, by giving notice in writing to the Buyer at any time before delivery of the Goods, to increase the Price to reflect any increase in the cost to Seller which is due to any factor beyond its control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, changes of legislation, significant increase in the costs of labour, materials or other costs of manufacture, mispricing), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 7.4. Our Website contains a large number of Products and it is possible that, despite our best efforts, some of the Products listed on the site may be incorrectly priced. We are under no obligation to provide the Product to you at the incorrect (lower) price, even after we have sent you an Order Confirmation.
- 7.5. Unless otherwise stated by the Seller in writing the Price is for delivery at the Seller's premises. Where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay any charges for transport, packaging and insurance.
- 7.6. The Price is exclusive of any applicable VAT, which the Buyer shall be additionally liable to pay to Seller.

8. **CREDIT ACCOUNTS**

- 8.1 Credit accounts ("Credit Accounts") with the Seller for use by the Buyer may be opened at the sole discretion of the Seller.

- 8.2 Where a Credit Account has been agreed the Seller may in its absolute discretion set and alter the Buyer's credit limit and payment terms and the Seller reserves the right not to deliver the Goods if the price thereof increases the amount owed by the Buyer to the Seller beyond the Buyer's credit limit.
9. **PAYMENT**
- 9.1 Where no Credit Account has been agreed by the Seller the Goods will not be delivered until the Seller is paid the amount shown on the invoice relating to the Goods.
- 9.2 Where a Credit Account has been agreed the following provisions will apply:
- 9.2.1 Subject to any special terms agreed in writing between the parties, the Seller may invoice the Buyer for the Price on or at any time after delivery of the Goods or performance of the Service, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller may invoice the Buyer for the Price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 9.2.2 The Buyer shall pay the Price within 30 days of the end of the month in which the Seller's invoice is dated, and the Seller shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in any Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 9.2.3. If the Buyer fails to make any payment on any due date then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 9.2.3.1. suspend or cancel the Contract or any other contract between the Parties or suspend any further deliveries to the Buyer;
- 9.2.3.2. appropriate any payment made by the Buyer to such of the Goods (or goods or services supplied under any other contract between the Parties) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or
- 9.2.3.3. charge the Buyer interest (both before and after any judgment) on any amount unpaid, at the lesser of (a) the rate of 4 per cent per annum above Bank of Scotland plc base rate from time to time, or (b) the maximum rate allowable by applicable law, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 9.3 Any payment made by credit card not exceeding a value as notified at the point of sale will incur a charge intimated at the point of sale.
10. **DESIGN ETC.**
- 10.1 Where the Goods are manufactured in accordance with information or drawings supplied by the Buyer or to his design or specification or where standard goods of the Seller are altered in accordance with the Buyer's instructions:
- 10.1.1 No guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods (this being without prejudice to any other of the Contract Terms).
- 10.1.2 The Buyer will indemnify and keep the Seller indemnified against all liability incurred by the Seller as a result of such goods infringing any patent, registered design, copyright, or other like protection or the provision of any statute, statutory instrument or regulation for the time being in force.
- 10.2 No variation by the Seller in the specification or design of any Goods shall constitute a breach of contract or impose upon the Seller any liability whatsoever.

10.3 The Seller shall be under no liability whatsoever to the Buyer in respect of any loss damage or claim incurred by or made against the Buyer should any goods supplied by the Seller infringe any patent registered design copyright or other like protection or the provisions of any statute statutory instrument or regulation for the time being in force.

10.4 Unless otherwise agreed in writing all patterns, drawings, tools etc., produced by the Seller shall remain the property of the Seller and must not be used or copied by the Buyer.

11. **BROCHURES ETC.**

No drawings, descriptive matter, weights, dimensions or shipping specifications issued by the Seller or the manufacturer of the Goods, nor the descriptions and illustrations contained in the Seller's or manufacturer's Website, catalogues, price lists and other advertising matter shall be deemed to form part of the Contract nor be regarded as a warranty or representation relating to the Goods.

12. **TERMINATION**

12.1 The Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer by providing notice in writing to the Buyer if:

12.1.1. the Buyer makes any voluntary arrangement with its creditors, becomes bankrupt, becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);

12.1.2. a receiver is appointed, to any of the property or assets of the Buyer;

12.1.3. the Buyer ceases, or threatens to cease, to carrying on of business; or

12.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2. If Condition 12.1 applies and the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.3. Termination of this Agreement pursuant to Condition 9.2.3.1 or 12.1 will be without prejudice to any other claims, rights or remedies of the Seller under the Contract or by law or equity, including claims for loss or damage. No termination of the Contract will relieve the parties of any unfulfilled obligation or liability that was incurred by such party pursuant to the Contract prior to such termination. All claims, rights and remedies of Seller under the Contract or at law or in equity will be cumulative and not exclusive.

13. **EXPORT**

Where the Goods are to be exported to the Buyer and unless the parties agree otherwise in writing:

13.1 The Buyer shall be responsible for ensuring compliance with all laws governing the importation of the Goods into the country of destination and for obtaining any permits, licenses and other approvals required for the goods to be lawfully imported to the country of destination.

13.2 The Buyer shall be responsible for arranging the inspection and (if appropriate) testing of the Goods at the Seller's premises before shipment.

13.3 The Seller shall have no liability for any claim in respect of the Goods which would be apparent on inspection or testing and which is made after shipment, or in respect of any damage sustained during transit.

13.4. Payment of all amounts due to the Seller shall be in Pounds Sterling made by irrevocable and confirmed letter of credit opened by the Buyer in favour of Seller.

14. **GIFT VOUCHERS**

No cash change will be given or offered against gift vouchers.

15. **GENERAL**

- 15.1 The Buyer may not assign the Contract in whole or in part without the prior consent in writing of the Seller.
- 15.2 The Seller will be entitled to assign, novate or sub-contract all of the Contract or any part thereof.
- 15.3 Failure by the Seller to enforce any of the Contract Terms will not be construed as a waiver of any of its rights hereunder.
- 15.4 The Law of Scotland shall apply to the Contract and parties agree to submit to the exclusive jurisdiction of the Scottish Courts in respect of all matters arising from the Contract.
- 15.5 The legal construction of these clauses shall not be affected by their headings which are for reference only.
- 15.6 On purchasing a John Deere product from Macgregor Industrial Supplies, the Buyers personal data, may be passed onto John Deere and their respective service providers for the purpose of marketing products and services of any kind offered by John Deere from time to time. This may include the transfer to and processing of this data for such purpose by John Deere companies located outside the EEA..

16. **INTERPRETATION**

In the foregoing terms and conditions of sale:

“Buyer” means the person either (i) purchasing the Goods from the Seller; or (ii) who accepts a quotation from the Seller; or (iii) whose order is accepted by the Seller.

“Seller” means MacGregor Industrial Supplies Limited (registered number SC173566) and having their registered office at 15-17 Henderson Road, Inverness IV1 1SN and also includes any parent company, subsidiary company or associated company.