

J.F.McKenna Limited
Terms and Conditions of Sale (Goods only)

All orders for the supply of goods (including any delivery of those goods) ('Goods') entered into between J.F. McKenna Limited, 66 Cathedral Road, Armagh, Northern Ireland, BT61 8AE ('the Company') and any person, firm or company ('the Buyer') are subject to the terms and conditions set out below:

GENERAL

1. (a) These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties with reference to the Goods with which the Contract (as defined below) is concerned. Without prejudice to the generality of the foregoing, the Company will not be bound by any standard or printed terms tendered by the Buyer. No terms or conditions endorsed upon, delivered with or contained in the Buyer's order, confirmation or order, specification or other document will form part of the Contract (as defined below) with the Company.
(b) No order placed by the Buyer shall be deemed to be accepted and the Company shall not be obliged to supply Goods on foot of the Buyer's order until such order has been accepted by the Company and processed in the Company's Armagh Offices (prompt and full completion of credit assessment form by the Buyer will assist this process). Once accepted and processed by the Company, each order (incorporating these terms and conditions) shall constitute a contract between the Company and the Buyer ('Contract').
(c) No variations or additions to these terms shall have any effect unless such variations and/or additions have been agreed in writing by the Company and the Buyer. Accordingly, save as aforesaid, none of the Company's employees or agents is authorised to vary these terms by oral agreement, representation or otherwise howsoever.
(d) Cancellation by the Buyer of any order, or part thereof, may be accepted by the Company but only before performance/delivery by agreement and on condition that the Buyer agrees to discharge, and discharges all costs and expenses incurred by the Company consequent on such cancellation.

PRICE

2. (a) Unless otherwise specified by the Company in writing all prices:
(i) are quoted exclusive of Value Added Tax; and
(ii) are subject to variation without prior notice.
(b) The Company's list prices for the Goods current at date of delivery will apply and shall be payable in accordance with the payment terms set out in condition 3 below.
(c) In the event that any discounted price is offered to the Buyer for the Goods, then that discounted price shall be conditional upon receipt of payment in full for the Goods on or before the date specified by the Company as attaching to such discounted price PROVIDED THAT if payment in full is not received on or before such date, the Company reserves the right to withdraw such discounted price and to apply the Company's list prices for the Goods current at date of delivery and seek payment in accordance with the payment terms set out in condition 3 below;
(d) Each quotation given is for the quantities stipulated in the Buyer's order only and shall not apply to any other quantity or to any other order or enquiry;
(e) The cost of installation, demonstration and commissioning of machines shall also be deemed excluded from any prices quoted, unless otherwise previously agreed in writing;
(f) Unless otherwise agreed by the Company in writing the price for the Goods excludes cost of carriage, insurance, loading and unloading which the Buyer will pay in addition when it is due to pay for the Goods.

PAYMENT TERMS

3. (a) The Buyer shall pay the price of the Goods within 28 days of the date on which the Goods are invoiced ('the due date').
(b) If payment in full is not received by the Company the Buyer will be liable to pay interest to the Company on such sum from the due date at the Bank of England base rate plus 5% per annum, accruing daily, until paid in full whether before or after any judgment. The Buyer will also re-imburse any bank fees and/or charges incurred by the Company in the operation of this account. The time of payment of the invoice shall be of the essence.
4. The Company reserves the right to refuse to supply the Buyer or deliver Goods on foot of orders thereof previously accepted by the Company from the Buyer, if:
(a) The Buyer's account is over due or its general credit standing is unsatisfactory; and/or
(b) The Buyer makes any voluntary arrangements with its creditors being a company or (being an individual or firm) commits an act of bankruptcy or goes into liquidation (or ceases or threatens to cease to carry on business) or if an encumbrancer takes possession, or a receiver or examiner is appointed, or of over any of the property or assets of the Buyer or the Company reasonably apprehends that any of the events is about to occur in relation to the Buyer and notifies the Buyer accordingly. Furthermore, and without prejudice to the foregoing, on the happening of any such event all unpaid accounts shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
5. The Company reserves the right at any time to apply payments made in the following order:
(a) to any interest due by the Buyer on outstanding payments and any bank or legal charges incurred by the Company due to non-payment or late payment for the Goods by the Buyer; then
(b) against consumable items delivered to the Buyer; and finally
(c) to the Goods.

DELIVERY

6. Each delivery shall be considered to be a separate and independent transaction.
7. The Company shall deliver the Goods to the Buyer by such method of carriage as the Company shall choose including without limitation, collection of the Goods by the Buyer at the Company's place of business and/or delivery of the Goods to a third party notified by the Buyer to the Company ("Third Party"). Delivery times or dates provided by the Company are estimates for planning purposes only and time shall not be of the essence.
8. (a) The Company shall not be liable for any direct, indirect or consequential loss, costs, damages, charges or expenses caused directly or indirectly by any delay in delivery or non-delivery or loss of the Goods (or any part thereof).
(b) In the event of the Buyer or the Third Party's failing to accept delivery of the Goods on the date stipulated for delivery, the Company shall be at liberty to impose an additional charge for handling and storage of the Goods until such time as delivery is accepted.
(c) The Buyer shall indemnify the Company for any unusual or abnormal delivery costs incurred by the Company including (without prejudice to the generality of the foregoing) costs incurred due to delivery of the Goods having to be effected outside normal working hours, or in part loads.
9. The Buyer will indemnify the Company against any liability (whether strict or otherwise) for any claim, loss or expense, direct or indirect, on account of any injury, disease or death of persons (including the Buyer's employees) or damage to property (including Buyer's) arising out of the Buyer's transportation, storage, handling, sale, use in any manufacturing process or disposal of the Goods.
10. Where the Goods are collected by the Buyer, any collection vehicle, ship or other container provided by the Buyer or its agent must comply with all relevant legislation and regulations (including Health and Safety) and with any standards or practises normally observed by the Company. Notwithstanding that the Company may also inspect such containers and deliver into them, the Company shall in no circumstances be responsible for their suitability or condition nor liable for any damage or loss resulting from their use.

RETURNS

11. (a) Goods supplied by the Company to the Buyer or the Third Party pursuant to an order made by the Buyer shall not be returnable by the Buyer or the Third Party to the Company without the Company's written consent;
(b) An application for consent to such return will be considered by the Company only if such application is received within 3 days of delivery, such application to be in writing, to state the date and number of the invoice on foot of which such Goods were supplied and delivered together with a full written explanation of the reason for the return so requested;
(c) In the event of the Company's consenting to such return, the Buyer's account will be credited by the Company at invoice price less 15 % handling charge, such charge (as Buyer hereby acknowledges) representing a genuine pre-estimate of the cost of the Company of accepting such return.

RISK

12. Risk of damage to or loss of Goods shall pass to the Buyer:
(a) In the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that such Goods are available for collection; or
(b) In the case of Goods to be delivered other than at the Company's premises, at the time of delivery of such Goods or if the Buyer or the Third Party wrongfully fails to take delivery of such Goods, at the time when the Company has tendered delivery of such Goods.

RESERVATION OF TITLE

13. (a) Notwithstanding delivery and passing of risk therein, or any other provision of these conditions, neither the legal nor beneficial property in Goods sold by the Company to the Buyer shall pass from the Company to the Buyer until payment in full (in cash or cleared funds) has been received by the Company.
(b) The Buyer shall hold the Goods as bailee for the Company but, notwithstanding the foregoing, and subject to these Conditions, shall be at the liberty to re-sell or to use the Goods in normal course of business. The proceeds of any such sale shall be held by the Buyer for the account of the Company and, to be applied first in payment of all sums due from the Buyer to the Company and, to that end, the Buyer irrevocably appoints the Company its Attorney for the purpose of perfecting the Company's title to any such proceeds of sale.
(c) The Buyer shall not create any Charge, Mortgage, Lien or encumbrance adverse to the Company's title to the Goods; not withstanding the foregoing, if the Buyer does so, all monies owing by the Buyer to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.
(d) Pending the passing of property in the Goods to the Buyer, the Goods shall be kept by the Buyer or Third Party separate from those of either the Buyer or Third Party or of third parties and shall be properly stored,

handled, protected, transported, complete, in good condition, adequately insured and in such manner as shall make them readily identifiable as the property of the Company.

(e) Until such time as property in the Goods passes to the Buyer, the Company shall be entitled at any time to require the Buyer or Third Party to deliver up the Goods to the Company, and if the Buyer or Third Party fails to do so, forthwith to enter upon any premises of the Buyer or Third Party or of any other third party where the Goods are stored or may be, and thereby to repossess the Goods.

WARRANTIES AND LIABILITIES

14. (a) Subject to the following provisions, the Company warrants that the Goods will at the time of delivery be free from defects in materials and workmanship.
(b) The above warranty is given by the Company subject to the following conditions:
(i) The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
(ii) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval.
(iii) The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date.
(iv) The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
15. Subject as expressly provided in these terms and conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the full extent permitted by law.
16. A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the specifications shall (whether or not delivery is refused by the Buyer or Third Party) be notified to the Company within 7 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 or Third Party does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
17. Where a valid claim in respect of any of the Goods which is based in a defect in the quality or condition of the Goods or their failure to meet the specification is notified to the Company in accordance with these terms, the Company may replace the Goods (or the part in question) free of charge or at the Company's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) in which case the Company shall have no further liability to the Buyer.
18. Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company 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 loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with 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 and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these terms.
19. The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
(a) Act of God, explosion, flood, tempest, fire or accident.
(b) War or threat of war, sabotage, insurrection, civil disturbance or requisition.
(c) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on any part of any governmental, parliamentary or local authority.
(d) Import or export regulations or embargoes.
(e) Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party).
(f) Difficulties in obtaining raw materials, labour, fuel, parts or machinery.
(g) Power failure or breakdown in machinery.

DESCRIPTIVE MATERIAL AND ILLUSTRATIONS

20. All illustrations, drawings, catalogues, directories and descriptive material are of a generally informative nature only and do not form part of any specification or description of Goods except to the extent expressly incorporated therein in writing. For the avoidance of doubt, the Buyer hereby affirms that he did not in any way rely on any description when entering into the Contract.

COMMUNICATIONS

21. All communications between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
(b) (in the case of the communications to the Buyer) to such address as is notified to the Company by the Buyer.
22. Communications shall be deemed to have been received by the Buyer:
(a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
(b) if delivered by hand, on the day of delivery; and
(c) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

SEVERABILITY

23. In the event any one of the provisions contained in the Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Contract but the Contract shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Contract shall be carried out as nearly as possible according to its original terms and intent.

WAIVER

24. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

ASSIGNMENT

25 (a) The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
(b) The Company may assign the Contract or any part of it to any person, firm or company.

RIGHTS OF THIRD PARTIES

26. The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

CONFIDENTIALITY

27. The Buyer undertakes that it will not at any time divulge or communicate to any person, except to its professional representatives or advisors or as may be required by law or any legal or regulatory authority, any confidential information of the Company which may have or may in the future come to its knowledge and the Buyer shall use its best endeavours to prevent the publication or disclosure of any confidential information.

ENTIRE AGREEMENT

28. The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

LAW

29. These terms and conditions will be construed in accordance with the laws of Northern Ireland. The parties submit to the jurisdiction of the courts of Northern Ireland.

Supplemental Terms and Conditions

INTERPRETATION

1. (a) In the Supplemental Terms:

"Goods" means any goods (in whole or part) agreed in the Contract to be supplied to the Buyer by the Company;

"Deliverables" means the Goods and Services agreed in the Contract to be supplied to the Buyer by the Company;

"Intellectual Property Rights" means any and all intellectual property rights including patents, copyright and related rights, design rights, trade marks, service marks, trade, business and domain names, know-how and confidential information and any other intellectual property rights whether registered or unregistered which may exist anywhere in the world, and shall include any applications for any of the foregoing;

"Services" means any services (in whole or part) agreed in the Contract to be supplied to the Buyer by the Company, as set out in the later of (1) the Company's quotation for the services duly signed by the Buyer, or (2) if the Company's quotation has been modified or amended by the Company as a result of negotiations with the Buyer, the Company's order confirmation duly signed by the Buyer.

(b) The Supplemental Terms supplement the Standard Terms PROVIDED THAT in the event of either any Supplemental Term restating a Standard Term or of any inconsistency, conflict or ambiguity between the Supplemental Terms and the Standard Terms, the Supplemental Terms shall prevail.

SERVICES

2. (a) The Services shall be agreed in the following manner:

(i) the Buyer shall provide the Company with a request for a quotation, setting out the requirements and specifications of the Services which it is requesting from the Company, including a description of what work is to be done and the dates by which it is requested to be started and finished and such other information as the Company may request to allow the Company to prepare a quotation;

(ii) the Company shall, as soon as reasonably practicable, provide the Buyer with a quotation; and

(iii) once the Buyer has signed the quotation and it has been returned to the Company, it shall become subject to these Supplemental Terms. In the event that the Company's quotation is modified or amended as a result of negotiations with the Buyer, the Company shall provide the Buyer with an amended quotation in the form of an order confirmation, which once signed by the Buyer and returned to the Company, shall become subject to these Supplemental Terms.

(b) Once the quotation or order confirmation (as appropriate) has been agreed and signed by the Buyer in accordance with Condition 2 (a) (iii) no amendment or variation to it shall be valid unless it is in writing and signed by or on behalf of each of the Buyer and the Company.

PAYMENT

3. (a) The Contract Price excludes VAT (which shall be payable by the Buyer at the prevailing rate as and when due) and shall be paid in pounds sterling (the Buyer bearing the cost of any fluctuation in the currency exchange rate).

(b) All payments shall be made by way of bank transfer to the following account:

Bank: Ulster Bank Limited, 7 Upper English Street, Armagh BT61 7BL, Northern Ireland

Account Name: J F McKenna Ltd

Account No: 05938181

Sort Code: 98-01-90

IBAN: GB38 ULSB 9801 9005 9381 81

SWIFT: ULSB GB2B

(c) The Company reserves the right to vary the Contract Price by notice in writing in the event that the supply of any of the Deliverables is delayed for any reason beyond the reasonable control of the Company (including without limitation, due to delays on-site or adverse site conditions).

(d) The Company reserves the right to suspend and/or cease supply of the Deliverables in the event that the Buyer fails to meet any and all due dates for payment of the Contract Price.

(e) For the avoidance of doubt, unless otherwise agreed by the Company, the Contract Price excludes:

(i) the supply of any goods and/or services other than the Deliverables;

(ii) electrical, plumbing or construction work as part of the Services;

(iii) the hire of specialised tools and/or equipment (including without limitation, a scissor-lift); and

(iv) the provision of any specialised machinery and/or equipment required by local Health & Safety legislation or other applicable local laws and regulations.

BUYER'S OBLIGATIONS

4. (a) The Buyer shall:

(i) co-operate with the Company in all matters relating to the Services and appoint the Buyer's manager in relation to the Services, who shall have the authority contractually to bind the Buyer on matters relating to the Services;

(ii) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as requested by the Company;

(iii) provide, in a timely manner, such documents, materials and other information as the Company may request and ensure that it is accurate in all material respects;

(iv) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;

(v) inform the Company in advance of all health and safety rules and regulations and any other reasonable security requirements that apply at the Buyer's premises;

(vi) ensure that all Buyer's equipment which the Company needs to operate or use in provision of the Services is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom and local standards or requirements; and

(vii) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to receipt of the Services (if any), in all cases before the date on which the Services are to start.

(viii) ensure that all packaging and other waste products resulting from this Contract are disposed of in accordance with local regulations

(b) The Buyer shall not, at any time from the date of the Contract to the expiry of twelve months after the termination of the Contract, solicit or entice away from the Company or employ or attempt

to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services.

BUYER'S ACKNOWLEDGEMENTS

5. (a) The Buyer acknowledges that:

(i) it has using its own skill and judgement, assessed for itself the suitability of the Deliverables for its requirements (including without limitation, any technical requirement or requirement in relation to power supplies and/or weather conditions), and as such, the Company does not warrant that the Deliverables will be suitable for such requirements;

(ii) it is solely responsible for ensuring that the Deliverables comply with all applicable local laws and regulations; and

(iii) the Goods are at the risk of the Buyer from the time of delivery, and as such, the Buyer is solely responsible for the security and insurance of the Goods from the time of delivery.

DELIVERY

6. The times and/or dates for supply of the Deliverables specified provided by the Company are estimates for planning purposes only and time of delivery shall not be made of the essence by notice.

INTELLECTUAL PROPERTY RIGHTS

7. As between the Buyer and the Company, all Intellectual Property Rights arising from or in connection with the provision of the Services shall be owned by the Company.

CONFIDENTIALITY AND THE COMPANY'S PROPERTY

8. (a) The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

(b) All materials, equipment and tools, drawings, specifications, information and data supplied by the Company to the Buyer shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

LIABILITY

9. (a) The Company shall not be liable to the Buyer for any direct, indirect, special or consequential loss or damage incurred by the Buyer or any third party, or be deemed to be in breach of the Contract, by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to supply of the Deliverables if the delay or failure was due to:

(i) the act or omission of the Buyer (or any third party engaged by the Buyer) or any other cause beyond the Company's reasonable control (including without limitation, on-site delays or inclement weather or site conditions); or

(ii) any suspension and/or cessation pursuant to Condition 3(d) above.

(b) The Company warrants to the Buyer that it will perform the Services with reasonable care and skill. All other warranties, conditions and other terms implied by statute or common law shall, to the fullest extent permitted by law, be excluded from the Contract.

(c) Nothing in these Supplemental Terms limits or excludes the liability of the Company:

(i) for death or personal injury resulting from negligence; or

(ii) for any damage or liability incurred by the Buyer as a result of fraud or fraudulent misrepresentation by the Company.

(d) The Company shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising out of or in connection with supply of the Deliverables.

(e) Other than in relation to Condition 9(c), the entire liability of the Company in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Services or under or in connection with the Contract shall not exceed an amount equal to the Contract Price.

TERMINATION

10. (a) The Contract shall terminate automatically on completion of the Services in accordance with the Company's quotation or confirmation of order (as appropriate).

(b) Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

(i) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(ii) an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder (as defined in the Insolvency (Northern Ireland) Order 1989), or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt.

(c) Any termination of the Contract shall be without prejudice to the Company's right to payment under Condition 3(a).

SURVIVAL

11. Conditions 7, 8 and 9(e) shall survive the termination or expiry of the Contract, however arising.