

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. This version 6 of these terms was most recently updated on 2 February 2018.

GENERAL

- (a) These terms apply in preference to and supersede any terms 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 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.
- (e) If the Company agrees to provide any maintenance services to the Buyer in respect of the Goods, the provision of such services shall be governed by the Company's supplemental terms for supply of maintenance services. If the Company agrees to provide any supplemental bespoke services to the Buyer in respect of the Goods, the provision of such services shall be governed by the Company's supplemental terms for project work. Each set of terms is available on request or on the Company's website at <https://www.jfmckenna.com/terms/>.

PRICE

- (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, which are available on request, 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 and Goods stipulated in the Buyer's order only and shall not apply to any other quantity or to any other order or enquiry. Each quotation shall not constitute an offer, and is only valid for a period of 30 days from its date of issue. The price for the Goods shall be the price stated in the Contract, and if no price is stated, the prices set out in the Company's price list in force as at the date of delivery.
- (e) The Company reserves the right to increase the price set out in any quotation/contract, giving the Buyer notice, to reflect any increase in cost due to: (i) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, other manufacturing costs, or other increases attributable to the actions of third parties); (ii) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or (iii) any delay caused by the Buyer's instructions in respect of the Goods or the Buyer's failure to perform its obligations under the Contract.
- (f) The cost of installation, demonstration and commissioning of machines shall also be deemed excluded from any prices quoted, unless otherwise previously agreed in writing;
- (g) 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

- (a) The Buyer shall pay the price of the Goods within 28 days of the date on which the Goods are invoiced (**due date**).
- (b) If payment in full is not received by 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 7% per annum, accruing daily, until paid in full whether before or after any judgment. The Buyer will also reimburse 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.
- (c) 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:
 - (i) The Buyer's account is overdue or its general credit standing is unsatisfactory; and/or
 - (ii) 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, of or 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.
- (d) 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

- Each delivery shall be considered to be a separate and independent transaction.
- 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. Unless agreed otherwise in the Contract, the Company reserves the right to deliver the Goods in instalments.
- (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 Third Party 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.
- 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.
- Where the product is 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 as regards health and safety) and with any standards or practices 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

- (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 a 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

- 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 (if Goods are not collected by the Buyer within 2 weeks of the date on which the Company notifies the Buyer that they are available for collection the Company shall have the option to charge the Buyer a surcharge (payable on demand) of 0.5% of the total value of the relevant Goods (ex VAT) for each further week (or part thereof) over which the Company is required to store the relevant Goods; 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

- (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; notwithstanding the foregoing, if the Buyer does so, all monies owing by the Buyer to the Company shall (without prejudice to any right of 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, handed, protected, transported, complete, in good condition, adequately insured and in such manner 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,

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and thereby to repossess the Goods.

WARRANTIES AND LIABILITIES – THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- (a) Subject to the following provisions, the Company warrants that the Goods will at the time of delivery be free from defects in material 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, willful 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; and (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.
- 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.
- 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.
- 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.
- Nothing in these terms and conditions shall limit or exclude the Company's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, for defective products under the Consumer Protection Act 1987, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any other matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- Subject to condition 17, 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.
- 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) Acts 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; or (g) power failure or breakdown in machinery.

DESCRIPTIVE MATERIAL AND ILLUSTRATIONS

All samples, 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.

WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

- (a) For the purposes of this condition: (i) "WEEE Regulations" means the Waste Electrical and Electronic Equipment Regulations 2013 in force in the United Kingdom (as may be amended from time to time); (ii) "Relevant EEE" means electrical and electronic equipment to which the WEEE Regulations apply that is supplied by the Company to the Buyer under the Contract; (iii) "Relevant WEEE" means (A) WEEE from users other than private households arising from Relevant EEE, and (B) WEEE from users other than private households arising from the replacement of equipment with the Relevant EEE; and (iv) otherwise than as defined in this condition, where the context so permits, the words and expressions used in this condition shall have the meanings ascribed to them in the WEEE Regulations.
- (b) The Buyer acknowledges and agrees that it shall at all times: (i) be and remain solely responsible for the collection, treatment, recovery and environmentally sound disposal of Relevant WEEE (and all costs in connection therewith); (ii) put in place and maintain its own arrangements for dealing with Relevant WEEE, such arrangements to be fully compliant with the WEEE Regulations; (iii) comply with the WEEE Regulations; and (iv) provide the Company with such co-operation, assistance and information as may be reasonably required and/or requested by the Company in relation to the Relevant WEEE to enable the Company to comply with: (A) its obligations under the WEEE Regulations; (B) any request by and/or requirement of any producer WEEE compliance scheme with which the Company is registered under the WEEE Regulations; and (C) any request by and/or requirement of any appropriate agency and/or governmental authority; and
- (c) The Buyer shall fully indemnify the Company in relation to all loss and all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities caused by its failure to comply with the provisions of this condition.

COMMUNICATIONS

- 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 the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 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 or bank holidays in Northern Ireland) after posting (exclusive of the day of posting);
 - (b) if delivered by hand, on the day of delivery; and
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

SEVERABILITY

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.

TERMINATION

- Without prejudice to any other rights to which it may be entitled, the Company may give notice in writing to the Buyer terminating the Contract with immediate effect if: (a) the Buyer commits any 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 the Buyer being notified of the breach; (b) a petition is filed, an order is made, or a resolution is passed for the winding up or bankruptcy of the Buyer or if an order is made for the appointment of an administrator to manage the affairs, business and property of the Buyer (or if such an administrator is appointed), or if documents are filed with the Court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying charge holder, or if a receiver is appointed of any of the Buyer's assets or undertaking or if 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 if the Buyer takes or suffers any similar or analogous action in consequence of debt (including where the Company reasonably suspects any of the foregoing may occur); or (c) the Buyer ceases, or threatens to cease, to trade.

WAIVER

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 AND OTHER DEALINGS

The Buyer shall not be entitled to assign, transfer, mortgage, charge, subcontract or otherwise deal with the Contract or any part of it without the prior written consent of the Company. The Company may assign, transfer, mortgage, charge, subcontract or otherwise deal with the Contract or any part of it to any person, firm or company.

RIGHTS OF THIRD PARTIES

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

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 Seller 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

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

LAW

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