

MACCAFERRI LIMITED ("Company") - CONDITIONS OF SALE (FOR GOODS AND SERVICES)

1 INTERPRETATION – 1.1 In these conditions the following words have the following meanings:-

"**Conditions**" means these conditions of sale.

"**Contract**" means any contract between the Company and the Customer for the sale and purchase of Works.

"**Customer**" means the company, firm, body or person purchasing the Works.

"**Customer Materials**" means any information, instructions, and material supplied to the Company by or on behalf of the Customer in relation to the Works including without limitation any designs, drawings, specifications, models or templates.

"**Goods**" means all goods, vehicles, machinery and equipment of any nature and all accessories for them, including without limitation all Perishable Goods, which the Company sells to the Customer.

"**Order**" means any order or delivery instruction for Goods, and/or Services given by the Customer to the Company.

"**Perishable Goods**" means all goods with a finite life of up to 2 days to be supplied by the Company to the Customer.

"**Services**" means any work and/or services agreed to be provided by the Company to the Customer

"**Site**" means the site to which the Goods are to be supplied.

"**Working Day**" means 9.00 am to 5.00 pm of any day excluding Saturdays, Sundays and English bank holidays.

"**Works**" means the Goods and/or Services (as appropriate).

1.2 The headings are for reference only and will not affect the interpretation of these Conditions.

2 QUOTATIONS - Any quotation is valid (subject to conditions 6.1 and 6.2) for 30 days from its date of issue provided that the Company has not previously withdrawn it by written or oral notice to the Customer. No Order in pursuance of any quotation or otherwise shall be binding on the Company unless and until it is accepted by the Company.

3 APPLICATION OF TERMS – 3.1 (Subject to clause 3.3) these Conditions shall apply to the supply of all Works by the Company to the exclusion of any other terms and conditions including but not limited to any which may be contained on any purchase order and they shall constitute the entire agreement between the parties with respect to their subject matter.

3.2 Each Order shall be deemed an offer from the Customer to purchase Works subject to these Conditions and any acceptance by the Company of such Order is on and subject to these Conditions. The Customer shall ensure that its Order is complete and accurate.

3.3 Any variation to these Conditions and any representation about the Works will only be effective if it is made in writing, contains a specific reference to these Conditions and is signed by a duly authorised representative of the Company.

3.4 All drawings, descriptive matter, specifications, technical data, advertising and other similar information issued by or on behalf of the Company is only issued to give an approximate idea of the Works and will not form part of the Contract.

3.5 The Customer may not cancel or reschedule any Contract for the sale of Perishable Goods by the Company to the Customer. Any other Contract may only be cancelled, varied or rescheduled (including without limitation by any change to Customer Materials) with the prior written consent of the Company. The Customer will fully indemnify the Company on demand against all losses, liabilities, costs, claims and expenses incurred by the Company as

a result of such cancellation, rescheduling or variation or any failure to take delivery under Condition 4.7.

4 DELIVERY – 4.1 Delivery will take place when the Works are delivered to the Customer (or made available for collection where it is to be collected) at the place stated in the Contract and except where expressly stated otherwise this shall be ex-Company's works.

4.2 Any delivery dates and times specified or agreed by the Company are given in good faith but are an estimate only and the Company will not be liable for the consequences of any delay in delivery provided delivery takes place within a reasonable time.

4.3 Where the Company delivers to Site, it uses independent carriers and the Company's liability in connection with the acts or omissions of the carrier shall not exceed that of the carrier to the Company. The Company shall use reasonable endeavours to enforce any warranty given by the carrier relating to delivery of the Goods to the Site for the benefit of the Customer.

4.4 The Company will not be liable for any shortages, non-delivery of, or defects in the Works at the time of delivery (to the extent that such defects are apparent on reasonable inspection) unless the Customer notifies this to the Company by telephone within 7 Working Days of the actual or anticipated date of delivery (as appropriate) and confirms this in writing within a further 7 Working Days.

4.5 The Customer is responsible for unloading and loading the Goods and shall ensure that the Site (and all access routes to it) is appropriate for the Goods and any vehicle on which they are supplied.

4.6 Where the Company supplies in bulk it will use reasonable endeavours to supply the quantity of the Goods ordered, but may supply and the Customer will accept up to 5% more or less than the quantity ordered.

4.7 If there is any delay in the delivery due to the Customer's acts or omissions, the Company may sell the Goods if the delay exceeds 3 days in the case of Perishable Goods and 28 days in the case of other Goods, deduct any monies payable to the Company by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall.

4.8 Each delivery shall be treated as a separate transaction and the Company shall be entitled to deliver in instalments.

5 RISK AND OWNERSHIP - 5.1 The Works are at the risk of the Customer from the time of delivery or deemed delivery to the Customer.

5.2 Ownership of any Perishable Goods will pass to the Customer from the time of delivery or deemed delivery to the Customer, but ownership of all other Works (both legal and equitable) will only pass to the Customer when the Company has received in full (in cash or cleared funds) all monies due to it from the Customer:

- (a) in respect of the Works; and
- (b) in respect of all other goods or services provided by the Company.

5.3 Until ownership has passed to the Customer, the Customer will:

- (c) hold the Works on a fiduciary basis as bailee for the Company and keep them free from any charge, lien or other encumbrance;
- (d) store them appropriately (at the Customer's cost) separately from all other materials so they remain readily identifiable as the Company's property and not alter any identifying mark on the Works or their packaging, and will maintain them in a satisfactory condition; and
- (e) ensure that the Works do not become affixed to and are capable of being removed without damage to any land or building.

The Customer may resell, use or otherwise dispose of the Works before ownership has passed but only where it does so in the ordinary course of its business and an event referred to in Condition 11.2 has not arisen in respect of it. It will be a sale, use or disposition of the Company's property on the Customer's own behalf and the Customer will deal as principal with its customers.

5.4 Until ownership has passed, the Customer's right to possession, use and sale of the Works will terminate immediately if any of the events set out in Condition 11.2 occur in respect of it.

5.5 The Customer grants the Company an irrevocable licence at any time to enter any premises where the Works are or may be stored to inspect them, or to recover them where condition 5.4 applies.

5.6 The Works will be deemed sold or used in the order they are delivered to the Customer.

6 PRICE AND PAYMENT - 6.1 All prices are based on the cost to the Company of providing such Works at the date of the quotation and if prior to the date of delivery there is any increase in such costs, the price payable for the Works may be increased accordingly by notice to the Customer. Unless otherwise agreed, prices for Services are charged on an hourly basis based on the Company's standard rates applicable at the date that the Services are performed.

6.2 The Company may amend the price of the Works due to any changes to or inaccuracies in the Customer Materials or terminate the Contract (when the Customer will be liable for all work carried out by the Company before termination) where it reasonably considers that such change or inaccuracy is substantial in each case by notice to the Customer. Quotations given other than in sterling are based on the rate of exchange at the time of quoting and the price may be revised if the rate differs at the date of invoice.

6.3 All prices exclude value added tax and other duties or taxes or any costs of import or export in relation to the Works and packaging and transportation (unless expressly otherwise stated by the Company), which the Customer will pay for in addition to the price.

6.4 Where the price is varied under Condition 6.1, the Customer may cancel the order by giving notice to the Company within 3 Working Days of notification of the new price if the percentage increase exceeds the base rate of the Bank of England at the date of notification plus 3%.

6.5 The Company may invoice the Customer any time after delivery (actual or deemed) of the Works or any instalment (as appropriate) or as otherwise agreed in writing by the parties. Invoices are due for payment in cleared funds on or before the last working day of the month following the month of invoice and shall be made in full without set-off or counterclaim.

6.6 Time for payment is of the essence and the Customer will indemnify the Company on demand against all losses, liabilities, costs, claims and expenses incurred by the Company in recovering overdue amounts.

6.7 Interest shall be due at 4% above the base rate of HSBC per year, compounded daily on all overdue sums and late payment shall disentitle the Customer from any discount to which it might otherwise be entitled and the Company may suspend performance of the Contract until any overdue sums have been paid.

7 WARRANTIES – 7.1 Where the Company is not the manufacturer of the Goods or performer of the Services it will use all reasonable endeavours to transfer or enforce for the benefit of the Customer any warranty or guarantee given to the Company by the manufacturer or supplier but its liability shall not exceed that of such manufacturer or supplier to the Company.

7.2 The Company warrants (subject to Condition 7.1) that as at the date of delivery the Goods will be of satisfactory quality and reasonably fit for the purpose for which they are generally used and the Services will be performed with reasonable skill and care.

7.3 The Company will not be liable for any breach of the warranties in Condition 7.2 unless the Customer:

(a) notifies it within 30 days of the date on which the Customer discovers or ought reasonably to have discovered the defect concerned; or (if the defect is as a result of damage in transit)

(b) the Customer gives the Company written notice in the manner and within the appropriate time limit as set out in the carrier's terms of business; and

(c) in each case the Company is given a reasonable opportunity after receiving notice to examine such Works.

7.4 The Company will not be liable for a breach of any of the warranties in Condition 7.2 to the extent that:

(a) the defect results from the Customer Materials, the Customer's negligence or failure to follow the Company's instructions or (if there are none) good trade practice

(b) the defect results from fair wear and tear, misuse, wilful damage, or abnormal working conditions;

(c) the defect arises as a result of any parts, materials or equipment not manufactured or workmanship not performed by the Company (when condition 7.1 shall apply);

(d) the Customer makes any further use of the Works after giving written notice of the defect;

(e) the defect arises as a result of any alteration or repair of the Works not made by or with the consent of the Company; or

(f) the Contract specifically states that the Works are sold in their actual state without warranty.

7.5 Subject to Conditions 7.3 and 7.4, if any of the Works do not comply with the warranties set out in Condition 7.2 the Company will at its option and cost repair or replace such Goods (or the defective part), re-perform such Services or refund the price of such Works and any repaired or replacement Works will be subject to these terms.

7.6 If the Company complies with Conditions 7.1 and 7.5 it will (subject to Condition 8.1) have no further liability in contract, tort (including but not limited to negligence) or otherwise in respect of such Works.

7.7 Where the Contract is one to which s12 of the Sale of Goods Act 1979 or s2 of the Supply of Goods and Services Act 1982 apply, the terms implied by those sections shall form part of the Contract but all other conditions, warranties, representations and undertakings of the Company that might otherwise be implied into the Contract (whether by custom, statute, course of dealing or otherwise) are expressly excluded.

7.8 The Customer warrants that the Customer Materials are accurate, complete, not misleading, sufficient to enable the Company to properly supply the Works, and do not infringe any third party intellectual property rights.

8 LIMITATION OF LIABILITY – 8.1 Nothing in these Conditions shall exclude or limit the Company's liability to an individual for death or personal injury to that individual caused by the Company's negligence or liability arising out of the Company's fraudulent misstatement or breach of the terms implied under Condition 7.7.

8.2 If the Company is delayed in or prevented from performing its obligations by bad weather, ground conditions, strikes, lockouts, labour disputes of any kind (whether of the Company's own employees or others), war, hostilities, compliance with any order or request of any competent authority, failure of or delays to transportation, or any circumstance outside the Company's control, the Company shall not be liable for any losses, liabilities, costs, claims or expenses incurred as a result and may cancel the Contract or suspend it for the period during which the circumstance exists without liability.

8.3 Subject to Condition 8.1 the Customer shall keep the Company fully indemnified on

demand from and against all costs, claims, losses, liabilities and expenses which may be made against the Company, its officers, employees or agents or which they may sustain or incur arising out of any:

- (a) breach by the Customer of these Conditions or the Customer's negligence, or breach of statutory duty;
- (b) claim that any Works based on, incorporating or using any Customer Materials infringe the intellectual property rights of any third party or any omission from or defect in the Works due to the Customer Materials;
- (c) failure of the Customer to provide a safe working environment at the Site or premises in the Customer's ownership or control on which the Company, its officers, employees or agents attend in connection with the Work; or
- (d) claim or demand against the Company by any third party arising out of or in connection with the operation, situation or possession of the Goods or performance of the Services and whether arising from the Company's breach of contract, tort (including without limitation negligence), breach of statutory duty or in any other way whatsoever to the extent that such claim exceeds the price payable in respect of such Works save only to the extent that the claim or demand results directly from the Company's deliberate default.

8.4 Subject to Condition 8.1, the Company shall not be liable for:

- (e) any loss of profits or revenue, damage to the Customer's reputation or goodwill, loss of expected future business, or loss of anticipated savings;
- (f) damages, costs or expenses payable by the Customer to any third party; or
- (g) any consequential or indirect loss (whether economic or otherwise) suffered by the Customer however it may be caused.

8.5 Subject to Condition 8.1, the Company's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with this Contract will be limited to the total value of the Contract.

8.6 The indemnities and limits to liability in this Condition 8 are given for the benefit of the Company and its employees, sub-contractors and agents.

9 CONFIDENTIALITY - All specifications, plans, drawings, patterns, designs, know-how, technical information, and other similar materials and all intellectual property rights in them supplied by the Company remain the Company's property and all information of a confidential nature supplied by the Company shall be treated by the Customer as confidential and shall not without the Company's written consent be disclosed to any third party or used by the Customer save to the extent required to use the Works in accordance with the Contract.

10 COMPLIANCE WITH LAW - The Customer shall be responsible for complying with all relevant laws and regulations, codes of practice or requirements of any competent authority or court of competent jurisdiction, applicable to the installation, transport, use and operation of the Goods.

11 TERMINATION - 11.1 Either party may terminate a Contract immediately if the other is in breach of any of its terms and fails to remedy it within 28 days of receipt of written notice specifying the breach and requiring it to be remedied.

11.2 The Company may terminate a Contract immediately if the Customer:

- (a) suffers a change in the ownership or control;
- (b) fails to pay the price on the due date;
- (c) dies or has a bankruptcy order made against him or makes any arrangement or composition with its creditors;

- (d) enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose of reconstruction or amalgamation, has a receiver, administrator or administrative receiver appointed or any resolution is passed or petition presented for its winding up or the granting of an administration order in respect of it or it is unable to pay its debts or ceases or threatens to cease to trade or any similar event occurs in any other jurisdiction.

11.3 Termination is without prejudice to any rights and remedies which have accrued to either party and Conditions which impliedly have effect after termination will continue to apply notwithstanding termination.

12 GENERAL - 12.1 The Customer will not without the prior written consent of the Company assign, hold on trust or otherwise transfer the Contract or any part of it. The Company may assign or transfer the Contract or any part of it without the Customer's consent.

12.2 Any notice shall be deemed served, if delivered by hand at the time of delivery, if posted, 48 hours after posting and if sent by fax, at the time of transmission.

12.3 Nothing in these Conditions shall create a partnership or agency between the parties.

12.4 The illegality, invalidity or unenforceability of any provision of these Conditions will not affect the legality, validity or enforceability of any other provisions of these Conditions.

12.5 Delay by either party in exercising any right or remedy will not be a waiver of such right or remedy and each right or remedy of the Company under these Conditions is without prejudice to any other right which it may have.

12.6 Save as expressly stated in Condition 8, a person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.7 The Company will have in respect of unpaid debts due to it from the Customer a general lien on all of the Customer's property in the Company's possession.

12.8 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts, except that this Condition 12.8 will not operate to prevent the Company from seeking emergency relief, (including, but not limited to, injunctive relief), or from enforcing the judgment of any English Court in any other jurisdiction.

13 FORCE MAJEURE - 13.1 Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, acts of God, epidemic, pandemic, civil unrest, fire, flood, droughts, storms, earthquakes, collapse of buildings, explosion or accident, acts of terrorism, acts of war whether declared or not, governmental action, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, material product supply price fluctuations as a result of those causes or any other event that is beyond the control of the party in question.