

TERMS & CONDITIONS OF SALE

The customer's attention is drawn in particular to the provisions of clause 11.

1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: the terms and conditions set out in this document.
Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or supply of Services in accordance with these Conditions.
Customer: the person or firm who purchases the Goods and/or Services from the Supplier.
Deposit: any deposit specified as payable by the Customer to the Supplier in the Supplier's quotation.
Force Majeure Event: has the meaning given in clause 12.
Goods: the goods (or any part of them) set out in the Order.
Goods Specification: any specification for the Goods, including any related plans and drawings that is agreed in writing by the Customer and the Supplier.
Order: the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form, the Customer's acceptance of the Supplier's quotation, or the Sales Contract overleaf, as the case may be.
Services: the services supplied by the Supplier to the Customer.
Supplier: McCloskey Equipment Limited (registered in England and Wales with company number 06153069) whose registered office is at McCloskey House, Hawksworth, Didcot, Oxfordshire. OX11 7HR, England.
Supplier Materials: has the meaning set out in clause 8.1(f).
- 1.2 Construction. In these Conditions, the following rules apply:
- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - (b) A reference to a party includes its personal representatives, successors or permitted assigns.
 - (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - (d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - (e) A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Goods Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or countersigns the Sales Contract overleaf, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or advertising, whether in electronic form or otherwise, are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have actual force.
- 2.6 A quotation given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue unless previously withdrawn by the Supplier.
- 2.7 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including without prejudice to the generality of the foregoing loss of profit), costs (including the cost of all labour and materials ordered, whether used or unused), damages, charges and expenses incurred by the Supplier as a result of cancellation.

3. GOODS

- 3.1 The Goods are described in the Supplier's quotation or acknowledgement of Order.
- 3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 Unless otherwise agreed, Goods must be paid for in full prior to delivery.
- 4.2 Unless otherwise agreed, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready. Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location or on the Goods' arrival at the Delivery at Location if delivered otherwise than at the Supplier's premises. The Customer shall ensure that adequate and appropriate equipment and labour for loading the Goods are made available at the Delivery Location at the Customer's cost.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to take delivery of the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and any Deposit paid shall be forfeited.

5. QUALITY

- 5.1 The Supplier warrants that on delivery, and for a period of the shorter of either 12 months from the date of delivery or the period of 1,000 operating hours (warranty period) unless otherwise agreed, the Goods shall:
- (a) conform in all material respects with their description; and
 - (b) be free from material defects in design, material and workmanship.
- 5.2 The above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, 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 Supplier.
- 5.3 Subject to clause 5.4, if:
- (a) the Customer gives notice in writing to the Supplier within seven days of the time when the Customer discovers or ought to have discovered a defect;
 - (b) that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (c) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (d) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods during the hours of between 8.00 am and 5.00 pm on a Business Day, or refund the price of the defective Goods in full. Repaired or replacement Goods shall be delivered in accordance with clause 4.
- 5.4 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after the time when the Customer discovers or ought to have discovered a defect;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (e) defects in second hand Goods which have been brought to the Customer's attention or where the Customer has inspected such Goods, which ought reasonably have been detected on the Customer's inspection;
 - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (g) the Goods differ from their description or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms and conditions implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full for the Goods (in cash or cleared funds).
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.2; and
 - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 The Supplier shall provide the Services to the Customer in all material respects during the working hours of between 8.00 am and 5.00 pm on a Business Day.
- 7.2 The Supplier shall use all reasonable endeavours to meet any agreed performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (c) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) prepare the Customer's premises for the supply of the Services and, unless otherwise agreed, allow the Supplier access during the working hours of between 8.00 am and 5.00 pm for the purposes of carrying out the Services;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - (f) keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its Obligations as set out in this clause 8.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. PRICE AND PAYMENT

- 9.1 The price of the Goods and/or Services shall be the price set out in the Order.
- 9.2 Unless otherwise agreed, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.3 The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 9.4 The Supplier may invoice the Customer for the Deposit, or the price of the Goods and/or Services on or at any time after the contract comes into existence.
- 9.5 If a Deposit is payable then the Customer shall pay such Deposit to the Supplier within 14 days of the Supplier's invoice for the same, and in any event prior to Delivery.
- 9.6 Unless otherwise agreed, the Customer shall pay all invoices in full and in cleared funds prior to delivery of the Goods. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.8 The charges for Services shall be on a time and materials basis:
- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the quotation;
 - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - (c) the Supplier shall be entitled to charge a premium overtime rate above the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.8(b); and
 - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

10. CUSTOMER'S INSOLVENCY

- 10.1 If the Customer becomes subject to any of the events listed in clause 10.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend the supply of Services and/or all further deliveries under the Contract or under any other contract between the Customer and the Supplier and forfeit any Deposit paid by the Customer without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered and/or Services provided to the Customer shall become immediately due.
- 10.2 For the purposes of clause 10.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
 - (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2(a) to clause 10.2(h) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; and
 - (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3 If the Supplier notifies the Customer in accordance with clause 10.1, then on request the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 10.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. LIMITATION OF LIABILITY

- 11.1 Subject to conditions 4 and 5, this clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of this agreement however arising;
 - (b) any use made or resale of the Goods by the Customer, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 11.2 Nothing in this agreement shall limit or exclude the liability of the Supplier for:
- (a) death or personal injury resulting from negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.
- 11.3 Without prejudice to clause 11.2, the Supplier shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- (a) loss of profit; or
 - (b) loss of goodwill; or
 - (c) loss of business; or
 - (d) loss of business opportunity; or
 - (e) special, indirect or consequential damage suffered by the Customer that arises under or in connection with this agreement.
- 11.4 Without prejudice to clause 11.2 or clause 11.3:
- (a) the Supplier's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the price of the Goods and/or Services; and
 - (b) where the Supplier has carried out any proper repair, replacement or other Services in respect of any Goods or part of any Goods or any Customer property, the Supplier shall have no liability in respect of any resulting failure of any other Goods, or part of any Goods or any Customer property. By way of example, if the Supplier properly repairs a hydraulic pump as part of a machine, it shall only be responsible for that pump and not for any resulting failure of any related components such as valves, seals or motors, or repeat failures of the pump due to other circumstances within the hydraulic system.

12. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. EXPORT TERMS

- 13.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 13 shall (subject to any contrary terms agreed in writing between the Customer and the Supplier) override any other provision of these conditions.
- 13.2 The Customer shall be responsible for complying with any legislation governing:
- (a) the importation of the Goods into the country of destination; and
 - (b) the export and re-export of the Goods,
- and shall be responsible for the payment of any duties on it.
- 13.3 Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be delivered EXW (incoterms 2010) and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

14. GENERAL

- 14.1 Assignment and subcontracting.
- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 14.2 Notices.
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.3 Severance.
- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 14.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.6 Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 14.7 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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