

# McAree Engineering Works Limited – Terms & Conditions of Trade

## Definitions

- 1.1. "Agent" shall mean McAree Engineering Works Limited Trading As McAree Engineering Limited its successors and assigns or any person acting on behalf of and with the authority of McAree Engineering Limited...
- 1.2. "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4. "Goods and/or Services" shall mean Goods and/or Services supplied by the Agent to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Agent to the Customer.
- 1.5. "Services" shall mean all services supplied by the Agent to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods and/or Services as defined above).
- 1.6. "Price" shall mean the cost of the Goods and/or Services as agreed between the Agent and the Customer subject to clause 3 of this agreement.

## 2. Acceptance

- 2.1. Any instructions received by the Agent from the Customer for the supply of Goods and/or Services and/or the Customer's acceptance of Goods and/or Services supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Agent.
- 2.4. The Customer undertakes to give the Agent at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

## 3. Price And Payment

- 3.1. At the Agent's sole discretion the Price shall be either;
  - a) as indicated on invoices provided by the Agent to the Customer in respect of Goods and/or Services supplied; or
  - b) The Agent's quoted Price (subject to clause 3.2) which shall be binding upon the Agent provided that the Customer shall accept the Agent's quotation in writing within thirty (30) days.
- 3.2. The Agent reserves the right to change the Price in the event of a variation to the Agent's quotation.
- 3.3. The Agent shall require a deposit of 60%.
- 3.4. Time for Payment for Goods and/or Services for approved account holders shall be thirty (30) days from the date of invoice.
- 3.5. At the Agent's sole discretion;
  - a) payment shall be due before delivery of the Goods and/or Services, or
  - b) Payment for approved Customers shall be made by instalments in accordance with the Agent's payment schedule.
- 3.6. Payment will be made by cheque, or by bank draft, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Agent.
- 3.7. VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Delivery of Goods and/or Services

- 4.1. At the Agent's sole discretion delivery of the Goods and/or Services shall take place when;
  - a) the Customer takes possession of the Goods and/or Services at the Agent's address or
  - b) the Customer takes possession of the Goods and/or Services at the Customer's address (in the event that the Goods and/or Services are delivered by the Agent or the Agent's nominated carrier); or
  - c) The Customer's nominated carrier takes possession of the Goods and/or Services in which event the carrier shall be deemed to be the Customer's agent.
- 4.2. At the Agent's sole discretion the costs of delivery are;
  - a) in addition to the Price, or
  - b) For the Customer's account.
- 4.3. The Customer shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods and/or Services as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.
- 4.4. Delivery of the Goods and/or Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5. The Agent may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6. The Customer shall take delivery of the Goods and/or Services tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;
  - a) such discrepancy in quantity shall not exceed 5%, and
  - b) The Price shall be adjusted pro rata to the discrepancy.
- 4.7. The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.
- 4.8. The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to deliver the Goods and/or Services (or any of them) promptly or at all.

## 5. Risk

- 5.1. If the Agent retains ownership of the Goods and/or Services nonetheless, all risk for the Goods and/or Services passes to the Customer on delivery.

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5.2. If any of the Goods and/or Services are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Agent is entitled to receive all insurance proceeds payable for the Goods and/or Services. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.

## 6. Title

6.1. It is the intention of the Agent and agreed by the Customer that ownership of the Goods and/or Services shall not pass until:

a) the Customer has paid all amounts owing for the particular Goods and/or Services, and  
b) The Customer has met all other obligations due by the Customer to the Agent in respect of all contracts between the Agent and the Customer.

6.2. Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Agent's ownership or rights in respect of the Goods and/or Services shall continue.

6.3. It is further agreed that:

- a) where practicable the Goods and/or Services shall be kept separate and identifiable until the Agent shall have received payment and all other obligations of the Customer are met; and  
b) Until such time as ownership of the Goods and/or Services shall pass from the Agent to the Customer the Agent may give notice in writing to the Customer to return the Goods and/or Services or any of them to the Agent. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods and/or Services shall cease; and  
c) the Agent shall have the right of stopping the Goods and/or Services in transit whether or not delivery has been made; and  
d) the Customer is only a bailee of the Goods and/or Services and until such time as the Agent has received payment in full for the Goods and/or Services then the Customer shall hold any proceeds from the sale or disposal of the Goods and/or Services on trust for the Agent; and  
e) the Customer shall not deal with the money of the Agent in any way which may be adverse to the Agent; and  
f) the Customer shall not charge the Goods and/or Services in any way nor grant nor otherwise give any interest in the Goods and/or Services while they remain the property of the Agent; and  
g) the Agent can issue proceedings to recover the Price of the Goods and/or Services sold notwithstanding that ownership of the Goods and/or Services may not have passed to the Customer; and  
h) Until such time that ownership in the Goods and/or Services passes to the Customer, if the Goods and/or Services are converted into other products, the parties agree that the Agent will be the owner of the end products.  
i) The agent has the right to enter the customers property to retrieve the goods if they have not been paid in full.

## 7. Customer's Disclaimer

7.1. The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Agent and the Customer acknowledges that the Goods and/or Services are bought relying solely upon the Customer's skill and judgment.

## 8. Defects

8.1. The Customer shall inspect the Goods and/or Services on delivery and shall within three (3) days notify the Agent in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Agent an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Customer believes the Goods and/or Services are defective in any way. If the Customer shall fail to comply with these provisions the Goods and/or Services shall be presumed to be free from any defect or damage. For defective Goods and/or Services,

8.2. Which the Agent has agreed in writing that the Customer is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods and/or Services or repairing the Goods and/or Services.

## 9. Returns

**Special orders/none stock will not be accepted for return.**

9.1. Returns will only be accepted provided that:

- a) the Customer has complied with the provisions of clause 8.1; and  
b) the Agent has agreed in writing to accept the return of the Goods and/or Services; and  
c) the Goods and/or Services are returned at the Customer's cost within ten (10) days of the delivery date; and  
d) the Agent will not be liable for Goods and/or Services which have not been stored or used in a proper manner; and  
e) The Goods and/or Services are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

## 10. Warranty

10.1. For Goods and/or Services not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods and/or Services. The Agent shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods and/or Services.

## 11. Sale of Goods and/or Services Act 1893 and Sale of Goods and/or Services and Supply of Services Act 1980

11.1. This agreement is subject to the provisions of the Sale of Goods and/or Services Act 1893 and the Sale of Goods and/or Services and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).

11.2. Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of

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any applicable provisions of the Sale of Goods and/or Services Act 1893 (in particular sections 12-15), or the Sale of Goods and/or Services and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.

11.3. In particular where the Customer buys Goods and/or Services as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.

## 12. Default & Consequences of Default

12.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 1.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

12.2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.

12.3. Without prejudice to any other remedies the Agent may have, if at any time the Customer is in breach of any obligation (including those relating to payment); the Agent may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. The Agent will not be liable to the Customer for any loss or damage the Customer suffers because the Agent exercised its rights under this clause.

12.4. If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.

12.5. Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:

- a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Customer will be unable to meet its payments as they fall due; or
- b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 13. Security and Charge

13.1. Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:

- a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
- c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

## 14. Cancellation

14.1. The Agent may cancel these terms and conditions or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice. On giving such notice the Agent shall repay to the Customer any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.

14.2. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for the deposit paid and any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.

## 15. Data Protection Act 1988 & Data Protection Act 2003

15.1. The Customer and the Guarantor/s (if separate to the Customer) authorises the Agent to:

- a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- b) to disclose information about the Customer, whether collected by the Agent from the Customer directly or obtained by the Agent from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.

15.2. Where the Customer is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.

15.3. The Customer shall have the right to request the Agent for a copy of the information about the Customer retained by the Agent and the right to request the Agent to correct any incorrect information about the Customer held by the Agent.

## 16. Intellectual Property

16.1. Where the Agent has designed, drawn or written Goods and/or Services for the Customer, then the copyright in those designs and drawings shall remain vested in the Agent, and shall only be used by the Customer at the Agent's discretion.

16.2. The Customer warrants that all designs or instructions to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Customer's order.

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### 17. General

17.1. Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.

17.3. The Agent shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Agent of these terms and conditions.

17.4. In the event of any breach of this contract by the Agent the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Agent exceed the Price of the Goods and/or Services.

17.5. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Agent.

17.6. The Agent may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.7. The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Customer of such change. Except where the Agent supplies further Goods and/or Services to the Customer and the Customer accepts such Goods and/or Services, the Customer shall be under no obligation to accept such changes.