

## These are the Terms and Conditions of Sale of MacDonald Fyne Ltd effective from 1st July 2018.

### 1. DEFINITIONS

1.1 In these Conditions the following terms shall have the following meanings:

- 'Company' means MacDonald Fyne Ltd.
- 'Customer' means the Customer of the Company and buyer of the Goods.
- 'Contract' means any Contract for the sale of Goods by the Company to the Customer.
- 'Goods' means any articles to be supplied by the Company to the Customer.
- 'Price' means the Price as detailed on the Order Acknowledgement Form.
- 'Order' means any purchase Orders (including verbal Orders) which are confirmed in writing to the Company by any means.
- 'Conditions' means the terms and Conditions of sale set out in this document and any special terms and Conditions agreed in writing between the Company and the Customer.
- 'Party' and 'Parties' means either one of or both the Company and the Customer.

### 2. QUOTATION

2.1 Quotations given by the Company shall, unless otherwise stated in them, be open for acceptance for up to 7 days from the date of the quotation.

### 3. EXISTENCE OF CONTRACT

3.1 No Contract shall come into existence until the Order has been received by the Company and the Company has issued an Order Acknowledgement Form.

3.2 These Conditions shall be incorporated in the Contract to the exclusion of all other terms or Conditions however stipulated or referred to by the Customer.

3.3 No variation or amendment of this Contract or oral promise or commitment related to it shall be valid unless committed to in writing and signed by both Parties.

3.4 Acceptance of delivery of the Goods shall be conclusive evidence of the acceptance by the Customer of these terms and Conditions.

### 4. PRICES

4.1 The Price for the Goods unless otherwise stated includes packing, insurance and carriage and other taxes or duties excluding VAT. The Price invoiced is calculated based on the quantity of Goods actually delivered, irrespective of the quantity shown in any quotation or on any Order Acknowledgement Form.

All Orders for personalised products are subject to a quantity tolerance of + or – 5% and all Orders for bespoke Goods are subject to a quantity tolerance of + or – 10%.

4.2 The Company shall have the right to adjust its Prices for any increase in costs that are outside the control of the Company and that arise after the date of the Contract.

4.3 Price changes shall take effect from the date of serving notice on the Customer.

### 5. PAYMENT

5.1 New Customers on first Orders placed will be subject to a pro-forma payment term (payment required before release of Goods).

5.2 Credit terms may be offered to Customers subject to satisfactory credit rating. The offer of credit will be at the sole discretion of the Company.

5.3 All invoices are payable in pounds sterling within 21 days of the date of the invoice unless otherwise agreed in writing and under no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason.

5.4 Without prejudice to any other rights of the Company, if the Customer fails to pay the invoice Price by the due date, the Company shall be entitled to claim and the Customer shall pay interest on any overdue amount from the date of which payment was due to the date of actual payment. Such interest will be calculated on a daily basis at a rate of 4% p.a. over the base rate as quoted by HSBC. The Company shall also be entitled to claim all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

### 6. GOODS

6.1 The Customer shall ensure that the Goods Ordered are suitable for their intended use.

6.2 If a sample of the Goods Ordered is provided to the Customer by the Company and accepted by the Customer, the Company shall not be held liable for any variations to the Customer's specifications thereafter, if the manufacture and processing of the Goods has commenced.

6.3 Where a sample of the Goods is shown to and inspected by the Customer, the Parties accept that such a sample is representative in nature and the bulk Order may differ slightly as a result of the manufacturing, branding or printing process, particularly with regard to different substrate materials.

6.4 The risk in any Goods supplied by the Customer to the Company shall remain with the Customer for the duration of the Contract unless agreed in writing by the Company.

6.5 The Company reserves the right to charge for any additional work required to meet the Customers' specification, if in the opinion of any officers, agents or employees of the Company, the Customers' specification would not achieve the required effect.

6.6 Any description given or applied to the Goods is given by way of identification only. For the avoidance of any doubt, the Customer affirms that it does not in any way rely on any description when entering into the Contract.

### 7. TITLE

7.1 Notwithstanding the earlier passing of risk, title to the Goods shall remain with the Company and shall not pass to the Customer until the amount due

under the invoice for them (including interest and costs) has been paid in full.

7.2 Until title passes, the Customer shall hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.

7.3 The Company may at any time before title passes and without any liability to the Customer:

— repossess and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them:

— for the purposes of determining what, if any, Goods are held by the Customer and to inspect them, the Company or its representatives shall be entitled to enter any premises of or occupied by the Customer.

7.4 Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall be held in a separate designated account and not mingled with other moneys or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.

7.5 The Company may maintain an action for the Price of any Goods notwithstanding that title in them has not passed to the Customer.

## **8. RISK, DELIVERY AND PERFORMANCE**

8.1 The Goods are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent regardless of who pays its charges) at the Company's premises or other delivery point as agreed by the Parties.

8.2 Risk in the Goods passes when they are delivered in accordance with clause 8.1.

8.3 The Company may at its discretion deliver the Goods by instalments in any sequence.

8.4 Where the Goods are delivered by instalments, no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.

8.5 Any dates quoted by the Company for the delivery of the Goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company, no regard has been paid to any quoted delivery dates.

8.6 If the Customer fails:

— to take delivery of the Goods or any part of them on the due date; and

— to provide any instructions or documents required to enable the Goods to be delivered on the due date, the Company may on giving written notice to the Customer store or arrange for the storage of the

Goods, and on the service of the notice:

— risk in the Goods shall pass to the Customer;

— delivery of the Goods shall be deemed to have taken place; and

— the Customer shall pay to the Company all costs and expenses including storage, any redelivery and insurance charges arising from its failure.

8.7 The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all, nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

## **9. CLAIMS NOTIFICATION**

9.1 Any claim for non-delivery of the Goods shall be notified in writing by the Customer or the Customer's Agent to the Company within 72 hours of receipt by the Customer or Customer's Agent of notification of despatch of the Goods.

9.2 Any claim that any Goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Company within 72 hours of their delivery, provided that the Customer endorses the carriers delivery note with details thereof.

9.3 Any alleged defect shall be notified by the Customer to the Company within 72 hours of the delivery of the Goods, or in the case of any defect which is not reasonably apparent on inspection, within seven days of the defect coming to the Customer's attention.

9.4 Any claim under this Condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.

9.5 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this Condition and the Customer shall, if so requested in writing by the Company, promptly return any Goods the subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.

9.6 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these Conditions.

## **10. ANTI-BRIBERY & CORRUPTION POLICY**

10.1 The Company is committed to conducting business in an ethical and honest manner, in accordance with the Bribery Act 2010. The Company has a zero-tolerance approach to bribery and corrupt activities and acts fairly and with integrity in all business dealings and relationships.

10.2 Any related concerns that a conflict or breach of the Company's bribery or corruption policy has occurred or may occur in the future, must be reported immediately to a relevant Line Manager or Company Director. This applies to all employees or any other person or persons associated with the Company (including third parties).

## 11. ANTI-SLAVERY POLICY

11.1 The Company is committed to implementing and enforcing effective systems and controls to ensure modern slavery is not taking place anywhere in the Company's own business or in any supply chains, consistent with our obligations under the Modern Slavery Act 2015.

11.2 The Company communicates its approach at the outset of any business relationship and expects the same high standards from all of our suppliers, contractors and other business partners.

11.3 The Company encourages reporting of any issue or suspicion of modern slavery in any parts of the business or supply chains of any supplier tier at the earliest possible stage.

## 12. SCOPE OF CONTRACT

12.1 Under no circumstances shall the Company have any liability whatsoever for:

- (a) any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Company, or the manufacturer of any Goods, or neglect or from any instructions or materials provided by the Customer;
- (b) any Goods which have been adjusted, modified or repaired;
- (c) the suitability of any Goods for any particular purpose or use under specific Conditions whether or not the purpose or Conditions were known or communicated to the Company;
- (d) any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company;
- (e) any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Company and / or contained in the Company's catalogues, Price lists or elsewhere, are merely intended to represent a general idea of the Goods and not to form part of the Contract, or be treated as representations or a portfolio of the Company's work.
- (f) any technical information, recommendations, statements or advice furnished by the Company, its servants or agents, not given in writing in response to a specific written request from the Customer before the Contract is made; or
- (g) any variations in the quantities or dimensions of any Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.

## 13. EXTENT OF LIABILITY

13.1 The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or Condition of the Contract, or any negligence, breach of statutory or other duty on

the part of the Company, or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:

- for death or personal injury resulting from the Company's negligence; and
- as expressly stated in these Conditions.

13.2 If the Customer establishes that any Goods have not been delivered, have been delivered damaged or do not comply with their description, the Company shall, at its discretion:

- (a) replace with similar Goods any Goods which are missing, lost or damaged or do not comply with their description;
- (b) allow the Customer credit for their invoice value; or
- (c) repair any damaged or defective Goods.

13.3 To the extent that the Goods are not of the Company's manufacture, the Company will assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.

13.4 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.

13.5 Where the Company is liable in accordance with this Condition in respect of only some or part of the Goods, the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.

13.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer, or if any adjustments, alterations or other work has been done to the Goods by any person except the Company.

13.7 The Company shall not be liable where any Goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods will, if available, be supplied by the Company at the Prices ruling at the date of despatch.

13.8 In no circumstances shall the liability of the Company to the Customer under this Condition exceed the invoice value of the Goods.

13.9 Whilst the Company shall make every effort to match print colours to the Customer's requirements, no liability is accepted by the Company for colour variations within normally accepted commercial tolerances.

13.10 The Company shall not be held liable for the acts or omissions of any third Parties to the Contract.

## 14. GENERAL

14.1 The Company may sub-Contract the performance of the Contract in whole or in part.

14.2 The Customer shall not assign or sub-let this Contract in whole or in part, without the prior written approval of the Company.

14.3 The Company shall have a lien on all the Customer's property in the Company's possession for all amounts due at any time from the Customer and may use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 28 days' notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Company and the costs of sale or disposal, the Company shall be discharged of any liability in respect of the Customer's property.

14.4 The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when due, or otherwise defaults in any of its obligations under the Contract, or becomes insolvent, has an administrative receiver appointed to its business or is compulsorily or voluntarily wound up, or the Company bona fide believes that any of those events may occur and in case of termination may forfeit any deposit paid.

14.5 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer, the Customer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third Party.

14.6 Except for any which are expressly agreed to be included in the Goods, all tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information whether or not it is patentable or copyright, plus any registered designs arising from the execution of any Orders, shall become the property of the Company. The Company reserves the right to use in its own marketing media, images of any of the Goods that it supplies, whether or not they are branded.

14.7 Customers should be aware that the Company utilises a global supply base and that sufficient information must be passed onto our global supply partners to enable us to satisfy each order. All data is treated as confidential and its use is covered by our Privacy and IT Confidential Data Protection and Security Policies.

#### **15. CONFIDENTIALITY**

15.1 The Customer shall not at any time, whether before or after the termination of the Contract, divulge or use any unpublished technical information deriving from the Company, or any other confidential information in relation to the Company's affairs or business or method of carrying on business.

#### **16. CANCELLATION**

16.1 Orders for Goods which have to be made especially for the Customer will be charged in full unless written notice of cancellation is received no later than 2 weeks before the expected delivery date quoted in the Company's Order acknowledgement and manufacture of them or

any components for them has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the Goods are allocated to the Contract, but if a cancellation notice is received after the Goods have been allocated to the Contract then the Customer shall be charged in full.

16.2 Orders for seasonal Goods are subject to a minimum cancellation charge of 25% of the unit cost. This is provided that notice of cancellation is received a minimum of 6 weeks before the due delivery dates quoted in the Company's Order acknowledgement and manufacture of them or any components for them has not commenced at the date of that notice. Cancellation of Orders for seasonal Goods received after the minimum 6 week notice period or, where the manufacture of the Goods has commenced already, will be charged in full.

16.3 Any Orders in respect of which an Order Acknowledgement is issued which is cancelled in accordance with clauses 16.1 or 16.2 are subject to a minimum administration charge of £50.

16.4 The Company reserves the right to cancel any Orders in respect of which the Specification provided by the Customer would not, in the opinion of any officers, agents or employees of the Company, result in the required effect at the cost set out in the Order Acknowledgement at any time prior to the commencement of manufacture and process of the Goods.

#### **17. FORCE MAJEURE**

17.1 The Company shall not be liable for any failure in the performance of any of its obligations under this Contract caused by factors outside its control.

#### **18. LAW AND JURISDICTION**

18.1 This Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding it.

#### **19. NOTICES**

19.1 Any notice given under this deed shall be in writing and may be served:

- personally;
- by registered or recorded delivery mail;
- by e-mail; or
- by any other means which any Party specifies by notice to the other.

19.2 Each Party's address for the service of notice shall be the address specified on the Order Acknowledgement, or such other address as is specified by notice to the other Party.

19.3 A notice shall be deemed to have been served:

- if it was served in person, at the time of service;
- if it was served by post, 48 hours after it was posted; and
- if it was served by e-mail, at the time of transmission.

19.4 Any variation to these Conditions (including any special terms and Conditions agreed between

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the Parties) shall be inapplicable unless agreed in writing by the Company.

19.5 Nothing contained in these Conditions shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in these Conditions shall be deemed to construe either of the Parties as agent for the other.