



SINCE 1917

TERMS and CONDITIONS OF PURCHASE (July 2013)

1 Interpretation

- 1.1 In these Terms:
- 1.2 “BUYER” means any **GERALD McDONALD GROUP** company.
- 1.3 “CONTRACT” means the contract for the sale and purchase of the Goods
- 1.4 “DELIVERY ADDRESS” means the address stated on the Order;
- 1.5 “GOODS” means the goods (including any instalment of the goods or any part of them) described in the Order;
- 1.6 “ORDER” means the Buyer’s purchase order [to which these Terms are annexed]; [to which these Terms apply];
- 1.7 “PRICE” means the price of the Goods;
- 1.8 “SELLER” means the person who accepts the Buyer’s Order or their principals.
- 1.9 “SPECIFICATION” includes any information relating to the Goods;
- 1.10 “TERMS” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
- 1.11 “WRITING”, and any similar expression, includes facsimile transmission and electronic mail and other comparable means of communication.
- 1.12 Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.13 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of the Purchase

- 2.1 The Buyer shall purchase and the Seller shall sell the Goods subject to these Terms.
- 2.2 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 The Buyer will consider that the Seller accepts the Order unless notification to the contrary is given by the Seller in Writing within seven days of its date.

2.4 No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

3 Specifications

3.1 The quantity, quality and description of the Goods shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing at no cost to the Buyer.

3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller, the Seller shall take such steps as are necessary to ensure compliance.

3.6 The Goods shall be certified with a Certificate of Analysis authenticating the Goods and shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed, sealed and secured so as to reach their destination in an undamaged condition in the ordinary course

4 Price

4.1 The Price of the Goods shall be as stated in the Order and, unless otherwise so stated, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

4.1.3 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

4.1.4 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.

5 Payment

5.1 The Seller may invoice the Buyer on or at any time after delivery of the Goods, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless special payment terms have been expressly agreed in writing and/or unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods at the terms indicated on the Purchase Order.

5.3 The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

6 Documents.

6.1 See Appendix A.

7 Delivery

7.1 The Goods shall be delivered to the Delivery Address on the date or within the period stated in the Order or call off Order, in either case during the Buyer's usual business hours.

7.2 Where the date of delivery of the Goods is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

7.3 The time of delivery of the Goods is of the essence of the Contract.

7.4 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.

7.5 The Buyer may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

7.6 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods.

7.7 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods.

7.8 If the Goods are not delivered on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damages for delay.

8 Risk and Title

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.

8.2 The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

9 Warranties and Liability

9.1 The Seller warrants to the Buyer that the Goods:

9.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;

9.1.2 will be free from defects in design, material and workmanship;

9.1.3 will correspond with any relevant Specification or sample; and

9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.

9.2 Without limiting any other remedy, if any Goods are not supplied in accordance with the Contract, then the Buyer shall be entitled:

9.2.1 to require the Seller supply replacement Goods in accordance with the Contract within seven days; or

9.2.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to supply any replacement Goods, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

9.3 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

9.3.1 breach of any warranty given by the Seller in relation to the Goods;

9.3.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

9.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

9.3.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying and delivering the Goods.

9.4 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure is beyond that party's

reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

- 9.4.1 Act of God, explosion, flood, tempest, fire or accident;
 - 9.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 9.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 9.4.4 import or export regulations or embargoes;
 - 9.4.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either the Seller or the Buyer or of a third party);
 - 9.4.6 power failure or breakdown in machinery.
- 9.5 If the Seller claims force majeure, the Buyer may decide to present the request to Arbitration to validate the Force Majeure request. The decision of the Arbitrators shall be final and binding on both parties.

10 Termination

- 10.1 The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
- 10.1.1 the Seller makes any composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or a moratorium comes into force in respect of the Seller (within the meaning of the Insolvency Act 1986); or
 - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
 - 10.1.3 execution or distress is levied against any of the Seller's assets; or
 - 10.1.4 the Seller ceases, or threatens to cease, to carry on business; or
 - 10.1.5 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly; or
 - 10.1.6 before delivery the Seller commits a breach of these Terms in relation to any Contract with the Buyer

10 General

- 10.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 10.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal

place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.

10.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.4 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

10.5 Any dispute arising under or in connection with these Terms or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the London Chamber of Commerce, in accordance with the Arbitration Act 1996 as amended from time to time and the decision of such arbitrator shall be final and binding on the Buyer and Seller.

10.6 These conditions and each contract of sale of Goods between the Buyer and the Seller and all matters arising in connection therewith shall be governed by the laws of England and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.

Appendix A

**** AMENDMENTS as per 01.11.16: see 1.c. and 2.e.4.**

1. Shipment of Goods

- a. The buyer does not accept batches with packaging containing varying nett weights.
- b. The buyer does not accept more than 3 supplier batches per consignment.
- c. Outer packaging must be neutral and is expected to be new or reconditioned. If reconditioned taints, old labels etc. must be removed and, if repainted, packaging must be of a uniform colour with no visible tallies, names or marks other than the Gerald McDonald label showing the following information:
 - a. Our Purchase Order number
 - b. Product description
 - c. Packaging size
 - d. Batch number
 - e. GTN weights

- d. All inner packaging must conform to EU packaging legislation of goods in contact with food.
- e. All packaging must be sealed.

2. Documents and document flow.

- a. On agreeing a Purchase the buyer will send a Purchase Order. Where two or more orders are required as call offs the buyer will refer to call off orders that will have separate references.
- b. With the Purchase Order the buyer will send marking instructions. These must be followed precisely as any remarking will be for the supplier's account.
- c. The Seller must provide the buyer with their minimum lead time period.
- d. The Buyer will send a call off requirement to the Seller detailing the Arrival Date at UK port. It is the responsibility of the Seller to make sure the goods are at the Arrival location on time.
- e. Documents to be submitted for Orders from overseas.

Prior to shipment of goods:

- i. Laboratory certificate of analysis. Showing as a minimum:
 - 1. Our Purchase Order number.
 - 2. The date of manufacture.
 - 3. The supplier's batch number(s)
 - 4. The analysis in the *Standards* section of our Raw Material Data Sheet (including full microbiological results) for each batch in the consignment. The buyer does not accept more than 3 batches per consignment. The Buyer will charge suppliers if we have to do missing analyses.

When goods have been shipped, the Seller shall send by email:

- ii. Invoice:
 - 1. Only one product per invoice.
 - 2. Our PO ref. to appear.
 - 3. Our product code ref. to appear.
 - 4. To whom the Buyer is to make payment together with bank account details.
- iii. Advice to insure if required.
- f. When goods have been shipped and no later than 10 days before arrival: By courier:

- i. Invoice in duplicate.
 - ii. Original and copy Bills of Lading.
 - iii. Movement certificate. To enable the Buyer to achieve the cheapest EU import duty rate. If in doubt contact the Buyer's logistics dept.
 - iv. Packing note. Quoting the PO number. The Buyer's product code number. All packing must be of the same nett weight.
- g. Documents to be submitted with local Orders.
- i. Documents in 2 e i and 2 e ii above.

Appendix B

**** AMENDMENTS as per 01.05.18**

1. Anti-Slavery and Human Trafficking Legislation and Policies.

- a. The supplier shall comply with all applicable anti-slavery and human trafficking legislation, EU directives and regulations that are currently in force including but not limited to the Modern Slavery Act 2015.
- b. The supplier shall have and shall maintain its own policies, procedures, checks and audits to ensure that his whole supply chain in which the supplier is a part adheres to the current legislation.
- c. The supplier shall not engage in any practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015.