



**McConnel Limited**  
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E-mail **sales@mcconnel.com**  
Website **www.mcconnel.com**

May 2018

## **CONDITIONS OF SALE**

### **1. Definitions**

In these conditions except where the context otherwise requires, the following words shall have the meanings set opposite each respectively the "Buyer", the person, firm or company with whom or with which the Company contracts subject to these conditions, the "Contract", the Contract made or to be made between the Company and the Buyer subject to these conditions, the "Goods", the articles, products and/or things (if any), including samples and/or spare parts where relevant, the subject matter of the Contract.

### **2. Basis of Contract**

- 2.1 Unless otherwise stated, and so long as notice of withdrawal or variation is not communicated to the Buyer, any quotation made by the Company shall remain open for a period of sixty days from the date appearing thereon, whereupon it shall forthwith lapse.
- 2.2 Any quotation, whether written or oral, submitted by the Company shall be deemed to be an invitation to treat, and not an offer. The placing by the Buyer of any order, whether written or oral, and whether or not any quotation may have been submitted by the Company, shall constitute an offer by the Buyer, and the Contract shall not be taken to have come into existence unless and until acceptance by the Company of the Buyer's offer shall have been communicated in writing to the Buyer. any order placed by the Buyer with any of the Company's salesmen or other employees or representatives shall be subject to written acceptance by the Company as aforesaid. Acceptance by the Company shall be deemed to include acceptance of these conditions, which shall form the conditions of the Contract and shall apply to the exclusion of any terms or conditions put forward by or on behalf of the Buyer.
- 2.3 The Buyer's attention is specifically drawn to the fact that only directors of the Company have authority to make or give on behalf of the Company any representation, warranty, condition or statement other than those contained in these conditions, and accordingly no variation of or addition to or consent, under these conditions, whether written or oral, shall have effect unless and until agreed in writing by the Company and signed by a director of the Company.

### **3. Information and Samples**

- 3.1 Any offer submitted by the Buyer shall be accompanied by sufficient data, information and (where relevant) samples to enable the Company (should the offer be accepted) to proceed with the order forthwith.



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- 3.2 In the event that after the date of any quotation submitted by the Company it shall be found that any data, information or samples supplied by the Buyer and upon which the Company's quotation may be based differ in any material respect from condition as they may in fact be, the Company shall be entitled to amend its quotation so as to take account of any increase to it in costs, whether actual or projected.
- 3.3 Any samples supplied by the Buyer shall be delivered at the Buyer's sole risk and expense to the Company at such address as the Company may specify.
- 3.4 The Buyer undertakes that any instructions concerning the use or operation of the goods advised to the Buyer by the Company will be forwarded to the first owner-user. The Buyer will be liable for any loss or damage resulting if this condition is not fulfilled by the Buyer.
- 3.5 Unless otherwise stated in the relevant invoice, all cases, containers and/or packing materials are non-returnable and will be charged for. Where so stated to be returnable, all such packing materials will be charged for, but credit will be allowed in full if these are returned in condition satisfactory to the Company to the Company's works carriage paid within thirty days following delivery of the relevant Goods.

#### 4. Delivery and Availability

- 4.1 Any times or dates quoted by the Company for delivery of all or any of the Goods are estimates only, and the Company shall not be liable for any failure to meet any such estimate, not for any loss, whether financial or otherwise, resulting directly or indirectly therefrom. No such failure shall entitle the Buyer to reject all or any of the Goods.
- 4.2 All Goods quoted from stock are quoted subject to being unsold when the Buyer's order is accepted.
- 4.3 The Company shall deliver the Goods when ready, to the Buyer at such address in Great Britain as the Buyer may specify, or, if no such address is specified to any address in the mainland of Great Britain of the Buyer to which correspondence and/or Goods may previously have been addressed or sent under the Contract. An additional charge will be made in respect of any carriage and insurance where the Contracts for the delivery of Goods outside the mainland of Great Britain. Unless otherwise agreed in writing, delivery shall take place at a time convenient to the Company. The manner of delivery shall be such as the Company in its sole discretion shall deem appropriate. Without prejudice to condition 9.2 hereof, Goods will normally be dispatched before the date of invoice.
- 4.4 The Company accepts no liability whatsoever for short delivery of or damage to Goods in transit, unless both it and the carrier are notified in writing of the Buyer's claim within seven days after delivery. The Company accepts no liability whatsoever for non-delivery unless it is notified in writing of the Buyer's claim within ten days after the



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date of invoice. The Company reserves the right to alter these time limits without prior notice in the event of the carrier in question altering the terms upon which it does business with the Company.

- 4.5 In the event that the Buyer shall be unable or unwilling to accept delivery of any Goods, the Company shall be entitled without further reference to the Buyer to store the Goods upon any of its own premises or arrange for their storage with a third party, in which event any costs so incurred by the Company shall be borne by the Buyer.

## 5. Description

Any specifications, drawings or other particulars relating to Goods submitted in connection with, or included in, any quotation given by the Company are, unless otherwise expressly stated in writing, approximate only, and any specifications, descriptions, designs, drawings, illustrations or other particulars contained in catalogues or other promotional or advertising matter of the Company are intended merely to present a general idea of the goods therein described and shall not be taken as forming part of the Contract. Accordingly, the Company reserves the right without notice to the Buyer to alter any such specification, description, design, drawing, illustration or other particulars and to supply the Goods as so altered in performance of the Contract and the Company shall have no liability therefore.

## 6. Performance

- 6.1 All information (including without limitation figures) given by the Company relating to the performance of the Goods or the cost of operating the Goods is based upon the Company's experience in the field in question, and all such figures are such as the Company might as a result of such experience expect to obtain on test, but the Company shall, unless such information shall have been specifically guaranteed in writing, accept no liability should it prove to be in any way inaccurate to the Buyer.
- 6.2 In the event that the performance of the Goods shall fail to fulfill the terms of any written guarantee given by the Company, the Buyer shall allow to the Company reasonable time and opportunity to fulfill the said terms. If after such reasonable time and opportunity the Company shall fail to fulfill the said terms, the Buyer shall be entitled to cancel the Contract only as regards such of the Goods as fail to fulfill the said terms.
- 6.3 It shall be the responsibility of the Buyer to ensure that the capacity and performance of the Goods are sufficient and suitable for the purpose or purposes intended, and that its methods of working and all sites where the Goods are to be installed and/or operated are safe and suitable for the installation and operation of the Goods and comply both before and after such installation and during such operation with all relevant legislation (including without limitation safety legislation).



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- 6.4 Where the Buyer provides any items of equipment for the installation and/or operation of the Goods or ancillary to or for use in connection with the Goods, it shall be the Buyer's responsibility to ensure that the use of any such items do not adversely affect the performance of the Goods.
- 6.5 Where samples are to be supplied by the Company, no work will be undertaken by the Company with regard to the bulk of the Buyer's order unless and until the Company shall have received from the Buyer written notification that the samples supplied are in all respects satisfactory to the Buyer.
- 6.6 The Buyer undertakes that any operating instructions concerning the use of the Goods, advised by the Buyer by the Company, will be forwarded by the Buyer to the first owner-user. The Buyer will be liable for any loss whatsoever arising if this condition is not fulfilled by the Buyer.

## 7. Cancellation

Subject to condition 6.2 following acceptance as aforesaid by the Company of the Buyer's order, no cancellation, either in whole or in part, may be made by the Buyer other than with the prior written consent of the Company and upon the terms which fully reimburse to the Company the amount or amounts of all work undertaken, time expended and costs incurred by it in connection with the Buyer's order, together with a reasonable profit margin.

## 8. Price

- 8.1 Any price quoted by the Company is exclusive of VAT and is in accordance with the trade terms in effect at the time of the order. With the agreement of the Buyer, the Company shall be entitled at any time up to the date of the invoice or despatch (as the case may be) to vary the price quoted to the Buyer. In the absence of agreement of the Buyer to such variation, either party may cancel the Contract.
- 8.2 If any additional cost is incurred by the Company by reason of any error or omission in the Buyer's instructions, or by reason of any additional instructions received from the Buyer, or if the Buyer requests any special testing of the Goods or any variation in the specification or design or any other modification to the Goods, or if delivery is not accepted by the Buyer in accordance with these conditions, the Company shall be entitled at any time up to the date of the invoice to vary the price quoted to the Buyer.



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## 9. Date for Payment

- 9.1 The Buyer shall make payments in full no later than the end of the month following that in which the date appearing on the Company's invoice falls, but the Company may at its discretion offer the Buyer a discount for earlier payment, as mentioned on the invoice. Interest at the rate of 2% over the base rate for time being and from time to time of the Company's bankers may at the Company's discretion be charged from day to day on all monies outstanding after this time until the actual date of payment, and any such cash discount referred to in the invoice or elsewhere will not be allowed to the Buyer. Any such cash discount may at the option of the Company be disallowed if at any time the Buyer has in respect of any invoice rendered by the Company an overdue balance.
- 9.2 Notwithstanding the provisions of condition 9.1 hereof, the Company reserves the right to require payment of any invoice in full or in part as a condition of despatch or delivery of all or any of the Goods.
- 9.3 Where payment is agreed to be made by instalments, any delay or default by the Buyer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged with immediate effect until the actual date of payment in accordance with condition 9.1.
- 9.4 The Company shall be entitled, in the event of any failure by the Buyer to make payment in accordance with the terms of the Contract, to charge to the Buyer, in addition to any interest payable and without prejudice to any other rights available to the Company, any sums, (including without limitation, legal costs and VAT thereon and on any other costs) reasonably incurred by the Company in the collection or attempted collection of the amount or amounts outstanding.

## 10. Disputes and Set Off

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Buyer of all obligations appearing in these conditions, and subject to these conditions, the Buyer shall not be entitled to withhold or delay payment or exercise any right of set off whatsoever and howsoever arising or arisen which might otherwise be available to it.



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## 11. Risk and Title

- 11.1 The risk of loss of or damages to the Goods or any of them shall pass to the Buyer in respect of such of the Goods as are despatched for delivery to the Buyer, upon delivery in accordance with condition 4.
- 11.2 Notwithstanding the passing of risk unless and until payment shall have been made to the Company in full in respect of all of the Goods and in respect of all and any other goods supplied or to be supplied by the Company and of all and any services rendered or to be rendered by the Company under the Contract or under any other contract between the Buyer and the Company;
- (a) property in and title to all the Goods shall remain in the Company;
  - (b) should the Buyer convert the Goods or any of them into any new product or products, whether or not any such conversion may involve the admixture of any other goods or thing whatsoever and in whatever proportions, any such conversion shall be effected by the Buyer solely as agent for the Company, and the Company shall have the full legal and beneficial ownership of any such new product or products;
  - (c) the Buyer shall store the goods and any such new product or products separately from all other goods and products and in such a way that they can be readily identified as being the property of the Company;
  - (d) subject to (e) and (f) below, the Buyer shall be free to sell the Goods and any such new product or products in the ordinary course of its business, in which case the proceeds of sale shall belong to the Company, and the Buyer shall account therefore to the Company on demand, provided that the Buyer shall have no authority to enter into any contract for sale on behalf of the Company, and any such contract for sale shall accordingly be concluded in the name of the Buyer;
  - (e) the Company may at any time revoke the Buyer's power of sale referred to in (d) above by written notice to the Buyer if the Buyer shall for seven days or more be in default in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other goods supplied by the Company or services rendered, whether or not under the Contract, by the Company or for any other reason whatsoever), or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Buyer in favour of the Company shall on presentation or payment be dishonoured, or if accepted by the Buyer in favour of the Company shall on presentation or payment be dishonoured, or if the Company in good faith shall have doubts as to the solvency of the Buyer;
  - (f) the Buyer's power of sale referred to in (d) above shall automatically cease if any administrator, receiver or manager shall be petitioned or appointed over any or all of the assets or undertaking of the Buyer, or if any winding up order shall be made against the Buyer, or proposal for voluntary arrangement (Insolvency



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Act 1986) or call any meeting of or make any arrangement or composition with creditors or commits any act of bankruptcy;

- (g) upon determination of the Buyer's power of sale under (e) or (f) above, the Buyer shall place the Goods and any such new product or products at the disposal of the Company, and the Company shall be entitled, using only such force as may be necessary, to enter upon any premises of the Buyer for the purpose of removing the Goods and any such new product or products from the premises.

Where payment may be made by means of any bill of exchange, cheque or other negotiable instrument, the Company shall be deemed not to have received payment for the purposes of this condition unless and until the bill of exchange, cheque or other negotiable instrument shall have been honoured on presentation for payment, notwithstanding that the Company may have negotiated it and received value thereafter.

## 12. Termination and Suspension

Without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, the Company shall be entitled upon the giving to the Buyer written notice of its intention to do so, either to terminate wholly or in part the Contract and/or any other contract with the Buyer or to withhold performance of all or any of its obligations under the Contract or any other contract in any of the following events:

- (a) if any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the due date for payment;
- (b) if the Buyer shall refuse to take delivery of any of the Goods in accordance with the terms of the Contract or of any other goods in accordance with the terms of any other contract between the Company and the Buyer;
- (c) if the Buyer shall commit any act of insolvency as defined in paragraph 11.2 (f) above;
- (d) if the Buyer shall commit any such breach of any contract with the Company;
- (e) if the Buyer shall refuse to provide any security for credit as hereinafter provided;
- (f) the Company, after giving written notice to the Buyer, at its absolute discretion considers the Buyer's credit status to be unsatisfactory.

The Company shall be entitled to exercise its rights of termination or suspension at any time during which the event or default giving rise thereto shall not have ceased or been remedied to its reasonable satisfaction and in the event of any such suspension, the Company shall be entitled to require, as a condition of resuming performance under the Contract, pre-payment of, or such security as it may stipulate for, the payment of any sums due or to become due to it.



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### 13 Defective Goods

- 13.1 The Company shall make good by reimbursement of the whole or part of the price (and, where relevant, as a deduction from any part of the price remaining unpaid) or at its option by repair by replacement any defect developing under the normal use in the Goods within twelve months with respect to machines and six months with respect to parts following the date of delivery to the first owner/user due solely to faulty design (except where supplied by or on behalf of the Buyer), materials or workmanship, provided that:
- (a) written notice of any such defect shall be given to the Company by the Buyer within twenty-eight days following the discovery thereof within the periods above referred to;
  - (b) any Goods alleged to be defective shall, if the Company requires, be promptly returned at the Buyer's risk and expense to the Company's works for inspection, and the Company shall in its reasonable opinion consider them to be defective solely by reason of faulty design, materials or workmanship as aforesaid;
  - (c) no attempt shall have been made by the Buyer, or by any other person, firm or company, to remedy any defect before the Goods in question shall have been returned to the Company for inspection;
  - (d) the Goods in question shall have been serviced and maintained properly and in accordance with the Company's recommendations and shall not have been fitted with any parts, components or accessories other than those manufactured or recommended by the Company;
  - (e) where any such defect is due to a fault in any part, component, accessory or other item of the Goods not manufactured by the Company, the buyer shall be entitled, as against the Company, only to such remedy as the Company may be able to obtain against the relevant manufacturer or supplier;
  - (f) in default of any claim being made under this condition within the period of twenty-eight days referred to, the Goods shall be deemed to comply with the contract and to be in all respects satisfactory;
  - (g) notwithstanding any other provision of these conditions, no condition, warranty or representation, other than a warranty as to title, is given or made by or on behalf of the Company in respect of any Goods which may have been used, whether for demonstration purposes or otherwise.





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- 13.2 The Company's liability shall be limited to reimbursement of the price or repair or replacement of the Goods as aforesaid and shall be subject to compliance by the Buyer with the terms of the foregoing part of this condition. Apart from such reimbursement, replacement or repair, the Company, its employees and agents shall be under no liability to the Buyer or to any third party for any injury, loss or damage of any kind whatsoever and howsoever arising or arisen and whether direct, consequential or special, including without limitation any loss of profits, injury, loss or damage resulting from or arising out of or incidental to;
- (a) any negligence of the Company or of any of its employees (except insofar as such negligence may result in death or personal injury);
  - (b) the Company's performance of or failure to perform or breach of any of its obligations, whether express or implied, under the Contract or under any other contract;
  - (c) the supply, installation, repair and/or maintenance of any of the Goods;
  - (d) any defect in any of the Goods;
  - (e) any advice given or representation made by the Company or on its behalf in relation to the nature, quality, specification, design, performance, use or installation of any of the Goods.
- 13.3 The terms of this condition replace all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute or otherwise, all of which shall accordingly be excluded, and the Company shall have no obligation to the Buyer, either in tort or in contract (and whether under the Contract or under any other contract) other than the express obligations contained in these conditions or in any other document expressly incorporated in writing into the contract. Accordingly, it shall be for the Buyer to insure against any liability arising from its use of the Goods.
- 13.4 To the best of the Company's knowledge and belief, and in the absence of any appropriate code of practice, the Company's designs and products when properly used, comply with the requirements of the Health and Safety at Work Act, 1974 and any modification or re-enactment thereof and any regulations made thereunder, but any additions to or variations of such designs or products arising from the requirements of the Act shall be charged to the Buyer as an additional cost, and the Company shall be under no liability for failure to comply with any requirement, whether statutory, regulatory, municipal or otherwise affecting the construction, installation or operation of any of the Goods or any other goods supplied by the Company, nor for obtaining any necessary consent or consents.



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## 14 Industrial Property Rights

The Buyer shall forthwith notify the Company in writing of any claims made or action brought against the Buyer for infringement of intellectual property rights of any nature whatsoever or for unauthorised use of any confidential information or for passing off by reason of the manufacture or sale of any Goods, and the company shall be free to conduct any negotiations for the settlement of any such claim and/or to conduct any litigation resulting therefrom without any obligation or responsibility whatsoever to the buyer other than, where it is decided or agreed that there has been any such infringement or unauthorised use or passing off, to give credit for the Goods giving rise to the claim or action or, at the option of the company, to make such alterations thereto as may be necessary to remedy the matter complained of. The Buyer shall without cost to the company provide such facilities and assistance as the Company may reasonably require to enable it to investigate and conduct any such claim or action. Where any Goods are manufactured and sold by the Company to the Buyer in accordance with a design or specification provided by the Buyer, then, as regards any such Goods, the Buyer shall indemnify the Company against all actions, claims, costs and demands whatsoever and howsoever arising or arisen in relation to any claim or action for infringement of any patent or copyright or for unauthorised use of any confidential information or for passing off, whether actual or alleged

## 15 General

- 15.1 It shall be the responsibility of the Buyer to ensure that all requirements to the Contract, whether statutory, regulatory; or municipal or otherwise howsoever, are complied with. It shall be a condition precedent to the performance by the Company of any of its obligations under the Contract that all necessary licenses, permits and consents shall have been obtained by the Buyer.
- 15.2 The Company shall have no liability whatsoever for any failure to perform or for any delay in the performance of any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its direct control, including without limitation shortage or raw materials, components or services, act of god, war, national emergency, laws or regulations of any country, industrial dispute, civil commotion, fire, tempest or flood.
- 15.3 No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Buyer of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.
- 15.4 The Contract is personal to the Buyer who shall not assign or in any way part with the benefit thereof without the Company's prior written consent.



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- 15.5 None of the Goods shall be exported by or on behalf of the Buyer, nor shall the Buyer allow any of the Goods to be exported without the prior written consent of the Company.
- 15.6 Where delivery is agreed to be made by instalments, each instalment shall be deemed to be a separate and distinct contract and no default by the Company in respect of one or more instalments shall entitle the Buyer to reject or withhold payment for any other instalment.
- 15.7 Each and every obligation contained in these conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other obligation.
- 15.8 Any notice required to be given in writing under the Contract shall be served by telex or recorded delivery post addressed to the registered office of the party for which it is intended, or to such other address as may be notified in writing for the purpose, and shall be deemed to have been received, in the case of a telex, upon transmission and, in the case of a letter as aforesaid, in the ordinary course of post. In proving service, it shall be sufficient to show that the telex was sent or that the envelope containing the notice was duly addressed, stamped and posted (as the case may be).
- 15.9 The Contract shall be governed by and construed in accordance with English Law.

## 16 Data Protection

- 16.1 To the extent Buyer discloses, provides or otherwise makes available, personal data to Company under or in connection with the Contract ("Shared Personal Data"), Buyer warrants that it: (a) has provided adequate notices to, and obtained valid consents from, the data subjects, in each case to the extent necessary for Buyer and/or its service providers or agents to process the Shared Personal Data in connection with this Contract and as described in the Company's Online Privacy Policy, including without limitation to send direct marketing to data subjects. Buyer will on request provide records of all consents obtained to Company and Buyer shall notify Company in writing within 24 hours of Buyer receiving data subject's objection to or withdrawal of data subject's consent to process their personal data including, without limitation for direct marketing activities; and (b) shall not, by act or omission, cause Company to violate any applicable data protection laws, notices provided to, or consents obtained from, data subjects as result of processing the Shared Personal Data in connection with this Contract.