

TRADE CREDIT APPLICATION



D MACINTYRE & SON LTD
9 Carters Lane
Kiln Farm
Milton Keynes
MK11 3ER

Area Account Manager

Business Name

Address

Postcode

Telephone

E-mail

Facsimile

Internet

Mobile

Business Organisation Type

Sole Trader

Partnership

Limited Company

Other (specify)

Date Established

VAT Number

Registered Address (if different)

Limited Company Registration Number

Trade References (Names & Addresses)

Name & Address: Owner/Partners/Director(s)

Please use a separate sheet if necessary

1.

2.

Payment Contact & Telephone (if different)

Nature of Business

Bank Name

Type of Account

Account No.

Sort Code

I/we accept and agree to comply with your terms and conditions and payment terms.

I/we give consent to a credit search being made on me/us as owner/partner(s) or director(s) of this organisation both now and at any future date. I/we understand that this search may be recorded by the agency and may be disclosed to subsequent enquirers.

Name	Position
Signature	Date

Name	Position
Signature	Date

D. MACINTYRE & SON LTD.

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Contract" means the contract between the Supplier and the Buyer to which these Terms and Conditions relate.
- 1.2 The "Supplier" means D MacIntyre & Son Limited having its registered office at 9 Carters Lane, Kiln Farm, Milton Keynes, MK11 3ER.
- 1.3 The "Buyer" means the person, firm or Company who buys or agrees to buy the Goods under the Contract.
- 1.4 "Goods" means the goods to which the Contract relates.
- 1.5 "Price" means the price of the goods shown on the Supplier's current price list (or if applicable the price contained in the Supplier's quotation).
- 1.6 "Terms and Conditions" means the terms and conditions of sale set out in this document and any Special Condition agreed in writing by the Supplier.

2. GENERAL

- 2.1 By ordering any goods from us you will be deemed to have accepted that these Terms and Conditions take precedence over any other terms and conditions contained on or in any letter, acceptance form, receipt or the like received by us in connection with the goods so ordered and that any such other Terms and Conditions will not form part of the Contract between the Supplier and the Buyer for the sale of such goods.
- 2.2 No variation or addition to these Terms and Conditions shall be effective unless agreed in writing by the Supplier.
- 2.3 Each order for the Goods by the Buyer shall constitute an offer by the Buyer to purchase the Goods subject to these Terms and Conditions. No Contract for the sale of Goods shall arise until the Supplier dispatches the Goods to the Buyer.
- 2.4 Nothing in these Terms and Conditions shall affect the statutory rights of any consumer.
- 2.5 The description of the Goods shall be as set out in the Supplier's quotation, if any. All drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained on the Supplier's website or in the Supplier's catalogue or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract.

3. PRICES

- 3.1 The Supplier reserves the right to revise the Price prior to despatch of Goods to reflect any direct or indirect increase in costs to the Supplier but if the Price has been agreed prior to despatch no price revision may take place without the prior agreement of the Buyer.
- 3.2 All Prices are exclusive of VAT.
- 3.3 Minimum order value £50.00.
- 3.4 Carriage will be charged as follows for deliveries to UK mainland addresses:
Orders £50 to £100 = £5 carriage.
Orders £100 to £200 = £2.50 carriage.
Next day (if available) = £10 surcharge.
Orders to third party addresses – an additional £15.
Other destinations – carriage charges will be advised prior to shipment.

4. PAYMENT

- 4.1 Payment is due in full on the terms of credit agreed which shall usually not be more than 30 days from the date of invoice. Time for payment shall be of the essence and any failure to pay shall entitle the Supplier, at its option, to treat the Contract as repudiated by the Buyer or to delay delivery under any or all Contracts until paid (in addition to any other remedy).
- 4.2 If any act or proceedings shall be commenced in which the Buyer's solvency is concerned, all monies under any transaction covered by these Terms and Conditions shall become immediately due and payable.
- 4.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the rate of 5% above Lloyds TSB Plc., base rate both before and after any Judgement.
- 4.4 All invoices shall be paid in full, free from any deduction, for any set-off, counterclaim or otherwise howsoever.

5. OWNERSHIP AND RISK

- 5.1 The risk in Goods shall pass to the Buyer upon delivery of the Goods or upon the Goods being appropriated to the Buyer but kept at the Supplier's premises at the Buyer's request.
- 5.2 The Supplier remains the owner of the Goods affected by the Contract until the Supplier has been paid in cleared funds in full for such Goods and all other sums which are or which become due to the Supplier from the Buyer on any account.
- 5.3 If any payment due under these Terms and Conditions is overdue in whole or in part or if the Buyer makes any voluntary arrangements with its creditors, becomes subject to an Administration Order, goes into Liquidation (otherwise than for the purpose of amalgamation or reconstruction) or if an encumbrancer takes possession, or an Administrative Receiver or Administrator is appointed of any of the property or assets of the Buyer or the Buyer ceases or threatens to cease to carry on business or suffers any action in consequence of debt or the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer the Supplier may, without prejudice to any of its other rights, recover and/or re-sell the Goods by its servants or agents, enter on the Buyer's premises to recover the Goods and the Buyer shall be liable for all the Supplier's expenses of so doing.

- 5.4 Where the Supplier exercises his rights under 5.3 to recover and re-sell Goods, the Supplier may recover and re-sell any Goods previously supplied by the Supplier whether or not they are the Goods to which the overdue payment relates.

- 5.5 Until ownership of the Goods has passed to the Buyer, the Buyer must

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee.
- (b) store the Goods (at no cost to the Supplier), separately from all other Goods of the Buyer or any third party in such way that they remain readily identifiable as the Supplier's property.
- (c) not destroy, 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 on the Supplier's behalf for their full price against all risk to the reasonable satisfaction of the Supplier. On request, the Buyer shall produce the policy of insurance to the Supplier and,
- (e) hold the proceeds of the insurance referred to in condition 5.5(d) on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

- 5.6 The Buyer may sell the Goods before ownership has passed to it solely on the following Conditions:-

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and
- (b) any such sale shall be a sale of the Supplier's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6. WARRANTY

- 6.1 The Supplier warrants that the Goods will, at the time of delivery, correspond to the description given by the Supplier.
- 6.2 The Buyer shall inspect the Goods immediately upon delivery and shall notify the Supplier within three working days of delivery if the Goods are damaged or do not comply with the Contract. If the Buyer fails to do this, the Buyer is deemed to have accepted the Goods.
- 6.3 Any Goods in respect of which any claim of defect or damage is made shall be preserved by the Buyer intact, together with the original packing at the Buyer's risk and either:-
- (a) retained by the Buyer for a reasonable period to enable the Supplier or its agent to inspect or collect the Goods or
- (b) at the Supplier's option returned by the Buyer to the Supplier.
- 6.4 If any Goods do not comply with the warranty set out in Condition 6.1, the Supplier shall at its cost and expense and discretion either repair or replace the defective Goods or give a full credit or refund for the price paid by the Buyer for such defective Goods.
- 6.5 The Supplier shall not be liable for a breach of the Warranty in Condition 6.1.
- (a) unless the Buyer gives written notice of the defect to the Supplier, and (if the defect is as a result of damage arising during transit at the risk of the Supplier) to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect.
- (b) if the defect arises because the Buyer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Goods or (in the absence of such instructions) good trade practice.
- (c) that is attributable to fair wear and tear, abuse, improper use or use in an environment or for a purpose for which the Goods were not designed or intended by the Supplier, or
- (d) if the Buyer alters or repairs such Goods without the written consent of the Supplier.
- 6.6 The Supplier is not the manufacturer of the Goods and, where applicable, shall pass on to the Buyer, to the extent possible, the benefit of the manufacturer's guarantee in respect of the Goods.
- 6.7 Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 section 12) all other Warranties conditions or terms relating to fitness for purpose, satisfactory quality or condition of the Goods, whether implied by Statute, Common Law or otherwise are excluded and the Buyer warrants that they are satisfied as to the suitability of the Goods for the Buyer's purposes.

7. LIMITATIONS OF LIABILITY

- 7.1 Subject to the provisions of these Terms and Conditions, the following provision set out the more entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Terms and Conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with a Contract.
- 7.2 Nothing in these Terms and Conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence or fraudulent misrepresentation.
- 7.3 Subject to Condition 7.2 the Supplier shall not be liable to the Buyer for any indirect or consequential, special or punitive loss, damage, costs or expenses, loss of profit, loss of business, loss of revenue or depletion of goodwill.
- 7.4 Subject to Condition 7.2, the Supplier's total liability to the Buyer under or connected with a Contract for:-
- (a) any loss or damage which arises directly out of the Supplier's negligence shall not exceed £10,000 for any one event or series of connected events and
- (b) any other direct loss not covered by Condition 7.4(a) shall not exceed the price payable for the Goods.

8. DELIVERY

- 8.1 Whilst every reasonable effort shall be made to keep any delivery date, time of delivery shall not be of the essence and The Supplier shall not be liable for any losses, costs, damages or expenses incurred by the Buyer or any other person or company arising directly or indirectly out of any failure to meet any estimated delivery date.

- 8.2 Unless otherwise agreed, the Supplier may deliver by instalments and in such case each instalment shall be treated as a separate Contract.

- 8.3 In the event that Goods or any of them are not delivered by the Supplier pursuant to an order by the Buyer within 30 days from the date that the order was placed or from the requested despatch date for such order (whichever is the later) the order or the remainder of the order where some but not all of the Goods have been delivered shall be treated as cancelled unless the Supplier receives written request from the Buyer to renew such order.

- 8.4 Failure by the Buyer to pay for any instalment or delivery when due shall entitle the Supplier to withhold further deliveries.

- 8.5 Delivery of the Goods shall be made to the Buyer's address and the Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

- 8.6 If for any reason the Buyer does not accept delivery of any of the goods when tendered

- (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Supplier's negligence).
- (b) the Goods will be deemed to have been delivered and
- (c) the Supplier may store the Goods until collected by the Buyer and the Buyer will be liable for all related costs and expenses (including without limitation, storage and insurance).

9. CANCELLATIONS AND RETURNS

- 9.1 No Contract shall be cancelled nor shall any Goods, which are in accordance with the Contract, be returned without the prior written approval of the Supplier and on the terms to be determined at the absolute discretion of the Supplier.

- 9.2 Unless the Supplier, at its discretion, decides otherwise, the Supplier agrees to accept the return of any such Goods, then:

- (a) a Goods Return Number obtained from the Supplier must be clearly shown on the returns parcel.
- (b) the Buyer will be liable for the cost of remedying any damage to the Goods returned where such damage has, in the opinion of the Supplier, been caused by the Goods being inadequately packaged by the Buyer or through the Buyer's fault and
- (c) the Supplier reserves the right to make a handling and restocking charge of £10 or 25% of the price for Goods that are returned whichever is the greater.

10. NO WAIVER

- 10.1 The Supplier's failure to insist upon strict performance of any provision of these Terms and Conditions shall not be deemed to be a waiver of its rights or remedies in respect of any present or future default of the Buyer in performance or compliance with any of these Terms and Conditions.

11. THIRD PARTY RIGHTS

- 11.1 The parties to a Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Right of Third Parties) Act 1999 by any person that is not a party to it.

12. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Buyer acknowledges that any and all of the trade marks, trade names, copyright designs and other intellectual property rights used or embodied in or in connection with the Goods, their packaging and advertising and promotional material (including but not limited to images of the Goods on the Supplier's website) are and shall remain vested in the Supplier or its licensors.
- 12.2 The Buyer shall not, without the prior written consent of the Supplier, alter or make any addition to the labelling or packaging of the goods and shall not alter, deface or remove in any manner any trade marks, any reference to the Supplier or any other name attached or affixed to the Goods or their packaging or labelling.

- 12.3 The Buyer shall only be entitled to make use of the Supplier's promotional or advertising material in respect of the Goods (including but not limited to images of the Goods on the Supplier's website) with the Supplier's prior written consent.

13. WEEE

- 13.1 The Buyer shall provide the Company with such data, information, documents and other assistance as the Company may from time to time reasonably require to enable it to satisfy its obligations pursuant to the Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006/3289).

14. DISPUTE

- 14.1 In the event of dispute between the Buyer and the Supplier, should the Supplier require in writing, the Buyer agrees to admit the dispute to arbitration in accordance with the Arbitration Act for the time being in force as a legally binding alternatives in Court action.

15. LEGALITY

- 15.1 In the event, that any or any part of these Terms and Conditions shall be determined invalid, unlawful, or unenforceable to any extent such term, condition, or provision shall be severed from the remaining Terms and Conditions that shall continue to be valid and enforceable to the fullest extent permitted by law.
- 15.2 These Terms and Conditions shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English Courts.