



MACO DOOR AND WINDOW HARDWARE (UK) LIMITED

TERMS AND CONDITIONS OF SUPPLY

October 2017

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

“Business Day” means a day (other than a Saturday, Sunday or public holiday) when banks in England are open for business;

“Conditions” means the terms and conditions set out in this document, as amended from time to time in accordance with condition 14.7;

“Contract” means each contract between MACO UK and the Customer for:

- (i) the provision of **Design Services by MACO UK**;
- (ii) **the purchase of Goods by the Customer from MACO UK; and/or**
- (iii) the hire of Loan Equipment by MACO UK to the Customer;

“Customer” means a person or firm who purchases the Design Services and/or Goods and/ or hires the Loan Equipment from MACO UK;

“Customer Premises” means the premises of the Customer at which the Loan Equipment must be held, as specified in the Quotation;

“Design Services” means the design services which may be provided by MACO UK in respect of the implementation of any specific design requirements for the Goods as described in a Quotation;

“Force Majeure Event” has the meaning given in condition 13;

“Goods” means the goods (or any part of them) which may be purchased by a Customer from MACO UK, as set out in a Quotation;

“Hire Payments” means the payments made by or on behalf of the Customer for hire of the Loan Equipment;

“Hire Period” means the period of hire of any Loan Equipment as set out in the Quotation;

“Insurer” means, in respect of any Loan Equipment, the insurer detailed in the Quotation, or any other reputable insurer approved by MACO UK in writing to the Customer, such approval not to be unreasonably withheld or delayed;

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“Loan Equipment” means the goods (or any part of them) which may be hired to a Customer by MACO UK, as set out in a Quotation;

“MACO UK” means MACO Door and Window Hardware (UK) Limited (registered in England and Wales with company number 02032782 and with its registered address at Eurolink Industrial Centre, Castle Road, Sittingbourne, Kent ME10 3LY);

“Maintenance Provider” means, in respect of any Loan Equipment, the maintenance provider detailed in the Quotation, or any other competent maintenance provider approved by MACO UK in writing to the Customer, such approval not to be unreasonably withheld or delayed;

“Manuals” means the instruction manuals and/or handbooks relating to any Loan Equipment which MACO UK may from time to time provide to the Customer;

“Order” means, in respect of the Design Services, Loan Equipment and/or Goods contained in a Quotation, the Customer's written acceptance of such Quotation;

“Order Confirmation” means MACO UK's written acceptance of an Order;



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“Quotation” means, following receipt of Requirements from the Customer:

- (i) MACO UK’s description of the Design Services and/or the Goods it is capable of providing (which may or may not be similar or identical to those requested within the Requirements); together with
- (ii) MACO UK’s quotation for the provision of such Design Services and/or Goods and/ or Loan Equipment;

“Requirements” means the Customer’s requirements for the supply of Goods or Loan Equipment by MACO UK (and, where applicable, any specific design requirements for such goods) which the Customer has made known to MACO UK prior to the creation of a Quotation;

“Risk Period” means the Hire Period and any further period during which the Loan Equipment is in the possession, custody or control of the Customer, until such time as the Loan Equipment is redelivered to MACO UK; and

“Total Loss” means that the Loan Equipment is, in MACO UK’s reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes but not e-mails.

2. BASIS OF EACH CONTRACT

2.1 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase (i) Design Services and/or Goods; and/or (ii) hire Loan Equipment, in accordance with these Conditions.

2.3 The Order shall only be deemed to be accepted when MACO UK issues an Order Confirmation (which shall be subject to satisfactory trade references), at which point the Contract shall come into existence.

2.4 Each Order Confirmation provides details of how an Order has been entered on to MACO UK’s systems. The Customer must review each Order Confirmation following receipt to ensure that it accurately reflects to applicable Order.

2.5 A Contract may only be cancelled by a Customer if:

- (a) such Contract does not include any element of Design Services or include the supply of bespoke Goods and/or Loan Equipment by MACO UK;
- (b) the Customer notifies MACO UK in writing, addressed to MACO UK’s registered address, marked “cancellation” and such cancellation is received by the Company not more than 3 days after the date on which MACO UK has issued a written acceptance of the Order in accordance with condition 2.3.

2.6 Each Contract constitutes the entire agreement between the parties in respect of the applicable Design Services, Goods and/or Loan Equipment. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MACO UK which is not set out in the Contract.



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- 2.7 Any samples, drawings, descriptive matter, or advertising produced by MACO UK and any illustrations contained in MACO UK's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Loan Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 Quotations
- (a) A Quotation shall not constitute an offer.
 - (b) Each Quotation shall only be valid for the period of time specified in such Quotation, or if no period is specified, a period of 30 days from the date of issue of the Quotation ("**Quotation Period**").
 - (c) Prices stated in a Quotation are intended to be valid throughout the Quotation Period. However, prices are based on assumptions such as the specification, volumes and delivery locations set out in the Quotation and may also be based on assumptions such as currency conversion and the price of raw materials to be used. MACO UK reserves the right to vary the prices in any Quotation should any such assumptions prove not to be accurate.
3. **DESIGN SERVICES**
- 3.1 Where MACO UK has issued an Order Confirmation which includes the provision of Design Services, MACO UK shall supply such Design Services to the Customer in accordance with the description contained in the Quotation (as may be varied by the Order Confirmation) in all material respects. The Customer acknowledges that the Design Services described in the Quotation (as may be varied by the Order Confirmation) may or may not be similar or identical to those requested within the Requirements.
- 3.2 MACO UK shall use all reasonable endeavours to meet any performance dates for the provision of the Design Services specified in the Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Design Services.
- 3.3 MACO UK shall have the right to make any changes to the Design Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Design Services, and MACO UK shall notify the Customer in any such event.
- 3.4 MACO UK warrants to the Customer that the Design Services will be provided using reasonable care and skill.
- 3.5 The Customer shall:
- (a) ensure that the contents of the Requirements, the Order and, in particular, the Order Confirmation are complete and accurate;
 - (b) co-operate with MACO UK in all matters relating to the Design Services;
 - (c) provide MACO UK, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by MACO UK; and
 - (d) provide MACO UK with such information and materials as MACO UK may reasonably require in order to supply the Design Services, and ensure that such information is accurate in all material respects.
- 3.6 If MACO UK's performance of any of its obligations under a Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- (a) MACO UK shall, without limiting its other rights or remedies, have the right to suspend performance of the Design Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays MACO UK's performance of any of its obligations;
 - (b) MACO UK shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from MACO UK's failure or delay to perform any of its obligations as set out in this condition 3.6; and



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- (c) the Customer shall reimburse MACO UK on written demand for any costs or losses sustained or incurred by MACO UK arising directly or indirectly from the Customer Default.
- 3.7 All Intellectual Property Rights in or arising out of or in connection with the Design Services shall be owned by MACO UK. All materials created in the performance of the Design Services are the exclusive property of MACO UK.

4. GOODS

- 4.1 The Goods are as described in the Quotation (as may be varied by the Order Confirmation), which may include alterations from MACO UK's standard product offering resulting from the provision of the Design Services. The Customer acknowledges that the Goods described in the Quotation (as may be varied by the Order Confirmation) may or may not be similar or identical to those requested within the Requirements.
- 4.2 To the extent that the Goods are to be altered from MACO UK's standard product offering in order to comply with the Requirements, the Customer shall indemnify MACO UK from and against any and all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by MACO UK in connection with any claim made against MACO UK for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with MACO UK's use of the Requirements. This condition 4.2 shall survive termination of the Contract.
- 4.3 MACO UK reserves the right to amend the specification of the Goods at any time on notice to the Customer:
- (a) if required by any applicable statutory or regulatory requirements; and/or
 - (b) as a result of MACO UK's continuous product improvement programme, provided that such modifications will be held within reasonable dimensional, weight and colour tolerances.

5. LOAN EQUIPMENT

- 5.1 Where a Quotation includes any Loan Equipment, MACO UK shall hire the same to the Customer for use at the Customer Premises, subject to these Conditions. Failure to meet Conditions will trigger an immediate right for MACO UK to repossess the equipment or invoice for the full cost of the Loan Equipment.
- 5.2 The hire of any such Loan Equipment under a Contract shall start on the date specified in the Order Confirmation and shall continue for the Hire Period unless the applicable Contract is terminated earlier in accordance with its terms.
- 5.3 The Customer shall, during the Risk Period:
- (a) ensure that the Loan Equipment is:
 - (i) kept and operated in a suitable environment;
 - (ii) used only for the purposes for which it is designed; and
 - (iii) operated in a proper manner by trained competent staff in accordance with the Manuals and any other instructions which may be given by MACO UK from time to time;
 - (b) take such steps (including compliance with all safety and usage instructions provided by MACO UK) as may be necessary to ensure, so far as is reasonably practicable, that the Loan Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - (c) instruct at its own expense the Maintenance Provider to maintain the Loan Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on delivery (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Loan Equipment;
 - (d) make no alteration to the Loan Equipment and shall not remove any existing component(s) from the Loan Equipment without the prior written consent of MACO UK unless carried out to comply with any mandatory



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modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it by the Maintenance Provider. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in MACO UK immediately upon installation;

- (e) keep MACO UK fully informed of all material matters relating to the Loan Equipment;
- (f) keep the Loan Equipment at all times at the Customer Premises and shall not move or attempt to move any part of the Loan Equipment to any other location without MACO UK's prior written consent;
- (g) permit MACO UK or its duly authorised representative to inspect the Loan Equipment at all reasonable times and for such purpose to enter upon the Customer Premises and shall grant reasonable access and facilities for such inspection;
- (h) maintain operating and maintenance records of the Loan Equipment and make copies of such records readily available to MACO UK, together with such additional information as MACO UK may reasonably require;
- (i) not, without the prior written consent of MACO UK, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Loan Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (j) not without the prior written consent of MACO UK, attach the Loan Equipment to any land or building so as to cause the Loan Equipment to become a permanent or immovable fixture on such land or building. If the Loan Equipment does become affixed to any land or building then the Loan Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Loan Equipment from any land or building and indemnify MACO UK against all losses, costs or expenses incurred as a result of such affixation or removal;
- (k) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of MACO UK in the Loan Equipment and, where the Loan Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Customer may enter such land or building and recover the Loan Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of MACO UK of any rights such person may have or acquire in the Loan Equipment and a right for MACO UK to enter onto such land or building to remove the Loan Equipment;
- (l) not suffer or permit the Loan Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Loan Equipment is so confiscated, seized or taken, the Customer shall notify MACO UK and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Loan Equipment and shall indemnify MACO UK on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (m) not use the Loan Equipment for any unlawful purpose;
- (n) ensure that at all times the Loan Equipment remains identifiable as being MACO UK's property and wherever possible shall ensure that a visible sign to that effect is attached to the Loan Equipment;
- (o) deliver up the Loan Equipment at the end of the Hire Period or on earlier termination of this agreement at such address as MACO UK requires, or if necessary allow MACO UK or its representatives access to the Customer Premises for the purpose of removing the Loan Equipment; and
- (p) not do or permit to be done anything which could invalidate the insurances referred to in condition 8.2.



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- 5.4 The Customer acknowledges that MACO UK shall not be responsible for any loss of or damage to the Loan Equipment arising out of or in connection with any negligence, misuse, mishandling of the Loan Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify MACO UK on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with these Conditions.
- 5.5 MACO UK shall comply with all mandatory English laws relating to the Loan Equipment including the Health & Safety at Work etc Act 1974.

6. DELIVERY OF GOODS AND/OR ANY LOAN EQUIPMENT

6.1 Carriage charges will be added to:

- (a) all Orders below £1,500.00 in value (excluding VAT), unless expressly agreed in writing by MACO UK to the contrary;
- (b) all Orders in excess of £1,500.00 in value (excluding VAT) where:
 - (i) the delivery address is not in mainland UK; or
 - (ii) the delivery address is in mainland UK but the Customer specifically requests overnight or other express delivery services.

6.2 MACO UK shall ensure that:

- (a) each delivery of the Goods and/or any Loan Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and MACO UK reference numbers, the type and quantity of the Goods and/or any Loan Equipment (including the code number(s) of the same, where applicable), special storage instructions (if any) and, if the Goods and/or any Loan Equipment are being delivered by instalments, the outstanding balance of Goods and/or any Loan Equipment remaining to be delivered; and
- (b) if MACO UK requires the Customer to return any packaging materials to MACO UK, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as MACO UK shall reasonably request. Returns of packaging materials shall be at MACO UK's expense.

6.3 Subject to condition 6.4, MACO UK shall deliver the Goods and/or any Loan Equipment to the location set out in the Order Confirmation or such other location as the parties may agree ("**Delivery Location**") at any time after MACO UK notifies the Customer that the Goods and/or any Loan Equipment are ready.

6.4 MACO UK shall use its reasonable endeavours to deliver the Goods and/or any Loan Equipment as near as reasonably possible to the Delivery Location as the relevant location permits, having regard to the type of vehicle used to deliver the Goods and/or any Loan Equipment. For the avoidance of doubt, the Customer acknowledges that delivery may be undertaken by articulated lorry, the use of which may be restricted by the structure of the road surface, the width of the road, turning restrictions and height restrictions.

6.5 Delivery of the Goods (and any Loan Equipment) shall be completed on the Goods' and/or any Loan Equipment's arrival at the Delivery Location. The Customer shall provide at its own expense the labour of unloading and stacking; such labour to be available between the hours of 8am and 6pm on the Business Day notified by MACO UK for delivery. The Customer shall unload with reasonable despatch.

6.6 Mack UK shall use its reasonable endeavours to despatch Goods and/or any Loan Equipment on any date quoted within the Order Confirmation. However, any such dates are approximate only, and the time of delivery is not of the essence.



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- 6.7 If the Customer fails to accept delivery of the Goods within 3 Business Days of MACO UK notifying the Customer that the Goods and/or any Loan Equipment are ready, then, except where such failure or delay is caused by a Force Majeure Event or MACO UK's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods and/or any Loan Equipment shall be deemed to have been completed at 9.00 am on the 3rd Business Day after the day on which MACO UK notified the Customer that the Goods and/or any Loan Equipment were ready; and
 - (b) MACO UK shall store the Goods and/or any Loan Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 6.8 If 10 Business Days after the day on which MACO UK notified the Customer that the Goods and/or any Loan Equipment were ready for delivery the Customer has not accepted delivery of them, MACO UK may resell or otherwise dispose of part or all of the Goods and/or any Loan Equipment and charge the Customer for any shortfall below the price of the Goods and/or any Loan Equipment.
- 6.9 MACO UK may deliver the Goods and/or any Loan Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.10 On delivery, the Customer shall undertake a brief inspection of the Goods and/or any Loan Equipment to determine whether any shortage exists and/or any damage to any Goods and/or any Loan Equipment is evident. The Customer shall note any claim for short delivery and/or for damage to the Goods and/or any Loan Equipment on the delivery schedule at the time of delivery and shall confirm such claims in writing to MACO UK within 3 Business Days of delivery. Compliance with this requirement shall be a condition precedent to any claim for short delivery and/or damage to any Goods and/or any Loan Equipment.
- 6.11 Unless otherwise agreed by MACO UK and contained within the Order Confirmation, the Goods and/or any Loan Equipment shall be delivered in MACO UK's standard packaging.

7. QUALITY

- 7.1 MACO UK warrants that on delivery, and for a period of 18 months from the date of delivery ("**Warranty Period**"), the Goods shall:
- (a) conform in all material respects with the description set out in the Quotation (as may be varied by the Order Confirmation), which may include variation from MACO UK's standard product range in order to comply with the Design Requirements;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979),
- and any failure to comply with any of the above warranties shall constitute a "**Defect**". Except as provided in this condition 7, MACO UK shall have no liability to the Customer in respect of any Defect. Except as expressly set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.2 On delivery of any Goods or within a reasonable time following delivery of any Goods (which shall, in any event, be no greater than 5 Business Days), the Customer shall undertake a thorough and comprehensive inspection of such Goods to determine whether any Defect exists ("**Customer Full Inspection**"). Any Defect which was (or should have been) apparent to a competent individual performing the Customer Full Inspection shall constitute a "**Full Inspection Defect**".
- 7.3 Subject to condition 7.4, if:
- (a) the Customer gives notice in writing to MACO UK that some or all of the Goods suffer from Defect(s);



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- (b) MACO UK is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by MACO UK) returns such Goods to MACO UK's place of business at MACO UK's cost,

MACO UK shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

7.4 MACO UK shall not be liable for any Defect in any of the following events:

- (a) in respect of any:
 - (i) Full Inspection Defect, the Customer has failed to notify MACO UK in writing of the same no later than 10 Business Days after delivery of the Goods;
 - (ii) Defect other than a Full Inspection Defect, the Customer has failed to notify MACO UK in writing of the same no later than 10 Business Days after discovery of such Defect;
- (b) the Customer makes any further use of such Goods after giving notice in accordance with condition 7.3;
- (c) the Defect arises because the Customer failed to follow MACO UK's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (d) the Defect arises as a result of MACO UK following any Design Requirement;
- (e) the Customer alters or repairs such Goods without the written consent of MACO UK;
- (f) the Defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

7.5 These Conditions shall also apply to any repaired or replacement Goods supplied by MACO UK.

8. RISK, INSURANCE AND TITLE

8.1 Risk

- (a) The risk in the Goods and any Loan Equipment shall pass to the Customer on completion of delivery.
- (b) Any Loan Equipment shall remain at the sole risk of the Customer until expiry of the Risk Period.

8.2 Insurance

- (a) During the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances with the Insurer:
 - (i) insurance of the Loan Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as MACO UK may from time to time nominate in writing;
 - (ii) insurance for such amounts as a prudent owner or operator of the Loan Equipment would insure for, or such amount as MACO UK may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Loan Equipment; and
 - (iii) insurance against such other or further risks relating to the Loan Equipment as may be required by law, together with such other insurance as MACO UK may from time to time consider reasonably necessary and advise to the Customer.
- (b) All insurance policies procured by the Customer shall be endorsed to provide MACO UK with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon MACO UK's request name MACO UK on the policies as a loss payee in



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relation to any claim relating to any Loan Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

- (c) The Customer shall give immediate written notice to MACO UK in the event of any loss, accident or damage to any Loan Equipment or arising out of or in connection with the Customer's possession or use of the Loan Equipment.
- (d) If the Customer fails to effect or maintain any of the insurances required under this agreement, MACO UK shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- (e) The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to MACO UK and proof of premium payment to MACO UK to confirm the insurance arrangements.

8.3 Title

- (a) Any Loan Equipment shall at all times remain the property of MACO UK, and the Customer shall have no right, title or interest in or to the Loan Equipment (save the right to possession and use of the Loan Equipment as described in the Quotation (as may be varied by the Order Confirmation)).
- (b) Title to the Goods shall not pass to the Customer until MACO UK has received payment in full (in cash or cleared funds) for:
 - (i) the Design Services and/or the Goods; and
 - (ii) any other goods or services that MACO UK has supplied to the Customer in respect of which payment has become due.
- (c) In respect of: (A) Loan Equipment, during the Risk Period; and (B) Goods, until title to the same has passed to the Customer, the Customer shall:
 - (i) hold the Goods and/or Loan Equipment on a fiduciary basis as MACO UK's bailee;
 - (ii) store the Goods and/or Loan Equipment separately from all other goods held by the Customer so that they remain readily identifiable as MACO UK's property;
 - (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and/or Loan Equipment;
 - (iv) maintain the Goods and/or Loan Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (v) notify MACO UK immediately if it becomes subject to any of the events listed in condition 11.2; and
 - (vi) give MACO UK such information relating to the Goods and/or Loan Equipment as MACO UK may require from time to time,but the Customer may resell or use the Goods (but not the Loan Equipment) in the ordinary course of its business.
- (d) If the Customer becomes subject to any of the events listed in condition 11.2, or MACO UK reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy MACO UK may have, MACO UK may at any time require the Customer to deliver up any Loan Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where any Loan Equipment stored in order to recover them.
- (e) If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in condition 11.2, or MACO UK reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably



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incorporated into another product, and without limiting any other right or remedy MACO UK may have, MACO UK may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

9. PRICE AND PAYMENT

9.1 Design Services/Goods

- (a) The price of the Design Services and/or the Goods shall be the price set out in the Order Confirmation, or, if no price is quoted, the price set out in MACO UK's published price list in force as at the date of delivery.
- (b) Unless otherwise stated, all quotations and estimates assume full delivery and not delivery by instalments. MACO UK reserves the right to increase the prices for delivery by instalments where requested by the Customer.
- (c) MACO UK may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Design Services and/or the Goods to reflect any increase in the cost of the same that is due to:
 - (i) any factor beyond MACO UK's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Design Requirements; or
 - (iii) any delay caused by any instructions of the Customer or failure of the Customer to give MACO UK adequate or accurate information or instructions.

9.2 Loan Equipment

The Customer shall pay the Hire Payments to MACO UK in accordance with the payment schedule set out in the Quotation (as may be varied by the Order Confirmation).

9.3 Unless expressly stated to the contrary in the applicable Order Confirmation, the price of the Goods and/or any Loan Equipment is exclusive of the costs and charges of packaging, insurance and transport of the Goods and/or any Loan Equipment, which shall be invoiced to the Customer.

9.4 The price of the Design Services, the Goods and any Loan Equipment is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from MACO UK, pay to MACO UK such additional amounts in respect of VAT as are chargeable on the supply of the Design Services, the Goods and any Loan Equipment.

9.5 MACO UK may invoice the Customer for the Goods and/or any Loan Equipment on or at any time after the completion of delivery.

9.6 Unless expressly agreed in writing by MACO UK to the contrary, the Customer shall pay the invoice in full and in cleared funds within 30 days of the end of the month in which delivery is made. Payment shall be made through the BACS system. Time of payment is of the essence.

9.7 If the Customer fails to make any payment due to MACO UK under the Contract by the due date for payment ("**Due Date**"), then:

- (a) the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Lloyds Bank Plc's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;
- (b) MACO UK may suspend any further deliveries until payment is made;



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- (c) MACO UK may demand the return of any Loan Equipment and the Customer shall immediately delivery up the same to MACO UK; and/or
 - (d) MACO UK may treat such failure as a material breach.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against MACO UK in order to justify withholding payment of any such amount in whole or in part. MACO UK may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by MACO UK to the Customer.
- 10. **RETURN OF GOODS**
- 10.1 Goods may be returned subject to MACO UK's prior written agreement and then only if they are standard stock items in "as new" condition.
- 10.2 In respect of any return, MACO UK shall only refund the Contract price for the Goods only after the application of any and all discounts which may have been applied to such Goods (and not any carriage charges which MACO UK may have applied):
 - (a) having become satisfied that the Goods are in "as new" condition having undertaken a full inspection of the Goods after their return to MACO UK;
 - (b) after deducting:
 - (i) a 20 per cent handling fee; and
 - (ii) any carriage fees for the return of such Goods.
- 11. **CUSTOMER'S INSOLVENCY, INCAPACITY OR BREACH**
- 11.1 If the Customer becomes subject to any of the events listed in condition 11.2, or MACO UK reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to MACO UK, MACO UK may cancel or suspend the performance of the Design Services and/or all further deliveries of Goods under each and every Contract or under any other contract between the Customer and MACO UK (which may include the termination of each such contract) and demand the return of any Loan Equipment without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 11.2 For the purposes of condition 11.1, the relevant events are:
 - (a) the Customer breaches any material provision of any Contract between the Customer and MACO UK, which shall include the Customer failing to make any payment due to MACO UK under the Contract by the Due Date;
 - (b) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent



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amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- (e) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (h) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.2(a) to condition 11.2(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (l) the Customer's financial position deteriorates to such an extent that in MACO UK's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (m) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.3 On termination of a Contract for any reason:

- (a) the Customer shall immediately pay to MACO UK all of MACO UK's outstanding unpaid invoices and interest and, in respect of Design Services and/or Goods supplied but for which no invoice has been submitted, MACO UK shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return to MACO UK any Loan Equipment provided under such Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. LIMITATION OF LIABILITY & INDEMNITIES

12.1 Nothing in these Conditions shall limit or exclude MACO UK's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for MACO UK to exclude or restrict liability.

12.2 Subject to condition 12.1:



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- (a) MACO UK shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
 - (i) any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
 - (ii) any damage to the Goods, any Loan Equipment or any property of the Customer or any third party arising as a result of:
 - A inadequate site access; or
 - B careless unloading of the Goods or any Loan Equipment by the Customer;
 - (iii) any failure by the Customer to provide MACO UK with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or Loan Equipment;
 - (b) MACO UK's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 100% of the price of the Design Services, Hire or Goods (as applicable).
- 12.3 The Customer shall fully and effectively indemnify MACO UK and keep MACO UK indemnified from and against any losses, costs or expenses which MACO UK may incur whether in contract, tort or otherwise resulting from:
- (a) any claim that the Design Services, the Goods or any Loan Equipment infringe the Intellectual Property Rights of a third party as a result of MACO UK's reliance on the Design Requirements; and
 - (b) any damage to the Goods, any Loan Equipment or any property of MACO UK, the Customer or any third party arising as a result of:
 - (i) inadequate site access; or
 - (ii) careless unloading of the Goods or any Loan Equipment by the Customer.
- 12.4 If a Total Loss occurs in relation to any Loan Equipment then:
- (a) the Customer shall within twenty (20) Business Days pay to MACO UK as agreed compensation for loss, a sum equal to the market value of such Loan Equipment;
 - (b) any insurance monies received by MACO UK pursuant to condition 8.2(b) following a Total Loss shall be applied as follows:
 - (i) to settle any outstanding sums owed to MACO UK pursuant to this condition 12.4;
 - (ii) to refund to the Customer any sums paid to MACO UK pursuant to this condition 12.4; and
 - (iii) any remaining balance shall be retained by MACO UK.
13. **FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.



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14. GENERAL

14.1 Set-Off

- (a) The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against MACO UK in order to justify withholding payment of any such amount in whole or in part.
- (b) MACO UK may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by MACO UK to the Customer.

14.2 Assignment and subcontracting

- (a) MACO UK may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of MACO UK.

14.3 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax (to the following fax number: 01795 433901) or email (to the following email address: d.kilbey@macouk.net).
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 14.3(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the 2nd Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, 1 Business Day after transmission.
- (c) The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

14.4 Severance

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.5 Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.6 Third party rights

A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.7 Variation



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Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by MACO UK.

14.8 **Governing law and jurisdiction**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.