

Issued by

Macfarlane Group UK Ltd  
Siskin Parkway East  
Middlemarch Business Park  
Coventry  
CV3 4PE  
Company Number: 1630389 ("**Macfarlane**")

Edition date: 01/01/2020

## Terms and conditions of purchase

Macfarlane only purchase goods, rights and services ("**Deliverables**") on these terms and conditions ("**these Terms**"). If the Supplier accepts Macfarlane's order it will be on these Terms and no other standard terms. If the Supplier acts in a manner calculated to appear as an acceptance of Macfarlane's order, *that will act as an acceptance* and the Supplier will be bound by these Terms, regardless of any inconsistency in the Supplier's own terms. If the Supplier wishes to reject Macfarlane's order and make a counter-offer the Supplier **MUST** therefore reply to Macfarlane's order in words explicitly and clearly indicating *rejection*. Equally, if the Supplier make a counter-offer which is not clearly labelled as such (or as a rejection of Macfarlane's order) no subsequent behaviour of Macfarlane's, in accepting Performance (as defined in section 4.1), can be taken to imply any acceptance by Macfarlane of that counter-offer. These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of Macfarlane. These Terms are important and should be studied carefully.

### 1 **The Contract**

- 1.1 Macfarlane's contract with the Supplier will comprise Macfarlane's express written order, these Terms, anything else Macfarlane expressly agree under section 1.2 and any content imposed by law, but nothing else ("**the Contract**").
- 1.2 If the Supplier wants Macfarlane to accept a term of the Supplier's, or accept a particular responsibility, or if the Supplier wishes to rely on a representation Macfarlane have made, the Supplier must therefore obtain Macfarlane's express agreement to that. *That means express written agreement, signed by a director or other senior officer of Macfarlane and referring expressly to these Terms.* Macfarlane will deal with the Supplier in reliance on these Terms, so be aware that Macfarlane's acceptance of contractual performance by the Supplier does *not* imply acceptance of any terms that are different to these Terms. The Supplier will indemnify Macfarlane against any direct or indirect consequence of the Supplier's seeking to rely on any contractual terms, or any statement, understanding or representation which is not contractually agreed as set out in this section 1. For purposes of this section, written agreement can be communicated by pre-paid post, fax or e-mail, save that Macfarlane never accept small print terms communicated by fax, on grounds of uncertain legibility.
- 1.3 If any of the terms of the Contract conflict with or contradict each other those terms will override each other in the following order of priority: (1) any express written agreement from Macfarlane; (2) Macfarlane's order; (3) these Terms.
- 1.4 Macfarlane are not contractually bound until Macfarlane place a formal order and then only to the extent of the issues specifically covered by that order or in writing signed by a director of Macfarlane. Macfarlane will only be contractually bound to the Supplier when the Supplier accepts Macfarlane's order with a formal order acknowledgement in writing or (if later) when Macfarlane accept Performance (as defined in section 4.1) by the Supplier.

### 2 **Price**

- 2.1 The price of the Deliverables ("**the Price**") will be as stated in Macfarlane's order and, unless otherwise stated, will be:
- 2.1.1 exclusive of any applicable VAT (which will be payable by Macfarlane subject to receipt of a valid VAT invoice from the Supplier);
- 2.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of Deliverables to or at the delivery address, and of any duties or levies other than VAT;
- 2.1.3 payable in pounds sterling; and
- 2.1.4 fixed for the duration of the Contract.
- 2.2 Macfarlane will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by the Supplier in comparable circumstances.
- 2.3 Unless a specific agreement has been made for Tooling costs to be free of charge, the Supplier will charge Tooling at the "cost incurred" by the Supplier ("**Tooling**" is defined as any specific tooling required by the Supplier to manufacture a specific product for Macfarlane, this includes but is not limited to all print stereotypes, cutting tools and moulds). For avoidance of doubt, "costs incurred" are the invoice cost paid by the Supplier minus any rebate enjoyed by the Supplier.
- 2.4 In the event that the Supplier charge Macfarlane Tooling costs, Macfarlane reserve the right to request evidence of these costs prior to making payment.
- 2.5 If Macfarlane will be reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Deliverables ("**Follow-on Deliverables**") then the Supplier will provide those Follow-on Deliverables or procure them to be provided, for at least 60 months following full Performance (as defined in section 4.1), at fair and reasonable prices which take no advantage of Macfarlane's dependence on the Supplier for their supply.

### 3 **Payment**

- 3.1 Invoices for the Deliverables may be sent to Macfarlane on, or after, (but not before) completion of Performance (as defined in section 4.1). No sum may be invoiced more than six months late.
- 3.2 The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Macfarlane's obligation to pay the Price to the Supplier:
- Macfarlane's Purchase Order number;
  - Invoice date and number;
  - Supplier's name and address;
  - Description of the Deliverables invoiced;
  - The location and date of delivery of the goods invoiced;
  - The location and date of performance of the services invoiced;
  - The Price of the Deliverables invoiced;
  - The delivery note or worksheet number where applicable;

- The VAT payable by Macfarlane (where applicable to the transaction) stated separately from the Price; and
- The Supplier's VAT number and any other particulars required by law or regulation from time to time, and an invoice which includes each of the above particulars is hereinafter called a "**valid invoice**".

3.3 Unless otherwise stated in the order, Macfarlane will pay the Price within 65 days of the end of month in which Macfarlane receive a "valid invoice".

3.4 Macfarlane will be entitled to set off against the Price any money owed to Macfarlane by the Supplier.

#### 4 **Restrictions on the Suppliers**

4.1 In this clause, the following words and expressions shall have the following meanings:

**Business: The trade and business of the Company.**

**Company (or the Company): Macfarlane Group UK Limited, which also trades under the names Macfarlane Packaging and Macfarlane.**

**Prospective Customer:** a person, company or business who is, or has been at any time during the period of 12 months immediately preceding the Key Date, in discussions with the Company with a view to becoming a client or customer of the Company.

**Restricted Business:** any person, company or business which is in competition to a material extent with any part of the Business, as the Business was carried on the Key Date.

**Restricted Customer:** any person, company or business who is at the Key Date, or who has been at any time during the period of 12 months immediately preceding the Key Date a client or customer of, or in the habit of dealing with, the Company in respect of the Business.

**Restricted Person:** any person who is at the Key Date, or who has been at any time during the period of 12 months immediately preceding the Key Date, employed or directly or indirectly engaged by the Company in an executive, managerial, sales or technical role.

**Supplier:**

4.2 The Supplier covenants that he or she and their Connected Employees shall not:

at any time during the period of 12 months commencing on the Key Date:

**canvass, solicit or otherwise seek the custom of any Restricted Customer or Prospective Customer with a view to providing goods or services to that Restricted Customer or Prospective Customer in competition with the Business (or any part of it) as it was carried on at the Key Date; or**

**induce or attempt to induce a Restricted Customer or Prospective Customer to cease or refrain from conducting business with, or to reduce the amount of business conducted with or to vary adversely the terms upon which it conducts business with the Company; or**

at any time during the period of 12 months commencing on the Key Date, have any business dealings with a Restricted Customer or Prospective Customer in connection with the provision of goods or services to that Restricted Customer or Prospective Customer

in competition with the Business (or any part of it) as it was carried on at the Key Date;  
or

at any time during the period of 12 months commencing on the Key Date, have any business dealings with, solicit, entice or attempt to entice away any person who is at the Key Date, or has been at any time during the period of 12 months immediately preceding the Key Date, a supplier of goods or services to the Company in respect of the Business, if such dealings, solicitation or enticement causes or is reasonably likely to cause such supplier to cease supplying, or reduce its supply of goods or services to the Company, or to vary adversely the terms upon which it conducts business with the Company; or

at any time during the period of 12 months commencing on the Key Date:

**offer employment to, enter into a contract for the services of, or otherwise entice or attempt to entice away from the Company, any Restricted Person; and**

**procure or facilitate the making of any such offer or attempt by any other person in relation to a Restricted Person; or**

at any time after the Key Date, do or say anything which may be harmful to the reputation of the Company.

4.3 The covenants in clause 0 are intended for the benefit of, and shall be enforceable by, the Company and apply to actions carried out by the Supplier in any capacity, whether directly or indirectly, on a Supplier's own behalf or on behalf of, or jointly with, any other person.

**4.4 Each of the covenants in clause 0 is a separate undertaking by the Supplier in relation to himself or herself and his or her interests and shall be enforceable by the Company separately and independently of their right to enforce any one or more of the other covenants contained in that clause.**

**4.5 The parties acknowledge that the Supplier has confidential information relating to the Business and that the Company is entitled to protect the goodwill of the Business. Accordingly, each of the covenants in clause 0 is considered fair and reasonable by the parties and the Supplier acknowledges that it has taken legal advice in respect of them.**

**The obligations and liability of the Supplier under this clause 1 shall be several and extend only to any loss or damage arising out of their own breaches.**

## **5 Specifications**

5.1 If Macfarlane order *goods*, then unless otherwise stated the order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those goods, necessary to enable Macfarlane to use them for their intended purposes. If Macfarlane order *services* then, unless otherwise stated, Macfarlane's order includes the complete performance of those services including any employee instruction, manuals, explanations or certifications necessary to enable Macfarlane to benefit from them for their intended purposes. If Macfarlane order goods or services then, unless otherwise stated, Macfarlane's order includes any *legal rights* necessary to use those goods or services for their intended purposes. As for those intended purposes, see section 6.1.3. References in

these Terms to "**Performance**" are to complete performance of all the Supplier's contract obligations as described in these Terms.

- 5.2 The quantity, quality and description of the Deliverables will be as specified in Macfarlane's order and these Terms or as agreed by Macfarlane in writing, subject to which then in full accordance with the Supplier's representations (see section 6.1).
- 5.3 If Macfarlane order goods for which a sample has been provided to the Supplier the goods supplied must be to the same specification as the sample, subject to tolerances as per industry best practice. Where there is a difference in specification between the samples and the written specification, the specification will over-ride each other in the following order of priority unless expressly otherwise stated by Macfarlane in writing: (1) a sample provided by the Supplier that has been approved by a Macfarlane standard "Sample Approval Form"; (2) a full detailed specification provided by Macfarlane; (3) a sample provided by Macfarlane to the Supplier.
- 5.4 The Deliverables shall be fit for purpose and conform to any relevant (i) British Standards, (ii) Macfarlane specifications, (iii) best industry practice and (iv) all or any statutes and subordinate legislation, all European Community regulations and directives (whether or not they have been implemented), all common law and other national or local laws, all regulations, orders, guidance notes, codes of conduct or practice, by-laws or directions and all judgments, decrees, orders, instructions, notices, requirements or awards of any court or competent authority which are legally binding ("**Legal Requirements**").
- 5.5 The Supplier shall confirm that the Deliverables are fully compliant with REACH or they do not need to comply with REACH as the chemicals provided are not included within the legislation; and that they are able, on demand, to provide Macfarlane with written evidence of REACH compliance.
- 5.6 In the event that deliverables are not fully compliant with REACH the Supplier must advise Macfarlane to this effect.
- 5.7 The Supplier shall confirm that the Deliverables are fully compliant with the Conflict Minerals legislation or they do not need to comply with the Conflict Minerals legislation as the products provided are not included within the legislation; and that they are able, on demand, to provide Macfarlane with written evidence of Conflict Materials legislation compliance.
- 5.8 In the event that deliverables are not fully compliant with the Conflict Materials legislation the Supplier must advise Macfarlane to this effect.
- 5.9 The Supplier shall confirm that the Deliverables are fully compliant with the Packaging (Essentials Requirements) Regulations 2015 (SI 2015/1640) or they do not need to comply with Packaging (Essentials Requirements) Regulations 2015 (SI 2015/1640); and that they are able, on demand, to provide Macfarlane with written evidence of Packaging (Essentials Requirements) Regulations 2015 (SI 2015/1640) compliance.
- 5.10 In the event that deliverables are not fully compliant with Packaging (Essentials Requirements) Regulations 2015 (SI 2015/1640) the Supplier must advise Macfarlane to this effect.
- 5.11 The Supplier shall confirm that the Deliverables are fully compliant with the ROHS WEEE directive and EU requirements or they do not need to comply with ROHS WEEE directive and EU requirements; and that they are able, on demand, to provide Macfarlane with written evidence of ROHS WEEE directive and EU requirements compliance.
- 5.12 In the event that deliverables are not fully compliant with ROHS WEEE directive and EU requirements, the Supplier must advise Macfarlane to this effect.
- 5.13 The Supplier has sole responsibility for complying with all Legal Requirements and specified Macfarlane Requirements concerning performance of the contract, and for ensuring that

Macfarlane can, in compliance likewise, fully utilise the Deliverables for their intended purposes. The Supplier will provide all documentation requested by Macfarlane to evidence such compliance.

- 5.14 Macfarlane will be allowed to inspect any goods during (and the Supplier's premises for) manufacture and storage so long as Macfarlane request an inspection by reasonable notice. If, as a result of the inspection, Macfarlane are not satisfied that the quality of the goods or the standards of their manufacture, storage or handling conforms with the Contract, the Supplier will take such steps as are necessary to ensure compliance. If, after that, Macfarlane are still not satisfied Macfarlane can cancel the contract without penalty.
- 5.15 If, before Performance has occurred in the relevant respect, Macfarlane notify the Supplier in writing of any change in desired specification (including as to quality and time frame) the Supplier will respond as follows. Macfarlane appreciate that a change may affect the contract price, or may even be unachievable. If the change would *reduce the Supplier's costs*, the contract price will reduce to fairly reflect that saving. If the change would *increase the Supplier's costs* the Supplier may notify Macfarlane promptly, in writing, of a proposed revision of the contract price fairly and proportionately reflecting any unavoidable such increased cost. The Supplier and Macfarlane will then use reasonable efforts to agree the revised terms in full, including the Price. If the change would for any reason be *unachievable* the Supplier may notify Macfarlane of that promptly and in writing, with reasons. Again, both parties will then use reasonable efforts to reach a mutually acceptable contract variation. Failing notice under one of the two preceding sentences Macfarlane's proposed change will be deemed to have been accepted and the contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no increase in the Price. What amounts to "prompt" notice for this purpose will depend on feasibility for the Supplier and urgency for Macfarlane, but not in any case later than 48 hours (excluding hours of days which are Saturdays, Sundays or are recognised bank holidays in England) from Macfarlane's notice of proposed change. In no event, agreed or not, will Macfarlane be liable to the Supplier in respect of any contract variation for more than a reasonable and proportionate reflection of such increased direct costs as the Supplier could not reasonably have been expected to avoid. The Price will not in any circumstance increase except with Macfarlane's express written agreement under, or referring explicitly to, this sub-section.
- 5.16 To protect Macfarlane's business Macfarlane may need, sometimes urgently, information as to precisely how the Deliverables were performed, and as to all relevant activities of any suppliers or sub-contractors of the Supplier's. The Supplier will meet any reasonable such request as soon as reasonably possible, and will keep records adequate for that purpose for at least two years after completion of Performance. Without limitation, these records must provide full traceability for all goods comprised in, or used in making, the Deliverables which are in any respect safety-critical. They must also demonstrate compliance of the Contract work with all Legal Requirements and with all contractually binding quality and quality and performance standards.
- 5.17 The Supplier will comply with any reasonable requirements Macfarlane may have as regards the packaging and packing of any Deliverables, and as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Subject to that, the Supplier will ensure that all packaging, packing, labelling and documentation is such as to ensure full compliance with Legal Requirements throughout the scheduled delivery process.

## 6 **Delivery and risk**

- 6.1 Any goods will be delivered to, and any services performed at, the address and on the date stated in the relevant order, or else under section 5.2, during usual business hours. If no address is specified, then delivery will be at Macfarlane's usual or main UK premises.
- 6.2 If Macfarlane specify the date or delivery address after ordering, Macfarlane will give the Supplier reasonable notice of the details. Failing a date, supply will be as soon as reasonably possible.

- 6.3 The date of delivery or performance (as appropriate) of the Deliverables will be of the essence of this Contract.
- 6.4 A delivery note quoting the number of the order must accompany each delivery or consignment of goods and must be displayed prominently.
- 6.5 If services are provided a worksheet detailing services undertaken must be supplied to Macfarlane within 48 hours of completion of work.
- 6.6 Where the Deliverables are to be supplied in instalments, the Contract is still to be treated as a single contract. If the Supplier fails to deliver or perform any instalment Macfarlane may treat the whole Contract as repudiated.
- 6.7 Macfarlane may reject any of the Deliverables which are not fully in accordance with the Contract. Acceptance does not occur until Macfarlane have had a reasonable time to inspect or consider the relevant Deliverables following supply or performance (as appropriate) and, in the case of latent defect, a reasonable time after the defect becomes apparent.
- 6.8 Macfarlane will not be bound to return to the Supplier any packaging or packing material, but if any relevant requirement for packaging recycling applies, the Supplier will take materials back free of charge on request.
- 6.9 If any of the Deliverables are not supplied on or by the agreed date then (save where Macfarlane has caused the delay), in addition to any other remedies available to Macfarlane, Macfarlane will be entitled to deduct 1% of the overall contract price for those Deliverables, for every week's delay.
- 6.10 Risk of damage to or loss of any goods passes to Macfarlane on delivery to Macfarlane's premises.
- 6.11 For avoidance of doubt, risk of damage to or loss of any goods delivered directly by the Supplier to Macfarlane's customer passes from the Supplier to Macfarlane's customer on delivery. Macfarlane will not be responsible for loss or damage to these goods at any time.
- 6.12 Property, title and ownership of any goods will pass to Macfarlane on delivery unless Macfarlane have paid in whole or in part for the goods in advance. In that case it will pass to Macfarlane as soon as the goods have (or, if goods are being assembled for Macfarlane, each successive component of the goods has) been appropriated to the contract.
- 6.13 In the event that Macfarlane have made any payment towards Tooling costs, then property, title and ownership will pass to Macfarlane on payment. For avoidance of doubt all Tooling must be stored at the Suppliers premises and maintained in good condition unless otherwise requested by Macfarlane. Risk of damage to or loss of any Tooling remains the Supplier's responsibility at all times whilst on the Supplier's premises, in transit or in possession of the Supplier's sub-contractors.
- 6.14 If Macfarlane supply any articles to the Supplier, e.g. for modification or copying, they remain Macfarlane's property at all times. Those articles must be kept strictly confidential and secure and Macfarlane can enter the Supplier's premises at any time on reasonable notice to ensure that this is so. While those articles are in the Supplier's custody the Supplier must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of Macfarlane's contract. Macfarlane retain copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which Macfarlane supply to the Supplier. The Supplier must indemnify Macfarlane against any direct or indirect loss caused to Macfarlane, and account to Macfarlane for any profit which the Supplier make, through breach of this provision.

- 6.15 If any Performance occurs on Macfarlane's premises this sub-section will apply. The Supplier will ensure that best industry standards are adopted for the health and safety both of the Supplier's personnel and of any other individuals affected by the Supplier's actions. Macfarlane may refuse or terminate access to any individual whom Macfarlane reasonably consider undesirable to have on Macfarlane's premises. The Supplier's personnel must, while on Macfarlane's premises, comply with Macfarlane's reasonable requirements as to security, health and safety routines, times and areas of access, and otherwise. The Supplier will be responsible to Macfarlane on a full indemnity basis for all damage and injury caused by the Supplier's staff.
- 6.16 If the contract terms refer to terms such as F.O.B and C. & F. which bear defined meanings in the current edition of Incoterms, those defined meanings will apply unless expressly stated otherwise.
- 6.17 Any goods provided by Macfarlane to the Supplier on a free issue basis will remain Macfarlane's absolute property throughout, and will be at the Supplier's risk while the goods are, or are supposed to be, in the Supplier's possession. The Supplier are not to part with possession (save to Macfarlane) unless with Macfarlane's express prior consent.

## **7 Warranties and liability**

- 7.1 The Supplier promise that:
- 7.1.1 the quantity, quality, description and specification for the Deliverables will be those set out in Macfarlane's order, apart from which then of the best standards reasonably to be expected in the market for that kind of Deliverable; and
- 7.1.2 any goods will be free from defects in materials and workmanship; and
- 7.1.3 any Deliverables will comply with all Legal Requirements and with all normally applicable quality and performance standards, relating to their sale or supply; and
- 7.1.4 all claims made by the Supplier about any of the Deliverables, and all apparently serious claims in the Supplier's advertising and promotional material, are correct and can be relied upon; and
- 7.1.5 any services will be performed by appropriately qualified and trained personnel; and
- 7.1.6 neither the sale and supply of any Deliverable, nor its proper use by Macfarlane for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.
- 7.2 All warranties, conditions and other terms implied by Legal Requirements in Macfarlane's favour will apply to any of the Deliverables bought from the Supplier.
- 7.3 It is the Supplier's responsibility to find out from Macfarlane the purposes that Macfarlane intend the Deliverables to be put to (including any applicable deadline affecting Macfarlane). The Supplier promises that they will be suitable for those intended purposes, save only for any unsuitability which the Supplier have, as soon as might reasonably have been expected of the Supplier (and in any case before starting Performance) expressly notified to Macfarlane.
- 7.4 The Supplier will indemnify Macfarlane and keep Macfarlane indemnified immediately upon Macfarlane's written demand against any direct or indirect cost, claim, expense or liability arising from any risk for which the Supplier is responsible under the Contract.
- 7.5 If the Supplier fails to comply with any obligation under the Contract Macfarlane will be entitled, at Macfarlane's discretion, to reject any of the Deliverable and the Supplier will not be entitled to receive payment for that Deliverable.



- 7.6 If any of the Deliverables do not comply with all requirements of the Contract Macfarlane can demand that the Supplier repair them or supply replacement Deliverables within seven days or, at Macfarlane's sole discretion, Macfarlane can reject the Deliverables and demand the repayment of any sum already paid for them.
- 7.7 Macfarlane will not be liable to the Supplier for any delay or failure to perform any of Macfarlane's obligations under the Contract if the delay or failure was due to a cause beyond Macfarlane's reasonable control.
- 7.8 If any of the Deliverables were bought or obtained by the Supplier from a third party then any benefits or indemnities that the Supplier hold from that other party, in respect of those Deliverables, will be held on trust for Macfarlane.
- 7.9 The Supplier will insure themselves, and keep insured until Performance is complete, against all normal insurance risks relevant to the Supplier's work for or with Macfarlane, on terms and for amounts consistent with normal business prudence. The Supplier will demonstrate to Macfarlane the terms and currency of any such insurance on request. In the event that any of the Deliverables are sub-contracted the sub-contractor(s) must also be insured against all normal insurance risks relevant to the work undertaken.

## 8 **Rights**

- 8.1 Any rights which the Supplier are contracted under the Contract to supply must be provided to Macfarlane in accordance with sections 7.2 or 7.3 as applicable.
- 8.2 This sub-section will apply to the following types of contract right: where the contract expressly identifies particular rights as covered by it; where the rights in question are evidently not unique to Macfarlane's Deliverables (for instance the Supplier evidently supplies the same thing, in the relevant respect, to others); or if those rights evidently derive from a third party of whom the same would be true (for instance the Supplier supplies software on what the Supplier have told Macfarlane is a proprietary third party platform). In those cases Macfarlane are not to expect full ownership of those rights. The Supplier will however validly licence those rights to Macfarlane, or procure them to be validly licensed to Macfarlane, on the following terms: assignable; royalty-free; covering usage for any likely intended purpose; and free of any obligation on Macfarlane save such as Macfarlane expressly agree in the contract or as are the minimum reasonably necessary for the maintenance of the right in question.
- 8.3 This sub-section will apply to all contract rights to which section 7.2 does not. In that case the Supplier will transfer to Macfarlane, or procure to be transferred to Macfarlane, with full title guarantee the ownership of those rights to the full extent (including as to territory) that Macfarlane reasonably need them for Macfarlane's intended purposes, and to the full extent of any wider rights available to the Supplier. The Supplier will execute any documents and make any declarations reasonably required by Macfarlane, now or in future, to transfer those rights, the Supplier will not exploit those rights save for Macfarlane or with Macfarlane's written consent, and the Supplier will (to the extent not yet legally transferred) hold all such rights on trust for Macfarlane absolutely for the maximum permitted period of eighty years. Macfarlane have the Supplier's irrevocable power of attorney to execute any such documents and make any such declarations on the Supplier's behalf if the Supplier fail to do so promptly on request.
- 8.4 If the Supplier carries out any development work at Macfarlane's request and wholly or primarily at Macfarlane's expense Macfarlane will own all intellectual property rights generated by that work, and section 7.3 will apply to those rights.
- 8.5 The Supplier will do anything reasonably required by Macfarlane, during or after Performance, to perfect any transfer or licence of rights to Macfarlane under this section or to assist Macfarlane in registering or authenticating (but not at the Supplier's cost enforcing or defending) those rights.

8.6 A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 9 **Termination**

9.1 If goods have been offered by the Supplier as, or if they are, standard or stock items Macfarlane can, by notice to the Supplier, at any time up to delivery cancel Macfarlane's commitment to buy them. Any other commitment of Macfarlane's to receive and pay for the Deliverables may be cancelled by Macfarlane as follows. Macfarlane will be bound to reimburse the Supplier for all irrecoverable costs incurred, or unavoidably committed, by the Supplier up to the point of cancellation. By "costs" is meant for this purpose the direct costs to the Supplier of Performance, to an aggregate amount not exceeding 80% of the purchase price for the cancelled commitment. Macfarlane will be entitled, if Macfarlane wish it, to the benefit of the part-finished Deliverables in question.

9.2 Macfarlane may suspend Performance of, or cancel, or suspend and then at any subsequent time cancel, the Contract without any liability to the Supplier if the Supplier breach its terms, or if the Supplier's business fails.

9.3 The Supplier's business will be treated for this purpose as having failed if:

9.3.1 the Supplier makes any voluntary arrangement with the Supplier's creditors;

9.3.2 (being an individual or firm) the Supplier become bankrupt;

9.3.3 (being a company) the Supplier become subject to an administration order or go into liquidation or receivership;

9.3.4 any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security ;

9.3.5 the Supplier stop or threaten to stop carrying on business;

9.3.6 the Supplier suffer any process equivalent to any of these, in any jurisdiction; or

9.3.7 Macfarlane reasonably believe that any of the events mentioned above is about to occur and Macfarlane notify the Supplier accordingly.

9.4 Any right of cancellation or suspension under this section is additional to any rights available to Macfarlane under the Legal Requirements of any relevant jurisdiction.

## 10 **Enforcement**

10.1 The Supplier will keep strictly confidential all information which the Supplier learns about Macfarlane or Macfarlane's customers, and use that information only for the performance, in good faith, of the Contract to Macfarlane. By way of illustration only, the Supplier may not use such information to help Macfarlane's competitors, poach Macfarlane's staff or disparage Macfarlane's reputation. Where Macfarlane provides details of Macfarlane's customers to the Supplier, the Supplier may not (directly or indirectly) use this information to enable the Supplier to sell to Macfarlane's customer directly. These restrictions will apply until the fifth anniversary of the contract date, and does not apply to information which was demonstrably public knowledge at the time of usage by the Supplier.

10.2 Macfarlane's relationship with the Supplier is as independent contractors only, not as partners or as principal and agent. The Contract is non-assignable by the Supplier. It is assignable by Macfarlane only to any company of which Macfarlane is a subsidiary or which has the same holding company as Macfarlane (as subsidiary and holding company are defined in the Companies Act 2006). The Supplier may not sub-contract or delegate

Performance in whole or in part without MacFarlane's consent. When Macfarlane has consented to allow the Supplier to sub-contract, copies of each sub-contract as and when requested shall be sent by the Supplier to MacFarlane. For the avoidance of doubt, the Supplier shall be and remain primarily and directly responsible to Macfarlane for all of the Deliverables supplied by the sub-contractor.

- 10.3 The Supplier will procure that none of the Supplier's associates behave in a way which, had the behaviour been the Supplier's, would have breached the Contract. Macfarlane hold the Contract on trust for Macfarlane's and all associates of Macfarlane's, and the Contract is made for the benefit of all of them so that the Supplier will be liable for damage caused to Macfarlane's associates as well as Macfarlane's. Macfarlane's respective associates for this purpose are any parent company or ultimate controlling shareholder and any company owned by either.
- 10.4 No waiver by Macfarlane of any breach of the Contract by the Supplier will be considered as a waiver of any subsequent breach of the same or any other provision, or as a release of the provision which the Supplier breached. No delay by Macfarlane in enforcement, and no toleration shown by Macfarlane, is to imply any waiver or compromise of Macfarlane's rights.
- 10.5 If any provision of these Terms is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.
- 10.6 Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by fax then on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).
- 10.7 The contract will be governed by the law of [England], and the Supplier will submit to the non-exclusive jurisdiction of the [English] courts.

## 11 **Macfarlane Trade Marks**

- 11.1 "Macfarlane" and the "the Clansman" symbol are registered trademarks of Macfarlane. Unless Macfarlane has given its prior written consent the Supplier shall not use any of Macfarlane's trade marks (registered or otherwise). Any written consent of Macfarlane to use any trade marks shall be deemed to be under licence which Macfarlane may terminate at any time by giving prior written notice to the Supplier.

## 12 **Ethical trading**

- 12.1 The Supplier is required to comply with the following Ethical Trading Code, to ensure compliance with it by their suppliers and to establish an effective programme to ensure all of the Deliverables to Macfarlane Group comply with the requirements of this clause 11. Macfarlane may review this programme or ask for independent certification e.g. BSI 10500 for anti-bribery.
- 12.2 Employment is freely chosen
- 12.2.1 There is no forced, bonded or involuntary prison labour.
- 12.2.2 Workers are free to leave their employer after reasonable notice.
- 12.3 Freedom of association and the right to collective bargaining are respected to the extent permitted by local law.
- 12.3.1 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates and does not hinder the development of parallel means for independent and free association and bargaining

- 12.4 Working conditions are safe and hygienic
  - 12.4.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
  - 12.4.2 Workers shall receive appropriate health and safety training, and such training shall be repeated for new or reassigned workers.
  - 12.4.3 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.
  - 12.4.4 The company observing the code shall assign responsibility for health and safety to a senior management representative.
- 12.5 Child labour shall not be used
  - 12.5.1 There shall be no use of child labour which shall be exploitative or shall jeopardise the health, safety, educational development or morals of any child.
  - 12.5.2 Children and young persons under 18 shall not be employed at night or in hazardous conditions.
  - 12.5.3 These policies and procedures shall conform to the provisions of the relevant ILO standards.
- 12.6 Reasonable wages are paid
  - 12.6.1 Wages and benefits paid for a standard working week meet national legal standards.
  - 12.6.2 All workers shall be provided with written and understandable information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.
  - 12.6.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission for the worker concerned. All disciplinary measures should be recorded.
- 12.7 Working hours are not excessive
  - 12.7.1 Working hours comply with national laws and known benchmark industry standards.
- 12.8 No discrimination is practiced
  - 12.8.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, disability, gender, marital status, sexual orientation, union membership or political affiliation.
- 12.9 No harsh or inhumane treatment is allowed
  - 12.9.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.
- 12.10 No bribery or corruption is permitted
  - 12.10.1 No bribes shall be paid or accepted to give or receive business

12.10.2 The Supplier will use all reasonable endeavours to ensure their employees, associated companies, agents or suppliers do not give or receive bribes in connection with the supply of goods or services to the Macfarlane Group.

12.11 Follow good environmental practice

12.11.1 To meet all relevant national, European and International environmental laws (both statutory and common law) and regulations and to improve environmental performance by aiming to comply with international standards.

### 13 **Chain of Custody**

13.1 The Supplier must be able to demonstrate the Legal Requirements of the Chain of Custody of all products supplied to Macfarlane within a reasonable time of a request for relevant information.

13.2 In event of such a request the Supplier must make available to Macfarlane the source of all relevant raw materials and details of each link in the supply chain including but not limited to extraction, manufacture and distribution.

13.3 The Supplier is responsible for ensuring that all products supplied, constituent parts and materials comply with all criteria specified in clause 4 in these terms.