



GJ/gj

Date as Postmark

Dear Sir or Madam

Following your recent enquiry about Viyella Home collections, I am pleased to enclose an Account Application form, which should be read in conjunction with our trading Terms and Conditions overleaf. These will form the basis of our trading relationship and I would ask you to particularly note that our payment terms are strictly Net 30 Days.

It is important that you complete all relevant sections of the Account Application form, returning the signed original to us with a sample of your headed paper. If you wish, you may fax the Account Application form to us to enable us to approach your trade references sooner. However, I must emphasise that we will require the signed original prior to the establishment of any credit facilities.

Please note that the following companies do not provide trade references:

*Andrew Martin International Ltd
Cope & Timmins Ltd
Crowson Group
Designers Guild
Hunter & Hyland
Industrial Upholstery Supplies
JAB International
Jane Churchill Interiors*

*James Hare Silks
KLJM Ltd
Lyn Bowman
The Malabar Cotton Company Ltd
Monkwell
Osborne & Little plc
Pierre Frey
Porter Valmic*

*Ross Fabrics
S Ross & Co, Leeds
Sanderson & Sons
SMD Textiles
Today Interiors Ltd, Grantham
Turnell & Gigon
Voyage Decoration Ltd
Zoffany*

On receipt of your signed original Account Application form, we will set up a trading account for you which will be opened on a proforma basis until we receive satisfactory trade references. At that time, our Credit Control Department will contact you with further details of your account.

We now look forward to a mutually rewarding relationship with you.

With kind regards

Yours faithfully

George Johnston

GEORGE JOHNSTON
Divisional Sales Director

Viyella is a registered trademark. Manufactured and distributed by MacNaughton Holdings Limited
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E-mail: sales@vh-fabrics.com Web: www.vh-fabrics.com

REGISTERED IN SCOTLAND NO. 101334

Terms and Conditions

1 GENERAL

- 1.1 These Terms and Conditions govern all contracts between Macnaughton Holdings Limited (Company Number SC101334) of Tower House, Ruthvenfield Road, Inveralmond, Perth PH1 3UN or any of its subsidiaries ("Macnaughton") and the party or parties purchasing Goods and/or Services from Macnaughton ("the Buyer") for the supply of Goods and/or Services by Macnaughton to the Buyer ("Contracts") and take precedence over and exclude any terms, stipulations and conditions the Buyer may introduce, even if such terms, stipulations and conditions contain a clause similar to any clause in these Terms and Conditions. No alteration to these Terms and Conditions will be recognised as valid or binding unless specifically agreed to and confirmed in writing by Macnaughton and signed by a Director of Macnaughton. The statutory rights of the Buyer are not affected by these conditions.
- 1.2 In these Terms and Conditions, "Purchase Order" shall mean the Buyer's purchase order for Goods and "Goods" shall mean those goods manufactured and/or supplied by Macnaughton to the Buyer as specified on the Purchase Order, "Stock Cutting" shall mean a cutting from the roll of cloth from which the Goods are to be supplied, "Pattern Book" shall mean a book of Samples, "Sample" shall mean an example of the Goods, "Invoice Price" shall mean the total sum due under a Contract, "Services" shall mean tartan design and/or registration services provided by Macnaughton as set out in the Purchase Order and "Standard Carriage and Handling" means the methods of transportation of the Goods together with handling thereof as set out in Macnaughton's price list from time to time.

2 ORDERS

- 2.1 All Purchase Orders must be in writing and the Buyer is responsible for ensuring the accuracy of each Purchase Order.
- 2.2 No Purchase Order shall be binding upon Macnaughton unless specifically accepted in writing by an officer of Macnaughton or an employee having specific authority to accept such order.
- 2.3 The Buyer may not cancel, amend or defer any Purchase Order placed or any Contract unless Macnaughton has given its prior written consent. Where such consent is given, it is an express condition thereof that Macnaughton shall be reimbursed for all materials, labour and costs incurred by it prior to cancellation for the purposes of that Purchase Order or Contract as applicable together with a reasonable addition thereto for loss of profit.

3 PAYMENT TERMS

- 3.1 The Buyer shall make payment of the Invoice Price in full within 30 days of the date of invoice (the "Due Date"). Time is of the essence for such payment. Without prejudice to any other rights of Macnaughton, the Buyer may be charged interest on the whole amount unpaid at the Due Date at the rate of 2% per month.
- 3.2 In the event of payment being overdue by the Buyer, Macnaughton reserves the right to:
- suspend the credit facility referred to in clause 3.1 above, and/or
 - suspend all and any deliveries to be made under any Contract.
- 3.3 Payment shall be made in full without deduction in the invoiced currency by cash, cheque, or direct transfer into Macnaughton's bank account, details of which will be provided on request. The Buyer shall be liable for all bank charges incurred in relation to payments due by the Buyer to Macnaughton under every Contract. Where payment is by cheque, five working days should be allowed for clearance.

4 PRICES

- 4.1 All sums quoted by Macnaughton are exclusive of VAT.
- 4.2 VAT will be payable on all sums due in terms of Contracts under which Goods are delivered within the United Kingdom. VAT will be payable on Contracts where Goods are delivered or Services provided within the remainder of the European Union unless the Buyer advises Macnaughton in writing of its VAT number when submitting a Purchase Order.
- 4.3 The Buyer shall specify the method of carriage in the Purchase Order and the Buyer shall be liable for the cost thereof, and any handling charge, which shall be payable in addition to the price of the Goods and all other sums due under the Contract.
- 4.4 Macnaughton reserves the right to vary prices, costs, fees and any other sums at any time without notice. Prices, costs, fees and any other sums charged will be those ruling at the date of the Purchase Order. Macnaughton's quotations are valid for 30 days from date of issue. Macnaughton reserves the right to vary the Contract at any time to take account of any variations in labour, materials and other costs.
- 4.5 The Buyer may request delivery by any method outwith the Standard Carriage and Handling but it shall be in Macnaughton's sole discretion whether to agree to such alternative method. Where Macnaughton does so agree, it shall be a condition of such agreement that the full cost in relation thereto be met directly by the Buyer and where the price of the relevant Goods under that Contract is less than £500 or such other sum decided by Macnaughton from time to time, the Buyer will be liable for such reasonable handling charge as decided by Macnaughton.

5 INTELLECTUAL PROPERTY

- 5.1 Where Macnaughton designs Goods as part of the Services, Macnaughton shall own all intellectual property rights in such Goods unless otherwise agreed in writing between the parties. If such agreement is reached, the Buyer shall be liable for an assignment fee as set out in Macnaughton's then current price list.
- 5.2 The Buyer shall indemnify Macnaughton on demand against all costs, claims, damages and expenses arising directly or indirectly out of any breach or alleged breach of any third party intellectual property rights resulting from compliance with the Buyer's instructions, expressed or implied, including but not limited to compliance with instructions from the Buyer in relation to tartan design services to be provided by Macnaughton.

6 DELIVERY

- 6.1 Any delivery date quoted by Macnaughton verbally or in writing, is an estimate only. Time of delivery shall not be of the essence and Macnaughton shall incur no liability whatsoever in respect of any loss or damage arising as a consequence of any deviation from the timetable (if any) agreed between the Buyer and Macnaughton.
- 6.2 Delivery of the Goods shall be at the delivery address stated in the Purchase Order where delivery is via the Standard Carriage and Handling and at the point of despatch to the alternative carrier or agent where Macnaughton agrees to an alternative method of carriage and handling in terms of clause 4.5 above.
- 6.3 When the Buyer fails to accept delivery of the Goods then, Macnaughton may store the Goods wholly at the Buyer's expense until delivery can be made and the Buyer shall reimburse Macnaughton on demand in respect of all costs incurred by Macnaughton in relation thereto.
- 6.4 Where delivery is made by Macnaughton to a third party on behalf of the Buyer, the Buyer should ensure that the third party has sufficient information (eg a Stock Cutting or Sample) to ensure the correct goods have been received. Macnaughton will not be liable for Goods that have been cut, subjected to any chemical treatment or processed in any way after delivery.

7 RISK AND TITLE

- 7.1 The risk in the Goods shall pass to the Buyer on delivery or attempted delivery of the Goods in terms of clauses 6.2 and 6.3.
- 7.2 Until the Buyer has paid Macnaughton the full Invoice Price, ownership of the Goods shall not pass to the Buyer.
- 7.3 Without prejudice to clause 7.2 above, the Buyer shall be entitled to sell the Goods in the ordinary course of business on the basis that, to the extent permitted by law, the proceeds of sale shall be the property of Macnaughton. Macnaughton reserves the right to terminate the Buyer's power of sale at any time and if so terminated, the Buyer shall immediately make the Goods available for collection and shall allow Macnaughton and/or its agents to enter upon the premises where the relevant Goods are located to uplift same. The Buyer agrees to account to Macnaughton on demand in respect of such proceeds of sale.
- 7.4 If the amount received by Macnaughton on the sale of any repossessed Goods shall be less than the amount due by the Buyer, either in respect thereof or any other grounds whatsoever, such repossession shall not extinguish the Buyer's liability of either for any deficiency in the amount received by Macnaughton on such sale, or for damages in respect of any loss occasioned by Macnaughton as a result of its exercising its right hereunder.
- 7.5 The Buyer shall indemnify Macnaughton on demand, in addition to any other amount for which the Buyer may be liable, for all costs, charges, expenses (including legal costs) on a full recovery basis occasioned by such exercise by Macnaughton of its said right to repossess.

8 CONTINUITY AND MATCHING

- 8.1 Macnaughton reserves the right to withdraw Goods from its current price list without prior notice.
- 8.2 While every effort is made by Macnaughton to provide continuity of shade throughout all Goods with the same order code as set out in Macnaughton's price list, Macnaughton provides no guarantee in respect thereof.
- 8.3 Where the Buyer requires an exact shade match of Goods with the same order code as set out in Macnaughton's price list, this should be specified by the Buyer in the Purchase Order and a Stock Cutting should be requested. The Buyer will be liable for any charge rendered by Macnaughton for providing such Stock Cutting.
- 8.4 Where the Buyer has received a Stock Cutting and wishes to order further Goods from that roll of cloth, the Buyer shall provide Macnaughton with the Purchase Order for such further Goods within 14 days of receipt of the Stock Cutting and shall include Macnaughton's reference number for the Stock Cutting in such Purchase Order.
- 8.5 As Macnaughton's fabrics are manufactured principally from natural fibres and are subjected to a wide variety of mechanical processes, Macnaughton provides no guarantee in respect of the sizing of repeat patterns, checks and sets within Goods with the same order code as set out in Macnaughton's price list.

9 WARRANTIES AND LIABILITIES

- 9.1 Macnaughton shall use reasonable endeavours to ensure that all Goods are free from material defect, comply substantially with the relevant Sample and where applicable, and provided the Buyer has complied fully with clause 8.4 above, correspond with the relevant Stock Cutting.
- 9.2 Unless the Buyer notifies Macnaughton in writing within seven days of delivery of the Goods that there is a shortage of, damage to or defect in the Goods and in any case prior to cutting, subjecting the Goods to any chemical treatment or processing them in any way, the Buyer will have been deemed to have accepted the Goods. Where such notification is given timeously to Macnaughton by the Buyer, and Macnaughton finds a shortage of or damaged or defective Goods, Macnaughton shall either replace such Goods or, in its sole discretion, provide the Buyer with a reasonable discount.
- 9.3 Under no circumstances will Macnaughton be liable to the Buyer for any loss of profit or any other indirect or consequential damage, loss or injury attributable to defects in the Goods or otherwise in relation to the performance of any contract entered into between Macnaughton and the Buyer.
- 9.4 The aggregate liability of Macnaughton, howsoever arising, shall not exceed the price paid for such Goods by the Buyer, except in the case of death or personal injury caused by Macnaughton's negligence.
- 9.5 Macnaughton shall not be liable for any change in appearance, durability and performance, or for any defect or damage caused to the Goods by any treatment or process, whether mechanical or chemical, subsequent to delivery.
- 9.6 It is the Buyer's sole responsibility to ensure that Goods ordered are suitable for the purpose intended. While Macnaughton takes all reasonable care when making recommendations on usage, it provides no warranties or assurances in relation thereto and all conditions and warranties, whether expressed or implied, statutory or otherwise, and whether as to quality, condition, performance, merchantability or fitness of purpose are expressly excluded.

10 RETURNS

- 10.1 The Buyer may return such Goods to Macnaughton which comply with clause 9.1 provided:
- the prior written consent of Macnaughton is obtained;
 - the request to return such Goods is made within 30 days of delivery;
 - the Goods are not processed or tampered with in any way; and
 - the requirements of clause 10.2 below are met
- and for the avoidance of doubt, this clause 10.1 shall not apply where there is a shortage of, damage to or defect in the Goods in which case clauses 9.1 and 9.2 shall apply.
- 10.2 Where Macnaughton consents to the return of Goods in terms of clause 10.1 above, the relevant Goods will be allocated a "Return Number" by Macnaughton which should be exhibited by the Buyer on an accompanying delivery note and clearly marked on the outside of the returned parcel. Goods returned without this marking will not be accepted.
- 10.3 In respect of Goods that are returned to Macnaughton in terms of this clause 10, the Buyer will be liable for a handling charge of 20% of the price of the Goods.

11 PROMOTIONAL MATERIALS

- 11 Any promotional materials given to the Buyer on a free of charge basis remain the property of Macnaughton and shall be returned to Macnaughton by the Buyer at the Buyer's expense on demand.

12 FORCE MAJEURE

- 12.1 Macnaughton shall have the right to cancel or delay delivery or provision or to reduce the quantity of Goods delivered and/or Services provided and shall under no circumstances be responsible for failure or delay in performing or fulfilling the Contract or otherwise failing to implement its obligations to the Buyer if such a failure or delay shall be due to any cause or circumstance beyond the control of Macnaughton or for a reason attributable to the Buyer or the Buyer's customers or agents.
- 12.2 If such circumstances continue for a continuous period in excess of 90 days, Macnaughton shall be entitled but not obliged to terminate the Contract upon prior written notice to the Buyer and without any liability to the Buyer.

13 BUYER'S INDEMNITY

- 13 The Buyer shall indemnify Macnaughton on demand against all costs, claims, damages and expenses arising directly or indirectly out of the Buyer's breach of any provision of these Terms and Conditions.

14 NOTICES

- 14.1 Any notice required to be served in terms of these Terms and Conditions shall be in writing and shall be served by hand delivery, fax or first class recorded post to the address of the parties first referred to herein.
- 14.2 Any notice served in terms of clause 14.1 above shall be deemed to have been served in the case of hand delivery, upon delivery, in the case of fax, when sent and in the case of first class recorded post, 48 hours after posting.

15 GENERAL

- 15.1 The Buyer shall not assign, subcontract or otherwise transfer any of its rights or obligations under the Contract but nothing in these Conditions shall limit or restrict the ability of Macnaughton to subcontract and/or assign all or any of its obligations under the Contract.
- 15.2 No waiver by Macnaughton of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.3 If any provision of these Conditions are held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall be not affected thereby.
- 15.4 The provisions of clauses 3, 4, 5, 6.1, 6.3, 7, 8.2, 8.5, 9, 10.3 and 13 hereof will survive the expiry or earlier termination of the Contract.
- 15.5 Without prejudice to any other rights which Macnaughton may have, Macnaughton reserves the right to suspend further deliveries of Goods and further provision of Services and/or by notice in writing to the Buyer terminate the Contract if:
- The Buyer breaches any of these Terms and Conditions and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - The Buyer shall commit any act of bankruptcy, become insolvent or compound with its creditors, enter into liquidation, have a receiver or administrator appointed, enter into a trust deed for the benefit of its creditors, cease to trade or take or suffer an analogous action or proceedings under the law of any other jurisdiction.
- 15.6 The Contract shall be governed by and construed in accordance with the law of Scotland and the parties hereby prorogate the non-exclusive jurisdiction of the Scottish courts.



ACCOUNT APPLICATION

**** PLEASE ENCLOSE A SAMPLE OF YOUR HEADED PAPER ****

(1) FULL TRADING TITLE & ADDRESS OF REGISTERED OFFICE

.....
.....
..... Postcode

Tel No Fax/E-mail

Accounts Contact

(2) YOUR COMPANY REG NO VAT NO

How many years have you been trading for?

(3) NAME & ADDRESS OF PROPRIETOR OR PARTNERS (*if not a Limited Company*)

.....
.....
..... Postcode

(4) PLEASE INDICATE THE NATURE OF YOUR BUSINESS

.....

(5) NAME OF BUYER AT THIS ADDRESS

Job Title

Tel No Fax No

(*This name will be added to our mailing list to receive our literature*)

(6) INVOICE ADDRESS IF DIFFERENT FROM ABOVE

.....
.....
..... Postcode

Tel No Fax No

(7) DO YOU REQUIRE AN ORDER NUMBER ON OUR INVOICES? YES / NO

(8) IS YOUR COMPANY PART OF A LARGER GROUP? IF SO, WHICH ONE?

VIYELLA IS A REGISTERED TRADEMARK. MANUFACTURED AND DISTRIBUTED BY MACNAUGHTON HOLDINGS LIMITED

TOWER HOUSE, RUTHVENFIELD ROAD, PERTH PH1 3UN, SCOTLAND

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E-mail: sales@vh-fabrics.com Web: www.vh-fabrics.com

REGISTERED IN SCOTLAND NO. 101334

(9) BANK NAME AND ADDRESS

.....
.....
..... Postcode
Sort Code Account No

(10) PLEASE GIVE NAMES AND ADDRESSES OF TWO SUITABLE TRADE REFEREES

(a)
.....
..... Postcode
Tel No Fax No
Account No

(b)
.....
..... Postcode
Tel No Fax No
Account No

(11) PLEASE STATE AMOUNT OF MONTHLY CREDIT REQUIRED £

Our standard terms of payment are *Nett 30 Days*. Please sign below to show acceptance of this and all other terms and conditions as attached.

We duly authorise our bankers as in (9) above to provide a reference on us to Viyella Home, a division of Macnaughton Holdings Limited.

SIGNED: **DATE:**

NAME:

POSITION:

FOR OFFICE USE ONLY	
Trade Reference	(a)
	(b)
Bank Reference	