



## STANDARD TERMS AND CONDITIONS

1. APPLICATION
  - 1.1 These conditions together with the General Terms and Conditions (available on request or by visiting our website at [MacDonald's Transport - Home \(macdonaldstransport.co.za\)](http://MacDonald's Transport - Home (macdonaldstransport.co.za)) or following this link [MacDonald's Transport - General Terms and Conditions](http://MacDonald's Transport - General Terms and Conditions)) as amended from time to time shall apply to, and are incorporated into all agreements for the provision of transport, warehousing and related services by MacDonald's.
  - 1.2 Any qualification or modification of these Conditions and any other conditions that the Customer may seek to impose will not apply unless expressly accepted by MacDonald's in writing.
  - 1.3 To the extent that the National Credit Act. 34 of 2005 ("Credit Act") applies to this agreement the parties record that the credit envisaged herein is incidental credit as referenced in section 2(2)(a) of the Credit Act.
2. CONTRACT
  - 2.1 A price given by MacDonald's to the Customer by way of a quotation or otherwise, shall constitute an offer.
  - 2.2 A price may be revoked at any time by MacDonald's as all pricing is influenced by certain fixed and fluctuating costs. Any variations occurring subsequent to the date upon which the price is given, shall entitle MacDonald's to adapt the price accordingly.
  - 2.3 The Customer may accept the price verbally, in writing, or by allowing MacDonald's to commence the Services for which the price was provided.
3. RATES
  - 3.1 The rates as quoted by the MacDonald's are based on certain fixed costs as well as fluctuating costs. In the event of any upward or downward adjustments in the price of fuel, labour, toll and/or tyre prices MacDonald's has the right to adjust the rates charged to the Customer accordingly.
  - 3.2 The rates quoted are strictly net and not subject to any discounts unless otherwise agreed to in writing. If any discount is agreed in writing it shall only be allowed if payment is received by MacDonald's by the due date (as contemplated in clause 4.1.2) and shall only be calculated on the net price. All discounts will be given to the Customer as a credit on the Customer's account and as such the Customer shall remain liable for payment of the full account, but will receive a credit on its account with MacDonald's after its account have been paid in full, which shall be taken into consideration on its next account.
  - 3.3 All tax invoices will be net of VAT and accordingly VAT will be added to the Rates as quoted or agreed to.
4. PAYMENT TERMS
  - 4.1 The Customer shall make payment to MacDonald's: of the invoices delivered by MacDonald's;
    - 4.1.1 within 30 (Thirty) days from date of statement;
    - 4.1.2 in South African currency;
    - 4.1.3 free of bank and other charges, without delay, counterclaim, holding-over, set-off or deduction and shall, unless otherwise agreed in writing, be made by way of EFT into the bank account designated from time to time by MacDonald's for this purpose.
    - 4.1.4 All EFT's shall be made at such time as to reflect such payment in good and cleared funds in the designated bank account by no later than the due date.
  - 4.2 In the event of the Customer not paying the whole of the invoice by the required day the Customer shall pay interest on the amount outstanding from the date due for payment until the actual date of payment at the rate of prime plus 2% per annum, compounded monthly in arrears.
  - 4.3 So long as any payment is outstanding whether relating to the current agreement between the Customer and MacDonald's of any other agreement, MacDonald's shall have a special and general lien on any of the Customer's Goods or equipment in MacDonald's possession and MacDonald's shall be entitled to retain such Goods or equipment or any part of it and/or suspend the delivery of services on any contract until payment is made.
  - 4.4 In the event of any payment being overdue, MacDonald's reserves the right to withdraw any credit facilities granted to the Customer without further notice to such Customer. In such event the full amount outstanding by the Customer to MacDonald's shall immediately become due owing and payable. MacDonald's shall be entitled to set-off any overdue amount owed to it against any amount owed to the client by MacDonald's.
  - 4.5 A certificate signed by any Director or CFO of MacDonald's (whose appointment and authority it shall not be necessary to prove) as to the existence of any facts and, in particular, without limiting the generality of the foregoing, as to the amount of the indebtedness of the Customer to MacDonald's, shall constitute prima facie proof of such facts for any purpose and, more particularly, for the purposes of obtaining provisional sentence, default judgment or summary judgment or their equivalent in any court of competent jurisdiction, without further notice.
5. SUSPENSION OF MACDONALD'S OBLIGATIONS
  - 5.1 If any amount owed by the Customer to MacDonald's from any cause whatever, whether under this agreement or not, is not paid on due date, then,

- without prejudice to any other right which it may have, MacDonald's may-
- 5.1.1 require that all amounts then owed to it by the Customer, from any cause whatever (and whether under the agreement or not) shall immediately become due and payable;
- 5.1.2 until payment is made, suspend the carrying out of any of its then uncompleted obligations;
- 5.1.3 terminate any credit facilities granted to the customer, whether under this agreement or not.
- 6 INSURANCE
- 6.1 MacDonald's shall maintain the following insurance:
- 6.1.1 Goods in transit insurance with a limit of R2,000,000;
- 6.1.2 Third Party Liability insurance with a limit of R100,000,000; and
- 6.1.3 General Public Liability Insurance in the amount of R5,000,000.
- 7 BREACH
- If the Customer breaches any of the terms and/or conditions hereof or any other agreement with MacDonald's or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice MacDonald's rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7 days or takes steps to commence Business Rescue proceedings or is placed in Business Rescue or is placed into provisional or final liquidation or under provisional or final sequestration or if his estate is voluntarily surrendered, MacDonald's shall have the right without prejudice to any other right that it may have in law against the Customer, to:
- 7.1 cancel the credit, terms and conditions and/or any agreement and to claim such damages as it may suffer; or
- 7.2 enforce compliance with the provisions of these terms and conditions or any agreement and to claim such damages as it may suffer as a result of such breach.
- 8 OVERRIDING EFFECT
- The terms and conditions as set out in this document shall override all terms and conditions stipulated, incorporated or referred to by the Customer in any order or negotiations and shall be the only terms and conditions binding on the parties.
- 9 GOVERNING LAW
- 9.1 The rights and obligations of MacDonald's and the Customer shall be governed by the law of the Republic of South Africa and the Customer agrees to submit to the jurisdiction of the Courts of the Republic of South Africa for the determination of disputes.
- 9.2 The Customer hereby consents to the jurisdiction of the Magistrate's Court for the determination of any dispute or claim arising between MacDonald's and the Customer notwithstanding that the value of such dispute or claim may otherwise be beyond the jurisdiction of that Court, provided that this provision shall not preclude MacDonald's at its sole discretion from instituting any action in the High Court of South Africa having jurisdiction or any other Court of competent jurisdiction.
- 10 LEGAL COSTS
- The Customer shall be liable for any legal costs occasioned by MacDonald's. The expression "legal costs" herein shall include, without limiting the generality of the foregoing, all costs relating to legal expenses incurred in enforcing MacDonald's rights and recovering any amounts due. These costs shall include attorney's fees on an attorney own client scale, collection commission and tracing agents.
- 11 VARIATION
- No amendment or variation of these conditions shall be of any force or effect unless recorded in writing and signed on behalf of MacDonald's authorised signatory. No striking through of any term of condition contained herein shall be deemed to have been accepted by MacDonald's unless MacDonald's authorised representative has initialled such striking through.
- 12 RELAXATION NOT WAIVER
- No relaxation or indulgence of these conditions by MacDonald's in favour of the Customer shall be construed as a waiver of MacDonald's rights.
- 13 RIGHT TO CALL ON SECURITY
- In the event that the Customer is in default of payment or cannot be granted credit on an unsecured basis and without derogating from the terms and conditions set out herein, MacDonald's shall be entitled to call on security in the form of a bank guarantee, suretyship and/or other suitable form of security to be provided by the Customer at any time, for the due and proper performance of any of the Customers obligations hereunder, and the Customer shall be obliged to do so within 7 days (or such longer time as agreed between MacDonald's and the Customer), failing which MacDonald's shall be entitled to act in terms of clause 8.
- 14 DOMICILIUM
- The Customer chooses the address appearing on the face of this document as his *domicillium citandi et executandi* for all purposes, including the giving of all notices and serving of all Court processes. MacDonald's chooses as its *domicillium citandi et executandi* for all purposes the address of MacDonald's appearing on the face of this document.
- 15 FORCE MAJEURE
- Should MacDonald's be delayed in or prevented from making a delivery and/or rendering a service and/or executing a contract owing to force majeure, act of God or any cause whatsoever beyond MacDonald's control, MacDonald's shall not be liable for any loss or damage resulting therefrom.
- 16 DISCLOSURE OF PERSONAL INFORMATION
- 16.1 The Customer understands that the personal information given in the credit application form is to be used by MacDonald's for the purpose of assessing the Customer's credit worthiness. The Customer confirms that the information given is accurate and complete. The Customer further agrees to update the information supplied, in order to ensure the accuracy and completeness of the information given, failing which MacDonald's will not be liable as a result of any inaccuracies or lack of completeness of information. MacDonald's shall at all times comply with its obligations in terms of the Protection of Personal Information Act 4 of 2013

- 16.2 MacDonald's has the Customer's consent at all times to contact and request information from any persons, credit bureaus or business, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the amounts purchased from the suppliers per month, length of time that the Customer has dealt with such supplier, type of Goods of services purchased and manner and time of payment.
- 16.3 The Customer agrees and understands that information given in confidence to MacDonald's by a third party on the Customer will not be disclosed to the Customer.
- 16.4 The Customer hereby consents to and authorises MacDonald's at all times to furnish credit information concerning the Customer's dealings with MacDonald's to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with MacDonald's.
- 16.5 The Customer hereby irrevocably consents and acknowledge that, failure to make payment to MacDonald's may result in a credit listing at a credit reporting agency

