

# Terms and Conditions of Sale

## INTERPRETATION

1. In these terms and conditions of sale the following expressions shall unless the context otherwise requires have the following meaning:-

“Business Day”, any day except a Saturday, Sunday or public holiday on which the clearing banks in Dublin are open for business.

“Buyer”, the individual, firm, corporate entity or other person with whom the Seller contracts.

“Conditions”, the terms and conditions of sale as set out herein and all amendments and supplements thereto.

“Contract”, any contract or agreement between the Seller and the Buyer for the supply of Goods incorporating, containing or referring to these Conditions.

“Credit Terms”, the credit terms on which the Seller supplies goods to the Buyer as stipulated by the Seller from time to time.

“Goods”, the goods, products, articles, items or services or any of them or any part of them which the Buyer agrees to buy from the Seller.

“Insolvency Event”, means (a) if the Buyer is a company, where the Buyer convenes a meeting of its creditors within the meaning of Section 587 of the Companies Act 2014 or a proposal is made for a composition, scheme of arrangement with (or assignment for the benefit of) its creditors or if the Buyer is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014 or a liquidator, receiver, examiner or similar officer is appointed in respect of all or any part of the business or assets of the Buyer or a petition is presented to any Court for granting of an examination order in respect of the Buyer or any proceedings commence relating to the or potential insolvency of the Buyer; or (b) if the Buyer is an individual or a partnership, where the Buyer dies (or in the case of a partnership, one partner dies) or has a bankruptcy order made against him/her or is unable to pay his/her debts or makes an arrangement or composition with his/her creditors, or otherwise takes the benefit of any legislation for the time being in force for the relief of insolvent debtors or any proceedings commence relating to the bankruptcy of or potential bankruptcy of the Buyer.

2. Any reference to any provision of any legislation shall include any modification re-enactment or extension thereof and shall also include any subordinate legislation made from time to time under such provisions. Any reference to any provision of any legislation unless the context clearly indicates to the contrary shall be a reference to legislation of Ireland.

3. Words such as “hereunder”, “hereto”, “hereof”, and “herein” and other words commencing with “here” shall unless the context clearly indicates to the contrary refer to the whole of these Conditions and not to any particular Section or Clause thereof.

4. The section and Clause headings in these Conditions are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of these Conditions.

5. In these Conditions the use of plural shall include the singular and the use of singular shall include the plural.

6. Any reference in these Conditions shall include any corporation, association, partnership or other entity as the case may be and shall include its heirs, executors, administrators, successors, permitted transferees and assigns.

7. These Conditions shall in all respects (including the formation thereof and performance thereunder) be governed by and construed in accordance with the laws of Ireland and the parties hereto submit to the exclusive jurisdiction of the Irish Courts.

## GENERAL

8. Goods supplied by the Seller to the Buyer are supplied on these Conditions to the exclusion of all and any other terms and conditions put forward by or on behalf of the Buyer (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or any other document). No other terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract and all such conditions, terms or stipulations are excluded or extinguished to the extent that they conflict or are inconsistent with these Conditions.

9. These Conditions contain the entire agreement between the Seller and the Buyer and supersede all previous representations, arrangements, undertakings and agreements (if any) between such parties in respect of the subject matter hereof.

10. These Conditions apply to all Goods supplied by the Seller and any variation to these Conditions or representations about the Goods shall have no effect unless otherwise agreed in writing by an authorised representative of the Seller.

11. Any liability of the Seller under these Conditions shall be subject to and conditional upon the performance and observation by the Buyer of all obligations under these Conditions. Subject to these Conditions the Buyer shall not be entitled to withhold or delay payment or exercise any right of set-off whatsoever which might otherwise be available.

12. Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13. Any waiver by the Seller of any breach of, or default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14. Every delivery of Goods under the Contract shall be deemed to constitute a separate enforceable Contract to which these Conditions shall apply.

## ORDER ACCEPTANCES

15. Quotations issued by the Seller are not offers capable of acceptance so as to form a binding contract and the Seller may withdraw or modify them at any time. No order in pursuance of any quotation or otherwise shall be binding on the Seller unless and until such order is accepted by the Seller either issuing a written acknowledgement of order or delivering the goods (whichever is the earlier) or upon the Seller signing its Disclaimer Notice as applicable. Any contract made between the Seller and the Buyer shall be subject to these Conditions and no representative or agent of the Seller has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them unless such term is in writing and signed by the Seller's director of sales, operations or marketing or some other person duly authorised by the Seller so to act. These Conditions shall override and exclude all and any terms and conditions stipulated, referred to or implied by the Buyer. In the event that the Seller has not given a written acknowledgement of the Buyer's order these Conditions, provided the Buyer shall have had prior notice of them, shall nonetheless apply to the Contract.

## REPRESENTATIONS

16. Save for any instructions or guidance as to the installation or use of the Goods any description, drawing, illustration or specification contained in the Seller's catalogues, samples, price lists or advertising material is intended merely to present a general picture of the Seller's Goods and shall not form a representation or be part of the Contract.

## PRICE/PAYMENT

17. The prices shall be those set out in the Seller's current price list as at the date of the Contract. All prices quoted are exclusive of VAT and the Buyer shall pay any and all taxes, duties and other government charges payable in respect of the Goods. Price of a combined order may be subject to packing, freight, insurance, duty and any other similar charges incurred.

18. All payments which are not received when payable shall be considered overdue and remain payable by the Buyer together with interest at a rate in accordance with Clause 30 hereof at the date on which the payment is due up until the date that the Seller receives payment in cleared funds. Said interest shall accrue from the date payment is due until the date of actual payment on a daily basis before as well as after any judgment and is payable on demand. The Seller may at its discretion and without prejudice to any other remedy available, after payment has become due suspend any further deliveries of Goods due under the Contract.

19. Subject to the other provisions of these Conditions, discounts or rebates allowed by the Seller shall be agreed by the Seller with the Buyer from time to time and such discounts will be applied in a manner agreed between the Seller and the Buyer from time to time.

20. In addition to the rights and remedies on the part of the Seller set out in these Conditions, if requested by the Seller, the Buyer shall be obliged to return all order books and/or related ancillary documents and shall cease immediately to use

electronic orders and/or other agreed forms of ordering and/or any intellectual property of the Seller if in the opinion of the Seller the Buyer does not meet its Credit Terms or is otherwise in breach of these Conditions. If, for any reason, the Buyer fails to make any payment or part of any payment the Seller shall be entitled to withdraw further deliveries and to cancel the Contract without notice to the Buyer and the Buyer shall not be entitled to compensation from the Seller in respect of any such withdrawal or cancellation.

## QUANTITY TOLERANCES FOR UNDER/OVER DELIVERIES

21. Quantities are approximate and accordingly the Buyer shall accept up to plus or minus 10% of the order quantity and any such variations will be deemed to be due execution of the order.

## DIMENSIONAL TOLERANCES

22. The Goods will be supplied to the dimensional tolerances defined by the Seller.

## WARRANTIES AND LIABILITY

23. (a) The Seller warrants that it has good title to the goods and that the goods will, for a period of 12 months from the date of delivery comply with their specification and be free from defects in material and workmanship. The Seller does not warrant that the goods are fit for any particular purpose and it is the Buyer's responsibility to ensure the goods are suitable for the use(s) to which it intends to put them.

(b) The warranties in condition 23 (a) are given on condition that the Seller is not liable for a defect in the goods caused by:-

(i) fair wear and tear, wilful damage, negligence, or abnormal or unsuitable storage or working conditions of the Goods by the Buyer;

(ii) failure to follow the Seller's instructions or guidance whether oral or in writing (including but not limited to any instructions set out in the Seller's catalogue) as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(iii) the Buyer altering or repairing the Goods without the written consent of the Seller; the Buyer making further use of the Goods after giving notice in accordance with condition 23(c); or

(v) the Goods differing from their specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

(c) The Seller is not liable for a defect in the Goods unless it is notified to the Seller within 5 days of the date of delivery or, if the defect would not be apparent on reasonable inspection, of the date on which it would become apparent to a reasonable buyer.

(d) The Seller shall not be liable for damage in transit, shortage of delivery or non-delivery unless the Buyer shall have given the Seller written notice of such damage, shortage or loss, with reasonable particulars of it within 5 days of receipt of the Goods or (in the case of total loss) of receipt of the invoice or other notification of dispatch.

(e) If the Seller is liable under these warranties then (subject to condition 23 (j)) the Seller's only obligation is, at its option, to make good any shortage or non-delivery; replace or repair any Goods which are damaged or defective; or refund to the Buyer the amount paid by the Buyer for the Goods that are the subject of the claim.

(f) Except as expressly set out in these Conditions, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the Goods are excluded.

(g) The Seller is not liable to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise, for:

(i) loss or damage incurred by the Buyer as a result of third party claims; or  
(ii) indirect or consequential damage suffered by the Buyer, including, without limitation, loss of goodwill, business opportunity or anticipated savings; or  
(iii) economic losses including without limitation loss of profit.

(h) For the avoidance of doubt, subject to condition 23 (j) the entire liability of the Seller arising out of or in connection with the Goods, whether for tort (including negligence), breach of contract, breach of statutory duty, misrepresentation or otherwise, is limited to the Seller's level of insurance cover in place from time to time (currently € [ ] ) and the Buyer shall be responsible for making its own arrangements for the insurance of any excess loss.

(i) The Seller's prices are determined on the basis of the liability limits in this condition. The Buyer may by written notice to the Seller request the Seller to agree a higher limit of liability provided insurance cover can be obtained for that higher limit.

(j) Nothing in these Conditions shall operate to exclude or restrict the Seller's liability for death or personal injury resulting from negligence, or breach of the obligations arising by and pursuant to the provisions of the Sale of Goods and Supply of Services Act 1980, or for fraud/deceit.

(k) The Buyer represents to the Seller that the Buyer buys the Goods from the Seller in the course of a business of selling goods of the class ordered or for the purpose of a trade or undertaking carried on by the Buyer and that the Buyer does not deal with the Seller as a “Consumer” within the meaning of Section 3 of the Sale of Goods and Supply of Services Act, 1980.

## BUYER'S INDEMNITY

24. The Buyer shall indemnify the Seller on demand against any claim or liability in respect of any infringement of a patent or registered design, copyright or other industrial property resulting from compliance with the Buyer's instructions, express or implied, and the Buyer undertakes further to indemnify the Seller on demand for any loss, damage or expense in respect of any liability in relation to the specification or design of such goods or any similar legislation in any other country in which the Goods are supplied.

## PROPRIETARY INFORMATION

25. All information of a confidential nature which the Seller has divulged or may divulge to the Buyer and any information relating to the Seller's business, products or processes which may have come or may come into the possession of the Buyer in the course of quoting and/or carrying out the order, shall be treated by the Buyer in confidence and shall not, without the prior written consent of the Seller, be disclosed to any third parties. All and any drawings and specifications relating to the Seller's products or processes whether in visual or an electronic form (including without limitation in a magnetic or digital form) (“drawings and specifications”) shall be deemed to be confidential information and are and shall remain at all times the sole property of the Seller and must not be copied, reproduced or divulged either directly or indirectly to any other person without the prior written consent of the Seller. Neither the Buyer nor any of its agents, employees or sub-contractors will use or exploit any drawings and specifications and undertakes and covenants not to reverse engineer, develop, implement or formulate any software, methodology or approach which is similar to any of the processes or procedures embodied in the drawings and specifications of the Seller and/or in any part thereof.

## DELIVERY ARRANGEMENTS

26. (a) The Buyer shall supply delivery instructions within two days of placing an order. Unless otherwise agreed in writing by the Seller, the Buyer shall take delivery of the Goods or any instalments at the Seller's premises within 14 days after receiving notification from the Seller that such goods are ready. If the Seller agrees to deliver the Goods elsewhere the Seller shall be entitled to add to the contract price the cost of combined order all packing, freight, insurance, duty and any other similar charges. Off loading shall be at the Buyer's risk and expense. Delivery dates are estimates given in good faith but the Seller shall not be liable for any failure to deliver on these dates nor shall such failure be deemed to be a breach of the Contract. Moreover, the Seller shall be entitled to defer delivery until any monies due from the Buyer have been received.

(b) The Seller shall not be liable for any loss or damage sustained by any Goods left with the Seller, howsoever caused, and whether or not attributable to negligence on the part of the Seller or negligence or wilful default on the part of any servant or agent of the Seller.

(c) The Seller wholly reserves the right to deliver Goods in instalments. In such case each part delivery shall be deemed to constitute a separate Contract, the fulfillment or non fulfillment of which shall not affect any other part of the Contract or the Contract as a whole.

## FORCE MAJEURE

27. If the Seller is delayed or prevented from supplying goods due to strikes, lock outs, trade disputes, breakdowns, accidents, lack of supply of materials, parts or power, war, riot, civil commotion, malicious damage, fire, flood, storm, governmental requirements or other causes beyond the reasonable control of the Seller, the Seller may cancel or suspend orders placed by the Buyer without incurring any liability and shall not be in breach of contract. If such an event exceeds three months, the Seller shall promptly notify the Buyer and the Buyer may cancel the order.

## ORDERS FOR MULTIPLE GOODS

28. Notwithstanding that the Buyer may, in a single order purchase several different products, each product shall be construed as forming a separate Contract, and failure to supply any of these shall not constitute a breach of contract in respect of the other items.

## CANCELLATION OF ORDERS

29. (a) Cancellation, suspension, deferment of an order, whether in whole or part by the Buyer, cannot be accepted without the consent, in writing, of the Seller's director of sales, marketing or operations or some other person duly authorised by the Seller so to act and the Buyer will be liable forthwith for all expenditure incurred by the Seller towards the execution of that order including components already produced, raw materials and unrecovered die and tool costs, and the cost of storage. The Seller also reserves the right to claim for loss of profits in the case of cancellation.

(b) If the Buyer shall fail to make any payment when it becomes due or if an Insolvency Event shall arise or if there shall be any breach by the Buyer of any of the Conditions hereof the Seller may defer or cancel any further deliveries and treat the contract as determined but without prejudice to its right to the full purchase price for the Goods delivered and damages for any loss suffered in consequence of such determination. If, for any reason, the Buyer fails to make any payment or part of any payment the Seller shall be entitled to withdraw further deliveries and to cancel the Contract without notice to the Buyer and the Buyer shall not be entitled to compensation from the Seller in respect of any such withdrawal or cancellation.

## TERMS OF PAYMENT

30. The Seller shall be entitled to issue an invoice in respect of the Goods at any time following seven days from the date on which the Buyer takes delivery of the goods at the Seller's premises or the Seller dispatches the goods or the Buyer defaults in his obligation to give delivery instructions or to collect the Goods, and the Goods are ready for despatch, whichever shall first occur. Payment shall be made by the Buyer, net cash, not later than the last day of the month following the date of the invoice. Without prejudice to any other rights of the Seller, interest will be payable on all overdue accounts until the date of actual payment at the rate of 4% per annum above the base rate from time to time of the Seller's bankers. Time for payment will be of the essence of the Contract, notwithstanding that property in the goods has not passed to the Buyer.

## PASSING OF TITLE IN GOODS SUPPLIED

31. (a) Upon delivery of the Goods, the Buyer shall hold the Goods solely as bailee for the Seller, and the Goods shall remain the property of the Seller until such time as the Buyer shall have paid to the Seller, (i) the full purchase price of all goods supplied under the Contract and (ii) all amounts due to the Seller, the full purchase price of the Seller. Payment shall mean payment in cash, and acceptance of a cheque shall constitute conditional payment only until such cheque has been cleared and cash received. Until such time the Seller shall be entitled to recover the Goods or any part thereof, and for the purpose of exercising such rights, the Seller, its employees and agents with appropriate transport, may enter upon the Buyer's premises and any other location where the Goods are situated.

(b) The Buyer shall hold the goods as bailee and not dispose of them save as agent for the Seller except that between itself and its customer the Buyer shall act as principal.

(c) The Goods must be clearly identified as being the Seller's goods and set aside by the Buyer until such time as the Goods are sold or used.

(d) The Buyer shall maintain appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to it. In the event of any loss or damage occurring while the Goods remain the property of the Seller, the Buyer shall, immediately on receipt of the insurance monies, remit to the Seller, the full purchase price of the Goods lost or damaged, less any part thereof which has already been paid, and until it has been remitted, shall hold such an amount as trustee and agent for the Seller in a separate designated account.

(e) The Buyer's licence to use or resell the Goods shall be terminable forthwith at any time upon notice by the Seller to the Buyer and shall automatically terminate in circumstances where an Insolvency Event of the Buyer occurs. No termination of the Contract shall prejudice, limit or extinguish the Seller's rights under this clause.

## RISK

32. The risk in the Goods shall pass to the Buyer on the date on which the Seller makes the goods available for delivery under clause 26 (whether or not the Buyer actually takes delivery).

33. The Buyer's right to possession of the Goods shall terminate immediately if:

- An Insolvency Event occurs, or is threatened or pending, in respect of the Buyer;
- The Buyer encumbers or in any way charges, or threatens to encumber or charge, any of the Goods; or
- The Buyer fails, or threatens to fail, to observe/perform any of his/its obligations under these Conditions.

34. The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

## ASSIGNMENT

35. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

36. The Seller may assign the Contract or any part of it to any person, firm or company without the consent of the Buyer.

## SEVERABILITY

37. If and to the extent that any provision or any part of these Conditions is illegal, void or unenforceable for any reason, then such provision or part thereof (as the case may be) shall be deemed to be severable from the remaining provisions or parts of the relevant provisions (as the case may be) all of which remaining provisions shall remain in full force and effect.

## NOTICES

38. Any notice given under a Contract or these Conditions shall be in writing and shall be served by hand, delivered or sent by registered post or fax to the other party. Any such notice shall be deemed to have been received (a) if hand delivered or sent by registered post, at the time of delivery and (b) in the case of fax, at the time of transmission. If no receipt occurs before 9.00 am on a Business Day the notice shall be deemed to have been received at 9.00 am on the day, and if deemed receipt occurs after 5.00 pm on a Business Day, or on any day which is not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day.

## DATA PROTECTION

39. Personal details provided to the Seller by the Buyer (where relevant) will only be used for the purposes of giving effect to any Contract. The information that may be provided by the Buyer to the Seller will be held in accordance with the Data Protection Acts 1988 and 2003. The collection and use of any personal information (including name, address, telephone number and email) is to better provide the Buyer with the required services. Information. The Seller may use the personal information of the Buyer in order to respond to queries or requests submitted, process orders or applications submitted, administer or otherwise carry out the Seller's obligations in relation to any Contract, anticipate and resolve problems with Goods supplied to the Buyer and/or create products or services that may meet the needs of the Buyer. To optimise the Seller's services, the Seller may wish to use personal data for direct marketing. As the Seller respects the privacy of all parties it deals with the Seller will only use personal data for this purpose when the Buyer is aware thereof and where required the Seller will request the consent of the Buyer prior to using personal data for direct marketing. Additionally, if at any time the Buyer wishes the Seller to stop using the Buyer's information for any or all of the above purposes, the Buyer can contact the Seller to advise accordingly and the Seller will stop the use of the Buyer's information for such purposes as soon as it is reasonably possible to do so. In addition, the collected personal data will (occasionally) be transferred to selected third parties, which may be located outside of the Economic European Area (“EEA”). By way of example, this may happen if any of the Seller's servers are from time to time located in a country outside of the EEA or one of the Seller's service providers is located in a country outside of the EEA. These third parties will not use personal information for any other purposes than what the Seller has agreed with them. The Seller requests those third parties to implement adequate levels of protection in order to safeguard all personal information. The Seller respects the personal information of the Buyer and therefore will take steps to ensure that all relevant privacy rights continue to be protected if there is any transfer of information outside of the EEA in this way. Except as set out herein, the Seller will not personally identify information without the permission of the Buyer unless it is legally entitled or required to do so for example, if required to do so by legal process or for the purposes of prevention of fraud or other crime) or if the Seller believes that such action is necessary to protect and/or defend its rights or property and those of other individuals or entities.