

## Midland Steel Reinforcement Supplies Limited

### Terms and Conditions for the supply of Goods and Services

The Customer's attention is particularly drawn to the provisions of clauses 2.1 (*basis of contract*), 3.2 (*status of quotation*), 3.6 (*cancellation and amendment of order*), 4.2 (*bar diameter*), 4.4 (*customer specification*), 4.5 (*supplier amendments*) 5.5 (*completion of delivery*), 5.6 (*goods carried by or on behalf of customer*) 5.7 (*failure to accept or take delivery*); 5.8 (*no right to reject delivery*), 6.1 (*risk*), 7.2 (*inspection of goods*), 7.6 (*supplier liability*), 8.4 (*deemed acceptance*), 8.6 (*time not of the essence for service performance*), 8.7 (*amendments to service specification*), 10.2 (*additional transport charges*), 10.3 (*supplier amendment*), 10.8 (*late payment interest*), 10.9 (*set-off*) 12.3 (*no liability and liability cap*), 12.4 (*effect of limitation of liability*), 12.5 (*exclusion of terms*), 13.2 (*suspension of services and further delivery of goods*), 14.2 (*no liability*), 14.3 (*termination*).

#### 1. INTERPRETATION

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

**Business Day:** a day other than a Saturday or Sunday which is not a public or bank holiday in Ireland;

**Breach of Duty:** the breach of any obligation or duty to take reasonable care or exercise reasonable skill which arises from the express or implied terms of a contract or under common law (but not any stricter duty);

**Commencement Date:** has the meaning set out in clause 3.4;

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.7;

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions;

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier;

**Debt:** the price to be paid in respect of the Goods which are resold or used in accordance with clause 6.4, which is outstanding from time to time;

**Deliverables:** the deliverables which form part of the Services (including any designs and/or detailing) as set out in the Order Acknowledgement;

**Delivery Location:** has the meaning set out in clause 5.2;

**Force Majeure Event:** has the meaning given to it in clause 14.1;

**Goods:** the goods (or any part of them) set out in the Order Acknowledgement;

**Goods Specification:** any specification for the Goods, including any relevant plans, designs or drawings, that is agreed by the Customer and the Supplier and reflected in the Order Acknowledgement;

Order: the Customer's written purchase order for the supply of Goods and/or Services from the Supplier following the Quotation;

Quotation: a quotation issued by the Supplier in response to a written enquiry from the Customer regarding Goods and/or Services;

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification;

Service Specification: the description or specification for the Services as set out in the Order Acknowledgement or as subsequently agreed in writing between the Supplier and the Customer;

Supplier: Midland Steel Reinforcement Supplies Limited (registered in Ireland with company number 354112);

Supplier's Premises: Unit 21, Bay Road Industrial Estate, Mountmellick, Co. Laois, R32 NY77 and/or National Enterprise Park, Portlaoise, Co. Laois, R32 RK6A; and

Supplier Materials: has the meaning set out in clause 9.1(h).

1.2 **Construction.** In these Conditions, unless a contrary intention is stated:

- (a) a reference to a person shall be construed as a reference to any individual, firm or company, corporation, unincorporated body, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality);
- (b) a reference to a person includes that person's legal personal representative, permitted assigns and successors;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) subject to clause 15.2, a reference to "writing" or "written" includes communication via email.

2. **BASIS OF CONTRACT**

2.1 **Basis of Contract:** these conditions apply to the contract and prevail over any terms and conditions that the customer puts forward or seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No additional terms, different terms, exclusions or modifications shall be effective against the supplier without the express written consent of an authorised officer of the supplier. The customer recognises that printed form purchase orders, invoices and other commonly used form documents relating to the performance

of any obligations hereunder may contain terms which conflict with one or more of these conditions. In case of any such conflict, unless otherwise agreed to by the supplier in writing with explicit reference to this clause, the relevant terms of these conditions shall prevail. No conduct of the supplier constitutes acceptance of any terms or conditions put forward by a customer.

- 2.2 **Entire Agreement:** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.3 **Goods and Services:** All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified herein.
- 2.4 **Waiver of Terms in Customer Documents:** Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of goods or illustrations or descriptions of services contained in the Supplier's catalogues or brochures are issued and/or published for the sole purpose of giving an approximate idea of the services and/or goods. They shall not form part of the Contract or have any contractual force.

### 3. QUOTATION, ORDER AND ORDER ACKNOWLEDGEMENT

- 3.1 **Quotation:** The Quotation shall be provided by the Supplier following a written enquiry from the Customer in respect of the Goods and/or Services.
- 3.2 **Status of Quotation:** the quotation shall not constitute an offer and is only valid for a period of five days from its date of issue (prices being subject to reconfirmation by the supplier following receipt of the order) provided that the supplier has not previously withdrawn the quotation.
- 3.3 **Status of Order:** The Order constitutes an offer by the Customer to purchase Goods and/or Services subject to these Conditions. The Customer shall be responsible for ensuring that the Order is complete and accurate in all respects and that the specifications are fit for the purpose intended.
- 3.4 **Order Acknowledgement:** The Order shall only be deemed to be accepted when the Supplier issues the Order Acknowledgement at which point and on which date the Contract shall come into existence (the "Commencement Date").
- 3.5 **Quality and Tonnage of Material:** The Customer acknowledges and accepts that where the Order Acknowledgement specifies certain quality and tonnage of material, the Customer will be obliged to buy that type and tonnage of material at the price and within the project timeline stated in the Order Acknowledgement or, if applicable, in accordance with clause 13.3(c) of these Conditions. After issuing the Order Acknowledgement, the Supplier will place an order with its suppliers for the Goods at the volume and price set out in the Order Acknowledgement and such volume and price is therefore binding on the Customer and is non-negotiable following the issue of the Order Acknowledgement by the Supplier.

3.6 **Cancellation and Amendment of Order:** once an order acknowledgement has been issued by the supplier, such order may not be cancelled or amended by the customer unless agreed in writing by the supplier provided always that the customer shall indemnify the supplier in full against all losses, including loss of revenue, loss of profit, loss of actual or anticipated profits, loss of the use of money, loss of anticipated savings, costs (including but not limited to costs of labour and materials used), damages, charges and expenses (including legal fees) incurred by the supplier as a result of the cancellation or amendment of the order.

#### 4. **GOODS**

4.1 **Goods Specification:** The Goods are described in the Goods Specification.

4.2 **Bar Diameter:** by placing an order, the customer acknowledges and agrees that where a quotation or order acknowledgment refers to b8 (bar diameter of 8mm) being provided by the supplier, b10 (bar diameter of 10mm) will be provided in its place unless otherwise specified in the quotation or order acknowledgment, or unless specifically agreed to in writing by the supplier. The supplier's making available for collection of the b10 (bar diameter of 10mm) at the delivery location in accordance with clause 5.2 shall constitute acceptance of the b10 (bar diameter 10mm) by the customer in lieu of the b8 (bar diameter of 8mm) and conformity with the contract by the supplier.

4.3 **Tolerances:** By placing an order, the Customer acknowledges and agrees that slight variances may occur in the cage diameter of Goods depending on production parameters and the Supplier shall have the right, in its absolute discretion, to change the specification of any Goods or Services at any time without incurring any obligations to the Customer or otherwise, provided that such Goods and Services comply with the relevant CARES standard.

4.4 **Customer Specification:** to the extent that goods are to be sourced or manufactured in accordance with, or have any process applied to them to accord with a goods specification supplied by the customer, the customer shall indemnify and keep indemnified the supplier against any and all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) awarded against or suffered or incurred by the supplier in connection with any claim made against the supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supplier's use of such goods specification. This clause 4 shall survive termination of the contract.

4.5 **Supplier Amendments:** at any time prior to the delivery of the goods, the supplier reserves the right to amend the goods specification or order acknowledgement, including the price of the goods stated therein, in accordance with any statutory or regulatory requirements or as a result of the availability or cost of raw materials, transport, components, labour, currency fluctuations or increase in surcharges or as a result of any change in delivery dates, quantities or specification of goods required by the customer. The supplier shall notify the customer in writing of any such amendments.

4.6 **Modified Goods:** Any Goods ordered in respect to which clause 4.2 applies or which are modified specifically for a Customer may not be returned or cancelled after the Order Acknowledgement has been issued by the Supplier.

## 5. DELIVERY OF GOODS

5.1 **Delivery Note and Return of Packaging:** The Supplier shall ensure that:

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

5.2 **Delivery Location:** The Supplier shall make the Goods available for collection by the Customer at the Supplier's Premises (the "Delivery Location").

5.3 **Collection of Goods:** The Customer is responsible for arranging transportation of the Goods from the Delivery Location to the Customer's nominated premises. At the Customer's request, as an additional service, the Supplier may arrange transportation of the Goods from the Delivery Location to the Customer's nominated premises at the Customer's expense.

5.4 **Delivery Mechanics:** Delivery of the Goods shall be completed when the Supplier has notified the Customer that the Goods are available for collection at the Delivery Location in accordance with Clause 5.2.

5.5 **Completion of Delivery:** any dates or times quoted by the supplier for the delivery of the goods are approximate only, and time is not of the essence and will not be made of the essence by notice. Any dates or times quoted by the supplier for the transportation of goods by a nominated haulier are approximate only, and time is not of the essence and will not be made of the essence by notice. The supplier shall not be liable for any delay in making the goods available for collection or for delay in transportation when the delay is caused by a force majeure event or by the customer's failure to provide the supplier with any instructions which are relevant to the delivery or the transportation of the goods.

5.6 **Goods Carried by Customer or by Haulier:** the supplier is not liable for non-delivery of the goods. All goods are carried at the risk of the customer by the customer or by a nominated haulier.

5.7 **Failure to Accept or Take Delivery:** if the customer fails to collect the goods at the supplier's premises within five business days of the supplier notifying the customer that the goods are ready for collection in accordance with clause 5.2, then, except where such failure or delay is

caused by a force majeure event or by the supplier's failure to comply with its obligations under the contract in respect of the goods:

- (a) Delivery of the goods shall be deemed to have been completed at 9.00 am on the day after the day on which the term for collecting the goods set out in clause 5.7 above expires; and
- (b) The supplier shall store the goods until delivery takes place at the sole risk and expense of the customer and will charge the customer for all related costs and expenses (including for delivery, storage and insurance); or
- (c) The supplier may resell the goods in the form ordered by the customer or in any other form, or otherwise dispose of part or all of the goods and, after deducting reasonable storage and selling costs, account to the customer for any excess over the price of the goods or charge the customer for any shortfall below the price of the goods.

5.8 **No Right to Reject Delivery:** the customer shall not be entitled to reject the goods if the supplier makes up to and including 10 per cent more or less than the quantity of goods ordered by the customer available for collection, and the customer will pay for such goods pursuant to a pro rata adjustment to the order invoice on receipt of notice from the supplier that the wrong quantity of goods was made available for collection.

5.9 **Delivery by Instalments:** The Supplier may make the Goods available for collection by instalments, which shall be invoiced and paid for separately. Any dates quoted by the Supplier for the availability of collection of Goods are estimates only and the Supplier will not be liable for the late or early availability of the Goods no matter the cause. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract. Any delay in making the Goods available for collection or any defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 6. TITLE AND RISK

6.1 **Risk:** the risk in the goods shall pass to the customer once the supplier notifies the customer that the goods are ready and available for collection in accordance with clause 5.2.

6.2 **Title:** Title to the Goods shall not pass to the Customer until the earlier of:

- (a) The supplier receiving payment in full (in cash or cleared funds) for:
  - (i) the Goods; and
  - (ii) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due; or
- (b) the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4(b).

- 6.3 **Obligations of Customer Prior to Passing of Title:** Until title to the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as bailee for the Supplier and:
- (a) store the Goods (at no cost to the Supplier) separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for the full price on the Supplier's behalf from the date of delivery (and on request the Customer will produce the policy of insurance to the Supplier);
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m); and
  - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 **Customer's Right to Resell:** Subject to clause 7.3 and clause 7.5 the Customer may resell the Goods at full market value or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent;
  - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs;
  - (c) the Customer shall itemise the Goods as a separate entry on its invoice to its customer and supply a copy of the same to the Supplier;
  - (d) any monies received by the Customer from its customer in respect of the Goods shall be held on trust solely for the Supplier pending payment to it for the Goods; and
  - (e) the Supplier may require immediate payment for the Goods or in consideration for the Supplier transferring title, the Customer shall immediately on demand assign to the Supplier the Debt and the right to seek payment of the same from its customer directly and give notice to its customer accordingly.
- 6.5 **Rights of Supplier in case of Termination Event:** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m) then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately;
  - (b) the Supplier may at any time:

- (i) require the Customer to deliver up all Goods in its possession which have not been resold; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.6 **Transfer of Title:** The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the price of such Goods to the Supplier.
- 6.7 **Recovery of Payment:** The Supplier shall be entitled to recover payment for the Goods notwithstanding that title of any of the Goods has not passed from the Supplier.
- 6.8 **Licence to Enter Premises:** The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 6.9 **Survival of Rights on Termination:** On termination or expiry of the Contract in relation to the Goods or the Services, howsoever caused, the Supplier's rights contained in this Clause 6 shall remain in full force.

## 7. **QUALITY OF GOODS**

- 7.1 **Supplier Warranty:** Subject to clause 7.3 and clause 7.5 the Supplier warrants that on delivery the Goods shall conform in all material respects with their description in the Order Acknowledgement, the Goods Specification and the relevant construction and use regulations as stated therein.
- 7.2 **Inspection of Goods:** the customer agrees to promptly inspect all goods as received. If the customer fails to give written notice within the applicable time period stated in clause 5.2, the goods will be deemed accepted and the customer will be deemed to have absolutely waived any claim for defects under clause 5.2(d) or under applicable law, to the extent permitted under such law.
- 7.3 **Remedies:** Subject to clause 7.5, if:
  - (a) the Customer gives notice in writing to the Supplier within 24 hours of delivery that some or all of the Goods do not comply with the warranty set out in clause 7.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost;

the Supplier shall, at its option, repair or replace the defective Goods, or reduce the Contract price by an amount equivalent to that proportion of the price payable in respect of the defective Goods.



7.4 **Approval of Returns:** All returns for the purposes of clause 7.3(c) must be approved in advance by the Supplier in writing. The Supplier cannot accept returned Goods without this prior authorisation.

7.5 **Conditions to Exercise Remedy:** The Supplier shall not be liable for the failure of the Goods to comply with the warranty in clause 7.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 7.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier using any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal or unsuitable working conditions or conditions of storage or use; or
- (f) the Goods differ from the Order Acknowledgement and the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

7.6 **Supplier liability:** except as provided for in this clause 7, the supplier shall have no liability to the customer in respect of the goods' failure to comply with the warranty set out in clause 7.1.

7.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 7.2.

## 8. **SUPPLY OF SERVICES**

8.1 **Service Specification:** The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

8.2 **Skill and Care:** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8.3 **Detailing Services:** Detailing services provided by the Supplier will comply with Eurocode standards under I.S. EN 1990 to I.S. EN 1999 unless otherwise agreed in writing in the Order Acknowledgment by the Supplier.

8.4 **Deemed Acceptance:** the customer shall be deemed to have accepted the services and deliverables if the customer, having received the services and deliverables, has failed to give written notice to the supplier within 48 hours of receipt, that the services and/or deliverables do not comply with the service specification in all material respects.

- 8.5 **Licence to Use Deliverables:** The Supplier grants a non-exclusive licence to the Customer to use the Deliverables in conjunction only with the Goods and/or Services provided by the Supplier. The Customer has no right to sub-licence the Deliverables.
- 8.6 **Time Not of the Essence for Service Performance:** the supplier shall use reasonable endeavours to meet any performance dates for the services specified in the order acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the services.
- 8.7 **Amendments to Service Specification:** the supplier shall have the right to make any amendments to the service specification which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the services, and the supplier shall notify the customer in writing of any such amendments.

## 9. CUSTOMER'S OBLIGATIONS

- 9.1 **Customer's Obligations:** The Customer shall:
- (a) ensure that the terms of the Order Acknowledgement and the Goods Specification and/or Service Specification are complete and accurate and all inaccuracies or instances of incompleteness are communicated to the Supplier in due course;
  - (b) co-operate with the Supplier in all matters relating to the Goods and/or Services and/or Deliverables;
  - (c) operate within agreed credit terms and limits as per any credit limit notification and terms report supplied to the Customer by the Supplier from time to time;
  - (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier in order to provide the Services and Deliverables or to deliver the Goods;
  - (e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods, Deliverables and/or Services, and shall ensure that such information is accurate in all material respects;
  - (f) prepare the Customer's premises for the supply of the Services or delivery of the Goods;
  - (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - (h) keep and maintain all materials, equipment, documents and other property of the Supplier (the "**Supplier Materials**") at the Customer's premises in safe custody at its own risk; maintain the Supplier Materials in good condition until returned to the Supplier; and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisations.

9.2 **Customer Default:** If the Supplier's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (the "**Customer Default**"):

- (a) the Supplier shall, without limiting its other rights or remedies, have the right to suspend delivery of the Goods or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 10. **CHARGES AND PAYMENT**

10.1 **Price and Tonnage:** The price for Goods and the tonnage of Goods shall be the price and tonnage set out in the Order Acknowledgement which is subject to reconfirmation by the Supplier following its inspection of schedules. The price of the Goods is exclusive of all costs and charges for packaging and insurance.

10.2 **Additional Transport Charges:** an additional transport charge shall apply:

- (a) Where the customer has requested the supplier to arrange transportation in accordance with clause 5.3. Transportation charges will depend on the characteristics of the goods and shall be agreed in writing.
- (b) Unless otherwise stated in the quotation, all cut and bent orders will incur an additional transport charge for any deliveries under fifteen (15) tonnes.
- (c) Additional charges will apply for deliveries which require a rear steering vehicle longer than 18 metres or wide loads.
- (d) where the customer has requested the supplier to arrange transportation in accordance with clause 5.3 the customer shall procure that the goods are offloaded within two hours of arrival at the delivery location. If the goods are not offloaded within two hours of the arrival of the goods at the delivery location the customer shall pay an additional demurrage charge at an hourly rate

10.3 **Supplier Amendment:** the supplier reserves the right to:

- (a) Increase the price of the goods, by giving notice to the customer at any time before delivery of the goods, in order to reflect any increase in the cost of the goods to the supplier that is due to:

- (I) Statutory or regulatory requirements;
- (II) Any factor beyond the control of the supplier or imposed on the supplier (including currency fluctuations, foreign exchange fluctuations, tariffs, taxes and duties, labour, raw materials, components, transportation and other manufacturing costs);
- (III) Any request by the customer to change the delivery date(s), quantities or types of goods ordered, or the goods specification; or
- (IV) Any delay caused by any instructions of the customer in respect of the goods or failure of the customer to give the supplier adequate or accurate information or instructions in respect of the goods.

10.4 **Invoices:** In respect of Goods, the Supplier shall invoice the Customer on or prior to delivery.

10.5 **Credit Terms:** Unless otherwise agreed in writing, the Customer shall pay each invoice submitted by the Supplier in full in cleared funds no later than upon delivery of the Goods or provision of the Services (the “**Due Date**”).

10.6 **Right to Suspend Services:** In the event of non-payment in whole or in part of any amount due from the Customer to the Supplier for the provision of the Services within five Business Days of the Due Date, the Supplier shall be entitled, by giving written notice to the Customer, to suspend the provision of the Services to the Customer until payment in full has been made by the Customer to the Supplier provided that the Supplier shall not be entitled to suspend the provision of the Services if:

- (a) the Customer has notified the Supplier in writing that it disputes a portion of such invoice in good faith; and
- (b) the Company has paid to the Supplier the undisputed portion of the invoice.

The rights of the Supplier under this clause 10.6 are in addition to the other rights under these Conditions or otherwise. The exercise by the Supplier of its rights under this clause 10.6 shall not prejudice any of its other rights under these Conditions or otherwise and will not prejudice payment by the Customer and other obligations of the Customer under these Conditions.

10.7 **VAT:** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (“**VAT**”). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.8 **Late Payment Interest:** if the customer fails to pay any amount payable to the supplier under the contract by the due date, then the customer shall pay interest on the overdue amount on demand from the due date to the date of payment in full, whether before or after any judgement, at the rate per cent per annum as may be specified from time to time pursuant to regulation 5 of

the European communities (late payment in commercial transactions) regulations 2012 (s.i. no. 580 of 2012). All such interest shall accrue from day to day and shall be compounded quarterly.

- 10.9 **Set-off:** the customer shall pay all amounts due under the contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The supplier may, without limiting its other rights or remedies, set off any amount owing to it by the customer against any amount payable by the supplier to the customer.

## 11. CONFIDENTIALITY

- 11.1 A party (the “**Receiving Party**”) shall keep in strict confidence all technical or commercial know-how, specifications, designs, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the “**Disclosing Party**”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business, its products and services including any quotation and prices which the Receiving Party is given or may obtain, including for the avoidance of doubt, all Deliverables (the “**Confidential Information**”). The Receiving Party shall only disclose such Confidential Information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Receiving Party may also disclose such of the Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. A Receiving Party shall give notice to the disclosing party of any unauthorised use, disclosure, theft or loss of Confidential Information as soon as is practicable after becoming aware of it. Clause 11 shall survive termination of the Contract.

## 12. LIMITATION OF LIABILITY

- 12.1 **Precedence:** This clause and clause 14 prevail over all other provisions of these Conditions, and set forth the entire liability of the Supplier in respect of the performance, non-performance, purported performance or delay in performance by Supplier of its obligations under the Contract; and otherwise in relation to the Contract or the entering into or performance of this Contract.

- 12.2 **Losses not Excluded:** Nothing in these Conditions shall limit or exclude the Supplier’s liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by Section 12 of the Sale of Goods Act, 1893 as amended by Section 10 of the Sale of Goods and Supply of Services Act, 1980; or
- (d) defective products under the Liability for Defective Product Act, 1991.

- 12.3 **No Liability and Liability Cap:** subject to clause 12.2:
- (a) The supplier shall under no circumstances whatsoever be responsible or liable to the customer, whether in contract, tort (including breach of duty and negligence), breach of statutory duty, or otherwise for any loss of revenue, loss of actual or anticipated profits, loss of contracts, loss of business, loss of opportunity, loss of goodwill, loss of reputation or any indirect, incidental or consequential loss or damages arising under or in connection with the contract; and
  - (b) The supplier's total liability to the customer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid (exclusive of vat) by the customer to the supplier for the goods and/or services.
- 12.4 **Effect of Limitation of Liability:** the limitation of liability under this section has effect both in relation to any liability expressly provided for under these conditions and to any liability arising by reason of the invalidity or unenforceability of any term of these conditions.
- 12.5 **Exclusion of Terms:** the terms implied by sections 13 to 15 of the sale of goods act, 1893, as amended by section 10 of the sale of goods and supply of services act, 1980 are, to the fullest extent permitted by law, excluded from the contract.
- 12.6 **Survival of Clause:** Clause 12 shall survive termination of the Contract.

### 13. TERMINATION

- 13.1 **Termination by Supplier:** Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  - (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company or limited liability partnership, is deemed unable to pay its debts within the meaning of section 570 of the Companies Act, 2014 or, being an individual, is deemed unable to pay his or her debts in full as they fall due, or being a partnership, has a partner to whom any of the foregoing apply;
  - (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than, where a company, for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, being a company, other than for the

sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

- (e) the Customer, being an individual, is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer attaches to or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within seven days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer, being a company;
- (h) the holder of a qualifying charge over the assets of the Customer, being a company, has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceedings are taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent to or similar to any of the events mentioned in clause 13.1(b) and clause 13.1(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the Customer, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

**13.2 Suspension of Services and Further Delivery of Goods:** without limiting its other rights or remedies, the supplier may suspend the supply of services or all further deliveries of goods under the contract or any other contract between the customer and the supplier if the customer: fails to pay any amount due under the contract on the due date for payment; refuses to collect or accept delivery of any goods; if the customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(m); or if the supplier reasonably believes that the customer is about to become subject to any of the events listed in clause 13.1(a) to clause 13.1(m).

**13.3 Consequences of Termination:** On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and all applicable interest;

- (b) in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on its notification to the Customer;
- (c) in respect of Goods yet to be delivered, the Supplier shall notify the Customer when such Goods are ready for collection and such collection shall be effected within six months of the termination date with payment being made by the Customer to the Supplier in full at the point of collection. If the Customer has not taken delivery or paid such sums in full within six months of the termination date, the Supplier shall be entitled to, but not obliged to, sell the Goods at such price as it can and charge the Customer for the difference between the price that would have been paid under the Contract plus storage costs plus any other costs incurred in selling the Goods to a third party less the sum actually received from the third party in respect of the Goods, or demand payment from the Customer in full if it does not sell the Goods to a third party regardless of whether or not the Customer takes delivery of the Goods. Such sum shall be immediately payable by the Customer upon demand by the Supplier and is recoverable as a debt;
- (d) the Customer shall return all of the Supplier Materials and return any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- (e) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (f) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### 14. **FORCE MAJEURE**

- 14.1 **Force Majeure Event:** For the purposes of the Contract, “**Force Majeure Event**” means an event beyond the reasonable control of the Supplier including but not limited to: (a) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party); (b) interruption or failure of a utility service or transport network; (c) act of God, flood, drought, earthquake or other natural disaster; (d) terrorist attack, war, riot, civil commotion, threat or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off diplomatic relations; (e) nuclear, chemical or biological contamination or sonic boom; (f) malicious damage, (g) compliance with any law or governmental order, rule, regulation or direction including any imposed export or import restriction, quota or prohibition or failing to be granted a licence or consent); (h) accident, collapse of buildings, breakdown of plant or machinery, explosion or fire; (i) adverse weather such as flood or storm; (j) epidemic or pandemic; or (k) default of suppliers or subcontractors.



14.2 **No liability:** in the event that the supplier suffers a force majeure event which impacts its ability to arrange to deliver the goods and/or services, the supplier shall notify the customer of such event and the likely impact. The supplier shall use its reasonable endeavours to mitigate the effect of the force majeure event, but the supplier shall not be liable to the customer as a result of any delay or failure to perform its obligations under the contract as a result of a force majeure event.

14.3 **Termination:** if the force majeure event prevents the supplier from providing any of the services and/ or delivering any of the goods for more than 12 weeks, the supplier shall, without limiting its other rights or remedies, have the right to terminate the contract immediately by giving written notice to the customer.

## 15. GENERAL

### 15.1 Assignment:

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 **Communications:** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by post or other next working day delivery service, or by commercial courier or email, save that service of any notice of any claim, dispute, termination, breach or legal proceedings in connection with any Contract shall not be made by e-mail.

15.3 **Service of Communications:** A notice or other communication shall be deemed to have been received: if delivered personally, when delivered at the address referred to in clause 15.2; if sent by post or other next working day delivery service, one day after posting, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission provided the sender has not received notice of failed or delayed delivery.

### 15.4 Severability:

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to be the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- (b) If one party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.5 **Waivers, Rights Cumulative:** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.6 **No Partnership or Agency:** Nothing in the contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.7 **Amendments:** Except as set out in these Conditions, no variation of the Contract, including the introduction of additional terms and conditions, shall be effective unless it is agreed to in writing and signed by the Supplier.
- 15.8 **Governing Law:** The Contract and any non-contractual obligations arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Ireland.
- 15.9 **Arbitration:** If a dispute cannot be resolved within 15 business days or such other longer period as may be agreed upon between the Disputing Parties, any dispute arising out of or in connection with the Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 15.10 **Injunctive Relief:** Nothing in clause 15.9 shall prevent a party from applying to a court of competent jurisdiction for injunctive relief against the other at any time or from instituting proceedings to ensure that the relevant claim falls within the relevant limitation period.
- 15.11 **Binding on Successors:** These Conditions and all of their provisions shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns.