

## CONDITIONS OF CONTRACT FOR PURCHASE OF GOODS AND/OR SERVICES

These terms and conditions are also accessible on the following Bord na Móna internet page <http://www.bordnamona.ie/suppliers/supplier-terms-and-conditions/>

### 1. Definitions and interpretation

In these conditions:

“**Contract**” or “**Agreement**” means the agreement between the Purchaser and the Supplier for the purchase of the Goods and/or Services; and these conditions and the Purchase Order (including any attachments or schedules thereto) and all written Specifications referred to therein or otherwise supplied to the Supplier, and all terms and conditions implied by law, shall each be part of the Contract. Where the parties have entered into a specific formal written contract to be signed for on or behalf of both parties, the terms of that contract shall prevail in the event of, and to the extent of, any conflict with these conditions or the Purchase Order.

“**Contract Price**” or “**Price**” means the price stipulated in the Purchase Order or elsewhere in the Contract and may be in Euro or in such other currency as may be agreed to in writing by the Purchaser and the Supplier.

“**Delivery Date**” means the date for delivery of the Goods (or performance of the Services as appropriate) specified in the Purchase Order.

“**Delivery or Advice note or docket**” means a note in duplicate, which accompanies the Goods and lists and describes them (including details of date of order, quantities, size, numbers and kinds of packages) and is to be countersigned and dated by the Purchaser on receipt by and one part returned to the Supplier.

“**Goods**” means the goods and/or equipment and/or materials or any part of them to be supplied to the Purchaser under this Contract and any services ancillary or necessary thereto, as more particularly described and set out in the Purchase Order.

“**Inspecting Officer**” means any person appointed by the Purchaser for the purpose of inspecting the Goods and/or Services supplied/performed by the Supplier.

“**Invoice**” means an Invoice which is furnished by the Supplier and which complies with the requirements of condition 4 hereof.

“**Parties**” means the Purchaser and the Supplier

“**Packing note**” means a note, which is typically enclosed with the Goods and contains a list and description(s) of the Goods that are being delivered with it.

“**Personal Data**” means data relating to a living individual who is, or can be, identified either from the data or from the data in conjunction with other information that is in, or likely to come into, the possession of the person, who either alone or with others, controls the contents and use of personal data.

“**Purchaser**” means the relevant company or companies within the group of companies of which Bord na Móna plc is the holding company.

“**Purchase Order**” or “**Order**” means the Purchaser’s written order attached hereto or furnished herewith, or which refers to these conditions, issued to the Supplier in respect of the Goods and/or Services.

“**Purchaser’s People**” means the Purchaser’s officers, employees, agents, other suppliers and contractors, and their sub-suppliers and sub-contractors.

“**Relevant Contracts Tax**” and “**RCT**” means Relevant Contracts Tax within the meaning of Chapter 2 of Part 18 of the Taxes Consolidation Act 1997, as may be amended from time to time. RCT applies to payments made by a principal contractor to a subcontractor under a relevant contract, being a contract for the carrying out of, or the supply of labour for the carrying out of, relevant operations in the construction, meat processing and forestry industries.

“**Services**” means the services, and any part thereof to be performed as more particularly described in the Contract or the Order.

“**Specifications**” means the specifications, drawings and requirements (in each case, if any) referred to as described in the Purchase Order or elsewhere in the Contract.

“**Supplier**” means the firm, company or person to whom the Purchase Order is given by the Purchaser.

“**Supplier’s People**” means a person(s) assisting the Supplier in the provision of the Goods and/or Services, including officers, employees, agents and sub-suppliers and sub-contractors of any tier.

“**Taxation**” and “**Tax**” means all forms of taxation, duties, imposts and levies whether of Ireland or elsewhere, including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property tax, wealth tax, VAT, customs and other import and export duties, excise duties, vehicle registration tax, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto whether payable in Ireland or elsewhere, and any costs, interest, surcharge, penalty or fine relating to the same and any penalties chargeable for non-compliance with any statutory provisions or regulations in connection therewith and the word taxation shall be construed accordingly.

“**VAT**” means Value Added Tax within the meaning of the VAT Consolidation Act 2010, as amended from time to time.

References to the singular shall include the plural where appropriate.

Where the Supplier access these conditions and/or req. steps online on our website (<http://www.bordnamonafss.ie>), our policies concerning, “website terms of use” and “privacy” (both of which are also to be found on our website) shall apply.

### 2. Existence of the Contract

2.1. The Purchase Order (the “**Order**”) is an offer and no binding contract shall be made until acceptance of the terms of the Order by the Supplier, whether expressly by written notice or by delivery in accordance with the Specifications.

2.2. These conditions shall be incorporated in the Contract to the exclusion of the terms or conditions stipulated or referred to by the Supplier.

2.3. In the performance of this Contract, the Supplier shall be an independent contractor and shall not act as nor be an agent or employee of Bord na Móna.

2.4. Failure or delay by the Purchaser in issuing a Purchase Order shall not relieve the Supplier from its obligation to comply with these conditions, as appropriate, and, in such circumstances, the informal order of the Purchaser shall be deemed an offer (and, where applicable, deemed an Order) in the absence of the timely issue of the Purchase Order.

2.5. The Supplier and the Purchaser shall each comply with all applicable laws and regulations in relation to the formulation of the Contract and otherwise in connection with the Supply of the Goods and/or Services and with these conditions.

### 3. Price

3.1. The Contract Price(s) quoted in the Order or otherwise referred to in the Contract shall be subject to no variation except with the written consent of the Parties.

- 3.2. The Contract Prices quoted in the Order or otherwise referred to in the Contract are fully inclusive of all charges for carriage, freight, harbour dues, custom charges, import duties, packing, insurance or other charges whatsoever and no such charges shall be payable by the Purchaser.
- 3.3. All shipping and insurance costs are payable by the Supplier.
- 3.4. The unit prices appearing on the Invoices must be net of all discounts, e.g. trading discounts, as specified in the Order.
- 3.5. Subject to and in accordance with the terms herein and the Order, and the issue by the Supplier of an undisputed Invoice in a form that complies with condition 4, the Purchaser shall pay the Supplier the Contract Price together with any VAT properly chargeable thereon. The Contract Price and all prices listed on the Order (which shall be stated in euro or such other currency as is applicable) shall be stated exclusive of VAT.

#### 4. Invoices and Credit notes

- 4.1. The Supplier shall raise an Invoice in respect of each consignment of the Goods and/or Services supplied hereunder no earlier than the Delivery Date of each such consignment of Goods or on completion of each stage of the Services. Such Invoice must be printed and shall comply with the provisions of Chapter 2 of Part 9 of the VAT Consolidation Act 2010, as amended from time to time. For the avoidance of doubt, such requirements are included in the mandatory requirements for an Invoice detailed in clause 4.2 below.
- 4.2. The Invoice must contain all of the following information:
  - a) The relevant Purchase Order number;
  - b) A unique Invoice number;
  - c) The VAT registration number of the payee;
  - d) The Purchaser's name in full (both trade or business name and full legal name);
  - e) The address in full of the payee;
  - f) A contact phone number and email address of the payee;
  - g) Where registered for VAT in Ireland, the payee must show the VAT due on the Invoice, the VAT rate and the VAT amount for the quantity of the Goods and/or Services supplied;
  - h) A description of the Goods and/or Services supplied;
  - i) The weight of the Goods and commodity code, and country of origin where applicable;
  - j) The unit price in Euro where applicable or the pre-agreed currency if not euro;
  - k) Any carriage cost applicable;
  - l) The net total amount;
  - m) The total value;
  - n) Full forwarding directions, quantities, size, number and kinds of packages and Purchaser's catalogue number for each item; and
  - o) Delivery docket number.
- 4.3. Credit notes issued by the Supplier (which reduce the amount payable by the Purchaser) must state:
  - a) The full name and address of the point of contact in the Purchaser;
  - b) A reference number uniquely identifying the credit note;
  - c) The invoice number to which the credit note applies;
  - d) The date the credit note is issued;
  - e) The full name, address and VAT registration number of the Supplier issuing the credit note;
  - f) The reason for issuing the credit note;
  - g) The amount of the deduction net of VAT; the VAT rate and amount(s); and
  - h) The total value of the credit note.
- 4.4. Where a deduction is due to be made in relation to an Invoice received, no payment shall be made until a credit note meeting the requirement of clause 4.3 is received.

#### 5. Packaging and Marking

- 5.1. The Supplier shall, at its own expense, use packaging of sufficient strength to protect the goods against all transport risks. In particular, any Goods to be supplied pursuant to the Contract shall be carefully packaged and protected or bundled according to their nature, in a manner appropriate for safe and secure transit and in accordance with any Specifications or special instructions of the Purchaser, which may include a request that the Goods be palletised.
- 5.2. The Purchaser shall have no responsibility for packaging materials or cases.
- 5.3. Where Packing notes are requested by the Purchaser, these must be included in each case, box or other package, clearly stating the quantities and description of items contained in each.
- 5.4. The marking of the packaging on the Goods shall be in accordance with the Specifications of the Purchaser.

#### 6. Payments and Statements

- 6.1. Separate monthly statements containing an accurate list of all invoices rendered during the previous month and other remaining un-paid invoices must be provided by the Supplier within the first five business days of the month to the Purchaser at the address specified in the Purchase Order to ensure payment.
- 6.2. Provided an undisputed invoice has been received which is in compliance with clause 4 hereof, and a monthly statement has been received which is in compliance with clause 6.1, payment for goods conforming to the Order, the Specifications and these conditions shall be made within 45 days from the end of the month during which the goods are delivered (and, as appropriate, meet the required specifications) or the services (or relevant part thereof) are supplied, or the Invoice is received, whichever is the later unless otherwise agreed with the Supplier. Please note that the procedure for and effect of disputed Invoices is set out in clause 6.8 below.
- 6.3. If the Supplier does not receive payment for undisputed invoices in accordance with sub-condition 6.2, the Supplier shall be entitled, upon making a written claim to the Purchaser within a reasonable period after the end of the delay in payment, to receive financing charges compounded monthly on the amount unpaid during the period of the delay. This period shall be deemed to commence on the due date specified in condition 6.2. The financing charges referred to herein shall be calculated at the annual rate of interest applicable for late payment ("late payment interest") which shall be the European Central Bank main refinancing operations (fixed rate) as published by the European Central Bank on its principal website (currently <http://www.ecb.europa.eu/home/html/index.en.html>) or as may be amended from time to time) which is applicable at the due

date for payment, plus 1 percentage point and shall be payable in Euro. Accordingly, to the extent that they conflict with or are otherwise agreed and specified in this condition, each of the provisions of the Statutory Instrument 580 of 2012, European Communities (Late Payment in Commercial Transactions) Regulations 2012 which imply certain terms into a contract unless they are otherwise agreed or specified, shall not apply to this Contract.

- 6.4. The Purchaser shall be entitled to retain such percentage or part of the Price (if any) as is specified in the Order as retention monies against any defects or delays in the delivery of the Goods or Service.
- 6.5. All payments to be made by the Purchaser under this Contract are stated on a gross basis and are subject to the making of any deduction or withholding on account of Tax as is required by any applicable Laws (including, for the avoidance of doubt, Relevant Contracts Tax and professional services withholding tax, if applicable) or the practice of the Revenue Commissioners (whether such laws or practice are in force at the Contract Date or at any time in the future). The Supplier shall accept the net amount paid after deduction or withholding in discharge of the Purchaser's liability to make payment to the same extent as if the deduction or withholding had not been made.  
For the avoidance of doubt, the Purchaser will apply the provisions of:
  - a) Chapter 2 of Part 18 of the Taxes Consolidation Act 1997, if the contract is to be treated as a "relevant contract" for the purposes of Relevant Contracts Tax (and the Purchaser and Supplier acknowledge that where Relevant Contracts Tax applies, there are particular VAT provisions which apply under law and the Parties agree to comply with such provisions); and
  - b) Chapter 1 of Part 18 of the Taxes Consolidation Act 1997, to any payment that is deemed to be in respect of a professional service.
- 6.6. No payment shall be made under this Contract, if the Revenue Commissioners' value threshold is met, unless the Supplier provides to the Purchaser a current tax clearance certificate (TCC) from the Revenue Commissioners and the onus is and shall be on the Supplier to provide the Purchase with a current TCC.
- 6.7. The Supplier warrants, represents and undertakes that it has and shall maintain a valid VAT registration number and current tax clearance certificate, and that it shall continue to hold, in good standing, current issues of all such certificates for the term of the Contract and shall provide a copy thereof to the Purchaser promptly upon request, both during and after the term of the Contract.
- 6.8. If the Purchaser deems that part of or the whole of the information in the Invoice is not adequate or accurate to enable payment to be made or part or the whole of the amount of the invoice is in dispute, the Supplier will be notified in writing by the Purchaser and, at the discretion of the Purchaser, payment of the entire invoice may be withheld until the dispute is resolved and an updated and agreed invoice or credit note, if applicable, is received at which date the terms for payment set out in clause 6.2 will apply.

## 7. Delivery

- 7.1. The Supplier shall at its expense arrange for delivery to the address for delivery specified in the Purchase Order on the Delivery Date.
- 7.2. Unless otherwise agreed in writing between the Purchaser and the Supplier, Delivery Duty Paid ("DDP") having the meaning set out in the rules of the International Chamber of Commerce ("ICC") rules for the use of domestic and international trade terms 2010 (Incoterms 2010), shall apply to Goods supplied under this Contract.
- 7.3. The time of delivery shall be of the essence of the Contract. If the Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Purchaser of the earliest possible date for delivery. Notwithstanding such notice, and unless a substitute Delivery Date for the Goods and/or Services has been expressly agreed by the Purchaser in writing, the Supplier's failure to effect delivery of the Goods and/or Services on the Delivery Date (which, for the avoidance of doubt, includes failure to deliver to the address for delivery specified on the Purchase Order) shall entitle the Purchaser, without prejudice to any other remedy it may have to:
  - 7.3.1. in the case of late delivery (deduct from the Price or amount payable to the Supplier 2 per cent of the total value of the Order for each week's delay) or where the Price or payment has been paid, to charge the Supplier 2 per cent of the total value of the Order for each week's delay as liquidated damages and not as a penalty; or
  - 7.3.2. cancel the Contract in whole or in part, whereupon, if requested by the Purchaser, the Supplier shall refund any part of the Price which has been paid in respect of such Goods and/or Services and the Purchaser shall, on receipt of the refund, at the Supplier's risk and expense, return any Goods already supplied under the Contract; and/or
  - 7.3.3. (where delivery is by instalments), cancel that instalment and (at the Purchaser's option) purchase substitute Goods and/or Services elsewhere; and in each case recover from the Supplier any costs and liabilities incurred by the Purchaser (including, without limitation, the costs of any replacement Goods and/or Services).
- 7.4. Where an Order is fulfilled by partial deliveries, each partial delivery shall be deemed to constitute a separate Contract.
- 7.5. The giving of a receipt by a servant or agent of the Purchaser shall be evidence of delivery only and not of delivery in accordance with the Contract.
- 7.6. The Supplier shall supply the Purchaser in good time with any instructions or other information required to enable the Purchaser to accept delivery of and use the Goods and/or the Services.
- 7.7. Delivery Notes must be forwarded (in duplicate) with the Goods and must quote Order No., date of Order, quantities, size, number and kinds of packages and any special arrangements.
- 7.8. Notwithstanding delivery, the Purchaser shall not be deemed to have accepted any Goods and/or Services until they have been inspected and checked against the relevant Packing note (if any) and passed any acceptance or Specification tests which the Purchaser deems necessary.

## 8. Warranties

- 8.1. The Supplier warrants to the Purchaser and it is a condition of the Contract that the Goods and/or Services:
  - 8.1.1. will be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser in the Specifications or the Order or other Contract documentation;
  - 8.1.2. will comply in all respects with the Order, the Specifications and/or any sample, supplied or advised to the Purchaser and for use by the Purchaser in the ordinary course of its business;
  - 8.1.3. will comply with all statutory requirements and regulations relating to the manufacture, standards, testing, marking, packaging, packing, distribution, sale and purchase of the Goods and carrying out of the Services; and

- 8.1.4. are free from defect and fit for the purpose of the Purchaser and in this respect the Purchaser is relying on the expertise of the Supplier
- 8.2. If any Goods and/or Services do not conform to the Contract on any grounds at all including, without limitation, by reason of quality or being unfit for the purpose for which they are required by the Purchaser, then the Purchaser shall be entitled, for a period of two years after the delivery thereof, at its discretion and, without prejudice to any other remedy, to exercise either or both of the following rights:
- 8.2.1. to reject the Goods and/or Services in whole or in part; or
- 8.2.2. to permit the Supplier to replace, repair or reinstate the Goods.
- 8.3. If the Supplier shall fail to repair or replace any Goods or Services within 14 days or such other period as may be specified by the Purchaser in accordance with condition 8.2 hereof, the Purchaser shall have the right to purchase replacement Goods and/or Services from another source and any money paid by the Purchaser to the Supplier in respect of the Goods and/or Services together with any additional expenditure over and above the Price reasonably incurred by the Purchaser in obtaining replacement Goods or Services shall be paid by the Supplier to the Purchaser.
- 8.4. The warranties and remedies provided for in this condition 8 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding acceptance by the Purchaser of all or part of the Goods and/or Services in respect of which such warranties and remedies are available. If, in respect of or in connection with any warranty claim, any amount payable by the Supplier to the Purchaser is subject to Taxation, the amount to be paid by the Supplier to the Purchaser shall be such so as to ensure that the net amount retained by the Purchaser after such Taxation has been taken into account and after taking into account the benefit of any taxation saving which the Purchaser may obtain as a result of the matter which gave rise to the warranty claim is equal to the full amount which would be payable by the Supplier had the amount not been subject to Taxation.
- 9. Indemnity**
- 9.1. The Supplier shall indemnify and keep indemnified the Purchaser, its agents, employees, officers, holding companies, subsidiary companies, associated companies and assignees, in full against any liability whatsoever, including, without limitation, losses, damages, costs and expenses (including legal expenses) awarded against or incurred by the Purchaser, or actions, proceedings, costs, claims, losses whether direct or indirect which may arise against the Purchaser out of or in connection with:
- 9.1.1. any defects or deficiency in the Goods and/or Services;
- 9.1.2. any claim that the goods infringe or are alleged to infringe the rights of any third party claimed under or in connection with any patent, trade mark, registered design, copyright or breach of confidence or other intellectual property right;
- 9.1.3. any breach of any warranty given by the Supplier in relation to the Goods and/or Services;
- 9.1.4. any act or omission of the Supplier or its employees, agents or sub-contractors in performing its obligations under the Contract;
- 9.1.5. any liability under the Liability for Defective Products Act, 1991 to 2010 in respect of the Goods;
- 9.1.6. any liability/penalty imposed under the Safety Health and Welfare at Work Act 2005 or any regulations made thereunder, or any other relevant statutes; or
- 9.1.7. any delay in the delivery of the Goods and/or Services.
- 9.2. The Supplier shall, at the request of the Purchase, assign to the Purchaser the benefit of all warranties, indemnities and other covenants received by the Supplier from any third party in connection with the Goods and/or Services.
- 10. Inspection**
- 10.1. The Purchaser reserves the right the Goods or Services at the Supplier's premises prior to despatch or on delivery, or during their manufacturing, processing or supply, and/or inspect and review the performance by the Supplier of the Services or any part thereof. In that regard, the Purchaser may appoint, or avail of the Services of, an Inspecting Officer. But no such inspection or test, or failure to inspect or test, shall constitute acceptance of the Goods or Services or affect any liability of the Supplier under the Contract. Accordingly, the Inspecting Officer or his authorized representative may also examine, inspect and/or test, the Goods or any sample thereof on their delivery or during their manufacture, processing or supply. Such inspection may involve the removal of a sample of the Goods for testing at a separate testing facility and, if agreed between the Supplier and the Purchaser, the provision of a report on such testing to the Supplier at a subsequent date within 30 days of the removal of the sample. Following an inspection, the Inspecting Officer may inform the Supplier in writing (a "direction") of any areas in respect of which he/she is of the opinion that the Goods and/or Services do not comply with the Contract, and the Supplier shall take all necessary steps to ensure such compliance.
- 10.2. If the Supplier fails to comply with a Direction or commits a breach of a Direction, the Purchaser may, as independent remedies and, without prejudice to any other remedies arising at law or under the Contract, obtain from any other person such of the Goods or related services as the Supplier shall have failed to provide under the Contract and the Supplier shall pay to the Purchaser any additional fees, charges, costs and expenses which the Purchaser may thereby incur.
- 11. Documents relating to the Goods**
- 11.1. The Supplier shall supply to the Purchaser free of charge all technical drawings, service manuals, and maintenance specifications including, where required by the Purchaser, certificate of conformance of Goods, certificate of analysis and material test certificates, written in the English language, with all relevant updating documents which relate to the Goods.
- 12. Intellectual Property**
- 12.1. The Intellectual Property which the Supplier has supplied to the Purchaser in accordance with this Contract which the Supplier has created and/or developed for the purpose of performing its obligations under this contract shall remain vested in the Supplier, and the Supplier hereby grants to the Purchaser an irrevocable, unconditional, perpetual, royalty free, non-exclusive licence to copy, use, adapt and reproduce such Intellectual Property for any purposes whatsoever in connection with the Purchaser's business and such licence shall carry with it the right to grant sub-licences and shall be transferable to third parties. The Supplier hereby indemnifies and agrees to keep indemnified the Purchaser and its directors, officers, managers, employees and servants and agents from and against all loss, damages, claims, costs and expenses for which the Purchaser is or becomes

liable or which is incurred by the Purchaser as a result of any infringement, or any alleged infringement of any third party's Intellectual Property rights in respect of the supply of the Goods and/or Services to the Purchaser.

## **13. Corruption**

13.1. The Supplier shall not give, offer or agree to give, or offer, any employee, servant or agent of the Purchaser, and the Purchaser shall not accept, any gift or consideration of any kind (including, without limitation, any loan, fee, commission, reward, benefit or other payment) unless it is provided for in the Contract. Any gifts received are to be returned or donated to charity by the Purchaser. For the avoidance of doubt, an invitation issued to the Purchaser or one of the Purchaser's People to participate in any professional development or business development event or reception shall not be deemed to constitute a gift for the purposes of this condition. Modest hospitality may be accepted at the discretion of the Purchaser, but no travel or accommodation costs can be accepted. The Supplier shall not commit any offence under the Prevention of Corruption Acts, the Ethics in Public Office Act 1995 and/or the Standards in Public Office Act 2001, and any amendments thereto.

## **14. Health and Safety and Environmental Law**

14.1. The Supplier undertakes that the Goods and Services are safe and without risk to health when properly used and comply in all aspects with all relevant statutes, regulations, bye-laws and standards (including, if applicable, the CE Mark and Declaration of Conformity) in force at the date of delivery including, without prejudice to the generality of the foregoing, the Factories Act 1955, the Safety, Health and Welfare at Work Act 2005, and any regulations made thereunder, the Waste Management Acts 1996 to 2008, the Local Government (Water Pollution) Acts, 1997, the Protection of the Environment Act 2003 and any amendments or modification or re-enactment thereof for the time being in force for the time being.

## **15. Title and Risk**

15.1. Unless payment is made by the Purchaser prior to delivery, in which case title shall pass to the Purchaser when payment is made, title in the Goods shall pass to the Purchaser on delivery of the Goods to the Purchaser without prejudice to any right of rejection which the Purchaser has under the Contract. The Goods shall be delivered free of encumbrance and the Supplier acknowledges that full title in the Goods vests in and remains in the Purchaser on delivery and that the Supplier has no right, title, interest, retention or reservation of title, lien or other right of ownership whatsoever and all or any liens of any nature in respect of the Goods howsoever arising and/or reservations of title are hereby expressly excluded, and waived by the Supplier.

15.2. Until delivery, the Goods shall be at the risk of the Supplier.

15.3. Where title in the Goods has passed to the Purchaser prior to delivery, the Supplier shall keep such Goods separate from other goods and shall clearly mark the Goods as the property of the Purchaser.

## **16. Insurance**

16.1. The Supplier shall at all times insure and keep itself insured with a reputable insurance company against all insurable liability with appropriate cover under the Contract in respect of the Goods and/or Services, and without prejudice to the generality of the foregoing, against all the Supplier's liabilities under condition 9 and where an insurance policy (or policies) has been supplied to the Purchaser, any periodic updates or renewals or modifications must be furnished promptly to the Purchaser in documentary form.

## **17. Services notification and Suspension**

17.1. When such timing requirements are not specified in the Purchase Order or elsewhere in the Contract, the Purchaser shall, when it requires the Services to be provided, send the Supplier notification of when it requires the services to be provided (the Services Notice) which can be sent in written form by post or by electronic communication or by telephone communication and the Supplier shall deliver those Services in accordance with the times specified in such Services Notice.

17.2. The Purchaser may at any time and from time to time elect to postpone or suspend the carrying out of the Services or any part thereof by giving the Supplier written notice to that effect and immediately upon such notification of such election the Supplier shall assist the Purchaser in bringing such postponement or suspension into effect. On any suspension by the Purchaser, the Supplier will be entitled to a reasonable portion of the Price and costs properly incurred for the part of the Services properly completed before the Suspension. The Supplier will not be entitled to any other payment or damages for suspension.

## **18. Return of Goods**

The Purchaser accepts no liability in regard to the satisfactory return to the Supplier of any consignment or part of a consignment delivered in error.

## **19. Notice to correct and step-in**

19.1. If the Supplier fails to carry out any obligation under this Contract, the Purchaser may by notice require the Supplier to make good the failure and to remedy it within a specified reasonable time.

19.2. If the Supplier fails to remedy any breach or failure to perform within the remedy period set out in a notice to correct issued under this condition 19, then the Purchaser may (without prejudice to any other right or remedy available to it) itself take such steps as necessary to remedy such failure or breach and/or engage others to take such steps.

19.3. The Supplier shall indemnify the Purchaser for all reasonable and proper costs and expenses incurred by it in taking the steps or engaging others to take the steps referred to in Clause 19.2.

## **20. Assignment**

20.1. The Supplier shall not, unless with the prior written consent of the Purchaser, assign, subcontract or transfer or purport to assign, sub-contract or transfer to any other person any of its rights or obligations under the Contract.

20.2. The Purchaser is entitled to assign and transfer all or part of its rights and obligations under the Contract.

## **21. Notices**

21.1. Any notice or other communication whether required or permitted to be given by one party hereto to the other shall be in writing addressed to the address of the other party specified in the Order, and may be given by hand, post or email, and, where



given by hand or post, shall be deemed to have been duly given if signed by on or behalf of a duly authorised officer of the party giving the notice and;

21.1.1. if delivered by hand, at the time of the delivery to the address or its duly authorised agent; or

21.1.2. if sent by post, three business days after posting if addressed to the party to whom such notice is to be given at the address supplied by such party to the party giving the notice (or such other address as is from time to time notified to the other party hereto).

21.2. If such notice or other communication is sent by email to the correct email address of the party to which it is being sent (the intended recipient having notified the sender of the correct email address), it shall be deemed to have been given when the email first enters the intended recipient's information system (where information system shall have the meaning set out in the Electronic Commerce Act 2000).

21.3. Nothing in this condition 21 shall invalidate a Service Notice issued by telephone in accordance with the provisions of condition 17.1.

## **22. Waiver**

No waiver or failure by the Purchaser to exercise or delay in exercising any right, power or remedy under or in connection with the Contract shall operate as a waiver thereof. No single or partial exercise of any right, power or remedy shall preclude any other or further exercise thereof.

## **23. Validity/Severability**

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

## **24. Set-off and contra arrangement**

Without prejudice to any other of the Purchaser's rights or remedies under the Contract or at law, the Purchaser may set off against any amount payable to the Supplier pursuant to this Contract, any amount otherwise due to the Purchaser from the Supplier.

## **25. Relationship**

Nothing in the Agreement shall constitute or shall be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute the Supplier as agent of the Purchaser for any purpose whatsoever and the Supplier shall have no authority or power to bind the Purchaser or to contract in the name of or create a liability against the Purchaser in any way or for any purpose.

## **26. Access to Premises**

Where the Supplier needs access to the premises of the Purchaser, the Supplier shall comply with all health and safety and security requirements of the Purchaser and shall procure that all of the Supplier's People shall also comply with such requirements.

## **27. Force Majeure**

27.1. Neither Party to this Contract shall be deemed to be in breach of the Contract, or any part thereof or otherwise be liable to the other, for any delay in performance or the non-performance of its obligations under this Contract, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party in writing, and the time for performance of that obligation shall be extended accordingly, provided that where any event of Force Majeure continues for any period in excess of four (4) weeks, either Party may terminate this Contract upon written notice to the other. If at any time the Supplier claims Force Majeure in respect of its obligations with regard to the supply of Goods and/or Services, the Purchaser shall be entitled to obtain from any other person such quantity of the Goods and/or Services as the Supplier is unable to supply or perform.

27.2. "Force Majeure" means, in relation to any Party, any circumstances or event beyond the reasonable control of that Party (excluding strikes, lockouts, go-slow, industrial disputes of the Supplier's organization or any of its sub-contractors or agents), which could not have been avoided by taking reasonable precautions and provided in each case that such event does not arise directly or indirectly as a result of any wilful act or default of the Party claiming relief.

## **28. Entire Agreement**

Unless it is otherwise specifically stated in or on the Order, the Contract supersedes any arrangement, understandings, promises or agreements made or existing between the parties thereto prior to or simultaneously with the Contract and constitutes the entire agreement between the parties thereto. Except, as otherwise provided therein, no addition, amendment to or modification of the Contract shall be effective unless it is made in writing and signed by and on behalf of both parties.

## **29. Confidentiality**

The Purchaser and the Supplier shall treat the details of the Contract and any information made available in relation thereto and all information concerning the Contract as private and confidential and neither of them shall publish or disclose the same or any particulars thereof (save insofar as may be necessary for the purposes of the Contract) without the previous written consent of the other party. This undertaking does not apply to confidential information (i) which at any time is or comes into the public domain (ii) which was lawfully in the possession of the Purchaser or the Supplier prior to disclosure by one to the other; (iii) which at any time is required by an applicable law or an applicable regulatory authority to be disclosed or (iv) which at any time after the Contract commences comes lawfully into the Purchaser's or Supplier's possession from a third party. The provisions of this condition shall survive for five years following the termination of the Contract.

## **30. Data Protection**

30.1. The Purchaser and the Supplier shall each ensure that to the extent that they or either of them control or process Personal Data of each other or any person doing business with or employed by either of them, they shall each do so in compliance with the requirements of the Data Protection Acts 1988 and 2003 and any amendments thereto.

30.2. The Supplier warrants that it has the appropriate technical and organisational measures in place to protect against unauthorised or unlawful processing of such Personal Data and against loss or destruction of, or damage to, such Personal Data held or processed by it and that it has taken, or will take all reasonable steps to ensure the reliability of any of its staff who will have access to such Personal Data processed as part of the delivery of the Goods or Services.

30.3. The Purchaser may disclose Personal Data of the Supplier to third parties if it believes in good faith that it is required to disclose it in order to comply with any applicable law, including, but not limited to, a summons, a search warrant, a court or regulatory order, or any statutory requirement.

**31. Governing Law and Jurisdiction**

The Contract shall be governed by, construed and take effect in accordance with the laws of the Republic of Ireland and the Purchaser and Supplier agree to submit any matters in dispute arising from this Contract to the exclusive jurisdiction of the Courts of the Republic of Ireland.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Position**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Date**