

## 1 Definitions

- 1.1. **"Completion Date"** means the date by which the Seller shall have completed the Works as stated in the Purchase Order or elsewhere within the Contract.
- 1.2. **"Contract"** means the contract for the supply of the Goods and/or carrying out of the Works, or any combination of these, which shall comprise these General Terms & Conditions, the Specification, the Purchase Order and any attachments to the Purchase Order and shall take precedence in the order listed herein.
- 1.3. **"Buyer"** means the company in whose name the Purchase Order is issued.
- 1.4. **"Date of Taking-Over"** means the date of acceptance and taking-over of the Works by the Buyer, as certified by the Buyer in writing.
- 1.5. **"Delivery Date"** means the date for delivery of the Goods as stated in the Purchase Order or elsewhere within the Contract.
- 1.6. **"Goods"** means the supply and delivery by the Seller of the items specified in the Purchase Order including materials, plant, goods, consumables, equipment and operation and maintenance manuals, all in accordance with the Contract.
- 1.7. **"Intellectual Property Rights"** means any patents, trademarks, service marks, logos, tradenames, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names or other similar rights whether registerable or not which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registration.
- 1.8. **"Law"** means any and all constitutions, acts, statutes, laws, bye-laws, rules, codes, regulations, orders, standards and/or conditions having effect in the relevant jurisdiction as per the provisions of clause 14 hereof, or any relevant part thereof including any final judgement or order of any Court of competent jurisdiction.
- 1.9. **"Purchase Order"** means a written purchase order issued by the Buyer to the Seller for the supply of the Goods and/or carrying out the Works.
- 1.10. **"Party"** means Buyer or Seller individually as the context requires and **"Parties"** means Buyer and Seller collectively.
- 1.11. **"Price"** means the price for the Goods and/or Works specified in the Purchase Order as may be amended in accordance with the Contract.
- 1.12. **"Programme"** means any programme or times for the delivery of the Goods and/or the carrying out of the Works as referred to in the Purchase Order or elsewhere in the Contract.
- 1.13. **"Site"** means the location at which the Goods are to be delivered and/or the Works are to be carried out as stated in the Purchase Order or elsewhere within the Contract.
- 1.14. **"Specification"** means any plans, drawings, data, samples or other descriptions or information relating to the Goods and/or Works as referred to in the Purchase Order or elsewhere in the Contract and with which the Seller must comply.
- 1.15. **"Seller"** means the supplier of the Goods or the subcontractor who will undertake the Works as named in the Purchase Order.
- 1.16. **"Warranty Period"** means for Goods, the period commencing from the date of delivery of the Goods for a period of 18 months; and for Works, the period commencing from the Date of Taking-Over of the Works for a period of 12 months.
- 1.17. **"Works"** means all work specified in the Purchase Order to be provided by the Seller other than the supply and delivery of Goods, and includes the installation, commissioning and testing of the Goods on the Site and any other construction or related activities or services on the Site, all in accordance with the Contract.

## 2 Acceptance

- 2.1 The issue of the Purchase Order by the Buyer to the Seller constitutes the Buyer's acceptance of the Seller's offer to supply the Goods and/or provide the Works in accordance with the Contract and constitutes the Seller's acceptance of the terms and conditions of the Contract.
- 2.2 Should, at a later date than this Contract, the Buyer issue an alternative contract for the Goods and/or Works provided for in this Contract, then that alternative contract shall supersede this Contract and shall apply retrospectively to the relevant Goods and/or Works and this Contract shall have no further effect.

## 3 Buyers Rights

- 3.1 The Buyer may at any time prior to despatch of the Goods or within seven (7) days of placing a Purchase Order amend or cancel a Purchase Order by notice to the Seller. If the Buyer amends or cancels a Purchase Order, its liability to the Seller shall be limited to payment to the Seller of costs reasonably incurred and suitably substantiated by the Seller in fulfilling the Purchase Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Seller's failure to comply with its obligations under this agreement, in which event the Buyer shall have no liability to the Seller.
- 3.2 The Buyer reserves the right to purchase any Goods, and/or procure the Works from any seller at its entire discretion.

## 4 Seller's Responsibilities

- 4.1 The Seller shall at all times, and at its cost, comply with the Law and all Buyer health, safety, environmental, quality, sustainability, employment, security, equality and business policies, rules and regulations that apply to the supply of the Goods and/or Works and additionally, any other specific requirements that apply at the Buyer's Site or premises.
- 4.2 The Seller shall provide risk assessments, method statements, COSHH data sheets, BIM data and all other data required to provide the Goods and/or Works.
- 4.3 The Seller shall comply with all Key Performance Indicators, including those related to health, safety, environment and quality, included in the Contract, if any.
- 4.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect, test and audit the performance record, management system, design and competences, the premises of the Seller or any third party before, during or after the Works are carried out; or in the case of Goods being supplied, their design, manufacture, processing or storage prior to despatch. The Seller shall provide the Buyer or any person to whom this right has been delegated by the Buyer with all facilities and records reasonably required for inspection, testing and auditing. For the avoidance of doubt, the Seller shall undertake at its cost all tests necessary to demonstrate that the Goods and/or Works comply with the Contract.
- 4.5 If, as a result of inspection, testing or auditing, the Buyer is not satisfied that the Goods and/or Works will comply in all respects with the Contract and so notifies the Seller, the Seller shall (at its own cost) take such steps as are necessary to ensure compliance. When any inspections and/or testing demonstrates to the reasonable satisfaction of the Buyer that the Goods, and/or Works comply in all respects with the Contract, the Seller shall provide to the Buyer evidence and/or certificates indicating the inspections and/or tests which have been performed in relation to the Goods and/or Works and the results achieved.
- 4.6 Any inspection, test or audit undertaken by the Buyer or on its behalf shall not signify acceptance of any Goods and/or Works provided by the Seller.
- 4.7 The Seller shall promptly notify the Buyer of any claim or circumstances which are likely to lead to a claim for the payment of any sum in excess of the Price. Failure to notify in accordance with this clause 4.7 shall result in the Seller being deemed to have waived any such claim.
- 4.8 The Seller shall at all times treat all Buyer information as confidential and shall not disclose any such information to any person without the prior written consent of the Buyer.
- 4.9 Except with the prior written consent of the Buyer, the Seller shall not make any press announcements or publicise the Contract or its contents in any way.
- 4.10 The Seller shall promptly notify the Buyer if they become aware of any ambiguity or error in the Contract or Specification or in any other respect in which the Goods and/or the Works are unlikely to meet the Buyer's requirements.
- 4.11 The Buyer shall only take instruction from the Seller's representative named in the Purchase Order. If no representative is named, the Seller shall request, in writing, the Buyer to confirm the name of its representative.

**The following additional clauses apply where Works are to be undertaken as part of the Contract:-**

- 4.12 Unless stated otherwise in the Purchase Order, the Seller shall give all notices legally required and pay all fees legally payable in connection with the Works.
- 4.13 The Seller shall co-operate with the Buyers other suppliers or sub-contractors to minimize the impact of the Works on their activities.

**5 Delivery (applicable where Goods are supplied as part of the Contract)**

- 5.1 The Goods shall be delivered to the Site on the Delivery Date in accordance with the requirements stated in the Contract and/or in accordance with any Programme stated therein. In the absence of any specific date for delivery, the Seller shall deliver the Goods with all due diligence and expedition at the earliest possible date and in accordance with any reasonable requirements as notified by the Buyer.
- 5.2 If the Goods are not delivered on the Delivery Date then, without prejudice to any other remedy, the Buyer shall be entitled to deduct from the Price or to claim from the Seller by way of liquidated damages for delay, two per cent (2%) of the Price for every day's delay, up to a maximum 5 times the Price or the Buyers annual spend with the Seller, whichever is the greater or such other liquidated damages as are specified in the Contract.
- 5.3 Without prejudice to any other remedies, if the Seller fails to provide the Goods or the Goods are rejected by the Buyer on delivery as they are not in compliance with the Contract, then the Buyer shall be entitled:
- 5.3.1 to require the Seller to take action to replace, or at the Buyers discretion repair the Goods within seven (7) days of receiving notice to such effect from the Buyer; or
- 5.3.2 at the Buyer's sole discretion, if it is not practicable for the Seller to comply with clause 5.3.1 or if the Seller has failed so to do, to treat the Contract as repudiated by the Seller and require the repayment of any part of the Price which has been paid.
- 5.4 The Seller shall give the Buyer reasonable advance notice of all deliveries and shall deliver and off load the Goods at the Site, in accordance with both the Buyers requirements and all applicable health and safety requirements, on the notified date within normal business hours.
- 5.5 At least 7 days prior to delivery, the Seller shall provide the Buyer with all necessary information including off-loading attendances, storage requirements, material data sheets and hazard documentation to enable the Buyer to accept delivery of the Goods.
- 5.6 A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently together with information about storage requirements and lifting hazards.
- 5.7 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 5.8 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course of business.
- 5.9 Where Goods are imported, the delivery shall be made DDP (delivered duty paid) unless otherwise mutually agreed in writing.

**6 Programme and Completion (applicable where Works are undertaken as part of the Contract)**

- 6.1 The Seller shall proceed regularly and diligently with the Works in accordance with the Programme and complete the Works by the Completion Date. In the absence of a Programme and/or the Completion Date, the Seller shall complete the Works with all due diligence and expedition at the earliest possible date and in accordance with any reasonable requirements as notified by the Buyer.
- 6.2 If the Works are not completed by the Completion Date, then, without prejudice to any other remedy, the Buyer shall be entitled to deduct from the Price or to claim from the Seller, by way of liquidated

damages for delay four per cent (4%) for the first week of delay or part thereof, three (3%) for the second week, two per cent (2%) for the third week and one per cent (1%) for the fourth week, up to a maximum of ten per cent (10%) of the Price or such other liquidated damages as are specified in the Contract.

- 6.3 Notwithstanding the Seller's obligation to complete the Works on or before the Completion Date, the Seller may be required to install, test and/or commission certain sections of the Works to comply with the Programme. The Price is deemed to include all costs in connection with complying with this requirement.

- 6.4 Unless otherwise agreed in writing, the Works will be undertaken during normal Site working hours.

**7 Price**

- 7.1 The Price shall be as stated in the Purchase Order and no increase in the Price shall apply without the prior consent of the Buyer in writing.
- 7.2 The Price shall be exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice).
- 7.3 Unless stated otherwise on the Purchase order, the Price shall be inclusive of all direct and indirect costs and charges that the Seller may or will incur in order to provide the Goods and / or Works. Such costs and charges shall include labour, overtime, plant, material, power, consumables, supervision, attendances, overheads, inflation, price fluctuation, storage, protection, mobilisation, demobilisation, site accommodation, personnel transport, employment costs, packaging (including disposal thereof), shipping, carriage, insurance and delivery, off-loading and distribution as required of the Goods and / or Works and any duties, imposts or levies other than value added tax.

**8 Payment**

- 8.1 Payment of each invoice shall be subject to the Seller providing all necessary backup to substantiate the amount invoiced. Each invoice must be in an electronic format and make clear reference to a valid Buyer Purchase Order number, the cost centre reference indicated on the Purchase Order, delivery/Site address and be detailed in a similar format to the Purchase Order to allow the matching of quantity and value.
- 8.2 The Buyer shall not be obliged to pay for Goods and/or Works that:
- 8.2.1 have been invoiced, but which are not in accordance with the Contract; or
- 8.2.2 the final invoice has been provided by the Seller later than 2 months after the delivery of the Goods or completion of the Works.
- 8.3 Payments to be made under this Contract shall not exceed the sum of the original Price and any additional sums to be paid or deducted in accordance with this Contract.
- 8.4 The Buyer shall be entitled to set off against the Price all sums owed to the Buyer by the Seller.
- 8.5 Subject to clauses 8.1, 8.2, 8.3, 8.4, 8.7, 8.10, 8.13 and 10.3, and unless otherwise stated in the Contract, the Buyer shall pay all invoices 30 days after the end of the month the invoice was issued in.
- 8.6 The Seller shall be entitled to charge interest on any undisputed overdue payments from the due date for payment until the date of payment at a rate of two per cent (2%) above the current interest rate on the deposit facility as published by the European Central Bank.
- 8.7 If any party responsible for making payments to the Buyer under the main contract to which this Contract relates, is or becomes insolvent within the meaning of either section 3(6) of the Construction Act 2013 (Irish contracts) or section 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996 Act (UK contracts), then the Buyer shall not be obliged to make any further payment to the Seller until it has received the equivalent payment under the main contract.
- 8.8 Interim payments or certificates do not indicate the Buyer's acceptance, approval, consent or satisfaction with the Goods or Work and the Buyer may at any time correct or modify any amount previously certified or paid.
- 8.9 The Buyer may use an online electronic system such as "Payapps" for the making, submission and assessment of payment claims. The Seller will cover its own costs for using any such system.
- 8.10 The Buyer may deduct retention at the rate of 5% from all payments made to the Seller. Half the accumulated amount will be paid to the

Seller upon the successful delivery of the Goods and/or the Date of Taking-Over of the Works. The remaining amount will be paid upon the expiry of the warranty period stated in clause 12.4.

**The following additional payment clauses apply where Goods are supplied as part of the Contract:-**

- 8.11 Unless otherwise stated in the Purchase Order or elsewhere in the Contract, the Seller shall be entitled to invoice the Buyer the Price on or at any time after delivery and acceptance by the Buyer of the Goods.
- 8.12 For invoices relating to imported Goods country of origin, country of destination, commodity code(s) and both net and gross weights must also be stated.

**The following additional payment clauses apply where Works are to be undertaken as part of the Contract:-**

- 8.13 Unless otherwise stated in the Purchase Order or elsewhere in the Contract, the Seller shall be entitled to invoice at the end of each month for that part of the Price relating to the element or part of the Works completed in that month. Each invoice shall be accompanied by a written statement titled "Application for Payment" detailing how the invoice is calculated together with all relevant supporting documentation for the Buyer's approval.

## 9 Liability

- 9.1 The Seller shall be liable for and will keep the Buyer, its servants and agents indemnified against, any expense, liability, loss, claim or proceedings whatsoever arising under the Contract or at Law in respect of
- 9.1.1 personal injury to, or the death of, any person whomsoever;
- 9.1.2 any loss, or damage to property (real or personal); and
- 9.1.3 claims from third parties in respect of actual or alleged infringement of their Intellectual Property Rights arising out of, or in the course of, or caused by, the Sellers performance or non-performance of the Contract, unless and to the extent that it is due to the negligence or breach of duty, on the part of the Buyer, its servants or agents.
- 9.2 Other than in respect of liquidated damages in accordance with clauses 5.2 and 6.2, neither Party shall be liable to the other for any consequential loss, loss of profit, revenue or goodwill.
- 9.3 Nothing in this Contract shall exclude or limit either Party's liability which it is not permitted to be excluded or limited as a matter of Law.

## 10 Insurance and Title

- 10.1 Unless stated otherwise in the Contract the Seller shall take out and maintain with a well-established and reputable insurer the following policies:-
- 10.1.1 Employers Liability Insurance of not less than £10,000,000 (UK contracts) or €13,000,000 (Irish contracts).
- 10.1.2 Public Liability Insurance and in relation to Goods, Product Liability Insurance with a limit of indemnity of not less than £10,000,000 (UK contracts) or €6,500,000.00 (Irish contracts) on an each and every claim basis.
- 10.1.3 Where the Seller is responsible for design of all or part of the Works, Professional Indemnity Insurance with a limit of indemnity of not less than £5,000,000 (UK contracts) or €6,500,000 (Irish contracts).
- 10.2 Prior to execution of the Contract, the Seller shall provide evidence that the insurance policies required by this Contract are in place and that all premiums have been paid. The Seller shall maintain the insurance policies for the duration of all of its obligations under the Contract and immediately provide to the Buyer evidence that all policies have been renewed whenever applicable.
- 10.3 The Buyer shall be under no obligation to allow the Seller access to any Site or make payment to the Seller where it has not complied with the requirements of clause 10.2.
- 10.4 Title in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, in which case it shall pass to the Buyer immediately and the Goods shall be marked "Property of the Buyer".

## 11 Termination

- 11.1 The Buyer shall be entitled to terminate the Contract forthwith without liability to the Seller by giving notice to the Seller at any time if:
- 11.1.1 the Seller makes any voluntary arrangement with its creditors or, being an individual or firm, becomes bankrupt or, being a company, becomes subject to an administration order or goes into liquidation, otherwise than for the purpose of solvent amalgamation or reconstruction;
- 11.1.2 an encumbrancer takes possession of, or a receiver is appointed in respect of, any of the property or assets of the Seller;
- 11.1.3 the Seller ceases, or threatens to cease, to carry on business; or
- 11.1.4 the Buyer reasonably believes that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly; or
- 11.1.5 delivery of the Goods is delayed for a period of four (4) weeks or more beyond the Delivery Date; or
- 11.1.6 completion of the Works is not achieved by the Completion Date; or
- 11.1.7 the Seller is in material breach of any of its obligations under the Contract and fails to remedy same within five (5) days of receiving notice to remedy such breach.
- 11.2 Notwithstanding clause 11.1, the Buyer shall be entitled to terminate the Contract subject to giving seven (7) days' prior notice to the Seller. In such circumstances, the Seller shall cease work immediately from receipt of the notice and shall mitigate its costs as far as is practicable. The Buyer shall reimburse the Seller such proportion of the Price as it is fair and reasonable to pay for the actual quantity of the Goods supplied, and/or the Works completed as at the date of termination.
- 11.3 On termination, title in all Goods and Work paid for by the Buyer, whether on or off the Site, shall vest in the Buyer.

**The following additional clauses apply where Works are to be undertaken as part of the Contract:-**

- 11.4 On termination in accordance with clause 11.1, the Buyer may itself take over the Works or make such arrangements as is necessary to complete the Works. In such event, the Buyer shall cease to be obliged to make any further payment under the Contract until the Works are completed. Upon completion of the Works, the Seller shall pay to the Buyer any additional cost incurred by the Buyer to complete the Works.
- 12 Warranties
- 12.1 The Seller warrants to the Buyer that the Goods and all materials, plant or equipment installed as part of the Works will:
- 12.1.1 be strictly in accordance with the Contract including the Specification and any sample(s) previously provided;
- 12.1.2 be new, fit for purpose and free from defects in design, materials and workmanship;
- 12.1.3 comply with the Law, including in relation to their manufacture and supply; and
- 12.1.4 comply with all relevant CE marking or equivalent requirements.
- 12.2 The Seller warrants to the Buyer that the Works shall be undertaken and completed strictly in accordance with the Contract, in compliance with industry best practice and using the skill, diligence, judgement and care to be expected of a competent sub-contractor who is experienced in undertaking works of an equal or similar nature and complexity to that of the Works.
- 12.3 The Seller warrants to the Buyer that any design of the Works provided by the Seller shall be undertaken with the skill, care and diligence to be expected of a professionally qualified designer who is experienced in undertaking design of an equal or similar nature and complexity to that of the Works.
- 12.4 During the Warranty Period the Seller shall, at the Buyer's option and the Seller's cost, repair, replace or make good all Goods and/or Works that do not comply with clauses 12.1, 12.2 and 12.3 within 7 days, or such longer period that the Buyer may agree to.

- 12.5 If the Seller fails to comply with clause 12.4 the Buyer may engage others to carry out the necessary work and the Seller hereby agrees to indemnify the Buyer in full against the cost thereof.

### **13 General**

- 13.1 This Contract constitutes the entire understanding and agreement between the Parties with respects to its subject matter, and constitutes and supersedes all prior discussions, agreements, communications, representations or understanding of the parties, whether oral or written. For the avoidance of doubt, all other terms and conditions contained within the Seller's quotation, invoice, delivery note (whether or not signed by a representative of the Buyer) or in any correspondence are expressly excluded and have no contractual force.
- 13.2 No variation to the Contract shall be binding unless expressly agreed to be a variation in writing by both Parties.
- 13.3 Unless stated otherwise in the Contract, all drawings, documents and information, including, but not limited to, all reports, statements, summaries, certificates, calculations, software code, source code, or similar and any other information, including any such information which is generated by or stored on computer, which have been or shall be prepared or provided by or on behalf of the Seller relating to this Contract shall, as the case may be, vest in or remain vested in the Seller but notwithstanding the completion, abandonment or termination or alleged termination of this Contract, the Seller hereby grants an irrevocable, royalty-free, non-exclusive, transferable licence to the Buyer to use, reproduce and/or modify them for any purpose whatsoever in connection with the Goods and/or Works.
- 13.4 The Seller shall not subcontract its performance or assign or transfer to any other person any of its rights or obligations under the Contract without the Buyer's prior written consent
- 13.5 Any reference in the Contract to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended from time to time.
- 13.6 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected by this decision or judgment and shall remain in full force and effect.
- 13.7 The headings in these General Terms & Conditions are for convenience only and shall not affect their interpretation.
- 13.8 Use of the term "including" or similar do not limit, but may extend, the generality of the provisions they relate to.
- 13.9 The waiver of any terms or conditions herein by either Party shall only be effective if recorded in writing and signed by that Party and shall constitute a waiver for the purposes of that particular transaction only and all other terms and conditions shall remain in full force and effect.
- 13.10 Any notice required to be given under the Contract shall be in writing. The Parties agree that e-mail is an acceptable medium for transmission of notices and that any notice sent by e-mail shall constitute a valid notice
- 13.11 All third party rights are excluded and no third parties shall have any rights to enforce this Contract.

### **14 Governing Law**

- 14.1 The Contract is subject to the Law of the jurisdiction of the Buyer and the Parties agree that Courts of that jurisdiction shall have the right to determine any disputes or differences under the Contract.