

## Uisce Éireann

### **PURCHASE ORDER TERMS AND CONDITIONS**

#### **V3.5**

**BY ACCEPTING OUR PURCHASE ORDER YOU ACCEPT THE TERMS AND CONDITIONS OF PURCHASE SET OUT BELOW. THESE TERMS APPLY TO THE EXCLUSION OF ANY OTHER TERMS WHICH THE SELLER SEEKS TO INCLUDE OR INCORPORATE.**

#### **1. DEFINITIONS**

- 1.1. Unless the context requires otherwise, where the Purchase Order relates solely to the purchase of Goods, references to Services shall be disregarded and where the Purchase Order relates solely to the purchase of Services, references to Goods shall be disregarded.

1.2. In these Terms:

"Contract" means the Purchase Order and these Terms, and any amendment thereto which may be agreed in writing by the Seller and Purchaser.  
"Delivery" means delivering the Goods or performing the Services in accordance with this Contract at the Delivery Time and at the Place of Delivery.

"Delivery Time" means: the date(s) upon which the Goods are to be Delivered or the period(s) over which the Services are to be Delivered, as the case may be.

"Goods" means all goods and materials described in the Purchase Order to be

Delivered to the Purchaser. "Intellectual Property" means all intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including, without prejudice to the generality of the foregoing: discoveries; inventions; improvements; designs; processes; research; Know-How; confidential and proprietary knowledge and information and any rights protecting same; works of authorship; computer software; databases; database rights; performances; trade or business names; domain names; patents, utility models and short term patents (and applications for same); trade marks and trade mark applications; rights (registered or unregistered and applications for same) in any design; copyright (including rights in computer software and semi-conductor topographies); business goodwill and reputation and rights protecting same; rights of use of allocated telephone numbers and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world.

"Know-How" means all data and other information, whether confidential or not, relating to the Parties, including without limitation, trade secrets, confidential technical or proprietary industrial, commercial or business information and techniques in any

form (including paper, electronically stored data, magnetic media, film and micro film), inventions, discoveries, improvements, processes, formulae, techniques, designs, specifications, drawings, plans, component lists, reports, notes of meetings, photographs, manuals, instructions and any similar proprietary rights which in any way subsist in anywhere in the world.

"Place of Delivery" means such location for Delivery specified in the Purchase Order.

"Price" means the price payable by the Purchaser for the Goods or Services, as specified in the Purchase Order.

"Purchase Order" means the purchase order issued to the Seller which states that it is subject to these Terms and the transaction details included therein and attached thereto.

"Purchaser" means Uisce Éireann, a designated activity company, limited by shares with Companies Registration Office number 530363 and its registered office at Colvill House, 24-26 Talbot Street, Dublin 1.

"Seller" means the person(s) or entity(ies) (including permitted assigns) with which the Purchaser places the Purchase Order as identified in the Purchase Order.

"Seller's Personnel" means the subcontractors, employees and any persons working on or adjacent to the site for the Seller and/or subcontractors in relation to the Services or Goods, and other persons assisting the Seller to perform the Contract.  
"Services" means:

(a) in cases where this Contract relates to services, all of the services described in the Purchase Order to be Delivered by Seller; and

(b) in cases where this Contract relates to the purchase of Goods by the Purchaser, the installation or other services (if any) relating to the purchase and Delivery of such Goods as described in the Purchase Order, together, in each case, with any services which can be reasonably inferred for the proper execution and completion of this Contract.

"Terms" means these terms and conditions.

"Tax Clearance Certificate" means a tax clearance certificate within the meaning of the Taxes Consolidation Act 1997 as amended.

"Tax Clearance Access Number" means a unique number assigned by the Collector General to a person that applies for a tax clearance certificate in electronic format under the Taxes Consolidation Act 1997 as amended.

"Tax Liability" means tax or payment in the nature of tax, including but without prejudice to the generality of the foregoing, income tax, social security contributions or any form of withholding tax or obligation which is a primary liability for the Seller or Seller's Personnel.

"VAT" means value-added tax under the Value-Added Tax Consolidation Act 2010 (as amended) and any other tax of a similar nature.

#### **2. SOLE TERMS AND SHIPMENT**

2.1. These Terms apply to the sale and purchase of the Goods or Services to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Purchaser hereby rejects any terms and conditions which may be provided by the Seller subsequent to the issue of the Purchase Order to the Seller.

2.2. The Purchaser will not accept any responsibility for any purchase order which is not on the Purchaser's official order form and fully completed and signed by a duly authorised representative of the Purchaser. All correspondence, advice notes, and invoices must quote the order number stipulated on the Purchase Order. All such correspondence, advice notes and invoices must reference the Purchaser.

2.3. The Seller shall ensure that the Delivery of Goods and/or Services shall be in compliance with all applicable laws, statutes and regulations.

2.4. At its expense, the Seller shall obtain and shall maintain any export licence or other authorisation necessary for the Delivery of the Goods to, or the Delivery of the Services at, the Place of Delivery, and shall provide the certificate of origin and any other documents which the Purchaser may require for the purpose of taking delivery, and evidencing ownership, of the Goods.

2.5. The Seller shall pay, and the Purchaser shall not be liable for, any packing, crating or cartage charges or other charges or duties connected to the packing, delivery, export and importation of the Goods to the Place of Delivery unless expressly stated otherwise in the Purchase Order. The Seller shall ensure that the Goods shall be packed or prepared for shipment having regard to the nature of the Goods and the method of shipment, so as to comply with all applicable laws and regulations, to secure the most competitive transportation rates and to meet the requirements of the carrier (who may be nominated by the Purchaser) to ensure secure shipment. Each container containing Goods must be marked to show quantity, order number, contents, Seller's name and safe-handling instructions.

#### **3. DELIVERY**

3.1. Title and property in the Goods shall pass to the Purchaser on completion of Delivery (or in the case of delivery by instalments, upon Delivery of each instalment) unless payment

or part payment has been made prior to delivery in which event the title and property in any Goods purchased or allocated by the Seller for the purposes of this Contract shall immediately vest in the Purchaser. In all cases, risk for any Goods shall pass on completion of Delivery of such Goods and not before. Passing of title and property in the Goods shall be without prejudice to any right of rejection the Purchaser has under this Contract or otherwise by law.

3.2. Time shall be of the essence in relation to Delivery and the Purchaser may reject Goods or Services not Delivered on the relevant Delivery Time.

#### **4. INSPECTION AND REJECTION**

4.1. The Purchaser may at all reasonable times inspect and test the Goods (including all designs and other components) during manufacture, assembly or processing. The Seller shall provide or procure for the Purchaser access at all reasonable times to places where the Goods or any components are being made, assembled or kept and shall procure the provision of all facilities as may reasonably be required for this purpose. Following such inspection, the Purchaser may inform the Seller in writing of any areas in respect of which the Purchaser is of the opinion that the Goods do not comply with this Contract, and the Seller shall thereupon take all necessary steps to ensure such compliance.

4.2. The Purchaser may reject, at Seller's expense:

- (a) Any Goods delivered in excess of those ordered, whether paid for or not; and
- (b) By written notice to Seller, any Goods or any portion thereof or any Services which are found, at the Delivery Time, or within a reasonable period after Delivery, to be defective or otherwise not to conform to this Contract.

4.3. If the Purchaser rejects any Goods, or the Seller fails to deliver any Goods at the relevant Delivery Time, the Purchaser may require the Seller by notice in writing, within the period stipulated in such notice, to replace the rejected Goods with Goods conforming to this Order or to deliver the undelivered Goods (as the case may be), or may at its sole discretion purchase substitute materials from a third party without notice to the Seller. If the Purchaser rejects any Services, or the Seller fails to Deliver any Services at the relevant Delivery Time, the Purchaser may require the Seller by notice in writing, within the period stipulated in

such notice, to re-perform the rejected Services in a manner conforming to this Contract or to Deliver the unperformed Services (as the case may be), or may at its sole discretion purchase substitute Services from a third party without notice to the Seller. Without limiting the Purchaser's other rights or remedies under this Contract or otherwise, any expenditure which is incurred by the Purchaser in the purchase of substitute Goods or Services, shall be paid by the Seller to the Purchaser.

- 4.4 Any rejection by the Purchaser or any acceptance by the Purchaser of credit, reimbursement or replacement shall be without any liability whatsoever on the part of the Purchaser and without prejudice to the Purchaser's other rights in respect of the defective nature or other failure of the Goods or Services to comply with the requirements of this Contract.

## 5. PRICE

- 5.1. No variation in the Price or the method of payment specified in this Contract will be accepted without the prior written approval of the Purchaser.
- 5.2. Unless otherwise specified, the Price is firm and fixed and not subject to any price adjustment (or escalation) formula to reflect variations in currency exchange rates, the cost of labour, materials, overheads and/or any other expense.
- 5.3. Without prejudice to any other term of this Contract, the Purchaser shall be required to pay only for the actual quantity of Goods or as the case may be, Services which are Delivered in full compliance with this Contract.

## 6. INVOICES AND PAYMENT

- 6.1. If the Purchaser is satisfied that the Seller has properly Delivered the relevant Goods and/or Services the Seller may include that part of the Price allocated to those Goods and/or Services in an invoice, to be issued to the Purchaser within 7 days of Delivery (unless a different payment regime is set out in the Purchase Order).
- 6.2. Invoices shall not be processed by the Purchaser and shall not be deemed to be validly issued unless and until submitted by the Seller to iSupplier, the Purchaser's e-invoicing system or unless sent for processing by the Seller to the correct email address ([payables@water.ie](mailto:payables@water.ie)) or postal address (P.O. Box 900, South Delivery Office, Cork City, Co. Cork, Ireland). Invoices shall include such information as may be requested by the Purchaser, shall reference the Purchase Order's number and the Purchaser and shall be issued in the currency of the Purchase Order. Sellers shall be solely responsible for the accuracy of all information entered by the Seller into iSupplier, the Purchaser's e-invoicing system.
- 6.3. The Purchaser shall, unless otherwise agreed in writing with the Seller, pay an agreed invoice

within 45 days after, the later of, (i) Delivery; or (ii) submission of the invoice (in accordance with clause 6.2) and approval by the Purchaser of the invoice. Payment for Goods and/or Services does not necessarily imply acceptance by the Purchaser of the Goods and/or Services.

- 6.4. Payment for Goods or Services Delivered to the Purchaser hereunder shall be conditional upon and subject to (i) Delivery without rejection pursuant to clause 4; (ii) provision (in accordance with clause 6.2) of an accurately detailed invoice by the Seller as described above; and (iii) where relevant, receipt by the Purchaser of an appropriate VAT invoice in respect of the Goods or Services (iv) the Purchaser having in its possession at the relevant time a valid Tax Clearance Certificate in respect of the Seller.

- 6.5. The Purchaser reserves the right to deduct from any monies due or becoming due to the Seller under this Contract, any monies owed to or claimed by the Purchaser from the Seller whether under this Contract or otherwise.

## 7. TAXES

- 7.1 The Purchaser may make any deduction or withholding on account of tax (including but not limited to professional services withholding tax and relevant contracts tax) required by law, Governmental direction or the practice of the Revenue Commissioners.
- 7.2 The Seller shall provide the Purchaser with all information that the Purchaser needs to provide to the Revenue Commissioners in respect of this contract, including
- 1) Either a current Tax Clearance Certificate or a tax reference number and Tax Clearance Access Number for the Seller, and
  - 2) (if requested by the Purchaser) for all Seller's Personnel (except individuals employed by the Seller in connection with the Services/Goods) receiving payments in connection with the Contract exceeding:
    - €650, a record of a tax reference number
    - €2,600 in any 12 month period, either
      - (a) a current Tax Clearance Certificate / a tax reference number and Tax Clearance Access Number or,
      - (b) a Subcontractor's Notification of Determination issued under Section 530I of the Taxes Consolidation Act 1997 showing a rate of 0% or 20%.
- 7.3 For the avoidance of doubt, the Purchaser shall have no liability whatsoever to make any payments whatsoever to Seller's Personnel, including overtime payments, sick or holiday pay, pension, bonus or other benefits. As between the parties, the Seller shall bear

exclusive responsibility for the payment of all payroll withholding taxes (including national insurance contributions, PAYE, USC and PRSI) for Seller's Personnel.

- 7.4 To the extent that the Seller is supplying personnel to the Purchaser, payment may be withheld at any time where evidence requested is not provided by the Seller to the effect that Irish payroll withholding taxes (including PAYE, USC and PRSI) are being operated in respect of Seller's Personnel, or that Irish payroll withholding taxes need not be operated in line with current published Revenue Commissioners' Statements of Practice and other guidance, or that the Seller has received permission from the Revenue Commissioners not to operate Irish payroll withholding taxes. This applies whether or not the Seller or Seller's Personnel in question is resident in Ireland, including when personnel are sourced from other companies. The Seller shall provide evidence of registration for Irish payroll withholding taxes and of actual operation of Irish payroll withholding tax obligations in respect of remuneration liable to Irish payroll withholding taxes on an ongoing basis.
- 7.5 Unless otherwise stated, amounts in the Contract exclude VAT. The Purchaser shall pay any VAT arising under Irish or other applicable law on the supply (by the Seller to the Purchaser) under this Contract. The Purchaser shall pay that VAT to the appropriate tax authorities when so required by the laws or their practice, or otherwise shall pay it to the Seller. The Seller confirms that it is registered for VAT. The Seller shall refund to the Purchaser any VAT incorrectly charged immediately upon notification. The Seller shall send the Purchaser for each payment a valid VAT invoice complying as to form, timing and all other respects with the law.
- 7.6 Unless otherwise expressly stated in this contract, the Seller bears exclusive liability for payment of all taxes and duties whatsoever and howsoever arising under Irish or other law in connection with the Services or Goods and performance of this contract. The Purchaser will have no liability to make any payment of a Tax Liability. The Seller undertakes to meet its Tax Liability obligations and to use its best endeavours to ensure that Seller's Personnel meet their Tax Liability obligations. If the Purchaser is required by law to make a payment or account for tax in respect of any Tax Liability to the Revenue Commissioners, the Purchaser shall make that payment within the time allowed and in the minimum amount required by law and may deduct such payment from any outstanding payments due to the Seller, or amounts subsequently becoming due to the Seller.
- 7.7 The Seller must (within three business days of demand by the Purchaser) pay to the Purchaser an amount equal to any loss, liability or cost whatsoever which the

Purchaser determines will be or has been (directly or indirectly) suffered on account of payment of or accounting for the Tax Liability.

- 7.8 If the Seller does not fully comply with this clause 7 the Purchaser shall not be required to pay in full.

## 8 WARRANTIES

- 8.1 The Seller acknowledges that:

- (a) The Purchaser is relying on the Seller's skill and expertise to ensure Goods are fit for the purpose intended and, in addition to all warranties in favour of the Purchaser, expressed or implied, established by statute, common law or elsewhere set forth in this Contract, the Seller hereby expressly represents and warrants that the Goods (i) will conform to the Purchase Order and all specifications, drawings and any other description and standard of performance relating to the Goods provided or accepted in writing by the Purchaser (as the case may be); (ii) will be fit and sufficient for the purpose intended; (iii) will be of best material and workmanship; and (iv) will be free from all patent and latent defects and all liens and encumbrances; and (v) will be of equal quality in all respects to any samples provided; and
- (b) The Purchaser is relying on the Seller's skill and expertise to ensure that the Services are provided with due care, skill and diligence and, in addition to all warranties in favour of the Purchaser, expressed or implied, established by statute, common law or elsewhere set forth in this Contract, the Seller hereby expressly represents and warrants that the Services (i) will be provided by appropriately experienced, qualified and trained personnel; (ii) will be rendered with all due skill, care and diligence; and (iii) will conform to all specifications (including those in the Purchase Order) and any other description relating to the Services, provided or accepted in writing by the Purchaser (as the case may be). The Seller hereby indemnifies the Purchaser against any and all liabilities, damages, costs or expenses which may accrue to or be sustained by the Purchaser as a result of a breach of the aforementioned warranties by the Seller. The Seller agrees that, at the request of the Purchaser and without prejudice to any other rights the Purchaser may have under this Contract or otherwise, it will promptly remedy any fault in the Goods or Services which constitutes a breach of the aforementioned warranties or where

any such fault is not remediable, will promptly supply replacement materials or services to the Purchaser, in each case without cost to the Purchaser.

8.2 The Seller gives a mechanical guarantee for a period of 12 months from the date of the Goods being put into operation or 36 months from the Delivery of the Goods, whichever is the shorter. If during the period covered by the said mechanical guarantee, any part of the Goods is found to be defective due to faulty design, manufacture, materials or workmanship, other than arising from fair wear and tear or mal-operation the Seller shall remedy such fault free of charge and provide a new 12 month mechanical guarantee in respect of the replaced item. Where a defect arising within the aforesaid period does not become apparent until the period has expired, the Seller's liability shall not cease merely because the Purchaser has been unable to give due notice of the defect to the Seller within the said period. The Purchaser may carry out remedial work on Goods if the Seller fails to do so within a reasonable time period after receiving notice from the Purchaser or if urgent remedial work is required to prevent serious material loss or damage. In either case, the Purchaser shall be entitled to reimbursement from the Seller of any costs incurred in the correction of defects including, but not limited to, transport costs, dismantling and assembling costs, costs for changing foundations and public utility conduits, and shall be so reimbursed within 45 days of submission of notice.

8.3 Neither inspection and testing of the Goods before Delivery (whether or not availed of) nor acceptance of the Goods or Services by the Purchaser, nor any payment by the Purchaser for the Goods or Services shall relieve the Seller of its obligations under this Contract. The warranties of the Seller together with its service warranties and guarantees, if any, shall be for the benefit of the Purchaser and, at the Purchaser's option, the Purchaser's customers, and may be assigned by the Purchaser to its affiliates or customers.

## 9 COMPLIANCE

9.1 The Seller represents and warrants to the Purchaser that:-

- (a) all Goods and Services Delivered pursuant to this Contract will have been produced, sold and Delivered to the Purchaser, and all facilities used by the Seller in connection with the Delivery of any Goods or Services shall be, in compliance with all applicable EU, national, federal, state, municipal and local laws and regulations;
- (b) all Goods Delivered pursuant to this Contract will have been sourced from the sources agreed with the Purchaser and will not have been produced using child labour;

(c) it has obtained and will maintain (at its cost) any necessary licences, clearances, consents, authorisations and permits whatsoever relating to the manufacture, transportation, importation, packing, delivery, sale or performance of the Goods and/or Services to the Purchaser; and

(d) any packaging, marking, labelling and shipping papers for international shipment of all hazardous materials will meet applicable national and International laws and regulations, and Seller hereby indemnifies the Purchaser against any and all liabilities, fines, damages, costs or expenses which may accrue to or be sustained by the Purchaser as a result of a breach of the Seller's warranties under this clause 9.

9.2 Should this Contract involve any hazardous substances or materials as determined by Irish, U.S., EU laws or any other applicable laws or regulations, the Seller warrants that the Seller comprehends the nature of the hazard related to the use, handling and transportation of such materials as applicable to the Seller. Upon receipt of the Purchase Order, the Seller shall notify the Purchaser of any such hazardous materials present in any of the Goods ordered by the Purchaser.

9.3 The Seller shall furnish prior to Delivery all appropriate safety data sheets and any other documentation requested by the Purchaser so as to enable the Purchaser to comply with applicable laws and regulations on receipt of Goods or performance of the Services.

## 10 DRAWINGS, PRINTS AND SPECIFICATIONS; CONFIDENTIALITY

10.1 The Seller agrees that it will not without the Purchaser's written consent use (other than for purposes of supplying the Goods or Services hereunder), sell, loan, publicise or disclose to any third party any of the tools, specifications, blueprints, drawings, designs or any other information prepared specifically for the Purchaser by the Seller in connection with the provision of Goods or Services to the Purchaser under this Contract, or any information of a confidential nature relating to the Purchaser's business or financial affairs (including without limitation documents, products, designs, prices, customers and processes). All such information shall be and remain at all times the property of the Purchaser and shall be preserved and regarded by the Seller as secret and confidential. Without prejudice to the generality of the foregoing the Seller shall take all proper and reasonable measures to ensure that all information, documentation and materials belonging to or relating to the Purchaser shall be kept confidential and shall not be disclosed or used save as otherwise expressly permitted by this Contract.

10.2 The Seller will provide at no extra cost to the

Purchaser the drawings and documents specified in the Purchase Order at the times specified in the Purchase Order. The Purchaser has the right to approve all drawings, but such approval shall not relieve the Seller of any of its responsibilities under this Contract. The drawings shall not be departed from without the Purchaser's written approval.

10.3 The Seller shall not permit publications about the Goods or Services, or photographs of the Goods to appear without the written authorisation of the Purchaser. The Seller will afford facilities to the Purchaser to take such photographs for the purpose of indicating progress, technical description or publicity.

## 11 SERVICE AND SPARE PARTS

The Seller shall maintain such stock of genuine spare parts for the Goods as is sufficient to cover commissioning and the ongoing use of the Goods thereafter and shall provide the Purchaser with an up-to-date price list in respect of such spare parts.

## 12 DEVIATIONS

12.1 The Purchaser shall be entitled at any time to require deviation from, addition to, or omission of any of the Services or Goods ("Change"). If such Change shall make the Services more or less expensive than if Delivered in accordance with the original requirements, a fair or reasonable addition or deduction shall be made to the Price. No claim shall be allowed for any extra labour or material by the Purchaser in connection with a Change unless same has been approved in writing by the Purchaser. Acceptance of payment of the Price constitutes waiver of all claims for extra Services or Goods furnished.

12.2 Any ideas, improvements, information, discoveries, inventions or development arising out of the Services, made by Seller in connection with this Contract which results from or involves suggestions, directions or information given by the Purchaser, shall be the sole and exclusive property of the Purchaser. The Seller and its employees and designers shall fully co-operate in obtaining suitable protection for the Purchaser including, but not limited to, execution of patent applications and assignments as required by the Purchaser.

## 13. INDEMNITY

13.1 The Seller shall assume full liability for and shall indemnify, protect and hold harmless the Purchaser, its affiliates and their respective directors, officers, employees and agents (the "Indemnified Parties") from and against any and all liability, damage, cost or expense which may accrue to or be sustained by any of the

Indemnified Parties resulting from or arising out of

(i) any negligence, breach of contract, breach of statutory duty or other wrongful act or omission on the part of the Seller or its subcontractors; or (ii) any claim, suit or action made or threatened against the Indemnified Parties for actual or alleged infringement of any third party's trademark, patent, copyright or other proprietary right by reason of the manufacture or Delivery of the Goods or Services by the Seller, the resale thereof by any of the Indemnified Parties, or use or availing of said Goods or Services or any part thereof by the Purchaser for a purpose known to the Seller. The Seller, at the Purchaser's request, shall defend, at its own expense, any such claim, suit or action. The indemnities given by the Seller in this clause 13 shall not apply to any liability, damage, cost or expense caused solely by the negligence of any of the Indemnified Parties.

13.2 Save for as set out in clause 7.6, neither party shall be liable for any incidental, punitive, consequential or indirect losses or for any loss of profits or loss of contracts arising out of or in connection with this Contract.

## 14. INSURANCE

14.1 If the Seller's Services involve operations by the Seller on the Purchaser's premises or at any place where the Purchaser conducts operations, the Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such Services and the Seller shall maintain such insurance policies as will protect the Purchaser from said risks, including but not limited to the types and amounts of cover hereinafter set out:

- (a) public liability insurance with a limit of indemnity of not less than €6.5 million per claim or series of claims arising from one event and unlimited in the aggregate;
- (b) employer's liability / Workers' Compensation insurance with a limit of indemnity of not less than €13 million per claim or series of claims arising from one event and unlimited in the aggregate or the relevant local social insurance equivalent in accordance with the laws of the state member having jurisdiction over the Seller's employees'.

14.2 The insurance policies as noted at clause

14 (a) above shall include, in each case, an indemnity to principals clause where these sub clauses are applicable.

14.3 If Seller is supplying Goods, from the date of the Purchase Order until completion of warranty period set out at clause 8.2, the Seller is obliged to insure the Goods through product liability insurance with a limit of indemnity of not less than €6.5 million per claim or series of claims arising from one event, and to insure any asset, goods, materials of the Purchaser located on the Seller's premises at any time, against any loss, damage or destruction by any cause whatsoever. The Seller shall produce evidence of such insurance upon request by the Purchaser.

## 15 DATA PROTECTION

15.1 In this Contract "Data Protection Law" means all applicable data protection law including, with effect from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018; and the terms 'personal data', 'process', 'controller', 'processor' and 'data subject' shall have the meanings given to them under Data Protection Law.

15.2 The Seller acknowledges that in performing its obligations, the Seller may process personal data on behalf of the Purchaser. In such circumstances, the Seller acknowledges that the Purchaser is the controller and the Seller is a processor, and the Seller agrees that:

- (a) the Seller shall process such personal data, on behalf of the Purchaser in the context of, and for so long as it is, performing its obligations. The obligations and rights of the Purchaser shall be as set out in this Contract;
- (b) the Seller shall process such personal data only in accordance with the documented instructions of the Purchaser, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations;
- (c) the Seller shall ensure that the persons authorised by the Seller to process such personal data are bound by confidentiality obligations consistent with Seller's obligations under Data Protection Law;
- (d) the Seller shall implement such technical and organisational security measures as are required to comply with the data security obligations under Data Protection Law;
- (e) the Seller is authorised to engage sub-processors to undertake processing on its behalf, provided that it provides the Purchaser with prior notice in writing containing details of the sub-processors that it engages and informs the Purchaser of any intended changes concerning the

addition or replacement of such sub-processors and provides the Purchaser with a reasonable opportunity to object to such changes;

- (f) where any sub-processor of the Seller will be processing such personal data on behalf of the Purchaser, the Seller shall ensure that a written contract exists between the Seller and the sub-processor containing clauses equivalent to those imposed on the Seller in this Contract. In the event that any sub-processor fails to meet its data protection obligations, the Seller shall remain fully liable to the Purchaser for the performance of the sub-processor's obligations;
- (g) the Seller shall inform the Purchaser immediately in the event of receiving a request from a data subject to exercise the subject's rights under Data Protection Law and shall provide such co-operation and assistance as may be required to enable the Purchaser to deal with such request in accordance with the provisions of Data Protection Law;
- (h) the Seller shall assist the Purchaser by implementing appropriate technical and organisational measures to allow the Purchaser to comply with requests from data subjects to exercise their rights under Data Protection Law;
- (i) the Seller shall assist the Purchaser in ensuring compliance with applicable obligations in respect of security of personal data under Data Protection Law;
- (j) the Seller shall: (i) at the choice of the Purchaser, delete or return all such personal data to the Purchaser when the Seller ceases to provide services relating to data processing; and (ii) delete all existing copies of such personal data unless EU law or the laws of an EU Member State require storage of the personal data;
- (k) the Seller shall: (i) make available to the Purchaser all information necessary to demonstrate compliance with the obligations laid down in this Contract; and (ii) allow for and assist with audits, including inspections, conducted by the Purchaser or another party mandated by the Purchaser, in order to ensure compliance with the obligations laid down in this Contract, including its data security obligations under Data Protection Law, provided however that the Purchaser shall be entitled, at its discretion, to accept adherence by the Seller to an approved code of conduct or an approved certification mechanism to aid demonstration by the Seller that it is compliant with the provisions of this

Contract;

- (l) the Seller shall inform the Purchaser immediately if, in its opinion, it receives an instruction from the Purchaser which infringes Data Protection Law;
- (m) the Seller shall notify the Purchaser without undue delay, and in any event within twenty-four (24) hours, after becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed and shall provide the Purchaser with such co-operation and as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such breach; and
- (n) no personal data shall be transferred outside of the European Economic Area by the Seller or any of its agents or sub-processors without the prior written consent of the Purchaser, which consent may be subject to terms and conditions (including, without limitation, that the data importer enters into model clauses in the form approved by the European Commission and, where relevant, complies with the provisions regarding sub-processors contained in such model contracts in respect of any sub-processors). The Seller shall comply with the requirements of Data Protection Law in respect of transfers of such personal data outside the European Economic Area, to the extent that the Purchaser consents to any such transfer.

15.3 The Seller shall notify the Purchaser in advance of processing any personal data on its behalf and provide a detailed description of all such personal data.

15.4 In order to process invoices submitted to in accordance with clause 6.1 above, it may be relevant or necessary for the Seller to disclose personal data (in respect of which it is the controller) to the Purchaser. In such circumstances, both parties agree that they are separate controllers for the purposes of Data Protection Law and the Seller warrants that:

- (a) such personal data has been collected, processed and disclosed in accordance with Data Protection Law;
- (b) it will comply with its obligations as a controller under Data Protection Law in respect of personal data which is disclosed to the Purchaser; and
- (c) it will provide all co-operation and assistance as may be required to enable

the Purchaser to comply with its obligations under Data Protection Law in respect of the disclosed data, including by providing adequate notice to the relevant data subjects.

## 16 INTELLECTUAL PROPERTY

16.1 All Intellectual Property in any artwork, designs, computer programmes, systems, scheme plans, sketches, drawings, data, or any other work developed by, drawn by or created or adapted by the Seller pursuant to this Contract shall be the property of the Purchaser. The Seller shall further execute all documents and do all such other acts which may be necessary or desirable to register (where relevant) any Intellectual Property in such works in the name of the Purchaser and to vest the legal and beneficial ownership in any and all such Intellectual Property in the Purchaser. The Seller irrevocably appoints the Purchaser to be his attorney and on his behalf to sign execute and do any such act or thing necessary for the purpose of giving to the Purchaser or its nominee the full benefit of the provisions of this clause.

16.2 The Seller shall not cause or permit anything which may damage or endanger the Intellectual Property or other property of the Purchaser, or the Purchaser's title to it or assist or allow others to do so.

16.3 Nothing in this Contract or in the Seller's status as a Seller shall grant the Seller any right or licence to any copyright, trade secret, or other Intellectual Property owned by the Purchaser.

## 17 FORCE MAJEURE

17.1 If a party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Contract by a Force Majeure Event, the Affected Party's obligations under this Contract to the extent affected by the Force Majeure Event shall be suspended while the Force Majeure Event continues.

17.2 Where a Force Majeure Event continues for a period of 1 (one) month or longer, the party not affected by the Force Majeure Event shall be entitled to terminate this Contract and the provisions of clauses 18.3 and 18.4 shall apply.

17.3 In this clause 17, "Force Majeure Event" means an event beyond the reasonable control of the Affected Party including, without limitation fire, explosion, flood, war, act of terrorism,

act of God, accident, interruption of or delay in transportation, labour trouble, strike, suspension of operations or works at any of the Affected Party's places of business, government action, riot or rebellion.

## **18 TERMINATION**

18.1 If the Seller (i) commits a material or fundamental breach of an obligation under or condition of this Contract; (ii) becomes insolvent; (iii) makes any composition or arrangement with its creditors (iv) has a liquidator, receiver, administrative receiver, examiner or administrator appointed over all or any part of its undertaking; (v) enters into compulsory or voluntary liquidation (other than for the purposes of amalgamation or reconstruction); (vi) suffers the occurrence of any event analogous to those described in any of (ii) to (v) under applicable law; (vii) if the Purchaser has reasonable cause to believe that any of the foregoing circumstances may occur; or (viii) if the Seller indicates in any way, including by its conduct, that it is unwilling to comply with the provisions of this Contract, the Purchaser may terminate this Contract forthwith by notice to the Seller.

18.2 Notwithstanding any of the foregoing, the Purchaser may terminate this Contract in whole or in part at any time by written notice to the Seller provided that in such circumstances the Purchaser shall pay the Seller for any Goods or Services Delivered to the Purchaser in accordance with this Contract up to the effective date of termination.

18.3 Upon termination of this Contract, the Seller shall deliver to the Purchaser all documentation relating to this Contract, together with any of the Purchaser's goods, which are in the Seller's custody or control. The Purchaser shall be entitled to enter the Seller's premises, without prior notice, for the purpose of removing therefrom any of the Purchaser's goods or documents.

18.4 Notwithstanding termination of this Contract, the provisions of this Contract shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder. Termination of this Contract by the Purchaser shall be without prejudice to the rights and remedies of the Purchaser in relation to any negligence, omission or default of the Seller prior to such termination.

## **19 PRECEDENCE**

19.1 Unless otherwise expressly agreed in writing by the Purchaser, this Contract alone shall govern the relationship between the Purchaser and the Seller relative to Delivery of the Goods and/or Services. Notwithstanding anything to the contrary in any document issued by the Seller

prior or subsequent to the Purchase Order this Contract shall take precedence over and shall prevail over any terms or conditions specified or referred to by the Seller (whether verbally or in writing and whether set out in the Seller's quotations or invoices or otherwise).

19.2 The Purchase Order shall prevail over these Terms if there is an inconsistency between them.

19.3 Subject to clause 12, any variation, change or amendment to this Contract is valid only if agreed by the parties in writing and signed by a duly authorised representative of the Purchaser. For the avoidance of doubt, the Purchaser reserves the right to amend these Terms to the extent that they apply to any future contract(s) made between the Purchaser and the Seller.

## **20 GENERAL**

20.1 The Seller assumes all obligations under applicable insurance, employment, benefits and tax legislation with respect to persons employed or otherwise engaged by or on its behalf in the performance and/or production and Delivery of Goods or Services under this Contract. If any claim is made or threatened, whether by legal proceedings or otherwise, against the Purchaser by any person (including without limitation any member of the Seller's staff) on the grounds that any such person supplied or engaged by or performing work (directly or indirectly) on behalf of the Seller in connection with this Contract is or was or is deemed (whether pursuant to section 13 of the Unfair Dismissals (Amendment) Act, 1993 or otherwise) to be or have been an employee of the Purchaser, then the Seller shall indemnify the Purchaser in respect of all loss, damage or injury and all costs, fees and expenses incurred by the Purchaser as a result thereof, including any damages and costs awarded by any court, tribunal or rights commissioner, the cost incurred in compliance with any demand made by the Revenue Commissioners and any loss, costs, fees and expenses suffered or incurred in complying with any order of the court, tribunal or rights commissioner.

20.2 Without prejudice to any other provision of this Contract, the Seller shall not offer, or give or agree to give, any person employed by the Purchaser any gift or consideration of any kind as an inducement or reward for doing, or for bearing to do, or having done, or forbore to do, any act in relation to the obtaining or performance of this Contract or for showing, or forbearing to show, favour or disfavour to any person in relation to this Contract. In the event of any breach of this clause or the commission of any offence by the Seller or any of the Seller personnel

under the Criminal Justice (Corruption Offences) Act 2018, the Bribery Act 2010 or under any legislation analogous to the foregoing in any applicable jurisdiction the Seller shall be regarded as having breached this Contract and the Purchaser may terminate this Contract forthwith. The decision of the Purchaser shall be final and conclusive in any dispute, difference or question arising in respect of the interpretation of this clause or the right of the Purchaser under this clause to terminate this Contract.

20.3 The Seller accepts and acknowledges that in Delivering the Services it is acting as an independent contractor, nothing in this Contract shall constitute a partnership or joint venture nor establish a relationship of agency or employment between the Purchaser and the Seller. The Purchaser has no and assumes no liability or responsibility for any of the Seller's personnel and neither the Seller nor any of its staff has any authority to negotiate or conclude any transaction or otherwise enter into any binding commitment on behalf of the Purchaser.

20.4 Nothing in this Contract shall be deemed to give the Seller any exclusive rights or entitlements against the Purchaser and the Purchaser shall be at liberty to retain the services of third parties at any time and from time to time at its sole discretion.

20.5 Any failure by the Purchaser to enforce or require strict performance by the Seller of any terms or conditions of this Contract shall not constitute a waiver thereof by the Purchaser and the Purchaser may at any time avail itself of the rights and remedies the Purchaser may have for any breach of the terms hereof.

20.6 Notices to be given under this Contract may be served by the Purchaser by sending same by ordinary prepaid post to the address stated in the Purchase Order.

20.7 If for any reason any provision of this Contract shall be or be bound to be void or of no effect or invalid the other provisions hereof shall not be affected thereby and shall continue in full force and effect. The Purchaser and the Seller further agree to replace any such invalid, unenforceable provisions with valid and enforceable provisions designed to achieve, to the greatest extent possible, the business purpose and intent of such invalid and unenforceable provisions.

20.8 The rights and remedies provided for in this Contract are cumulative and are not exclusive of rights or remedies provided by law.

## **21 ASSIGNMENT/TRANSFER**

21.1 The Purchaser shall be entitled, at its absolute discretion, at any time and from any time, without the prior written consent of the Seller, to transfer, assign, and/or novate its rights and obligations pursuant to this Contract, in whole or in part, to any third party (whether an associated company of the Purchaser or otherwise and whether to one or more such parties).

21.2 Without prejudice to clause 21.1, if the business and/or legal structure of the Purchaser is re-organised in any manner, the rights and obligations of the Purchaser pursuant to this Contract may, at its absolute discretion, be varied in such a manner as the Purchaser may notify to the Seller to reflect any reduced or altered requirement for the Goods as a result of said re-organisation.

21.3 The Seller may not assign, transfer, charge, subcontract or deal in any manner with any or all of its right or obligations under this Contract with the Purchaser's prior written consent in writing except as part of a company amalgamation or reconstruction.

## **22 GOVERNING LAW**

22.1 This Contract shall be governed by and construed in accordance with the laws of Ireland and the parties agree to submit to the exclusive jurisdiction of the Courts of Ireland.

## **23 CODE OF BUSINESS CONDUCT**

23.1 The Seller shall engage with the Purchaser in the "procure to pay" process (tendering, contracting, ordering, certification, invoicing, payments) in compliance with best practice and with honesty and integrity.

23.2 If the Seller is dissatisfied in relation to the Purchaser's tendering and purchasing procedures it shall immediately bring this to the Purchaser's attention.

