

TERMS & CONDITIONS OF SALE

1. GOVERNING CONDITIONS

- 1.1 All Goods are quoted for and supplied by the Seller and accepted by the Buyer upon these terms and conditions. Nothing contained in any order by the Buyer or elsewhere shall supplement, qualify, override or modify these terms and conditions and the Seller shall not be deemed to accept any other terms of the Buyer or any such modification by failing to object to provisions contained in any order or other communication from the Buyer. In the event of any conflict between any terms and conditions set out in any order by the Buyer and these terms and conditions, these terms and conditions shall prevail unless otherwise agreed in writing by an authorised officer of the Seller.
- 1.2 The Seller's catalogues, price lists, advertising literature, drawings specifications and any documents submitted with any quotation are intended only to give a general description of the Goods; and the contents thereof may not be relied on by the Buyer as a representation or warranty nor shall they otherwise constitute or form any part of the Contract.
- 1.3 These conditions supercede any and all prior oral and written quotations, communications, agreements and understanding of the parties in respect of the sale and delivery of the goods and shall apply and preference to any supercede any and all terms and conditions of any order placed by the Buyer and any other terms and conditions submitted by the Buyer. Failure of the Seller to object to terms and conditions set by the Buyer shall in no event be construed as an acceptance of any terms and conditions of the Buyer. Neither shall the Seller's commencement of performance nor the Seller's delivery be deemed or constituted as acceptance of any of the Buyer's Terms and Conditions. If these terms and conditions differ from any Terms and Conditions of the Buyer, these Conditions and any subsequent communication or conduct by or on behalf of the Seller can be including, without limitation, confirmation of an Order and delivery of goods, constitute a counter offer and not acceptance of such Terms and Conditions submitted by the Buyer. Any communication or conduct of the Buyer which confirms agreement for the delivery of goods by the Seller, as well as acceptance by the Buyer of any delivery of goods from the Seller shall constitute a qualified acceptance by the Buyer of these conditions.

2. QUOTATIONS

Unless previously withdrawn the Seller's offer to supply the Goods (the quotation) is valid for 30 days from the date on which it is sent to the Buyer.

3. PRICE

- 3.1 The price payable by the Buyer shall be that specified by the Seller in its invoice.
- 3.2 The price is exclusive of Value Added Tax, and of delivery and transportation costs which will be shown separately; and may at any time be varied by the Seller in accordance with cost variations, including (but without prejudice to the generality of the foregoing) variations in the costs to the Seller of obtaining supplies, materials, labour, transport and variations consequent upon fluctuations in foreign exchange rates. Where information is subsequently submitted by the Buyer which involves material alteration to the specification or methods of manufacture of the Goods, the Seller may amend the price to cover any additional cost arising from such alteration

4. PAYMENT

- 4.1 The Buyer shall pay the price within 30 days after the date of the invoice. Time is of the essence in respect of this clause. In addition to its other rights the Seller shall be entitled to charge interest at the rate of 4% per annum over National Irish Banks base rate from time to time in force on all overdue payments whether or not notice of default is given by the Seller. Interest shall accrue on a daily basis.
- 4.2 Payment shall be due to the Seller and the Seller shall be entitled to institute proceedings for the price (and interest accrued if any) whether or not the property in the Goods has passed to the Buyer in accordance with these terms and conditions.
- 4.3 The Buyer shall not be entitled to set off any sums payable hereunder against any claims which the Buyer may have against the Seller under this Contract or otherwise howsoever.
- 4.4 The Seller may require payment by irrevocable confirmed letter of credit on terms satisfactory to the Seller's bankers.
- 4.5 If the Seller agrees to deliver Goods by installments payment for the entire quantity of Goods must be made within three months of the first delivery irrespective of whether the entire quantity of the Goods have been delivered to the Buyer. The Goods paid for which have not been delivered will be made available to the Buyer at the Seller's premises on reasonable notice.

5. THE GOODS

The Seller will endeavour to supply Goods which comply with any expressly agreed specification and description and with any sample. However such specifications and descriptions are approximate only and minor deviations (including without prejudice to generality of the foregoing deviations in colour, markings, measurements and weight) shall not constitute variations from specification, description or sample.

6. CANCELLATION AND RETURN

The Buyer shall not be entitled to cancel an order once accepted except against prior payment of a reasonable cancellation charge to be specified by the Seller. The Seller will not accept return of goods for credit or exchange.

7. INDEMNITY & INSURANCE

- 7.1 The Buyer shall indemnify and keep indemnified the Seller against any loss, damage, cost, charge, expense, claim, action, proceeding, penalty or other liability resulting from infringement of copyright, patent, trade mark, design right or other right or privilege of any third party arising from the Buyer's design, specification or instructions or from the Seller's compliance therewith.
- 7.2 The Buyer shall be liable to indemnify the Seller against all damages, costs and expenses in respect of injury to, illness or death of any person, or loss of or damage to any property arising out of or in the course of the supply of goods, to the extent of the liability, due to any negligence, breach of contract, breach of statutory regulations and duties or due to any omissions or defaults of the Buyer.
- 7.3 Without prejudice to the foregoing, the Buyer shall maintain, enforce and provide the Seller with evidence that it has arranged liability insurance to include products liability insurance with a limit of indemnity of not less than €5,000,000.00 for any one incident. The insurance



shall include all goods, materials and equipment (including any free issues) for the replacement value while they are under the Buyer's responsibility.

- 7.4 The Buyer shall indemnify the Seller against any loss or damage that the Seller may suffer or any costs or expenses (including special, indirect, incidental, consequential damages to include damages for loss of profits that the Seller may incur as a result of a breach of any of the conditions or obligations set out in these Terms and Conditions whether such loss, damage, costs or expenses are incurred by the Seller, by its successors in title or by any Third Party claiming on or against the Seller. This indemnity shall remain in force after the conclusion of, or sooner termination by either party of this Agreement.

8. DELIVERY

- 8.1 Unless otherwise instructed by the Buyer the Goods shall be delivered and shall be deemed to be delivered to the Buyer when made available to the Buyer or to the Buyer's agent or carrier for loading and transportation at the Seller's premises and "Delivery" shall herein be accordingly construed. Proof of delivery shall be the signature of the Seller's delivery note by an employee of the Buyer.
- 8.2 Whilst the Seller will endeavor to deliver the Goods by the specified date or dates for delivery, such date or dates are estimated dates only and the Seller shall not be liable for failure to deliver on such dates. Time shall not be of the essence in relation to those dates. The Seller will notify the Buyer of any substantial changes in those dates.
- 8.3 Where the Seller arranges transportation of the Goods from its premises, the Seller does so as agent of the Buyer and the Buyer shall reimburse to the Seller all costs and expenses thereby incurred and shall indemnify and keep indemnified the Seller against all loss, damage, costs, charge, expense, claim, action, proceedings, penalty or other liability (whether to the Seller, the Buyer or otherwise and whether or not arising from any act or default of the Seller), in connection with such transportation. In the absence of specific directions in writing from the Buyer the Seller shall deliver the Goods to the Buyer's address as stated overleaf using such means of transport as the Seller may think fit and shall not be responsible for insuring the Goods in transit.
- 8.4 If the Buyer fails promptly to fulfill the terms of payment on the due dates the Seller at its option may defer further deliveries or may cancel the Contract in relation to all or part of the undelivered balance of the Goods. The Seller reserves the right prior to making any delivery to require from the Buyer satisfactory security for payment.

9. RISK

Notwithstanding the above provisions risk in the Goods shall pass to the Buyer upon delivery by the Seller to the Buyer or to the Buyer's agent or carrier.

10. WARRANTIES

- 10.1 The Seller warrants that the Goods will be of merchantable quality and will conform (subject to permitted variations under Clause 5 hereof) to expressly agreed specifications.
- 10.2 All other conditions and warranties whether express or implied by statute, common law or otherwise as to quality, fitness (including fitness for any purpose made known by the Buyer) or otherwise are (to the extent allowed by law) excluded from the Contract and the Buyer in selecting the Goods shall be deemed to have relied entirely on its own skill and judgment.

- 10.3 The Seller shall not be liable in any event for errors or omissions in drawings or samples after they have been improved by the Buyer and may rely on all information supplied by the Buyer.
- 10.4 Under no circumstances shall the Seller be liable to the Buyer for any special, consequential, incidental or indirect loss or damage for loss of profits incurred by the Buyer as a result of any act, omission, negligence, breach of duty, breach of statutory duty or contract or breach of contract or default of the Seller its servants or agents suffered by the Buyer or any other person or persons whatsoever other than negligence resulting in personal injury or death.
- 10.5 In no event will the Seller's total liability for any damages based on contract, tort or statutory duty arising out of or in connection with the supply of goods exceed the greater of €1,000,000.00 or the total amount paid to the Seller by the Buyer under Purchaser Orders.
- 10.6 In no event will the Seller's total liability for any damages and actions based on contract, tort or statutory duty arising out of or in connection with the supply of goods exceed the amount remaining due under any purchase orders, together with any interest thereon pursuant to these terms and conditions.
- 10.7 The above limitations shall not apply to death or personal injury or otherwise to the extent prohibited by the laws of Ireland."

11. CLAIMS

- 11.1 The Buyer shall be deemed to have accepted the Goods as undamaged and complete and as complying (to the extent hereby required) with any relevant description, specification and sample unless:
- 11.1.1 in the case of non-delivery, notice is given to the Seller and to any carrier or intended carrier of the Goods within 7 days.
- 11.1.2 in any case of shortage damage or loss the Buyer shall notify the Seller and any carrier of the Goods in writing thereof within 7 days after Delivery.
- 11.1.3 in any case of defect or non-compliance, the Buyer shall notify the Seller in writing within 7 days after Delivery.
- 11.2 The Buyer shall accept in full and final settlement of any claim in respect of shortage, damaged, defective or non-complying Goods, either replacement of such Goods (or in the case of shortage, delivery of such shortage) or (at the Seller's option) a credit note in respect of the price thereof.

12. TITLE

- 12.1 The title to the Goods shall remain with the Seller until all sums owing to the Seller by the Buyer under the Contract or otherwise howsoever shall have been paid in full or until the Buyer on-sells the Goods as authorised in clause 12.2 hereof; and so long as title to the Goods remains with the Seller the Buyer shall hold the Goods as Bailee of the Seller on the following terms and in such a way, that the Goods shall be readily identifiable and distinguishable from all other Goods held by the Buyer.
- 12.2 Unless an event under clause 12.5 shall have occurred, or unless the Buyer shall have been otherwise notified by the Seller, the Buyer may on-sell the Goods by way of bona fide sale at full market value in the ordinary course of business to customers who are not either controlled by the Buyer, or control the Buyer or are in common control with the Buyer.

- 12.3 Where the Buyer on sells the Goods, the proceeds of sale of the Goods (or of any Goods of which the Goods form part) shall be held separately to the order of the Seller until all sums owing to the Seller by the Buyer under this Contract or otherwise howsoever shall have been paid in full.
- 12.4 The authority of the Buyer under clause 12.2 hereof shall without notice cease if the Buyer enters into liquidation whether compulsorily or voluntary, or compounds with or enters into a scheme of arrangement for the benefit of its creditors, or has a Receiver appointed on all or any part of its assets or shall cease (or threaten to cease) to carry on all or a substantial part of its business.
- 12.5 If at any time any or all of the price is due or upon any event occurring under clause 12.4 hereof, the Seller or its Agents may at any time enter the premises of the Buyer or its Agents to retake possession of the Goods and any Goods owed or co-owned by the Seller.

13. FORCE MAJEURE

The Seller shall not be under any liability whatsoever in the event of its failure, delay or default carrying out all or any of its obligations hereunder due in whole or in part to any circumstances or cause beyond the Seller's control, including but without prejudice to the generality of the foregoing, fire, flood, power failure, reduction of power supplies, mechanical failure or any inability by the Seller or its suppliers to obtain on normal commercial terms materials, labour or facilities requisite for the manufacture and supply of the Goods, strike, lock-out, industrial dispute or action taken by any party or any other person, firm or company in connection therewith or on consequence or furtherance thereof but this provision shall not in any way limit or restrict the rights of the Seller to terminate the Contract in accordance with its terms and conditions.

14. TERMINATION

Without prejudice to any right of the Seller under general law to terminate the Contract at any time including the happening of any one or more of the following events, the Seller may terminate the Contract forthwith by serving notice in writing on the Buyer:

- 14.1 upon the happening of any one or more of the events specified in Clause 12.4 or
- 14.2 where the Seller has agreed to supply the Buyer with Goods on credit and the limit of the amount of that credit fixed by the Seller has been exceeded by the Buyer whether on the Contract or any other Contract or in aggregate: or
- 14.3 where the Seller agrees to deliver Goods by installments and the Buyer fails to pay for any installment within the time stipulated or refuse to accept or take Delivery of any installment; or
- 14.4 subject to Clause 8, where the Buyer arranges transportation of the Goods and fails duly and promptly to collect the Goods from the Seller's premises; or
- 14.5 upon the Seller receiving notice of infringement of any right specified in Clause 7 hereof.
- 14.6 where the Buyer fails to comply with the provisions of clause 4.

15. EFFECT OF TERMINATION

The termination of the Contract by the Seller for whatever cause shall not prejudice or affect the rights or remedies of the Seller against the Buyer in respect of any antecedent breach of the Contract, and shall not prejudice the rights and remedies of the Seller in respect of any sums or sum of money owed or owing from the Buyer to the Seller.

16. CONFIDENTIAL INFORMATION

All secret or confidential information relating to the Seller's business and processes which may come or have come into the possession of the Buyer in connection with this order/Contract shall be kept secret and confidential by the Buyer and shall not be disclosed to any third party without the prior consent in writing of the Seller.

17. WAIVER

No waiver or variation by the Seller of any of the provisions of the Contract shall be duly made or deemed to have been duly made unless in writing and signed by a duly authorised officer of the Seller. The failure by the Company or delay by the Company in insisting on any occasion on the performance of any provision of the Contract shall not thereby act as a waiver of such breach or any subsequent breach or acceptance of such variation.

18. NOTICES

Any notice required hereunder shall be in writing and may be given by first class pre-paid post, personally delivered or by facsimile transmission to the postal or facsimile address of the Seller or the Buyer's address as set out in the Contract or to such other address as may have been duly notified by either party from time to time. Any notice given by post will be deemed to be given on the second business day after the posting, any facsimile shall be deemed to have been received when receipt is acknowledged and as of the date when personally delivered.

19. ASSIGNMENT

The Buyer shall not without prior written consent of the Seller assign or transfer the Contract or the benefit thereof or any part thereof to any person.

20. LAW

The proper law of the Contract is the law of Ireland and these terms and conditions and any Contract made hereunder shall be governed and construed and enforced in all respects in accordance therewith. Both the Seller and the Buyer shall submit to the non-exclusive jurisdiction of the Irish Courts.

21. CLAUSE HEADINGS

The clause headings are used for guidance only and are not to affect the meaning or interpretation of these terms and conditions.

22. SEVERABILITY

If any part of this Contract is found by a Court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable, then such part shall be severed from the remainder of this Contract which will continue to be valid and enforceable to the fullest extent permitted by law.



23 LIMITATION OF LIABILITY

In no event will the Seller be liable for special, indirect, incidental or consequential damages or damages for loss of profits arising out of or in connection with this contract.