

**ELEMENT MATERIALS TECHNOLOGY LABORATORY
SOLUTIONS IRELAND LIMITED**

**TERMS AND CONDITIONS FOR THE SALE OF GOODS
(AND ASSOCIATED SERVICES) (UK AND IRELAND)**

1. Formation of Contract

- 1.1 These terms and conditions ("**Terms and Conditions**"), together with any quotation, proposal, estimate or fee quote ("**Quotation**") provided by or on behalf of the Company, shall apply to supply of the Goods ("**the Goods**") and, if applicable, associated services identified in the Quotation ("**the Services**") and provided by the entity noted on the Quotation ("**Company**") for the customer noted in the Quotation ("**Customer**").
- 1.2 These Terms and Conditions shall supersede and override any terms or conditions contained in or referred to in the Customer's purchase order or acceptance of a quotation or specification and shall prevail over any terms implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing. Any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 Unless otherwise specified therein, written Quotations shall be valid for thirty (30) days from the date thereof (regardless of when the Customer received the quote) and the Company may withdraw any such Quotation at any time. No Quotation given by the Company shall be an offer to contract with any person and no contract shall come into existence except in accordance with sub-condition 1.4.
- 1.4 The Customer's purchase order or the Customer's acceptance of a Quotation constitutes an offer by the Customer to purchase the Goods and/or Services specified in the Quotation upon these Terms and Conditions. No offer placed by the Customer shall be accepted by the Company, other than by the Company acknowledging the order or (if earlier) by the Company starting to deliver the Goods (and/or, if applicable, provide Services), when a contract on these Terms and Conditions will be established (the "**Contract**").
- 1.5 No acceptance or acknowledgement, even if in writing and signed by the Company, of the Customer's purchase order or any other document shall constitute acceptance of any provision of the Customer's purchase order or any other document that conflicts with or adds to these Terms and Conditions unless the Company specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with sub-condition 2.1.
- 1.6 All technical information, specifications, descriptions, drawings and other particulars furnished in catalogues, price lists and other documents issued by Company are as accurate as reasonably possible but are given for general information are not to be treated as binding unless specifically confirmed in writing. All dimensions and materials are unless otherwise stated subject to reasonable variations resulting from the raw material available or arising in the ordinary course of manufacture.
- 1.7 These terms of sale should be read in conjunction with our policy documents (including our return policy) which we issue from time to time and which form part of the terms of sale.
- 1.8 Where it is agreed in any Quotation that Services are to be provided, subject to the payment of the Consideration, Company shall provide such Services in accordance with the conditions agreed in the Quotation.

2. Variation including Cancellation, Postponement and Amendment

- 2.1 These Terms and Conditions may not be varied or waived by either party unless the variation or waiver is in writing and is signed by an officer or duly authorised signatory of the Company. The variation or waiver must set out the condition(s) or sub-condition(s) to be varied or waived and the detail of each such variation or waiver.
- 2.2 The Customer may cancel or postpone any order (in whole or in part) subject to the Special Conditions outlined at sub-condition 3.10, provided that the Customer shall pay to the Company a handling / restocking charge of up to 75% based on downstream supplier terms and associated carriage charges relating to such order plus other costs relating to such order reasonably incurred prior to the date of the cancellation or postponement or otherwise incurred by the Company as a result of the cancellation or postponement.
- 2.3 The Company reserves the right to review and amend any Quotation prices where documentation, specification or other materials relating to the Contract have materially changed since the original Quotation was given or where additional Goods/Services not envisaged by the Quotation are requested.
- 2.4 If there are any variations in the cost of materials, labour or otherwise during the period of the Contract, the price may, at the absolute discretion of the Company, be adjusted to account for such variation.

3. Prices & Payment

- 3.1 The Customer shall pay the Company the charges set out in the Quotation ("**Consideration**").
- 3.2 The Company may issue invoices in respect of the supply of Goods:
3.2.1 upon shipment; or
3.2.2 in a manner otherwise specified in the Quotation, including individual lines on the Quotation, or order confirmation.
- 3.3 Company may invoice for the Services in advance, at the frequency set out in the Quotation.
- 3.4 Company may require satisfactory credit references before accepting a new Customer and prepayment of up to 100% of the first Contract.
- 3.5 The Customer shall pay the Consideration and any other costs stated in any invoice provided pursuant to these Terms and Conditions in full, without deduction or set-off, within thirty (30) days of the date stated on that invoice (unless such other payment profile is agreed in the Contract). The Consideration and any other costs shall be paid free and clear of, and without deduction for and on account of, tax, unless the Customer is required by law to make such payment subject to the deduction of withholding tax; in which case the sum paid by the Customer shall be increased to the extent necessary to ensure that after such deduction or withholding the Company receives an amount equal to Consideration and any other costs it would have paid had no such deduction or withholding been required.
- 3.6 The Customer shall pay the Consideration to the Company by electronic bank transfer in cleared funds in the currency specified in the Company's Quotation, proposal or order confirmation. All payments due to the Company shall be payable within the specified time irrespective of whether or not the Customer has recovered payment from a third party.
- 3.7 Where the Customer is in default of payment in accordance with these Terms and Conditions, the Company may: suspend provision of any further Goods and/or Services being carried out for the Customer; alter or withdraw credit terms; and/or amend terms, prices or service levels. Company does not accept any responsibility for the consequences of suspending the provision of the Goods and/or Services in such instance. The amount outstanding from time to time shall bear interest, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 5% per annum above the base rate from time to time of HSBC Bank in the relevant currency. Further, Company reserves the right to forward unpaid accounts to a debt-collecting agency at Customer's cost.
- 3.8 The Company may retain or set off any sums owed to it by the Customer which have fallen due and payable against any sums due to the Customer under the Contract or any other agreement between the parties or any of their Group Companies. "**Group Company**" means, in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company.
- 3.9 **Special conditions for standing orders:**
Where a Customer contracts on standing orders (agreed by the Company salesperson and clearly stated on the Quotation), the following provisions shall apply:
3.9.1 Customers wishing to cancel a standing order before the end of the agreed term can do so subject to the following (as required by the Company):
(a) Customer must buy the next month's shipment of Goods;
(b) Company will try to return the Goods to its supplier if more than one month's worth of stock is held, otherwise Customer will buy the total amount of reserved stock being held for them (this may be up to 12 months' worth of stock).
- 3.9.2 Reasonable changes may be made to the standing order if the full quantity of the Goods is purchased from Company within +/-3 months of the start or end date of the standing order.
- 3.9.3 Delivery charges will vary according to the quantities and size of the Goods being supplied. Customers will be informed of delivery charges for the Goods on their standing order on the Quotation.
- 3.9.4 All standing orders will be placed on hold and deliveries will cease if any invoice for the standing order shipment from Company is not paid on time and in full.
- 3.9.5 Goods pursuant to a standing order will be shipped by Company on the last working day of the month, unless otherwise agreed in writing. Company requires at least 30 days' notice for decreased quantity deliveries for the next shipment.
- 3.10 **Special conditions for call-off contracts:**
When a Customer contracts on a call-off basis (agreed by the Company salesperson and clearly stated on the Quotation) (a "Call-off Contract"), the following provisions shall apply:

- 3.10.1 Company shall provide a Quotation (which shall include an expiry date for when the Goods must be taken i.e. called-off by the Customer, subject to a maximum Call-off Contract period of 12 months).
- 3.10.2 Once the Call-off Contract has been agreed, Company shall purchase the stock and hold it in its warehouse until the Customer submits a Call-off Order (as defined in sub-condition 3.10.4 below), in accordance with the Call-off Contract. Company is entitled to stagger the purchase of stock in accordance with warehousing requirements at its discretion, such stock to be replenished as appropriate upon the customer calling-off the Goods.
- 3.10.3 Without prejudice to sub-condition 3.7, Company shall make upfront payment for the Goods. The Company shall provide an order number to be used for each shipment and invoice sent to Customer. Company is entitled to suspend or terminate the Contract (- and therefore delivery of the Goods under the Call-off Contract) with immediate effect by giving written notice, in the event that any invoices issued are not paid on time and in full.
- 3.10.4 The Customer shall Call-off the Goods via email to the Company salesperson ("**Call-off Order**"). Goods stored at the Company warehouse shall be shipped within 1-2 working days of the relevant Call-off Order. Goods stored at any manufacturers warehouse or in any other location shall be shipped from the relevant facility within a timeframe to be advised by the Company salesperson following receipt of the Call-off Order. All delivery costs shall be borne by the Customer and unless otherwise specified, on all orders for delivery outside the Republic of Ireland, the costs of delivery, cases and containers, dock and airport costs, port and customs entry, freight, insurance if any will be chargeable to the Customer.
- 3.10.5 At its discretion, Company may facilitate any Customers wishing to cancel a Call-off Order before the expiry date envisaged by sub-condition 3.10.1 by attempting to return Goods to their original manufacturer. If the original manufacturer does not accept the return, the Customer will be liable for the full amount remaining payable under the Call-off Order. If the manufacturer accepts the return, the Customer shall be charged a handling charge of up to 75% of the value of the Goods being returned plus other costs relating to such order reasonably incurred prior to the date of the cancellation or postponement or otherwise incurred by the Company as a result of the cancellation or postponement.

4. Customer's Obligations

- 4.1 In addition to the other obligations outlined in these Terms and Conditions, the Customer agrees that it should take all reasonable steps to eliminate or reduce any risk to health and safety which use of the Goods may give rise to and acknowledges that the Company will not undertake any research as to the risks to health and safety which may arise from use or storage of the Goods and shall comply with any dependencies regarding site preparation as advised by the Company from time to time.
- 4.2 The Customer shall indemnify the Company against any claim, proceedings, costs, loss, damage or liability suffered by the Company as a result of failure by the Customer, or any other person in control of the Goods, to take such steps or ensure compliance with the duties referred to in sub-condition 4.1.
- 4.3 The Customer shall supply as much information as possible, including a unique purchase order number, reference or authorization, about each scope of work for which a Quotation is provided in order to assist Company in its successful delivery of the Goods and, if applicable, performance of Services.
- 4.4 The Customer represents and warrants the completeness and accuracy of all documents and information supplied to the Company for the purposes of the Company delivering the Goods, both at the time of delivery and subsequently. It is a material condition of the Contract that Goods will be provided by the Company on the basis that full disclosure is made by the Customer of all information and documentation which may affect such provision of Goods.
- 4.5 Customer shall co-operate fully in the event of a recall of the Goods or containers and shall provide such co-operation and assistance as Company may reasonably request in order to comply with applicable legal requirements relating to the Goods or containers or any part of them.

5. Warranties and Remedies

- 5.1 Subject to Customer's compliance with the above condition 4, (i) the Goods supplied shall be of satisfactory quality (within the meaning of the Sale of Goods and Supply of Services Act 1893 and 1980) for 30 days following delivery; and (ii) Services, if agreed to be provided in a Quotation, shall be provided with reasonable skill and care. In the event that the Company agrees the Goods are not of such satisfactory quality or, if applicable, Services are not provided with reasonable skill and care, and Customer notifies the Company within 14 days of delivery or performance, Company shall at its sole option either supply replacement Goods, repair the defect or refund the price paid for the relevant Goods (or, if applicable, reperform the Services); such replacement, repair or refund (or if applicable reperformance) shall be Customer's sole remedy in respect of any claim for a breach of this condition. The Customer may not make any claim except when it has given notice as required by this condition. Company shall be under no liability for any defect which is due to accident, fair wear and tear, negligent use, tampering, improper handling, improper use, improper operation or improper storage or any other default on the part of any person other than the Company.
- 5.2 Otherwise, to the extent permitted by law, Company provides no warranties and makes no representation as to the fitness for purpose of any Goods, or that they are suitable for use with any equipment nor does Company warrant or represent that Goods sold hereunder shall be free of defects in material and workmanship or shall conform to any agreed specification at the time of delivery. The Customer may rely only on warranties provided by the manufacturer and it shall be a matter for the Customer to satisfy itself as to the terms and conditions of such warranties.
- 5.3 No employee, agent or other person is authorised to give any warranty or make any representation on behalf of the Company in relation to the Contract, or to assume for the Company any other liability in connection with the Goods, unless such warranty, representation or assumption of liability is in writing and signed by an officer or duly authorised signatory of the Company.

6. Delivery of Goods

- 6.1 Company will deliver the Goods to the location agreed in the Quotation ("**Delivery Location**"). Customer shall make sure that the premises to which the Goods are to be delivered, and, if applicable, Services are to be performed, are compliant with all relevant health and safety legislation and codes of practice. If any premises are not compliant, Company is entitled to suspend deliveries or performance until they are compliant without any liability to Customer. Delivery in respect of any Goods is completed on arrival of the relevant Goods at the Delivery Location.
- 6.2 Company reserves the right to make an additional charge if Customer requests any unscheduled delivery or emergency delivery.
- 6.3 In the event that Company specifically agrees that Customer will collect the Goods, Customer will collect the Goods from the Delivery Location at the time specified by Company and, in such case delivery in respect of any Goods is completed on the completion of loading of the relevant Goods at the Delivery Location.
- 6.4 Unless otherwise agreed by the Company, delivery within the Republic of Ireland will be at the Customer's cost by whatever means the Company deems appropriate. Unless otherwise specified on all orders for delivery outside the Republic of Ireland, the costs of delivery, cases and containers, dock and airport costs, port and customs entry, freight, insurance if any will be chargeable to the Customer. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon. The Company shall be entitled to make delivery of Goods and instalments if required and will require to pay for any instalment in addition to Goods. If the Customer fails to accept delivery within 14 days of receipt of notice in writing that the Goods are ready for delivery, the Customer shall be liable for all the Company's storage costs and additional carriage costs in addition to a reasonable administration charge and the Company shall be entitled without prejudice to its other rights to resell or otherwise dispose of the Goods.
- 6.5 The Company will use reasonable endeavours to deliver the Goods by estimated delivery dates, but unless otherwise explicitly agreed in a Contract, the Company does not guarantee any stated delivery dates. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Customer shall not be entitled to cancel the Contract or refuse payment should delivery be made after an agreed delivery date. Company will use commercially reasonable efforts to redeliver any Goods that are lost in transit or damaged by the Company's couriers to the extent not due to an act or omission of the Customer.
- 6.6 The Company's obligation to provide the Goods under the Contract shall be subject to any obligation it may have to comply with any law

- or other regulation binding on it which may be in force from time to time.
- 6.7 The specification for packaging the Goods shall be entirely at the discretion of Company who shall have the right to pack all Goods in such manner, with such materials and in such quantities as Company thinks fit and Company is not obliged to comply with any packaging instructions or requests from Customers. The cost of special packaging, if agreed or deemed necessary by Company, shall be an additional charge to Customer. Containers and any packing material supplied as returnable will be charged to Customer (and refunded on return where returned in the same condition). Company reserves the right to charge a replacement cost where a returnable container is not returned, or to levy a charge where a returnable container is returned damaged.
- 7. Risk, Title and Acceptance**
- 7.1 Subject to 7.2, risk of damage to or loss of the Goods shall pass to Customer upon delivery, or, on orders for delivery outside the Republic of Ireland on delivery 'free on board' to the port or airport notified in the relevant Contract. Claims for shortages or damage to Goods before risk passes must be made in writing within 48 hours of receipt failing which proper delivery shall be conclusively presumed to have been made.
- 7.2 Where delivery is made pursuant to 6.3, the risk in the Goods shall pass to the Customer at the time of collection by the Customer or the Customer's designated carrier and the Customer must put in place adequate insurance cover for the Goods.
- 7.3 Title to the Goods shall pass to Customer only when Company has received payment (in cleared funds) of:
- 7.3.1 all amounts owing in respect of the Goods and/or Services; and
- 7.3.2 all other amounts then due and owing from Customer to Company or any other Group Company, whether or not under these Terms and Conditions.
- 7.4 The Goods shall remain the property of the Company until the price has been fully paid and the Company shall be entitled to recover the Goods at any time until title has passed. Until title passes, the Customer shall take all reasonable steps to keep the Goods separately identifiable from other property, but shall not be prohibited from using such Goods.
- 7.5 In regard to any Goods returned by the Customer, other than where a claim is made as to shortages or damage to Goods before the passing of risk, the Company reserves the right to:
- 7.5.1 refuse the return of said Goods where the Goods have been opened or the original manufacturers packaging is marked or damaged;
- 7.5.2 make a re-stock and charge against the Customer; and
- 7.5.3 designate minimum order quantities and/or minimum handling charges.
- 7.6 If any Goods are returned, the Company's customer services department should be contacted in advance of returning the Goods, quoting all relevant information – quantity & description, order / delivery information and reason for return. Goods returned later than 14 days from invoice date will, if accepted for return, be subject to a handling / restocking charge of up to 75% based on downstream supplier terms and associated carriage charges. All returned Goods must be in a resalable condition and in their original packaging.
- 7.7 Where a quotation sets out acceptance criteria, final acceptance of the Goods shall take place on successful completion of functional testing. Functional testing is deemed to have been successfully completed if no defects in the Goods are revealed by diagnostic and test programmes and/or procedures developed by Company for this purpose. In respect of any Goods which are the subject of experimental, development or prototype work undertaken by Company the Customer is entitled to participate in establishing a functional specification and to participate in functional testing at its cost. On completion of functional testing, Company will notify the Customer that the Goods are ready for operation. In all other cases, Company will rely upon functional testing in the course of final checking and final acceptance shall be deemed to have occurred, unless the Customer expressly refuses acceptance in writing within seven days after delivery of the Goods, stating precise details with regard to the defect resulting in refusal of acceptance.
- 8. Patents, Designs and Technical Information**
- 8.1 The Customer shall not use or deal with the Goods or the Company's literature, brochures, leaflets or lists so as to infringe, interfere with or weaken any rights of the Company or of any manufacturer of the Goods under or in any respect of any patents, processes, proprietary information, trademarks, registered designs, logo's artwork or copyright for or in connection with the Goods.
- 8.2 Subject to mandatory laws, Customers shall not without Company's prior written consent: (a) use any of the names, devices or logos applied by Company to any of the Goods or containers, except for the purpose of identifying and promoting the Goods in a manner which is acceptable to Company; or (b) sell, dispose of or describe the Goods under or by reference to any other name or description. Customer shall allow Company access to premises and facilities where the Goods or containers are stored and handled so Company can check compliance with these Terms and Conditions.
- 8.3 The Company shall have no liability for the infringement of any rights of any third party arising from the use of the Goods in combination with other Goods, trademarks or processes not supplied by the Company.
- 8.4 Where the Goods are manufactured to the design or specification of the Customer, the Customer warrants that such a design or specification does not infringe the rights of any third party.
- 9. Intellectual Property**
- 9.1 In this condition 9, the following definitions apply: **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (now existing or hereafter created), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 9.2 All Intellectual Property Rights (including copyright in reports, records, certificates, written statements, scientific documentary, primary data or electronic means of handling data) produced during provision of the Goods and/or Services or otherwise given by Company in the course of provision of the Goods and/or Services shall belong to and remain the property of the Company.
- 9.3 To the extent the provision of Goods and/or Services involve the preparation of a report or certification for the Customer, upon the Customer discharging all its obligations under the Contract, including payment of the Consideration, the Customer will obtain an irrevocable, royalty-free, non-exclusive licence for the duration of the Contract to use the report or certification (including the right to sub-license), subject to the terms of sub-condition 9.2 and this sub-condition 9.3. The report or certification must not be made public (except as required by law), edited or amended in part or as a whole without the Company's prior written consent or unless otherwise expressly agreed in the Contract.
- 9.4 All Intellectual Property Rights in all service mark(s), trade mark(s), certification mark(s) and other names and logos owned by the Company shall remain the property of the Company and cannot be sold or licensed by the Customer.
- 9.5 These Terms and Conditions do not grant and shall not be construed as granting, any rights to either party to any name or mark of the other party. Neither party is granted any right to the other party's name in connection with any publication and may not give any press release or make any other public announcement regarding the Contract, the Goods and/or Services or any transaction between the parties without the express prior written consent of the other party.
- 9.6 The Customer shall indemnify the Company against:
- 9.6.1 all losses to which the Company may become liable as a result of a claim that the use of any data, equipment or other materials supplied by the Customer for the provision of the Goods and/or performance of the Services involves the infringement of any Intellectual Property Rights of any third party.
- 9.6.2 all claims, damage costs and expenses to which Company may become liable through executing any order in accordance with Company specifications, designs or drawings by the infringement or the alleged infringement of a patent registered design or similar instrument or privilege.
- 10. Termination**
- 10.1 If the Customer becomes subject to any of the events listed in sub-condition 10.2, the Company may terminate the Contract with immediate effect by giving written notice to the Customer.
- 10.2 For the purposes of sub-condition 10.1, the relevant events are:
- 10.2.1 if the Customer commits a breach of any terms of the Contract or any other contract with the Company which is incapable of remedy or, if capable of remedy, has not been remedied by the Customer in accordance with a written notice from the Company requiring remedy within the period specified in the said notice, being no earlier than seven (7) days;
- 10.2.2 if the Customer fails to make payment of the Consideration within the specified time;

- 10.2.3 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due within the meaning of section 570 of the Companies Act 2014;
- 10.2.4 an encumbrancer takes possession, or a receiver or administrator is appointed, over any of the property or assets of the Customer;
- 10.2.5 the Customer ceases, or threatens to cease, to carry on business;
- 10.2.6 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; and
- 10.2.7 if the Company reasonably apprehends that provision of the Goods and/or Services or dealing with the Customer would be in breach of Sanctions Rules, the Customer fails to satisfy due diligence requests made by the Company in connection with compliance with Sanctions Rules or other relevant laws or regulations or the Customer does anything which is in breach of, or would cause the Company to be in breach of, Sanctions Rules. For the purposes of this sub-condition, "**Sanctions Rules**" shall mean any applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licences, orders, or requirements, in force from time to time, including without limit those of the European Union, the United Kingdom, the United States and the United Nations.
- 10.3 On termination of the Contract for any reason the Customer shall immediately pay to the Company all indebtedness to the Company with applicable interest per condition 3.7.
- 10.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 10.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 11. Force Majeure**
The parties shall not be liable for delay in performing, or failure to perform, any obligation under the Contract if such delay or failure to perform is caused directly or indirectly by any act of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, riot, accident, terrorism, explosion, strike or labour dispute, any law, or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, delay or default by subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable or any other cause beyond the party's reasonable control, provided that this condition 11 shall not apply to any of Customer's obligation to make any payments due to the Company under a Contract.
- 12. Entire Agreement**
12.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them relating to its subject matter.
12.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. This does not limit or exclude liability for fraudulent misrepresentation.
- 13. Severability**
Should any provision or remedy herein provided for be invalid or unenforceable or unlawful under any applicable law in whole or in part, it shall be deemed to be amended in so far as it is possible to do so in order to make it enforceable whilst retaining its purpose or severed from the Contract if it is not possible to do so and the remaining provisions of these Terms and Conditions, including any remaining default remedies, shall be given effect in accordance with the intent hereof. In the Company's sole discretion, it may terminate the Contract by not less than seven (7) days' written notice to the Customer in the event that it considers that such deletion will have a material adverse effect on its rights under the Contract.
- 14. No Partnership or Agency**
14.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 14.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 15. Data Protection**
15.1 For the purpose of this condition 15, the words "Controller", "Personal Data" and "Process", shall have the meanings assigned in the Data Protection Laws (or where not defined in applicable Data Protection Laws, shall have the meaning as in Irish Data Protection Laws). "**Data Protection Laws**" means the European Data Protection Laws, Irish Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country. "**European Data Protection Laws**" means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("**GDPR**")"; all other applicable law, regulations and codes of conduct in any relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by the Data Protection Commission and the European Data Protection Board or any other relevant data protection supervisory authority;; and laws implementing or supplementing the GDPR. "**Irish Data Protection Laws**" means the Data Protection Act 2018, the EU ePrivacy Directive 2002/58/EC (as implemented into applicable law and as amended or replaced from time to time).
15.2 Subject to ensuring compliance with all applicable Data Protection Laws, each party may Process business contact information relating to personnel of the other (for example name, business telephone number, job title and business email address) for the purpose of carrying out its obligations under this agreement and to manage the general relationship between the Customer and Company and the Company's suppliers. For those purposes, each party deems that it is acting as an independent Controller and shall at all times, ensure compliance with Data Protection Laws required of a Controller.
- 16. Sub-contracting**
16.1 Unless otherwise restricted by the terms of the Contract, the Company shall be entitled, in its absolute discretion, to sub-contract the whole or of any part of its provision of the Goods and/or Services.
16.2 The Company may assign, delegate, license or hold on trust, all or any part of its rights or obligations under the Contract.
16.3 The Contract is personal to the Customer which may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 17. Confidentiality**
For the purposes of this condition, "**Confidential Information**" shall mean all information which a party may have or acquire before or after the date of the Contract which relates to a party's business, products, developments, trade secrets, know-how or other matters connected with provision of the Goods and/or Services and information concerning a party's relationships with actual or potential clients, customers or suppliers and all other information designated as confidential or which ought reasonably to be considered confidential.
17.1 Each party (the "**Recipient**") shall keep all Confidential Information of the other party (the "**Disclosing Party**") in the strictest confidence. Save for the purposes of fulfilling its obligations under the Contract, the Recipient shall not, without the prior written consent of the Disclosing Party, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.
17.2 Notwithstanding condition 17.1, a Recipient may disclose Confidential Information which it has received if:
17.2.1 it is required to do so by any governmental, local government or regulatory authority, any accreditation body or by law (but then only to the extent it is strictly required to do so);
17.2.2 it is strictly necessary for the purpose only of obtaining professional advice in relation to the Contract;
17.2.3 it was already known to the Recipient prior to the time of disclosure by the Disclosing Party (where the Recipient can prove the same with documentary evidence); or
17.2.4 it is information which subsequently becomes public knowledge other than by breach of the Contract by the Recipient.
17.3 In the event of an information request being made to a Recipient pursuant to any Freedom of Information legislation or the the European Communities (Access to Information on the Environment) Regulations 2007 in respect of any Confidential Information then the Recipient shall notify the Disclosing Party and shall not disclose any information until an analysis has been made as to whether the information requested is capable of benefiting from an exemption from disclosure.

- 17.4 The obligations of the parties under this condition 17 shall continue to apply without limit of time.
- 18. Export Control Licence**
- 18.1 For the purposes of this condition 18, "**Export Control Licence**" shall mean any public or governmental licence, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by any Republic of Ireland, United Kingdom, United States or other foreign authority with jurisdiction over the parties or the Goods subject to the contract which, from time to time, it is necessary to obtain in order to be entitled to market, import, export, re-export products and/or provision of services and/or transfer of technology and/or Intellectual Property Rights.
- 18.2 The Company's performance of its obligations under the Contract may, wholly or partly, be subject to Export Control Licences. If any such Export Control Licence requires signed end user certificates or any other Republic of Ireland or foreign governmental or court approvals or consents the parties agree to assist each other in completing the relevant end user certificates or other such approvals or consents and the Customer undertakes to conform to and apply the terms of such, end user certificates, Export Control Licences or restrictions.
- 18.3 The Customer represents and warrants that it shall inform the Company in writing, prior to the Company receiving any Goods or information from the Customer, of any applicable Export Control Licence requirement, import, or export restrictions that may apply to provision of the Goods by the Company, including any instances where any products, information or technology may be exported/imported to or from a country, to or from a party, or involving an end use that is restricted from such transaction under the above state applicable laws.
- 18.4 The Company shall make reasonable efforts to obtain the necessary Export Control Licences, but the parties acknowledge that the issuance of Export Control Licences is at the sole discretion of the relevant authorities. If any necessary Export Control Licence(s) are delayed, denied or revoked, the Company shall notify the Customer thereof in writing as soon as reasonably practicable, and the Company shall be entitled to a corresponding extension of the time for provision of the Goods, and, in case any necessary Export Control Licence(s) are denied or revoked, terminate the Contract, wholly or partly, without liability in relation to the Customer.
- 18.5 Should the Goods be subject to any Export Control Licences or any other Republic of Ireland or foreign governmental or court restrictions, the Customer undertakes to conform to and apply the valid terms of such Export Control Licences or restrictions (as applicable from time to time).
- 19. Notices**
- All notices to be served by one party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and forty-eight hours after posting if posted by first class or airmail pre-paid post in each case to the registered address, if applicable, or if not applicable the last known address of the other party.
- 20. No Waiver**
- No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy. Waiver by either party hereto of a breach by the other party of any of the provisions of these Terms and Conditions shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.
- 21. Liability and Indemnity**
- 21.1 This condition sets out the entire financial liability of the Company, its employees, agents and sub-contractors to the Customer in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence or breach of statutory duty) arising under or in connection with the Contract.
- 21.2 Other than as expressly set out herein, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 21.3 SUBJECT TO THE REMAINING SUB-CONDITIONS OF THIS CONDITION, THE COMPANY SHALL NOT BE LIABLE, WHETHER IN TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION OR OTHERWISE FOR:
- 21.3.1 LOSS OF PROFITS; LOSS OF BUSINESS, LOSS OF REVENUE; LOSS OR DAMAGE INCURRED AS A RESULT OF A THIRD PARTY CLAIM; DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODS; LOSS OF CONTRACT; LOSS OF USE; LOSS OR CORRUPTION OF DATA OR INFORMATION; EX GRATIA PAYMENTS; OR
- 21.3.2 ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES, FINES, PENALTIES OR EXPENSES; OR PURE ECONOMIC LOSS.
- 21.4 SUBJECT TO CONDITION 21.6, THE COMPANY'S TOTAL LIABILITY TO THE CUSTOMER IN CONTRACT, TORT (INCLUDING CLAIMS FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE CONSIDERATION PAID IN THE TWELVE MONTHS PRIOR TO THE CLAIM UNDER THE CONTRACT THAT IS SUBJECT TO THE CLAIM. The Company shall be under no liability in respect of any claim under the Contract and any such claim shall be wholly barred and unenforceable unless:
- 21.4.1 the Customer (not within the definition of a "consumer" under the EC Consumer Goods and Associated Guarantees Regulation 2003) notifies the Company in detail and in writing of the alleged basis for the claim within two (2) months of the Customer becoming aware thereof and within one year after the provision of the Goods / completion of the Services to which the claim relates; and
- 21.4.2 the Company is permitted to inspect any and all Good and/or Services which are claimed to have been defective or to which any claim otherwise relates.
- 21.5 The Customer hereby represents that it is a competent user of the Goods supplied hereunder, that it has satisfied or is able to satisfy itself that the Goods are safe to use, and that it will institute a safe system of working for the use of Goods. The Customer shall indemnify the Company against any claim by a third party that the third party has suffered any loss, damage, personal injury or death by reason of or resulting from any defect in the design, specification or manufacture of the Goods.
- 21.6 Nothing in these Terms and Conditions limits or excludes the liability for:
- 21.6.1 death or personal injury resulting from negligence; or
- 21.6.2 liability incurred as a result of fraud or fraudulent misrepresentation; or
- 21.6.3 any other matter which may not be limited or excluded by law.
- 21.7 The Customer acknowledges that the provisions of this condition are reasonable and reflected in the price which would be higher without these provisions and the Customer will accept such risk and/or insure accordingly.
- 21.8 This condition shall survive termination of the Contract.
- 22. Governing Law**
- 22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed under the laws of the Republic of Ireland.
- 22.2 Each party irrevocably agrees that the courts of the Republic of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).