

## **Ventol Ireland Terms & Conditions of Sale**

### **1. Interpretation**

- 1.1. In these conditions of sale the following words will (unless the context otherwise requires) have the following meanings:

**"Conditions"** means the conditions set out below and in the Order Acknowledgement. Where any terms below conflict with

any terms in the Order Acknowledgement the terms in the Order Acknowledgement will take precedence. **"Contract"** means any contract between the Supplier and the Customer for the sale of any Works. **"Customer"** means the company, firm, body or person purchasing the Works. **"Customer's Property"** means any Goods returned by the Customer to the Supplier (which are found to be NDF under Clause 9.7 or any specifications, drawings, designs, packagings, equipment, goods, materials, instructions, approvals or information supplied by or on behalf of the Customer to the Supplier in connection with the Works. **"EEE"** means electrical and electronic equipment, regulated by the WEEE Regulations. **"Goods"** means any goods or materials which the Supplier agrees to provide to the Customer. **"IPR"** means all Confidential Information, patents, trade marks and service marks, rights in designs, trade or business names, copyright (including rights in computer software), database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world. **"Order Acknowledgement"** means the written acknowledgement of and acceptance by the Supplier of the Customer's request to purchase any Works. **"Services"** means any work and/or services which the Supplier agrees to provide to the Customer. **"Supplier"** means Ventol Ireland Ltd whose main business address is at Ventol Ireland, Unit 1 B Three Rock Road, Sandyford Industrial Estate, Dublin 18. **"WEEE"** means waste electrical and electronic equipment, regulated by the WEEE Regulations. **"WEEE Regulations"** means the European Union (Waste Electrical and Electronic Equipment) Regulations 2006, as amended by The Waste Electrical and Electronic Equipment (Amendment) Regulations 2014. **"Works"** means Goods and/or Services (as appropriate).

- 1.2. The words **"agreed in writing"** will mean expressly agreed in writing and signed by a director of the Supplier.
- 1.3. The headings are for reference only and will not affect the interpretation of these Conditions.
- 1.4. the Supplier reserves the right at anytime without liability to correct any clerical, typographical or other similar errors or omissions made by its employees.

### **2. Quotations**

- 2.1. Any quotation (whether written or oral) is given on the basis that no contract will come into existence other than in accordance with the provisions of Clauses 3.5 and 3.6.
- 2.2. Unless otherwise agreed in writing any quotation is valid only for a period of 24 hours from its date of issue provided that the Supplier has not previously withdrawn it by written or oral notice to the Customer.

### **3. Application of Terms**

- 3.1. (Subject to Clause 3.4) these Conditions are the only conditions on which the Supplier is prepared to deal with the Customer and they will govern the Contract and all of the Supplier's future supplies to the Customer.
- 3.2. No terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in any purchase order or other similar document delivered or sent by the Customer to the Supplier will form part of the Contract.
- 3.3. Any reference in the Order Acknowledgement to the Customer's purchase order or other similar document will not be deemed to imply that any terms, conditions or warranties endorsed upon, delivered with, referred to, stipulated or contained in such purchase order or other similar document will form part of the Contract.
- 3.4. No employee or agent of the Supplier has authority to vary these Conditions orally. No variation to, waiver of or addition to these Conditions or any representation about the Works will have any effect unless it is agreed in writing and contains a specific reference to these Conditions and is signed on the Supplier's behalf by a director of the Supplier.
- 3.5. Each purchase order for Works issued by the Customer will be deemed to be an offer by the Customer to purchase Works subject to these Conditions.

- 3.6. No purchase order placed by the Customer will be deemed to be accepted by the Supplier until an Order Acknowledgement is issued by the Supplier or (if earlier) the Supplier supplies the Works to the Customer.
- 3.7. The Customer must ensure that the content of its order and any applicable specification are complete and accurate.
- 3.8. Unless otherwise agreed in writing all drawings, illustrations, descriptions, specifications, technical data, advertising and other similar information issued by the Supplier or contained on the Supplier's Website or in the Supplier's catalogues, brochures, trade literature, price lists or other similar published materials are issued or published only for the purpose of giving an approximate idea of the Works described in them and will not form part of the Contract.
- 3.9. Any purchase order which has been accepted by the Supplier in accordance with Clause 3.6 may only be cancelled, postponed or varied by the Customer with the prior written consent of the Supplier and on terms that the Customer will indemnify the Supplier in full against all losses (including but not limited to loss of profit), costs (including but not limited to inventory and other commitments made by the Supplier as a result of such purchase order), damages, charges and expenses incurred (directly or indirectly) by the Supplier as a result of such cancellation, postponement or variation.

#### **4. Delivery**

- 4.1. Any times specified or agreed by the Supplier for the delivery of the Works are given in good faith but are an estimate only. the Supplier will use its reasonable endeavours to deliver the Works within the times specified in the Order Acknowledgement or otherwise agreed in writing and if no time is specified or agreed by the Supplier delivery will take place within a reasonable time. The time for the delivery of the Works will not be of the essence of the Contract.
- 4.2. (Subject to the provisions of Clause 4.3) the Customer will collect the Works from the Supplier's place of business and delivery will be deemed to take place when the Supplier notifies the Customer that the Works are ready for collection and unless otherwise agreed in writing the Customer will collect the Works within 3 working days of the issue of such notice.
- 4.3. If the Supplier agrees to deliver the Works then subject to Clause **Error! Reference source not found.** delivery will be deemed to take place when the Works are delivered to the Customer at the place stated in the Supplier's Order Acknowledgement or such other place as the parties may agree except that delivery to a carrier for the purpose of transmission to the Customer will be deemed to be delivery to the Customer and section 32 of the Sale of Goods Act 1893 (the "**1893 Act**") will not apply.
- 4.4. Subject to Clause 4.3 the Supplier will make such arrangements for the delivery of the Works to the carrier as it thinks appropriate but the Customer will indemnify the Supplier against any costs or expenses the Supplier incurs as a result of such delivery by the carrier (including but not limited to export and/or import duties and any costs of packing, loading and/or unloading) such costs and/or expenses to be paid by the Customer when it is due to pay for the Works.
- 4.5. The Supplier will use reasonable endeavours to ensure where necessary that the Works will be packed so as to be adequately protected against damage in normal conditions of transit of usual duration.
- 4.6. The Supplier may deliver the Works in instalments. Deliveries of further instalments may be withheld until the Works comprised in earlier instalments have been paid for in full.
- 4.7. In the event of any delay in the delivery of any Goods and/or the performance of any Services which are attributable to any act or omission by the Customer:
  - 4.7.1 delivery of the Goods and/or performance of the Services will be deemed to have taken place at the time which but for such delay, delivery or performance it would have taken place and any extra costs (including but not limited to storage and insurance costs) incurred as a result of such delay will be added to the Contract price and paid by the Customer; and
  - 4.7.2 the Supplier may sell or otherwise dispose of such Goods (as it sees fit) 28 days after such delay and deduct any monies payable to the Supplier by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall.
- 4.8. Where the Works are to be supplied from stock such supply is subject to the availability of the stock at the date of delivery.
- 4.9. On delivery to the Customer all Works should be examined by the Customer. The Supplier will not be liable for any damage to or any shortages in or non-delivery of the Works (even if caused by the Supplier's negligence) unless the same is notified in writing by the Customer to the Supplier (together with all relevant details) within 48 hours of the actual or anticipated date of delivery (as appropriate). Any damage to or any shortages in or non-delivery of part of the Works will not affect the Contract in respect of the other parts of the Works. Any damage to or any shortages in or non-delivery of part of the Works will not affect the Contract in respect of the other parts of the Works.
- 4.10. Subject to a notice being provided in accordance with Clause 4.9 the Supplier will, if it is reasonably satisfied that any Works have not been delivered as a result of the Supplier's fault (in its sole discretion) either arrange for delivery as soon as reasonably possible or (where the Contract price has been invoiced) give credit (at the pro rata Contract price) to the Customer for such Works.
- 4.11. If the Supplier complies with Clause 4.9 it will (subject to Clause 10.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for such shortages or non-delivery.
- 4.12. The Customer will (at its own expense) provide such advice, assistance and information as may be required to

enable the Supplier to perform its obligations under the Contract.

## **5. Risk and Ownership**

- 5.1. The Customer acknowledges that before entering into the Contract it has expressly represented and warranted that it is not insolvent and has not committed any act of bankruptcy, or being a company with limited and unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, to petition for winding up of the Customer or exercise any other rights over or against the Customer's assets.
- 5.2. (Unless otherwise agreed in writing) the Goods are at the risk of the Customer from the time of delivery or deemed delivery (as appropriate) to the Customer in accordance with these Conditions and loading and off loading (as appropriate) will be at the Customer's risk. Section 20 of the Sale of Goods Act 1893 will not apply.
- 5.3. (Notwithstanding that risk in the Goods will pass to the Customer in accordance with the provisions of clause 5.2) ownership of the Goods (both legal and equitable) will remain with the Supplier (unless ownership is properly vested in some other person by the operation of any statute) until the Supplier has received in full (in cash or cleared funds).
  - 5.3.1 all sums due in respect of the Goods; and
  - 5.3.2 all other sums which are or which become due to the Supplier from the Customer on any account.
- 5.4. Until ownership of the Goods has passed to the Customer under Clause 5.3, the Customer will:
  - 5.4.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 5.4.2 keep the Goods free from any charge, lien or other encumbrance;
  - 5.4.3 store the Goods (at no cost to the Supplier) separately from all other goods or materials of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property and easily accessible to the Supplier;
  - 5.4.4 not destroy, deface or obscure any identifying mark on the Goods or their packaging;
  - 5.4.5 maintain the Goods in a satisfactory condition;
  - 5.4.6 insure the Goods on the Supplier behalf for their full price or replacement value (whichever is the greater) against all usual risks and to the reasonable satisfaction of the Supplier and on request produce such policy of insurance to the Supplier;
  - 5.4.7 hold all proceeds of the insurance referred to in clause 7 on trust for the Supplier and not mix it with any other money or pay the proceeds into any overdrawn bank account; and
  - 5.4.8 allow the Supplier access at any reasonable time to enable the Supplier to verify that the Customer has complied with its obligations under this Clause 5.4.
- 5.5. The Customer may resell, use or otherwise dispose of the Goods before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Customer's business at full market value and will be a sale, use or disposition of the Supplier's property on the Customer's own behalf and the Customer will deal as principal when making such sale, use or disposition.
- 5.6. Once payment becomes due, the Supplier may while the owner of the Goods (without prejudice to its other rights) demand the immediate return of the Goods at any time and the Customer must comply with (and bear the cost of) such demand immediately. If the Customer fails to return such Goods, the Customer grants to the Supplier or its successors in title, and their respective employees and agents, an irrevocable license to enter the Customer's premises (with or without vehicles) to remove the Goods (the cost of which shall be borne by the Customer) and may sell or otherwise deal with the Goods.
- 5.7. The Supplier will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.
- 5.8. The Goods will be deemed sold or used in the order delivered to the Customer.

## **6. Goods Stocked Against Anticipated Orders**

By arrangement between the Supplier and the Customer, and at the Supplier's entire discretion, Goods may be stocked by the Supplier against anticipated future purchase orders for such Goods from the Customer. In all such cases:

- 6.1. The maximum period for which such goods shall be retained by the Supplier (the "**Maximum Period**") shall be as agreed between the Supplier and the Customer or, where no specific arrangement has been reached for the maximum period for which the Goods are retained by the Supplier, such period shall be deemed to be 6 calendar months.
- 6.2. All Goods remaining retained at the end of the Maximum Period shall, at such date, be deemed to have been the subject of a purchase order on that date from the Customer to the Supplier and which has been the subject of an Order Acknowledgement for prompt delivery to the Customer. Payment will be required in accordance with Clause 7.

## **7. Price and Payment**

- 7.1. The price for the Works will be the price set out in the Order Acknowledgement (or otherwise agreed in writing) between the parties.
- 7.2. Each price is based on the scope of the Works and the instructions and information provided by the Customer. The Supplier reserves the right (in its absolute discretion) to amend the price to cover any increase in cost which may arise as a result of additional Works being requested by the Customer (and agreed by the Supplier) or additional or incomplete instructions or information being provided by the Customer.

- 7.3 Quotations given in a currency other than sterling are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the price may be subject to revision if any different rate of exchange is ruling at the date of invoice.
- 7.4 (Unless otherwise agreed in writing and subject to circumstances in which free delivery is specifically agreed in writing in advance as set out in this Clause 7.4) the price for the Works is exclusive of any value added tax (and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Works) and any costs or charges in relation to export and/or import, packaging, loading, unloading, carriage and insurance. Such costs and expenses will be paid by the Customer when it is due to pay for the Works. Works may qualify for free delivery, depending on the designation of the Customer and the volume of Works ordered in a given period. Further details may be obtained from the Supplier's Sales Office.
- 7.5 Where the Supplier agrees (in its discretion) to bring forward the date of delivery of the Works at the Customer's request any additional costs reasonably incurred by the Supplier shall be charged to the Customer in addition to the contract price.
- 7.6 the Supplier may invoice the Customer for the Works at any time after the delivery of the Works or the delivery of any instalment (as appropriate). If any delivery is postponed at the request or by the default of the Customer then the Supplier may submit its invoice at any time after the Works are ready for delivery or would have been ready but for such request or default on the part of the Customer.
- 7.7 (Unless otherwise agreed in writing) where the terms for payment in the Order Acknowledgement show "**COD**", the Supplier will not be bound to deliver the Goods until the Customer has paid the price for them. Payment shall be due before the Delivery Date.
- 7.8 (Unless otherwise agreed in writing) where the terms for payment in the Order Acknowledgement show "**Net**", payment of the price will be due on the date when the period as specified in the Order Acknowledgement expires.
- 7.9 Where no terms for payment are set out in the Order Acknowledgement or otherwise agreed in writing payment of the price will be made within 30 days from the date of delivery of the Works.
- 7.10 No payment will be deemed to have been received until the Supplier has received cleared funds.
- 7.11 Time for payment will be of the essence of the Contract and the Customer will indemnify the Supplier against all reasonable expenses, debt recovery fees, Court fees, solicitor's fees and disbursements incurred by the Supplier in recovering overdue amounts.
- 7.12 All payments payable to the Supplier under the Contract will become due immediately on termination of this Contract notwithstanding any other provision of these Conditions.
- 7.13 The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 7.14 the Supplier may (but shall not be obliged to) at any time or times without notice to the Customer set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer (in either case howsoever arising and whether such liability is present, future, liquidated or unliquidated). The Supplier and Customer agree that in exercising this right to set off, the Supplier shall be doing no more than discharging its own liability by the application of its own asset. Any exercise by the Supplier of its rights under these Conditions will be without prejudice to any other rights or remedies available to the Supplier under these Conditions or otherwise.
- 7.15 If the Customer fails to pay the Supplier any sum due pursuant to the Contract the Customer will, subject to Clause 7.16, be liable to pay interest to the Supplier on the amount unpaid, at the rate specified under or pursuant to the European Communities (Late Payment in Commercial Transactions) Regulations 2002 such interest to accrue on a daily basis until the date payment is received by the first party in full.
- 7.16 As an alternative to its remedy in Clause **Error! Reference source not found.** the Supplier reserves the right to claim interest under the European Communities (Late Payment in Transactions) Regulations 2012.
- 7.17 Without prejudice to the provision of Clauses 7.14 and **Error! Reference source not found.** if the Customer fails or the Supplier reasonably believes that the Customer will fail to pay for the Work or any other work under any other contract when due the Supplier may:
- 7.17.1 demand payment of all outstanding balances whether due or not under this Contract or any other contract between the Customer and the Supplier;
- 7.17.2 treat the Contract or any other contract between the Customer and the Supplier as repudiated by the Customer;
- 7.17.3 suspend any future performance of the Contract or any other contract between the Customer and the Supplier until all overdue sums have been paid; or
- 7.17.4 appropriate any payments made by the Customer to such of the Works (or such works supplied under any other contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer).

## **8. Quality**

- 8.1. The Customer acknowledges that the Supplier is not the manufacturer of the Goods and may not itself perform any or all of the Services and that the Supplier's expertise is in the sourcing of the Works only. The Customer acknowledges that as an intermediate supplier of the Goods the Supplier only checks the external packaging of the Goods for obvious signs of damage and does not in any way inspect the quality or condition

of the Goods themselves.

- 8.2. The Customer acknowledges that the manufacturer of the Works typically provides warranty assurances directly for the benefit of end users of the Works.
- 8.3. The Customer acknowledges that the Supplier does not hold itself out as having any particular expertise in relation to the actual Works and the Customer agrees that it relies entirely on its own skill and judgement in evaluating the suitability and fitness of the Works for its purpose.
- 8.4. The Customer acknowledges that the prices charged by the Supplier for the Works are based strictly on the quality assurances set out in this Clause 8.
- 8.5. Based on the acknowledgements set out in this Clause 8 the Supplier will:
  - 8.5.1 use its reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier; comply with its returns policy as set out in Clause 9; and
  - 8.5.2 (where the Supplier itself performs the Services rather than procuring a third party to perform the Services to the Customer on behalf of the Supplier) perform the Services with reasonable skill and care.
- 8.6. The Customer agrees that the Supplier shall not (subject to the provisions of Clause 8.5 and Clause 10.1) be responsible for or give any warranties in relation to the quality or suitability of the Works and that provided the Supplier complies with the provisions of Clause 8.5 the Supplier shall (subject to the provisions of Clause 10.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for any quality or suitability claims in relation to the Works.

## **9. Returns Policy**

- 9.1. Any Goods to be returned by the Customer to the Supplier will only be dealt with by the Supplier in accordance with the provisions set out in this Clause 9.
- 9.2. Where the Customer wishes to return any Goods (for any reason) the Customer should first contact the Supplier's Sales Office. Should the problem not be resolved to the Customer's satisfaction the Customer should proceed in accordance with the remainder of this Clause 9.
- 9.3. Returns Reference Number ("**RRN**"). An RRN must be obtained from the Supplier's Sales Office before any return will be processed in accordance with this Clause 9. Goods returned without a valid RRN are likely to be rejected by the Supplier. RRNs are valid for 10 days from the date of issue. If the Goods are not returned within 10 days the RRN will be cancelled and a new RRN must be requested **if** the Customer still wishes to return the Goods. When preparing the Goods for return the Customer must ensure that the RRN is clearly visible on a label on the outer covering.
- 9.4. Incorrectly Ordered Goods. Incorrectly ordered Goods are the responsibility of the Customer. The Customer acknowledges that the Supplier is under no obligation to accept the return of incorrectly ordered Goods. If the Supplier agrees to accept the return of Incorrectly Ordered Goods then a handling/restocking fee of at least 20% will be invoiced. The percentage charged will depend on amongst other things the amount of labour involved and the condition of the packaging and contents and the Supplier reserves the right to insist on a purchase order covering this cost and the return freight cost before returning the Goods.
- 9.5. Returns Due to Later Delivery. Returns due to late delivery must be requested by fax or e-mail within 24 hours of the due delivery date. The original purchase order must contain details of any cut-off delivery date and the Supplier must agree in writing that a deadline for delivery had been accepted by the Supplier. If the Supplier has accepted such deadline the Supplier will at its own cost arrange for the collection of goods falling into this category.
- 9.6. Defective On Arrival ("**DOA**") Goods. DOA Goods are those found to have a fault on delivery. The fact that there is a fault must be confirmed by someone with technical knowledge and the Customer must provide as much specific technical detail as is reasonably possible. DOA Goods must be notified within 7 days of delivery of the Goods in order to qualify for credit or replacement (at the Supplier's option and in the Supplier's absolute discretion). The packaging of the Goods must be in pristine condition otherwise the Customer will be subject to a minimum 20% handling/restocking fee. The freight cost of returning the Goods to the Supplier will be the responsibility of the Customer. The Supplier will meet the reasonable costs of returning replacement Goods (as appropriate) to the Customer and also any carriage costs incurred in sorting the problem out.
- 9.7. No Defect Found ("**NDF**"). If Goods are returned and are found to be of NDF status, the supplier reserves the right to apply a restocking and handling charge of not less than 20% of the original invoice value. The fee applied may vary based on the condition of the returned packaging, the goods themselves, and the labour involved in inspecting and processing the return. The Supplier may also require a purchase order covering the restocking fee and the return freight cost prior to accepting the return.
- 9.8. Goods Returned not in original condition. Goods returned where the packaging and/or contents is found not to be in its original condition are likely to be rejected on arrival provided that the goods being returned are conforming goods (i.e. not defective or misdescribed). Should the Supplier agree to accept such Goods (in its absolute discretion) the Supplier reserves the right to impose a handling/re-stocking fee of at least 20% of the original sale value of the Goods. Should items be damaged in transit during its return to the Supplier it is the responsibility of the Customer (and not the Supplier) to take this matter up with the carriers.
- 9.9. Packaging and Labelling. Where possible, the packaging of the Goods being returned should be protected by using an outer cover. The Customer should not write on, or attach labels, to the packaging itself if this can be avoided. When preparing the Goods for return the Customer should ensure that the RNN is easily visible on a label on the outer covering.

- 9.10. Overdue Accounts. No returns will be accepted from any Customer whose account is overdue.
- 9.11. The Supplier will not be obliged to comply with any of the provisions in this Clause 9 unless
  - 9.11.1 (where the Goods are faulty and the fault is apparent on reasonable inspection) the Customer gives written notice of the fault to the Supplier within 7 days of the date of delivery of the Goods; and
  - 9.11.2 (where the Goods are faulty and fault is not apparent on reasonable inspection) the Customer gives written notice of the fault to the Supplier within 7 days of the date when the Customer discovers or ought reasonably to have discovered the fault.
- 9.12. Notwithstanding any other provision of this Clause 9 if the Goods are found to be faulty but:
  - 9.12.1 the fault arises as a result of the Customer's negligence;
  - 9.12.2 the fault arises as a result of fair wear and tear or abnormal working conditions;
  - 9.12.3 the fault arises as a result of any misuse, physical damage (including but not limited to dropping, spillage or foreign objects) or accident (unless the Supplier is directly responsible for such);
  - 9.12.4 the Customer makes any further use of the Goods after giving written notice of a fault;
  - 9.12.5 the fault arises because the Customer has failed to follow the Supplier's or the manufacturer's instructions (whether oral or in writing) as to the storage, assembly, use, handling or maintenance of the Goods or (if there are none) good trade practice;
  - 9.12.6 the fault arises as a result of any testing or commissioning of the Goods performed by the Customer or any third party;
  - 9.12.7 the fault arises as a result of any alteration, servicing or repair of the Goods not made by the Supplier; or
  - 9.12.8 the Customer acknowledges that the Contract states that the Goods are sold in their actual state without warranty then the Customer acknowledges that the Supplier is not obliged to comply with its obligations under this Clause 9, that the Supplier reserves the right to apply a reasonable labour charge to the Customer without completing any repair and the Supplier reserves the right to retain the Goods until a purchase order is received covering the labour charge and the return freight cost.

## **10. Limitation of Liability**

- 10.1. All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by Part IV of the 1980 Act but subject always to the provisions of Clause 13.2)) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.2. Nothing in these Conditions exclude or limit the liability of the Supplier for fraudulent misrepresentation or for any death or personal injury caused by the Supplier's negligence. THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 10.3 AND 10.4
- 10.3. (Subject to Clauses 10.1 and 10.2) the Supplier will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any
  - 10.3.1 economic loss of any kind (including but not limited to loss of use, profit, anticipated profit, business, contracts, overhead recovery, machining costs, revenue or anticipated savings);
  - 10.3.2 any damage to the Customer's reputation or goodwill;
  - 10.3.3 any product recall or business interruption costs; or
  - 10.3.4 any other special, indirect or consequential loss or damage (even if the Supplier has been advised of such loss or damage) arising out of or in connection with the Contract.
- 10.4. (Subject to the provisions of clause Clauses 10.1, 10.2 and 10.3) the Supplier's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with this Contract will be limited to the Contract price.
- 10.5. The provisions of this Clause 10 shall survive the termination or expiry (for whatever reason) of this Contract.
- 10.6. THE PRICES CHARGED FOR THE WORKS ARE BASED STRICTLY ON THE UNDERSTANDING OF ACCEPTANCE BY THE CUSTOMER OF THE PROVISIONS IN THE CONTRACT FOR THE LIMITATION OF THE SUPPLIER'S LIABILITY. SHOULD THE CUSTOMER REQUIRE THE SUPPLIER TO ACCEPT ADDITIONAL LIABILITY THIS MAY BE DISCUSSED BETWEEN THE PARTIES AND THE PRICE INCREASED ACCORDINGLY.

## **11. The Customer's Property**

- 11.1. While the Supplier will take reasonable care of the Customer's Property whilst it is in the Supplier's possession, control or custody the Customer's Property will (unless otherwise agreed in writing) remain at the Customer's risk and responsibility.
- 11.2. the Supplier will not be liable for any loss or damage to the Customer's Property unless such loss or damage arises as a direct result of the Supplier's negligence. Where the Supplier is liable under this Clause 11.1 the Supplier's liability to the Customer will be limited to the actual cost of the replacement or repair of the loss or damage to the Customer's Property.
- 11.3. The Customer will ensure that the Customer's Property is in good condition and suitable for use by the Supplier in the performance of the Contract and while the Supplier will use reasonable endeavours to verify any relevant aspects of the Customer's Property no responsibility is accepted by the Supplier for its accuracy.
- 11.4. Any defect in the Works which is due in whole or in part to the Customer's Property will not entitle the Customer to terminate the Contract, reject the Works, make any deductions from the Contract price or claim damages in respect of such defect.
- 11.5. The Customer will keep the Supplier indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding awarded against or incurred by the Supplier as a result of or in connection with

the use by the Supplier of the Customer's Property.

- 11.6. The Supplier (without prejudice to any other remedy it may have) has a general lien on all of the Customer's Property in its possession (for any reason) in respect of all sums owed to the Supplier by the Customer.

## **12. Confidentiality**

- 12.1. The Customer will keep confidential all technology, technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has been disclosed to the Customer by the Supplier or its agents and any other confidential information concerning the Supplier's business or its products which the Customer may obtain as a result of or in connection with the Contract ("Confidential Information").
- 12.2. The Customer will restrict the disclosure of the Confidential Information to such employees, agents or subcontractors, as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Customer.
- 12.3. The Customer will not without the prior written consent of the Supplier publish or disclose the Confidential Information to any third party or make any use of the Confidential Information except to the extent necessary to implement the Contract.

## **13. IPR**

- 13.1. The Customer will keep the Supplier indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any IPR resulting from any use by the Supplier of the Customer's Property or any compliance by the Supplier with the Customer's instructions, whether express or implied.
- 13.2. Nothing in these Conditions will be construed as any representation or warranty by the Supplier that the design, manufacture, use or sale of the Works is not an infringement of any third party intellectual property rights and the Customer acknowledges that the Supplier only transfers such title as the Supplier has.

## **14. Termination**

- 14.1. the Supplier may terminate the Contract immediately if:
- 14.1.1 the Customer fails to pay the price on the due date;
- 14.1.2 the Customer is in breach of any term of the Contract and (where remediable) has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- 14.1.3 there is a material change in the ownership or control of the Customer; or
- 14.1.4 the Customer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administration or any equivalent or analogous event occurs in any jurisdiction.
- 14.2. The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.
- 14.3. Any Conditions which expressly or impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

## **15. Export Sales**

- 15.1. Where the Works are supplied for export from Ireland the provisions of this Clause 15 will (subject to any special terms agreed in writing between the parties) apply despite any other provision of these Conditions. Unless otherwise agreed in writing the currency will be pounds sterling. The Customer will where requested by the Supplier establish and maintain in favour of the Supplier an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight on presentation to the bank by the Supplier of a certified copy of the Supplier's invoice. All bank charges and other expenses in relation to the letter of credit will be borne by the Customer.
- 15.2. Unless otherwise agreed in writing Works will be sold Ex Works (the Supplier's warehouse in the UK) (as defined in INCOTERMS 2020 Edition).
- 15.3. The Customer will be responsible for complying with any legislation or regulation governing the export of the Works from Ireland and the importation of the Works into the country of destination and for payment of any relevant duties or taxes.

## **16. WEEE Regulations**

- 16.1. The Customer is responsible under the WEEE Regulations for the environmentally sound disposal of EEE when it is discarded as WEEE.
- 16.2. The Supplier may, at its discretion, offer a "**take back**" option in relation to WEEE items, but this will be subject to agreement on a case by case basis and may incur a charge.
- 16.3. A source of local disposal of WEEE may be available to the Customer by telephoning +353 (0)1 2999320 or by emailing [operations@weeeireland.ie](mailto:operations@weeeireland.ie), whereby a free, "**no obligations**" quotation for collection and/or disposal may be provided. It should be noted, however, that the Supplier is not, however, responsible for this service and shall inherit no obligations to the Customer in relation to it.

## **17. Lien**



The Supplier will have in respect of unpaid debts due to it from the Customer a general lien on all property of the Customer which is in the Supplier's possession for whatever reason and whether worked upon or not.

## **18. Force Majeure Etc**

The Supplier will not be liable to the Customer or be deemed to be in breach of these Conditions by reason of any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure was beyond the Supplier's reasonable control, was of an unexpected or exceptional nature or if the duration of the delay is not substantial. If the Supplier is unable to perform its obligations under these Conditions in accordance with this Clause 18 it will promptly notify the Customer of the nature and extent of the circumstances in question.

## **19. General**

- 19.1. The Customer will not without the prior written consent of the Supplier assign or transfer the Contract or any part of it to any other person.
- 19.2. The Supplier may without the prior written consent of the Customer assign, transfer or subcontract the Contract or any part of it to any other person.
- 19.3. Each right or remedy of the Supplier under these Conditions is without prejudice to any other right or remedy which the Supplier may have under these Conditions or otherwise.
- 19.4. Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class post or facsimile transmission. Any notice or document shall be deemed served, if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.
- 19.5. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 19.6. Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.
- 19.7. Any waiver by either party of any breach of, or any default under, any provision of the Contract by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 19.8. A person who is not a party to the Contract will have no right to enforce any term of the Contract. This Clause 19.8 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 19.9. The Customer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the Supplier prior to the Contract upon which the Customer relied in entering into the Contract whether such statement was made orally or in writing.
- 19.10. The Contract will be governed by Irish law and the parties submit to the exclusive jurisdiction of the courts of Ireland.

## **Ventol Ireland Ltd Terms & Conditions of Purchase**

### **1. Definitions**

- 1.1. In these conditions of purchase the following words will (unless the context otherwise requires) have the following meanings:  
"Conditions" means the conditions set out below and in the Order. Where any terms below conflict with any terms in the Order the terms in the Order will take precedence. "Contract" means any contract between the Supplier and the Customer for the purchase of any Works. "Customer" means Ventol Ltd whose main business address is at Ventol Ireland, Unit 1 B Three Rock Road, Sandyford Industrial Estate, Dublin 18. "Goods" means any goods or materials to be purchased by the Customer from the Supplier pursuant to an Order. "Order" means a properly signed and numbered purchase order relating to any Works issued by the Customer to the Supplier on the Customer's official order form. "Services" means any works and/or services to be performed by the Supplier for the Customer pursuant to an Order. "Supplier" means the company, firm, body, or person to whom the Order is addressed. "Works" means Goods and/or Services (as appropriate).
- 1.2. The words "agreed in writing" will mean agreed in writing and signed by a director of the Customer.
- 1.3. The headings are for reference only and will not affect the interpretation of these Conditions.
- 1.4. The Customer reserves the right at anytime without liability to correct any clerical, typographical or other similar errors or omissions made by its employees.

### **2. Application of Terms**

- 2.1. (Subject to Clause 2.4) these Conditions are the only conditions on which the Customer is prepared to deal with the Supplier and they will govern the Contract and all the Customer's future purchases from the Supplier.
- 2.2. No terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in



any quotation or other similar document delivered or sent by the Supplier to the Customer will form part of the Contract.

- 2.3. Any reference in the Order to the Supplier's quotation or other similar document will not be deemed to imply that any terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in such quotation or other similar document will have effect to the exclusion or amendment of these Conditions.
- 2.4. No variation to, waiver of or addition to these Conditions will have any effect unless expressly agreed in writing and contains a specific reference to these Conditions.
- 2.5. The Customer will not be liable for any order unless it is issued or confirmed on the Customer's official order form, is signed by a director of the Customer and the Supplier accepts these Conditions.
- 2.6. The Supplier will be deemed to have accepted these Conditions if the Supplier supplies any Works to the Customer or otherwise acts in accordance with the Order.

### **3. Delivery**

- 3.1. (Subject to Clause 3.3) the Supplier will deliver (or provide) the Works to the Customer and the date for the delivery (or provision) of the Works will be specified in the Order or (if no such date is specified) delivery (or provision) of the Works will take place within 28 days of the date of issue of the Order and time will be of the essence of the Contract. Unless otherwise agreed in writing the Customer is not obliged to accept the delivery (or provision) of any Works otherwise than on the due delivery (or provision) date. The Supplier will promptly notify the Customer of any anticipated delay in the delivery (or provision) of the Works.
- 3.2. (Subject to Clause 3.3) the Supplier will deliver (or provide) the Works to the address specified in the Order or to such other place of delivery (or provision) as is notified by the Customer to the Supplier in writing. The Supplier will arrange for the carriage of the Works to the place of delivery and delivery to any carrier will not be deemed to be delivery to the Customer (for the avoidance of doubt any such carrier will be deemed to be an agent of the Supplier and not of the Customer). Delivery, in relation to Works comprising Goods, will be completed when the Works have been unloaded at the place of delivery and signed for by a duly authorised officer of the Customer.
- 3.3. Where agreed between the parties in writing, the Customer will collect the Works from the address specified in the Order or from such other place of collection as may be otherwise agreed. The Supplier will ensure that the Works are available for collection from the date specified in the Order or (if no such date is specified) within 28 days of the date of issue of the Order and time will be of the essence of the Contract. The Supplier will notify the Customer when the Works are ready for collection and the Customer will use its reasonable endeavours to collect the Works within the times agreed or if no time is agreed collection will take place within a reasonable time and the time for the collection of the Works by the Customer will not be of the essence of the Contract. Collection will be completed when the Works have been loaded onto the Customer's nominated transport at the place of collection and signed for by a duly authorised officer or nominated representative of the Customer.
- 3.4. Unless otherwise agreed in writing deliveries (under Clause 3.2) will only be made during the Customer's normal business hours and collections (under Clause 3.3) will only be made during the Supplier's normal business hours.
- 3.5. The Supplier will ensure that each delivery note or collection note (as appropriate) shows the Order number, date and number of the Order and any relevant delivery schedule, consignment quantity, contents and (in the case of part delivery or collection (as appropriate)) the outstanding balance remaining to be delivered or collected (as appropriate).
- 3.6. The packaging of the Works must be in accordance with normal industry standards (if any) and must bear the description and quantity of the contents and the Customer's Order number. All palletised Works must have protective cardboard wrap round the pallet covered with black shrink wrap, sealed with security tape. Pallets must be banded. Clear wrap is not to be used. Any dangerous products must be prominently marked as such
- 3.7. If the Supplier does not comply with the provisions of the Clauses 3.5 or 3.6 the Customer may reject the Works.
- 3.8. If the Goods have a life expectancy of a fixed duration or if there are any circumstances known to the Supplier which would adversely affect the life span of the Goods the Supplier will promptly advise the Customer in writing of all such necessary and appropriate information relating to the Goods and this will form part of the description of the Goods.
- 3.9. The Supplier will ensure (at its own cost) that all Works are properly packed in a manner suitable for transit and storage. The Supplier will also ensure that individual packages are packed to comply with reasonable safety standards and to enable handling by mechanical means.
- 3.10. The Supplier will not make and the Customer will not accept any charge whatsoever for any packing, packaging or containers of any description supplied with the Works.
- 3.11. The Customer will not be liable to the Supplier for any loss or damage to any packaging materials and cases supplied with the Works.
- 3.12. If (for any reason) the Customer is unable to take delivery or make collection (as appropriate) of the Goods and/or is unable to take delivery of the performance of the Services on the due delivery or collection (as appropriate) date the Supplier will store or arrange for the storage of the Goods for a reasonable time (at

the Customer's reasonable expense), will arrange for the re-performance **of** the Services and will safeguard the Works and take all reasonable steps to prevent their deterioration until actual delivery or collection (as appropriate).

- 3.13. Unless otherwise agreed in writing the Customer will not be responsible for any Works provided in excess of the Order and any excess will be and will remain at the Supplier's risk.
- 3.14. The Customer will not be responsible for any failure to give notice to any carrier of any loss, damage, delay, detention or non-delivery.
- 3.15. The Supplier agrees to supply to the Customer (on request) any and all necessary declarations and documents relating to the Works.

#### **4. Risk and Ownership**

- 4.1. The Goods will remain at the risk of the Supplier until delivery is completed in accordance with Clause 3.2 or until collection is completed in accordance with Clause 3.3 (as appropriate).
- 4.2. Notwithstanding Clause 4.1 ownership in the Goods will pass to the Customer on payment or when delivery is completed in accordance with Clause 3.2 or when collection is completed in accordance with Clause 3.3 (as appropriate) (whichever is the earlier) (without prejudice to any right of rejection or other right which may accrue or have accrued to the Customer).

#### **5. Price and Payment**

- 5.1. The price for the Works will be stated in the Order and (unless otherwise agreed in writing) will be fixed for the duration of the Contract and will be exclusive of value added tax but inclusive of all other charges (including but not limited to charges for packaging, delivery and insurance requested by the Customer).
- 5.2. The Supplier may invoice the Customer for the Works at any time after the delivery, provision or collection (as appropriate) of the Works. Invoices must show the Customer's order number, delivery or collection (as appropriate and if appropriate) number, the date and number of any relevant delivery schedule and such other sufficiently detailed description as may be necessary to enable the Works to be identified.
- 5.3. Where the invoice includes any charge for value added tax the invoice must be in the form as laid down from time to time by the Office of the Revenue Commissioners.
- 5.4. Except where the parties have agreed for any shorter or longer period, the Customer will use reasonable endeavours to pay the price for the Works within 60 days of the end of the month in which the Customer receives a valid invoice but time for payment will not be of the essence of the Contract.
- 5.5. All payments will be made by the Customer without prejudice to the Customer's rights should the Works prove unsatisfactory.
- 5.6. Any failure by the Supplier to comply with the instructions set out in the Contract may delay payment.
- 5.7. The Customer may (but will not be obliged) at any time or times without notice to the Supplier set off any liability of the Customer to Supplier against any liability of Supplier to the Customer (in either case howsoever arising and whether such liability is present, future, liquidated or unliquidated). The Customer and Supplier agree that in exercising this right to set off, the Customer shall be doing no more than discharging its own liability by the application of its own asset. Any exercise by the Customer of its rights under these Conditions will be without prejudice to any other rights or remedies available to the Customer under these Conditions or otherwise.

#### **6. Changes in Specification etc**

The Customer may at any time make written changes to the Contract including but not limited to changes in the designs, compositions, specifications, method of shipment, scope of Services, quantities, packaging or time or place of delivery or collection (as appropriate). If any such change results in any increase or decrease in the cost of, or the time required for, the performance of the Contract an equitable adjustment will be made to the price, delivery or collection (as appropriate) date or both unless such changes are envisaged by the parties at the time the Contract was entered into. Any claim or adjustment by the Supplier must be approved by the Customer in writing before the Supplier proceeds with such a change. For the avoidance of doubt nothing in this Clause 6 will relieve the Supplier from the obligation of proceeding without delay in the performance of the Contract.

#### **7. Quality**

- 7.1. The Customer is relying on the Supplier's skill and judgment in relation to the Works and the Supplier undertakes, warrants and represents to the Customer and agrees as a condition of this Contract that the Works and any and all labelling and packaging will:
  - 7.1.1 conform in all respects to the quantity, quality, design, functionality, performance criteria, description, specification, stipulation or standard stated or referred to in the Order, any literature (whether of a promotional character or otherwise) issued or representations made in connection with the Works;
  - 7.1.2 be capable of any standard of performance specified in the Order;
  - 7.1.3 be of first-class materials and workmanship and be executed with reasonable skill and care by properly qualified and experienced persons;
  - 7.1.4 be equal in all respects to any sample, pattern, drawings, demonstration or specification provided or given by either party (which has been accepted in writing by the Customer);

- 7.1.5 be fit and sufficient for any purpose for which they are commonly supplied or used and for any purpose indicated (either expressly or by implication) in the Order or as may be made known by the Customer to the Supplier prior to the Contract being entered into;
- 7.1.6 be so designed, tested, constructed and manufactured as to be safe and without risk to health or property when properly used;
- 7.1.7 include all necessary information about the use of the Works and all instructions and warnings relating to the Works as may be necessary for the safe use of the Works and for the Customer to comply with its statutory obligations under the Health and Safety at Work Act 2005;
- 7.1.8 must be packaged in accordance with the Contract,
- 7.1.9 be of satisfactory quality and be free from defects (whether latent or patent) in design, materials or workmanship; and
- 7.1.10 comply with all relevant laws, regulations, orders, rules and codes of practice that may be in force in Ireland and such other territories which the Customer has informed the Supplier that the Works will be supplied from time to time; and
- 7.1.11 be freely available for resale within the European Economic Area.
- 7.2. The Supplier will promptly provide all necessary information in connection with the design, resale and use of the Works (whether or not such information is requested by the Customer).
- 7.3. The Supplier consents to the Customer transferring any guarantee or similar rights given by the Supplier to the Customer in relation to the Works supplied to any third party to whom the Customer sells, hires or otherwise disposes of such Works with the intent that such guarantee or similar rights may be enforced against the Supplier not only by the Customer but also by any third party claiming through the Customer.
- 7.4. The Customer's rights under these Conditions are in addition to the statutory conditions implied in favour of a purchaser by the Sale of Goods and Supply of Services Act 1980 (as amended).
- 7.5. The Customer may at any time on giving reasonable notice to the Supplier enter any premises where the Works are being carried out to ensure that the Supplier is complying with its obligations under this Contract and the Supplier grants to the Customer irrevocable authority to enter onto such premises for the purposes of exercising its rights under this Clause.

## **8. Indemnity and Insurance**

- 8.1. The Supplier will keep the Customer indemnified in full against any and all loss (including direct, indirect, or economic loss (including but not limited to loss of profits)), liability, damage, injury, claim, action, demand, expense or proceeding awarded against, suffered, incurred or paid by the Customer as a result of or in connection with:
  - 8.1.1 any breach by the Supplier of any term of the Contract;
  - 8.1.2 any infringement or alleged infringement of any third party intellectual property rights caused by the resale, supply or use of the Works in the European Economic Area;
  - 8.1.3 any contract entered into by the Customer the performance of which has been delayed or rendered impossible by the Supplier's breach of its obligations under the Contract;
  - 8.1.4 (in the event of delays, defaults or non-deliveries arising other than as a result of the Customer's negligence) any increase in the cost of any item which would not have been incurred but for such delay, default or non-delivery; and/or
  - 8.1.5 any claim made against the Customer by any customer or third party to the extent that such was caused by, relates to or arises from the Works.
- 8.2. The Supplier will at all times during the continuance of the Order and thereafter carry adequate insurances in an amount not less than £2 million to cover product liability and will make the policy and premium receipts available for inspection by the Customer at any reasonable time.
- 8.3. The provisions of this Clause 8 shall survive the termination or expiry of this Contract (howsoever arising).

## **9. Confidentiality**

- 9.1. The Supplier will keep in strict confidence all technical and commercial know-how, specifications, processes or initiatives which are of a confidential nature and which have been disclosed to the Supplier by the Customer or its agents and any other confidential information concerning the Customer's business or its products which the Supplier may obtain as a result of the Contract ("**Confidential Information**").
- 9.2. The Supplier will use the Confidential Information solely for the purposes of complying with its obligations under the Contract.
- 9.3. The Supplier will restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Supplier's obligations to the Customer under the Contract and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Supplier.
- 9.4. The Supplier will not (except to the extent necessary to fulfil its obligations under the Contract) without the prior written consent of the Customer advertise or publish the fact that the Supplier has contracted to supply the Works to the Customer.
- 9.5. The Supplier will notify the Customer of any breaches of this Clause 9 and will co-operate with any reasonable steps which the Customer may decide to take in relation to such breach.

## **10. Licences**

If the performance of the Order requires the Customer to have any permit or licence from any government or other authority at home or overseas, the Order will be conditional on such permit or licence being available at the required time.

## **11. Termination**

- 11.1. The Customer may at any time (in its absolute discretion) terminate the Contract in whole or in part by giving the Supplier written notice. On receipt of such notice the Supplier will discontinue all work (or as the case may be the relevant part) on the Contract. the Customer will (on terminating the Contract in accordance with the provisions of this Clause 11.1) pay to the Supplier a fair and reasonable sum for any work in progress which the Supplier will be unable to reuse for any other customer but the Customer will not be liable to the Supplier for any economic loss and except as set out in this Clause 11 will have no further liability to the Supplier in relation to such termination.
- 11.2. The Customer may terminate the Contract immediately if:
  - 11.2.1 the Supplier fails to provide the Works on the due date;
  - 11.2.2 the Works supplied do not conform in every respect with the Contract;
  - 11.2.3 the Supplier is in breach of any term of the Contract and (where remediable) has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
  - 11.2.4 there is a material change in the ownership or control of the Supplier; or
  - 11.2.5 the Supplier is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator or any equivalent or analogous event occurs in any jurisdiction.
- 11.3. The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.
- 11.4. Any Conditions which expressly or impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

## **12. Force Majeure**

The Customer will not be liable to the Supplier or be deemed to be in breach of these Conditions by reason of any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure was beyond the Customer's reasonable control. If the Customer is unable to perform its obligations under these Conditions in accordance with this Clause 12 it will promptly notify the Supplier of the nature and extent of the circumstances in question.

## **13. General**

- 13.1. The Supplier will not without the prior written consent of the Customer assign or transfer the Contract or any part of it to any other person.
- 13.2. The Supplier will not without the written consent of the Customer subcontract the Order or any part of it other than for materials, minor details or for the part of the Goods of which the manufacturers are named in the Order or the specification. Any such consent by the Customer will not relieve the Supplier of any of its obligations under the Contract.
- 13.3. Each right or remedy of the Customer under these Conditions is without prejudice to any other right or remedy which the Customer may have under these Conditions or otherwise.
- 13.4. Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class post or facsimile transmission. Any notice or document shall be deemed served, if delivered, at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.
- 13.5. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.6. Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.
- 13.7. Any waiver by either party of any breach of, or any default under, any provision of the Contract by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 13.8. (Except as provided in Clause 7.3) a person who is not party to the Contract will have no right to enforce any term of the Contract. This Clause 13.8 does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.
- 13.9. The Contract will be governed by Irish law and the parties submit to the exclusive jurisdiction of the Irish courts.

