

CONDITIONS OF PURCHASE**A. DEFINITIONS**

- (1) An Post is hereinafter termed the "*Company*". The person, firm or company supplying the goods or services is hereinafter termed the "*Supplier*".

B. APPLICABILITY

- (1) Save where the Company has executed a specific contract with the Supplier for supply of goods or services, in which case such contract shall supersede these Conditions of Purchase, these Conditions of Purchase shall govern every contract for supply of goods and/or services between the Company and the Supplier. All orders are placed and executed on the understanding that the Supplier is bound by these Conditions of Purchase. Any goods and/or services shall be supplied pursuant to these Conditions of Purchase only, to the total exclusion of any terms and conditions of the Supplier. No quotation or standard terms of business or supply, in any confirmation docket, invoice, purchase order or other similar document issued by or on behalf of the Supplier shall vary this Agreement or be binding upon the parties.

C. PRICES

- (1) The price payable shall, unless otherwise stated, be the price ruling at the date of placing the order. Prices shall not be subject to variation except with the written consent of the Company, The Company reserves the right to cancel the order either in whole or in part in the event of any increase in the ruling price between the date of placing the order and the date of delivery.
- (2) Unless otherwise stated in the order, payment will be made within 30 (thirty) days of receipt of a valid VAT invoice supported by such information as the Company may require (the Payment Date). In the event that amounts due and owing are not discharged by the Payment Date interest shall be payable at an annual rate of 1% on all such outstanding amounts from the day after the Payment Date until the date on which payment of the amount due is made. The Company shall in addition to such interest pay the Supplier such compensation as is specified in the European Communities (Late Payment in Commercial Transactions) Regulations 2012 in respect of such late payment.

D. DELIVERY AND PACKAGING

- (1) The Supplier, at his own risk and expense, shall deliver the goods properly packed, secured and marked with the applicable order number, or the services (as the case may be), to the location specified in that order, or any alternative subsequently agreed. Each package should be clearly marked with the Supplier's name and the delivery address specified.
- (2) The giving of a receipt by an employee of the Company or by an employee or agent or the consignee or Company to any railway company, shipment agent, carrier or other person or company whomsoever, shall be proof only of actual delivery and not of delivery in good condition and quantity specified.
- (3) The risk in the goods will remain in the Supplier until they are delivered to and are accepted by the Company. Title to the goods will pass to the Company on delivery, or upon payment if earlier. Passing of title is without prejudice to any right of rejection of the goods which may accrue to the Company hereunder. Shortages, breakages or other damage or loss to any consignment from any cause whatsoever prior to delivery to consignee shall not be paid for by the purchaser, all risks and insurance being borne by the Supplier.
- (4) The time of delivery stated in the order is binding upon the Supplier unless otherwise agreed to in writing by the Company. The Supplier shall perform and complete all services within the time scales set out in the applicable orders or statements of work, or within such other time scales as may be agreed from time to time in writing between the Company and the Supplier. In the case of late delivery, performance or completion, the Company reserves the right to charge the Supplier 2% of the total value of the order for every week of delay as liquidated damage, and not as a penalty.
- (5) The Company will not undertake to return, any packages, cases or other packing materials, and no payment will be made by the purchaser in respect thereof. Exceptions to this clause must be clearly stated in writing and agreed to in writing by the Company.

E. QUALITY

- (1) Goods supplied shall be in all respects in accordance with sample and/or the specification of the Company. Any article found to be inferior in quality, or in any manner defective, will be rejected. Acceptance of delivery shall not preclude the Company from exercising this right.
- (2) If within twelve months after delivery of the goods (hereinafter called the "*guarantee period*" the Company gives notice in writing to the Supplier of any defect in the goods which shall arise under proper use or of any non-conformity with this contract then the Supplier shall with all possible speed repair or if the Company requests, replace the goods so as to remedy the defects without costs to the Company.
- (3) If a substantial proportion of the goods are defective, or do not conform as aforesaid, the Company may, without prejudice to any other rights and remedies, reserve the right to cancel the order and reject any or all goods already delivered, and the Supplier shall thereupon repay to the Company any sums already paid in respect of goods so rejected or not then delivered. Rejected goods will be returned at the Supplier's risk and expense.
- (4) The Supplier shall with all possible speed repair or replace, free of charge, goods damaged or lost in transit provided that the Company shall give the Supplier written notification of such damage or loss within a reasonable time.

- (5) The Supplier guarantees the availability of such spares which are proprietary in his equipment for a period of at least 10 years. Should any equipment become obsolescent during this time the Supplier shall give the Company ninety (90) days notice in writing in advance of any such obsolescence and shall supply such spares as the Company shall consider advisable to maintain equipment.
- (6) The Company reserves the right to inspect any goods before dispatch from the Supplier's premises, but such inspection shall not relieve the Supplier from responsibility or liability nor be interpreted in any way to imply acceptance of such goods. Goods must be to the entire satisfaction and approval of the Company's Inspector when examined at time of delivery or subsequent thereto of its address for delivery as stated in this order.
- (7) Where it is specified that a sample is to be submitted with the tender, such sample shall, in the event of the tender being accepted and unless otherwise agreed, be taken as the standard by which the supply in bulk shall be governed.
- (8) The Supplier hereby represents, warrants and undertakes that the services shall be supplied in a good and workmanlike manner with all reasonable skill, care, judgement and diligence by personnel sufficiently experienced, competent, qualified and trained to carry out the services.

F. HEALTH, SAFETY & ENVIRONMENT

- (1) It is a condition precedent to the tendering process that all goods, equipment, services and the like, supplied to An Post, comply with all applicable Regulatory and Statutory requirements, Irish/EU Standards (whichever is the higher) and any certification where applicable. The goods, equipment, services and the like must be fit for the purpose required. All goods must be supplied with Manufacturer's Instructions, Material Safety Data Sheets, Safety Instructions, etc., as required. All relevant documentation must be forwarded to An Post before purchase.
- (2) The Supplier shall comply with all the Company's safety policies and instructions.
- (3) The Supplier shall comply with all legislation which is in force from time to time whose purpose is the protection of the environment, including the protection of human health, flora, fauna and the eco-systems on which they depend and for the avoidance of doubt, shall include but not be limited to the Local Government (Water Pollution) Acts 1977-90, the Air Pollution Act 1987, the Environmental Protection Agency Act 1992 as amended, the Waste Management Acts 1996-2005, the Protection of the Environment Act 2003, the European Communities Acts 1972 to 2002 and all regulations, directives, bye-laws, orders, decisions and codes made thereunder and all relevant legislation in relation to the assessment of environmental impacts and the protection of air, land and water.
- (4) The Supplier shall endeavour to introduce environmentally friendly products and processes, to include areas such as disposal, use of full life cycle products, and consideration of environmentally friendly alternatives.
- (5) The Supplier shall behave ethically and shall endeavour to contribute to economic development while improving the quality of life of its workforce and their families as well as of the local community and society at large.
- (6) The Supplier agrees that it shall, when requested by the Company submit full personal details of Personnel to the Company. The Supplier acknowledges that Personnel may be required to submit to garda vetting and that Personnel may be refused admission to a Site as a result of failure to submit to such garda vetting or in circumstances where the results of such garda vetting indicate that admission to the Site of such Personnel may in the reasonably held opinion of the Company compromise the safety or security of the Company. The Company reserves the right (in addition to any other rights or remedies which it may have under this Agreement or otherwise at law) to terminate this Agreement with immediate effect and without liability in the event that it believes that the continued provision of the Services by Personnel may compromise the safety or security of the Company.

G. CONFIDENTIALITY

In providing the goods and/or performing the services, the Supplier may be exposed to confidential information and materials of the Company. This document and all information disclosed about the Company and its businesses are given to the Supplier in confidence. The Supplier, its subcontractors and all other persons involved shall retain in confidence and shall not copy or disclose to any third party, without the Company's written approval, any information obtained from the Company or deduced from information obtained from the Company. The Supplier shall assume responsibility for ensuring the confidentiality of information disclosed to a subcontractor.

H. DATA PROTECTION

The Supplier acknowledges that in performing its obligations under this Agreement, the Supplier may process personal data, within the meaning of the Data Protection Acts 1988 and 2003 (the "Data Protection Acts"), received from the Company. In such circumstances the Supplier shall: only collect and process personal data in accordance with the Data Protection Acts and instructions of the Company and solely as strictly necessary for the performance of its obligations or exercise of its rights under this Agreement; and, not disclose or permit the disclosure of such personal data, other than as required by law or as necessary for the performance of the Services; and, implement such technical and organisational security measures to guard against the loss, destruction, corruption or alteration of personal data as are required to comply with its obligations under the Data Protection Acts. The Supplier shall immediately notify the Company of any breach of its obligations under this clause.

I. INSURANCE

The Supplier undertakes to take out and maintain adequate insurance cover with a reputable insurance company against liability which the Supplier or any of its subcontractors may incur under this Agreement, including without limitation the following insurances:

- (i) Employers Liability insurance with a limit of not less than thirteen million euro (EUR13,000,000) for any one claim or series of occurrences;
- (ii) Public and Products Liability insurance with a limit of not less than six million five hundred thousand euro (EUR6,500,000) for any one claim or series of occurrences;
- (iii) Errors and Omissions insurance covering against liability for claims, damages, losses and expenses with a limit of not less than five million euro (EUR5,000,000) for any one claim or series of occurrences;

The Supplier shall produce on request to the Company a copy of the policy of insurance and evidence that any premiums have been paid. However, neither inspection nor receipt of such copies shall constitute acceptance by the Company of the terms thereof nor waiver of the Supplier's responsibility thereunder.

J. INTELLECTUAL PROPERTY

- (1) In consideration of the payment by the Company to the Supplier of €1.00 (one euro) (the sufficiency of which the Supplier hereby acknowledges), the Supplier hereby grants the Company, its successors and assigns, a non-exclusive, perpetual, royalty-free licence to use all intellectual property related to the services supplied by the Supplier to the Company and the Supplier hereby irrevocably assigns to the Company, its successors and assigns, on an exclusive and worldwide basis, all right, title and interest in, including all copyright, patents and other proprietary rights in, and intellectual property made, originated or developed during the course of otherwise related to the services which the Supplier or any of the Supplier's staff or agents made, makes, conceived or conceives (either solely or jointly with others and either on or off the Company's premises) in connection with this Agreement (the "Company Materials"). The Company Materials shall be the exclusive property of the Company and may not be used by the Supplier or any Supplier staff or agent for any purpose except for the benefit of the Company.
- (2) The Supplier hereby represents, warrants and undertakes that it is the owner or licensee of the goods or services (as the case may be), that it has all rights, licences and consents legally required to provide the goods or services to the Company and/or to assign the intellectual property in the Company Materials to the Company as set forth in this Agreement and that the Company's receipt and use of the goods and/or services (as the case may be) does not and will not infringe any intellectual property rights of any third party.

K. INDEMNITY

The Supplier agrees to indemnify and to keep indemnified the Company and hold the Company harmless from and against all loss, liabilities, damages and expenses (including reasonable legal fees) arising out of or in connection with the Supplier's negligence, default or breach of this Agreement or of any order, including any act or omission of its personnel or sub-contractors. This Clause K shall survive termination of this Agreement.

L. TERMINATION

- (1) Without prejudice to its other rights, the Company reserves the right (i) to cancel any order for any reason at any time prior to delivery on giving the Supplier 7 days notice in writing; and (ii) to terminate this Agreement without cause entirely at the Company's convenience and discretion. Save in the event of breach by the Supplier, the Company will pay a reasonable price for all work in progress at the date of the cancellation notice, to the extent only that such work in progress cannot reasonably be used by the Supplier in respect of its other customers. The Company shall not be liable for any other direct or indirect costs, damages or expenses of the Supplier arising from such cancellation.
- (2) This Agreement may be terminated:
 - (i) forthwith if either party commits a material breach of this Agreement and which in the case of a breach capable of being remedied shall not have been remedied within 15 working days of written notice to remedy same;
 - (ii) forthwith by notice in writing to the other party, if that other party is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or compounds with or convenes a meeting of its creditors, or has a receiver or manager, or administrative receiver or an administrator or examiner appointed over its assets, or ceases for any reason to carry on business, or takes or suffers any similar action which in the opinion of the party giving notice, means that the other party may be unable to pay its debts as they fall due.
 - (iii) by the Company if the Supplier suffers a force majeure event which persists for 4 consecutive weeks;
 - (iv) by the Company if the Supplier commits a breach of Clause G (Confidentiality), Clause H (Data Protection) or Clause J (Intellectual Property).
- (3) Termination shall be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law and shall not affect any accrued rights or liabilities of either party.

- (4) All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

M. GENERAL

- (1) Patented articles supplied shall be marked in accordance with the provision of the Patents Act, 1964. Without prejudice to the Company's other rights, the Supplier agrees to indemnify and to keep indemnified the Company and hold the Company harmless from and against all loss, liabilities, damages and expenses (including reasonable legal fees) arising out of or in connection with any action, claim or demand for alleged or actual infringement of any patent, copyright, design right, trade mark, name or other intellectual property right in respect of any goods or services supplied under this Agreement, or for royalty or damages in respect thereof.
- (2) It shall be a condition of the contract/business that the Supplier shall produce, as appropriate, either a valid C2 Tax Certificate, a Tax Clearance Certificate or, in the case of Suppliers resident outside the state, a statement from the Revenue Commissioners as to their suitability for appointment on tax grounds.
- (3) The Supplier shall not offer any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any purchase order with the Company. Any breach of this consideration will render the Supplier liable to the cancellation of this and any other order with the Company and entitle the Company to recover from the Supplier the amount of any loss resulting from such cancellation.
- (4) Subject to these conditions, the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 shall apply.
- (5) The Company accepts no liability whatsoever for goods, supplies or services not ordered on the official order form and invoices for such supplies or services not officially ordered will not be honoured.
- (6) The Supplier shall not subcontract its rights or obligations under this Agreement without the prior written consent of the Company.
- (7) Nothing in this Agreement shall constitute or be deemed to constitute the Supplier an employee or agent of the Company or a partnership or joint venture between the Company and the Supplier for any purpose whatsoever.
- (8) If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, all other terms of this Agreement shall remain in full force and effect.
- (9) This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties.
- (10) The parties shall do their utmost to resolve any dispute or controversy with respect to the interpretation or application of any provision of this Agreement in an amicable, timely and efficient manner for the purposes of seeking a just and equitable solution. Proposals and information exchanged during informal dispute resolution proceedings will be privileged, confidential and without prejudice to a party's legal position in any formal proceedings.
- (11) Any dispute or difference arising out of or in connection with this Agreement shall be determined by the appointment of a neutral arbitrator to be agreed between the parties, or failing agreement within 14 (fourteen) days, such dispute may then be referred to the courts.
- (12) This Agreement is governed by and shall be construed in accordance with Irish law and the parties irrevocably submit to the exclusive jurisdiction of the Irish courts.