

1. INTERPRETATION

1.1 In these Conditions the following words have the following meanings:-

Contract: any contractual arrangement between ICP and the Customer for the sale of Products and/or the supply of Services by ICP to the Customer entered into in accordance with condition 2.2.

Customer: the person, firm or company who purchases the Products and/or Services from ICP.

Deliverables: all documents, products and materials used or developed by ICP in relation to the Products and/or Services in any form, including computer programmes, data, reports and specifications.

Delivery Point: the premises of ICP at Kilbrittain, Bandon, County Cork, Ireland or such other place where delivery of the Products is to take place as requested by the Customer and agreed to by ICP in accordance with condition 4.1 ("**Alternative Delivery Point**").

Input Material: all documents, information and materials provided by the Customer relating to the Products and/or Services, including computer programmes, data, reports and specifications.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, 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, 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.

Order: a request by the Customer made in a form acceptable to ICP to purchase Products and/or Services from ICP, including an official written purchase order referencing ICP's invoice number.

Products: the products to be supplied by ICP to the Customer under the Contract (including any part or parts of them).

Services: the services to be provided by ICP to the Customer under the Contract.

Specific Terms: the specific terms and conditions (if any) communicated by ICP to the Customer in respect of any particular sale or supply of Products and/or Services.

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions, references to the masculine include the feminine and the neuter and references to the singular include the plural and vice versa as the context admits or requires.

1.4 Headings will not affect the construction of these Conditions.

2. APPLICATION OF CONDITIONS

2.1 Subject to any variation under condition 2.4, these Conditions shall:-

- (a) apply to and be incorporated into the Contract; and
- (b) prevail over any inconsistent terms or conditions contained, or referred to, in any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document or implied by any law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Products and/or Services described in it subject to the Specific Terms (if any) and these Conditions. No offer placed by the Customer shall be accepted by ICP other than:

- (a) by a written acknowledgement issued and executed by or on behalf of ICP (including by way of email); or
- (b) (if earlier) by ICP delivering the Products or starting to provide the Services,

when a contract for the sale and/or supply and purchase of those Products and/or Services on the Specific Terms (if any) and these Conditions will be established. The Customer's standard terms and conditions (if any) attached to or enclosed with or referred to in any communication from the Customer shall not govern the Contract.

2.3 Subject to any variation under condition 2.4 the Contract will be subject to the Specific Terms (if any) and these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). Where there is any inconsistency between the Specific Terms and these Conditions, the Specific Terms shall apply.

2.4 These Conditions apply to all ICP's sales and supplies and any variation to these Conditions and any representations about the Products and/or Services shall have no effect unless expressly agreed in writing and signed by a director of ICP.

2.5 Quotations, if given by ICP, are given on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 90 days from its date, provided that ICP has not previously withdrawn it.

3. DESCRIPTION OF PRODUCTS

3.1 The description, specification and quantity of the Products shall be as set out in ICP's acknowledgement of the Order, whether by way of an invoice, order confirmation or otherwise. All samples, drawings, descriptive matter, specifications and advertising issued by ICP and any descriptions or illustrations contained in ICP's brochures or catalogues are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They will not form part of this Contract and a sale of Products shall not be a sale by sample.

4. DELIVERY/NON-DELIVERY OF PRODUCTS

4.1 Unless otherwise agreed in writing by ICP, delivery of the Products shall take place at the Delivery Point where the Products will be collected by the Customer. If specifically requested by the Customer and agreed to in writing by ICP, ICP shall make arrangements for delivery of the Products to the Alternative Delivery Point as soon as practicable and shall advise the Customer of the approximate date of delivery.

4.2 Any dates specified by ICP for delivery of the Products to the Alternative Delivery Point are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified delivery will be within a reasonable time.

4.3 Subject to the other provisions of these Conditions, ICP will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by ICP's negligence), nor will any delay entitle the Customer to

- terminate or rescind the Contract unless such delay exceeds 60 days.
- 4.4 If for any reason the Customer will not accept delivery of any of the Products when they are delivered to the Delivery Point or the Alternative Delivery Point (whichever applies), or ICP is unable to deliver the Products because the Customer has not provided appropriate instructions, details, documents, licences, authorisations, facilities or manpower:
- (a) risk in the Products will pass to the Customer (including for loss or damage caused by ICP's negligence);
 - (b) the Products will be deemed to have been delivered; and
 - (c) ICP may store the Products until the Customer takes delivery whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5 The Customer will, if required by ICP, provide at its expense at the Delivery Point or Alternative Delivery Point (whichever applies) adequate and appropriate equipment and manual labour for unloading the Products.
- 4.6 The details of the Products as recorded by ICP upon dispatch from ICP's place of business shall be conclusive evidence of the Products received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 4.7 ICP shall not be liable for any non-delivery of Products (even if caused by ICP's negligence) unless written notice is given to ICP within 7 days of the date when the Products would in the ordinary course of events have been received.
- 4.8 Any liability of ICP for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or refunding the Customer the price paid for the Products.
- 5. RISK/TITLE**
- 5.1 Subject to condition 4.4, the Products are at the risk of Customer from the time of delivery.
- 5.2 Ownership of the Products shall not pass to the Customer until ICP has received in full (in cleared funds) all sums due to it in respect of:-
- (a) the Products; and
 - (b) all other sums (if any) which are or which become due to ICP from the Customer on any account.
- 5.3 Until ownership of the Products has passed to the Customer, the Customer must:
- (a) hold the Products on a fiduciary basis as ICP's bailee;
 - (b) store the Products (at no cost to ICP) separately from all other Products of the Customer or any third party in such a way that they remain identifiable as ICP's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (d) maintain the Products in satisfactory condition and keep them insured on ICP's behalf for their full price against all risks to the reasonable satisfaction of ICP. On request the Customer shall produce the policy of insurance to ICP.
- 5.4 The Customer's right to possession of the Products shall terminate immediately if:
- (a) any of the circumstances described in condition 12.1(b) occurs; or
 - (b) the Customer suffers or allows any execution whether legal or equitable to be levied on its property or fails to observe/perform any of its obligations under the Contract or any other contract between ICP and the Customer or is unable to pay its debts or ceases to trade; or
 - (c) the Customer encumbers or in any way charges any of the Products.
- 5.5 ICP shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products is not passed from ICP.
- 5.6 The Customer grants ICP its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them or, where the Customer's right to possession is terminated, to recover them.
- 5.7 Upon termination of the Contract howsoever caused ICP's (but not the Customer's) rights contained in this condition 5 will remain in effect.
- 6. QUALITY**
- 6.1 Where ICP is not the manufacturer of the Products, ICP will endeavour to (but shall be under no obligation to) transfer to the Customer the benefit of any warranty or guarantee given to ICP.
- 6.2 ICP warrants that, (subject to the other provisions of these Conditions) upon delivery the Products will:
- (a) conform with any agreed specification;
 - (b) be free from defects in materials and/or workmanship for a period of 12 months from the date of delivery.
- 6.3 ICP shall not be liable for a breach of the warranties in condition 6.2 unless:
- (a) the Customer gives written notice of the defect to ICP and if the defect is as a result of damage in transit, to the carrier within fourteen days of the time when the Customer discovers or ought to have discovered the defect; and
 - (b) ICP is given a reasonable opportunity after receiving the notice of examining such Products and the Customer (if asked to do so by ICP) returns such Products to ICP's place of business, at ICP's cost, for the examination to take place there.
- 6.4 ICP shall not be liable for a breach of the warranties in condition 6.2 if:
- (a) the Customer makes any further use of such Products after giving such notice; or
 - (b) the defect arises because the Customer failed to follow ICP's oral or written instructions (whether contained in the materials safety data sheet or any handbook or similar document given to the Customer by ICP or otherwise) as to the storage, installation, commissioning use or maintenance of the Products; or
 - (c) the Products are unsuitable or ineffective because the Customer has failed to provide sufficient or accurate information in relation to the proposed use of the Products or such unsuitability or ineffectiveness arises from any drawing, design or specification provided by the Customer; or
 - (d) the Customer alters or repairs the Products without the written consent of ICP; or
 - (e) the faults arise due to any subsequent mechanical, chemical, electrolytic or other damage after delivery not due to a defect in the Products; or
 - (f) the defect arises because of fair wear and tear.
- 6.5 Subject to Conditions 6.3 and 6.4, if any of the Products do not conform with any of the warranties in condition 6.2 ICP shall, at its option, repair or replace such Products (or the defective part) or refund the price of such Products provided that if ICP so requests the Customer shall, at ICP's expense, return the Products or the part of such Products which is defective to ICP.
- 6.6 If ICP complies with condition 6.5 it shall have no further liability for a breach of the warranties in condition 6.2 in respect of such Products.
- 6.7 Any Products replaced will belong to ICP and any repaired or replacement Products will be subject to the above provisions of Conditions 6.2 to 6.6 for the unexpired portion of the twelve month period.
- 7. ICP'S OBLIGATIONS**

- 7.1 ICP shall use reasonable endeavours to provide the Services to the Customer in accordance, in all material respects, with the Contract.
- 7.2 ICP shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence of the Contract in this respect.
- 7.3 ICP shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under Condition 8.1(e), provided that it shall not be liable under the Contract if, as a result of such observance, it is in breach of any of its obligations under the Contract.
- 8. CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer shall:-
- (a) co-operate with ICP in all matters relating to the Products and/or Services;
- (b) ensure that the terms of the Order and any relevant and/or applicable specifications and details are complete and accurate;
- (c) where required to enable ICP to supply the Products and/or Services, provide for ICP, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, lands, data and other facilities as requested by ICP;
- (d) provide, in a timely manner, such Input Material and other information as ICP may request and ensure that it is accurate in all material respects;
- (e) inform ICP or its agents, sub-contractors and agents of all health and safety rules and regulations and security requirements that are applicable at the Customer's premises;
- (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Products and/or Services, in all cases before the date on which the Products are to be delivered or Services are to start.
- 8.2 If ICP's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, ICP shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 8.3 The Customer shall be liable to pay to ICP, on demand, all reasonable costs, charges or losses sustained or incurred by ICP (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.
- 9. CHARGES AND PAYMENT**
- 9.1 Unless otherwise agreed by ICP in writing, the price for the Products and/or Services shall be the price set out in ICP's price list, receipt, invoice or acknowledgement of Order and shall be exclusive of any VAT (unless stated otherwise).
- 9.2 Payment of the price:
- (a) for the Products, is due upon the Customer making the Order and prior to delivery of the Products; and
- (b) for the Services, is due by way of agreed deposit prior to commencement of the Services and the balance within 30 days of the date of invoice.
- 9.3 No payment shall be deemed to have been received until ICP has received cleared funds.
- 9.4 All payments payable to ICP under the Contract shall become due immediately upon termination of this Contract despite any other provisions.
- 9.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise.
- 9.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay ICP any sum due pursuant to the Contract, ICP may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of AIB Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement; and/or
- (b) suspend the supply of all Products and/or Services until payment has been made in full.
- 10. LIMITATION OF LIABILITY *THE CUSTOMER SHOULD TAKE PARTICULAR NOTICE OF THIS CLAUSE***
- 10.1 Subject to Conditions 4 and 6, the following provisions set out the entire financial liability of ICP (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract;
- (b) any use made or resale by the Customer of any of the Products and/or Services or of any product incorporating any of the Products; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of ICP:
- (a) for death or personal injury caused by ICP's negligence;
- (b) for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by ICP.
- 10.4 Subject to Conditions 6.2 and 6.3:
- (a) ICP's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid for the Products and/or Services;
- (b) ICP shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arises out of or in connection with the Contract.
- 11. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**
- 11.1 As between the Customer and ICP, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by ICP.
- 11.2 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, data or initiatives which are of a confidential nature and have been disclosed to the Customer by ICP, its employees, agents or sub-contractors and any other confidential information concerning ICP's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to ICP and shall ensure that such employees, agents or sub-contractors are subject to obligations of

- confidentiality corresponding to those which bind the Customer.
- 12. TERMINATION**
- 12.1 Without prejudice to any other rights or remedies which ICP may have, ICP may terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:
- (a) the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing of the breach; or
- (b) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or, if the Customer is a body corporate, convenes a meeting of creditors or enters into liquidation except a solvent voluntary liquidation for the purpose only of re-construction or amalgamation or has a receiver and/or manager appointed of its undertakings or any part thereof or has an examiner appointed or a resolution is passed or petition presented to any court for the winding up of the Customer or any steps are taken or proceedings commenced relating to the insolvency or possible insolvency of the Customer or the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 12.2 On termination of the Contract for any reason:-
- (a) the Customer shall immediately pay to ICP all of ICP's outstanding unpaid invoices and interest and, in respect of Products and/or Services supplied but for which no invoice has been submitted, ICP may submit an invoice which shall be payable immediately on receipt;
- (b) the Customer shall, forthwith return all of ICP's Deliverables. If the Customer fails to do so, then ICP may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safekeeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 13. ASSIGNMENT**
- 13.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of ICP.
- 13.2 ICP may assign the Contract or any part of it to any person, firm or company.
- 14. FORCE MAJEURE**
- 14.1 ICP shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that if the event in question continues for a continuous period in excess of ninety days the Customer shall be entitled to give notice in writing to ICP to terminate the Contract.
- 15. GENERAL**
- 15.1 No variation of the Contract, or these Conditions, or of any of the documents referred to in them, shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 15.2 The Customer acknowledges and agrees that, in entering into the Contract, it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.
- 15.3 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15.4 Each right or remedy of ICP under the Contract is without prejudice to any other right or remedy of ICP whether under the Contract or not.
- 15.5 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, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, 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.
- 15.6 Failure or delay by ICP in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 15.7 Any waiver by ICP of any breach of or any default under any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 15.8 The formation existence construction performance validity and all aspects of the Contract shall be governed by Irish law and the parties submit to the exclusive jurisdiction of the Irish courts.
- 16. COMMUNICATIONS**
- 16.1 All communications between the parties about the Contract must be in writing and delivered by hand or sent by registered post or electronic mail:
- (a) (in the case of communications to ICP) to its registered office or such changed address as may be notified to the Customer by ICP; or
- (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a Company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to ICP by the Customer.
- 16.2 Communication shall be deemed to have been received:
- (a) if sent by registered post six days (excluding Saturdays, Sundays and public holidays) after posting (exclusive of the day of posting);
- (b) if delivered by hand on the day of delivery;
- (d) if sent by electronic mail upon confirmation of receipt by the receiver.
- 16.3 Communications addressed to ICP shall be marked for the attention of the CEO and/or Director of Operations.