



## Our Terms & Conditions of trade

### 1. Interpretation

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in Ireland, when banks in Dublin are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

**Confidential Information:** this term includes, without limitation, all information as to source, quantity, and price of Goods and services provided by Supplier

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases Goods from the Supplier.

**Customised Goods:** Goods (as defined below) which have been made for a specific Customer or standard Goods which have been specifically customised for example, with the addition of the Customer's name, logo, crest or other distinctive marking.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order which includes Customised Goods as defined above.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Sales Order Acknowledgement:** means an order confirmation document, sent by the Supplier to the Customer, agreeing to fulfil an Order and confirming the Order Number of the Order.

**Specification:** any specification for the Goods, including any related drawings, that is agreed in writing by the Customer and the Supplier.

**Supplier:** Any company within JBS Group comprising the following related companies James Boylan Safety Ltd (Irish Company No. 314314), James Boylan Safety (NI) Ltd (Northern Ireland Company No. NI004135), Anderco Safety (Ireland) Ltd (Irish Company No. 196214), Anderco Safety (UK) Ltd (English Company No. 07089015) and Romar Innovate Ltd (English Company No. 02129067).

## **1.2 Interpretation:**

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

## **2. Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 Each Order shall be deemed to be a separate offer by the Customer to buy Goods on the terms of this agreement, which the Supplier shall be free to accept or decline at its absolute discretion.
- 2.4 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order by means of a "Sales Order Acknowledgement" or otherwise, at which point the Contract shall come into existence.
- 2.5 The Supplier shall assign an Order Number to each Order received from the Customer and inform the Customer of the Order Number in the Sales Order Acknowledgement or otherwise. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order

- 2.6 The Customer shall be deemed to have inspected the Sales Order Acknowledgement, whether it has taken the opportunity to do so or no, to satisfy itself that it conforms with its Purchase Order. In the event that the Sales Order Acknowledgement varies the terms of the Customer's Purchase Order, then the Customer shall be deemed to accept such variation upon the expiration of 24 hours of such Sales Order Acknowledgement having been sent by the Supplier.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.8 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.9 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 2.10 The Supplier may, at its sole discretion, accept amendments to an Order after it issues its Sales Order Acknowledgement or otherwise accepts an Order.

### **3. Goods**

- 3.1 The Goods are described in the Supplier's catalogue or the Specification and includes Customised Goods.
- 3.2 The Customer agrees and acknowledges that the Supplier does not hold itself out to have expertise in specifying the suitability of the Goods for the Customer's intended purpose. The Customer agrees that it has sole responsibility to correctly specify the type and grade of Goods required when placing its Order.
- 3.3 To the extent that the Goods are to be manufactured or customised in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 Unless otherwise specifically specified otherwise in the Customer's Order and restated or varied in the Sales Order Acknowledgement, the Goods will be graded on the basis of the relevant CE/EN/BS certified standards or failing that, on the official grading rules issued by the relevant

manufacturer's association (and if more than one such manufacturer's association, such association as shall be selected by the Supplier acting reasonably) covering such Goods and in effect at the time of delivery of the Sales Order Acknowledgement. The Customer acknowledges that the grading of certain Goods is based on the subjective opinion of the grader and the Supplier's only obligation is to provide Goods that have the grading as set forth in the Sales Order Acknowledgement and the Supplier does not guarantee nor make any representations nor warranties that the grading was performed accurately by the manufacturer. The applicable grade may be specified in the Order and restated or varied in the Sales Order Acknowledgement, or if none are so designated, the Supplier shall, acting reasonably, select the grading system of an appropriate manufacturer's association upon notice of any claim. In the event of a dispute over grade, quality, tally, size, specification, or manufacture, it is agreed that inspection at time of unloading of the Goods at the Delivery Location is final.

- 3.5 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

#### **4. Delivery**

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, and the relevant Customer, the Order Number and such other Supplier reference numbers as may be specified from time to time, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Sales Order Acknowledgement or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer has not received delivery of the Goods within (a) three (3) Business Days of the Sales Order Acknowledgement, or (b) such other delivery date as is specified on the Sale Order

Acknowledgement or otherwise agreed in writing, whichever is the later ("the Delivery Date"); the Customer shall immediately notify the Supplier of its belief that such Goods have not been delivered prior to the expiration of the third (3rd) Business Day from the Delivery Date. In any dispute as to whether Goods have been delivered, the Customer agrees that delivery shall be proved if the Supplier can produce (a) a duplicate of the Delivery Note, or (b) a duplicate of the Invoice quoting the Delivery Note reference number, such Invoice having been delivered in the time frame established in the normal course of trading between the parties and if no such normal course of trading, then within 30 days, or (c) the carrier's electronic record of the Goods having been accepted by the carrier, or (d) the carrier's electronic records of the progress of delivery concluding at the **Delivery Location** regardless of any acceptance signature by the Customer. The Customer acknowledges and understands that, having regard to the short term record keeping of carriers, that the time limit and other terms of this sub-clause are fair and reasonable.

- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods, provided at all times (a) the Customer gives the Supplier three (3) days written notice of its intention to source replacement goods elsewhere, and (b) **the Suppliers liability under this clause shall not exceed the value of the Customer's Order for such Goods with the Supplier plus 10%.** The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If the Customer fails to take delivery of the Goods within one (1) Business Day of the Supplier's carrier attempting delivery then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the first Business Day after the day on which the Supplier's carrier attempted delivery ; and
  - (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7 Upon delivery of the Goods, the Customer shall have three (3) Business Days to reject such delivery for the following specified reasons, but not for any other reason; shortages outside of the variances permitted below, or, damage to the Goods or Packaging, or, failure of the Goods to meet the warranties set out in Clause 5 hereof. Any such rejection shall be communicated in writing to the Supplier within the aforementioned time limit, in respect of which time shall be of the essence. A Refund or Credit Note shall only issue for Goods validly rejected under this subclause provided such Goods are first returned to the Supplier.
- 4.8 If ten Business Days after the day on which the Supplier's carrier's attempted delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods. **In such event, and for the avoidance of**

**doubt, the Customer agrees that the reasonable storage and selling costs are estimated to be 25% of the invoiced value of the Goods where the Goods are not customised. The Customer further acknowledges and understands that Customised Goods are likely to achieve a resale price significantly below the original invoiced value and that the Customer will be liable for such shortfall together with the other costs set out in this clause.**

- 4.9 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.10 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. Quality**

- 5.1 The Supplier warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description in the Sales Acknowledgement Order or the Specification; and
  - (b) be free from material defects in design, material and workmanship

- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier within three (3) Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the within seven (7) days of delivery,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description in the Sales Order Acknowledgment or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- (g) the Goods differ from the Specification derived from a manufacturer's drawings, brochure or photographs in circumstances where such description has been approved by the Customer prior to the Supplier issuing a Sales Order Acknowledgement.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1893 (as amended) are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the later of either, when the Supplier receives payment in full (in cash or cleared funds) for the Goods, or, the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
  - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
    - (i) the Goods; and
    - (ii) the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
  - (a) it does so as principal and not as the Supplier's agent; and
  - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, the Supplier:
  - (a) may by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
  - (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in the Sales Order Acknowledgement, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to three (3) Business Days] before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.



- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) unless otherwise specified in the Sales Order Acknowledgment, excludes customs duties and the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 Unless otherwise agreed in writing by the Supplier, the Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at the maximum permitted interest rate of the ECB Base Rate plus 8% per annum pursuant to the Irish European Communities (Late Payment in Commercial Transactions) Regulations 2012.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8. Limitation of liability**

- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1893 (as amended);  
or
  - (d) defective products covered by s. 10 of the Liability for Defective Products Act, 1991.

**8.3 Subject to clause 8.2, the Supplier's total liability to the Customer shall not exceed the value of the Customer's Order for the Goods with the Supplier giving rise to the liability claim plus 10%.**

8.4 Subject to clause 8.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.5 This clause 8 shall survive termination of the Contract.

## **9. Termination**

9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract or any other contract between the Customer and the Supplier, and (if such a breach is remediable) fails to remedy that breach within **10 working** days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering examinership, administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(a) to clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied (including, without limitation, Customised Goods) but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **10. Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for two month, the party not affected may terminate the Contract by giving 5 Business Days' written notice to the affected party, provided at all times that in respect of Customised Goods, the Supplier only shall be entitled to terminate after two months and the Customer shall not enjoy any such right

## **11. Credit Terms**

11.1 Unless otherwise agreed in writing, payment for Goods and any associated services supplied is due 30 days net following date of invoice. The Customer must strictly adhere to the terms of payment and credit limits offered by the Supplier. The Supplier reserves the right to alter terms of payment and credit limits at its discretion and without notice. If the Customer fails to adhere strictly to credit limits and terms of payment, the Supplier may suspend or place on hold deliveries to the Customer and/or reduce the credit terms for future deliveries. The Customer shall pay all sums due in full without deduction or set-off. Time is of the essence for all sums due.

CREDIT APPROVAL. All sales are subject to continuing credit approval

- 11.2 Under the European Communities (Late payment in Commercial Transactions) Regulations 2002, and Late Payment of Commercial Transactions Regulations 2012 that implement Directive 2011/7/EU, interest may be charged at the ECB's most recent refinancing rate carried out before 1 January and 1 July each year plus 8% pa on overdue accounts. The Supplier reserves the right to

apply such interest charges, once credit terms are breached, from the date each invoice becomes overdue (being 30 days after the date of delivery or invoice, whichever is the earlier).

- 11.3 The Customer is specifically alerted to the Customer's liability to pay legal fees and associated costs incurred in the collection of overdue debts.

## **12. General**

### **12.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **12.2 Confidentiality.**

- (a) Each party undertakes that it shall not for a period of two years after termination of the Contract or performance of the contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2(b)..
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### **12.3 Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

**12.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**12.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**12.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**12.7 Notices.**

- (a) Any notice or communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by fax to its main fax number or sent by email to the address customarily used for communication between the parties.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid post next working day delivery service, at 9.00 am on the second Business Day after posting, and
  - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 12.8 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Ireland.
- 12.9 Jurisdiction.** Each party irrevocably agrees, for the sole benefit of the Supplier that, subject as provided below, the courts of Ireland shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation. Nothing in this clause shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**End**