

# TERMS AND CONDITIONS FOR PROVISION OF GOODS



The Customer's attention is specifically drawn to clause 5 and limitation of liability clause 10

## 1. Definitions and Interpretation

1.1 **Definitions** In these Conditions, the following definitions apply:

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in Ireland, when banks in Dublin are open for business;
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 12.5;
<b>Contract</b>	the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions, the Supplier Order Acknowledgement and the Specification;
<b>Customer</b>	the person or firm who purchases the Goods from the Supplier;
<b>Delivery Location:</b>	has the meaning given in clause 4.2;
<b>Force Majeure Event</b>	has the meaning given in clause 11;
<b>Goods</b>	the goods (or any part of them) as set out in the Supplier Order Acknowledgement;
<b>Intellectual Property Rights</b>	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>Order</b>	The Customer's order for the supply of Goods as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation;
<b>Project</b>	the place where the Goods are installed;
<b>Supplier Order Acknowledgement:</b>	written acceptance by the Supplier of the Customer's Order on the Supplier's Order Acknowledgement form;
<b>Specification</b>	any specification for the Goods, including any related plans and drawings as issued by the Supplier unless altered by written agreement by the Customer and the Supplier or in accordance with clause 3.3;
<b>Supplier</b>	Architectural & Metal Systems Limited, Wallingstown, Little Island, Co. Cork, Ireland, T45 VP40.

1.2 **Interpretation** In these Conditions, the following rules apply:

- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors and permitted assigns.
- A reference to legislation or legislative provision is a reference to it as amended or re-enacted. A reference to a legislation or legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 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.
- A reference to **writing** or **written** includes email save for the purposes of clause 12.8
- The headings used in these Conditions are for convenience only and shall have no effect upon the interpretation of these Conditions.
- Words imparting the singular number shall include the plural and vice versa.
- Time shall be construed by reference to whatever time may from time to time be in force in Ireland.

## 2. Basis of contract

- 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 trade, custom, practice or course of dealing.
- The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Supplier Order Acknowledgement and any applicable Specification are complete and accurate and that these documents reflect the Customer's own contractual requirements.
- The Contract shall come into existence when the Supplier issues the Supplier Order Acknowledgement to the Customer.
- Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in writing. In entering into this Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not included in the Supplier Order Acknowledgement.
- Any quotation given by the Supplier shall not constitute an offer. Unless otherwise stated in the quotation, a quotation shall only be valid for a period of 10 Business Days from its date of issue.
- Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- The Supplier will use reasonable endeavours to ensure the Goods are delivered in accordance with time set out in the Contract, but the Supplier shall not be liable for any expense, loss or damage incurred as a result of the Supplier for whatever reason not delivering at the date or within the time so specified.
- The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.

## 3. Goods

- The Goods are described in the Supplier's Specification.
- To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify, keep indemnified and hold harmless the Supplier from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier as a result of or 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 3.2 shall survive termination of the Contract.
- The Supplier reserves the right to amend the design or the Specification of the Goods if required by any applicable statutory or regulatory requirements or to meet current production requirements or for any other reason at any time.
- It is the Customer's responsibility to determine its selection of the Goods and to evaluate for itself whether the Goods are suitable for its anticipated purpose (even if such purpose is made known to the Supplier). The Customer will ensure that the Goods are only used for such intended purposes as are identified by the manufacturer of the Goods (whether the Supplier or a third-party manufacturer).
- The Customer shall be liable for and shall ensure that the Supplier's or the manufacturer's oral or written instructions are followed as to the storage, commissioning, installation, fixing, use and maintenance of the Goods or (if there are none) that good trade practice regarding the same (including the applicable laws, regulations, European Standards as applicable and guidelines on use of the relevant Goods) are complied with.
- The Customer shall indemnify, keep indemnified and hold harmless the Supplier in respect of any loss, liability, damage, costs and expenses (including, without limitation, legal costs) suffered or incurred by the Supplier arising from or in connection with the Customer's design and / or selection of the Goods and evaluation of whether the Goods are suitable for its intended purpose and/or any breach of condition.
- It is the Customer's responsibility to ensure that the Goods supplied by the Supplier are safely and properly incorporated into the Project and are entirely compatible with the fire strategy for the Project.

## 4. Delivery of the Goods

- The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the Supplier reference numbers and the type and quantity of the Goods.
- Unless agreed otherwise in writing, the Customer shall return stillages and L-frames to the Supplier within 30 Business Days from the date of delivery to the Delivery Location. Failure to return stillages within 30 Business Days will result in a charge of €150 per stillage and €500 per L-frame plus VAT.

4.3 The Supplier shall deliver the Goods to the nearest appropriate area of handstanding to the Delivery Location set out in the Supplier Order Acknowledgement or such other location as the parties may agree. Where the Delivery Location is agreed to be collection of the Goods by the Customer from the Supplier's premises at the Supplier's address stated on the Supplier's Order Acknowledgement, the Goods shall be collected within three Business Days of the Supplier writing to the Customer and confirming that the Goods are ready.

4.4 The Customer shall:

(a) provide all necessary delivery instructions, documents, licences, authorisations, labour and equipment to enable the Goods to be safely unloaded at the Delivery Location and shall ensure that each delivery of Goods is signed for; and

(b) procure that, at the time anticipated for delivery of the Goods, the Delivery Location is in a condition which does not constitute a danger to vehicles, the Goods or the persons responsible for carriage of such Goods.

4.5 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.6 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, a change to customs procedures, any non-availability of raw materials 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.

4.7 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, a change to customs procedures, any non-availability of raw materials 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.

4.8 If the Supplier is unable to deliver the Goods due to the Customer's breach of clause 4.4 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 upon dispatch from the Supplier's premises, or on the day on which the Supplier wrote to the Customer and confirmed that the Goods were ready;

(b) if the Customer is unable to take delivery the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance and additional transportation costs); and

(c) the Customer shall indemnify, keep indemnified and hold harmless the Supplier in respect of any loss, liability, damage, costs and expenses (including, without limitation, legal costs) suffered or incurred by the Supplier arising from or in connection with the Customer's breach of clause 4.4.

4.9 If 5 Business Days after the day on which the Supplier first attempted delivery of the Goods the Customer has not taken 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, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.10 The Customer shall not be entitled to reject Goods if the Supplier delivers up to and including 2.5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the relevant invoice on receipt of notice sent in accordance with clause 12.8(a) from the Customer that the wrong quantity of Goods was delivered.

4.11 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.

4.12 Unless otherwise stated in the Quotation, where the Delivery Location is at the Supplier's premises, the Customer is solely responsible for loading the Goods. Unless otherwise stated in the Quotation, where the Delivery Location is not at the Supplier's premises, the Customer is solely responsible for unloading the Goods at the Delivery Location. All Goods will be unloaded by the Customer immediately on arrival at the Delivery Location, otherwise waiting time will be charged. Any damage caused on loading at the Supplier's premises or on unloading is the sole responsibility of the Customer.

## 5. Quality of Goods

5.1 Subject to the other provisions of this clause 5, the Supplier warrants that on delivery, and unless otherwise stated in the Supplier Order Acknowledgement, for a period of three years from the date of delivery (**Warranty Period**), the Goods shall:

(a) conform in all material respects with the Specification;

(b) be free from material defects in design, material and workmanship;

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice sent in accordance with clause 12.8(a) to the Supplier during the Warranty Period within ten Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and

(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 Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, which shall be the sole remedy available to the Customer in such circumstances.

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, fixing, use and maintenance of the Goods or (if there are none) good trade practice regarding the same (including the applicable laws, regulations, European Standards and guidelines on use of the relevant Goods);

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

(d) the Customer changes, alters, modifies or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of carelessness, improper treatment, fair or normal wear and tear, ageing, accidental or wilful damage (including but not limited to vandalism), negligence, abnormal storage or working conditions;

(f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements or altered in accordance with clause 3.3;

(g) the defect arises as a result of the presence of chemically active liquids or materials not previously confirmed in writing to and agreed in writing with the Supplier;

(h) the defect arises as a result of the presence of associated materials or products which affect or are capable of affecting the performance or weather-tightness of the Goods;

(i) where the defect, abnormal wear and tear, corrosion and/or ageing has occurred as a result of the inappropriate selection of material or finish grades for the environment the Product(s) will be exposed to;

(j) where the defect, abnormal wear and tear /or ageing has occurred as a result of the inappropriate selection of Product(s) for the loads and cycle usage the Products(s) will be exposed to;

(k) the defect arises from abnormal loads, either temporary or permanent;

(l) the defect arises from misuse of the whole or any part of the Product, including but not limited to physical damage, pet damage, alkaline deposits, chemical damage caused by either poor maintenance or poor design of the building;

(m) the defect arises from mechanical, thermal shock or friction damage, exposure to corrosive or aggressive fumes, chemicals, or metal dust;

(n) the defect arises from exposure to abnormal temperatures, water infiltration or retention along uncoated surfaces;

(o) the defect arises from continuous or abnormal immersion in aqueous solutions, abnormal moisture or condensation, run off created due to galvanic corrosion;

(p) the defect arises from contamination resulting from algae, moss or lichen growth or nearby plant growth;

(q) the defect arises from any fault in the Product arising from the addition of any non-approved third-party products;

(r) the defect arises from any exacerbation of defects which result from the Customer's failure to promptly repair any known defects;

(s) the defect arises from use of the Product on any different project than the Project listed in the Supplier Order Acknowledgement;

(t) the defect arises as a result of a Force Majeure Event; or

(u) the Customer has not paid the Supplier in accordance with clause 8.

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 All other warranties, conditions or terms relating to the Goods (other than those provided for in Section 12 of the Sale of Goods Act 1893), whether implied by statute or common law or otherwise, 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.

5.7 No warranty provided by the Supplier shall act to exclude, limit or relieve any other third party from their duties or obligations in relation to the storage, commissioning, installation, use and/or maintenance of the Goods (including their ongoing compliance with any applicable laws, regulations and guidelines and good trade practice relating to the same).

5.8 If the Supplier is prevented from providing the remedy pursuant to clause 5.2 due to acts required of the Customer and/or any third party, resolution of such remedy by the Supplier shall be suspended until the required acts of the Customer and/or the relevant third party have been completed.

## 6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery as defined in clause 4.

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

(a) 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 respect of which payment has become due, 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 in accordance with clause 12.8(a) immediately if it becomes subject to any of the events listed in clause 9.1(b) to 9.1(d);  
(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time relating to:

- (i) the Goods; and
- (ii) the ongoing financial position of the Customer.

(f) permit or procure permission for the Supplier, its agents and authorised representatives to enter any premises of the Customer or of any third party where the Goods are stored in order to inspect whether the Customer is in compliance with this clause 6.3 and/or recover the Goods.

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 may:

- (a) by notice in writing in accordance with clause 12.8(a), 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.

6.5 Tools and dies manufactured in accordance with a Specification supplied by the Customer shall remain the property of the Customer. The Supplier does not accept any liability for the storage of tools and dies. Storage will not be extended beyond three years without prior agreement with the Supplier.

## 7. Intellectual Property

7.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of the Supplier or (as the case may be) the third-party rights owner.

7.2 Where a Supplier Order Acknowledgement is issued for Goods, subject to the Supplier supplying all Goods on the Supplier Order Acknowledgement and subject to all sums due and payable having been paid, the Customer shall have an irrevocable royalty-free, non-exclusive licence ("Licence") to use the Intellectual Property Rights in or arising out of or in connection with the Goods for any purpose relating to the Project. Such licence is limited to the construction, completion, maintenance, refurbishment and repair of the Project. Where no Supplier Order Acknowledgement is issued, or where the Goods listed are not supplied, or where sums due and payable have not been paid, the Customer has no Licence to use the Supplier's Intellectual Property Rights. The Supplier shall not be liable for any such use by the Customer or any third party of any of the Intellectual Property Rights for any purpose other than that for which they were prepared.

7.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods (other than where the Specification has been supplied by the Customer), the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer. The Customer is responsible for any costs arising from such licence.

7.4 The Supplier may inform third parties that it provides or has provided the Goods to the Customer. The Customer licenses the Supplier to use its name and logo(s) for this sole purpose.

## 8. Price and payment

8.1 The Supplier will carry out a credit check on the Customer and will set a credit limit and the payment terms which may include a requirement for an advance payment. The Supplier will write to the Customer and confirm its decision on the credit limit and payment terms ("**Payment Terms Decision**").

8.2 The Supplier may amend a Supplier's Payment Terms Decision at any time and for any reason and make a demand for payment of all sums owing forthwith. If the credit limit set out in the Payment Terms Decision is exceeded (or is likely to be exceeded by the making of a delivery), the Supplier reserves the right to place the Customer account on stop until the Customer brings the account back within the Supplier's credit limit set out in the most recently issued Payment Terms Decision.

8.3 The price of the Goods shall be the price set out in the Supplier's Order Acknowledgment, or if no price is set out in the Supplier's Order Acknowledgment, at the Supplier's published price list in force as at the date of delivery.

8.4 The Supplier may, by writing to the Customer at any time up to ten 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 but not limited to foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials including but not limited to increases in raw material prices and other manufacturing or delivery 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.

(d) storage costs

8.4 The price of the Goods:

- (a) excludes amounts in respect of value added tax (VAT), excise, sales taxes, any international or other tariffs, levies or duties of a similar nature which are imposed or charged by any competent fiscal authority which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate; and
- (b) includes the costs and charges of standard packaging, and transport of the Goods;

(c) excludes the cost of unloading; and

(d) excludes the costs for failure by the Customer to return stillages and L-frames.

8.5 In instances where the price of the Goods is inclusive of transport costs to a Delivery Location defined by the Customer the Goods will be packed to optimise transport efficiency unless specifically agreed otherwise prior to placement of order. Any protection applied to the Goods is for the sole purpose of protecting the Goods during transport.

8.6 The Supplier may invoice the Customer on or at any time after the completion of any delivery for any of the Goods delivered.

8.7 The Customer shall pay each invoice submitted by the Supplier:

- (a) in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer. If there are no relevant credit terms in place, then unless set out otherwise in these terms, each invoice submitted shall be paid within 30 days of the end of the month in which the invoice is dated; 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.

8.8 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 8.8 will accrue each day at 4% a year above the Euro Interbank Offered Rate ("**EurIBOR**") base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.9 If the Customer queries or disputes any part of an invoice then the Customer will raise such a query or dispute within 10 Business Days of the invoice date. Any query or dispute raised after this time will not be valid.

8.10 Payment shall fall due in accordance with clause 8.7 and the Supplier shall accordingly be entitled to sue for the price once it is due, despite the fact that title to the Goods has not passed to the Customer.

8.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 9. Termination and suspension

9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice in accordance with clause 12.8(a) to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within three Business Days of that party being notified in writing in accordance with clause 12.8(a) to do so;

(b) the Customer takes any step or action in connection with its entering 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.

(e) the Customer rejects, returns or fails to take delivery of any Goods supplied by the Supplier otherwise than in accordance with this contract; or

(f) the Customer fails to make payment due under this Contract and fails to remedy that breach within three Business Days of being notified in accordance with clause 12.8(a) in writing to do so.

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(b) 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 On termination of the Contract for any reason the Customer shall

(a) immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

(b) return any outstanding stillages or L-frames, failing which the Supplier shall raise invoices for any stillages and / or L-frames not returned to the Supplier and such invoices shall be payable by the Customer immediately on receipt.

9.4 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry,

including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

#### 10. Limitation of liability

10.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims and has therefore set a limit of liability per Contract. The Supplier does not hold insurance in respect of certain types of loss. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

10.2 The restrictions on liability in this clause 10 apply to every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.3 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act, 1893;
- (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.4 Subject to clause 10.3, the Supplier's total liability in contract, tort (including, without limitation, negligence) or otherwise arising out of or in connection with or in relation any Goods supplied under this Agreement or the supply or non-supply or purported supply or delay in supply of any Goods under this Agreement or otherwise out of or in connection with or in relation to this Agreement or any transaction or matter contemplated by it shall be limited to €500,000. The limitation of liability under this sub-clause has effect in relation both to any liability expressly provided for under this Contract and to any liability arising by reason of the invalidity or unenforceability of any term of this Contract.

10.5 Subject to clause 10.3, the following types of loss are wholly excluded:

- (a) loss of revenue;
- (b) loss of actual or anticipated profits;
- (c) loss of sales or business;
- (d) loss of agreements or contracts;
- (e) loss of anticipated savings;
- (f) loss of use or corruption of software, data or information;
- (g) loss of or damage to goodwill; and
- (h) loss of reputation; and
- (i) any indirect or consequential loss howsoever caused (including, for the avoidance of doubt, whether such loss or damage is of a type specified in sub-clauses (a) to (h) above).

whether arising out of, or in connection with, or in relation to any Goods supplied under this Contract or the supply or non-supply or purported supply or delay in supply of any Goods under this Contract or otherwise out of or in connection with or in relation to this Contract or any transaction or matter contemplated by it.

10.6 This clause 10 shall survive termination of the Contract.

#### 11. Force majeure

11.1 Neither party shall be in breach of the Contract nor liable to the other in contract, tort (including, without limitation, negligence) or otherwise for any failure or delay in performing or failure to perform, any of its obligations under the Contract if such failure or delay results from a Force Majeure Event. A **Force Majeure Event** means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, sabotage, revolts, riot, civil commotion, vandalism, interference by civil or military authorities, sanctions, requisitions, embargos, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, radiation, radioactivity, sonic boom, explosion, collapse of building structures, fire, flood, tidal wave, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions and any consequent effects, or default of suppliers or subcontractors or any epidemic or pandemic whether known or unknown at the time that the Supplier Order Acknowledgement was issued.

11.2 In the circumstances of a Force Majeure Event, the affected party shall be entitled to a reasonable extension of time for performing such obligations.

11.3 Where a Force Majeure Event continues for a period of more than 42 days, the Supplier may terminate the Contract by giving 10 Business Days written notice to the Customer in accordance with clause 12.8(a).

#### 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 Cancellation.

After the Supplier has issued the Supplier Order Acknowledgement, that order may be cancelled by the Customer only with the written agreement of the Supplier's Directors, which will incur a cancellation fee. The cancellation fee will be the full order value less any reasonable mitigation, including any avoidable finishing costs, transport costs and the value of the materials (such value being the higher of its salvage value or the value if returned to its original supplier after any re-stocking fees have been applied). Payment of any cancellation fee does not confer any rights of ownership or licence rights over the intellectual property rights of the Supplier including, but not limited to; copyright, patents or design rights. The Customer shall pay such amendment or cancellation fees within five Business Days of the date of invoice.

##### 12.3 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, contractors, subcontractors 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; 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.

##### 12.4 Entire agreement

(a) The 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.

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

12.6 **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 or 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.

12.7 **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 12.7 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.

##### 12.8 Notices

(a) Any notice expressly required by this Contract to be given in accordance with this clause 12.8(a) shall be sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary be deemed to have been received at 09:00 on the second Business Day after the date of posting.

(b) 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.

(c) A notice given under the Contract is not valid if sent by fax or email.

12.9 **Relationship** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Supplier and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

12.10 **Governing law** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with Irish law.

12.11 **Jurisdiction** Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to hear, determine and settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) and the parties submit to the exclusive jurisdiction of the Irish courts for that purpose.