



# The National Chemical Company Limited Terms and Conditions (2025)

Sale of any Goods or Services, as each is defined in the Contract, is conditional on Buyer's acceptance of these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and any additional or different terms proposed by Buyer shall not apply to the Contract. The Buyer shall not modify these Terms and Conditions, nor shall any course of performance, course of dealing, or usage of trade operate as a modification or waiver of these Terms and Conditions. Any order to purchase Goods or receive Services shall constitute Buyer's acceptance of these Terms and Conditions. Seller's quotation shall expire on the date set forth in the quotation and may be modified or withdrawn by Seller before receipt of Buyer's order. Fulfillment by Seller of any order submitted by Buyer shall not constitute acceptance of any of Buyer's terms and conditions and shall not constitute a modification or amendment of these Terms and Conditions.

## 1. Definitions.

**"Buyer"** means the person to whom the Seller has agreed to sell Goods or provide Services under the Contract.

**"Confidential Information"** has the meaning set out in Clause 18

**"Contract"** means either the contract agreement signed by the Seller and the Buyer, or the purchase order submitted by Buyer and accepted by Seller in writing, for the sale of Goods and/or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement, but expressly excluding any additional or different terms proposed by Buyer in accordance with the provisions referred to above. Unless expressly agreed to in writing and signed by seller, the Terms and Conditions shall take precedence over other documents included in the Contract.

**"Contract Price"** means the agreed price stated in the Contract for the sale of Goods and/or Services, including adjustments (if any) in accordance with the Contract.

**“Data Protection Laws”** means any applicable law relating to the processing, privacy and use of personal data, including, but not limited to, the General Data Protection Regulation ((EU) 2016/679); the Data Protection Acts 1988-2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the ePrivacy Regulations (SI No. 336 of 2011-The European Communities (Electronic Communications Networks and Services)(Privacy and Electronic Communications) Regulations 2011.

**“Examiner”** has the meaning ascribed thereto in the Companies Act 2014.

**“Goods”** means the products, parts, materials, supplies, and other goods (including any installment of the goods or parts) Seller has agreed to supply to Buyer under the Contract.

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, 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 similarly or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Personal Data”, “process”, “data processor”, “data controller”, “personal data breach”, “data protection impact assessment”, “supervisory authority” and “data subject”** have the meanings given to them in the Data Protection Laws.

**“Seller”** means The National Chemical Company Limited, a limited liability company incorporated in the Republic of Ireland under CRO No. 29597 and having its registered office at 42 Lower Leeson Street, Dublin 2, D02 FX39, being the entity selling the Goods or performing Services under the Contract.

**“Services”** means the services Seller has agreed to perform for Buyer under the Contract.

**“Terms and Conditions”** means these “General Terms and Conditions for the Sale of Goods or Services,” together with any modifications or additional provisions specifically stated in Seller’s final quotation or specifically agreed upon by Seller in writing.

**“Third Party Goods”** means Goods sold by the Seller which have been manufactured by a party other than the Seller. In these Terms and Conditions unless the context otherwise requires:

- a) References to a law includes any provision of any constitution, statute, statutory instrument, order, by-law, directive, regulation or decision of any governmental entity and any judicial or administrative interpretation of any of the foregoing, in each case, as amended, revised, modified or replaced from time to time; and
- b) Words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall unless the context clearly indicates to the contrary refer to the whole of these Terms and Conditions and not to any particular clause thereto.
- c) Save as otherwise provided herein, any reference to a clause, paragraph or sub-paragraph shall be a reference to a clause, paragraph or sub-paragraph (as the case may be) of these Terms and Conditions and any reference in a clause to a paragraph or sub-paragraph shall be a reference to a paragraph or sub-paragraph of the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended.
- d) The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa.
- e) The headings in the clauses in these Terms and Conditions are inserted for convenience of reference only and shall not be considered a part of or affect the constructions or interpretation of these Terms and Conditions.
- f) References to subsidiary and holding company shall be construed in accordance with the Companies Act 2014.
- g) References to “including” means comprising, but not by way of limitation to any class, list or category.
- h) References to “writing” or “written” shall include a reference to any electronic mode of

representing or reproducing words in visible form.

- i) References to “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent.
- j) References to a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- k) References to a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation.
- l) References to a time of day is a reference to time in the Republic of Ireland.
- m) References to a “Party” means the Seller or the Purchaser as the case may be.

## **2. Delivery and Delivery Terms.**

- a) Except as otherwise set forth in Seller’s quotation or another instrument executed by both parties, (i) Seller shall deliver Goods to Buyer FCA Seller’s facility or warehouse (Incoterms 2020), and (ii) Buyer shall pay all delivery costs and charges or pay Seller’s standard delivery charges plus handling. Partial deliveries are permitted. Seller may deliver Goods in advance of the delivery date. If Goods delivered do not correspond in quantity, type, specification or price to those itemized in the delivery invoice or documentation, Buyer shall notify Seller within seven (7) days after receipt.
- b) Delivery schedules are estimates only and assume timely receipt of all necessary information and documentation from Buyer, and Seller assumes no responsibility or liability for any delays. All requested delivery dates, shipments and order lead times are subject to Seller’s ability to (i) obtain the Goods and (ii) schedule or provide transportation. Buyer shall cooperate fully with Seller’s endeavours to deliver the Goods, and shall be appropriately prepared to safely and promptly receive the Goods

when delivered. Buyer shall provide adequate access to on-site tanks, or other suitable receptacles, to allow for the efficient unloading of the Goods.

- c) Risk of loss and damage to the Goods shall pass to Buyer upon delivery pursuant to Clause 2(a).
- d) If any Goods to be delivered under the Contract cannot be delivered to or received by Buyer when ready due to any cause attributable to Buyer, Seller may deliver the Goods to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder, all at Buyer's sole expense. If Seller places Goods into storage, the following provisions apply: (i) risk of loss shall immediately pass to Buyer, if they have not already passed pursuant to Clause 2(c), and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) a fee of two percent (2%) of the sale price of the Goods will be charged to Buyer; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Goods available to Buyer for collection.
- e) Any liability of Seller for non-delivery of the Goods in conformity with the Contract shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods
- f) Quantities

The Seller will endeavour to supply the Goods sold hereunder in accordance with the specification and in the quantity agreed with the Purchaser. However, the Purchaser agrees to accept such Goods despite variation in the quantity and/or specification so long as such variation does not extend beyond that accepted in the general trade for the sale of such Goods or such variation as the Seller and the Purchaser have agreed in writing.

Where the delivery of Goods is to be made in bulk, the Seller reserves the right to deliver up to 10% more or less than the quantity ordered without any adjustment in the Contract Price and the quantity so delivered shall be deemed to be the quantity ordered.



### **3. Cancellation of Purchase Order.**

Buyer may withdraw its order or cancel the Contract only with the prior written consent of Seller, which Seller may withhold in its absolute discretion. All withdrawals or cancellations will be subject to payment to Seller of its reasonable cancellation charges.

### **4. Inspection and Acceptance of Goods**

Buyer shall inspect all Goods within seven (7) days of the delivery of the Goods to Buyer in accordance with Clause 2. Buyer shall be deemed to have accepted all Goods unless Buyer notifies Seller in writing during such seven (7) day period that any Goods do not conform to the applicable Seller specifications. Buyer may return Goods (including any nonconforming Goods) only at its own cost and only with the prior written authorisation/consent of Seller, subject to the payment of a restocking fee as agreed by the parties. At Seller's sole option, Seller will repair or replace any nonconforming Goods or refund to Buyer the purchase price for such Goods, in any case as Buyer's sole remedy for such nonconforming Goods. Notwithstanding the foregoing, no returns of special, custom-made, or made-to-order Goods will be permitted. No returns will be permitted, in any case, more than thirty (30) days after delivery of the Goods

### **5. Title and Risk of Loss.**

The full legal and beneficial title to the Goods shall remain with the Seller until the Purchaser has paid the Seller in full in respect of the Goods and has discharged all other indebtedness or sums due by the Purchaser to the Seller [During such period, the Purchaser will have possession of the Goods as bailee for the Seller and will have authority until such authority is countermanded by the Seller in the manner hereafter appearing or until the occurrence of an event described in Clause 15 to sell the Goods in the ordinary course of the Purchaser's business. At any time prior to the Purchaser paying for the Goods and any other sums due and the discharge of indebtedness, the Seller may, by notice in writing, determine the Purchaser's right to sell the Goods. The Purchaser shall hold in trust for the Seller until the price of the Goods and all other sums due have been paid and all indebtedness by the Purchaser to the Seller has been discharged, such portion of the proceeds of the sale of the Goods as equates to the liability of the Purchaser to the Seller. The Purchaser shall retain the aforesaid portion of the proceeds of sale in a manner that allows the proceeds to be separately identifiable and

the proceeds shall be lodged by the Purchaser to a separate account as may be designated by the Seller from time to time. The Seller shall be entitled to all rights and claims which the Purchaser may have against its customers arising from the sale of the Goods until payment in full for the Goods and all outstanding sums and the discharge of the Purchaser's indebtedness].

Until title to the Goods has passed to the Purchaser, the Purchaser shall (a) at its own expense separately store the Goods and prevent any loss or damage due to deterioration and will take all reasonable steps to maintain the Goods separately identifiable; (b) not remove, deface or obscure any identifying mark or packing on or relating to the Goods; (c) give the Seller such information as the Seller may reasonably require from time to time relating to the Goods and the ongoing financial position of the Purchaser; (d) inform the Seller as soon as possible if it becomes subject to any of the events set out in Clause 15.

For as long as any money is due by the Purchaser to the Seller or indebtedness remains outstanding, the Seller shall be entitled to enter any premises where the Goods are located to take possession of and to resell same and for this purpose, the Purchaser hereby grants the Seller an irrevocable right and licence to enter any such premises. This right shall continue notwithstanding termination of the Contract for any reason and shall be without prejudice to any accrued rights of the Seller. In the event of the Seller recovering the Goods, it shall be entitled to recover the costs incurred by the Seller in connection with effecting repossession of the Goods.

## **6. Contract Price.**

- a) Buyer shall purchase the Goods and, if applicable, shall pay for the Services provided, from Seller at the Contract Price. Unless otherwise set forth in an instrument executed by both parties, upon acceptance of an order by Seller, Seller shall have the right to revise the price of any Goods or Services by written notice (including email) to Buyer, In the event of a price increase, Buyer may cancel any undelivered portion of any order by written notice to Seller, provided such notice is received by Seller not more than ten (10) days after Buyer's receipt of Seller's notice of a price increase. Upon cancellation, Buyer shall pay Seller: (1) the Contract Price for all Goods which have been delivered or are in the process of being delivered, (2) components or goods secured by Seller from third parties for the performance of the Contract, and (3) specially made goods and/or equipment procured for the performance of the Contract. All prices constitute

confidential information of the Seller within the meaning of Clause 18, and Buyer shall not disclose such prices to any person in accordance with its obligations under Clause 18.

- b) All Contract Prices are exclusive of all Value Added Tax (VAT), sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by the Revenue Commissioners or by any other governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such VAT, charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
- c) The Contract Price excludes delivery and handling charges as well as any duties that may apply to the Goods, all of which are the obligation of Buyer and will be added to the invoice if prepaid by Seller.

## **7. Payment Terms.**

- a) Unless otherwise set forth in the quotation or other instrument executed by both parties, terms of payment are net cash thirty (30) days following the date of invoice in Euros, or by letter of credit paid upon submission of shipping/delivery documents, all payable in the currency specified in the invoice.
- b) Buyer shall pay interest on all late payments at the at the rate prescribed from time to time under the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (SI No. 580 of 2012) calculated daily and compounded monthly. Buyer shall reimburse Seller for all reasonable costs incurred in collecting any late payments, including, without limitation, legal fees and court costs. In addition to all other remedies available under these Terms and Conditions or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof.
- c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, insolvency or otherwise.



- d) If Buyer disputes any invoice or portion thereof, it shall notify Seller in writing within thirty (30) days of receipt of said invoice, provide the Seller with a description of the reason for the dispute, and pay all undisputed amounts. All charges not timely disputed in writing shall be deemed to be accepted and shall be due and payable as set forth above.

#### **8. Warranty; Exclusion of Warranties.**

- a) Seller warrants that all Goods manufactured by Seller shall, at the time of delivery, conform with applicable Seller specifications and description and that the Seller and the Goods are in compliance with Section 12 of the Sale of Goods Act 1893. All Third-Party Goods (including goods where the Seller has only manufactured a component part of the Goods, are sold only with the warranties, representations and guarantees provided by the third-party manufacturer of such Goods, if any. Unless expressly set forth in a separate service agreement, Seller provides no warranties or representations with respect to any Services provided by Seller pursuant to the Contract. Without prejudice to the generality of the foregoing, the Seller provides no warranty or representation with respect to, or guarantee of durability or, a minimum shelf life for any Goods, and the determination of the suitability of the Goods supplied hereunder for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer. SELLER MAKES NO OTHER WARRANTY WITH RESPECT TO THE GOODS OR SERVICES, AND EXCLUDES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING AND, IN ACCORDANCE WITH SECTION 55 SALE OF GOODS AND SUPPLY OF SERVICES ACT 1980, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN SECTIONS 13, 14 and 15 SALE OF GOODS ACT 1893, OR ANY WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. Seller does not authorize any agent, representative, or personnel to make any other warranties or alter this exclusion clause.
- b) All Goods are sold for commercial use only and are not intended for use by consumers. The Buyer hereby warrants and represents that it does not enter into the Contract as a consumer within the meaning of Section 2(1) Consumer Rights Act 2022Any

inspection services provided by Seller at Buyer's request shall be provided as a customer service only and shall not constitute a warranty or approval of Buyer's installation, use, or maintenance of the Goods, nor shall Seller be liable for failure to detect improper use, installation or maintenance of the Goods by Buyer.

- c) Without prejudice to the generality of clause 8(a), the Seller gives no guarantees as defined in Section 15 of the Sale of Goods and Supply of Services Act 1980 in relation to the Goods. In the event that the Goods are sold with a guarantee from the original manufacturer thereof, the Seller undertakes no liability to the Purchaser for the observance of the terms of such guarantee. This clause is for the express provision of excluding the Seller's liability in respect of such a guarantee in accordance with Section 17(1) of the Sale of Goods and Supply of Services Act 1980.

#### **9. Limitation of Liability; Hazards.**

- a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY (i) LOSSES ARISING OUT OF RELATING TO ANY DELAY IN DELIVERY, OR (ii) LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL LOSS, COSTS, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH LOSSES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR ITS ESSENTIAL PURPOSE.
- b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER ATTRIBUTABLE TO OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THOSE SPECIFIC GOODS PURCHASED BY BUYER HEREUNDER THAT ARE THE SUBJECT OF THE CLAIM OR, AS TO SERVICES, FOR THE AMOUNTS PAID TO SELLER FOR THE SPECIFIC SERVICES PERFORMED BY SELLER HEREUNDER THAT ARE THE SUBJECT OF THE CLAIM.
- c) This limitation of liability constitutes a fundamental term of the Contract, is an integral part of the negotiated bargain between the parties and reflects the bargained-for

allocation of risks between Seller and Buyer, without which Seller would not have agreed to provide the Goods or Services at the Contract Price or at all

- d) Buyer acknowledges that there may be hazards associated with the possession and use of the Goods, including any containers related thereto, and Buyer assumes all liability arising out of, resulting from, or in any way related to, Buyer's storage, possession, transportation, handling, resale or use of the Goods.

#### **10. Indemnity.**

Buyer shall indemnify, the Seller and keep the Seller indemnified from and against all damages, losses, expenses and costs (including reasonable legal fees and costs and expenses related to the enforcement by Seller of such indemnity obligation) related to or arising from claims brought by a third party, on account of personal injury or damage to tangible property in connection with Buyer's obligations under the Contract and/or Buyer's handling, use, or sale of the Goods.

#### **11. Adequate Assurance.**

Seller reserves the right by written notice to cancel any order or require full or partial payment or adequate security for the performance by the Buyer of its obligations in the event of: (i) Buyer's insolvency, (meaning it is unable to pay its debts as they fall due within the meaning of the Companies Act 2014) (ii) Buyer's passing of a resolution for winding up (iii) the appointment of a receiver over the assets of the Buyer or (iv) the execution by Buyer of an assignment for the benefit of creditors or (v) an order of the Court is passed for an Examiner to be appointed to the Buyer. Seller reserves its right to suspend its performance until payment or adequate security for performance is received and also reserves its right to cancel Buyer's credit at any time for any reason.

#### **12. Intellectual Property Rights.**

- a) The Seller provides no warranty, representation or assurance that the Intellectual Property Rights of third parties are not infringed where the Goods constitute Third Party Goods, including but not limited to goods, models, and drawings for the manufacture and/or delivery of the Third Party Goods.

- b) In the absence of written agreement to the contrary and save in relation to Third Party Goods, the Seller hereby warrants and represents to the best of its knowledge, information and belief that it owns the Intellectual Property Rights in relation to the Goods.
- c) Buyer agrees that no express or implied licenses or other rights relating to any Intellectual Property Rights of Seller, or the Goods are provided to Buyer hereunder. Title in all Intellectual Property Rights of Seller and the Goods (including intellectual property licensed to Seller) shall remain at all times in Seller.

### **13. Compliance with Export Laws.**

The Goods, items, technology, or software which are the subject of a quotation/order Contract may be subject to various export laws including Irish and EU export controls, including the Control of Exports Act 2023. Seller is committed to complying with all relevant export laws. If these items are being exported from the Republic of Ireland, the following statement applies, "These commodities, technology or software were exported from the Republic of Ireland in accordance with Irish law. Diversion contrary to Irish law is prohibited." Buyer is responsible for applying for export licenses, if required, based on end user or country of ultimate destination. Seller's obligations are conditional upon Buyer's compliance with all Irish and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Goods other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice. Buyer shall indemnify and keep the Seller indemnified from any and all costs, liabilities, penalties, sanctions and fines related to non-compliance with applicable export laws and regulations, including reasonable legal fees and costs and expenses related to the enforcement by Seller of any such indemnity obligation.

#### 14. Packaging

Packaging may be provided by Seller to Buyer on the following conditions (unless otherwise specified in a subsequent signed instrument):

- a) Returnable, rental or loaned packaging. Such packaging shall remain the property of the Seller or its agents and shall not be used for purposes other than to package the Goods. The Buyer shall be liable for any damage or loss caused to such packaging while in the Buyer's possession. The packaging must be returned to the Seller not later than two months after the date of delivery of the Goods and in the event of its destruction, deterioration or non-return within this time, the Buyer shall be liable for the loss or replacement of the packing or its repair or for damages suffered by the Seller in consequence thereof;
- b) Invoiced packaging. Such packaging shall on delivery become the property of the Buyer and the Buyer shall, promptly after delivery, remove the name and other markings of the Seller from the packaging together with any other markings not corresponding to its use. The Seller shall not be liable for any loss or damages caused through improper use of the packaging not in accordance with its technical capacity or purpose;
- c) Tankers and containers. The time taken to empty containers and tankers shall not exceed two hours. After such time, the Seller reserves the right to charge demurrage at the Seller's rate as amended from time to time;
- d) Special pressurized packing. Notwithstanding any special arrangements, the Seller reserves the right to invoice such packing to the Buyer at replacement cost plus a reasonable charge should the Buyer fail to return the packing within a period of four months from the date of delivery. This time limit shall not be extended without the written consent of the Seller;

#### 15. Termination.

In addition to any remedies that may be provided under these Terms and Conditions, Seller may terminate the Contract with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the Contract and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (iii) becomes



insolvent; i.e. unable to pay its debts as they fall due within the meaning of the Companies Act 2014; (iv) passes a resolution to wind up or to appoint an Examiner; (v) has a receiver appointed to it; or (vi) any event analogous to the above occurs in any other jurisdiction; or (vii) ceases to carry on business. .

#### **16. Amendment and Modification.**

These Terms and Conditions may only be amended or modified in writing which specifically states that it amends these Terms and Conditions and is signed by an authorized representative of each party.

#### **17. Waiver.**

No waiver by Seller of any of the provisions of the Contract is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Contract operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

#### **18. Confidential Information.**

All confidential or proprietary information of Seller or provided by Seller, including but not limited to specifications, the Seller's Intellectual Rights, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Contract constitutes Confidential Information and shall be used solely for performing the Contract and may not be used for any other purpose or disclosed to any third party or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller, which contains Confidential Information. Seller shall be entitled to injunctive relief for any breach of this Clause. This Clause does not apply to information that is: (a) in the public domain through no fault of Buyer; (b) known to Buyer at the time of

disclosure; or (c) lawfully obtained by Buyer on a non-confidential basis from a third party that had a lawful right to disclose it.

#### **19. Force Majeure.**

Seller shall not be liable or responsible to Buyer, nor be deemed to be in breach of the Contract, for any failure or delay in fulfilling or performing any term of the Contract if and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, or Seller's suppliers, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, 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, materials or telecommunication breakdown or power outage, or the worsening, escalation or expansion of any of the foregoing. If an event of Force Majeure continues for a period exceeding 3 months, either party may terminate the Contract without liability.

#### **20. Assignment.**

Buyer shall not assign any of its rights or delegate any of its obligations under the Contract without the prior written consent of Seller, which consent may be withheld by the Seller in its absolute discretion. Any purported assignment or delegation in breach of this Clause shall be null and void and shall not relieve Buyer of any of its obligations under the Contract.

#### **21. Relationship of the Parties.**

The relationship between the parties is that of independent contractors. Nothing contained in the Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### **22. Governing Law.**

All matters arising out of or relating to the Contract shall be governed by and construed in accordance with the laws of the Republic of Ireland.



### **23. Jurisdiction.**

Any legal proceedings or action arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the courts of the Republic of Ireland.

### **24. Notices.**

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set out in the Contract or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, courier (with all fees pre-paid), electronic transmission (with confirmation of transmission) or certified or registered post (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Contract, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Clause.

### **25. Severability.**

If any term or provision of the Contract is determined by the Court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision.

### **26. Survival.**

Provisions of these Terms and Conditions which by their nature are expressed or implied to apply beyond the expiration or termination of the Contract are to remain in force after any termination or expiration of these Terms and Conditions including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Indemnification, Jurisdiction, and Survival.

### **27. Complete Agreement.**

The Contract constitutes the entire agreement between Buyer and Seller relating to the subject matter hereof, and supersedes all prior and contemporaneous discussions, understandings, and agreements related to the subject matter hereof.



## **28. Language.**

The parties have expressly requested that the Contract and all related documents be drafted in the English language.

## **29. Data Protection**

To the extent that a party receives or otherwise obtains or has access to personal data pursuant to or in the performance of the Contract, it shall:

- a) Comply with its obligations under Data Protection Laws in respect of its processing of personal data;
- b) Use the personal data solely for the performance of the Contract;
- c) Process personal data only in accordance with other party's written instructions;
- d) Take appropriate technical and organizational measures to prevent unauthorized or unlawful processing or, accidental loss or destruction of or damage to the personal data;
- e) Ensure that personal data is only accessible to personnel who require access to it for the performance of the Contract and are subject to a binding written contractual obligation to keep the personal data confidential;
- f) Not transfer the whole or any part of the personal data outside the EEA without the other party's written consent;
- g) Comply with all applicable laws relating to rectification, erasure and/or restriction of processing of personal data;
- h) Promptly notify the other Party of any data subject breach without undue delay, however, no later than 24 hours after discovery of the breach.
- i) not acquire ownership of or rights in the personal data and any retention right to the personal data is excluded.
- j) Upon termination of the Contract, erase all the personal data (including copies) in accordance with Data Protection Laws.