

DUBLIN CITY COUNCIL



Dublin City Council

Comhairle Cathrach Bhaile Átha Cliath

GENERAL CONDITIONS OF PURCHASE OF SUPPLIES

(June 2005)

GENERAL CONDITIONS OF PURCHASE OF SUPPLIES

1. INTERPRETATION

1.1. In these general conditions:

- “CONDITIONS”** means the standard terms and conditions of purchase set out in this document and includes (and shall be deemed to incorporate) any Special Conditions and in the event of a conflict between the standard terms and conditions and any Special Conditions, the Special Conditions shall prevail.
- “CONTRACT”** means these Conditions including the Specification and any Order given hereunder.
- “CONTRACTING AUTHORITY”** means Dublin City Council, including its successors and assigns.
- “DELIVERY ADDRESS”** means the address stated on an Order or such alternative address as may be agreed in Writing.
- “DELIVERY DATE”** means the date or dates stated by the Contracting Authority on an Order (or otherwise agreed in accordance with Clause 6.2) as being the date or dates upon which the relevant Goods are to be delivered, such date or dates being consistent with any time-scales for delivery set out in the Special Conditions.
- “GOODS”** means the goods (including any instalment of the goods or any part of them) to be supplied (and, where appropriate, installed and commissioned) in accordance with this Contract pursuant to Orders made hereunder.
- “INVOICE”** means a written document from the Supplier to the Contracting Authority detailing the Goods sold and delivered to the Contracting Authority hereunder and requesting payment for such Goods.
- “ORDER”** means any purchase order in Writing by which the Contracting Authority orders the Goods and which will contain a description of the quantity, Price, Delivery Date, Delivery Address in relation to the Goods to be supplied pursuant to such purchase order.
- “PRICE”** means the price of the Goods stated in the Order.

“SPECIAL CONDITIONS”	means any special terms and conditions agreed in Writing between the Contracting Authority and the Supplier from time to time.
“SPECIFICATION”	Includes any plans, drawings, designs, calculations, descriptions, data and other information relating to the Goods, as advised and/or approved by the Contracting Authority, and either set out in the Schedule hereto or annexed to the Special Conditions or as otherwise agreed by the parties in Writing from time to time.
“SUPPLIER”	means the person so described in the Special Conditions or, in the absence of Special Conditions, any Order.
“WRITING”	includes cable, e-mail, facsimile transmission and comparable means of communication.

- 1.2 Any reference in these conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 Save where the express wording or the context otherwise requires, the definitions contained herein shall apply to any Special Conditions agreed between the parties.

2. BASIS OF PURCHASE

- 2.1 Subject to the terms and conditions herein, the Supplier agrees to supply, and the Contracting Authority agrees to purchase, Goods meeting in full the requirements of each Order, the Specification and these Conditions.
- 2.2 These Conditions prevail over any other terms offered or prepared by the Supplier, irrespective of whether such other terms have been notified to the Contracting Authority, and shall apply to the Contract to the exclusion of any other terms and conditions, express or implied by trade, custom, practice or course of dealing, on which any quotation has been given to the Contracting Authority or subject to which an Order is accepted or purported to be accepted by the Supplier.
- 2.3 No variation to any Order or to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Contracting Authority and the Supplier.

3. SPECIFICATIONS

- 3.1 The quantity, quality and description of the Goods to be delivered shall, subject as provided in these Conditions, be as specified in each Order and the Specification.
- 3.2 Any specification documents supplied by the Contracting Authority to the Supplier, or specifically produced by the Supplier for the Contracting Authority, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in such specification, shall be the exclusive property of the Contracting Authority. The Supplier shall not disclose to any third party or use any such Specification except to the

extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract, subject to the Contracting Authority's obligations under law, including but not limited to the Freedom of Information Act 1997 as amended. Copyright in any specification documents owned by the Supplier and not produced by the Supplier specifically for the Contracting Authority shall remain with the Supplier. The Supplier hereby grants the Contracting Authority an irrevocable royalty-free licence to use, reproduce and modify such specification documents.

- 3.3 The Supplier shall comply with all requirements and/or obligations of any statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measure in the fulfilment of this Contract, in particular (but not limited to) in relation to the manufacture, packaging, packing, distribution, importation, pricing or sales of the Goods. In particular, but without limitation to the generality of the foregoing, any patented articles supplied hereunder shall be marked in accordance with the provisions of the Patents Act, 1992.
- 3.4 The Supplier shall not unreasonably refuse any request by the Contracting Authority to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the Contracting Authority with all facilities reasonably required for such inspection and testing.
- 3.5 If, as a result of inspection or testing, the Contracting Authority is not satisfied that the Goods will comply in all respects with the Contract and the Contracting Authority so informs the Supplier within seven (7) days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.
- 3.6 The Goods shall be marked, packed and secured in accordance with the Contracting Authority's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.
- 3.7 The Supplier shall be responsible for obtaining any import licences, permits or other consents necessary for the importation and delivery of Goods and shall produce evidence of same if requested to do so by the Contracting Authority.
- 3.8 The Supplier shall supply, without charge, such reasonable quantity of operation and maintenance manuals in English relating to the Goods which the Contracting Authority may require and/or which are necessary for the proper installation, operation and maintenance of the Goods.
- 3.9 The Supplier agrees on request to supply the Contracting Authority with any necessary declarations, certificates and other documents stating the origin of the Goods.
- 3.10 In selecting packaging, the Supplier shall take into consideration environmental concerns and shall use packing material of sufficient strength and quality to protect the Goods against all transport risks and shall be responsible for any damage to the Goods resulting from the inadequacy of such packaging in accordance with the indemnity provisions of this Contract.
- 3.11 The Contracting Authority may (unless otherwise agreed in Writing) require the Supplier to dispose, at the Supplier's cost, of all packaging materials. Failure by the Supplier to effect disposal within 14 days of the relevant delivery shall entitle the Contracting Authority to arrange disposal with another supplier and any money paid by the Contracting Authority in effecting disposal of packaging shall be paid by the Supplier to the Contracting Authority or set off against any monies owed to the Supplier pursuant to Clauses 4 and 5.

- 3.12 Where this Contract is for the supply of equipment, it will, unless otherwise stated, also cover the delivery, installation and commissioning (to include any necessary start-up, calibration and testing) of the equipment, operator training and supply of manuals.

4 **PRICE OF THE GOODS**

- 4.1. The Price shall be as stated in the pricing schedule attached to the Special Conditions and on each Order. In the event that a price shown on Order is not in accordance with the Special Conditions (or, in the absence of Special Conditions, the price tendered by the Supplier to the Authority for the purpose of securing the award of the Contract) the Supplier shall immediately notify the Contracting Authority of such inconsistency and shall invoice the Contracting Authority on the basis of the applicable price set out in the Special Conditions (or such tendered price, if applicable) and not the price set out in the Order.
- 4.2 In the event that there is no pricing schedule and the Price is not stipulated on the Order or otherwise agreed in Writing, the Order shall be filled at prices no higher than those last charged or quoted by the Supplier to the Contracting Authority.
- 4.3 The Price of the Goods shall be:
- 4.3.1 exclusive of any applicable value added tax (which shall be payable by the Contracting Authority, subject to receipt of a V.A.T. invoice);
 - 4.3.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, unloading and installation of the Goods to the Delivery Address and any duties, imports or levies other than value added tax;
 - 4.3.3 inclusive of all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any work, invention or design for the purpose of performing its obligations under this Contract; and
 - 4.3.4 no less favourable than the price at which the Supplier supplies the same Goods to other purchasers in Ireland.
- 4.4 The Contracting Authority shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale or set out in the Special Conditions or any Order.
- 4.5 The Price of the Goods shall be fixed for the first year of the Contract and not subject to review but may be reviewed in each successive year for the duration of the Contract. The Price of the Goods for each successive year shall be agreed by the Contracting Authority and the Supplier and recorded in Writing. In the event of a failure to agree a new price for the Goods, the existing Price shall be deemed to be the Price of the Goods as increased by the percentage rate of inflation in the previous twelve months, as calculated by the consumer price index ("CPI") published by the Consumer Association of Ireland, provided that either party shall thereafter be entitled to terminate the Contract on three months' prior written notice.
- 4.6 In the event that the cost to the Supplier of any raw materials used by the Supplier in the manufacture of the Goods should increase at an annual rate materially in excess of the applicable CPI over any twelve-month period, at the request of the Supplier the parties will review the Price of the relevant Goods. In the event of a failure to agree on a new Price for the relevant Goods, the existing Price of such Goods will remain unchanged provided that the Supplier in such circumstances shall have the right upon three months' prior written notice to terminate the supply of such Goods to the Contracting Authority and the

Contracting Authority shall thereupon have no obligation to purchase or pay for such Goods but the Contract shall otherwise remain in full force and effect.

5. TERMS OF PAYMENT

- 5.1. The Supplier shall be entitled to invoice the Contracting Authority on or at any time after proper delivery of the Goods, and each invoice shall quote the number of the Order and will be forwarded to the “Bill to” address specified on the Order, or as otherwise agreed in Writing between the parties. Improperly furnished invoices may be returned to the Supplier unpaid.
- 5.2. Each Invoice shall quote the Contracting Authority’s product codes (as stated on the relevant Order) together with the applicable Price rate for each code, the Price as stated on the Order and the Delivery Address. VAT shall be itemised separately on each Invoice. All Invoices shall include the Supplier’s VAT Registration Number.
- 5.3. A separate Invoice must be rendered for each individual delivery of Goods, unless otherwise agreed in Writing between the parties. In the event that the Supplier makes a partial delivery of Goods the Supplier shall not be entitled to invoice for such partial delivery until all outstanding Goods have been delivered, unless the Contracting Authority has consented to such partial delivery.
- 5.4. Where a Supplier has not accompanied its invoice with an appropriate delivery note and there is difficulty in establishing proof of delivery, the Supplier shall supply the Contracting Authority with the relevant delivery note signed by a duly authorised representative of the Contracting Authority, immediately upon request. The relevant invoice will be held “in dispute” until proof of delivery is established.
- 5.5. Unless otherwise stated in the Order, the Contracting Authority shall pay the Price of the Goods within 30 days after receipt of the Contracting Authority of a proper Invoice or, if later, after acceptance of the Goods in question by the Contracting Authority.
- 5.6. The Contracting Authority shall be entitled to set off against the price:
 - 5.6.1. any sums owed to the Contracting Authority by the Supplier under the terms of the Contract or any other agreement; and
 - 5.6.2. any sum contained in the Contracting Authority’s bona fide written estimate of any loss, expense, damage or other sum incurred or likely to be incurred by the Contracting Authority which arises out of or in connection with any breach by the Supplier of the Contract (including, without prejudice to the generality of the foregoing, late delivery of the Goods) or any other agreement.
- 5.7. Payment under this Contract shall be made in Euro unless the Contracting Authority otherwise agrees in Writing.
- 5.8. The Supplier shall provide the Contracting Authority within thirty (30) days of each anniversary of the date of this Contract and within thirty (30) days of termination of this Contract with a statement giving accurate and complete details of the amount and value of the Goods sold by the Supplier to the Contracting Authority under this Contract during the year ending on the date of such anniversary or, in the event of termination of this Contract, during the period from the date of this Contract or the date of the last such statement submitted by the Supplier to the Contracting Authority (as appropriate) to the date of termination of this Contract.

- 5.9 The Supplier shall keep at its normal place of business detailed, accurate and up to date records of the amount and value of all Goods sold by it to the Contracting Authority hereunder. The Contracting Authority shall be entitled on reasonable notice to enter the Supplier's premises during normal office hours and to inspect such records in order to verify whether any statement supplied by the Supplier to the Contracting Authority pursuant to Clause 5.8 above is accurate and complete.
- 5.10 On request from the Contracting Authority, the Supplier shall, at its own expense, ensure that its external auditors provide the Contracting Authority with an annual audit certificate as soon as reasonably practicable after the end of the Supplier's financial year. In the annual audit certificate the auditors shall confirm that any statement supplied by the Supplier to the Contracting Authority, pursuant to Clauses 5.8 or 5.9 above, during that financial year is complete and accurate.

6. DELIVERY

- 6.1. The Goods shall be delivered to the Delivery Address during the Contracting Authority's usual business hours on the date or within the period stated in the Order.
- 6.2. Where the Contracting Authority has agreed that the Delivery Date is to be specified by the Supplier after the placing of an Order, the Supplier shall give the Contracting Authority reasonable notice of such Delivery Date and the Contracting Authority shall be entitled to cancel the relevant Order without penalty or other obligation at any time within seven (7) days following receipt of such notice.
- 6.3. Each Delivery Date is of the essence of the Contract.
- 6.4. If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Contracting Authority of the earliest possible date for delivery. Notwithstanding such notice and unless a substitute Delivery Date for the Goods has been expressly agreed by the Contracting Authority in Writing, the Supplier's failure to effect delivery of the Goods on the Delivery Date shall entitle the Contracting Authority, without prejudice to any other remedy it may have, to invoke the remedies in this Contract.
- 6.5. A packing note quoting the number of the Order, the Supplier's name and the Delivery Address must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.6. The Contracting Authority shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until:
- (a) the Contracting Authority has had a reasonable time to inspect them following delivery of the Goods; and
 - (b) the Goods have passed any acceptance tests which the Contracting Authority deems appropriate, such tests to be carried out by the Contracting Authority within a reasonable period after the date of actual delivery of such Goods; or, if later,
 - (c) the lapse of a reasonable period after any latent defect in the Goods has become apparent.

In particular, the giving of a receipt or signature of a delivery note by the Contracting Authority, its servants or agents, on delivery to the Supplier, its servants or agents, shall be proof only of delivery notwithstanding the terms of any such receipt or delivery note. It is the Supplier's responsibility to retrieve at no extra cost to the Contracting Authority any

defective or damaged Goods within seven days of notification being issued. Any rejected articles not removed within the prescribed time may be re-consigned to the Supplier, who shall repay to the Contracting Authority any expense thereby incurred or occasioned.

- 6.7. Without prejudice to any other remedy that the Contracting Authority may have if the Goods are not supplied in accordance with this Contract, where the Supplier has failed to deliver on time in accordance with Clause 6, or where the Contracting Authority has discovered a defect, a shortage or damage caused in transit and has notified the Supplier of such defect, shortage or damage and has given the Supplier all reasonable opportunity to investigate and remedy the same, the Contracting Authority may:
 - 6.7.1. require the Supplier, at the Supplier's expense, to fulfil its obligations in all respects within fourteen (14) days or such other period as is specified by the Contracting Authority; and/or
 - 6.7.2. vary the terms of this Contract or the Order, in which case the Supplier shall fulfil its obligations as so varied; or
 - 6.7.3. cancel the Order insofar as it relates to the Goods which have not been delivered on time and/or in accordance with the terms of this Contract, whereupon the Supplier shall refund any part of the Price which has been paid in respect of such Goods and the Contracting Authority shall, at the Supplier's use and expense, return any Goods already supplied under that Order; and
 - 6.7.4. purchase substitute goods elsewhere and recover from the Supplier any direct, indirect and or consequent losses, cost and liabilities whatsoever incurred by the Contracting Authority (including, without limitation, the costs of any replacement goods); or
 - 6.7.5. terminate the Contract (in full or in part) in accordance with the provisions of Clause 10 and require repayment of any part of the Price which has been paid in respect of the Goods and the Contracting Authority shall, at the Supplier's risk and expense, return Goods already supplied under this Contract and shall be entitled to recover from the Supplier any direct, indirect and/or consequential losses, costs and liabilities whatsoever incurred by the Contracting Authority (including without limitation, the costs of any replacement goods).
- 6.8. The Supplier shall supply the Contracting Authority in good time with any instructions or other information required to enable the Contracting Authority to accept delivery of the Goods.
- 6.9. The Contracting Authority shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not such Goods are accepted by the Contracting Authority.
- 6.10. Where access to the Contracting Authority's premises is necessary in connection with delivery or installation of the Goods, the Supplier shall comply with all reasonable security and health and safety requirements of the Contracting Authority while on the Contracting Authority's premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements

7. RISK AND PROPERTY

- 7.1 Title in the Goods shall pass to the Contracting Authority on delivery to and acceptance by the Contracting Authority unless payment is made prior to delivery, in which event title shall pass to the Contracting Authority once payment has been made. Where title in the Goods has passed to the Contracting Authority prior to delivery pursuant to this clause the Supplier shall keep such Goods separate from other Goods and shall clearly mark the Goods as the property of the Contracting Authority.
- 7.2 Nothing in this Contract shall be deemed to give the Supplier any right, title, licence, trade name, trade mark, patent, packaging design, intellectual property right or other interest of the Contracting Authority. The Supplier agrees that all the foregoing are and shall remain the exclusive property of the Contracting Authority unless otherwise agreed in Writing between the parties.
- 7.3 Notwithstanding the provisions of Clause 7.1 above, risk of damage to or loss of the Goods shall, unless, otherwise agreed between the parties, remain with the Supplier until delivery, acceptance and commissioning of the Goods to the Contracting Authority in accordance with the provisions of this Contract and, in particular, Clause 6 hereof.

8. LIABILITY AND INSURANCE

- 8.1 The Contracting Authority is relying wholly and exclusively upon the Supplier's skill, judgement and expertise in supplying the Goods and accordingly the Supplier shall be liable to the Contracting Authority for any loss or damage whatsoever, or howsoever or wherever caused arising directly or indirectly in connection with this Contract save to the extent that such loss or damage arises as a direct result of the negligence or default of the Contracting Authority. Any approval, testing or acceptance by the Contracting Authority in accordance with this Contract shall not in any way limit the Supplier's liability and obligations under this Contract
- 8.2 The Supplier shall at all times insure and keep itself insured with a reputable insurance company, approved by the Contracting Authority, against all insurable liability under this Contract in respect of the Goods and, without prejudice to the generality of the foregoing, in respect of all claims by third parties for death, injuries, or damage to property, and against all actions, suits, claims, demands, costs and expenses whatsoever, by reason of, or arising out of any claim by any of the Supplier's employees, workmen or servants, in respect of any accident, death, injury or damage sustained in connection with or arising out of this Contract. In addition the Supplier shall maintain such other insurances as may be prudent for the purposes of the Supplier's business.
- 8.3 Certified copies of the said insurance policy or policies (or, in the alternative, a letter addressed to the Contracting Authority from the Supplier's insurance broker confirming that the said policy or policies are in place) shall be furnished, duly completed, to the Contracting Authority prior to the commencement of this Contract. Such policies shall be maintained for the duration of the Contract and up-to-date copies thereof (or an up-to-date letter from the Supplier's insurance broker, as appropriate) shall be forwarded to the Contracting Authority on an annual basis.
- 8.4 The Supplier shall provide all faculties, assistance and advice required by the Contracting Authority or the Contracting Authority's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance of this Contract.

9. WARRANTIES

- 9.1 The Supplier warrants and undertakes to the Contracting Authority that:
- 9.1.1 the Goods will be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier in Writing at the time of the Order and for use by the Contracting Authority in the ordinary course of its business;
 - 9.1.2 the Goods will be free from defects;
 - 9.1.3 the Goods will correspond with any relevant Specification and any sample of the Goods submitted by the Supplier at any time; and
 - 9.1.4 the Supplier will comply with all statutory requirements and regulations in fulfilling its obligations hereunder, including any requirements and regulations relating to the manufacturing, packaging, distribution, supply, sale and purchase of the Goods, including Irish health and safety legislation.
- 9.2. Without prejudice to any other remedy, if any Goods are not supplied in accordance with the Contract, then the Contracting Authority shall be entitled:
- 9.2.1. to require the Supplier to repair the Goods or to supply replacement goods of a type and specification approved in Writing by the Contracting Authority and to reimburse the Contracting Authority in respect of all losses incurred in recovering and returning such Goods in accordance with the Contract within fourteen (14) working days unless otherwise specified; or
 - 9.2.2. at the Contracting Authority's sole option, and whether or not the Contracting Authority has previously required the Supplier to repair the Goods or to supply any replacement goods, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.
- 9.3. Without prejudice to the generality of Clause 8.1, the Supplier shall indemnify the Contracting Authority in full against all liability, including, without limitation, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Contracting Authority as a result of or in connection with:
- 9.3.1 breach of any warranty given by the Supplier in relation to the Goods;
 - 9.3.2 any claim that the Goods infringe or that their importation, use or re-sale, infringes the patent, copyright, design, right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Contracting Authority;
 - 9.3.3 any liability under the Liability for Defective Products Act, 1991 in respect of the Goods; and
 - 9.3.4 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods.
- 9.4 The Supplier shall make good all damage that may be caused by an act or default of the Supplier, the Supplier's agents or servants, to any property of the Contracting Authority. The Contracting Authority shall retain the option to have the damage otherwise made good and to charge the Supplier with the expense.

- 9.5 Neither the Supplier nor the Contracting Authority shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure arises as a direct consequence of any of the following events:
- 9.5.1 act of God, explosion, flood, tempest, fire or accident;
 - 9.5.2 war or threat of war, sabotage, insurrection, civil disturbance or rebellion;
 - 9.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 9.5.4 import or export regulations or embargoes;
 - 9.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the Supplier or the Contracting Authority or of a third party);
 - 9.5.6 shortages in necessary raw materials, labour, fuel, parts or machinery; or
 - 9.5.7 power failure.
- 9.6 If either of the parties shall become aware of any of the events listed in Clause 9.5 above which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 9.7 In the event of a delay or failure by either party in performing any of its obligations in relation to the Goods as a direct consequence of an event listed in Clause 9.5, then for as long as such event continues:
- 9.7.1 either party shall have the right to terminate this Contract upon fourteen (14) days notice in Writing; and/or
 - 9.7.2 the Contracting Authority shall have the right to suspend the Contract or (to the extent that such event affects the supply of some but not all of the Goods) to suspend the Contract insofar as it relates to the Goods so affected, in either case for as long as the relevant event shall continue (without prejudice to its right to terminate the Contract as aforesaid).

10 TERMINATION

- 10.1. The Contracting Authority shall be entitled to cancel any Order in respect of all or part only of the Goods by giving notice to the Supplier at any time prior to delivery, in which event the Contracting Authority's sole liability shall be to pay to the Supplier the Price for the Goods in respect of which the Contracting Authority has exercised its right of cancellation, less the Supplier's net cost saving arising from cancellation.
- 10.2. The Contracting Authority reserves the right to terminate this Contract forthwith at any stage on payment to the Supplier of the Supplier's reasonable costs accrued prior to the date of termination, including reasonable costs arising from the termination of the Contract.
- 10.3. Without prejudice to the Contracting Authority's remedies pursuant to Clause 6 the Contracting Authority shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time, if:

- 10.3.1 the Supplier makes any voluntary arrangement with its creditors or becomes insolvent or bankrupt or goes into liquidation; or
 - 10.3.2 an encumbrancer takes possession of, or a receiver is appointed to, the Supplier or any of its property or assets; or
 - 10.3.3 the Supplier ceases, or threatens to cease, to carry on business; or
 - 10.3.4 the Supplier commits a material breach of any term or condition of this Contract or fails to perform any obligation, responsibility hereunder and if such breach is capable of being remedied fails to remedy the breach within thirty (30) days of notice given by the Contracting Authority requiring the Supplier to do so; or
 - 10.3.5 the Supplier is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 or any analogous provision of law; or
 - 10.3.6 an order is made or an effective resolution is passed for the winding up of the Supplier other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the Contracting Authority, or
 - 10.3.7 a petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, administrative receiver, trustee or any similar officer over the Supplier or any part of its assets; or
 - 10.3.8 the Contracting Authority reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
 - 10.3.9 if the Supplier has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Contract or any other contract with the Contracting Authority, or showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with the Contracting Authority, or if like acts have been done by any other person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) and in such event the Contracting Authority shall be entitled to recover from the Supplier the amount of any loss resulting from such termination.
- 10.4 Termination of this Contract pursuant to any provision of these Conditions shall not relieve or discharge either party from any obligations or liabilities which have accrued prior to such termination.

11. GENERAL

- 11.1 The Supplier shall be in a position to produce, as appropriate, either a valid C2 Tax Certificate, a Tax Clearance Certificate or, in the case of Suppliers having their principal place of business outside Ireland, a statement from the Revenue Commissioners that it has satisfied them as to its suitability on tax grounds to be awarded the contract. Where a Tax Clearance Certificate expires within the course of the Contract, the Contracting Authority shall be entitled to seek and the Supplier shall provide a renewed certificate. All payments under the Contract will be conditional on the Supplier being in possession of a valid Tax Clearance Certificate at all times.

- 11.2 The Supplier shall comply with any applicable collective bargaining agreements relating to the terms and conditions of employment of its employees.
- 11.3 The Supplier undertakes to treat as confidential all information relating to the Contracting Authority, its business and operations which is not already in the public domain and not to communicate or disclose any part of such information to any person save for employees and contractors who are directly involved in performing the Supplier's obligations hereunder (and then strictly on a "need to know" basis) or use such information other than for the purposes expressly contemplated hereunder.
- 11.4 The Contracting Authority shall endeavour to hold confidential any information relating to the Supplier, its business and operations which is not already in the public domain, subject to the Contracting Authority's obligations under law, including the Freedom of Information Act 1997 as amended ("the FOI Act"), and to the remaining provisions of this Clause 11.4. In the event that the Supplier considers that any information supplied by it should not be disclosed by the Contracting Authority because of its sensitivity, the Supplier shall, when providing such information, identify the same and specify the reasons for its sensitivity. In the absence of such identified sensitivity, the Contracting Authority may release such information, in exercise of its lawful discretion, pursuant to its obligations under law, including in response to a request made under the FOI Act. The Contracting Authority accepts no liability whatsoever in respect of any information provided by the Supplier which is subsequently released or in respect of any loss or damage suffered as a result of the Authority complying with its obligations under law, including the FOI Act.
- 11.5 Any notice or other communication whether required or permitted to be given by one party hereto to the other shall be in Writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and:
- (i) if delivered, at the time of delivery to the addressee or its duly authorised agent,
 - (ii) if sent by pre-paid post, four (4) days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Contract (or such other address as is from time to time notified to the other party hereto)
 - (iii) if transmitted electronically on receipt of 'read receipt' or equivalent.
- All notices to the Supplier under this Contract shall be sent to the address specified in the Special Conditions (or, if there are no Special Conditions, on each Order) and all notices, documents and communications given by either party under this Contract shall be in the English language.
- 11.6 The Supplier shall not advertise or publicly announce that it is supplying the Goods to the Contracting Authority without the prior written consent of the Contracting Authority, such consent not to be unreasonably withheld
- 11.7 The Contract is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or obligations hereunder, without the express written consent of the Contracting Authority.
- 11.8 The Contracting Authority is entitled to assign and transfer all or part of its rights and obligations under this Contract and shall provide the Supplier with written notice of any such assignment or transfer.

- 11.9 Neither party shall have the right or authority either express or implied to create or incur any liability against or on behalf of the other party other than those obligations and liabilities provided for in this Contract.
- 11.10 No waiver by the Contracting Authority of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.11 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Conditions and the remaining of the provision in question shall not be affected thereby.
- 11.12 The Contract shall be governed by the laws of Ireland and the Supplier agrees to submit to the non-exclusive jurisdiction of the Irish courts.
- 11.13 Any unresolved question, dispute or difference concerning this Contract that may arise between the parties hereto shall be referred to a single arbitrator to be agreed between the parties, or, failing such agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, to be appointed on the request of either party by the President for the time being of the Law Society of Ireland. The decision of the arbitrator appointed under this condition shall be final and binding on the parties. Such arbitration shall be governed by the Arbitration Acts 1954 and 1998 or any statutory variation, modification or re-enactment thereof for the time being in force.

SCHEDULE

SPECIFICATION

[attach here or to the Special Conditions or alternatively refer to any specification included in tender documents]