

Electricity Supply Board
CONDITIONS OF CONTRACT
FOR PURCHASE OF MATERIALS AND/OR SERVICES

1. DEFINITIONS

1.1 In these conditions:

"2013 Act" means the Construction Contracts Act 2013 and any amendments thereto.

"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Supplier.

"Contract" means the contract for sale and purchase of Materials and/or Services including these Conditions and the Supplier's acceptance of the Order.

"Delivery Address" means the address/es stated as such on the Order.

"Delivery Date" means the date or dates stated on the Order as the date or dates upon which Materials and/or Services are to be delivered or completed.

"Incoterms" means the version of the international rules for the interpretation of trade terms of the International Chamber of Commerce as specified in the Order or if not so stated then the version which is in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Contract, but if there is any conflict between the provisions of Incoterms and the Contract the latter shall prevail.

"Materials" means the materials (including any instalment of the materials or part of it) described on the Order.

"Order" means the Purchaser's purchase order to which these Conditions are annexed.

"Price" means the price of Materials and/or Services as set out in Condition 4.

"Purchaser" or "ESB" means Electricity Supply Board, a statutory corporation having its principal place of business at Two Gateway, East Wall Road, Dublin 3, Ireland, D03 A995 (which expression shall include each of its successors in title and permitted assigns).

"Purchasing Manager" means the Purchaser's purchasing manager having his address at Two Gateway, East Wall Road, Dublin 3, Ireland, D03 A995 or as otherwise advised in writing by the Purchaser to the Supplier.

"Specifications" means the plans, drawings, specifications, data or other information relating to the Materials and/or Services contained in the Order or the Supplier's offer, or as otherwise agreed by the parties in writing, or if not so specified or agreed, shall be as specified by the Supplier as standard for the Materials and/or Services.

"Services" means the services or works and any part of the services or works described on the Order.

"Supplier" means the person, firm, or company to whom the Order is addressed (which expression shall include each of its successors in title and permitted assigns).

"Subsidiary Company" has the same meaning as is attributed to such expression by Section 155 of the Companies Act 1963 and "Subsidiary Companies" shall be construed accordingly.

"Tax Clearance Certificate" means a written or electronic confirmation from the Office of the Revenue Commissioners that a Supplier's tax affairs are in order at the date of issue of the certificate.

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, consolidated, replaced, 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.

2 BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Purchaser to purchase the Materials and/or Services subject to these Conditions.

2.2 Subject to the terms of any agreement between the Supplier and the Purchaser in force at the date hereof in respect of the Materials and/or Services (which terms shall prevail over the Conditions) the Conditions shall apply to the exclusion of any other terms and conditions, expressed or implied by trade, custom, practice or course of dealing.

2.3 Acceptance by the Supplier of an Order, whether expressly by notice or implied by delivery, shall result in a Contract for the sale of the Materials and/or Services which are the subject of such Order. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of Order, Specification, delivery docket, invoice or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 Subject to variation or cancellation permitted by Conditions 6.6 and 6.7, no variation to the Contract shall be binding unless agreed in writing between the authorised representatives of both parties.

3 SPECIFICATIONS

3.1 The quantity, quality and description of the Materials and/or Services shall, subject as provided in these Conditions, be as specified in the Specifications.

3.2 Any Specifications supplied by the Purchaser to the Supplier in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specifications, shall as between the Supplier and the Purchaser be the exclusive property of the Purchaser. The Supplier shall not disclose to any third party or use any such Specifications 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.

3.3 The Supplier shall comply with all applicable regulations or other legal requirements concerning waste management, manufacture, standards, testing, marking, labelling, packaging, packing and delivery of Materials and/or Services.

3.4 Any specifications, documents, information, designs, models, drawings and other items produced or developed by the Supplier specifically for the Purchaser in connection with the Materials and/or Services, together with the copyright, design rights or any other intellectual property rights therein, shall as between the Supplier and the Purchaser, be the exclusive property of the Purchaser.

4 PRICE

4.1 Unless otherwise clearly agreed in writing by both parties the Price to be charged against this Order must be in accordance with Incoterms.

4.2 The price of Materials and/or Services shall be as stated on the Order and subject to no variation or extra charges except with the prior written consent of the Purchaser.

4.3 Unless otherwise stated in the applicable Incoterms, the Price shall be:

4.3.1 exclusive of any applicable value added tax (which shall be payable by the Purchaser subject to receipt of a VAT invoice);

4.3.2 inclusive of all charges for packaging, packing, loading, unloading, shipping, carriage, insurance and delivery of any Materials to the

4.3.3 Delivery Address and any duties, taxes or levies other than value added tax; and

4.3.3 payable in Euro or if otherwise stated then the currency stated on the Order.

5 TERMS OF PAYMENT

5.1 Subject as hereinafter provided, the Supplier shall be entitled to invoice the Purchaser on or at any time after delivery of the Materials and/or Services. All invoices must be sent to the address specified on the Order. To the extent that the Contract constitutes a "construction contract" under the terms of the 2013 Act only, the Parties agree: (i) that the invoice constitutes the "payment claim notice" (as that term is defined in the 2013 Act) provided always that it meets the requirements of subsection 4(2) of the 2013 Act, (ii) the date of the invoice constitutes the "payment claim date" (as that term is defined in the 2013 Act), (iii) that the five day period set out in section 4 of the 2013 Act shall be construed strictly, and (iv) the date of receipt of the invoice at the address specified in the Order constitutes "delivery" for the purposes of section 4 of the 2013 Act.

- 5.2 Each invoice shall quote the number of the relevant Order, the relevant Purchaser's product codes, (as stated on the Order) together with applicable part or all of the Price for each code, the Delivery Date and the Delivery Address. Value Added Tax and the cost of shipping (where not included in the Price) shall be itemised separately on each invoice. Where appropriate invoices must show both the Supplier's VAT Registration number and the Purchaser's VAT registration number IE 8F52100V.
- 5.3 Unless otherwise stated in the Order, the Purchaser shall pay the relevant invoiced amount of the Price on a net monthly account basis i.e. payment is made on the last business day of the month following the month of the invoice date by direct transfer from the Purchaser's bank account to Supplier's bank account as advised to the Purchaser provided all monies specified on the Supplier's invoice are properly due in accordance with the Contract and the invoices are correctly addressed and quote the relevant Order Number. Time for payment shall not be of the essence of the Contract.
- 5.4 The Purchaser shall be entitled to set off against the Price or any retention in respect thereof any sums owed to the Purchaser by the Supplier. 5.5 The Purchaser shall be entitled to retain such percentage part of the Price (if any) as is specified in the Order as retention monies against any defects or delays in the Materials and/or Services.
- 5.6 Where no price is stipulated on the Order, the Order must not be filled at higher prices than those last charged or quoted by the Supplier to the Purchaser without the prior consent of the Purchaser in writing.
- 5.7 If the Supplier does not receive payment in accordance with Sub-Condition 5.3, the Supplier shall be entitled, upon making a written claim to the Purchaser during or within a reasonable period after the end of the delay in payment, to receive financing charges compounded monthly on the amount unpaid during the period of the delay. This period shall be deemed to commence on the due date specified in Sub-Condition 5.3. The financing charges referred to herein shall be calculated at the annual rate of interest applicable for late payment ("late payment interest") which shall be the European Central Bank main refinancing operations (fixed rate) as published by the European Central Bank (on its principal website (currently www.ecb.int) or as may be amended from time to time) which is applicable at the due date for payment, plus one (1) percentage point and shall be payable in Euro. Accordingly, to the extent that they are otherwise agreed and specified in this Condition, each of the provisions of the Statutory Instrument 580 of 2012, European Communities (Late Payment in Commercial Transactions) Regulations 2012 which imply certain terms into a contract unless they are otherwise agreed or specified, shall not apply to the Contract.
- 5.8 The Purchaser shall be entitled to deduct or withhold from the Price before payment thereof, any taxes or other charges which it is obliged to deduct or otherwise withhold in accordance with the applicable laws and to pay any such deductions or withholdings to the relevant authority. It shall be the sole responsibility and liability of the Supplier to apply to the relevant authority for or to seek any applicable refunds or rebates in respect thereof.
- 5.9 Payment is subject to the production by the Supplier of a valid up-to-date Tax Clearance Certificate and on-going certification. The Purchaser reserves the right to withhold payment in whole or in part pending production of a valid Tax Clearance Certificate and the Supplier agrees to waive any right it may otherwise have to claim for payment due and or late payment interest under the Contract arising from such withholding of payment.
- 5.10 For the avoidance of doubt, in the event that the Contract constitutes a "construction contract" under the 2013 Act only, a failure by the Purchaser to dispute an invoice for the purposes of withholding sums claimed thereunder within the time frame and in the manner set out in the 2013 Act shall not prejudice the Purchaser from making any further claim in respect of the Materials and/or Services delivered under the Contract and to seek reimbursement of any sums paid.

6 DELIVERY AND ACCEPTANCE

- 6.1 The date of delivery, stated on the Order is binding upon the Supplier, unless otherwise agreed to in writing by the Purchaser.
- 6.2 The Materials and/or Services shall be delivered to the Delivery Address by the Supplier on or by the relevant Delivery Date during the Purchaser's usual business hours and off loaded by the Supplier unless the Purchaser requests otherwise.
- 6.3 No consignment of Materials shall be deemed to have been delivered unless a delivery note has been signed by a duly authorised representative of the Purchaser.
- 6.4 Time of delivery of Materials and/or Services is of the essence of the Contract.
- 6.5 The Supplier shall supply the Purchaser in good time with any instructions or other information required to enable the Purchaser to accept delivery of the Materials and/or the Services.
- 6.6 If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Purchaser of the earliest possible date for delivery. Notwithstanding such notice, and unless a substitute delivery date for the Materials and/or Services has been expressly agreed by the Purchaser in writing, the Supplier's failure to effect delivery of the Materials and/or Services on the Delivery Date shall entitle the Purchaser, without prejudice to any other remedy it may have to:
- 6.6.1 deduct from the Price or (if the Purchaser has paid the Price) to claim from the Supplier by way of liquidated damages for delay 2 per cent of the Price for every week's or part week's delay, up to a maximum of 15 per cent of the Price; and/or
- 6.6.2 cancel the Contract in whole or in part, whereupon if requested by the Purchaser the Supplier shall refund any part of the Price which has been paid in respect of such Materials and/or Services and the Purchaser shall, on receipt of the refund, at the Supplier's risk and expense, return any Materials already supplied under the Contract; and/or
- 6.6.3 (where delivery is by instalments) cancel that instalment and (at the Purchaser's option) purchase substitute Materials and/or Services elsewhere;
- and in each case in paragraphs 6.6.1, 6.6.2 and 6.6.3 inclusive recover from the Supplier any costs and liabilities incurred by the Purchaser (including, without limitation, the costs of any replacement Materials and/or Services).
- 6.7 Partial delivery of an Order shall not be made without the prior written consent of the Purchaser. In case of partial delivery of Materials, all packages, etc., Advice Notes, Packing Notes and Invoices must be clearly marked "Partial Delivery".
- 6.8 The Purchaser accepts no liability in regard to the satisfactory return to the Supplier of any consignment or part of a consignment delivered in error under any Order.
- 6.9 Notwithstanding delivery, the Purchaser shall not be deemed to have accepted any Materials and/or Services until they have:-
- 6.9.1 been inspected and checked against the relevant packing note; and
- 6.9.2 passed any acceptance tests which the Purchaser deems necessary, such tests to be carried out by the Purchaser within thirty days from the date of delivery.
- 6.10 Without prejudice to any other remedy that the Purchaser may have, if any Materials and/or Services are not supplied in accordance with the Order, then the Purchaser shall be entitled on giving notice to the Supplier within thirty days from the date of delivery of the relevant Materials and/or Services and without liability to the Supplier to:-
- 6.10.1 require the Supplier, at the Supplier's expense, to remedy any defects and to comply with the Order in all respects within fourteen days or such other period as is specified by the Purchaser and if not remedied and complied with to invoke any of the other remedies provided in the Contract at the end of the said period; and/or
- 6.10.2 vary the Contract, at the Supplier's expense, in which case the Supplier shall comply with the Order as so varied; and/or
- 6.10.3 treat the Contract as terminated (in full or in part) by the Supplier's breach and at the Purchaser's option require repayment of any part of the Price which has been paid in respect of the Materials and/or Services and the Purchaser shall, on receipt of the repayment, at the Supplier's risk and expense, return any Materials already supplied under the Contract; and in each case in paragraphs 6.10.1, 6.10.2 and 6.10.3 inclusive, recover from the Supplier any costs and liabilities incurred by the Purchaser, (including without limitation, the costs of any replacement Materials and/or Services).

7 PACKING, MARKING AND DOCUMENTATION

- 7.1 The Materials shall be marked in accordance with the Purchaser's instructions (if any) and any applicable regulations or requirements of the carrier and/or legal authority, and properly packed and secured so as to reach the Delivery Address in an undamaged condition in the ordinary course.
- 7.2 A packing note must accompany each delivery or consignment of the Materials and must be displayed prominently.
- 7.3 The Supplier shall be responsible for obtaining any import licences, permits or other consents necessary for the importation and delivery of the Materials and/or Services.
- 7.4 The Supplier shall supply without charge such reasonable quantity of operation and maintenance manuals in English relating to the Materials and/or Services which the Purchaser may require and/or which are necessary for the proper installation, operation and maintenance of the Materials and/or Services.
- 7.5 The Supplier agrees on request to supply the Purchaser with any necessary declarations, certificates and other documents stating the origin of the Materials and/or Services and whether, and if so how, they qualify for EU or EFTA preferences.
- 7.6 The Regulations of the Department of Agriculture, Ireland, governing the control of Foot and Mouth disease prohibit the use of hay, straw or peat moss litter as packing for goods. Hay includes grass moss, rushes, ferns, heathers, alfalfa meal, etc. Where prohibited packing is used the Materials shall be returned to the Supplier for repacking, all costs for the account of the Supplier.
- 7.7 The Supplier shall use packing of sufficient strength, etc., to protect the Materials against all transport risks.
- 7.8 Use of Shipping containers: Materials must be packed so that they can be unloaded by Fork Lift Truck working from ground level; Cable drums must be stacked upright; Steelwork must be in open sided containers; Multiplicity of small items must all be on pallets; Containers must not be too tightly packed.
- 7.9 The Purchaser will not undertake to return any packages, cases, or other packing materials, and no payment will be made by the Purchaser in respect thereof. Exceptions to this condition must be clearly stated in writing and agreed to in writing by the Purchaser.
- 7.10 All packages, cases, pallets and other containers must be clearly and individually marked with the Purchaser's name, Order number and product code. Packing notes must always be included in each box, case, etc., stating the Order number, quantities and description of items contained in each box, the Purchaser's product codes (as stated on the Order), the Delivery Date and the Delivery Address.
- 7.11 In accordance with the European Communities Registration Evaluation Authorisation and Restriction of Chemicals (REACH) and Classification, Labelling and Packaging (CLP) Regulations, the Supplier shall provide the Purchaser with the relevant up to date EU version of the Safety Data Sheet(s) ("the Sheets") for any hazardous substance(s) it is supplying. The Sheets shall have a review date of no greater than 5 years older than the delivery date of the Materials to the Purchaser. The Supplier shall send the Sheets to the Purchaser with the Materials.

8 SHIPPING DOCUMENTS

- 8.1 Copies of the commercial invoice and packing lists must always accompany the Materials for shipment.
- 8.2 Copies of the commercial invoice and packing lists must also be forwarded to the Purchasing Manager, before or at the time of shipment.
- 8.3 Bill of Lading must be forwarded directly to the Purchasing Manager, and one must be forwarded by ship's bag. Bills of Lading must never be sent through a bank.
- 8.4 Where applicable, the correct customs documentation must be provided by the Supplier e.g., T-documents, AADs, EUR forms, Certificates of Origins, etc.

9 RISK AND TITLE

- 9.1 Except as otherwise provided by the Purchaser or by the applicable Incoterms, risk of damage to or loss of the Materials and/or Services and title in the Materials and/or Services shall pass to the Purchaser upon delivery to the Purchaser in accordance with the Contract including off-loading and stacking, unless payment is made prior to delivery, in which event, title but not risk shall pass to the Purchaser once payment has been made.
- 9.2 Where title in the Materials and/or Services has passed to the Purchaser prior to delivery pursuant to Condition 9.1, the Supplier shall keep such Materials and/or Services as the property of the Purchaser and clearly separate and mark them accordingly.
- 9.3 The Supplier and/or any of its sub-contractors or agents shall not be entitled to any lien or similar encumbrance on any of the Materials and/or Services for any sums due past or present where the title thereto has vested in the Purchaser under these Conditions.

10 WARRANTIES

- 10.1 The Supplier warrants to the Purchaser and it is a condition of the Contract that the Materials and/or the Services:-
- 10.1.1 will be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser in writing at any time up to and including the time the Order is placed and for use by the Purchaser in the ordinary course of its business;
- 10.1.2 will be free from defects;
- 10.1.3 will correspond in all respects with the Order, Specifications and/or any sample supplied or advised to the Purchaser; and
- 10.1.4 will comply with all statutory requirements and regulations relating to the manufacture, standards, testing, marking, packaging, packing, distribution, sale and purchase of the Materials and carrying out of the Services.
- 10.2 In the event that any Materials and/or Services do not comply with any of the warranties in Condition 10, and without prejudice to any other remedy that the Purchaser may have, the Purchaser shall be entitled at any time during the period of two years following the date of delivery and at its sole discretion to require the Supplier, at the Supplier's expense, to repair or replace within fourteen days or such other period as is specified by the Purchaser any such Materials and/or Services and to reimburse the Purchaser with all associated costs and damages incurred by the Purchaser.
- 10.3 If the Supplier fails to repair or replace any Materials and/or Services within fourteen days (or such other period as is specified by the Purchaser) in accordance with Condition 10.2, the Purchaser shall have the right to purchase replacement Materials and/or Services from another source and any money paid by the Purchaser to the Supplier in respect of the Materials and/or Services together with any additional expenditure over and above the Price reasonably incurred by the Purchaser in obtaining replacement Materials and/or Services shall be paid by the Supplier to the Purchaser.
- 10.4 The warranties and remedies provided for in this Condition 10 and conditions 6.6, 6.10 and 11 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding acceptance by the Purchaser of all or part of the Materials and/or Services in respect of which such warranties and remedies are available.

11 INDEMNITIES

- 11.1 The Supplier shall indemnify and keep indemnified the Purchaser, its agents, employees, officers, Subsidiary Companies, associated companies and assignees, in full against any liability whatsoever, including, without limitation, losses, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Purchaser (whether to its own employees, customers or otherwise) arising from or in connection with:
- 11.1.1 breach of any warranty given by the Supplier in relation to the Materials and/or Services;
- 11.1.2 any claim that the Materials and/or Services infringes, or its importation, use or resale, 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 Specifications supplied by the Purchaser;
- 11.1.3 any act or omission of the Supplier or its employees, agents or sub-contractors in performing its obligations under the Contract;
- 11.1.4 any liability under the Liability for Defective Products Act, 1991 to 2010 in respect of the Materials;
- 11.1.5 any liability/penalty imposed under Safety, Health and Welfare at Work Act, 2005 or any other relevant statutes.
- 11.2 The Supplier shall, at the request of the Purchaser, assign the benefit of all warranties, indemnities and other covenants received by the Supplier from any third party in connection with the Materials and/or Services.

12 SAFETY, EMPLOYMENT, ENVIRONMENT AND INSURANCE

- 12.1 The Supplier shall in so far as same apply to the sale delivery and performance of Materials and/or Services:-
- (a) comply and ensure that each of its employees, sub-contractors, agents or representatives complies with all Irish safety, environmental and equality legislation including, without limitation, The Safety, Health & Welfare at Work Act, 2005, The Safety, Health & Welfare at Work (Construction) Regulations, 2006 as amended (the "Regulations"), The Safety, Health & Welfare at Work (General Application) Regulations 2007 as amended, Waste Management Acts 1996 - 2008, Local Government (Water Pollution) Acts 1977 - 2007, the Chemicals Act 2008 and the Regulations made thereunder including but not limited to the Chemicals Act (CLP Regulation) Regulations 2011, (S.I. No. 102 of 2011) Planning and Development Act 2000 (as amended), The Employment Equality Acts 1998 to 2011 and the Equal Status Acts 2000 to 2011, as may be amended from time to time and any subordinate legislation made thereunder together any regulations implementing EU legislation and also with the most recent versions of the following safety requirements (as applicable):-
 - (i) ESB Group Safety Statement,
 - (ii) Individual ESB Business Unit's Contractor Safety Regulations (latest edition) and Contractor Environmental Regulations (latest edition),
 - (iii) Individual ESB Business Unit's Contractor Management Procedures and/or Guidance Documents as the case may be;
 - (b) at the Purchaser's request, provide to the Purchaser two copies of:-
 - (i) its Safety Statement as defined in and pursuant to Section 20 of the Safety, Health & Welfare at Work Act, 2005;
 - (ii) its developed Safety Plan as defined in the Regulations;
 - (c) provide or procure the provision of all necessary documents for inclusion in the Safety File (as defined in the Regulations) to be furnished to the Employer on and as a condition to the achievement of taking over;
 - (d) indemnify and hold harmless the Purchaser in the event of any claims, losses, costs, damages, expenses, fines and/or penalties arising from the failure by the Supplier, its employees, sub-contractors, agents or representatives to comply with the provisions of this sub-condition 12.1.
- 12.2 The Supplier shall at all times insure and keep itself insured with a reputable insurance company against all insurable liability under the Contract in respect of the Materials and/or Services, and without prejudice to the generality of the foregoing, against all the Supplier's liabilities under Condition 11. The Supplier shall provide all facilities, assistance and advice required by the Purchaser and the Purchaser's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance of the Contract.
- 12.3 The Supplier shall be responsible for compliance with the safety and insurance obligations in Condition 12 without reliance on the Purchaser.

13 TERMINATION

- 13.1 Without prejudice to any other rights or remedies to which it may be entitled, the Purchaser shall be entitled to terminate the Contract forthwith without liability to the Supplier by giving notice to the Supplier at any time if:-
- 13.1.1 the Supplier commits a material breach of any of the terms or conditions of the Contract and if such breach is capable of being remedied fails to remedy the breach within thirty days of notice given by the Purchaser requiring the Supplier to do so; or
 - 13.1.2 there is a change in control or ownership of the Supplier; or
 - 13.1.3 the Supplier convenes a meeting for the purpose of or proposes to enter into any arrangement or composition for the benefit of its creditors; or
 - 13.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property assets of the Supplier; or
 - 13.1.5 the Supplier ceases, or threatens to cease, to carry on business or takes or suffers any similar analogous action under any applicable law; or
 - 13.1.6 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 the financial position of the Supplier has deteriorated to such an extent that in the opinion of the Purchaser the Supplier may not be able to meet its obligations under the Contract; or
 - 13.1.7 any representation herein contained by the Supplier shall in the opinion of the Purchaser prove to be untrue or incorrect in any respect as of the date when made; or
 - 13.1.8 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 in advance by the Purchaser; or
 - 13.1.9 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
 - 13.1.10 the Purchaser reasonably believes that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
 - 13.1.11 the Supplier engages in any unlawful act or practice or is in breach of any of the provisions set out in Condition 21.
- 13.2 Termination of the Contract for whatever reason shall not relieve or discharge either party from any obligations which may have accrued prior to such termination.
- 13.3 The Purchaser shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Purchaser shall pay to the Supplier fair and reasonable compensation for work then in progress but such compensation shall not include any losses including loss of anticipated profits.

14 ASSIGNMENT

- 14.1 The Contract is personal to the Supplier and the Supplier shall not, unless with the prior written consent of the Purchaser, assign, sub-contract or transfer or purport to assign, sub-contract or transfer to any other person any of its rights or obligations under the Contract. In the event the Purchaser provides consent to the Supplier to assign, sub-contract or transfer any of its rights or obligations under the Contract to any other person (or purport to do so), the Supplier agrees to novate the contract with such other person to the Purchaser upon request by the Purchaser, and shall ensure that in such circumstances the contract engaging that other person requires that other person to novate that contract to the Purchaser where requested. In addition, the contract between the Supplier and the other party shall ensure that in circumstances where the other party has a right to suspend or terminate the contract with the Supplier (whether pursuant to a contractual or statutory right), the Supplier shall give notice to the Purchaser of such fact in sufficient time for the Purchaser to exercise its novation right prior to such suspension or termination by the other party.
- 14.2 The Purchaser is entitled to assign and transfer all or part of its rights and obligations under the Contract.

15 NOTICES

- 15.1 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:-
- 15.1.1 if delivered, at the time of delivery to the addressee or its duly authorised agent;
 - 15.1.2 if sent by pre-paid post, four 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 Agreement (or such other address as is from time to time notified to the other party hereto);
 - 15.1.3 if transmitted by facsimile, on a receipt of an error free transmission report to such facsimile number or numbers from time to time notified to the other party.
- 15.2 All notices to the Purchaser under the Contract shall be in writing and sent to the Purchaser's buying entity specified on the Order. All notices to the Supplier under the Contract shall be in writing and sent to the address specified on the Order.

16 WAIVER

- 16.1 No waiver by the Purchaser of any breach of the Contract by the Supplier shall be considered a waiver of any subsequent breach of the same or any other provision.

17 VALIDITY

- 17.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

18 RELATIONSHIP

- 18.1 Nothing in the Agreement shall constitute or shall be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute the Supplier as agent of the Purchaser for any purpose whatsoever and the Supplier shall have no authority or power to bind the Purchaser or to contract in the name of or create a liability against the Purchaser in any way or for any purpose.

19 FORCE MAJEURE

- 19.1 Neither the Purchaser nor the Supplier 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 under the Contract if the delay or failure was beyond that party's reasonable control including in such cases but not by way of limitation of any law, order, regulation, directive or request of any Government or legal authority; war or threat of war, insurrection, national emergency, riots, acts of public enemies, fire, floods, or other catastrophe, strikes, lock-outs or any industrial disputes of the Purchaser or any similar cause beyond the control of the party.
- 19.2 On the occurrence of "Force Majeure", both parties shall allow a fair and reasonable extension of the time for completion of this Agreement. Upon the happenings of any such event causing delay, the party who is in breach as a result of the circumstances outlined in condition 19.1 above shall give notice thereof in writing to the other as soon as reasonably practicable and shall nevertheless constantly use all reasonable endeavours to prevent delay.

20 COMPLIANCE AND DATA PROTECTION

- 20.1 The Supplier shall comply with all requirements and/or obligations of any statute, statutory instrument, rule, order, regulation, directive and/or bylaws laid down by legislation, Government departments and/or EU bodies dealing with and relating to the manufacture, standards, testing, marking, packaging, packing, distribution, importation, performance, pricing or sales of the Materials and/or Services or any other provision of the Contract without reliance on the Purchaser and shall indemnify and hold harmless the Purchaser in the event of any claims, losses, costs, damages, expenses, fines and/or penalties arising from the failure by the Supplier, its employees, sub-contractors, agents or representatives to comply with the provisions of this Condition 20.
- 20.2 The Supplier shall comply with all requirements and/or obligations set out in the Annex (Protection of Personal Data) in respect of any Processing of Personal Data carried out by the Supplier on behalf of the Purchaser. The Supplier shall indemnify and hold harmless the Purchaser in the event of any claims, losses, costs, damages, expenses, fines and/or penalties arising from the failure by the Supplier, its employees, sub-contractors, agents or representatives to comply with the provisions of the Annex(Protection of Personal Data)

21 REQUIREMENTS FOR SUPPLIERS

- 21.1 The Supplier (including its sub-contractors of all tiers and their employees) shall meet its obligations hereunder in an ethical and professional manner, observing at all times all laws applicable to the manufacture, assembly and/or supply of the Materials and/or the performance of the Services by it to the Purchaser.
- 21.2 The Supplier represents, warrants and covenants that as of the date of the Contract, neither it nor any of its affiliates, officers, directors, representatives, sub-contractors or agents (collectively "Affiliates") has:

- (i) offered, paid, promised or authorized any bribe, inducement, facilitation payment or benefit of any kind to, or
- (ii) accepted any bribe, inducement, facilitation payment or benefit of any kind from,

any person or entity employed or owned by or acting for or on behalf of any ESB company (including without limitation any employee, officer, director of any ESB company) or otherwise.

- 21.3 The Supplier further represents, warrants and covenants that as of the date of the Contract, neither it nor any of its Affiliates has paid, offered or promised to pay, or authorized the payment, directly or indirectly, of any monies or anything of value to any government or similar official, political party or party official, or any candidate for political office, for purposes of: (a) influencing any official act or decision of any official, party, government, government agency or government-owned or controlled entity for the purpose of; (b) inducing any official or party to do or omit to do an act in violation of a lawful duty; or (c) securing any improper advantage, in order to obtain or retain business, or direct business to, any person or entity, in any way related to the Contract. For purposes of the foregoing, "government official" includes, without limitation, any officer, employee or representative of any state-owned or controlled entity or company.
- 21.4 The Supplier declares that it is familiar with and understands the terms of ESB's "*Requirements for Agents, Suppliers, Advisors and other Third Parties arising in connection with ESB Policies*" set out at <http://www.esb.ie/main/about-esb/procurement-policy.jsp> (the "Requirements"). The Supplier further covenants and agrees that it complies with and shall continue to comply with each and every obligation contained in the Requirements. The Supplier shall, if requested by the Purchaser (not more than once annually) certify in writing that it has complied with the Requirements in effect for the previous year or part thereof for which such Materials and/or Services were provided.
- 21.5 In addition to the rights and remedies set out in the Requirements, if the Purchaser has reason to believe that the statements and undertakings given by the Supplier in this Condition 21 have been or would be infringed in the future, the Purchaser shall have the right to carry out an audit of the Supplier and/or suspend the payment of payment(s) to the Supplier, until the Purchaser has conclusively and satisfactorily confirmed that there has been no such infringement.
- 21.6 In the event of the Supplier or any Affiliate engaging in any unlawful act or practice in relation to the delivery of money or anything of value in connection with the subject matter of the Contract and/or any breach of any of the covenants set out in sub-condition 21.2 and 21.3 above, the Purchaser shall (notwithstanding any other rights conferred by law or under the Contract) have the right to terminate the Contract forthwith upon notice to the Supplier. In the event of such termination the Supplier shall have no right to any compensation, indemnification or remedy whatsoever other than the right to receive payment in respect of Materials and/or Services provided prior to the date of such unlawful act or breach.
- ## **22 GOVERNING LAW**
- 22.1 These conditions shall be governed by and shall be read and construed in all respects in accordance with Irish law and each of the parties hereto submits to the non-exclusive jurisdiction of the Republic of Ireland Courts.

23 ENTIRE AGREEMENT

- 23.1 Unless it is otherwise specifically stated in or on the Order or on the Conditions, the Contract supersedes any arrangements, understandings, promises or agreements made or existing between the parties thereto prior to or simultaneously with the Contract and constitutes the entire agreement between the parties thereto. Except as otherwise provided therein, no addition, amendment to or modification of the Contract shall be effective unless it is made in writing and signed by and on behalf of both parties.

24 CONFIDENTIALITY

- 24.1 The Purchaser and the Supplier shall treat the details of the Contract and any information made available in relation thereto and all information concerning the Contract as private and confidential and neither of them shall publish or disclose the same or any particulars thereof (save insofar as may be necessary for the purposes of the Contract) without the previous written consent of the other party. This undertaking does not apply to confidential information (i) which at any time is or comes into the public domain; (ii) which was lawfully in the possession of the Purchaser or the Supplier prior to disclosure; (iii) which at any time is required to be disclosed by an applicable law (including but not limited to the Freedom of Information Act 2014 and/or European Communities (Access to Information on the Environment) Regulations 2007 to 2011, to the extent applicable) or an applicable regulatory authority to be disclosed or (iv) which at any time after the Contract commences comes lawfully into the Purchaser's or Supplier's possession from a third party. The provisions of this Condition shall survive three years following the termination of the Contract.

ANNEX

PROTECTION OF PERSONAL DATA

1 THIS ANNEX WILL APPLY TO THE EXTENT THAT PERSONAL DATA IS PROVIDED BY ESB TO THE SUPPLIER OR THAT PERSONAL DATA IS OTHERWISE PROCESSED BY THE SUPPLIER ON BEHALF OF ESB IN RELATION TO THE CONTRACT.

- 1.1 In addition to the terms set out in Condition 1 (Definitions), the following capitalised terms shall have the following meanings:
- **“Controller”, “Personal Data”, “Personal Data Breach” “Process/Processing” and “Processor”** will have the meanings ascribed to them (or to corresponding terms) in the GDPR;
 - **“Data Protection Legislation”** means collectively (i) the GDPR, (ii) the Data Protection Acts, 1988 to 2018; (iii) any other statute, statutory instrument, rule, order, directive, or regulation, of any competent national or supranational authority relating to the protection of Personal Data or the privacy of individuals (iv) any binding guidance or code of practice issued by a Supervisory Authority;
 - **“GDPR”** means General Data Protection Regulation (EU) 2016/679 and any amendment or replacement to it (including any corresponding or equivalent national law or regulation which implements the GDPR); and
 - **“Supervisory Authority”** means any competent authority responsible for supervising compliance with Data Protection Legislation.
 - **“ESB”** shall mean ESB and any company that is from time to time in the same group as ESB which is the Controller in relation to any Personal Data which is Processed by the Supplier in relation to the Contract.
- 1.2 The Supplier will only Process Personal Data for the purpose of performing the Contract and the personal data processing activities described in it and it will do so strictly in accordance with the Controller's instructions and Data Protection Legislation.
- 1.3 The Supplier will ensure that all persons having access to Personal Data shall be subject to appropriate obligations of confidentiality.
- 1.4 The Supplier shall maintain complete, accurate and up to date records of all Processing of Personal Data undertaken on behalf of ESB (including but not limited to the type of personal data processed and the categories of data subjects) and shall provide on request all documentation necessary to demonstrate compliance with this Annex.
- 1.5 The Supplier shall ensure the integrity and security of all Personal Data processed by it on behalf of ESB taking all technical and organisational measures necessary to ensure compliance with the requirements of Data Protection Legislation.
- 1.6 The Supplier shall not subcontract or outsource any Processing of Personal Data received under the Contract without ESB's prior written consent.
- 1.7 The Supplier shall not export or Process any Personal Data received under to the Contract outside of the European Economic Area without ESB's prior written consent.
- 1.8 In the event of a Personal Data Breach, the Supplier will notify ESB of such Personal Data Breach within 12 hours of the Supplier becoming aware of it and provide any information ESB may reasonably require relating to that Personal Data Breach.
- 1.9 If either Party anticipates any change to (a) the Services or, or (b) the interpretation of the Services under the Data Protection Legislation, which would require the Supplier to Process Personal Data for any purpose other than for the performance of the Contract, the Parties will negotiate in good faith to incorporate appropriate data protection provisions into the Contract.
- 1.10 The Supplier shall not retain any Personal Data (or any part thereof) for any longer than is necessary to perform the Contract and/or comply with its legal obligations, after which time the processor must erase or return the Personal Data to ESB.
- 1.11 ESB reserves the right to inspect or audit the Supplier and any subcontractor for the purposes of ensuring compliance with the terms of this Annex.