



## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS:

#### 1.1 In these Conditions:

“**Buyer**” means the person specified in the Order Confirmation as purchaser of the Goods and/or Services from the Seller;

“**Conditions**” means the terms and conditions of sale set out in this document (including Schedule 1) and any special terms and conditions agreed in writing by the Seller;

“**Contract**” means these Conditions together with each individual Order and related specifications accepted by the Seller subject to, and in accordance with, these Conditions;

“**Deliverables**” means any and all information, material, technology, tooling, fixtures or other good which are not the Goods;

“**Delivery Point**” means the place where delivery of the Goods is to take place under Clause 6, namely the Seller’s Premises or the point of delivery nominated in the Order Confirmation;

“**Force Majeure**” means, in relation to any person, any circumstances beyond the reasonable control of that person (including, without limitation, any strike, lock-out, picket or other form of industrial action or any threatened industrial action);

“**Goods**” means the articles which the Buyer agrees to buy from the Seller, as specified in each Order Confirmation and for the avoidance of doubt, references to Goods does not include any Deliverables which are provided by the Seller in addition to the articles specified in each Order Confirmation;

“**Intellectual Property Rights**” means any intellectual property rights including, without limitation, know-how, goodwill, patents, copyrights, design rights, trade marks, sui generis database rights, confidential information, whether registered or unregistered or capable of registration, anywhere in the world, together with applications or rights to apply for any of the foregoing.

“**Invoice**” means the invoice issued by the Seller in respect of the Goods and/or Services;

“**Order**” means each request made by the Buyer to the Seller, whether in writing or orally, for the supply of a quantity of Goods and/or Services;

“**Order Confirmation**” means the confirmation of Order issued by the Seller to the Buyer on which reference is made to these Conditions;

“**Price**” means the price for the Goods and/or Services, which is (save, in each case, to the extent otherwise agreed by the Seller in writing) inclusive of packaging and exclusive of carriage, insurance and VAT;

“**Records**” means any and all records, files, books, correspondence, drawings, designs plans or specifications which the Seller is required, pursuant to any applicable laws, to retain in connection with the Goods and/or Services;

“**Seller**” means Nualight Limited, a company incorporated under the laws of Ireland with registered number 86239;

“**Seller's Premises**” means the location identified as such in the Order Confirmation or such other location as may be specified as such by the Seller by notice in writing to the Buyer;

“**Services**” means only such services as the Seller agrees to provide to the Buyer in addition to or in conjunction with the Goods and are as specified in the Order Confirmation.

“**VAT**” means any value added tax and any goods and services, sales or other turnover tax, imposition or levy of a like nature chargeable in respect of the sale of the Goods to the Buyer;

“**Warranted Goods**” has the meaning given to it in Schedule 1; and

“**Warranty**” has the meaning given to it in Schedule 1.

1.2 In these Conditions, unless the contrary intention is stated, a reference to:

- (a) the singular shall include the plural and vice versa;
- (b) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (c) a person includes that person's legal personal representatives, successors and permitted assigns;
- (d) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;
- (e) a clause or other provision is a reference to a clause or provision of these Conditions, and any reference to a sub provision is, unless otherwise stated, a reference to a sub provision of the provision in which the reference appears;
- (f) 'including' means comprising, but not by way of limitation to any class, list or category;
- (g) 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;
- (h) any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned;
- (i) 'writing' shall include a reference to any electronic mode of representing or reproducing words in visible form; and
- (j) 'month' means calendar month.

1.3 These Conditions shall be construed without regard to the rule of construction known as "ejusdem generis". If any ambiguity or question of intent or interpretation arises, these Conditions shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of these Conditions.

1.4 Headings and captions are to be ignored in the construction of these Conditions.

### 2. CONDITIONS APPLICABLE

2.1 The Conditions shall apply to all contracts for the sale of Goods and the supply of Services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order or otherwise

and no conduct by the Seller constitutes acceptance of any terms or conditions put forward by the Buyer.

2.2 All Orders for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase Goods and/or Services pursuant to the Conditions.

2.3 Acceptance of delivery of the Goods by the Buyer shall be deemed conclusive evidence of the Buyer's acceptance of the Conditions.

2.4 Each Contract in respect of each individual Order is individual and separate from any other Contract entered into by the Seller and Buyer from time to time.

### 3. PRICE AND PAYMENT

3.1 The Price of the Goods and/or Services shall be the price set out in the Order Confirmation. The Price is exclusive of VAT. Save where the Seller otherwise agrees in writing, any:

- (a) Deliverables and/or
- (b) services which are not the Services

which are provided by the Seller in addition to or in conjunction with the Goods and/or Services are not included in the Price and may be invoiced separately. The Buyer shall pay direct to the Seller the Price, any VAT and any costs of packaging, insurance and delivery specified in the Invoice (the "**Invoice Amount**"), on the date and in the manner specified in the Invoice.

3.2 If a payment is made in a currency other than the currency specified in the Order Confirmation, the payment received by the Seller must equate to the Invoice Amount quoted in the currency specified in the Order Confirmation.

3.3 The Buyer shall pay the full Invoice Amount without any deduction, withholding, counterclaim or set-off (including on the grounds of any alleged shortfall in delivery, defect in quality or failure to conform to specification, sample, description or previously supplied goods or services or any breach of Contract and/or these Conditions by the Seller).

3.4 The Seller reserves the right at its absolute discretion to require payment prior to delivery of the Goods and/or the commencement of performance of the Services or alter the terms of payment from time to time.

3.5 Time for payment is of the essence. If any payment is overdue, the Seller is entitled, without prejudice to any other right or remedy, to suspend all further deliveries or supplies of Goods and/or Services under any Contract entered into with the Buyer and/or any of its Affiliates without notice.

3.6 If the Buyer fails to pay to the Seller any amount payable to it under this Agreement on the due date then the Buyer shall pay on demand from time to time to the Seller, interest (as well after as before any judgment) on that amount, from the due date to the date of payment in full, at the rate per cent per annum as may be specified from time to time pursuant to the regulation 5 of the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012).

### 4. ORDERS AND SPECIFICATIONS

4.1 No Order placed by the Buyer is deemed to be accepted by the Seller and no Contract comes into existence unless and until

- (a) in the case of the Goods a written acceptance of the Order is issued by the Seller or, if earlier, the Seller delivers the Goods to the Buyer or the Buyer collects the Goods from the Seller; and
- (b) in the case of the Services a written acceptance of the Order is issued by the Seller or, if earlier, the Seller commences performance of the Services.

4.2 Any quotation is valid for thirty (30) days only from its date of issue, provided that the Seller has not previously withdrawn it.

4.3 Goods ordered by the Buyer and/or Deliverables provided as part of or in conjunction with the Services are specially prepared and custom manufactured. Accordingly, a Contract or Order for Goods and/or Services may not be cancelled or terminated by the Buyer except, if at all, with the Seller's prior written consent.

4.4 The Buyer will ensure that the terms of its Order and any applicable specification are complete and accurate and the Seller has no responsibility or liability whatever for determining whether the specifications, and any resulting Goods and/or Deliverables provided in conjunction with or as part of the Goods and/or Services, will be fit for the purpose intended by the Buyer.

4.5 The quantity and description of the Goods and/or Services is as set out in the Order Confirmation.

4.6 The specification of the Goods is as set out in the Order Confirmation.

4.7 The Seller may reject or seek revisions to proposed specifications in which case the Buyer will, in good faith, revise the specifications accordingly. However, the Seller has no responsibility or liability whatever for determining whether the specifications, and any resulting Goods, will be fit for the purpose intended by the Buyer.

4.8 Orders are accepted and Goods are delivered subject to availability of the relevant raw materials and the Seller accepts no responsibility and is not liable in any way to the Buyer if the Goods ordered are unavailable.

4.9 If the raw materials specified in the Buyer's specification are not available, the Buyer must nominate an alternative substitute raw material to be used in the manufacture of the Goods which will then constitute a new Order.

4.10 The Seller will have no liability for materials supplied or made available to the Seller for use in the manufacturing of the Goods which is scrapped, discarded or otherwise lost in the manufacturing and supply process. The Seller will, however, take reasonable care to avoid any loss of materials supplied by the Buyer.

4.11 The Seller may reject any Orders from time to time despite the fact that it has previously entered into a Contract or accepted Orders in respect of similar or identical Goods.

### 5. WARRANTIES

5.1

(a) The Buyer acknowledges and agrees that the only warranty given by the Seller in relation to the Goods is the Warranty in relation to the Warranted Goods. The Buyer further acknowledges and agrees that no warranty is given in relation to any Goods which are not Warranted Goods.

(b) The Seller warrants that it will perform each Service in a way which will not materially differ from such manner of performance as may be agreed in writing between the Seller and Buyer from time to time. These warranties apply subject to full payment in respect of all Goods and Services ordered by the Buyer under any Contract.

5.2 Except as expressly provided in these Conditions, all terms, conditions, warranties and/or representations, whether express or implied by statute or common law (including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable skill and care), are excluded to the fullest extent permitted by applicable law. Without prejudice to the generality of the foregoing, all terms, conditions, warranties or representations implied by sections 13, 14 and 15 of the Sale of Goods Act 1893 and/or section 39 of

the Sale of Goods and Supply of Services Act 1980 are hereby excluded to the fullest extent permitted by applicable law. For certainty, the Buyer confirms that it has entered into the Contract in the course of its business and not as a consumer and that the exclusions in these Conditions are fair and reasonable in the circumstances and have been reflected in the price.

5.3 Subject to Clause 5.4, if any of the Services are proven by the Buyer to have been provided in breach of Clause 5.1(b), the Seller will, at its sole discretion, either:

- (a) perform again that part of the Service which is proven to be in breach of Clause 5.1(b); or
- (b) reduce the Price to a level which is proportionate to the standard of Service actually provided;

5.4 Without prejudice to Clause 5.2, and in each case to the fullest extent permitted by applicable laws:

(a) the Seller is not liable for a breach of the warranty in Clause 5.1(b) unless:

(i) the Buyer gives written notice of the defect in performance to the Seller within ten (10) days of the date the completion of performance the relevant Service;

(ii) the Seller is given a reasonable opportunity after receiving notice of the alleged defect in performance to remedy it;

(b) the Seller shall not be liable in contract, tort or otherwise howsoever for any of the following losses or damage (whether or not such loss or damage was foreseen, foreseeable, known or otherwise): (i) loss of revenue, (ii) loss of actual or anticipated profits, (iii) loss of contracts, (iv) loss of the use of money, (v) loss of anticipated savings, (vi) loss of business, (vii) loss of opportunity, (viii) loss of goodwill, (ix) loss of reputation, (x) loss of, damage to or corruption of data, (xi) the cost of installation, removal or reinstallation of any Goods and/or Deliverables; (xii) any damage resulting from misuse, abuse, or improper or incorrect repair of any Goods and/or Deliverables; (xiii) any damage from improper wiring or installation of any Goods and/or Deliverables; or (xi) any indirect or consequential loss howsoever caused (including, for the avoidance of doubt, whether such loss or damage is of a type specified in sub-clauses (i) to (xiii) above) whether arising out of, or in connection with, or in relation to any goods or services supplied under any of these Conditions or any Contract or the supply or non-supply or purported supply or delay in supply of any goods or services under any of these Conditions or any Contract or otherwise out of or in connection with or in relation to any of these Conditions or any Contract or any transaction or matter contemplated by any of these Conditions or any Contract provided that nothing in any of these Conditions or any Contract shall exclude or limit the Seller's liability under the tort of deceit or for death or personal injury, or any other liability to the extent that, under applicable law, it cannot be excluded or limited;

(c) the Seller is not liable for a breach of the warranty in Clause 5.1(b) if:

(i) the Buyer makes any further use of the relevant Deliverables provided in conjunction with or as part of the Services after identifying the alleged breach, whichever is the earlier;

(ii) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Deliverables provided in connection with or as part of the Services or (if there are none) good trade practice;

(iii) the Buyer alters or repairs such Deliverables provided in conjunction with or as part of the Services without the written consent of the Seller;

(iv) the defect in the Deliverables provided as part of or in conjunction with the Services is caused by fair wear and tear, abnormal or unsuitable conditions of storage or use, transit by the carrier or any act, neglect or default of the Buyer or any third party or arising from any breach of any Contract by the Buyer;

(v) the breach, defect or defect in performance arises because the specifications are not fit for the purpose intended; and/or

(vi) the breach, defect or defect in performance arises from circumstances outside of the Seller's reasonable control; and

(d) the Seller's total liability in contract, tort (including, without limitation, negligence) or otherwise arising out of or in connection with or in relation to any of the Goods or Services set out in a given Order Confirmation (including any Deliverables provided in conjunction with or as part of such Goods or Services) or the supply or non-supply or purported supply or delay in supply of any such Goods or Services (including any Deliverables provided in conjunction with or as part of such Goods or Services) or the manufacture, sale, installation, delivery, or use of any such Goods or Services (including any Deliverables provided in conjunction with or as part of such Goods or Services) or otherwise out of or in connection with or in relation to any Contract for any of such Goods or Services or any transaction or matter contemplated by such Contract shall be limited to the lower of €5,000 and the amount actually paid for such Goods and Services (exclusive of VAT), in aggregate.

The limitation of liability under Clause 5.4(d) has effect in relation both to any liability expressly provided for under any of these Conditions or any Contract and to any liability arising by reason of the invalidity or unenforceability of any term of this any of these Conditions or any Contract.

5.5 In the event that the Buyer is established in, or the Delivery Point (in the case of the Goods) or place of performance (in the case of the Services) is in a jurisdiction other than Republic of Ireland, the Buyer warrants and shall warrant at the date of delivery that the performance by either party of its obligations under these Conditions or any Contract shall not be in breach of or contrary to any law, statute or regulation or equivalent obligation of that jurisdiction.

5.6 The Buyer acknowledges and agrees that the warranties in Clause 5.1 and Schedule 1 and the rights of the Buyer under section C of Schedule 1 and Clause 5.3, are the Buyer's exclusive rights and remedies arising out of or in connection with the Goods and the Services.

## 6. DELIVERY

6.1 The Seller may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract. Each instalment is a separate Contract and no cancellation or termination of any one Contract relating to an instalment entitles the Buyer to repudiate or cancel any other Contract or instalment.

6.2 Unless otherwise agreed to in writing by the Seller, delivery of the Goods takes place at the Seller's Premises and the remainder of this Clause 6.2 applies:

(a) The Buyer, or its nominated carrier, will take delivery of the Goods at the Seller's Premises within ten (10) days of the Seller giving it notice that the Goods are ready for delivery.

(b) Delivery of the Goods is Ex Works (the Seller's Premises) Incoterms 2010 (which Incoterm is hereby incorporated into the Contract). Accordingly, the Goods are at the sole risk of the Buyer (including for loss or damage arising out of the Buyer's or the carrier's negligence) on and from when the Goods are made available by the Seller for collection by the Buyer at the Seller's Premises.

(c) The Buyer is responsible for loading the Goods.

6.3 If the Order Confirmation provides that the Seller will deliver the Goods to a nominated destination, then the remainder of this Clause 6.3 applies:

(a) The Buyer will take delivery of the Goods when they are made available by the Seller (or its agent) for collection at the Delivery Point.

(b) Delivery of the Goods is Ex Works (the Seller's Premises) Incoterms 2010 (which Incoterm is hereby incorporated into the Contract). Accordingly, the Goods are at the sole risk of the Buyer (including for loss or damage arising out of the Seller's or the carrier's negligence) on and from when the Goods are made available by the Seller at the Seller's Premises for collection by its carrier.

(c) The Buyer is responsible for insuring the Goods (and the Seller is not required to insure the Goods at any time).

(d) The Buyer is solely responsible for loading and unloading the Goods at the Delivery Point and will make all arrangements necessary to take delivery of the Goods whenever they are made available at the Delivery Point.

(e) The Buyer is solely responsible for discharging all taxes, charges, levies, tariffs or similar and for procuring any licences, permits, consents, authorisations or similar arising out of or in connection with the export and/or delivery of the Goods.

(f) The Seller is entitled to make a charge for the cost of delivery and an additional charge may be levied for delivery otherwise than by the Seller's normal carrier.

6.4 In all events:

(a) delivery is deemed to take place on and from when the Goods are made available by the Seller (or its nominee) at the Delivery Point;

(b) any dates specified by the Seller for shipping or delivery of the Goods are an estimate and time for delivery is not of the essence and will not be made of the essence by notice;

(c) if no dates are so specified, delivery or shipping will be within a reasonable time; and

(d) the Seller may deliver or ship the Goods at any reasonable time before or after the quoted date.

6.5 The Seller is not liable to the Buyer for any loss or damage caused to the Buyer by late delivery of the Goods (even if caused by the Seller's or the carrier's negligence), nor does any delay entitle the Buyer to terminate or rescind the Contract except if it exceeds one hundred and eighty (180) days.

6.6 If the Buyer refuses or fails to take delivery of the Goods delivered in accordance with the Contract or fails to take any action necessary on its part for delivery of the Goods, the Goods are deemed to have been delivered by the Seller and the Seller may, at its absolute discretion, either:

(a) store the Goods until final delivery at the sole risk and expense of the Buyer (including for loss or damage caused by the Seller's or the carrier's negligence), whereupon the Buyer is liable for all related costs and expenses (including, without limitation, storage, transit and/or insurance) from the date of delivery; or

(b) dispose of the Goods as the Seller may determine and recover from the Buyer (in addition to the Contract price) any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, transport, storage and disposal costs) from the date of delivery.

6.7 The quantity and quality of any consignment of Goods as recorded by the Seller on despatch from the Seller Premises is conclusive evidence of the quantity and quality of the Goods received by the Buyer on

delivery unless the Buyer can provide conclusive evidence proving the contrary.

6.8 Any liability of the Seller for non-delivery of the Goods is limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6.9 The Seller is not liable for any non-delivery of Goods unless the Buyer gives written notice to the Seller of the non-delivery within ten (10) days of the date when the Goods would in the ordinary course of events have been received or the date of delivery, whichever is the earlier. The Seller is not liable for non-delivery of the Goods where the Goods are carried by the Buyer or by a carrier on behalf of the Buyer.

## 7. TITLE

7.1 Title to the Goods set out in a given Order Confirmation shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for such Goods.

7.2 Title to the Goods set out in a given Order Confirmation shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for any other goods that the Seller has supplied to the Buyer.

7.3 Until title in the Goods has passed:

(a) the Buyer acknowledges that it is in possession of the Goods solely as bailee in a fiduciary capacity for the Seller; and

(b) the Seller may at any time inspect the Goods and may at any time repossess them, and for this purpose may enter upon any premises where they are stored or where they are reasonably thought to be stored and the Buyer grants to the Seller, its agents and employees an irrevocable licence at any time to enter any such premises for the purposes of such inspection and/or repossession.

7.4 Until such time as the Buyer becomes the owner of the Goods, they must be stored on its premises separately from its own goods or those of any other person and in a manner that makes them readily identifiable as the goods of the Supplier, maintain the Goods in satisfactory condition and keep the Goods insured on the Seller's behalf for the Price against all risks to the reasonable satisfaction of the Seller. On request the Buyer will produce the policy of insurance to the Seller.

7.5 This Clause 7 does not entitle the Buyer to return the Goods and refuse or delay payment on the grounds that property and/or title have not passed.

7.6 The Buyer shall not, on the payment of the Price, acquire title to or any ownership interest in anything other than the Goods, including but not limited to any tooling or fixtures which are provided by the Seller in addition to or in conjunction with the Goods.

7.7 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale is effected in the ordinary course of the Buyer's business at full market value; and

(b) any such sale is a sale of the Seller's property on the Buyer's own behalf and the Buyer deals as principal when making such a sale.

7.8 The Buyer's right to possession of the Goods terminates immediately if a Termination Event occurs.

7.9 Each provision in this Clause 7 is separate and independent of the other provisions and is severable

## 8. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

8.1 The Buyer warrants, represents, confirms and agrees that (i) the use and possession of any specifications and any related documents or manuals provided by the Buyer to the Seller; (ii) the manufacture of the

Goods by the Seller in accordance with the Buyer's specification and any related documents or manuals; and (iii) the resulting Goods do not and will not infringe the Intellectual Property Rights of any third party.

8.2 The Buyer acknowledges and agrees that all Intellectual Property Rights in the processes used or developed by the Seller in the manufacture and production of the Goods and/or Deliverables and the performance of the Services belong to, and fully vest in, the Seller.

8.3 The Buyer hereby irrevocably agrees to fully and effectively indemnify, hold harmless and keep so indemnified on demand the Seller from and against any and all costs, claims, demands, damages, losses, liabilities, awards and/or expenses (including legal costs and expenses) whatever which are suffered and/or incurred by the Seller and which directly or indirectly arise out of, in connection with or as a result of any breach of, or non-compliance with, Clause 8.1.

8.4 The Buyer will not without the Seller's permission re-sell any Goods supplied under this Contract from which any label or logo has been removed or altered.

8.5 The Buyer will keep in confidence any information of a confidential nature obtained during the course of the parties' business and shall not, without the prior written consent of the Seller, use, disclose, copy or modify that information other than as necessary for the exercise of its rights, and performance of its obligations, under these Conditions.

#### 9. TERMINATION

9.1 The Seller may terminate these Conditions and/or any Contract immediately and at any time (without liability) if:

- (a) the Buyer is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or the Buyer suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness or any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Buyer; or any liquidator, provisional liquidator, receiver or examiner is appointed to or in respect of the Buyer or any of its assets or anything analogous to any of the aforementioned events occurs in any other jurisdiction;
- (b) the Buyer ceases or threatens to cease to trade;
- (c) the Buyer fails to, or threatens not to, pay all sums due on time; and/or
- (d) the Buyer encumbers or in any way charges any of the Goods in a manner inconsistent with the Seller's rights under Clause 7, (each a "Termination Event").

9.2 The termination of any Contract shall be without prejudice to the rights of each of the parties accrued up to the effective date of termination of that Contract.

9.3 Clauses 4.4, 4.7, 4.10, 5.1(a), 5.2, 5.5, 5.6, 6.5, 6.6, 6.7, 6.8, 6.9, 7, 8 and 10 survive the termination of these Conditions and each Contract however it arises, and shall continue to bind the parties or the relevant party (as applicable) and shall continue in full force and effect in

accordance with their respective provisions subject to any applicable statute of limitation periods.

9.4 All payments payable under any of these Conditions or any Contract to the Seller become immediately due upon the termination of any of these Conditions or any Contract despite any other provision.

#### 10. GENERAL

10.1 Any variation to any Contract shall be inapplicable unless evidenced by writing signed on behalf of the Seller by a duly authorised person.

10.2 On the expiry of such period of time as the Seller is required by any applicable laws to retain the Records, the Seller may, at its sole discretion, destroy or otherwise dispose of the Records.

10.3 If the Seller is affected by Force Majeure it shall forthwith notify the Buyer of the nature and extent thereof. The Seller shall not be deemed to be in breach of any of these Conditions or any Contract, or otherwise be liable to the other by reason of any delay in performance, or non-performance, of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party hereto; and the time for performance of that obligation shall be extended accordingly.

10.4 If any of these Conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect (a) the legality, validity or enforceability of any other of the Conditions, or (b) the legality, validity or enforceability in any other jurisdiction of that or any other Condition.

10.5 The Buyer may not assign or deal in any way with all or any part of any Contract or these Conditions, or its rights or obligations under a Contract or these Conditions, without the prior written consent of the Seller. The Seller may assign any Contract and/or these Conditions, or any rights or obligations under any Contract and/or these Conditions and the Buyer hereby agrees to such and will do any reasonable matters to evidence such agreement. The Seller may sub-contract its rights and obligations under any Contract and/or these Conditions.

10.6 Nothing in the Conditions or a Contract is intended to create a partnership, agency or employment relationship of any kind, or any form of a joint venture, between the parties or to authorise either party to act as agent for or on behalf of the other. Neither party has authority to make representations, act in the name or on behalf of or otherwise to bind or incur liability on behalf of the other.

10.7 These Conditions, all Contracts and any non-contractual obligations arising out of or in connection therewith shall be governed by and construed in accordance with Irish law. The Irish courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with these Conditions and any Contract and the parties submit to the exclusive jurisdiction of the Irish courts for that purpose

10.8 Each Contract comprises all the terms upon which the Seller agrees to sell or supply Goods and/or Services which are the subject of that Contract to the Buyer. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the applicable Contract. Nothing in this condition excludes or limits the Seller's liability for fraudulent misrepresentation.

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## **SCHEDULE 1**