

# **Irish International Trading Corporation. (Cork) Plc**

## **General Conditions of Sale**

### **1. Interpretation.**

In these conditions of sale:

"Supplier" means Irish International Trading Corporation (Cork) Public Limited Company, registered in Ireland No. 5027, whose registered office is at Tramore Road, Cork

"Customer" shall mean the corporate entity firm or person seeking to purchase the Goods from the Supplier

"Goods" means the goods ordered by the Customer from the Supplier, in an order which has been accepted by the Supplier.

### **2. Delivery Date.**

The Supplier shall use reasonable efforts to meet any stated delivery date but shall not be liable (in contract, negligence or otherwise) for any loss or damage resulting from its failure to do so, howsoever caused. Deliveries may be suspended without affecting the contract in the case of strikes, fire, accident, force majeure or other exceptional causes.

### **3. Collection and Delivery**

Collection and Delivery of the Goods shall be at the Supplier's place of business unless otherwise agreed, and Section 32(1) and 32(2) of the Sale of Goods Act, 1893 will not apply. Where it is agreed that the Supplier shall deliver or procure delivery of the Goods, when ready, it shall do so at the risk and cost to the Customer as agreed with the Customer to such address in Ireland as the Customer may specify or, if no such address is specified to any address of the Customer to which correspondence and/or Goods may previously have been sent under any contract. The manner of delivery shall be such as the Supplier in its sole discretion shall deem appropriate. If the Supplier is unable to effect delivery on arrival at the Customers premises for any reason whatsoever, an additional charge for any return or subsequent visit may be made at the Suppliers' sole discretion.

### **4. Loss or Damage in Transit**

The Customer is under a duty wherever possible to examine the Goods on delivery or on collection (as the case may be). Where the Goods cannot be examined the Carrier's note or such other note (as the case maybe) shall be marked by the Customer at the time of delivery "not examined". To the extent permitted by law, the Supplier shall be under no liability whatsoever for any defects or shortages as aforesaid unless notified in writing of the details within 48 hours following despatch. In all cases where defects or shortages are complained of, the Supplier shall be under no liability to the Customer in respect thereof

unless a reasonable opportunity to inspect the Goods is provided to the Supplier by giving at least 48 hours notice in writing before any use is made thereof or any alteration or modification is made thereto by the Customer. The Supplier shall make good any defects or shortages in accordance with the terms of this condition but otherwise shall be under no liability whatsoever, whensoever or howsoever arising, whether by way of negligence or otherwise, for such defects or shortages.

#### **5. Risk of Loss or Damage**

Risk in the Goods shall pass to the Customer when the Goods are dispatched by the Supplier or made available for collection by the Customer or its agent. Each of these events will constitute delivery to the Customer. The Customer will: indemnify and keep indemnified the Supplier against all loss of and damage to the goods and against any reduction in the re-sale value thereof below the price to be paid therefor by the Customer: insure and keep insured the Goods in an amount at least equal to the price to be paid therefor by the Customer: and hold upon trust the Supplier absolutely all proceeds of such insurance until the Supplier is paid in full for the Goods.

Title and risk to the Goods purchased shall pass to the Customer (upon delivery). Delivery is deemed made when the Goods are made available to the Customer for collection and or unloading at the point of delivery, and for the avoidance of doubt, the customer is solely responsible for unloading from the vehicle.

#### **6. Instalments.**

Unless otherwise expressly agreed, the Supplier may make delivery in one or more instalments.

#### **7. Packaging, Carriage and Insurance.**

The Prices are (inclusive or exclusive) of any cost of standard packaging, carriage and insurance, which shall be arranged by the Supplier (but paid by the Customer in addition to the Price)

#### **8. Title**

(i) Notwithstanding the passing of risk under Condition 5, unless and until payment in full shall have been made to the Supplier of all sums due to it under the contract and/or under any other contract between the Customer and the Supplier on any account whatsoever, property in and beneficial title to the Goods shall remain in the Supplier; and

(ii) The Customer will hold the Goods as bailee for the Supplier and shall store the goods separately from all other Goods and products and in such a way that can be readily identified as being the property of the Supplier; and

(iii) The Customers power of sale shall automatically cease in the event of insolvency, the appointment of a receiver or examiner or the convening of a meeting of creditors.



(iv) Upon determination of the Customers power of sale the Customer shall place the goods at the disposal of the Supplier and the Supplier shall be entitled to enter upon any premises of the Customer (and the Customer hereby grants a licence to the Supplier to enter) for the Purpose of removing the Goods from the premises (including severance from realty where necessary); and

(v) The Supplier shall at any time be entitled to apply any payment by the Customer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Supplier may in its absolute discretion think fit notwithstanding any purported application to the contrary by the Customer

#### **9. Returnable Packaging.**

If the Goods are supplied with packaging designated by the Supplier as returnable, the Customer shall return it, carriage-paid and in good order and condition to premises (in Ireland) specified by the Supplier.

#### **10. Queries and Complaints.**

Notification of queries and/or complaints must be notified to the Supplier in writing within seven (7) days of receipt of the Goods.

#### **11. Prices.**

Unless another price is quoted by the Supplier in writing and accepted by the Customer, the price of the Goods is the Suppliers relevant price as at the date of the order.

#### **12. VAT.**

Unless expressly quoted as including VAT, all prices are exclusive of value added tax or any other government taxes or duties which if applicable, shall be paid by the Customer.

#### **13. Time of Invoice.**

The Supplier may invoice the Customer upon dispatch of the goods.

#### **14. Payment Terms.**

Unless otherwise agreed in writing by the Supplier, the Customers shall make all payments due to the Supplier, on or within 30 days of the date of the invoice.

#### **15. Prompt Payment Discount.**

The customer may be allowed an agreed discount of the amount invoiced if that invoice is settled in full within 30 days of the date of the invoice.

#### **16. No deductions.**

The Customer shall make all payments in Euro, without set-off or counterclaim and free and clear of all taxes, deductions, withholdings and other fees and charges.

#### **17. Interest.**

The Customer shall pay to the Supplier interest on any overdue amount at a rate of 8% per annum above the refinancing base rate of the European Central Bank, from the due date for payment until payment, calculated on a daily basis and compounded monthly. Interest will be payable both before and after judgement.

#### **18. Warranty and Liability**

The liability of the Supplier is subject to compliance by the Customer with all the terms contained in this Condition.

**(i) (a)** the Customer shall be responsible for ensuring that Goods are fit for the purpose for which it wishes to use them and the supplier gives no warranty (and none shall be implied) that the Goods are fit for any particular purpose; and

**(i) (b)** the defect in question shall have appeared within 12 months (or such longer period(if any) as maybe provided for in any guarantee given by or on behalf of the manufacturer of the Goods) after the Customer shall have taken possession of the goods and shall have been thereupon promptly notified in writing to the Supplier; and

**(i) (c)** any Goods alleged to be defective shall be stored in a safe place by the Customer until such time as the Supplier authorises their disposal in writing; and

**(i) (d)** any Goods alleged to be defective shall, if so required by the Supplier, be promptly returned at the Customers risk and expense to the Supplier's premises for inspection, and the Supplier shall as its reasonable opinion consider them to be defective solely by reason of faulty design materials or workmanship; and

**(i) (e)** no attempt shall have been made by the Customer or by any third party to remedy any defect before, if so required by the Supplier, the Goods in question shall have been returned to the Supplier for inspection; and

**(i) (f)** the Goods in question shall have been serviced and maintained properly and in accordance with the Supplier's recommendations and shall not have been altered and/or fitted with any parts, components or accessories other than those manufactured or recommended by the Supplier

**(ii)** Apart from such reimbursement repair or replacement the Supplier, its employees and agents shall be under no liability to the Customer to any third party for any loss or damage of any kind whatsoever, howsoever and wheresoever arising or arisen, and whether direct or indirect, including without limitation any injury, loss or damage arising out of or incidental to-

**(ii) (a)** any negligence of the Supplier to of any of its employees or agents (except insofar as such negligence may result in death or personal injury); or



**(ii) (b)** the Suppliers performance of or failure to perform or breach of any of its obligations, whether express or implied under the contract or otherwise; or

**(ii) (c)** the supply, repair or maintenance of any of the goods; or

**(ii) (d)** any defect in any of the goods; or

**(ii) (e)** any advice given or representation made by the Supplier or on its behalf;

**(iii)** The liability of the Supplier arising from all and any claims relating to any single contract shall be limited to a maximum of the sum received by the Supplier from the Customer under the contract or such amount (less the costs of recovery incurred by the Supplier) as the Supplier receives from the manufacturer of the Goods giving rise to the claim from the customer.

**(iv)** The Supplier shall not be liable for any claim relating to any breach of warranty express or implied, brought after the expiry of the period of twelve months from the date on which the contract was made (or, after the expiry of such longer period (if any) as may be provided for by or on behalf of the manufacturer of the Goods).

**(v)** The Supplier shall in no circumstances be liable to the customer for any economic loss, loss of profit, loss of business, consequential, indirect or like loss.

**(vi)** The terms of this condition replace and exclude all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute, course of dealing, trade practice or otherwise, all of which shall accordingly be excluded to the extent allowed by law, and the Supplier shall in relation to the goods have no obligation to the Customer, either arising by statute or in tort or in contract and whether arising out of any negligence of the Supplier or any of its employees or agents (and whether under the contract or under any other contract) other than the express obligations contained in these conditions or if any other document expressly incorporated in writing into the contract. Accordingly, it shall be for the Customer to insure against any liability arising from the performance and from its use of the goods.

**(vii)** the Supplier shall use its reasonable endeavours to transfer to the Customer the benefit of any guarantee in respect of the goods available from the manufacturer provided that the Supplier may in its discretion, elect to do so only at the cost of the Customer.

**(viii)** The provisions of this Condition shall survive any termination of the contract

**(ix)** The exclusion from and limitation of liability set out in this condition shall be considered severable. The validity, illegality or unenforceability of any one condition, clause, sub-clause, paragraph or sub-paragraph of this clause shall not affect the validity or enforceability of any other part of this clause

## **19. Application.**

These conditions of sale shall apply to any purchase of goods under an order which is accepted by the Supplier. No other terms shall apply to the sale of the Goods, including any standard conditions of purchase of the Customer, even if

they are printed on the written order of the Customer or any other document issued by the Customer.

## **20. Termination and Suspension**

Without prejudice to any rights and remedies available to it, whether under the contract or otherwise, the Supplier shall be entitled in its absolute discretion and upon giving to the Customer written notice of its intention to do so, either to terminate wholly or in part the contract and/or any other contract with the Customer or to withhold, vary or suspend performance of all or any of its obligations under the contract or any other contract in any one or more of the following events;

- (i) if any sum owing to the Supplier from the Customer on any account whatsoever shall be unpaid after the due date for payments
- (ii) if the Customer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the contract
- (iii) if insolvency occurs
- (iv) if the customer shall commit any breach of any contract with the supplier
- (v) if the supplier in good faith shall have doubts as to the solvency of the Customer
- (vi) Where it is necessary to make alternative arrangements to deal with supply shortages. In such circumstances, the Customer's obligation to purchase Goods hereunder shall remain binding to the extent that the Supplier meets the Customer's order
- (vii) if the Customer refuses to permit or hinders performance of the contract the Supplier shall be entitled to exercise its rights of termination or suspension hereunder at anytime during which the event giving rise thereto shall not have ceased or been remedied, and in the circumstances of any such suspension, the Supplier shall be entitled to require as a condition of resuming performance under the contract, pre-payment of or such security and it may stipulate for the payment of any sum or sums due or to become due to it. Upon any such event happening the Supplier shall also have a general lien over all monies and property of the Customer in its possession for any sums due to the Supplier.

## **21. Notices**

Any notice required to be given in writing under the contract shall be given either by telex or facsimile transmission or by first class registered post addressed to the registered office of the party for which it is intended

## **22. Governing Law.**

These conditions of sale shall be governed by Irish Law.

### **23. Arbitration**

All disputes which arise between the parties in connection with this Agreement, or the subject matter of this Agreement, shall be decided by an arbitrator agreed by the parties or, in default of agreement, appointed by the President for the time being of the Law Society of Ireland or in the event of his being unwilling or unable to do so by the next senior officer of the Society who is willing and able to make the appointment provided always that these provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by order of the High Court, or refuses to act, or is incapable of acting or dies.