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| <b>POLICY:</b>      | Procurement Policy   |
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## **Section 1**

### **1.1 Introduction and Scope**

All policies, guidelines and protocols of Mary Immaculate College, will reflect the Colleges commitment to the promotion of equality and will be fully compliant with the provisions of prevailing equality legislation.

This document states the Mary Immaculate College policy for the purchase of all goods and services with the objective of ensuring a cost effective and legally compliant approach to purchasing, which meets the requirements of a devolved budgetary system and departmental choice. The document relates to the management and control of all non-pay spend, in respect of the acquisition of goods and services in all Departments and applies irrespective of the source of funding for a purchase.

### **1.2 Purchasing Objectives**

Purchasing shall always be undertaken with the over-riding objectives of:

- Securing maximum Value for Money (VFM)
- Complying with all relevant legislation and avoidance of risk

In pursuing these objectives, the College also requires that procedures and processes are in place to ensure that:

- Competitive bidding and tender processes are performed
- Suppliers are appropriately selected and authorised for use
- Suppliers are monitored for financial and non-financial performance
- Goods and services are purchased only with proper authorisation
- Goods and services received are correctly recorded
- Payments are only made for goods and services received and authorised

### **1.3 General Principles**

The Procurement Policy recognises that a combination of centralised and departmental purchasing is the most appropriate method to achieve the purchasing objectives within the College. Departments must use centrally negotiated contract agreements (where they exist), including Consortium contracts, in order to maximise purchasing power for the whole College and to obtain optimum value for money. In specialist areas the technical needs of the department will determine the specification and the Finance Office will then help to arrange competitive quotations/tenders as appropriate, assisting departments to meet the terms of the College's Procurement Policy. It is mandatory to use contracts established by the Office of Government Procurement (OGP) Service.

## **1.4 Status of Procurement Policy**

Adopted at a meeting of An tÚdarás Rialaithe on 17<sup>th</sup> December 2014.

## **Section 2 Responsibility for Purchasing in the College**

### **2.1 Finance and Resource Committee**

The Finance and Resource Committee is a Committee of the Governing Body. Its principal duties in relation to Procurement Policy are to have general supervision of the finances of the College, to ensure that expenditure incurred has been properly authorised and to make recommendations to Governing Body on any related matters.

### **2.2 Audit and Risk Committee**

The Audit and Risk Committee seeks to satisfy itself that arrangements are in place to promote economy, efficiency and effectiveness.

### **2.3 Vice President of Admin and Finance**

The Vice President of Admin and Finance (VPAF) is responsible for the financial administration of the College, including formal review of procurement policy. The policy is kept under constant review and alterations as necessary are recommended to the VPAF.

In addition the VPAF is responsible for:

- a) Ensuring the availability of appropriate centrally negotiated contracts for the use in the purchase of goods and services by departments, where aggregation of budget spend, yields demonstrable VFM benefit and/or such a contract reduces legal or contractual risk to the College.
- b) Ensuring that all contracts entered into by Mary Immaculate College maintain and protect the best interests of the College.
- c) Provision of up to date guidance on legislation applicable to Third Level Sector Procurements including:
  - European Union Supplies/Services/Works/Directives
  - Government Procurement Policies
- d) Co-ordination of training for staff involved in purchasing activities throughout the College.

In addition – the VPAF has the power to authorise any purchase deemed necessary under an urgent situation, with the written approval of the College President.

## 2.4 The Finance Office

### The Finance Office is responsible for:

- a) Provision and publication (distribution and sharing) of supplier contracts, contract information, terms and conditions.
- b) Provision of a purchasing advisory and facilitation service (to include sourcing, advice on and help with drawing up of specifications, tendering, contract negotiation, pre and post-purchase assessments of tenders).
- c) Liaison and active involvement with Government and public sector buying agencies/consortia.
- d) Management of all tenders over €25,000.
- e) Resolution with suppliers of service and contractual performance issues in liaison with departments

## 2.5 Budget Holders

2.5.1 Deans of Faculty, Heads of Department (HoD) and Research PI's act as budget holders and managers have "Authority to incur expenditure" on behalf of the College. They have day to day responsibility and accountability for ensuring that the Procurement Policy procedures are applied to all purchases of goods and services within their defined authority. Inter alia, the Budget Holder should ensure:

- a) The use of Contracted suppliers where applicable, details of which are listed on the College website.
- b) That where a good or service is required for which an Internal Service Provider exists, a quote from the Internal Service Provider (e.g. Computer Centre, Audio Visual, Reception Centre) is obtained and considered fairly before a contract is placed with an external supplier.
- c) The use of Agresso Purchase Orders for the purchase of all goods and services.
- d) That staff engaged in purchasing activities liaise with their own department and the Finance Office whilst conducting any pre-and post-tender negotiations.
- e) That staff engaged in purchasing activities have an understanding of the College's objectives, and adhere to the Procurement Policy.
- f) That procedures outlined in Appendix 1 are adhered to according to the level of expenditure involved and that any potential purchase greater than €25,000 (exclusive of VAT) in a contract or overall cost of a contract greater than €25,000 - be brought to the attention of the Finance Office at the earliest opportunity.

2.5.2 The Budget Holder may enter into contracts for the supply of goods and services only where:

- a) a centrally negotiated contract does not exist
- b) the value of the contemplated purchase is less than €25,000 per contract and,
- c) the requirement relates directly to the technical specialty of the department i.e. it is for items uniquely purchased by that department alone, and,
- d) Finance Office advice is sought before any contract is placed.

All contracts should comply with the Procurement Policy.

A written record of all contracts and agreements entered into must be maintained within the department for audit purposes, and in case of future contractual challenge.

## **2.6 Buildings Maintenance Manager**

The Buildings Maintenance Manager is responsible for the governance of all Tenders/Quotations/Purchase Orders relating to the maintenance of the Estate – in consultation with the VPAF. These duties and responsibilities default to the VPAF in the absence of the Buildings Maintenance Manager.

## **2.7 Capital Projects & Maintenance of the Estate**

For capital projects the College follows the guidelines and procedures set down by the HEA. An internal team comprising the College President, the Vice President Administration & Finance and the Buildings Maintenance Manager will oversee all capital projects. External Consultants will generally be appointed for capital projects including a project manager. Part of the remit of the Project Manager will be to ensure that national and international public procurement guidelines are adhered to and to advise the College in all such matters.

# **Section 3 Purchasing Policy**

## **3.1 Delegation / Transfer of Authority**

The Budget Holder will not delegate his/her purchasing authority. A more senior staff member may temporarily take over a Budget-holder's duties in a time of illness. Any transfer of purchasing authority must be notified in advance and in writing to the Finance Office.

## **3.2 Competition**

Fair competition shall be used and encouraged at all times consistent with the objective of:

- i. Securing maximum Value for Money (VFM) for all College purchases.
- ii. compliance with Government procurement rules applicable to the Public Sector
- iii. compliance with EU Procurement Directives are applicable

### **3.2.1. Call Off Contracts**

Where a Call off contract exists for the supply of goods and services the contract will already have been subject to the necessary level of competition and shall therefore always be used in preference to any other supply arrangement. It is not necessary to obtain further competitive quotations and orders may be placed directly with the supplier.

### **3.2.2 Preferred Supplier**

Where the Finance Office have identified from a Framework Contract a preferred supplier (usually

following a mini-competition) this supplier becomes Mary Immaculate College's Contracted supplier and must be used in preference to any other supplier available on that Framework.

### **3.2.3 Sourcing**

Where a requirement for goods or services is identified and this cannot be met from an existing contract or Internal Service Provider it is important to identify a variety of potential sources of supply in order to excite an appropriate level of competition and achieve VFM.

### **3.2.4 Tendering Thresholds**

The degree/extent of effort put into the competition itself should reflect the likely expenditure that will be incurred under the contract. The current thresholds for quotations and tenders together with the actions attaching to these threshold levels of expenditure, are detailed in Appendix 1: Summary of Purchasing Thresholds.

These thresholds apply to any potential single purchase greater than the limits specified (exclusive of VAT) or overall cost of a contract or purchases from a single supplier likely to exceed a specified limit in a year. There is to be no pro rata or other adjustment to contracts of supply which may exceed one year.

### **3.2.5 E U Directives**

Purchasing within the College is subject to the legislative requirements of EU Regulation and Directives as embodied in (and enforceable via) Irish law. The College is classified as an "Other Public Sector Contracting Authority" under the EU Public Sector and Utilities Procurement Directives due to the way in which it receives funding.

EU Directives require that all purchase requirements (tenders) above "Threshold Values" for the time being in force are open to European Competition. Tenders with a value above the applicable Threshold Value must be published in the supplement to the Official Journal of the European Union (OJEU), and a set process with prescribed timescales for tendering etc. need to be followed. Below the Threshold Values there needs to be competition to satisfy the Irish Government Procurement Rules, and the general principles of Non Discrimination, Equal Treatment, Transparency, Mutual Recognition and Proportionality need to be demonstrable.

### **3.2.6 Confidentiality**

Details provided by or agreed with suppliers (including those relating to tenders, contracts and pricing) are confidential to the College and those suppliers and must not be disclosed to others.

Confidentiality is a prerequisite of the College's participation in Government, Public Sector, Higher Education sector consortia contract arrangements. Product information and costs of a supplier must not be disclosed to a competitor or used as the basis for a one-off purchase. Although in the short term such negotiation may be advantageous, in the long term it can create a loss of confidence and inhibit future benefits, i.e. it may directly affect the level of future competition.

### 3.3 Conditions of Contract

Mary Immaculate College Standard Terms and Conditions of Contract (Purchase) (T&C's) must be used when entering into contracts for the supply of goods or services where a centrally negotiated contract does not exist. See Appendix 5. These T&C's are written to protect the interests of the College in the case of dispute regarding the contract and to ensure that legal requirements are met, and obligations appropriately discharged.

A verbal order, person to person, by telephone, or fax, constitutes a binding contract to the same extent as a formal College Purchase Order. All verbal orders must be confirmed to the supplier in writing with a Purchase Order, and the supplier notified that Mary Immaculate College T & C's apply to the contract i.e. prevail.

Suppliers may still seek to impose their own Conditions of Contract. These are often very one-sided, in particular those governing rental or lease contracts. Purchasers should review carefully a supplier's conditions where these are to be applied and in the case of substantial discrepancy with Mary Immaculate College T & C's or of doubt about the implications of a suppliers conditions, should consult the Finance Office before agreeing to apply them to a contract.

### 3.4 Making a Purchase

Mary Immaculate College Purchasing Procedures must be followed for all purchases of goods and services from funds administered by the College. This applies regardless of the source of those funds.

A Mary Immaculate College Agresso Purchase Order must be raised for all purchases.  
(An approved Requisition Form applies, and should be attached to, all Membership Renewal invoices.)

The Finance Office is able in certain circumstances to arrange an urgent purchase utilising a Mary Immaculate College Corporate Purchasing Card. Refer to Credit Card Policy and Procedures in the Finance Office.

Payments in advance of delivery should not be made and if requested by a supplier, should be referred to the Finance Office.

**Regular period end reviews of all departmental Open purchase orders should be made and prompt actions taken to resolve / close them.**

### 3.5 Leasing

Leasing may only be used as a method of purchasing following prior consultation with and agreement from the VPAF.

Lease contracts generally run over a predefined number of years with a commitment to a third party - normally a Finance Company. Discontinuing an agreement is almost impossible without severe financial penalty, and matters such as title to the residual asset need to be carefully considered.

### 3.6 Ethics

All College employees involved in any way in the purchasing process shall act ethically and in particular



should have regard to:

- a) Conflicts of Interest
- b) Hospitality
- c) Inducements - Employees of Mary Immaculate College must not accept inducements in any form from suppliers of goods and services. Inducements include special offers where the inference is that free items may be made available on a personal as opposed to business use basis.

### 3.7 Insurance

Details of all insurance policies, cover etc. can be found on the College website.

### 3.8 Record Keeping

The Budget Holder is responsible for ensuring that records and systems are appropriately maintained and administered for all purchases, as specified in the Procurement Policy.

Document Retention procedures must be complied with in the usual manner.

### 3.9 Legislative Requirements

All employees involved in purchasing on behalf of the College must comply with the requirements of all relevant and applicable legislation. This includes, but is not limited to, general duties imposed on the College as a public authority

Specific legislation impacting College Purchasing procedures includes (but is not limited to):

- EU Procurement Directives 2004
- Late Payment in Commercial Transactions Act 2002
- Sale of Goods Act 1980
- Freedom of Information Act 1997 & Amendment 2003
- Transfer of Undertakings (TUPE) 1980
- Waste Electrical and Electronic Equipment (WEEE) Directive 2002/96 EC
- Safety, Health & Welfare Act 2005
- Protection of the Environment Act 2003

### 3.10 Government Circulars

**The following government circulars must be followed in respect of public sector purchasing;**

Circular 2/09 Arrangements for ICT Expenditure in the Civil and Public Service

Circular 10/10 Facilitating SME Participation in Public Procurement

Circular 2/11 Additional Arrangements for ICT Expenditure in the Civil and Public Service

**Adherence to the Mary Immaculate College Procurement Policy, including the use of Mary Immaculate College Standard Terms and Conditions of Contract (Purchase) is intended to ensure compliance with applicable legislation.**

### **3.11 Consequences of Non Compliance with Purchasing Policy and Procedures**

3.11.1 Failure to use contracted suppliers i.e. those that have already been subject to an appropriate competition thereby ensuring VFM for the College, will result in:

- a) An initial warning that a breach of College Procurement Policy has occurred, in that an inappropriate supplier has been used with a reminder to utilise the contracted supplier in future.
- b) On the second occurrence, a financial penalty, disciplinary action and/or the withdrawal of authority to incur expenditure.

**3.11.2 Where no existing contract is available, failure to conduct an appropriate competition for the supply of goods or services will result in:**

- a) An initial warning that a breach of College Procurement Policy has occurred, in that a competition should have been carried out and must be carried out in future.
- b) On the second occurrence, disciplinary action and/or the withdrawal of Authority to Incur Expenditure.

**3.11.3** Where purchases of goods and services which are the subject of centrally negotiated contracts are made via Personal Expenditure and expenditure is subsequently reclaimed from the College, an investigation into the nature and reasons for the purchase and a comparison against the cost of purchase through the centrally negotiated contract will be made. This may result in a delay before a refund of expenditure can be made. At the discretion of the Director of Finance, any refund may be made at the rate that would have been paid had the centrally negotiated contract been used.

### **3.12 Advertising**

All contracts with a value of €25,000 or more must be advertised on the Irish Government tendering portal [www.etenders.gov.ie](http://www.etenders.gov.ie), by the Finance Office. The advertising threshold for works and works related services is € 50,000 (exclusive of VAT.)

**Appendix 1: Summary of Purchasing Thresholds**

The following planned levels of expenditure require the actions outlined below each in order to comply with Procurement Policy.

The Finance Office is required to be involved with all purchases over €25,000 to ensure competitive tendering processes are carried out under the Department of Finance guidelines.

**PROCUREMENT VALUE THRESHOLDS FOR GOODS, SERVICES AND WORKS**

| <b>&lt; €5,000<br/>(excluding VAT)</b>  | <b>€5,001 -<br/>€25,000*<br/>(excluding<br/>VAT)</b>   | <b>Cumulative or Single Value<br/>€25,000 - €193000<br/>(excluding VAT)</b>   | <b>Cumulative or Single Value<br/>&gt; €193,000<br/>(excluding VAT)</b>  | <b>Cumulative or<br/>Single Value<br/>&gt; €4,845,000<br/>(excluding VAT)</b>   |
|---|--|---|--|---|
| At least One Verbal Quotation;<br>Best Procurement Practice dictates that staff ensure they have a minimum of 3 quotes;<br>Should be confirmed by e-mail, fax etc;<br>a noted reference to a catalogue price will also suffice; | Three written quotations from preferred vendors;<br>Complete a Scoring Sheet;<br>Select most suitable bid;<br>Notify unsuccessful bidders; | National Tender;<br>Specification to be provided to Finance Office;<br>Advertised for 10 Working days ;<br>Evaluated by both Finance Office and User;<br>Awarded subject to standstill period of 14 days;<br>All purchases of goods and services are subject to a competitive tendering exercise to be handled by Finance Office. (to be contacted as early as possible in the process);<br>Complete a Scoring Sheet;<br>Award a Contract;<br>Select most suitable bid;<br>Notify unsuccessful bidders; | EU Tender;<br>Specification to be provided to Finance Office;<br>Advertised for 40 days;<br>Evaluated by both Finance Office and User;<br>Awarded subject to standstill period of 14 days;<br>All Purchases of goods and services are subject to a competitive tendering exercises under European Procurement Procedures which must be handled by Finance Office (to be contacted as early as possible in the process);<br>Complete a Scoring Sheet;<br>Award a Contract;<br>Select most suitable bid;<br>Notify unsuccessful bidders; | Major Works contracts exceeding this value must be tendered by the Finance Office under European Procurement Procedures |

**Note: ALL VALUES EXCLUDE VAT**

**Note: \* The advertising threshold for works and works related services remains at € 50,000 (exclusive of VAT).**

**See also:**

Appendix 2: Checklist of Documentary evidence required (for Purchases in excess of € 25,000)

Appendix 3: Checklist of Documentary evidence in appointment of Third Party Consultants (Capital Tenders)

**Appendix 2: Checklist of Documentary evidence required**

In the case of each purchase or project in excess of € 25,000, documented evidence of MIC involvement in each stage from beginning to end should be on file.

Documented evidence should include as a matter of best practice the following:

|   |
|---|
| <ul style="list-style-type: none"> <li>• Evidence of advertising</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Invitation to tender proposals</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Documentation surrounding evaluation criteria (inc current Tax Clearance Certificate)</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Documented marking scheme (<i>see Appendix 4: Example of a Scoring Sheet</i>)</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Terms of reference for each party involved in the granting of the project</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Minutes of meetings held internally and also minutes of meetings where any authorisation / activities have been delegated</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Where activities are delegated to third parties those third parties should be appropriately qualified for the task</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Documented evidence of review of third party results ensuring that the evidence of review addresses items such as achievement of the terms of reference and conclusion thereon.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Documented process of approval</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Letter of intent to award</li> </ul>   |
| <ul style="list-style-type: none"> <li>• The contract</li> </ul>  |
| <ul style="list-style-type: none"> <li>• The e Tender award notice</li> </ul>   |

**Appendix 3: Checklist of Documentary evidence in appointment of Third Party Consultants**

Documentation surrounding the use of third party consultants in the evaluation of capital tenders.

|  |
|--|
| • Details of the third parties,  |
| • Tax status i.e. tax clearance certificates, qualifications, engagement letter, |
| • Scope of the engagement,   |
| • Confirmation regarding conflict of interest                                    |
| • Key Milestones   |

In addition formal documentation should also address the instances in which it is appropriate to utilise such parties and also require that details of meetings and any formal agreements are maintained and appropriately referenced. Such procedures will ensure compliance with EU Directives on public procurement and will also display MIC's involvement in the evaluation of tenders.

|  |
|--|
| • documented evidence of review of the third party report; such evidence of review should also include a formal sign off,    |
| • documented consideration of the scope of the engagement and how the third party has adequately met its terms of reference. |

The check list should be used by both the third party and MIC, whereby the third party denotes on the check list that activities delegated to them have been completed and fulfil the requirements of National and EU guidelines on public procurement. MIC should in addition to the report, including the check list, receive a copy of the file documents used by the third party in the course of their work, and a copy of that file should be reviewed, approved and retained as evidence of MIC's review of the work of the third party.

**Appendix 4: Example of a Scoring Sheet****Selection criteria** (*typically for a Report – amend as appropriate*)

MIC will assess responses according to the criteria detailed in the table below to establish the most economically advantageous tender.

| <b>Criterion</b>  | <b>Max score</b> |
|---|------------------|
| <b>Understanding of MIC's role and remit</b>  | 15               |
| <b>Project plan</b><br>Marks will be awarded based on the information provided as detailed in section X.x) above.   | 20               |
| <b>Relevant experience</b><br>Marks will be awarded in respect of relevant qualifications and experience held by respondents detailed in section Y.x) and Y.z) above. | 25               |
| <b>Cost</b><br>A mark will be extrapolated for each respondent based on their proposed charges vis-à-vis other eligible respondents.                                  | 30               |
| <b>Overall suitability for appointment</b>  | 10               |
| <b>TOTAL MARK AWARDED</b>   | <b>100</b>       |

## Appendix 5: Standard Terms & Conditions Purchasing

### 1. INTERPRETATION:

1.1 In these Conditions:

"**Buyer**" means Mary Immaculate College

"**Conditions**" means the standard 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 Buyer and the Seller.

"**Order**" means the Buyer's purchase order to which these Conditions are annexed. "Services" means the services (if any) described in the Order.

"**Goods**" means the goods (including any instalment of the goods or any part of them) described in the Order.

"**Contract**" means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services on the Conditions.

"**Delivery Address**" means the address stated on the Order.

"**Price**" means the price of the Goods and/or the charge for the Services.

"**Seller**" means the person so described in the Order.

"**Specification**" includes any plans, drawings, data or other information relating to the Goods or Services.

"**Writing**" includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to a statute or a provision of statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2. BASIS OF PURCHASE:

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to the Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 The College reserves the right to cancel the Order unless unconditionally accepted by the Seller in writing within 28 days of its date.

2.4 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

### 3. SPECIFICATIONS:

3.1 the quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer and the Seller.

3.2 Any Specification supplied by the Buyer to the Seller or specifically by the Seller for the Buyer, in connection with the Contract together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

**3.5** If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

**3.6** The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

#### **4. PRICE OF GOODS AND SERVICES:**

**4.1** The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

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

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

**4.2** No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

**4.3** The Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

#### **5. TERMS OF PAYMENT:**

**5.1** The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

**5.2** Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 30 days after the end of the month of receipt by the Buyer of a valid invoice or after acceptance of the Goods or Services in question by the Buyer whichever is the later. The Buyer shall pay the Price of the Goods and the Services after the acceptance of the Goods or Services in question and on receipt of a valid invoice. Payments will only be made under the terms of the Prompt Payment of Accounts Act, 1997 unless other invoicing arrangements have been agreed.

**5.3** The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

#### **6. DELIVERY:**

**6.1** The Goods shall be delivered to and the Services shall be performed at the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

**6.2** Where the date of delivery of the Goods or of performances of the Services is to be specified after the placing of Order, the Seller shall give the Buyer reasonable notice of the specified date.

**6.3** The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

**6.4** A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

**6.5** If the Goods are to be delivered or the Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

**6.6** The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

**6.7** The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.



**6.8** The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the goods, whether or not any Goods are accepted by the Buyer.

## **7. RISK AND PROPERTY:**

**7.1** Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

**7.2** The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## **8. WARRANTIES AND LIABILITY:**

**8.1** The Seller warrants to the Buyer that the Goods:

8.1.1 will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;

8.1.2 will be free from defects in design, material and workmanship;

8.1.3 will correspond with any relevant Specification or sample; and

8.1.4 will comply with all statutory requirements and regulations relating to the Sale of the Goods. **8.2** The Seller warrants to the Buyer that their Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

**8.3** Without prejudice to any other remedy, if the Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

8.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or

8.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

**8.4** The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs, claims and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

8.4.1 breach of any warranty given by the Seller in relation to the Goods or Services;

8.4.2 any claim that the Goods infringe, or their use or resale infringes the patent, copyright, design right or trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

8.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

8.4.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and

8.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

**8.5** In respect of any injury, damage or loss caused to third parties or their property by the Goods there shall be no automatic right of indemnity due from the Buyer to the Seller. Any clause in the Seller's standard terms and conditions of sale purporting to establish a right of indemnity from the Buyer to the Seller in the event of any injury, damage or loss caused to third parties or their property shall not be incorporated into this Contract.

## **9. TERMINATION:**

**9.1** The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving to the Seller at any time prior to delivery or performance in which event the Buyer's sole liability shall be to pay the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.

**9.2** The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

9.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

9.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller;

9.2.3 the Seller ceases, or threatens to cease, to carry on business; or

9.2.4 the Buyer reasonably apprehends that any of the above events is about to occur in relation to the Seller and notifies the Seller accordingly.

#### **10. GENERAL:**

**10.1** The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligation under the Contract.

**10.2** Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

**10.3** No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

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

#### **11. HEALTH AND SAFETY:**

**11.1** The Seller shall comply with the requirements of Irish and international legislation and agreements relating to the supply, packaging, labelling and carriage of hazardous goods.

**11.2** The Seller shall ensure that Goods comply with current health and safety legislation and the legislation implementing any relevant EC Directive. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.

#### **12. LAW:**

**12.1** The construction, validity and performance of the Contract shall be governed by Irish Law. The Contract shall be deemed to have been made in Ireland and the parties to the Contract hereby submit to the exclusive jurisdiction of the Irish Courts.

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