

**JUNGHEINRICH LIFT TRUCK LIMITED**  
**GENERAL TERMS AND CONDITION OF SALE [FROM WEBSITE]**

**1. Interpretation**

In these Conditions:-

- 1.1 “the Act” means the Companies Act 2014, as amended, extended, or re-enacted from time-to-time.
- 1.2 “an AntOn Product” means a Product identified by the Seller as belonging to the AntOn product range.
- 1.3 “the Buyer” means the person who agrees to purchase the Products and/or acquire the Services from the seller subject to these conditions whose details may be set out on the Order;
- 1.4 “these Conditions” means the terms and Conditions of sale set out in this document.
- 1.5 “the Contract” means the agreement between the Seller and the Buyer for the sale and purchase of the Products and/or the supply of Services.
- 1.6 “the Delivery Address” means the address for delivery of the Products and/or the supply of the Services which shall be the Buyer’s principal place of business unless specified on the Order.
- 1.7 “the Estimated Delivery Date” means the date on which the Seller estimates that the Products will be delivered and/or the Services will be supplied which may be set out on the Order;
- 1.8 “the Order” means the Buyer’s order for the Products or the Services, whether on the Website or the Seller’s printed order form to which these Conditions are attached;
- 1.9 “the Products” means the goods which the Seller is to supply to the Buyer in accordance with these Conditions and which may be listed on the Order.
- 1.10 “the Seller” means Jungheinrich Lift Truck Limited whose registered office is at 33 Sir John Rogerson’s Quay, Dublin 2 and main trading address at J5 Maynooth Business Campus, Maynooth, Co. Kildare.
- 1.11 “the Services” means the services which the Seller is to provide to the Buyer in accordance with these Conditions and which may be listed on the Order.
- 1.12 “the Website” means [www.jungheinrich.ie](http://www.jungheinrich.ie)

**2. Basis of sale**

- 2.1 These Conditions apply to all contracts for the sale of Products and the supply of Services entered into by the Seller. By placing an Order with the Seller or accepting the Seller’s quotation the Buyer agrees to deal with the Seller on these Conditions to the exclusion of all other terms, conditions, warranties or representations with the exception of any terms specified in in the Order or on the Website.
- 2.2 No variation of these Conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Buyer and a Director of the Seller.
- 2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Products and/or the Services beyond those contained in preprinted marketing materials, specification sheets and such like or otherwise available in the public domain. The only exceptions to this are where a General Manager or Director of the Seller confirms such representations in writing.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Products or the provision of the Services which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer’s own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6 In the case of an Order made on the Website, Your Order will be accepted when we dispatch your Product, unless we reject your Order. The Contract between us is formed at the time we dispatch your Products. If your Order is dispatched in more than one delivery, each dispatch will form a separate contract covering the Product(s) delivered under that dispatch. Without affecting any consumer cancellation right which may apply (see below), you can cancel your Order for a Product at no cost, at any time before we dispatch that Product. Before we have accepted your Order, we reserve the right to tell you that your Order has been rejected for any reason. In particular, all Orders are subject to stock availability. We will tell you as soon as possible if we can’t supply one or more of the Products that you have ordered. If we cannot contact you about these out-of-stock Products, we will accept your Order for the Products we do have in stock. If you have already paid for the unavailable Products, we will give you a refund for their purchase price.
- 2.7 In the case of an Order not made on the Website, the Order is not accepted by the Seller until a duly authorised order confirmation is issued by the Seller to the Buyer.

2.8 The Buyer shall ensure that the terms of its Order and any applicable specification are complete and accurate.

2.9 Any quotation is given on the basis that no contract shall come into existence until the Seller dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it.

### **3. Sale and purchase**

3.1 The Buyer agrees to purchase the Products and/or acquire the Services from the Seller and the Seller agrees to sell the Products and/or supply the Services to the Buyer on these Conditions save as expressly amended in writing by the Seller.

3.2 The Buyer shall not be entitled to cancel in whole or in part any Order which the Seller has accepted. In the event of the Seller allowing the Buyer to cancel any such Order, the Seller reserves the right, without prejudice to any other right or remedy, to apply a cancellation charge up to the price payable under the contract to compensate the Seller for expenses incurred and loss of profit.

3.3 If the products are to be manufactured or any process is to be applied to them by the Seller in accordance with the specifications submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights or misuse of any confidential information of any other person or any other liability whatsoever which results from the Seller's use of the Buyer's specifications or from the sale or supply of such Products by the Seller pursuant to the provisions of clause 4.6 below.

3.4 The Seller reserves the right to make any changes in the specifications of the Products which are required to conform with any applicable safety or other requirements or which do not materially affect their quality or performance.

3.5 Notwithstanding anything else in these Conditions, if you are ordering Products from the Buyer as a consumer, you have statutory rights to cancel any online or telephone Orders (excluding Orders for bespoke or made-to-measure Products) within fourteen days and receive a full refund, including standard delivery charges. This is your consumer cancellation right and it applies in addition to any other rights set out under these Conditions. To exercise your consumer cancellation right, you must contact us at any time before the Products are delivered or within fourteen days of delivery, starting on the day after your delivery is made. If your Order is delivered in multiple shipments, the fourteen-day period starts the day after the last instalment is delivered. If we receive your cancellation notice outside these timeframes, your consumer cancellation right will not apply. Please also note that if you exercise your consumer cancellation right after the Products have been delivered, you will be responsible for returning the Products to us at your own cost and within fourteen days of cancelling your Order.

### **4. Delivery**

4.1 Unless it is agreed in writing on the Order that the Buyer will collect the Products, the Seller shall use its reasonable efforts to deliver the Products to the Buyer and/or provide the Services for the Buyer at the Delivery Address on or around the Estimated Delivery Date, but the Seller shall determine the route and means of delivery and time of delivery shall not be of the essence. The Estimated Delivery Date shall be extended if the Buyer has failed to give the Seller all information, instructions and drawings necessary to enable the Seller to manufacture or deliver the Products, if the Buyer has failed to carry out any other obligation in relation to the contract, or if delivery is delayed by any circumstances beyond the reasonable control of the Seller, by the number of days delay caused by such failure. The Seller shall under no circumstances be liable for late delivery or performance.

4.2 The Seller shall be entitled to deliver the Products and/or provide the Services in instalments in which case each instalment shall be treated as an entirely separate contract and any default or breach by the Seller in respect of any such instalment shall not entitle the Buyer to cancel any other instalment or treat the Contract as a whole as repudiated.

4.3 If the Products are damaged on delivery or in transit or less than the correct amount of the Products is delivered, then unless the Buyer notifies both the Seller and Carrier in writing (otherwise than by a note on the delivery note) by the close of business of the third day after delivery no claim against the Seller may be made in respect of damage to or short delivery of such Products.

4.4 If the Products have not been delivered despite receipt by the Buyer of the invoice from the Seller relating to them, then the Buyer should notify the Seller within three days after the date of such invoice.

4.5 The Buyer shall be deemed to accept the Products on delivery notwithstanding any late delivery by the Seller.

4.6 If the Buyer fails to take delivery of the Products or fails to give the Seller adequate delivery instructions before the Estimated Delivery Date, then without prejudice to any other right or remedy available to the Seller, the Seller may: -

4.6.1 store the Products until actual delivery is made and charge the Buyer for the costs (including insurance) of storage, transport and loading and/or;

4.6.2 sell or supply the Products (whether or not such Products were manufactured by the Seller pursuant to the provisions of clause 3.3 above) in or to a third party in any country at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract and in either case shall be entitled to

charge interest (both before and after any judgement) on the price payable for the Products under the Contract at 4% over the base rate from time to time of Allied Irish Banks plc from the Estimated Delivery Date to the date of actual delivery, alternative sale or alternative supply.

4.7 The quantity of any consignment of Products as recorded by the Seller upon dispatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

## **5. Installation of the Product and Services**

5.1 If specified on the Order or in the relevant quotation, or the Seller's standard documentation for the Products, that the Seller is to install the Products then, as soon as reasonably possible after their delivery, the Seller shall install them at the Delivery Address.

5.2 The Buyer shall give full access to the Delivery Address to the Seller for the purpose of installing the Products and/or providing the Services, shall undertake any preparatory work specified by the Seller in the Order, in the relevant quotation or in the Seller's standard documentation and shall compensate the Seller for any additional costs which the Seller incurs by reason of the Buyer's failure properly to undertake any such preparatory work.

5.3 The Seller shall procure that its employees who install the Products or provide the Services comply with all reasonable safety, security and other regulations which are in force or apply at the Delivery Address and which have been notified to the Seller and its employees and the Buyer shall indemnify the Seller against any loss which the Seller may suffer or incur as a result of any injury to its employees or damage to or loss of its property whilst at the Delivery Address resulting from anything other than the negligence of the Seller or its employees or any non-compliance by the Products with the warranty set out in clause 8 below.

## **6. Tests**

6.1 If the Seller has quoted any rates of performance for the Products, any tests reasonably required to satisfy the Buyer shall be carried out within 10 days after delivery, or any other period as agreed in writing, at the Buyer's works. Where the results of any test are recorded on a test certificate it shall be conclusive evidence of the performance of the Product tested.

6.2 Additional tests shall be at the expense of the Buyer.

## **7. Prices and Payment**

7.1 Subject to the provisions of clause 7.4 the price of the Products and/or the Services shall be the price expressly quoted in writing by the Seller or otherwise shall be the list price applying at the date of acceptance by the Seller of the Order.

7.2 Unless otherwise stated on the Order or under the terms of any quotation or in any price list of the Seller, all prices are given by the Seller on a delivered basis. The price stated for a Product excludes the cost of any Services referred to in the Order.

7.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

7.4 The Seller reserves the right to increase the price of the Products and/or the Services in the event of and to take account of any change in: -

7.4.1 the rate of export tax or other duty levied by the Federal Government of Germany; or

7.4.2 any import levy between the date of acceptance of the Order and the date of delivery and/or supply.

7.5 The Seller shall be entitled to invoice the Buyer for all amounts due under the Contract on or at any time after delivery of the Products and/or provision of the Services unless the Products are to be Collected by the Buyer or the Buyer fails to take delivery of them, in which case the Seller shall be entitled to invoice the Buyer at any time after the Seller has notified the Buyer that the Products are ready for collection or (as the case may be) the Seller has tendered delivery of the Products.

7.6 The Buyer shall make Payment to the Seller, in Euro, in respect of all invoices in full and without any exercise of any lien, deduction or set off (whether in relation to such invoice or otherwise) within the time specified in the Seller's quotation. If the Products are delivered in instalments, time for payment in respect of Products whereof delivery has been made shall be calculated from the date that those Products were delivered and not the date that all other Products were delivered. Time of payment shall be of the essence.

7.7 All payments shall be applied to invoices and to Products and/or Services listed in such invoices in the Order determined in its discretion by the Seller.

7.8 If full payment (including any instalment) is not received by the Seller by the due date then without prejudice to its rights the Seller shall be entitled: -

7.8.1 to sue for the entire price; and/or

7.8.2 to charge interest (both before and after any judgement) at the rate of 4 % over the base rate from time to time of Allied Irish Banks plc on all amounts outstanding to the Seller by the Buyer whether or not under the Contract and whether or not such sums have become due; and/or

7.8.3 to require the immediate return to the Seller of all Products agreed to be sold by the Seller to the Buyer in which the property has not passed to the Buyer in accordance with the provisions of clause 10 below and the Buyer hereby agrees to reimburse to the Seller upon demand the Seller's costs or expenses in recovering such Products; and/or

7.8.4 to suspend work on Services and/or further delivery of Products.

7.8 If full payment of an instalment is not received by the Seller by the due date then the whole of the balance of the price of the Order to which the instalment relates shall become due forthwith.

## **8. Warranty and Liability**

8.1 The Seller warrants that the Services will be provided with reasonable skill and care and that the Products will give the rates of performance quoted by the Seller and will be free from defects in material and workmanship for the periods set out below commencing from the date of delivery **PROVIDED THAT:-**

8.1.1 the Seller shall be under no liability in respect of any defects in the Products arising from any drawing, design or specifications supplied by the Buyer;

8.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage or negligence by the Buyer or persons using the Products, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) or misuse;

8.1.3 the Seller shall be under no liability if the Buyer or any third party has carried out any modification, alterations, repair, maintenance or service of the Products or has installed any spare parts without the Seller's approval;

8.1.4 the Seller shall be under no liability if the Buyer has failed to have the Products serviced regularly which for these purposes shall mean a minimum of one service using original parts a minimum of once every 1,000 hours of operation or within each 12-month period, whichever occurs first, or in the case of any AntOn Product a minimum of one service using original parts every 500 hours of operation or within each 12-month period, whichever occurs first. All products must be maintained either by the Seller or by a qualified party approved by the Seller. All maintenance must be undertaken by following the Originating Equipment Manufacturer's Maintenance and Servicing Schedules using the Originating Equipment Manufacturer's parts;

8.1.5 the Seller shall be under no liability if the total price of the Products has not been paid by the due date for payment;

8.1.6 any such defect in or failure to meet any such specification by the Products shall be notified to the Seller in writing as soon as reasonably possible after the Buyer discovers such defect or non-conformity, and the Seller shall have reasonable time and opportunity to remedy any such defect or failure;

8.1.7 any such defect in or failure to meet any such specification by an AntOn Product shall be notified to the Seller via the AntOn online portal, which can be accessed using the QR code stamped on the truck and, upon submission, the Buyer will receive guidance on next steps directly from the online system; and

8.1.8 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller and which the Seller hereby assigns to the Buyer so far as it is able.

8.2 For the purpose of this clause 8, "single shift operation" shall mean where the equipment is put to use for up to 1200 operating hours per annum, "double shift operation" shall mean where the equipment is put to use for up to 2400 operating hours per annum and "triple shift operation" shall mean where the equipment is put to use up to 3600 operating hours per annum.

8.3 The warranty in clause 8.1 shall apply for the following periods:

8.3.1 in the case of Products with a powered drive unit, the earliest of 1200 operating hours or alternatively a period of twelve months unless specified otherwise in the Seller's quotation;

8.3.2 in the case of Products termed as Hand Pallet Trucks for a period of twenty-four months for Standard Models or twelve months for Galvanized, Galvanox or Inox Models;

8.3.3 in the case of spare parts (either as new or replacement), the earlier of 600 operating hours or a period of six months for single shift operation, three months for a double shift operation and one month for a triple shift operation or greater, unless specified otherwise in the Seller's quotation; and

8.3.3 in the case of any AntOn Product, a maximum of 12 months where the goods have been put into an operation working time of no more than 20 hours per week or a maximum of 1,000 operating hours in the 12-month period, whichever occurs first.

8.4 In the event of any valid claim under clause 8.1 above being made by the Buyer, the Seller shall be entitled to supply replacement Services and/or to replace or repair the Products (or the part in question) free of charge or, at the Seller's sole

discretion, refund to the Buyer the price of the Products and/or the Services (or a proportionate part of the price as appropriate) but the Seller shall have no further liability to the Buyer. Any component or parts replaced by the Seller shall become the property of the Seller.

8.5 There are no warranties, conditions, guarantees or representations as to quality or fitness for a particular purpose of the Products or the provision of the Services or other warranties, conditions, guarantees or representations whether express or implied, oral or in writing, except as expressly stated in the Contract.

8.6 The Seller does not exclude liability for any death or personal injury arising from use or supply of the Products or the provision of the Services to the extent that it results from the proven negligence of the Seller or its employees.

8.7 The Seller excludes liability to the Buyer for any direct physical damage other than death or personal injury to the extent that it results from the negligence of the Seller or its employees in excess of €1,250,000.

8.8 Except pursuant to sub-clause 8.6 above, the Seller shall not in any event be liable for any indirect, special or consequential damages, howsoever arising in connection with or arising out of the furnishing, functioning or use of the Products, or any item provided or Services, and shall not be liable for any other damages except as provided in the Contract.

8.9 Except pursuant to sub-clause 8.6 above, the Seller shall not in any event be liable for any loss of anticipated profits, loss of business, depletion of goodwill and / or similar losses, pure economic loss or loss or corruption of data, in each case howsoever arising in connection with or arising out of furnishing, functioning or use of the Products, or any item provided or Services, and shall not be liable for any other damages except as provided in the Contract.

8.10 Except pursuant to sub-clause 8.6 above, no action, regardless of form, arising out of the transactions under the Contract may be brought by the Buyer more than two years after the cause of action has accrued.

8.11 The Price for the Products and/or Services quoted by the Seller to the Buyer is based on these Conditions being applicable to the agreement between the Buyer and the Seller. The Seller is willing to negotiate an increased price if the Buyer considers that it wishes the Seller to accept greater liability than is provided for in these Conditions as amended in writing by the Seller.

## **9. Intellectual Property Claims**

**9.1** The Seller shall at its expense defend any action against the Buyer and pay all damages and costs awarded against the Buyer (except to the extent that the Buyer is entitled to recover such sums under any policy of insurance) based on a claim that any of the Products constitute an infringement of any patent or copyright or other intellectual property rights of, or misuse of any confidential information belonging to, any third party (a "Claim") **PROVIDED THAT: -**

9.1.1 the Seller shall be notified promptly in writing by the Buyer of any notice of a Claim;

9.1.2 the Seller shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise;

9.1.3 the Buyer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action; and

9.1.4 the Buyer shall take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.

9.2 If a Claim is successful or the Seller considers that it is likely to be successful, the Seller may, at its option or as part of a Settlement or compromise, procure for the Buyer the right to continue using the Products, modify the Products so that they are non-infringing or terminate the Contract in so far as it applies to those Products subject to the Claim, in which latter case the Seller shall refund to the Buyer the price paid for such Products less depreciation on a straight line basis over the life of the Products as determined by the Seller.

9.3 In no event shall the Seller have any liability under this clause with respect to any Claim based on the use of the Products in combination with any other product or equipment not supplied by the Seller.

9.4 This clause states the entire obligation and liability of the Seller with respect to infringement of intellectual property rights and misuse of confidential information.

## **10. Risk and Title**

10.1 Risk of loss of or damage to the Products shall pass to the Buyer on delivery and the Buyer shall insure the Products from that time until ownership of and title to them passes to the Buyer.

10.2 Notwithstanding delivery and the passing of risk in the Products to the Buyer, nor any other provisions of the Contract, the Seller shall retain legal and equitable ownership of and title to the Products. Title to any Products ordered by the Buyer shall not pass until the Seller has received payment in full (in cash or cleared funds) the price of the Products and of the Services together with the full price of any other products or services the subject of any other contract with the Seller and together with all storage charges and interest that may be due to the Seller under this Contract or any other and until payment in full as aforesaid has been made the Buyer acknowledges that he is in possession of the goods solely as bailee for the Seller.

10.3 Until ownership of and title to all Products owned by the Seller passes to the Buyer, the Buyer shall keep the Products in trust for the Seller and store the Products separately from all other goods owned by the Buyer or any third parties so that they remain readily identifiable as the Seller's property and the Buyer will not remove, obscure or deface any identifying mark or packaging on or relating to those Products. The Buyer shall keep the Products under its possession or control properly stored, protected and insured. The Buyer shall be entitled to use such Products, or to resell the Products or any goods produced from or with them at full market value in the ordinary course of its business, and such resale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale but shall account to the Seller for the entire proceeds of the sale or for any insurance, shall hold such proceeds in trust for the Seller, and shall keep such proceeds at all time identifiable as the Seller's monies shall not mingle such proceeds with other monies or pay them into any overdrawn bank account.

10.4 For the avoidance of doubt, the Products and all other goods supplied to the Buyer by the Seller shall be presumed to belong to the Seller unless the Buyer can prove otherwise.

10.5 The Customer's right to possession of the Products shall cease if any of the states of affairs or events described in sub-clauses 12.1.2 to 12.1.4 exists or if the Customer does anything or fails to do anything which would entitle a receiver to take possession of any assets which would entitle any person to present a petition for winding-up.

10.6 Until ownership of and title to any Products owned by the Seller passes to the Buyer (and providing the Products are still in existence and have not been resold), the Seller shall be entitled at any time to repossess them and may enter upon any premises where they are stored or where they are reasonably thought to be stored for this purpose, and the Seller shall be fully indemnified by the Buyer for doing so. The Seller shall be entitled to use or dispose of such Products as it wishes. Unless the Seller expressly elects otherwise any contract between it and the Buyer for the supply of the Products shall remain in existence, notwithstanding any exercise by the Seller of any of its rights under this clause.

10.7 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any Products that remain the property of the Seller. However, if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **11.Laws and Regulations**

11.1 The Buyer shall comply with all laws and regulations relating to the ownership and use of the Products including health and safety requirements.

## **12.Termination**

12.1 The Seller shall be entitled to terminate this Contract forthwith by notice in writing to the Buyer if: -

12.1.1 the Buyer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or  
12.1.2 the Buyer (being a company) is unable to pay its debts within the meaning of section 570 of the Act or shall convene a meeting of its creditors or if a proposal shall be made for a scheme of arrangement within the meaning of Chapter 1 of Part 9 of the Act or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a receiver, examiner or similar officer is appointed over all or a substantial part of the undertaking or assets of the Buyer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Buyer (whether by the presentation of a winding up petition or otherwise) or for the making of an order appointing an examiner (other than for the purposes of reconstruction or amalgamation); or

12.1.3 the Buyer (being an individual) is unable to pay his debts within the meaning of section 570 of the Act or a petition is presented for his bankruptcy or the Buyer proposes or enters into an arrangement or compromise with his creditors whether by way of a Debt Settlement Arrangement or Personal Insolvency Arrangement or otherwise or the issuance of a Debt Relief Notice or a Protective Certificate or any other similar protection from his creditors; or

12.1.4 the Buyer (being a partnership) is unable to pay its debts or a petition is presented for the winding up of the Buyer under the provisions of the Partnership Act 1890 whether or not involving individual insolvency proceedings against the Buyer's partners and presented by creditors or by the partners themselves or such a petition is presented in conjunction with bankruptcy or individual insolvency or petitions against any partner or if the Buyer enters into any composition, scheme of arrangement or voluntary arrangement including the business and assets of the Buyer or the share of any partner or in the event of any action for a partnership account and/or a winding up of or a dissolution of the Buyer under the Partnership Act 1890 or if any of the states of affairs or events described in clause 12.1.3 exist or occur to or in relation to any of the partners or if the Buyer is dissolved; or

12.1.5 the Buyer ceases or threatens to cease to carry on business; or

12.1.6 there is at any time a material change in the management, ownership or control of the Buyer; or

12.1.7 the Buyer (being resident or engaged in carrying out its business in a jurisdiction other than Ireland) is subject to an event similar to any of those specified in sub-clauses 2.1.2 to 2.1.4; or

12.1.8 if the Seller reasonably apprehends that any of the events specified in clauses 12.1.2 to 12.1.4 inclusive is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2 In the event of termination by the Seller pursuant to clause 12.1 above then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Buyer and, if the Products have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall be entitled to charge interest (both before and after any judgement) at the rate of 4% over the base rate from the time of Allied Irish Banks plc from the time of such cancellation or suspension until the Seller receives payment.

12.3 In the event of termination by the Seller pursuant to clause 12.1 above the following clauses shall continue in force: Clause 8 (Warranty and Liability), Clause 9 (Intellectual Property Claims), Clause 10 (Risk and Title), Clause 12 (Termination) and Clause 13 (General).

### **13. General**

13.1 The remedies available to the Seller under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Buyer.

13.2 The failure or delay of the Seller to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

13.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

13.4 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at its principal place of business or to such other address which it has previously notified to the sending party and shall be deemed to have been given when actually received or, if sent by recorded delivery mail and returned marked "gone away" or to the like effect, on return of such recorded delivery mail.

13.5 The Contract is personal to the Buyer and the Buyer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of the Seller. The Seller may assign the Contract or any part of it to any person, firm or company.

13.6 Neither party shall be liable to the other if its performance of its obligations under the Contract (other than an obligation to pay money) is prevented or hindered due to any circumstances outside its control and the time for performance shall be extended by a reasonable period in such circumstances.

13.7 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.

13.8 The construction, validity, and performance of the Contract is governed by the law of Ireland and the parties accept the jurisdiction of the Irish Courts.