



Enterprise Ireland Terms & Conditions

WHEREAS:-

The following terms and conditions shall, unless otherwise agreed to in writing by Enterprise Ireland, apply to all purchases of goods by Enterprise Ireland:-

IT IS AGREED:-

1 PURCHASE

- 1.1 The supplier of the goods identified in a purchase order or contract, ("**Seller**"), shall sell and Enterprise Ireland shall purchase the goods on the execution by Enterprise Ireland of a purchase order or contract for the price agreed and shown thereon.
- 1.2 Goods supplied to Enterprise Ireland shall be deemed to be supplied on these terms and conditions, and no purported variation of these terms and conditions shall be valid unless specifically agreed by Enterprise Ireland.
- 1.3 Enterprise Ireland will not accept responsibility for any order which is not on an official order form and fully signed by an authorised officer.

2 APPLICABILITY AND LAW

These terms and conditions shall be governed and construed by the laws of Ireland and the parties agree to submit to the exclusive jurisdiction of the Irish Courts.

3 TITLE AND ACCEPTANCE

- 3.1 The title and property in the goods shall pass to Enterprise Ireland upon delivery or, in case of delivery by instalments, upon delivery of each instalment, unless payment or part payment has been made prior to delivery in which event the property in any materials, components or goods purchased or allocated by the Seller for the purpose of a Purchase Order shall immediately vest in Enterprise Ireland.
- 3.2 If any goods are delivered which fail to comply with the provisions of a Purchase Order (however slight the failure to meet those requirements) by reason of quality, quantity, price, or (without limitation) any other reason, or are delivered in error, without prejudice to any other rights, Enterprise Ireland may at its sole discretion and at Seller's risk and expense, either:-
 - 3.2.1 Return the goods or any instalment or any part thereof on the basis that a full refund for such goods shall be paid forthwith by the Seller; or
 - 3.2.2 require immediate replacement or rectification by delivery of goods which are in accordance with the Purchase Order; or
 - 3.2.3 require the immediate repair or remedy of any defects in the goods; or
 - 3.2.4 repair or remedy the defects or deficiencies itself or by others, at the Sellers expense; or
 - 3.2.5 purchase equivalent goods elsewhere at no additional cost to Enterprise Ireland; or
 - 3.2.6 refuse to accept any further delivery of goods upon continuous failure to meet delivery schedules or failure to meet quality, without liability. Enterprise

Ireland shall have the right to claim compensation for all its resulting costs and expenses. The making of any prior payment shall not prejudice Enterprise Ireland's right of rejection.

3.3 All consignments are to be addressed to Enterprise Ireland at the correct location and forwarded to the delivery address advised in the Purchase Order. Enterprise Ireland is under no obligation to accept delivery of goods in advance of the delivery or performance dates advised in the Purchase Order.

3.4 Time shall be of the essence in relation to the delivery of the goods.

4. PAYMENT

4.1 In consideration of the provision of goods, Enterprise Ireland shall pay Seller in accordance with agreed prices and rates ("charges") as stated in the Purchase Order.

4.2 Invoice and Monthly Statement

4.1.1 Seller shall issue an invoice for each individual Purchase Order.

4.1.2 The invoice shall be sent directly to Accounts Payable in the Finance Department Enterprise Ireland or e-mailed to accounts.payable@enterprise-ireland.com quoting the Purchase Order number.

4.1.3 The supplier name on the invoice must agree to the Purchase Order.

4.1.4 The invoice quantity, value and currency must be the same as on the Purchase Order.

4.1.5 The description on the invoice must reasonably match that on the Purchase Order.

4.1.6 Invoices received without a Purchase Order will be returned.

4.1.7 A single monthly statement shall be submitted by Seller within three (3) working days of month end. This statement shall include a breakdown showing all individual invoice charges for the month.

4.3 Tax Clearance Certificates

Where cumulative payments exceed €10,000 (including VAT), in a 12 month rolling period, a valid Tax Clearance Certificate from Irish Revenue must be submitted to Enterprise Ireland. This applies to both Irish Resident suppliers and Non Resident suppliers.

4.4 E-Day Bank Details for Payment

4.4.1 Enterprise Ireland (like all Irish Public Bodies) no longer sends cheques to businesses in Ireland.

4.4.2 To receive payment for your supply to Enterprise Ireland the business bank details must be submitted to accounts.payable@enterprise-ireland.com

4.5 Late Payments

4.5.1 Enterprise Ireland is bound by the Late Payment in Commercial Transactions Regulations 2012.

4.5.2 All public sector bodies must pay invoices within 30 days of receipt of invoice (invoice must be received by Accounts Payable, Finance, Enterprise Ireland) or the goods or service, whichever is the later.

- 4.5.3 After 30 days, interest and compensation is automatically applied to monies outstanding, if the invoice is correct and there are no outstanding queries in relation to it.
- 4.5.4 Invoices/delivery shall be queried by Enterprise Ireland within 10 working days of receipt in writing.
- 4.5.5 The rate of interest payable under this sub-clause shall be ECB main re-financing rate plus 8 percentage points.
- 4.5.6 Any queries on invoices should be addressed to accounts.payable@enterprise-ireland.com.

5. INSPECTION AND TESTING

Seller agrees to allow Enterprise Ireland's authorised representatives to visit its premises and any other location which is in any way associated with a Purchase Order to ensure that Seller is discharging its responsibilities efficiently and to Enterprise Ireland's satisfaction. Any such inspection or test, or failure to inspect or test, shall not in any way relieve Seller from any of its obligations hereunder.

6. INDEPENDENT CONTRACTOR

- 6.1 Seller is an independent contractor and neither it nor its sub-contractors or its or their employees or agents are the sub-contractor, agent or employee of Enterprise Ireland, and they shall not hold themselves out to be so.
- 6.2 Seller shall comply with all applicable laws, ordinances, statutes, orders, rules and regulations of any governmental authority having jurisdiction (hereafter "Laws") and shall, unless otherwise stipulated in the Purchase Order, obtain and pay for all licences and permits necessary for the provision of goods in accordance with such Laws.

7. WARRANTIES

- 7.1 Seller hereby warrants its power to enter into contracts and has obtained all necessary approvals to do so.
- 7.2 Seller hereby warrants that Seller has conveyed good title to Enterprise Ireland and that any goods supplied to Enterprise Ireland will be free from encumbrance.
- 7.3 Seller shall use its best endeavours to assign to Enterprise Ireland all benefits of the manufacturer's warranty, or any other guarantee which may apply to any goods supplied.
- 7.4 Seller warrants that all goods delivered hereunder are free from defects in design, material and in workmanship and that the goods are of merchantable quality and fit for the purposes intended.

8. INDEMNITY

- 8.1 If notified promptly in writing of any action brought against Enterprise Ireland based upon a claim that any parts provided or a modification made to the goods by Seller infringes any patent, trade mark, copyright or other intellectual property right, the Seller shall if called upon to do so by Enterprise Ireland defend such action at its expense and pay any costs and damages awarded and any expenses incurred by Enterprise Ireland in connection with the claim (including legal and other expert fees). If so called upon, Seller shall have sole control of the defence of any such action and all negotiations for its settlement or compromise.

- 8.2** If as a result of such claim Enterprise Ireland is prohibited from using or otherwise unable to use the goods or if such a claim is likely to be made, Seller will either procure for Enterprise Ireland the right to continue using the goods, or replace or modify the infringing parts without detracting from the goods overall performance so that it becomes non-infringing. The Seller shall indemnify Enterprise Ireland against any loss of use during such modification or replacement.
- 8.3** The Seller will not have any liability to Enterprise Ireland under any provision of this clause if the infringement, or claim thereof is based upon any modification of any item of the goods by a party other than Seller (other than in accordance with Seller's instructions).

9. LIMITATION OF LIABILITY

- 9.1** In no event will Enterprise Ireland's total liability for damages and actions based on contract or tort arising out of or in connection with a Purchase Order exceed the amount remaining due under the Purchase Order.
- 9.2** In no event shall Enterprise Ireland be liable for any indirect or consequential loss suffered by Seller.

10. FREEDOM OF INFORMATION

Please note Enterprise Ireland is subject to the Freedom of Information Act 2014. The following extract may be relevant to these terms and conditions:

A record in the possession of a service provider shall, if and in so far as it relates to the service, be deemed for the purposes of this Act to be held by the FOI body, and there shall be deemed to be included in the contract for the service a provision that the service provider shall, if so requested by the FOI body for the purposes of this Act, give the record to the FOI body for retention by it for such period as is reasonable in the particular circumstances.

11. CONFIDENTIALITY

Save as provided for by law, including the Freedom of Information Act 2014, both parties agree to maintain in confidence and not disclose, reproduce, copy any materials, documentation or specification which are provided to the other hereunder. Both parties shall take all reasonable steps to ensure that its employees, agents, Sub-contractors are bound by the same obligation.

12. FORCE MAJEURE

Neither party will be liable for failure or delay in the performance of its obligations under a Purchase Order due to causes beyond its control including but not limited to strikes, wars, revolutions, fires, floods, explosions, earthquakes or governmental regulations.

13. ASSIGNMENT

Seller shall not assign a Purchase Order or contract or any part thereof without Enterprise Ireland's prior written approval.

14. SUB-CONTRACTING

- 14.1** Seller shall not sub-contract all or any part of its obligations under a Purchase Order or contract (except delivery of goods) without Enterprise Ireland's prior written approval. No such approval shall create any contractual relationship between Enterprise Ireland and any sub-contractor.
- 14.2** Seller shall be fully responsible for those elements performed by its sub-contractors and for the acts and omissions of all its sub-contractors to the same extent as it is for the acts and omissions of persons directly employed by it.

15. NOTICES

- 15.1** Any demand, notice or communication shall be deemed to have been duly served:-
- 15.2** If delivered by hand, when left at the proper address for service (except that where such delivery is not on a working day, service shall be deemed to occur on the next following working day).
- 15.3** If given or made by prepaid post, two working days after being posted.
- 15.4** Any demand notice or communication shall be made in writing to the recipient at its registered offices, or in the case of Enterprise Ireland, East Point Business Park , Dublin 3 , Ireland (or such other address as may be notified in writing from time to time) marked for the attention of the Purchasing Manager, Enterprise Ireland.

16. WAIVER

- 16.1** Failure to exercise or delay in exercising on the part of either party any right, power or privilege of that party under these terms and conditions or under a Purchase Order shall not in any circumstances operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege in any circumstances preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 16.2** Any waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms.

17. HEADINGS

The headings to the clauses of these terms and conditions shall not affect the construction of these terms and conditions.

18. SEVERABILITY

If any part of these terms and conditions is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable, then such part shall be severed from the remainder of these terms and conditions which will continue to be valid and enforceable to the fullest extent permitted by law.

19. CANCELLATION

- 19.1** Enterprise Ireland may cancel an order in whole or in part at any time by written or electronic notice in the event that the Seller

- 19.1.1 fails to comply with any of these terms or conditions including but not limited to delivery terms; or
- 19.1.2 is subject to a receiver, liquidator or other similar officer being appointed over any or all of its property or assets; or
- 19.1.3 files a voluntary petition in bankruptcy; or
- 19.1.4 voluntarily ceases trading.

20. INSURANCE

If Seller's work involves operations by Seller on Enterprise Ireland's premises or at any of Enterprise Ireland's customers or at any place where Enterprise Ireland conducts operations, the Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and except to the extent that such injury is due solely and directly to Enterprise Ireland's negligence, the Seller shall indemnify Enterprise Ireland against all loss which may result in any way from any act or omission of Seller, its employees, servants, agents or sub-contractors and Seller shall maintain such public liability, personal injury and property damage and employer's liability and compensation insurance as will protect Enterprise Ireland from said risks and shall produce evidence of such insurance upon request by Enterprise Ireland.

21 DATA PROTECTION

- 21.1 Seller shall comply with all applicable data protection law including but not limited to the General Data Protection Regulation 2016 (the **GDPR**), the Data Protection Act 2018 and any other national implementing legislation ("**Data Protection Law**").
 - 21.2 In this clause 21, the terms "personal data", "processor", "controller", "data subject", "supervisory authority", "personal data breach" and "processing" have the meaning given to those terms in Data Protection Law. "Sub-processors" shall mean other processors that are used by Seller to process personal data.
 - 21.3 To the extent that Enterprise Ireland acts as a controller and Supplier acts as a processor, and the provision of the goods or services requires Supplier to process personal data relating to Enterprise Ireland's clients, employees, officers and/or other persons, at Enterprise Ireland's request or under Enterprise Ireland's instructions, Seller shall comply with its obligations as processor under this clause 21.
 - 21.4 The subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data, the categories of data subjects and Enterprise Ireland's obligations and rights as controller are as provided in the applicable agreement between Enterprise Ireland and Seller and/or further to written or oral instructions that Seller receives from Enterprise Ireland.¹
 - 21.5 In processing personal data that Enterprise Ireland provides to Seller, Seller warrants and represents that Seller is, and shall be for so long as Seller processes any such data, fully compliant with the Data Protection Law and Seller agrees:
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- 21.5.1 To only process the personal data on Enterprise Ireland's documented instructions, unless Seller is required to do so by EU or Irish law. Seller shall inform Enterprise Ireland of that legal obligation before processing, unless that law prohibits such information on important grounds of public interest.
- 21.5.2 Not to transfer the personal data to a recipient outside the EEA, without Enterprise Ireland's prior written consent, unless the transfer is subject to the terms of a contract incorporating the standard contractual clauses in the form adopted by the European Commission; the recipient is in a country the subject of an adequacy decision by the European Commission; or the transfer is to the US to an entity that is a certified member of the EU-US Privacy Shield scheme.
- 21.5.3 To impose a duty of confidentiality on any staff and subcontractors of Seller, where applicable, with access to the personal data.
- 21.5.4 To implement technical and organisational security measures appropriate to the risks of processing the personal data, including pseudonymisation and encryption of personal data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident, and a process for regularly testing, assessing and evaluating the effectiveness of security measures.
- 21.5.5 Not to engage another processor without Enterprise Ireland's prior specific or general written authorisation. In the case of general written authorisation, Seller shall inform Enterprise Ireland of any intended changes concerning the addition or replacement of other processors, thereby giving Enterprise Ireland the opportunity to object to such changes.
- 21.5.6 To require any sub-processor that Seller engages to process the personal data on Enterprise Ireland's behalf, to adhere to the same obligations that Seller undertakes in these terms and conditions, to ensure such processing meets the requirements of the Data Protection Law, and Seller will remain fully liable for any breach by a sub-processor of its obligations in relation to the processing of the personal data.
- 21.5.7 Insofar as possible, and taking into account the nature of the processing, assist Enterprise Ireland by appropriate technical and organisational measures to fulfil Enterprise Ireland's obligation to respond to individuals' requests to exercise their rights to transparent information, access, rectification, erasure, restriction of processing, objection and portability under Data Protection Law.
- 21.5.8 Taking into account the nature of the processing and the information available to Seller, assist Enterprise Ireland in ensuring compliance with its obligations under Data Protection Law in regard to data security; data breach notification to the supervisory authority and to individuals; carrying out Data Protection Impact Assessments and related consultations with supervisory authorities.

- 21.5.8.1 At Enterprise Ireland's request, delete or return all the personal data to Enterprise Ireland after the end of the provision of Seller's goods or services, and delete existing copies unless EU or Member State law requires storage of that personal data.
- 21.5.8.2 Make available to Enterprise Ireland all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR, and allow for and contribute to audits, including inspections, conducted by Enterprise Ireland or another auditor mandated by Enterprise Ireland.
- 21.5.8.3 Immediately inform Enterprise Ireland if, in Seller's opinion, an instruction of Enterprise Ireland infringes Data Protection Law.