

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES ("Terms")

The Buyer's attention is particularly drawn to the provisions of clause 11.4.

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply to these Terms.
"Buyer" means the person, firm or company who purchases Goods and any Services from the Company.
"Company" means Kaneco Limited having its registered office address at Unit M1, Ballymount Drive, Ballymount Road, Dublin 12.
"Contract" means any contract between the Company and the Buyer for the supply of Goods and any Services, incorporating these Terms.
"Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
"Services" means any service supplied by the Company to the Buyer.
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Clause headings do not affect the interpretation of these Terms.
- 1.6 A person includes a corporate body or unincorporated entity.

2. Application of Terms

- 2.1 Subject to any variation under clause 2.3 hereof, the Contract shall be on these Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or any other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Terms apply to all of the Company's supply of Goods and Services and any variation to these Terms and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods and any accompanying Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy the Goods and avail of the accompanying Services subject to these Terms.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods or begins to provide Services to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement/acceptance of order to the Buyer or the Company delivers the Goods or begins to provide Services to the Buyer. Any quotation from the Company shall be valid for the period stated thereon, otherwise for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.8 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Description

- 3.1 The quantity and description of the Goods and any Services shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and this is not a sale by sample unless otherwise agreed in writing by the Company.

4. Delivery of Goods

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place when the Goods are placed on the Buyer's means of transport or on a site or in a warehouse or at another delivery location nominated by the Buyer and agreed upon between the Company and the Buyer.
- 4.2 Unless otherwise agreed in writing by the Company, the Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be and not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these Terms, the Company shall not be liable for any direct, indirect or consequential loss (all three of which include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence) nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not (without limitation) provided appropriate instructions, documents, licences or authorisations:
- 4.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 4.5.2 the Goods shall be deemed to have been delivered; and
- 4.5.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The Buyer shall provide at the delivery point and at its expense adequate and appropriate equipment and manual labour for loading or unloading the Goods.
- 4.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 4.10 In the event that Goods are incorrectly ordered by the Buyer, the Company may accept return of the incorrectly ordered Goods provided that such Goods are returned in the condition in which they were in on despatch from the Company's premises and the Buyer pays to the Company a handling/re-stocking charge of a minimum of 25% of the price of the Goods. Goods agreed for return in such circumstances cannot be authorised for collection until the Company is in receipt of the compensating amount.
- 4.11 Subject to the provisions of clause 4.10, if the Buyer cancels an order which has been accepted by the Company, the amount due on the date of despatch of the Goods the subject of the order shall be due to the Company from the Buyer.

5. Non-Delivery

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company'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.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. Supply of Services

- 6.1 The Company shall provide the Services to the Buyer in accordance with any description or specification for Services provided by the Company to the Buyer.
- 6.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and the Company shall notify the Buyer in any such event.
- 6.4 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.

7. Price and Payment

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery and the price for the Services shall be calculated on a time and materials basis, full details of which will be set out in the Company's quotation to the Buyer.
- 7.2 The price for the Goods and any Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods and any Services.
- 7.3 Subject to clause 7.6, payment of the price for the Goods and any Services is due in Euros within 30 days of delivery, provision of Services or invoicing, whichever occurs first.
- 7.4 Time for payment shall be of the essence.
- 7.5 No payment shall be deemed to have been received until the Company has received cleared funds.
- 7.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 7.7 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 7.8 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Allied Irish Banks plc, accruing on a daily basis until payment is made, whether before or after any judgement.
- 7.9 Default in payment by the Buyer shall entitle the Company, without prejudice to any other rights it may have, to cancel the Contract and any other contracts with the Buyer or to suspend deliveries under any contract until payment in full has been received by the Company.

8. Quality and Warranties

- 8.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 8.2 The Company warrants that (subject to the other provisions of these Terms) upon delivery (and (i) for a period of 12 months thereafter in the case of Goods and (ii) for a period of 3 months thereafter in the case of spare parts for Goods) the Goods shall:
- 8.2.1 Be of merchantable quality within the meaning of the Sale of Goods and Supply of Services Act 1980;
- 8.2.2 Be reasonably fit for their purpose; and
- 8.2.3 Be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.
- 8.3 The Company shall not be liable for a breach of the warranties in clause 8.2 unless:-
- 8.3.1 the Buyer gives written notice of the defect to the Company within 1 day from when the Buyer discovers or ought to have discovered the defect and, if the defect is as a result of damage in transit within 1 day of receipt of the Goods by the Buyer; and
- 8.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 8.4 The Company shall not be liable for a breach of the warranties in clause 8.2 if:
- 8.4.1 the Buyer makes any further use of such Goods after giving such notice; or
- 8.4.2 the defect arises because of an accident or because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
- 8.4.3 the Buyer alters repairs or modifies such Goods without the written consent of the Company; or
- 8.4.4 the defect in the Goods arises from designs or specifications supplied to the Company by the Buyer; or
- 8.4.5 the defect arises as a result of excessive wear and tear, the Goods being incorrectly fitted, subjected to neglect, carelessness or abnormal conditions.
- 8.5 Subject to clauses 8.3 and 8.4, if any of the Goods do not conform with any of the warranties in clause 8.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract price provided that, if the Company so requests, the Buyer shall, at its expense, return the Goods or the part of such Goods which is defective to the Company.
- 8.6 If the Company complies with clause 8.5, it shall have no further liability for a breach of any of the warranties in clause 8.2 in respect of such Goods.
- 8.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms.

9. Risk and Retention of Title

- 9.1 The risk in the Goods shall pass to the Buyer on delivery.
- 9.2 The title/property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other sums which are or which become due to the Company from the Buyer on any account.
- 9.3 Until property in the Goods passes to the Buyer, the Buyer shall:
- 9.3.1 hold the Goods as fiduciary agent and bailee for the Company;
- 9.3.2 keep the Goods properly stored, protected, insured and identified as the Company's property;
- 9.3.3 be entitled to resell or otherwise dispose of the Goods in the ordinary course of the Buyer's business and the proceeds of any such resale or other disposal shall belong to the Company to whom the Buyer shall account on demand until the Price is paid in full;
- 9.3.4 not be entitled to use the Goods as security for any debts, loans or other financial arrangements.
- 9.4 The Company may require the Buyer at any time before property in the Goods passes to the Buyer to return the Goods to the Company and should the Buyer fail to do so, the Company or any agent of the Company will be entitled to enter the premises on which the Goods are stored and repossess them.
- 9.5 The Buyer's entitlement to resell or otherwise dispose of the Goods may at any time be revoked by the Company by notice to the Buyer if the Buyer is in default of payment for longer than seven days after the due date for payment or if the Company has bona fide doubts as to the solvency of the Buyer.
- 9.6 The Buyer's entitlement to resell or otherwise dispose of the Goods shall terminate automatically if a receiver is appointed over the Buyer's property or assets or a winding up order is made against the Buyer or the Buyer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting or makes arrangements or composition for creditors or commits an act of bankruptcy and without prejudice to any other right or remedy available to the Company, the Company shall be entitled to deliver any order or suspend further deliveries without any liability to the Buyer. If the Goods have already been delivered but not paid for the price of the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 9.7 The Buyer will ensure that it includes, in its contracts with its customers to whom the Company's Goods are resold or otherwise disposed of, a retention of title clause in identical terms to this clause 9 and will appoint the Company under such clause as its agent for the purposes of enforcing any such retention of title clause.

10. Confidential Information

- 10.1 Except with the Company's prior written consent, the Buyer shall not use (other than for purposes of fulfilling the Contract) or disclose to any other person any information relating to the Goods and/or Services or to the Contract, where such information is indicated by the Company either expressly or by implication as being confidential information; and
- 10.2 All drawings, plans, specifications, photographs or other similar documents submitted to the Buyer from the Company shall remain the property of the Company and the Buyer shall not copy, disclose to any third party or otherwise use such documents without the prior written consent of the Company.

11. Limitation of Liability

- 11.1 Subject to clauses 4, 5 and 8 of these Terms, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-distributors) to the Buyer in respect of:
- 11.1.1 any breach of these Terms;
- 11.1.2 any use made or resale by the Buyer of any of the Goods or of any product incorporating any of the Goods; and
- 11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by the Sale of Goods and Supply of Services Act 1980) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Terms excludes or limits the liability of the Company:
- 11.3.1 For death or personal injury caused by the Company's negligence; or
- 11.3.2 For any property for which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 11.3.3 For fraud or fraudulent misrepresentation.
- 11.4 Subject to clauses 11.2 and 11.3:
- 11.4.1 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lesser of the Contract price or the price invoiced by the Company to the Buyer for the 6 months prior to the date on which the liability occurs; and
- 11.4.2 The Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case (whether direct, indirect or consequential, or any claims for consequential compensation in whatsoever (whosoever) which arises out of or in connection with the Contract.
- 11.5 In the event that the Company manufactures, designs or installs Goods to the Buyer's specification, the Buyer hereby agrees to indemnify and keep the Company indemnified from and against all costs, losses, liabilities, damages, expenses, fines, penalties and obligations (which without prejudice to the foregoing shall include, without limitation, all legal and other professional fees and expenses) incurred by and all claims of any kind (whether public or private and including claims for equitable relief) made against the Company in respect of, relating to or arising out of any claim or action by any third party relating to any infringement of that third party's intellectual property rights. The Buyer will, at its own expense, defend or cause to be defended or, at its option, settle any claim. The Buyer will pay any final judgement entered against the Company in respect of all costs and expenses relating to any such claim.

12. Assignment

- 12.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. Force Majeure

- 13.1 The Company reserves the right to defer the date of delivery and/or the provision of Services or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. Communications

- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or by registered post or by facsimile:
- 14.1.1 (in the case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 14.1.2 (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- 14.2.1 if sent by registered post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 14.2.2 if delivered by hand, on the day of delivery; or
- 14.2.3 if sent by facsimile on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Company shall be marked for the attention of the Managing Director of the Company.

15. General

- 15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 15.2 Except as provided these Terms may not be amended, varied or modified except in writing signed by a duly authorised officer or representative of each of the Company and the Buyer.
- 15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5 If any provision of the Contract or these Terms is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable in whole or in part, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract/Terms and the remainder of such provision shall continue in full force and effect.
- 15.6 Any Terms which by their nature extend beyond expiration or termination of the Contract or these Terms shall survive and remain in effect.
- 15.7 These Terms shall override and supersede any previous negotiations, agreements or arrangements between the Company and the Buyer in relation to the supply of Goods and any Services.
- 15.8 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture or any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.9 Reference to writing or any other form of communication between the parties shall include facsimile and communications by electronic means.
- 15.10 The terminology used in the Company's trade literature shall apply to all quotations and other documents which may be furnished by the Company.
- 15.11 The formation, existence, construction, performance, validity and all aspects of the Contract and these Terms shall be governed by Irish law and the parties submit to the exclusive jurisdiction of the Irish courts.