

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

The Buyer's attention is particularly drawn to the exclusions and limitations of liability at Condition 8.

1. DEFINITIONS AND INTERPRETATIONS

In these Conditions of Sale:

1.1 the following words and expressions have the following meanings:

"Applicable Law", any (a) statute, statutory instrument, bye-law, order, regulation, directive, treaty, decree, decision of the European Council or law (including any common law or civil law judgment, demand, order or decision of any court, regulator or tribunal); (b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or (c) industry code of conduct or guideline, which relates to the Contract and/or the Goods

"Business Day", a day that is not a Saturday, Sunday or public or bank holiday in Ireland

"Buyer", the person named as the customer in the Order

"Conditions", these standard terms and conditions of supply, as varied from time to time in accordance with **Condition 13.4**

"Contract", the contract between the Seller and the Buyer for the supply of Goods formed in accordance with **Condition 2.2**

"Force Majeure Event", (a) act of God; (b) war, insurrection, riot, civil commotion, act or threat of terrorism; (c) lightning, earthquake, fire, flood, storm, or extreme weather condition; (d) theft, malicious damage; (e) strike, lockout, industrial dispute (whether affecting the workforce of a party and/or any other person); (f) breakdown or failure of plant or machinery; (g) inability to obtain essential supplies or materials; (h) change in Applicable Law; (i) any failure or default of a supplier or sub-contractor of the Seller; or (j) any event or circumstance to the extent it is beyond the reasonable control of the Seller

"Goods", the goods set out in the Order

"Information", any samples, descriptions and/or information, whether of a technical nature or not, relating to the Goods including without limit quantities, measurements, dimensions, weights, specifications, designs, drawings or descriptive matter

"Insolvent", a party (a) has a receiver, administrator or provisional liquidator appointed (b) is subject to a notice of intention to appoint an administrator; (c) passes a resolution for its winding-up; (d) has a winding up order made by a court in respect of it; (e) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring previously approved in writing by the other party); or (f) ceases to carry on business

"Intellectual Property", all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trademarks, registered designs, models, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions

"Order Acknowledgement", the Seller's written acceptance of the Order set out in the Seller's standard order acknowledgement form / email

"Order", the Buyer's acceptance of the Seller's quotation, specifying (a) the company details of the Buyer; (b) the Price; (c) the quantity of Goods; (d) delivery address; (e) the specification of vehicle for delivery; (f) brick type; and such other information as required by the Seller from time to time

"Price(s)", the agreed prices for the Goods set out in the individual customer account for the Buyer as those prices may be varied from time to time in accordance with **Condition 6.6**

"Seller", Clayblock Limited trading as Clayblock Limited (registered number 596300) whose registered office is; Clayblock Limited, Barmona, Monamolin, Gorey, Co. Wexford

"Specification", the written technical specification for the Goods

"VAT", value added tax

HEALTH & SAFETY INFORMATION ABOUT THE INTENDED USE OF THE GOODS IS AVAILABLE AND IT IS THE RESPONSIBILITY OF THE BUYER TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.

1.2 all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions;

1.3 unless the context otherwise requires:

1.3.1 references to the singular include the plural and vice versa and references to any gender include every gender;

1.3.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.4 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate

legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;

1.5 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;

2. CONTRACT FORMATION

2.1 Any quotation given by the Seller will be valid for the period specified in the quotation, or if no such period is stated, 60 days from and including its date, unless the Customer is notified of a price adjustment by the Seller. Any quotation will constitute an invitation to treat and not an offer.

2.2 The Order constitutes an offer by the Buyer to purchase Goods from the Seller on these Conditions. A contract for the supply of Goods by the Seller to the Buyer on these Conditions will be formed when the Seller accepts the Order by issuing an Order Acknowledgement to the Buyer. For the avoidance of doubt, the Seller is under no obligation to accept the Order.

2.3 These Conditions are the only terms and conditions on which the Seller will supply goods to the Buyer and will apply to the exclusion of all other terms and conditions including any terms which the Buyer purports to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.

2.4 The Buyer must ensure the accuracy of the terms of any Order including any delivery dates and any information provided by the Buyer and provide such dates and information within a sufficient time to enable the Seller to perform the Contract in accordance with its Conditions.

3. THE GOODS

3.1 All Information issued or published by the Seller whether in catalogues, brochures, websites, other promotional material or otherwise are for the sole purpose of giving an approximate idea of the relevant Good. Goods may vary (for example in shade or texture or dimensional tolerances = or - 5mm) from any description provided by the Seller.

3.2 The Seller will be entitled at any time to vary the design, finish or Specification of the Goods and/or their packaging; and/or substitute any materials which are used in the Goods and which are unavailable for any reason with alternative materials, to the extent that this does not materially affect their quality or performance; or this is necessary to comply with Applicable Law. The Seller will use reasonable endeavours to give the Buyer prior written notice of any such variation or substitution.

4. DELIVERY

4.1 If delivery is to take place by collection by the Buyer, the Buyer will collect the Goods from the address specified in the Order Acknowledgement. The Buyer will collect the Goods during Business Hours within a period of 7 Business Days from and including the day on which the Seller or its representative, informs the Buyer that the Goods are available for collection. Delivery of the Goods will be deemed to occur:

4.1.1 at the time of collection (prior to loading); or

4.1.2 if earlier, on expiry of the period for collection specified in this **Condition 4.1**.

4.2 If the Seller is to deliver the Goods, the Seller will deliver the Goods to the address specified in the Order. The Buyer will be responsible for ensuring that the correct delivery address is recorded in the Order. The Buyer will be responsible for off-loading the Goods from the delivery vehicle, unless the Order states that it is the Seller's responsibility. The Seller will inform the Buyer in advance of the date on which the Goods will be delivered. Delivery of the Goods will be deemed to occur when they arrive at the delivery address.

4.3 Where the Goods are to be delivered, delivery will be made only to the nearest convenient point to site of works on a safe hard road. The Seller reserves the right to refuse to deliver the Goods to sites considered at the sole discretion of the driver to be unsuitable.

4.4 The Seller will be entitled, at its discretion, to deliver the Goods by separate instalments. The Seller will be entitled to invoice the Price for each instalment separately in accordance with **Condition**

6.7. Each instalment will be deemed to be a separate contract and no cancellation or termination of any one contract relating to an instalment will give the Buyer the right to cancel or terminate any other contract.

4.5 The Seller will not be responsible for the collection or removal of packaging and any associated costs will be the Buyer's sole responsibility.

4.6 The Seller will use reasonable endeavours to make available for collection or deliver the Goods, on the estimated delivery date set out in the Order Acknowledgement and if no time is stated within a reasonable time. Time for delivery of the Goods will not be of the essence of the Contract. Any delivery dates given by the Seller are estimates only. If despite those endeavours, the Seller is unable for any reason to fulfil any delivery or performance on the specified date, such failure will not entitle the Buyer to cancel the Order unless and until the Buyer has given 60 Business Days' prior notice to the Seller requiring the delivery to be made and the Seller has not fulfilled the delivery in that period.

4.7 The Seller's sole liability for failure to deliver the Goods will be limited to the Price (excluding VAT) paid by the Buyer in obtaining replacement goods of equivalent description and quality in the cheapest market available, less the Price of the Goods.

4.8 Save as provided in **Condition 4.6** the Buyer will not be entitled to cancel the Contract or to reject any Goods by reason of a delay in delivery or failure to deliver.

4.9 If delivery occurs and the Buyer fails to take or make arrangements to accept delivery of the Goods or if delivery is delayed by the Buyer or the Seller is unable to deliver because of inadequate access or instructions delivery shall be deemed and the Seller may do any one or more of the following (without prejudice to any other right or remedy the Seller may have):

- 4.9.1 store or arrange for storage of the Goods until the Buyer collects or accepts delivery of them or they are disposed of under **Condition 4.9.2** (as applicable) and to take such action as it considers necessary to attempt to re-deliver the Goods to the address specified in the Order;
- 4.9.2 following written notice to the Buyer, treat the Contract as repudiated by the Buyer and dispose of the Goods in any way it sees fit, including by sale to another person. If the Seller sells any of the Goods under this **Condition 4.9.2** at a price which is less than the relevant Price the Seller will be entitled to charge the Buyer for the shortfall;
- 4.9.3 charge the Buyer for all costs and expenses which the Seller incurs under **Conditions 4.9.1** and **4.9.2**;
- 4.9.4 make additional charges for failed Delivery;
- 4.9.5 allocate new Delivery dates;
- 4.9.6 invoice the Buyer for the Goods;
- 4.9.7 terminate this Contract without liability on the Seller's part; and/or
- 4.9.8 recover from the Buyer all costs and losses incurred by the Seller.
- 4.10 The Buyer will indemnify the Seller on demand against all claims, losses, liabilities, damages, costs and expenses (including but not limited to all direct, indirect and consequential losses), the Seller will incur or suffer as a result of:
 - 4.10.1 loading, unloading or delivery in accordance with the Buyer's instructions;
 - 4.10.2 manufacturing or applying any process to the Goods in accordance with the Buyer's Specification;
 - 4.10.3 any third party claim arising from the supply of the Goods; and/or
 - 4.10.4 any third party claim that the Specification and/or any Information supplied by the Buyer infringes any such third party intellectual property rights.
- 4.11 The amount the Buyer is liable to pay under this indemnity will be reduced in proportion to the extent that such claims, losses, liabilities, damages, costs and expenses are due to the Seller's negligence.

5. INSPECTION AND CONDITION OF GOODS

- 5.1 The Buyer shall inspect the Goods at the place and time of delivery and/or collection but nothing in these Conditions shall require the Buyer to break packaging and/or unpack Goods which are intended to be stored before use ("**Reasonable Inspection**").
- 5.2 If the Seller delivers Goods to the Buyer no claim for shortages or loss or damage to the Goods in transit or failure of the Goods to conform to the Contract apparent on Reasonable Inspection, including material variations in colour, shape, size, texture or quantities ("**Apparent Defects**") will be considered unless the Buyer notifies the Seller by telephone as soon as reasonably possible on delivery by endorsement on delivery document and separate written notification is received by the seller within 3 Business Days of Delivery. If the Buyer has not given notice as specified in this Condition the Goods will be deemed to have been delivered in the quantities shown in the delivery documents and will be deemed to have been accepted and the Buyer shall not be entitled to reject the Goods.
- 5.3 Subject to **Condition 8.4**, the Seller's liability for loss or damage for Apparent Defects is limited to supplying the Goods as ordered and the Seller shall not be liable for any damages howsoever caused. The Buyer remains liable to pay the Price of other Goods delivered in accordance with the Contract. Any other claim for damages is subject to **clause 8**.
- 5.4 The Seller shall be given reasonable opportunity to inspect the Goods which are the subject of a complaint and investigate such complaints before the Goods are used.
- 5.5 Subject to **Condition 3.1, 3.2** and **5.6**, the Seller warrants that upon delivery, the Goods will:
 - 5.5.1 conform to the Specification in all material respects; and
 - 5.5.2 be free from material defects in design, materials or workmanship.
- 5.6 The Seller shall not be liable for a breach of any of the warranties in **Condition 5.5**:
 - 5.6.1 if the defect would have been apparent on Reasonable Inspection under **Condition 5.1** unless the Buyer gives the Seller notice in accordance with that Condition;
 - 5.6.2 unless the defect is discovered within 36 months of the date of delivery and the Seller is given written notice of the defect within 15 Business Days of it being discovered;
 - 5.6.3 if the Buyer fails to adhere to the terms of payment set out in the Conditions;
 - 5.6.4 unless after discovery of the defect the Seller is given a reasonable opportunity to inspect the Goods before they are used or fixed or in any way interfered with;
 - 5.6.5 if in the opinion of the Seller the Goods comply with their description notwithstanding any variation in colour and/or texture;
 - 5.6.6 if the defect arises as a result of the Goods being used for a purpose other than that specified to the Buyer by the Seller and acknowledged in writing by the Buyer;
 - 5.6.7 if the defect arises from fair wear and tear; and/or
 - 5.6.8 if the defect arises from the Buyer's negligence, misuse, alteration or repair of the Goods, failure to follow and Applicable Law, storage of the Goods in unsuitable conditions or use of the Goods in abnormal working conditions.
- 5.7 Subject to **Condition 5.6** if any of the goods do not conform with any of the warranties in **Condition 5.5** the Seller shall at its option replace such Goods or refund the Price.
- 5.8 If the Seller complies with **Condition 5.7** it shall have no further liability for a breach of any of the warranties in **Condition 5.5** in respect of such Goods.
- 5.9 If the Goods are supplied manufactured or processed to Information supplied by the Buyer or as approved by the Buyer or any third person nominating or specifying the Goods then subject to

Conditions 8.2 and 8.4 the Seller shall not be under any liability for damages howsoever caused or under **Condition 5.7** of these Conditions as the case may be except in the event of:

5.9.1.1 fraudulent misrepresentation by the Seller;

5.9.1.2 misrepresentation where the representation was made or confirmed in writing by a director;

5.9.1.3 non-compliance with such Information; or

5.9.1.4 breach of a written warranty signed by a director that the Goods are fit for that purpose.

6. PRICE AND PAYMENT

6.1 The Buyer will pay the Prices to the Seller in accordance with this **Condition 6**.

6.2 All invoices will be payable by the Buyer by the date specified in the Order Acknowledgement / email (or such other date as specified by the Seller from time to time) following delivery. All payments will be made in the currency stipulated in the invoice (Euro).

6.3 If the Buyer exhausts its account credit limit, payment will be required prior to the normal payment date, before further deliveries will be made.

6.4 The Prices are exclusive of the costs specified in the Order Acknowledgement which will be payable by the Buyer in addition to the Prices.

6.5 Any sum payable under the Contract is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.

6.6 The Seller will be entitled to vary the Prices at any time by giving written notice to the Buyer to reflect any variation in the cost of supplying the Goods which arises as a consequence of any change in law/any variation in the Buyer's requirements for the Goods or any information provided by the Buyer being inaccurate or incomplete or any failure or delay by the Buyer in providing information.

6.7 The Seller will be entitled to invoice the Buyer for the Prices for the Goods and any costs specified in the Order Acknowledgement, payable by the Buyer in addition to the Prices following delivery.

6.8 Time will be of the essence in respect of the timescales for payment of invoices set out in **Condition 6.2** and **6.3** and any timescales which may be substituted for them in accordance with **Condition 13.4**.

6.9 Notwithstanding any purported contrary appropriation by the Buyer, the Seller will be entitled, by giving written notice to the Buyer, to appropriate any payment by the Buyer to any invoice issued by the Seller.

6.10 If any sum payable under the Contract is not paid on or before the due date for payment the Seller will be entitled to charge the Buyer interest on that sum at 4% per annum above the base lending rate from time to time of Allied Irish Banks from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.

6.11 Notwithstanding **Condition 6.10**, the Seller may, at its sole discretion and as an alternative to **Condition 6.10**, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6.12 If the Buyer fails to make any payment due to the Seller under the Contract or any other contract between the Buyer and the Seller on or before the due date, the Seller will be entitled to withhold further deliveries of the Goods until payment of all overdue sums has been made.

6.13 If the Buyer fails to make any payment due to the Seller under the Contract on or before the due date, or if the Seller has any reasonable concerns regarding the Buyer's financial standing the Seller will be entitled, by giving written notice to that effect to the Buyer, to:

6.13.1 vary the invoicing and/or payment terms set out in the Contract; and/or

6.13.2 issue invoices prior to Goods being made available for collection/delivered and the Seller will not be required to make available for collection/deliver the Goods until the relevant invoice has been paid in full.

6.14 If the Buyer fails to make any payment due to the Seller under the Contract on or before the due date or if the Buyer becomes Insolvent or if the Seller has any reasonable concerns regarding the Buyer's financial standing all invoices issued will immediately become due and payable.

6.15 Save as otherwise expressly provided in these Conditions or required by law, all payments to be made by the Buyer to the Seller under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.

6.16 Following expiry or termination of the Contract:

6.16.1 the Seller will be entitled to invoice all Prices and any costs specified in the Order Acknowledgement which have not yet been invoiced; and

6.16.2 all invoices (including any invoices issued under **Condition 6.16.1**) will become immediately due and payable by the Buyer.

6.17 Credit is granted at the sole discretion of the Seller and may be reviewed at any time. The Seller reserves the right to refuse to execute any Order or the Contract if the credit rating of the Buyer adversely changes and is not satisfactory to the Seller or its insurers.

7. PASSING OF RISK AND TITLE

7.1 Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with **Condition 4.9**).

7.2 Subject to **Condition 7.3** and **7.4**, legal and beneficial ownership of the Goods shall remain with the Seller until the Buyer pays in full (in cleared funds) all sums due to it in respect of: the Price of the Goods and any other sums which are or which become due to the Seller from the Buyer whether in respect of this Contract or any account whatsoever.

7.3 The Buyer may resell the Goods in the ordinary course of its business and, if it does so, legal and beneficial ownership of Goods will pass to the Buyer immediately prior to the Buyer entering into a binding contract for the sale of those Goods.

7.4 The Seller may, by giving written notice to the Buyer, pass legal and beneficial ownership of the Goods (or any of them) to the Buyer at any time before such ownership would otherwise have passed to the Buyer.

7.5 Until ownership of the Goods has passed to the Buyer, the Buyer will:

7.5.1 hold the Goods on a fiduciary basis as the Seller's bailee;

7.5.2 store the Goods (at no cost to the Seller) separately from any other goods of the Buyer or any third party and the Buyer shall not interfere or destroy any identification marks, labels, batch numbers or serial numbers on the Goods so that the Goods remain readily identifiable as the Seller's property;

7.5.3 not without the prior written consent of the Seller, annex any Goods to any premises;

7.5.4 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller, and will whenever requested by the Seller produce a copy of the policy of insurance and do nothing and not omit to do anything which in consequence permits any insurer to refuse to indemnify the Buyer in full in accordance with the terms of any insurance policy maintained in respect of the Goods in respect of any claim made under any such insurance policy and ensure that any insurance proceeds received by the Buyer under the relevant policy are applied to repairing damaged Goods or, in event that they are not so applied, hold such proceeds on trust for the Seller;

7.5.5 at the Seller's request the Buyer will notify its customers that the Seller remains the legal owner of the Goods until the Seller receives payment in accordance with **Condition 6** and the Seller reserves the right to label the Goods accordingly;

7.6 The Buyer may use the Goods in the ordinary course of its business before ownership has passed to it.

7.7 If the Buyer resells any Goods, the Buyer will hold such part of the proceeds of sale as represents the amount owed by the Buyer to the Seller in trust for the Seller and will account to the Seller accordingly.

7.8 The Buyer's right to possession, use and resale of the Goods will terminate immediately if, before ownership of the Goods passes to the Buyer in accordance with **Conditions, 7.2, 7.3 or 7.4**:

7.8.1 the Buyer becomes Insolvent;

7.8.2 the Seller gives the Buyer written notice that it has any reasonable concerns regarding the financial standing of the Buyer ;

7.8.3 the Buyer fails to pay any sum due to the Seller under the Contract on or before the due date or any other contract between the Seller and the Buyer;

7.8.4 the Buyer encumbers or in any way charges any of the Goods; or

7.8.5 the Contract expires or terminates for any reason.

7.9 Once the Goods are delivered to the Buyer, the Seller will be entitled to recover payment for the Goods (including by way of an action for the price) notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.10 The Buyer grants, and will procure that the owner of any third party premises grants, the Seller, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are used or may be stored in order to inspect them, or, where the Buyer's right to possession, use and resale has terminated, to recover them.

7.11 If the Buyer's right to possession, use and resale of the Goods terminates in accordance with **Condition 7.8**, the Seller will be entitled to issue the Buyer with a credit note for all or any part of the price of the Goods together with value added tax thereon.

7.12 The Seller's rights contained in this **Condition 7** will survive expiry or termination of the Contract however arising.

8. EXCLUSIONS AND LIMITATIONS OF LIABILITY

The Buyer's attention is particularly drawn to this Condition.

8.1 Subject to **Condition 8.4**, the Seller's entire liability for any non-delivery of Goods or failure to deliver the Goods in accordance with the timescales set out or referred to in the Contract will be as set out in **Condition 4.7** and the Seller will have no other liability for any such non-delivery or failure to deliver.

8.2 Subject to **Condition 8.4**, the Seller's maximum aggregate Liability will be limited to the Price of the Goods.

8.3 The Seller will have no liability to the Buyer for any:

8.3.1 loss of profit (whether direct, indirect or consequential);

8.3.2 loss of revenue or loss of business (in each case whether direct, indirect or consequential);

8.3.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);

8.3.4 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);

8.3.5 loss of bargain (whether direct, indirect or consequential);

8.3.6 liability of the Buyer to third parties (whether direct, indirect or consequential); or

8.3.7 indirect, consequential or special loss,

subject always to **Condition 8.4**.

8.4 Nothing in these Conditions shall exclude or restrict the Seller's liability to the Buyer for:

8.4.1 death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
8.4.2 its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
8.4.3 breach of its obligations arising under section 12 Sale of Goods Act 1979;
8.4.4 breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982; or
8.4.5 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

9. INTELLECTUAL PROPERTY

9.1 Nothing in the Contract will operate to transfer to the Buyer or to grant to the Buyer any licence or other right to use any of the Seller's Intellectual Property Rights, save that the Buyer may use the Seller's Intellectual Property Rights in the Goods solely to the extent necessary to use the Goods for the purpose for which they were supplied.

10. BUYER OBLIGATIONS

10.1 The Buyer will:

10.1.1 provide the Seller with all such Information and assistance as the Seller may reasonably require from time to time to perform its obligations or to exercise any of its rights under the Contract;
10.1.2 notify the Seller within 24 hours of: any discussions, negotiations or proposals with any creditors in relation to a debt or debts owed to any of them or any discussions relating to insolvency; and
10.1.3 comply with the Seller's instructions in connection with any product recall initiated by the Seller involving the Goods (or any of them).

10.2 Notwithstanding any other provision of the Contract the Seller will not be in breach of the Contract to the extent its failure to perform or delay or defect in performance of its obligations under the Contract arises as a result of:

10.2.1 any breach by the Buyer of its obligations contained in the Contract ;
10.2.2 the Seller relying on any incomplete or inaccurate information provided by a third party; or
10.2.3 the Seller complying with any instruction or request by the Buyer or one of its employees.

11. TERMINATION

11.1 If the Buyer:

11.1.1 commits a material breach of the Contract which cannot be remedied; or
11.1.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within 30 days of a written notice referring to this **Condition 11.1.2**, setting out the breach and requiring it to be remedied being given by the Seller,
the Seller may terminate the Contract immediately without giving further written notice to that effect to the Buyer.

11.2 A material breach can be remedied if the Buyer can comply with the relevant obligation in all respects other than as to time of performance unless time of performance of such obligation is of the essence.

11.3 **Condition 11.1.2** will not apply to any failure by the Buyer to make any payment due to the Seller under the Contract on or before the due date. **Condition 11.5** will apply instead to any such failure.

11.4 A material breach will mean a breach by the Buyer which:

11.4.1 would deprive the Seller of a substantial benefit under the Contract which the Seller would otherwise derive under the Contract;
11.4.2 would expose the Seller to liability; or
11.4.3 would be a repudiatory breach at common law,
and a breach of any of the following provisions: **6.2 and 6.3** will be deemed (without limitation) to be a material breach.

11.5

11.5.1 Subject to **Condition 11.5.2**, the Seller may terminate the Contract immediately by giving not less than 7 days' written notice to that effect to the Buyer if the Buyer fails to make any payment due to the Seller under the Contract on or before the due date.

11.5.2 The right of termination set out in this **Condition 11.5** will not arise in respect of any failure to make payment of any sum to the extent that such sum is and remains the subject of a bona fide dispute (where any sum which is not part of the bona fide dispute has been paid in accordance with the Contract) unless the Seller has reasonable concerns regarding the Buyer's financial standing, in which case this **Condition 11.5.2** shall not apply.

11.6 The Seller may terminate the Contract immediately by giving written notice to that effect if the Buyer becomes Insolvent. The Buyer will notify the Seller immediately upon becoming Insolvent.

11.7 Following expiry or termination of the Contract:

11.7.1 **Conditions 1, 4.9, 5.6, 5.8, 5.9, 6, 7, 8, 11.7.1, 13, 14, 15** will continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract; and

11.7.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

12. FORCE MAJEURE

12.1 The Seller will not be in breach of the Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.

12.2 If a Force Majeure Event occurs:

12.2.1 the Seller will as soon as reasonably practicable after becoming aware of the Force Majeure Event give written notice to the Buyer that the Force Majeure Event has occurred giving details of the nature, extent and anticipated duration of the Force Majeure Event and the expected impact of the Force Majeure Event on its ability to perform its obligations; and

12.2.2 the Seller will use reasonable endeavours, without being required to incur additional expenditure, to mitigate the effects of the Force Majeure Event.

12.3 Subject to **Condition 12.4**, the Buyer will not be in breach of the Contract or otherwise liable to the Seller for any failure to perform or delay in performing its obligations under the Contract to the extent that this is due to a Force Majeure Event affecting the Seller.

12.4 If the Seller is affected by a Force Majeure Event the Buyer will continue to pay the Seller's invoices in accordance with **Condition 6.2** in respect of any Goods which the Seller continues to supply notwithstanding the occurrence of the Force Majeure Event.

12.5 If the Seller is unable to deliver/make available for collection under **Condition 4.1 and 4.2** all or substantially all of the Goods for a period of more than 30 days or more in a period of three months due to a Force Majeure Event which gives rise to relief from liability under **Condition 12.1**, either party will be entitled to terminate the Contract by giving not less than 7 days' written notice to that effect to the other party.

13. GENERAL

13.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

13.1.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in the Contract; and

13.1.2 nothing in this **Condition 13.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

13.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

13.3 If any term of the Contract is found by any court or body of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

13.4 No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative/director on behalf of each of the parties.

13.5 Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

13.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

13.7 The Seller's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in **Condition 8** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract. The parties may vary or rescind the Contract without the consent of the Seller's employees, agents or sub-contractors.

13.8 Save as provided in **Condition 13.7**, the parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

13.9 The Seller will be entitled to assign, transfer, license, charge, hold on trust, sub-contract or deal in any other manner with all or any part of its rights or obligations under the Contract.

13.10 The Buyer will not be entitled to assign, delegate, license, charge, hold on trust, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the Seller's prior written consent, save that the Buyer may subcontract its obligations to collect the Goods under **Condition 4.1**.

14. NOTICE

14.1 Subject to **Condition 14.3**, any notice or other communication given under or in connection with the Contract will be in writing, in the English language and:

14.1.1 sent to the relevant party's address by pre-paid An Post service; or

14.1.2 delivered to or left at the relevant party's address; or

14.1.3 by email; and

in the case of any notice or other communication to be given to us, marked for the attention of our specified representative. Our address is set out below and your address is detailed in the Order, and may be changed by the relevant party giving at least 7 Business Days notice in accordance with this

Condition 14:

Clayblock Limited, Barmona, Monamolin, Gorey, Co. Wexford Y25 HR50.

14.2 Any notice or communication given in accordance with **Condition 14.1** will be deemed to have been served:

14.2.1 if given as set out in **Condition 14.1.1**, at 9.00 a.m. on the day after the date of posting; and

14.2.2 if given as set out in **Condition 14.1.2**, at the time the notice or communication is delivered to or left at that party's address, and

14.2.3 if given as set out in **Condition 14.1.3** at the time of transmission, provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

14.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of **Condition 14.1** were complied with. This **Condition 14** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

15. GOVERNING LAW AND JURISDICTION

15.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the laws of The Republic of Ireland, The court of Ireland have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including any non-contractual obligations).