

## Conditions of Sale

### 1. Definitions

1.1 In these Conditions:

**“Buyer”** means the person who accepts a quotation of the Company for the sale of the Goods or whose Order for the Goods is accepted by the Company;

**“Company”** means Amari Ireland Limited, a private company registered in Ireland with limited liability under company number 42861 whose registered office is at Amari House, Unit 17 Fonthill Industrial Park, Fonthill Road, Clondalkin, Dublin 22;

**“Conditions”** means the standard terms and conditions of sale set out in this document;

**“Contract”** means the contract for the purchase and sale of the Goods which shall comprise these Conditions; any special terms and conditions agreed in Writing between the Buyer and the Company; and the Order;

**“Goods”** means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions;

**“Order”** means an order by the Buyer which is accepted by the Company; and

**“Writing”** includes telex, cable, e-mail, facsimile transmission and comparable means of communication.

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

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

### 2. Contract

2.1 These terms apply to all contracts of sale between the Company and the Buyer.

2.2 The contract of sale shall be formed on the acceptance of the Order by the issue of a Contract by the Company. The Contract shall constitute the entire agreement between the parties to the exclusion of any other terms and conditions or any other agreement, arrangement or understanding which is made or purported to be made between the Company and the Buyer whether written or oral, relating to its subject matter.

- 2.3 No variation, waiver or addition to these conditions shall be valid unless previously agreed in Writing by the Company and all terms appearing in the Buyer's Order or other documents which are inconsistent with these conditions shall have no effect.
- 2.4 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 An "Export Sale" is a contract of sale where the goods are to be exported from Ireland.
- 2.6 The Company may sub-contract the services of any person or company for the purpose of fulfilling its obligations hereunder in whole or in part. The Company enters into this Contract for and on behalf of itself and its servants, agents and sub-contractors and every references in these Conditions to the "**Company**" shall be deemed each of the Company's servants, agents and sub-contractors.

### **3. Condition**

- 3.1 If the contract price exceeds €20,000 this Contract must be authorised on behalf of the Company by any one director of the Company. In the event that a sale contract in which the contract price exceeds €20,000 is not authorised by a director the said sale contract shall be voidable at the option of the Company. Should the Company exercise this option the contract shall be void and to no effect and neither party shall have any claim whatsoever against the other.

### **4. Quotations**

- 4.1 All tenders or quotations by the Company must be accepted within seven (7) days only from the date thereof but the Company reserves the right to withdraw the tender or quotation without prior notice within the said seven (7) days.
- 4.2 No quotation or tender by the Company nor the publication by the Company of any other documents shall place the Company under any duty or liability or the Buyer and whilst all care will be taken in the production of such tender, quotation and/or other document as aforesaid the accuracy thereof is not guaranteed and the same shall not form part of any contract of sale between the Company and the Buyer, nor be deemed to be nor constitute a representation by the Company to enter into or finalise a contract of sale.

### **5. Orders and Specifications**

- 5.1 No Order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.

- 5.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 5.3 Subject to clauses 5.7 and 5.8 below, the quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's Order (if accepted in Writing by the Company in accordance with clause 2.2).
- 5.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- 5.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU law requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.
- 5.6 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit and other indirect losses), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 5.7 The Company reserves the right to supply Goods which may vary in weight by up to 10% from the amount stated in the Contract. Where the Company under-delivers Goods by an amount not exceeding 10% by weight, the Buyer acknowledges that this shall not be a breach of Section 13 of the Sale of Goods and Supply of Services Act 1980 and the delivery of such lesser amount of Goods shall be deemed to be delivery under the Contract and shall be paid for by the Buyer at the rate set out in the Contract. Where the Company delivers Goods by an amount no greater than 10% by weight of the amount set out in the Contract, the Buyer acknowledges that this shall not be a breach of Section 13 of the Sale of Goods and Supply of Services Act 1980 and the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event of the Company delivering an amount greater than 10% by weight in excess of the quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Company (in the same condition as delivered to the Buyer) Provided Always that such Goods must be returned no later than fourteen (14) days from the date of delivery.

5.8 The Company reserves the right to supply Goods which may vary in dimension by up to 10% from the amount stated in the Contract. Where the Company under delivers Goods by an amount not exceeding 10% by dimension the Buyer acknowledges that this shall not be a breach of Section 13 of the Sale of Goods and Supply of Services Act 1980 and the delivery of such lesser amount of Goods shall be deemed to be delivery under the Contract and shall be paid for by the Buyer at the rate set out in the Contract. Where the Company delivers goods by an amount no greater than 10% by dimension of the amount set out in the Contract the Buyer acknowledges that this shall not be a breach of Section 13 of the Sale of Goods and Supply of Services Act 1980 and the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event that the Company delivering an amount greater than 10% by dimension in excess of the quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Company (in the same condition as delivered to the Buyer) Provided Always that such Goods must be returned no later than fourteen (14) days from the date of delivery.

## **6. Price**

6.1 The contract price in this Contract is based on information available to the Company as the date thereof and if between that date and the date on which the Goods are delivered to the Buyer there shall be any variation in the cost of materials, labour or otherwise to the Company the contract price may in the absolute discretion of the Company be adjusted to take account of such variation.

6.2 Except as provided in Clause 12.2 the contract price shall be paid to the Company within thirty (30) days (or such extended period as is agreed in Writing by the Buyer and the Company) of delivery of the Invoice to the Buyer.

6.3 Except in an Export Sale, the contract price is a net delivered price but unless otherwise stated in this Contract the cost of packaging shall be an additional cost payable by the Buyer.

6.4 The contract price and all taxes (including VAT) duties and charges (all of which are exclusive of the contract price) shall be paid in full on the due date set out in Clause 6.2 above without any deduction, set-off or counter claim whatsoever. All bank charges etc. are for the account of the Buyer.

6.5 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- (a) Cancel the contract or suspend any further deliveries to the Buyer;
- (b) Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the

Company may think fit (notwithstanding any purported appropriation by the Buyer); and

(c) Charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of two per cent (2%) per month calculated on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

- 6.6 In the event that the Company owes money to the Buyer under any contract or other arrangement entered into between the Company and the Buyer the Company shall be entitled to set off such sums owed by the Company to the Buyer against any sums which the Buyer shall owe to the Company pursuant to this contract.

## **7. Delivery**

- 7.1 The delivery date(s) stated in the Quotation and/or the Contract are only approximate and are not conditions of the contract of sale and the Company shall not be liable for the consequences of any delay.
- 7.2 Except in an Export Sale on F.O.B. (free on board) terms the Company has the absolute right to select the method and route of carriage of the Goods.
- 7.3 Delivery to an independent carrier for pre-paid carriage to the place of delivery shall be deemed to be delivery of goods to the Buyer and the performance of the Company's duties hereunder.
- 7.4 If the Buyer fails to accept delivery of the Goods (or, in the case of an Export Sale, fails to accept the shipping documents) then the Goods shall be stored by the Company at the cost and expense of the Buyer. After a period of fourteen (14) days has elapsed after the failure by the Buyer to accept delivery of the Goods (or accept the shipping documents) the Company shall have the power (but be under no duty) to sell the Goods, for the account of the Buyer and apply the proceeds of sale in diminution of any amount owing to the Company from the Buyer hereunder, or any other amounts whatsoever due to the Company from the Buyer.
- 7.5 The Company shall not be under any obligation to provide any plant, power or labour or other facilities (other than the normal loading and unloading facilities) in connection with the delivery of the Goods.
- 7.6 Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained by the Buyer intact as delivered for a period of twenty one (21) days from notification of the claim to the Company, within which time the Company or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Company from any liability for Goods which are alleged not to conform to Contract. If the Company agrees with the Buyer that the Goods are damaged or defective and that it is not possible to remedy any defect then the Company shall, at its sole option, replace the Goods or credit the Buyer accordingly.

- 7.7 The Company shall have no liability to the Buyer in respect of damaged or defective Goods (and the Buyer shall be required to pay the full contract price) where:
- (a) Any claim made by the Buyer is not in accordance with these Conditions;
  - (b) Damage has been sustained after delivery of the Goods to the Buyer, or its agents;
  - (c) Defects are caused by installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Goods by any person other than the Company or its employees or agents; or
  - (d) A receipt has been obtained by the Company, duly signed by the Buyer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition.

## **8. Risk and Property**

- 8.1 (a) The property in all Goods sold hereunder shall pass to the Buyer when the Goods, and all other goods, the subject of any other contract between the Company and the Buyer which at the time of payment of the full price of the goods sold under the first mentioned contract have been delivered to the Buyer but not paid for in full, have been paid for in full to the satisfaction of the Company.
- (b) The property in the Goods shall remain with the Company until transferred in accordance with Clause 8.1(a) and the Company shall be entitled to re-delivery of the Goods from the Buyer in accordance with sub-clause(c) below notwithstanding the subjection of the Goods to any process, addition, admixture, or treatment, whether by way of manufacture or otherwise, and whether by the Buyer or others.
- (c) The Company shall (without prejudice to its other rights hereunder) be entitled at any time after the due date for payment, or before such date in the event that serious doubts arise as to the Buyer's solvency, in the Company's absolute discretion to give notice to the Buyer to pay within seven (7) days in full the amount unpaid in respect of the Goods as shall have already been delivered to the Buyer under these Conditions and if on the expiration of that period the Buyer has failed to pay the full amount then outstanding the Company shall be entitled to immediate re-delivery of such Goods as shall have been delivered to the Buyer under these Conditions (but excluding any goods the title in which has already passed to the Buyer) and shall also be entitled to such immediate re-delivery upon the appointment of a Receiver of the whole or any part of the Buyer's undertaking or the passing of a Resolution or the making of an order to wind up the Buyer, for which purpose the Company shall be entitled and the Buyer hereby grants the Company a licence to enter upon the premises of the Buyer during normal business hours for the purpose of identifying such goods, and removing such goods from the Buyer's premises.

(d) Should the Buyer during such period that any money is due by the Buyer to the Company for any goods supplied by the Company to the Buyer sell any goods (the title in which is retained by the Company) to any purchaser who receives the same in good faith and without notice of any title, lien or other right of the Company to the goods, the Buyer shall receive and hold the proceeds of such sale in trust for the Company until all moneys due by the Buyer to the Company for any goods sold and delivered by the Company to the Buyer are paid for by the Buyer.

- 8.2 Notwithstanding the forgoing the risk in the Goods (if ascertained) shall pass to the Buyer on the date of these Conditions. If the goods are unascertained as at the date of these Conditions the risk shall pass immediately on appropriation of the Goods.
- 8.3 If so required by the Buyer the Company shall at the expense of the Buyer, insure the Goods in transit on such reasonable terms as the Buyer may request.

## **9. Warranties**

- 9.1 Any claim by the Buyer against the Company in respect of defective goods and/or any claim by the Buyer for non-delivery or short delivery must be notified in Writing to the Company within fourteen (14) days of delivery of the Goods or in the case of non-delivery on the scheduled delivery date.
- 9.2 If no written claim is submitted in accordance with Clause 9.1 any claim shall be deemed to be barred and absolutely waived.
- 9.3 If a claim is made under Clause 9.1 then if such claim is admitted by the Company the Company shall have the option to rectify or replace the Goods, or pay the Buyer such compensation as the Company in its absolute discretion considers reasonable in full and final satisfaction and discharge of the claim.
- 9.4 Save as provided herein there are excluded from this Contract of Sale all representations, conditions, warranties and terms whether express or implied as to the quality or fitness for any purpose of the Goods or otherwise or any other terms as may be implied by law in favour of the Buyer or by custom or practice or otherwise.
- 9.5 The Company hereby excludes all liability (whether in contract, tort, including negligence or otherwise) whatsoever for any indirect, incidental, punitive or consequential loss, damage, cost or expense of any kind, or any loss of or corruption of data, loss of profits or account of profits, loss of revenue or anticipated savings or of contracts, loss of operation time, loss of goodwill or reputation, and (to the furthest extent possible under applicable law) death or personal injury whether caused directly or indirectly and whatsoever and howsoever caused even if the Buyer has been advised of their possibility.
- 9.6 It is expressly acknowledged and accepted by the Buyer that this Contract of Sale is not a consumer sale and that they have inspected the Goods or have waived the

right to inspect the Goods and that the exclusions in Clauses 9.4 and 9.5 are fair and reasonable. In the case of an Export Sale it is expressly acknowledged that this is a contract for the international sale of goods.

- 9.7 Without prejudice to the proceeding clauses in no circumstances whatsoever shall the Company's liability for any loss (direct or consequential) exceed the contract price of the Goods.

## **10. Rejection**

- 10.1 In no circumstances whatsoever shall the Buyer have any right to reject delivery of the Goods, and the Buyer's remedies (if any) shall be limited to the recovery of compensation as provided in Clause 9.3.

## **11. Part Deliveries**

- 11.1 If under this Contract delivery is made in part deliveries or shipments each part delivery or shipment shall be deemed to be a separate sale and the default of the Company on one part delivery or shipment shall in no circumstances entitle the Buyer to rescind or repudiate the Contract in relation to part deliveries or shipments remaining to be made under this Contract.

## **12. Export**

- 12.1 In the case of an Export Sale notwithstanding anything herein to the contrary, the Company shall perform and discharge its duties by presenting the shipping documents i.e. the invoice and Bill of Lading or Delivery Order to the Buyer. Where the contract of sale is on C.I.F. or C&F. terms the Bill of Lading shall be freight prepaid and in the case of a C.I.F. contract the certificate of insurance shall be deemed to be a shipping document.
- 12.2 Notwithstanding the terms of Clause 6.2 in an Export Sale the contract price shall be paid against presentation of the shipping documents by such method of payment provided in the Contract or if no such method is provided then by irrevocable letter of credit.
- 12.3 Clause 6.2 (except in relation to interest) shall have no application in the case of Export Sales and in Clauses 9.1 references to non-delivery and short delivery shall be construed as reference to short shipment and non-shipment.
- 12.4 In the case of an Export Sale the Buyer hereby warrants that if an import licence or permit is required for the importation of the Goods into the country of destination then such import licence or permit has been obtained or will be obtained by the Buyer prior to shipment.



### **13. Force Majeure**

- 13.1 In this event of any strikes, lockouts, trade disputes, accidents, fire, inclement weather, flood, tempest, war or Act of God or delay in delivery of materials or any cause or contingency whatsoever beyond the reasonable control of the Company affecting the Company's supply of the goods, this Contract may be terminated or suspended by the Company in its sole discretion. Such cancellation or suspension shall not constitute a breach by the Company of its duties hereunder and the Company shall not be liable to the Buyer for any delay and/or damage caused by reason of such cancellation or suspension and in the event of suspension, days for the delivery of the goods shall be deferred to take account of such suspension. At any time after a suspension under this Clause the Company can exercise its rights under this Clause to terminate the Contract.

### **14. Lien**

- 14.1 The Company shall have a general lien on all the goods of the Buyer from time to time in the possession of the Company whether pursuant to this Contract of Sale or otherwise for all amounts due to the Company hereunder or otherwise. If the Buyer does not discharge the lien within twenty eight (28) days of it being imposed by the Company, by payment of all amounts due to the Company as at the date of such imposition, the Company shall have the right to sell the goods the subject of the lien and to deduct from the net proceeds of sale all amounts due to the Company.

### **15. Insolvency**

- 15.1 If the Buyer being an individual or where the Buyer is a firm, any partner in it shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of its creditors or if the Buyer being a Company shall pass a resolution or a Court shall make an Order that the Buyer be wound up (not being a Members' Voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager on behalf of a creditor shall be appointed or if circumstances shall arise which entitle a Court or a Creditor to appoint a Receiver or Manager or which entitle the Court to make a winding up Order or if the Buyer becomes insolvent then the Company shall be entitled forthwith on notice to the Buyer to terminate the contract with immediate effect without compensation to the Buyer but without prejudice to any rights of the Company hereunder.

### **16. Anti-Bribery**

- 16.1 The Buyer, (which for the purposes of this clause 16 shall include all of the Buyer's employees, agents, representatives, affiliates and any person employed by or acting on behalf of the Buyer) agrees with the Company that it will not, in connection with the Goods to be supplied under this Contract or in respect of any other agreement or understanding between the Buyer and the Company, bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or

other form of inducement, reward or advantage charitable donations, facilitation payments, and/or political contributions (whether of money or anything of value)) the Company or any of the Company's employees, agents, representatives, affiliates or persons employed by or acting on behalf of the Company, any customers, potential customers, public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Party**").

- 16.2 The Buyer represents and warrants to the Company that it has not, prior to the date of this Contract, bribed or attempted to bribe any Relevant Party in order to secure and/or retain any business with the Company whether in connection with this Contract or otherwise.
- 16.3 The Buyer acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business.
- 16.4 The Buyer agrees that it will not take or knowingly permit any action to be taken that would cause the Company to be in violation of any applicable anti-bribery or anti-money laundering laws.
- 16.5 The Buyer agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Buyer whether under this Contract or otherwise, and the Company (and the Company's authorised representatives) shall have the right to inspect, audit and to take copies of the Buyer's books, records and accounts at any time on prior written notice.
- 16.6 If the Buyer discovers that it has or may have violated any of the provisions in this clause 16, the Buyer shall immediately notify the Company and cooperate with any investigations by the Company into such matters.
- 16.7 Without prejudice to the generality of clauses 16.1 to 16.6 inclusive, the Buyer covenants with the Company to establish and at all times maintain and implement such anti-bribery policies and procedures as may be required to ensure that it prevents bribery or attempted bribery taking place on the Buyer's behalf.
- 16.8 The Buyer agrees that in addition to the Company's termination rights set out elsewhere in this Contract, the Company may immediately terminate this Contract in the event of a breach of this clause 16 by the Buyer.
- 16.9 The Buyer shall indemnify the Company against all liabilities, costs, expenses, damages, claims, demands and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any breach of this clause 16, whether or not the Contract has been terminated.

## **17. Notices**

- 17.1 All notices etc. to be served by one party on the other shall be deemed duly delivered or served within two (2) days of posting if posted by first class or airmail prepaid post or registered post or swift post to the address of the other party stated in the Contract.

## **18. Indemnity**

- 18.1 The Buyer shall indemnify the Company against all liabilities and costs incurred by the Company (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss or damage to the vehicle used to transport the Goods and to other goods on that vehicle) by reason of any error, omission, misstatement or misrepresentation by the Buyer, its servants or agents insufficient or improper documentation or packing, labelling or addressing of the Goods.

## **19. Validity**

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

## **20. Waiver**

- 20.1 Failure or neglect by the Company to enforce at any time any of the Conditions hereof shall not be construed nor deemed to be a waiver of the Company's rights hereunder, nor in any way affect the validity of the whole or any part of these Conditions, nor prejudice the Company's rights to take subsequent action.

## **21. Governing Law and Disputes**

- 21.1 This Contract is governed by Irish law.
- 21.2 Any dispute under the contract shall be referred to an arbitrator or arbitrators to be appointed by the parties, or in default of agreement, by the President of The Incorporated Law Society of Ireland for the time being and his or their discretion shall be binding on both parties, and this shall be a submission to arbitration within the Arbitration Act 2010 or any statutory modification thereof for the time being in force.
- 21.3 In this clause dispute does not include a claim in relation to the price of the Goods sold by the Company to the Buyer.