

Movement by Perfection



The Royal League in ventilation, control and drive technology

# General Terms and Conditions of Business

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## General Terms and Conditions of Business of ZIEHL- ABEGG Ireland Ltd.

### I. Definitions and Interpretation

#### 1. Definitions:

“**Confidential Information**” means all information disclosed by or on behalf of a party (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of the Contract) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;

“**Contract**” means the contract between us and the Customer for the sale and purchase of Goods and/or Services in accordance with these General Terms and Conditions.

“**Goods**” means the goods (or any part of them) to be supplied by us to the Customer as set out in an Order Confirmation.

“**Customer**” means the person or firm who purchases the Goods and/or Services from us.

“**Intellectual Property Rights**” means all present and future copyright and related rights, patents, trade marks, trade names and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

“**Order**” means the Customer’s order for the Goods and/or Services as set out in the Customer’s purchase order form, the Customer’s written or electronic response to our quotation, or overleaf, as the case may be.

“**Order Confirmation**” means the written acceptance of an Order issued by us to the Customer on our official order acceptance form.

“**Services**” means the services to be provided by us to the Customer as set out in the Order Confirmation and/or service description agreed by the parties in writing and such additional services as may be agreed from time to time.

“**Us**”, “**we**” or similar means Ziehl-Abegg Ireland Limited registered in Ireland with company number 705633.

2. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
3. Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### II. Application of the General Terms and Conditions of Supply

1. All our deliveries of Goods, provision of Services and any quotations are made exclusively on the basis of these General Terms and Conditions which shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. We reserve the right to amend and update our General Terms and Conditions from time to time and these shall apply to all future business relations between the parties even if not expressly agreed upon again in the future.
2. An Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these General Terms and Conditions. The Order shall only be deemed accepted when we issue an Order Confirmation, at which point the Contract shall come into existence. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer.
3. Any additional rights to which we are entitled by law shall apply in addition to those provided for in these General Terms and Conditions.
4. These General Terms and Conditions shall apply exclusively to business-to-business contracts and shall not apply to business-to-consumer contracts.

### III. Quotations and Scope of Performance

1. Quotations are valid for 30 days from the date of issue. Unless otherwise agreed by us in writing, quotations shall not constitute an offer from us and a Contract shall only come into existence in accordance with clause II (2) above.

2. In relation to our supply of Goods and/or Services, the Order Confirmation shall be decisive
3. Any illustrations, drawings, advertising, information as to weights, measures, performance, consumption, and other descriptions of the Goods and/or Services in the documentation with our quotation or contained in our catalogues or brochures are approximations only, to the extent not expressly referred to as binding. They shall not form part of the Contract nor have any contractual force and are no guarantee of the quality or characteristics of the Goods and/or Services.
4. For technical reasons, we reserve the right to supply up to 5% more or less than the agreed delivery volume when delivering consumables or small parts. There will be no refund if a lesser quantity is delivered. Protective devices are included in our deliveries only where expressly agreed in advance in writing.
5. The Goods are as described in our catalogues unless the Customer requests a different specification (which we have agreed in writing), in which case the Customer shall provide us with all necessary information we require as to the purpose of use, type of installation, operating conditions, and other specifications we require.
6. Where Goods are made or Services are provided to the Customer's specification, instructions or design, the Customer shall be responsible for their suitability, accuracy and completeness and shall indemnify us against all liability, loss, damage, costs, interest and expense incurred in connection with the use of such Goods and/or Services by the Customer, including any actual or alleged infringement of any Intellectual Property Rights arising out of such use.
7. With respect to (RETROFIT) Services, each Order shall specify the type and detail of the Services required from among the options proposed by us. We shall confirm the (RETROFIT) Services that will be provided, in the Order Confirmation.
8. We unreservedly retain all Intellectual Property Rights in all cost estimates, drawings, and any other documents including any deliverables provided with the Services. Such documentation may not be passed on to third parties. Drawings and other documents that are provided as part of our quotation or provided for information must be returned to us without undue delay if the related Order is not placed.

#### **IV. Correspondence by Electronic Communication and Fax**

1. The contracting parties recognise the validity of messages transmitted electronically. A reference to writing or written includes faxes and emails.

2. A message sent electronically shall be deemed received by the recipient when it has been delivered to the recipient's communication device..
3. A message is deemed received by the recipient by means of message retrieval when it has been made available for retrieval in the relevant part of the sender's communication device and has been retrieved by the recipient.
4. If correspondence between the contracting parties is exchanged by fax, the transmission report shall be deemed evidence of receipt.

#### **V. Price**

1. 1. The price of the Goods and/or Services shall be the price set out in the applicable Order Confirmation. If no price is quoted, the prices shall be as set out in our published price list and are, in relation to the supply of Goods, "ex works" in accordance with Incoterms 2020, including loading at our premises, but with the cost of packaging excluded.
2. The price of the Goods and/or Services (as applicable):
  - a. excludes amounts in respect of value added tax ("VAT") and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice;
  - b. excludes the costs of packaging, insurance and transport of the Goods; and
  - c. shall be quoted in pounds sterling unless other currencies are stated.
3. If the delivery of Goods and/or provision of Services is to be made or provided more than four months after the conclusion of the Contract, we reserve the right to reasonably raise our prices if there has been a significant increase in the cost of certain factors that impact on the determination of our prices, including the cost of materials, the cost of wages, and any governmental or regulatory charges.

#### **VI. [Intentionally Left Blank]**

#### **VII. Retention of Title**

1. We shall retain title to the Goods to the value of all outstanding amounts owed by the Customer (including any and all amounts on account, invoiced or otherwise owing) until such outstanding amounts have been paid. When assessing the value of Goods where title has been retained,



such Goods shall be assessed at their net purchase price, excluding VAT, as stated in the invoice. In the case of joint ownership, the relevant share in the real value of the Goods shall be assessed.

2. Title to the Goods shall not pass to the Customer until the earlier of the following
  - a. we receive payment in full (in cash or cleared funds) for the Goods and all other sums that are or become due to us from the Customer for sale of the Goods, in which case title shall pass at the time of payment of all such sums; or
  - b. the Customer resells those Goods, in which case title to those Goods shall pass to the Customer in accordance with clause VII (4) below.
3. Until title to the Goods has passed to the Customer, the Customer shall:
  - a. handle the Goods with due care for the duration of the retention of title; and
  - b. adequately insure the Goods at their replacement value, at the Customer's own expense, against damage by fire, water, and theft. Without prejudice to any other rights or remedies we may have, the Customer hereby assigns to us all claims for compensation arising from such insurance. If an assignment is not permissible, the Customer hereby irrevocably instructs its insurer to make payments, if any, exclusively to us. At our request, the Customer shall provide evidence to us of the certificate of insurance and/or conclusion of the insurance contract.
4. The Customer is entitled to resell or process the supplied Goods in the ordinary course of its business before we receive payment for the Goods. If the Customer sells the Goods before that time, it does so as principal and not as our agent. Title to those Goods shall pass to the Customer immediately before the time at which resale by the Customer occurs. The Customer's claim against its purchaser shall be assigned to us with all ancillary rights up to the value of the Goods. If an assignment is not permissible, the Customer shall instruct its purchaser to make payments, if any, exclusively to us until we receive full payment for the Goods. On request, the Customer shall provide us with all relevant information and shall allow us to inspect the records held in this regard.
5. To the extent that the Customer processes the Goods in which title is retained, the contracting parties agree that we shall become the owners of the processed Goods. The Customer's rights in the new products shall be proportionate to their value added to the new product. If the

Customer combines the Goods in which title is retained into another product such that our Goods become an essential part of another product, the Customer shall transfer to us the proportionate ownership of the new product. The Customer shall hold such new products on our behalf and in the event of a resale by the Customer, the provisions of clause VII (4) shall apply.

6. If we become aware of facts that give rise to justified doubts about the Customer's creditworthiness, or if the Customer defaults on payments due to us, we may terminate the Contract without setting an additional period for performance and may require the return of the Goods in which we retain title until all outstanding sums due have been paid in full.
7. In the event that a third party seizes or impounds Goods of which we are the owners or joint owners, the Customer shall provide the third party with evidence of our ownership of the Goods without undue delay. The Customer shall notify us as soon as possible of such seizure or impounding and shall cooperate with us as necessary to protect our rights.
8. Any Goods in which we have retained title may not be assigned to third parties by way of security, pledged, or encumbered in any other manner.

## VIII. Terms of Payment

1. Unless we have agreed otherwise in advance in writing, our invoices are payable ten days after issue without deduction, set off or withholding except any deduction or withholding required by law. Payment in cash or by bill of exchange will only be accepted if expressly agreed with us in advance in writing. At our discretion, we may set off payments against older debts of the Customer, in which case we will inform the Customer of the type of settlement made. If costs and interest have already been incurred, we are entitled to set off the payment first against the costs, then against the interest, and finally against the principal performance.
2. Payments will be deemed received only once received in cash or cleared funds. In the case of a cheque, payment is deemed received only when the cheque has cleared.
3. If the Customer defaults in payment, we are entitled to claim interest at a rate of 8% per annum above the basic interest rate applicable at the time from the due date until actual payment of the overdue amount. We reserve our right to assert further claims for damages.



4. 4. If we become aware of any circumstances that give rise to doubts about the Customer's creditworthiness including, for example, if a cheque does not clear or if payments are suspended, we may request payment of the entire outstanding amounts due to us by the Customer, even if we have previously accepted instalments. We are also entitled to require advance payments or the provision of security.
5. Counterclaims on the part of the Customer entitle the Customer to a set off against amounts due to us only if these claims have been established by a final declaratory judgment or if they are undisputed. The Customer may assert a right to retention only if the Customer's counterclaim is based on the same Contract.
4. We are entitled to make part deliveries and to perform in part unless this is an unacceptable burden to the Customer.
5. The Customer shall cooperate with us and shall fulfil its obligations under the Contract to enable us to deliver the Goods and/or perform the Services in a timely manner.
6. The delivery date or period is deemed to have been met if the Goods have left the works, or if we have given notice of the Goods being ready for dispatch, by the time the delivery period expires. Delivery is subject to us having received the Goods from our suppliers on time.

## IX. Delivery and Service Periods

1. Delivery dates or periods shall be agreed in writing and may be agreed as binding or non-binding. Unless agreed otherwise in writing, time of delivery of the Goods or provision of the Services shall not be of the essence.
2. We are not liable for delays in delivery or performance that occur due to force majeure or because of events that considerably complicate delivery or make delivery impossible. These events include any circumstances not within our reasonable control including without limitation strikes, lock-outs, regulatory impact, etc., which impact us, our suppliers or their sub-suppliers, even if dates and periods have been agreed to be binding. Such events entitle us to delay the delivery or service for the duration of the adverse event plus a reasonable start-up period. If such events considerably change the economic value of the Contract or the content of the delivery or service or if they have a significant impact on our business, we may additionally require that the Contract be reasonably adjusted. If the adverse event continues for more than one month, we are entitled to terminate the Contract in whole or in part. If we wish to terminate the Contract, we shall notify the Customer of such intent after becoming aware of the impact of the force majeure event. If the delivery period is extended or we are released from our obligation to perform the Services as a result of an adverse event and we have duly given notice to the Customer of such event, this shall not give rise to a claim for damages by the Customer.
3. If we are liable for not meeting binding dates or periods for delivery of the Goods or performance of the Services, the Customer's claim is limited to compensation in an amount equal to 0.5% of the invoice value for each entire week of delay subject to a maximum of up to 5% of the invoice value of the Goods and/or Services affected by the delay. Additional claims are excluded unless the delay is based on gross negligence
7. Where delivery of the Goods is delayed by us, the Customer may set an extension period during which delivery must occur, stating that delivery will not be accepted after the expiration of this additional period. If we fail to deliver within such additional period, the Customer shall be entitled to cancel the Order and/or terminate the Contract.
8. If the Customer rejects the Goods without reason, we are entitled to claim compensation for damage incurred by us; and the risks of accidental deterioration and accidental loss or destruction of the Goods after such rejection pass to the Customer.

## X. Services

1. Where applicable, we shall supply the Services set out in the Order Confirmation to the Customer in accordance with the Service specification in all material respects.
2. We shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation, but any such dates shall be estimates only.
3. We reserve the right to amend the Service specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and we shall notify the Customer accordingly.
4. In respect of the (RETROFIT) Services, we do not (nor does any group company of ours) guarantee or offer any warranty in respect of:
  - a. the actual achievements of the (RETROFIT) Services in terms of energy savings or return on investment ("ROI"). Any annual energy savings, calculated on the basis of the assumed parameters of the end-user's current equipment, are non-binding and are purely estimates;



- b. the accuracy of the calculations, or that the ROI will take place within the expected period and in the estimated amounts.

Actual energy savings and ROI may differ from those shown in any commercial or technical proposals, which shall be non-binding on us.

## XI. Supply of Software

1. If software is supplied, the Customer is granted a non-exclusive and non-transferable licence to use the software and the related documentation for the operation of the Goods for which the software is supplied. The Customer is not permitted to make copies, except for one back-up copy. References to authors, series numbers, and other identification features of the software may not be removed or altered.
2. The Customer shall take appropriate precautions to prevent unauthorized access by third parties to the software and the related documentation. The Customer shall store the original data storage media supplied and the back-up copy in a place that is secured against unauthorized access by third parties. The Customer shall ensure its officers and employees comply with these terms of supply and with any applicable intellectual property licence and relevant copyright law.
3. Our liability for loss, damage or alteration of data is limited to the average cost of restoration that would be incurred if back-up copies had been made at regular intervals.

## XII. Passing of Risk and Receipt

1. Risk passes to the Customer no later than on dispatch of the parts to be delivered, even if part deliveries are made or if we have assumed further obligations, e.g., the shipping costs or delivery and installation. If shipment becomes impossible and we are not at fault, risk passes to the Customer on notification that the Goods are ready for dispatch.
2. If there is a delay in shipment due to circumstances for which the Customer is responsible, risk passes to the Customer from the day the Goods are ready for dispatch.
3. The Customer shall accept delivery of the Goods even if they have minor defects.

## XIII. Quality

1. The Customer may not refuse to accept deliveries because of insignificant defects. The Customer has an obligation to inspect the Goods on delivery and notify us of any damage or defects. Obvious damage and defects that are identifiable on a due inspection are to be notified to us in writing no later than 8 days after delivery of the Goods to the Customer. Other damage or hidden defects shall be notified to us in writing no later than 8 days after they are discovered. Notifications of defects shall be sent in writing to our head office. Notifications of defects to field staff, carriers or other third parties are not acceptable as suitable notification.
2. The terms implied by sections 12, 13 14 (2), 14 (4) and 15 of the Sale of Goods Act 1983 and sections 12 and 39 of the Sale of Goods and Supply of Services Act 1980 are, to the fullest extent permitted by law, excluded from the Contract.
3. The Goods supplied to the Customer by us under the Contract shall:
  - c. conform to the specification where a specification was explicitly agreed in writing; and
  - d. comply with all applicable statutory and regulatory requirements.
4. If we inform the Customer of technical or operational requirements with regard to the use of the Goods, the Customer shall be responsible for compliance with such technical or operational requirements. The Customer shall also inform its buyers and end-users of these requirements. Without prejudice to clause XIV(1), our liability is excluded for damage or defects that result from use of the Goods in a way that does not conform to the specifications and/or requirements of which the Customer has been informed.
5. We shall not be liable for faulty or defective Goods or a failure of the Goods to comply with the warranty set out in clause XIII(3) if the fault or defect arises due to:
  - a. use of the Goods in a way that does not conform to technical or operational specifications and/or requirements of which we have informed the Customer;
  - b. incorrect assembly, storage, use or maintenance of the Goods by the Customer;
  - c. incorrect installation of the Goods by the Customer or a third party, except where the incorrect installation is based on our instructions;
  - d. non-compliance by the Customer with instructions on usage and operation of the Goods contained in the delivery documentation, operating instructions or other instructions issued by us;



- e. normal wear and tear, willful damage, negligence or abnormal storage or working conditions that cannot be attributed to production or material defects;
  - f. inappropriate or incorrect handling or repairs of the Goods by the Customer or third parties, including interference by unqualified persons or use of non-original spare parts or resources.
6. We do not assume any liability for faults and/or defects caused by the Customer or that are due to a technical cause other than the original fault or defect.
  7. If a defect exists and the Goods are returned to us, the return shipment may only be made with our prior consent. Return shipments made without our prior consent may not be accepted. The Customer shall bear the cost of the return shipment.
  8. If, following a notification of a fault or defect we repair or replace the Goods, the provisions in Section VII shall apply.
  9. Where a fault or defect has been identified and has been notified to us in due form and within the specified time limits, the Customer shall have the following rights:
    - a. If the Goods are found to be faulty or defective, the Customer may request that we repair the fault or replace the Goods (unless the maintenance and repair of the Goods is covered by a separate agreement and will be provided by a third party, including where we are providing (RETROFIT) Services). We will choose at our discretion whether to repair or replace the faulty Goods. If the Goods are repaired, insofar as the notification of fault is found to be justified, we shall bear the costs of such repair, including transportation and travel expenses and the cost of our own labor and materials, to the extent that such costs and expenses are not increased due to the Goods having been moved to a place other than the original delivery address. If the Goods are shipped to an address other than the original delivery address, the Customer shall bear the extra costs incurred if shipment was not part of the delivery contract between the Customer and us.
    - b. We shall be entitled at our discretion to employ third parties to carry out repair works or to replace the Goods. This does not establish a contractual relationship between the Customer and the third party. In this case, without prejudice to clause XIV(1), our liability does not extend further than if we had carried out the repairs or the replacement. If an attempt at repair or replacement of the Goods fails, we have the right to make a further attempt at repair or replacement, reserving the right to choose between a repair or replacement of the faulty Goods. Only when the repeated repair or replacement also fails does the Customer have the right to terminate the Contract or to reduce the purchase price.
    - c. Clause XIII(9)(a) or XIII(9)(b), do not apply insofar as these provisions would cause an unacceptable burden to the customer, for example in the case of an unjustified refusal or unacceptable delay of the repair or replacement.
    - d. If a notification of a fault or defect by the Customer proves to be unjustified, the Customer shall reimburse us for all costs and expenditure that this caused.
  10. The limitation period for the Customer's claims for faulty or defective goods is one year from delivery unless the faulty or defective Goods have been used for a building in accordance with its usual manner of use and has caused a defect of the building. The one-year limitation period equally applies to tort claims that are based on defective Goods. The statutory limitation periods shall apply to other losses. If we make a statement in respect of a claim by the Customer relating to faulty or defective Goods, such statement shall not be considered a commencement of negotiations concerning the claim, or the circumstances giving rise to the claim. The Customer shall in all cases prove that the defect existed already at the time of delivery
  11. These General Terms and Conditions shall also apply to any repaired or replacement Goods supplied by us.

#### **XIV. Liability**

1. Nothing in the Contract shall limit or exclude the liability of either party for:
  - a. death or personal injury resulting from negligence;
  - b. fraud or fraudulent misrepresentation;
  - c. breach of the terms implied by section 10 of the Sale of Goods Act 1980;
  - d. any other liabilities which cannot by law be excluded.
2. Without prejudice to clause XIV(1) or XIV(3), our total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall not exceed the price paid for the Goods and/or Services under the Contract.
3. Without prejudice to clause XIV(1), we shall not under any circumstances be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise for any:
  - a. loss of profit;
  - b. loss of or damage to goodwill;





- c. loss of sales or business;
- d. loss of business opportunity;
- e. loss of anticipate savings; or
- f. special, indirect or consequential damage,

suffered by the Customer that arises under or in connection with this Contract.

4. Unless expressly set out in this Contract, all conditions, warranties and other terms implied by statute, common law or otherwise with respect to the Goods and/or Services are excluded to the fullest extent permitted by law.
5. Claims by the Customer for reimbursement of expenses are excluded, unless a reasonable third party would also have incurred these expenses and the Customer provides evidence of such expenses.
6. No repair of defects, replacement delivery or payment of damages shall be regarded as recognition of a legal obligation unless we have agreed otherwise in writing.

## **XV. Customer Obligations and Export Control**

1. The Customer may not alter the Goods in any way that may impact on safety. The Customer may not alter or remove existing warnings of dangers in case of improper use of the Goods. If the Customer is in breach of this clause XV(1), the Customer shall indemnify and hold us harmless from and against any product liability claims of third parties to the extent that the Customer is responsible for the defect giving rise to liability.
2. If we issue a product recall or a product warning because of a product defect concerning the Goods, the Customer shall assist us and take all reasonable measures required by us. Without prejudice to any other rights or remedies we may have, the Customer shall bear the cost of the product recall or product warning to the extent that the Customer is liable for the product defect and the damage sustained.
3. The Customer shall notify us without undue delay of any risks in the use of the Goods and of possible product defects of which the Customer becomes aware.
4. The supply of Goods in accordance with this Contract may be subject to export restrictions or prohibitions. The Customer shall comply with all applicable export control regulations and corresponding restrictions. In the case of a re-sale or forwarding of the Goods, the Customer shall draw the recipient's attention to the provisions of the relevant export control law.

5. The Customer shall ensure that Goods are not used, either directly or indirectly, for a purpose that is connected in any way to chemical, biological or nuclear weapons and their carrying systems. Furthermore, the Customer shall ensure that the items are not put, either directly or indirectly, to a military end-use in a country subject to a weapons embargo. The Customer shall not sell, export, re-export, supply or forward the Goods or otherwise make them available to persons, companies, facilities, organizations or in countries, either directly or indirectly, if doing so would be contrary to any applicable export control laws and regulations.
6. The Customer shall, on request, provide end use certificates in order to prove the final destination and end-use of the Goods as required for any export licences or approvals.
7. The Customer shall be liable for any and all losses suffered by us that have been caused by the Customer's failure to comply with any applicable export control provisions.
8. The performance of the Contract and corresponding obligations are subject to the condition that the required export or transfer authorisations, approvals or any other authorisations stipulated by foreign trade law or clearances by the competent authorities are issued and that there are no other legal restrictions that must be complied with.
9. The Customer shall be responsible for all taxes, charges and duties in connection with its receipt of the Goods and/or Services.
10. We shall not be liable if damage suffered by the Customer is totally or partially due to a lack of cooperation from the Customer in providing relevant information on or before the commissioning of the Goods or an incorrect use by the Customer or end-user of the Goods and/or Services.

## **XVI. Data Protection**

- 1.1. The Customer acknowledges and agrees that we may have access to personal data (i.e. information relating to identified or identifiable natural person for example names, functions or contact details) of the Customer's employees, representatives, consultants, agents, contractors and other personnel. Such personal data may be processed by or on behalf of us in accordance with our privacy policy, (available at <https://www.ziehl-abegg.com/gb/en/privacy/>) to enter into and perform any rights and/or obligations under this Contract as well as related purposes, including for order and payment processing, tolls and import/export management, customer relationship management, business accounting and general administrative purposes.

2. The parties agree that they act as independent data controllers (as defined under applicable data protection law) in relation to personal data processed in accordance with the Contract and this clause XVI.
3. The Customer shall provide fair processing information to its personnel whose data may be processed by us, including notifying the data subject of our right to transfer personal data to third parties or third parties abroad while ensuring a comparable data protection level as described in our privacy policy, in accordance with applicable data protection law. The Customer shall (where required) obtain valid consent to such processing prior to transferring that personal data to us.
4. Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
5. On termination of the Contract for any reason the Customer shall immediately pay to us all of our outstanding unpaid invoices and interest (where applicable).
6. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
7. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **XVII. Termination**

1. Without limiting our other rights or remedies, we may terminate this Contract with immediate effect by giving written notice to the Customer if:
  - a. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so;
  - b. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - c. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - d. the Customer's financial position deteriorates to such an extent that in our opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
2. Without limiting our other rights or remedies, we may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and us if the Customer becomes subject to any of the events listed in clause XVII(1)(a) to clause XVII(1)(d), or we reasonably believe that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## **XVIII. Intellectual property**

1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by us.
2. We grant to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the deliverables for the purpose of receiving and using the Services and the deliverables in its business.
3. The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause XVIII(2).

## **XIX. Confidentiality**

1. Each party shall use the Confidential Information of the other party disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Contract and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under the Contract to those of its employees, officers and professional advisers who need to have access to it
2. Each party shall ensure through adequate contractual arrangements with their employees, officers and professional advisers that they shall comply with this clause XIX.



3. The provisions of clauses XIX(1) and (2) shall not apply to Confidential Information that:
  - a. the receiving party can prove was known to the receiving party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing party;
  - b. is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf, provided that this clause XIX(3)(b) shall only apply from the date that the relevant Confidential Information enters the public domain
  - c. the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence; or
  - d. is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.
4. Within three (3) days of receipt of a request to do so made at any time and in any event if the Contract is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.

## XX. Force Majeure

Neither party shall be in breach of this Contract nor liable to the other party for any delay in performing or non-performance of, any of its obligations under this Contract if and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control, including acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and interruption or failure of a utility service. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

## XXI. General

1. **Assignment.** The transfer of rights and obligations of the Customer to third parties is subject to our written consent.
2. **Entire agreement.** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
3. **Variation.** Except as set out in these Terms and Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
4. **Waiver.** No failure or delay by us to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
5. **Severance.** If any provision in this Contract is or becomes invalid, illegal or unenforceable in whole or in part, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part thereof shall be deemed deleted. This shall not affect the validity of the remaining provisions hereof.
6. **Third party rights.** A person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
7. **Notices:**
  - a. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

b. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause XXI (7)(a); if sent by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; if sent by fax at the time specified in the transmission report; or if by email when received in accordance with clause IV.

8. **Governing Law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Ireland. The parties hereby specifically exclude the United Nations Convention on Contracts for the International Sale of Goods (CISG).

9. **Jurisdiction.** Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation. The Customer hereby waives any defence which it may have based on arguments of lack of jurisdiction, improper venue or inconvenient forum. Notwithstanding the foregoing, we will be entitled to bring proceedings in any other court of competent jurisdiction.





# The Royal League

