

## **1. INTERPRETATION**

1.1 In these terms and conditions the following words have the following meanings:

1.1.1 **Conditions:** these terms and conditions as added to or amended from time to time by FRS.

1.1.2 **Contract:** any contract between FRS and the Customer for the supply of Services, incorporating these Conditions.

1.1.3 **Customer:** the person(s), firm or company who purchases the Services from FRS.

1.1.4 **Customer's Equipment:** any equipment, machinery, systems or facilities provided by the Customer and used directly or indirectly in connection with the supply of the Services.

1.1.4 **Know How:** know how, trade secrets, confidential technical and proprietary industrial and commercial information and techniques in any form which may subsist anywhere in the world.

1.1.5 **Intellectual Property:** trademarks, service marks, trade names, patents, inventions, design rights, copyrights (including rights in computer software), rights of extraction relating to data bases, data base rights and all other similar proprietary rights which may subsist in any part of the world.

1.1.6 **Price:** the price for the Services as determined in accordance with Condition 5.1 as may be amended by FRS from time to time.

1.1.7 **Services:** any services agreed in the Contract to be supplied to the Customer by FRS (including any part or parts of them) together with any other services which FRS provides or agrees to provide to the Customer.

1.2 In the Conditions references to any Statute or Statutory Provision, shall, unless the context otherwise requires, be construed as a reference to a Statute or Statutory Provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In the Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In the Conditions headings will not affect the construction of the Conditions.

## **2. APPLICATION OF TERMS**

2.1 Subject to any variation under condition 2.3 the Contract shall be subject to these Conditions to the exclusion of all other terms and conditions, except those imposed by FRS (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained within the Customer's order, confirmation of order, specification or other document

will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all Contracts unless FRS states otherwise and any variation to these Conditions shall have no effect unless expressly agreed in writing by FRS.

2.4 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of FRS which is not set out in the Contract.

2.5 Each order or acceptance of the Services by the Customer from FRS shall be deemed to be an offer by the Customer to purchase the Services subject to these Conditions.

2.6 No order placed by the Customer shall be deemed to be accepted by FRS until a written acknowledgement of order is issued by FRS or (if earlier) FRS supplies the Services to the Customer.

## **3. SERVICES**

3.1 Subject to these Conditions and any other terms agreed in writing by FRS, FRS agrees to supply and the Customer agrees to purchase the Services for the Price from the date of acceptance by FRS of the Customer's offer (in accordance with Condition 2.6) for the term of the Contract or until the Contract terminates.

3.2 All examples, illustrations, descriptive matter or advertising issued by FRS or contained in FRS's catalogues or brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services. They will not form part of the Contract.

3.3 FRS may, from time to time, without notice, change the Services in order to comply with any applicable safety or statutory requirements and/or provided that such changes do not materially affect the nature or quality of the Services, change the Services for other operational reasons after giving the Customer notice of any such changes.

3.4 Subject to these Conditions, FRS will not be liable, for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by FRS's negligence) nor will any delay entitle the Customer to terminate or rescind the Contract.

## **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

4.1.1 co-operate with FRS in all matters relating to the Services;

4.1.2 provide, for FRS its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, lands, data and other facilities as requested by FRS;

4.1.3 be responsible (at its own cost) for preparing and maintaining the relevant premises, facilities and livestock for the supply of the Services and obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, in all cases before the date on which the Services are to start;

4.1.4 inform FRS or its agents, sub-contractors and employees of all health and safety rules and regulations and security requirements that are applicable at the Customer's premises;

4.1.5 ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all Irish and European standards or requirements.

4.2 If FRS's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, FRS shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

4.3 The Customer shall be liable to pay to FRS, on demand, all reasonable costs, charges or losses sustained or incurred by FRS (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to FRS confirming such costs, charges and losses to the Customer in writing.

## **5. PAYMENT**

5.1 Unless otherwise agreed by FRS in writing, the price for the Services shall be the price set out in FRS's price list, receipt, invoice or acknowledgement of order and shall be exclusive of any VAT (unless stated otherwise).

5.2 Unless otherwise agreed by FRS in writing, the Customer shall pay each invoice submitted to it by FRS in full within 30 days of the date of the invoice and no payment shall be deemed to have been received until FRS has received cleared funds. Time for payment shall be of the essence of the Contract.

5.3 Without Prejudice to any other right or remedy that it may have, if the Customer fails to pay FRS on the due date, FRS may (i) charge interest at the rate of 12% per annum accruing on a daily basis and/or (ii) suspend all Services until payment has been made in full.

5.4 All sums payable to FRS under the Contract shall become due immediately upon its termination, despite any other provision.

5.5 FRS may, without prejudice to any other rights it may have, set off any liability of the Customer to FRS against any liability of FRS to the Customer.

5.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise.

## **6. LIMITATION OF LIABILITY**

6.1 The following provisions set out the entire financial liability of FRS (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of:

6.1.1 any breach of these Conditions or the Contract;

6.1.2 any use made by the Customer of any of the Services; and

6.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

6.2 All warranties conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Contract.

6.3 Nothing in these Conditions excludes or limits the liability of FRS:

6.3.1 for any matter which would be illegal for FRS to exclude or attempt to exclude as a liability; or

6.3.2 for fraud or fraudulent misrepresentation.

6.4 Subject to conditions 6.2 and 6.3:

6.4.1 FRS's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Contract shall be limited to the Price paid by the Customer; and

6.4.2 FRS shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of good will or otherwise, in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract or the provision of the Services.

## **7. CONFIDENTIALITY AND DATA PROTECTION**

7.1 The Customer shall keep in strict confidence all technical or commercial Know-How, specifications, inventions, processes, data or initiatives which are of a confidential nature and have been disclosed to the Customer by FRS, its employees, agents or sub-contractors and any other confidential information concerning FRS's business, its products or services which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to FRS and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

7.2 The Customer acknowledges and agrees that its personal data including its name and address will be

processed by and on behalf of FRS for the purpose of providing the Services.

## **8. ASSIGNMENT**

8.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of FRS.

8.2 FRS may assign the Contract or any part of it to any person, firm or company.

## **8. FORCE MAJEURE**

FRS reserves the right to defer delivery of the Services, to cancel the Contract or to vary or reduce the Services provided to the Customer, without liability to the Customer, if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, disease, blockouts, strikes or other labour disputes provided that if the event in question continues for a continuous period of in excess of 90 days the Customer shall be entitled to give notice in writing to FRS to terminate the Contract without any refund of the Price paid being due.

## **9. TERMINATION**

9.1 Without prejudice to any other rights or remedies which FRS may have, FRS may terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:

9.1.1 the Customer commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or

9.1.2 the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or, if the Customer is a body corporate, convenes a meeting of creditors or enters into liquidation except a solvent voluntary liquidation for the purpose only of re-construction or amalgamation or has a receiver and/or manager appointed of its undertakings or any part thereof or has an examiner appointed or a resolution is passed or petition presented to any court for the winding up of the Customer or any steps are taken or proceedings commenced relating to the insolvency or possible insolvency of the Customer or the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

9.2 On termination of the Contract for any reason:

9.2.1 the Customer shall immediately pay to FRS all of FRS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, FRS may submit an invoice which shall be payable immediately on receipt; and

9.2.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **10. INTELLECTUAL PROPERTY**

The Customer acknowledges and accepts that all rights to any Know How or Intellectual Property that FRS uses in providing the Services are the property of FRS or other third parties and the Customer has no rights whatsoever in or to such Know How or Intellectual Property and that unauthorised use of such Know How or Intellectual Property is strictly forbidden.

## **11. INDEMNITY**

The Customer agrees to indemnify and keep indemnified FRS and its officers, employees, sub-contractors and agents (all together the “**Indemnitees**” and each an “**Indemnitee**”) from and against all proceedings, actions, costs, charges, claims, expenses, damages, liability, losses and demands whatsoever and howsoever arising as a result of the use by the Customer of the Services or that the Indemnitees, or any of them, may incur as a result of (i) any act, neglect, default or omission of the Customer or (ii) any breach by the Customer of the Contract or these Conditions.

## **12. GENERAL**

12.1 Each right or remedy of FRS under the Contract is without prejudice to any other right or remedy of FRS whether under the Contract or not.

12.2 If any provision of the Contract is found by any Court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality invalidity, voidness, voidability unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.3. Failure or delay by FRS in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

12.4. Any waiver by FRS of any breach of or any default under any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way effect the other terms of the Contract.

12.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by any person that is not a party to it.

12.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Irish Law.

12.9 These Conditions shall continue to bind each party insofar as and as long as may be necessary to give effect to their respective rights and obligations.