

**PUBLICLY FUNDED HEALTH AGENCIES
STANDARD CONDITIONS OF CONTRACT**

HeBE, December 2003

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A. DEFINITIONS AND INTERPRETATION

1 DEFINITIONS

- 1.1 In this Agreement (comprising these Conditions of Contract, together with the Invitation to Tender Letter, the Tender Proposal, the Specification, the Form of Agreement / letter confirming appointment of the Supplier, and such other documents as are listed in the Form of Agreement / letter confirming appointment of the Supplier), the following terms shall have the following meanings unless context otherwise requires:

“Conditions of Contract” means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Supplier.

“Contract Period” means the duration of this Agreement as stated by the Purchaser in the tender documents or as otherwise agreed in writing between the parties.

“Delivery Address” means the address stated as such on the Purchase Order.

“Delivery Date” means the date or dates stated by the Purchaser on the Purchase Order as the date or dates upon which the Supplies are to be delivered, such date or dates being consistent with time-scales for delivery previously agreed between the parties or being consistent with reasonable time-scales for delivery.

“Form of Agreement” means (where applicable) the form of agreement signed by both parties relating to the supply of the Supplies, and referencing these Conditions of Contract.

“Form of Tender” means the form of tender completed and submitted by the Supplier as part of its tender.

“Supplies” means goods and services (including equipment and any ancillary supplies described on the order) meeting the Specification and any subsequent amendments agreed by the Purchaser in writing, and supplied (and, where appropriate, installed and commissioned) in accordance with this Agreement and, in respect of Delivery Date, Delivery Address, volume / description, in accordance with the terms of each Purchase Order.

“Incoterms” means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2000, or such rules as are in force at the date when this Agreement is made. Unless the context otherwise requires, any terms or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Agreement or in any Purchase Order under this Agreement, but if there is any conflict between the provisions of Incoterm and this Agreement, the latter shall prevail.

“Invitation to Tender Letter” means the letter by which the Purchaser invited the Supplier to tender for this contract.

“Packaging Material” means any material, container or wrapping, used for or in connection with the transport, handling, protection, marketing or sale of any Supplies, excluding any material, container or wrapping used for the containment of the Supplies.

“Purchase Order” means the Purchaser’s purchase order to which these Conditions of Contract are referenced and by which the Purchaser orders or draws down the Supplies. Purchase Orders should specify the Supplies required in a particular delivery, their requested Delivery Address, their requested Delivery Dates, their Price and any other relevant information.

“Price” means the price of the Supplies as set out in **Condition 4**.

“Pricing Schedule” means a document setting out the prices to apply to the Supplies over the Contract Period.

“Purchaser” means the body or bodies identified as the Awarding Authority(s) in the Invitation to Tender letter/or on the Purchase Order (which expression shall include any assignee).

“Specification” means the plans, drawings, specifications or other information relating to the Supplies, as advised by the Purchaser, or as agreed by the parties in writing, and shall, at the discretion of the Purchaser, include all or parts of the Tender Proposal.

“Supplier” means the person, firm or company to whom the Purchase Order is addressed and/or named as the tenderer on the Form of Tender. In the event of conflict, the name on the Form of Tender shall prevail.

“Subsidiary Company” has the same meaning as is attributed to such expression by Section 155 of the Companies Act 1963.

“Tender Proposal” means the tender submitted by the Supplier in relation to this Agreement, including the Pricing Schedule and any other schedules thereto.

- 1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 Save where the express wording or the context otherwise requires, the definitions and provisions regarding the interpretation contained herein shall apply to any special conditions agreed between the parties.

B. SCOPE OF CONTRACT

2 AGREEMENT TO SUPPLY

- 2.1 Subject to the terms and conditions herein, the Supplier agrees to supply, and the Purchaser agrees to purchase, the Supplies meeting in full the requirements of the Specification and any subsequent amendments agreed to by the Purchaser in writing.
- 2.2 The Supplier shall inform itself of the purpose of any Supplies purchased pursuant to this Agreement, and of the environment in which those Supplies are intended to operate / be used.
- 2.3 The Supplier shall be bound to supply the Supplies covered by this Agreement in accordance with such Purchase Orders as are issued by the Purchaser during the Contract Period. The Purchaser will not accept responsibility for Supplies unless they are requisitioned by way of an official Purchase Order issued by the Purchaser. Purchase Orders may be communicated in writing via post, fax, e-mail or any other means agreed in writing by the parties.
- 2.4 These Conditions of Contract shall apply to the purchase of the Supplies to the exclusion of any other terms and conditions, expressed or implied by trade, custom, practice or course of dealing.
- 2.5 Except where expressly permitted, no variation to or cancellation of the Conditions of Contract shall be binding unless agreed in writing between both parties or their authorised representatives

3 SPECIFICATION

- 3.1 The quantity and description of the Supplies shall, subject to these Conditions of Contract, be as specified in the Specification and any subsequent amendments agreed to by the Purchaser in writing. The quantity and description of any individual delivery of the Supplies shall be as stated in the Purchase Order.
- 3.2 Where the Specification is supplied by the Purchaser to the Supplier, or specifically produced by the Supplier for the Purchaser in connection with this Agreement, the copyright, design rights or any other intellectual property rights in the Specifications shall, as between the Supplier and the Purchaser, be the exclusive property of the Purchaser.
- 3.3 Where this Agreement is for the supply of equipment, it will, unless otherwise stated, also cover the delivery, installation and commissioning (to include start-up, calibration, testing etc.) of the equipment, operator training and supply of manuals.

C. PRICE AND PAYMENT

4 PRICE

- 4.1 The Price shall be as stated in the Pricing Schedule or, where there is no Pricing Schedule, on the Purchase Order.
- 4.2 In the event that there is no Pricing Schedule and the Price is not stipulated on the Purchase Order, the Purchase Order must not be filled at higher prices than those last charged or quoted by the Supplier to the Purchaser save with the prior consent of the Purchaser in writing.
- 4.3 The Price for individual deliveries shall be as stated on the Purchase Order and shall not be subject to variation except with the prior written consent of the Purchaser.
- 4.4 Unless otherwise stated, the Price shall be:
 - 4.4.1 exclusive of any applicable value added tax (which shall be payable by the Purchaser subject to receipt of a VAT invoice),
 - 4.4.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance, delivery, unloading and installation of equipment to the Delivery Address and any duties, or levies other than value added tax,
 - 4.4.3 inclusive of all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any invention or design for the purpose of performing its obligations under this Agreement,
 - 4.4.4 payable in euro, and
 - 4.4.5 no less favourable than the price the Supplier supplies the same Supplies to other purchasers in Ireland.

5 TERMS OF PAYMENT

- 5.1 Subject as hereinafter provided, the Supplier shall be entitled to invoice the Purchaser on or at any time after delivery of the Supplies. All invoices must be sent to the Invoice Address specified on the Purchase Order, or as otherwise agreed in writing between the parties.
- 5.2 Each invoice shall quote the number of the relevant Purchase Order, the relevant Purchaser's product codes (as stated on the Purchase Order) together with the applicable price for each code, the price as stated on the Purchase Order and the Delivery Address. VAT shall be itemised separately on each invoice. Where appropriate, invoices must show the Supplier's VAT Registration Number.

- 5.3 A separate invoice must be rendered for each individual delivery of Supplies, unless otherwise agreed in writing between the parties. In the event that the Supplier makes a part delivery of Supplies less than that requested by the Purchaser as a delivery in full or by instalment, the Supplier shall not be entitled to payment for such part delivery, unless he has obtained the consent of the Purchaser to such part delivery in accordance with **Condition 11.1** hereof.
- 5.4 Unless otherwise stated in the Invitation to Tender Letter or in the Purchase Order, the Purchaser shall pay the Supplier for the delivery within 30 days of receipt of invoice, following delivery, provided all monies specified on the Supplier's invoices are properly due in accordance with this Agreement and the invoices meet the requirements set out in **Conditions 5.2 and 5.3** above. The Supplier shall, where applicable, comply with the provisions of the Prompt Payment of Accounts Act, 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2002, in its dealings with sub-contractors.
- 5.4.1 Where a Supplier has not submitted an appropriate delivery note with an invoice, and there is difficulty in establishing proof of delivery, the Supplier shall supply the Purchaser with the relevant delivery note signed by a duly authorised representative of the Purchaser, immediately upon request. The invoice will be held 'in dispute' until proof of delivery is established
- 5.5 The Purchaser shall be entitled to set off against the Price any sums owed to the Purchaser by the Supplier.

D. DELIVERY AND SUPPLY

6 TIME

- 6.1 The Supplier shall deliver the Supplies on the Delivery Date, unless otherwise agreed to in writing by the Purchaser. The Supplies shall be delivered to the Delivery Address by the Supplier on or by the relevant Delivery Date during the Purchaser's usual business hours. Time of delivery of the Supplies shall be of the essence of this Agreement, unless otherwise agreed.
- 6.2 If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Purchaser of the earliest possible date for delivery. Notwithstanding such notice and unless a substitute delivery date for the Supplies has been expressly agreed by the Purchaser in writing, the Supplier's failure to effect delivery of the Supplies on the Delivery Date shall entitle the Purchaser, without prejudice to any other remedy it may have, to invoke the remedies set out in **Condition 7.2 below**.

7 ACCEPTANCE; REMEDIES FOR DEFECTS, SHORTAGES, DAMAGE AND DELAY

- 7.1 Notwithstanding delivery, the Purchaser shall not be deemed to have accepted any Supplies until they have been
- 7.1.1 inspected and checked against the relevant packing note and
 - 7.1.2 has passed any acceptance tests, which the Purchaser deems appropriate, such tests to be carried out by the Purchaser within a reasonable period after the date of delivery, and
 - 7.1.3 a delivery note has been signed by a duly authorised representative of the Purchaser.
- 7.2 Without prejudice to any other remedy that the Purchaser may have if Supplies are not supplied in accordance with these Conditions of Contract, the Specification or the Purchase Order, where the Supplier has failed to deliver on time in accordance with **Condition 6**, or where the Purchaser has discovered a defect, a shortage, or damage caused in transit, and has notified the Supplier of such defect, shortage or damage, and has given the Supplier all reasonable opportunity to investigate and remedy same, the Purchaser may:
- 7.2.1 require the Supplier, at the Supplier's expense, to fulfil its obligations in all respects within fourteen days or such other period as is specified by the Purchaser, and/or
 - 7.2.2 vary the terms of these Conditions of Contract, the Specification or the Purchase Order, in which case the Supplier shall fulfil its obligations as so varied, or
 - 7.2.3 cancel the Purchase Order relating to the Supplies which have not been delivered on time / in accordance with the terms of this Agreement, whereupon the Supplier shall refund any part of the Price which has been paid in respect of such Supplies and the Purchaser shall, at the Supplier's use and expense, return any Supplies already supplied under that Purchase Order; and
 - 7.2.4 purchase substitute Supplies elsewhere and recover from the Supplier any direct, indirect and or consequent losses, cost and liabilities whatsoever incurred by the Purchaser (including without limitation, the costs of any replacement Supplies); or
 - 7.2.5 terminate the Agreement (in full or in part) in accordance with the provisions of **Condition 29** and require repayment of any part of the Price which has been paid in respect of the Supplies and the Purchaser shall, at the Supplier's risk and expense, return Supplies already supplied under this Agreement and shall be entitled to recover from the Supplier any direct, indirect and/or consequential losses, costs and liabilities whatsoever incurred by the Purchaser (including without limitation, the costs of any replacement Supplies).

8 RIGHT OF REJECTION

The whole of any consignment may be rejected by the Purchaser if a reasonable sample of the Supplies taken randomly from the consignment is found not to conform substantially with the requirements of this Agreement.

The Purchaser's right of rejection shall continue irrespective of whether the Purchaser has accepted the Supplies. In particular, taking delivery, inspection, use or payment by the Purchaser of the Supplies or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy that the Purchaser may have against the Supplier, provided that the right of rejection shall cease within a reasonable time from the date on which the Purchaser discovers or might reasonably be expected to discover the latent defect or other relevant breach of Contract.

9 PACKING, MARKING AND DOCUMENTATION

- 9.1 The Supplies shall be marked, packed and secured in accordance with the provisions of this Condition and any other reasonable instructions from the Purchaser (if any) and any applicable regulations or requirements of the carrier.
- 9.2 The Supplier shall be responsible for obtaining any import licences, permits or other consents necessary for the importation and delivery of Supplies and shall produce evidence of same if requested to do so by the Purchaser.
- 9.3 The Supplier shall supply, without charge, such reasonable quantity of operation and maintenance manuals in English relating to the Supplies which the Purchaser may require and/or which are necessary for the proper installation, operation and maintenance of the Supplies.
- 9.4 The Supplier agrees on request to supply the Purchaser with any necessary declarations, certificates and other documents stating the origin of the Supplies.
- 9.5 The Regulations of the Department of Agriculture, Ireland, governing the control of Foot and Mouth disease prohibit the use of hay, straw or peat moss litter as packing for goods. Hay includes grass moss, rushes, ferns, heathers, alfalfa meal etc. Where prohibited packing is used, the Supplies must be returned to sender for repacking, all costs for the account of the Supplier.
- 9.6 In choosing packaging, the Supplier shall take into consideration environmental concerns. Without prejudice to this, the Supplier shall use packing of sufficient strength, etc to protect the goods against all transport risks and shall be responsible for damage to the Supplies resulting from the inadequacy of the packaging in accordance with the indemnity provisions of this Agreement.

- 9.7 **Use of shipping containers.** Unless otherwise agreed in writing by the Purchaser, Supplies must be packed so that they can be unloaded by fork lift truck working from ground level. Multiplicity of small items must be on pallets ('europallet' or equivalent); Containers must not be so tightly packed as to risk damage to Supplies in transit or during unpacking.

Pallets must be four-way entry 1200X100X161mm with a full perimeter base of nailed wooden construction and should conform to BS2629 or equivalent. Euro-pallets should only be used if agreed in writing with the Purchaser before delivery

- 9.8 The Purchaser will not, unless otherwise agreed or required by law, undertake to return any packages, cases or other packing materials and no payment will be made by the Purchaser in respect thereof.

- 9.9 All packages, cases, pallets and other containers must be clearly and individually marked with the Purchaser's name, Purchase Order number and product codes. The following shall appear on the outside of each pack:

1. A description of the Supplies
2. The quantity contained in each pack
3. Storage and/or handling instructions
4. Expiry date of contents, if applicable
5. Relevant materials safety information, if applicable
6. Purchase Order reference number on outer packaging

Packing notes must always be included in each box, case etc. stating the Purchase Order number, quantities and description of items contained in each box; the Purchaser's product codes (as stated on the Purchase Order), the Delivery Date and the Delivery Address.

The Purchaser may (unless otherwise agreed in writing) require the Supplier to dispose, at the Supplier's cost, of all Packaging Materials. Failure by the Supplier to effect disposal within 14 days of relevant delivery shall entitle the Purchaser to arrange disposal with another supplier and any money paid by the Purchaser in effecting disposal of packaging shall be paid by the Supplier to the Purchaser.

- 9.10 The Supplier shall comply with all applicable laws, regulations and statutory instruments relating to the disposal of waste, including in particular, the Waste Management Act, 1996, and all regulations adopted thereunder (including the the Waste Management (Packaging) Regulations, 1997), Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment, and any amendments or re-enactments thereof.

10 SHIPPING DOCUMENTS

- 10.1 Copies of all appropriate documentation, including the commercial invoice and packing lists, must always accompany the Supplies for shipment and must also be forwarded to the originator of the Purchase Order or other person authorised by the Purchaser before or at the time of shipment
- 10.2 Where applicable, the correct customs documentation must be provided by the Supplier e.g. T-documents, AADs, EUR forms, certificates of origins, etc.

11 PARTIAL DELIVERIES, STOCK LEVELS, RETURNS

11.1 Partial Delivery

Partial delivery of an order shall not be made without the prior written consent of the Purchaser. In case of partial delivery, all packages etc, advice notes, packing notes and invoices must be clearly marked “Partial Delivery”.

11.2 Stock Levels

Suppliers shall maintain sufficient stock levels so as to be in a position to meet the Purchaser’s requirements for the Supplies or Services as set out in the Specification for the duration of this Agreement. Where a Supplier has difficulty in meeting its contractual obligations at any point in time during the Contract Period, it shall immediately notify the originator of the relevant Purchase Order and relevant contact person(s) referenced in the Purchaser concerned so that alternative arrangements can be made. Such notification shall not affect the Purchaser’s entitlement to rely on **Conditions 6 and 7** hereof in relation to its remedies for the Supplier’s failure to meet its obligations under this Agreement.

11.3 Returns

The Purchaser accepts no liability in regard to the satisfactory return to the Supplier of any consignment or part of a consignment delivered in error under any Purchase Order.

12 COMMUNICATIONS

12.1 Language

All written and oral communications, all documents and the labelling and marking of all packages shall be in the English language .

12.2 Instructions

The Supplier shall supply the Purchaser in good time with any instructions or other information required to enable the Purchaser to accept delivery of the Supplies.

12.3 Quality Assurance And Inspections

The Supplier shall, where appropriate, provide the Purchaser with a schedule of quality assurance checks, inspections, and testing thirty (30) days before the delivery of the Supplies. This schedule shall not in any way relieve the Supplier of the obligation to fully comply with all of the requirements, codes, and standards pertaining to the Supplies.

12.4 Notification Of Hazards And/Or Recalls

In the event that a product recall or defect notice is issued by the manufacturer, (original supplier) or a medical device regulatory body (such as the Irish Medicines Board) in any country in the world, in relation to the Supplies, or similar goods or services from the same manufacturer, the Supplier shall notify the Purchaser of said recall or defect within five days of the earliest recall or defect. Failure of the Supplier to comply with this requirement may lead to the Purchaser terminating this Agreement or invoking its other remedies under this Agreement.

E. RISK, TITLE AND INSURANCE

13 RISK AND TITLE

13.1 Title in the Supplies shall pass on delivery to and acceptance by the Purchaser unless payment is made prior to delivery, in which event, title shall pass to the Purchaser once payment has been made. Where title in the Supplies has passed to the Purchaser prior to delivery pursuant to this clause the Supplier shall keep such Supplies separate from other Supplies and shall clearly mark the Supplies as the property of the Purchaser.

13.2 Nothing in this Agreement shall be deemed to give the Supplier any right, title, licence, trade name, trademark, patent, packaging design, intellectual property right or other interest of the Purchaser. The Supplier agrees that all the foregoing are and shall remain the exclusive property of the Purchaser, unless otherwise agreed between the parties.

13.3 Notwithstanding the provisions of **Condition 13.1** above, risk of damage to or loss of the Supplies shall, unless, otherwise agreed between the parties, remain with the Supplier until delivery, acceptance and commissioning of the Supplies to the Purchaser in accordance with the provisions of these Conditions of Contract and, in particular, **Condition 7** hereof.

14 INSURANCE

14.1 The Supplier shall at all times insure and keep itself insured with a reputable insurance company, approved by the Purchaser, against all insurable liability under this Agreement in respect of the Supplies and, without prejudice to the generality of the foregoing, in respect of all claims by third parties for death, injuries, or damage to property, and against all actions, suits, claims, demands, costs and expenses whatsoever, by reason of, or arising out of any claim by any of the Supplier's employees, workmen or servants, in respect of any accident, death, injury or damage sustained in connection with or arising out of the execution of this Agreement, or any of the matters connected therewith, whether such claims or proceedings be brought or costs or expenses incurred under or by virtue of any Workmen's Compensation Act 1934, as amended, or other statute or at common law, or otherwise howsoever.

14.2 The policy or policies indemnifying the Supplier and the Purchaser in respect of all claims by third parties for death, injuries or damage to property shall include indemnification in respect of claims by third parties for death or injury caused by or attributable to poisonous or foreign or deleterious matter in the Supplies supplied by the Supplier. For each relevant category the Supplier shall, unless otherwise agreed in writing between the parties, maintain the following minimum insurances:

14.2.1 public liability insurance with a minimum limit of indemnity of €6.5m;

14.2.2 professional indemnity policy in relation to professional services with a minimum limit of €6.5m for any one claim. The policy must be maintained in force for the period of the Agreement and for a further period of six years after termination of the Agreement

14.2.3 product liability insurance with a minimum limit of €6.5m and this policy must extend to include the liability of the Supplier / Manufacturer in the event of defects in the Supplies;

14.2.4 employer's liability insurance in relation to employees of the Supplier servicing or installing Supplies on the Purchaser's property. The limit of indemnity under this policy should be €12.7m for any one occurrence;

14.2.5 third party commercial motor vehicle liability cover with a minimum limit of €6.5m

14.2.6 In the event of Supplies being supplied and then installed by the Supplier, evidence of all risks insurance, in the joint names of the Purchaser and the Supplier, on the Supplies should be presented until such time as the Purchaser accepts responsibility following the installation.

14.2.7 The public liability, products liability and employer's liability insurance policies referred to in sub-clauses 1, 2 and 3 above should extend to provide an indemnity to the Purchaser.

14.2.8 The Supplier shall provide all faculties, assistance and advice required by the Purchaser or the Purchaser's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance of this Agreement.

14.3 The name on the insurance certificate must be the legal name of the Supplier

14.4 The said insurance policy or policies shall be furnished, duly completed, to the Purchaser prior to the commencement of this Agreement, maintained for the duration of this Agreement and up-to-date copies forwarded to the Purchaser each year. All policies presented shall contain an Irish Law Jurisdiction clause.

F. WARRANTIES AND INDEMNITIES

15 WARRANTIES

15.1 The Supplier warrants to the Purchaser and it is a condition of this Agreement that the Supplies :

- 15.1.1 will be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier in writing at the time of the Purchase Order and for use by the Purchaser in the ordinary course of its business;
- 15.1.2 will be free from defects;
- 15.1.3 will correspond in all respects with the Specifications and/or any sample, and;
- 15.1.4 will comply with all statutory requirements and regulations relating to the manufacture, packaging, packing, distribution, supply, sale and purchase of the Supplies .

15.2 In the event that any Supplies do not comply with any of the warranties set out in this Condition, and without prejudice to any other remedy that the Purchaser may have, the Purchaser shall be entitled at any time during the period of two years, or such other period as is reasonable having regard to the nature of the Supplies, following the date of delivery and at its sole discretion to require the Supplier,

15.2.1 at the Supplier's expense, to repair or replace within fourteen days, or such other period as is specified by the Purchaser, any such Supplies and to reimburse the Purchaser with all costs incurred in recovering and returning such Supplies; and

15.2.2 if the Supplier fails to repair or replace the said Supplies within the applicable period, the Purchaser shall have the right to purchase replacement Supplies from another source and any money paid by the Purchaser in obtaining replacement Supplies shall be reimbursed by the Supplier to the Purchaser.

15.3 The warranties and remedies provided for in this **Condition 10 and in Conditions 6.2, 7.2 and 16** shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding acceptance by the Purchaser of all or part of the Supplies in respect of which such warranties and remedies are available.

16 INDEMNITIES

16.1 The Supplier shall indemnify and keep indemnified the Purchaser, its agents, employees, officers, subsidiaries, associated companies, assigns and, where the Purchaser is acting as an agent, the Purchaser's principal, in full against:

16.1.1 any liability whatsoever, including, without limitation, losses, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Purchaser (whether to its own customers or otherwise) indirectly or directly arising from or consequently upon or in connection with breach of any warranty given by the Supplier in relation to the Supplies.

16.1.2 any claim that the Supplies infringes, or its importation, use of, resale, infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises necessarily and unavoidably from compliance with any specifications supplied by the Purchaser.

16.1.3 any act or omission of the Supplier or its employees, agents or sub suppliers in performing its obligations under this Agreement.

16.1.4 any liability under the Liability for Defective Products Act 1991, or subsequent amending legislation, in respect of the Supplies .

16.1.5 any liability/penalty imposed under the Safety, Health and Welfare at Work Act, 1989, and all regulations adopted thereunder, together with the provisions of the European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) Regulations, 2000, and any subsequent amending legislation, or imposed on employers in relation to health, safety and welfare under common law.

16.1.6 any liability/penalty imposed under, or any losses, damages, claims, demands, fines, costs or expenses of any kind incurred under, or in connection with, the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations, 1980 and 2000 (Transfer Regulations), or subsequent amendments or re-enactments.

16.1.7 If, in the knowledge or opinion of the Supplier, the Specification provided by the Purchaser, or any part thereof, infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Supplier shall immediately advise the Purchaser of this and shall decline to accept the order. If the Supplier fails to do this notwithstanding that he knew, or should reasonably have known, of the infringement, the Supplier shall be held liable to the Purchaser for all losses, damages, costs and expenses awarded against or incurred by the Purchaser arising from or in connection with the said infringement or paid or agreed to be paid by the Purchaser in settlement of the claim.

16.2 The Supplier shall assign to the Purchaser the benefit of all warranties, indemnities and other covenants received by the Supplier from any third party in connection with the Supplies .

G. GENERAL CONDITIONS

17 TAX CERTIFICATES

The Supplier and all sub-contractors (domestic or otherwise) shall continue to hold, in good standing, current issues of all tax certificates and, in the case of non resident suppliers, statements from the Revenue Commissioners as to suitability for tax purposes, for the duration of this Agreement and until final payment has been made.

18 COMPLIANCE WITH LAW

The Supplier shall comply with all requirements and/or obligations of any statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measure in the fulfilment of this Agreement and, in particular but not limited to, in relation to the manufacture, packaging, packing, distribution, importation, pricing or sales of the Supplies.

19 HAZARDOUS SUBSTANCES

The Supplier shall comply with the provisions of the Safety, Health & Welfare at Work Act, 1989 and all regulations adopted thereunder together with the provisions of the European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) Regulations, 2000. In particular, the Supplier shall provide the following to the Purchaser with respect to any substance associated with this Agreement which might be harmful:-

- A Health and Safety Data Sheet (MSDS or equivalent) and,
- Instructions on disposal

20 TRANSFER OF UNDERTAKING AND EMPLOYMENT MATTERS

20.1 The Supplier hereby indemnifies the Purchaser and all participating agencies fully, and shall keep the Purchaser and all participating agencies fully indemnified, in respect of any losses, damages, claims, demands, actions, fines, penalties, liabilities, costs or expenses of any kind incurred by the Purchaser or any participating agency arising from or in connection with the application of European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations, 1980 and 2000 (Transfer Regulations) (and any subsequent amendments or re-enactments thereto), whether resulting from the award, continuance or termination of this contract.

20.2 The Purchaser may instruct the Supplier to procure the appropriate disciplinary action (which includes the removal from the place of work) is taken against any employee of the Supplier or of any of its contractors or sub-contractors, in

accordance with the terms and conditions of employment of the employee concerned, who misconducts himself/herself or is incompetent or negligent in his/her duties or his/her presence or conduct at work is otherwise considered by the Purchaser (acting reasonably) to be undesirable. The Purchaser shall cooperate with any such disciplinary proceedings and shall be advised in writing by the Supplier of the outcome.

- 20.3 The Supplier shall set up and maintain policies and procedures governing all relevant personnel matters (including, without limitation, discipline, grievances, equality and health and safety) and shall procure that such policies are also set up and maintained for its subcontractors (where appropriate). The Supplier shall procure that the terms and the implementation of such policies and procedures comply with law and any legal requirement and good industry practice.

21 CE MARKINGS

All goods manufactured and offered to the Purchaser must meet the essential requirements of Council Directive 93/42/EEC and must have relevant CE markings as detailed in the above directive except in the cases of:

- 21.1 devices intended for clinical investigation which will be made available to medical practitioners or authorised person for that purpose provided they meet the requirements laid down in Article 15 and in Annex VIII of Directive 93/42, and
- 21.2 custom made devices placed on the market and put into service where they meet the conditions laid down in Article 11 in combination with Annex VIII. The Directive requires that Class IIa, IIb and III devices are accompanied by the statement referred to in Annex III

22 DATA PROTECTION

- 22.1 Where applicable, the Supplier must comply with its obligations under the Data Protection Act 1988 and EU Directive 95/46/EC, and any amendment or any statutory modification or re-enactment thereto, and any regulations made thereunder (“Applicable Data Protection Legislation”). In particular, the Supplier must ensure compliance with the Purchaser’s security arrangements in relation to personal data and must ensure that all staff (whether employees or otherwise) are aware of and comply with the obligations imposed by the Applicable Data Protection Legislation. In addition, if the Supplier is required to access or process personal data held by the Purchaser, the Supplier shall keep all such personal data secure at all times and shall process such data strictly in accordance with instructions received from the Purchaser.

22.2 The Supplier shall indemnify the Purchaser against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the Supplier's unauthorised and/or unlawful processing or the Supplier's destruction and/or damage to any personal data held by the Supplier, its employees or agents.

23 INDUCEMENTS TO PURCHASE

23.1 The Purchaser shall be entitled to terminate the Agreement and to recover from the Supplier the amount of any loss resulting from such termination in the following circumstances:

23.1.1 if the Supplier has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Agreement or any other contract with the Purchaser or any Irish government health agency, or showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser or any Irish government health agency, or

23.1.2. if like acts have been done by any other person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier).

24 SPONSORSHIP

It shall be a condition of the contract that the Supplier shall, on request provide, details of any sponsorship, gifts, hospitality, or other cash or cash equivalents which it has provided to employees of the Purchaser.

25 CONFIDENTIALITY

25.1 The parties hereto acknowledge that it may be necessary from time to time, to disclose to each other their confidential and proprietary information, including industrial or intellectual property, inventions, drawings, patterns, models, trade secrets, specifications, plans, designs and other information relating to the goods, processes and supply of services of the disclosing party (hereinafter called "Confidential Information"). Any Confidential Information disclosed by a party to another party shall be used by the receiving party exclusively for the purposes of fulfilling the receiving party's obligations under this Agreement and for no other purpose other than by the consent of the disclosing party.

25.2 Confidential Information shall not be deemed to include:

- Information that is in the public domain,
- Information that is made public by the disclosing party,

- Information that is published or otherwise becomes part of the public domain without any disclosure by the parties hereto, or by their employees, servants or agents,
- Information that becomes available on a non-confidential basis, whether directly or indirectly from a source, which source, did not acquire this information on a confidential basis, or
- Information which either party is required by law to disclose to a court or to a government body.

26 ELECTRONIC TRADING

- 26.1 As requested from time to time by the Purchaser, the Supplier shall, free of charge, supply to the Purchaser the product details of the Supplies in the media specified by the Purchaser. The Supplier shall ensure that the product details delivered to the Purchaser are at all times complete and accurate and shall, without delay, notify the Purchaser in writing of any modification or addition to or any inaccuracy or omission in such product details.
- 26.2 The Supplier hereby grants the Purchaser a licence to use the said product details (including, without limitation, making and distributing copies thereof) for the purposes of any electronic procurement system(s) used either by the Purchaser or, where appropriate, by entities on whose behalf the Purchaser is buying, for the duration of this Agreement.
- 26.3 The Supplier shall indemnify the Purchaser from and against all liability whatsoever arising in connection with the use by the Purchaser of product details relating to the Supplies provided to the Purchaser by the Supplier
- 26.4 The Supplier shall do all reasonably requested by the Purchaser to facilitate the introduction and/or operation of any electronic systems which the Purchaser wishes to apply to its procurement and supply processes.

27 ANNUAL SALES STATEMENT

- 27.1 The Supplier shall provide the Purchaser within 30 days of each anniversary of the date of this Agreement and within 30 days of termination of this Agreement with a statement giving accurate and complete details of the amount and value of the Supplies sold by the Supplier to the Purchaser under this Agreement during the year ending on the date of such anniversary or, in the event of termination of this Agreement, during the period from the date of this Agreement or the date of the last such statement submitted by the Supplier to the Purchaser (as appropriate) to the date of termination of this Agreement. Where the Purchaser consists of more than one legal entity, the statement shall include accurate details of the purchases made by each legal entity comprising the Purchaser.

- 27.2 The Supplier shall keep at its normal place of business detailed, accurate and up to date records of the amount and value of the Supplies sold by it to the Purchaser and, where appropriate, to the individual legal entities comprising the Purchaser during this Agreement. The Purchaser shall be entitled on reasonable notice to enter the Supplier's premises during normal office hours and to inspect such records in order to verify whether any statement supplied by the Supplier to the Purchaser pursuant to **Condition 27.1** above is accurate and complete.
- 27.3 On request from the Purchaser, the Supplier shall, at its own expense, ensure that its external auditors provide the Purchaser with an annual audit certificate as soon as reasonably practicable after the end of the Supplier's financial year. In the annual audit certificate the auditors shall confirm that any statement supplied by the Supplier to the Purchaser pursuant to **Conditions 27.1 or 27.2** above during that financial year is complete and accurate.

28 CONTRACT REVIEW

Supplier performance shall be subject to review on an on-going basis. The Supplier shall provide periodic reports to the reasonable satisfaction of the Purchaser during the Contract Period to the Purchaser and shall be committed to continuously improving the Supplier /Purchaser relationship.

H. TERMINATION

29 TERMINATION

29.1 Without prejudice to any other rights or remedies to which it may be entitled, the Purchaser shall be entitled to terminate this Agreement forthwith without liability to the Supplier by giving notice to the Supplier at any time if:-

- 29.1.1 the Supplier commits a material breach of any of these Conditions of Contract or fails to perform any obligation, responsibility hereunder and if such breach is capable of being remedied fails to remedy the breach within thirty days of notice given by the Purchaser requiring the Supplier to do so, or
- 29.1.2 the Supplier convenes a meeting for the purposes of or proposes to enter into any arrangement or composition for the benefit of its creditors; or
- 29.1.3 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Supplier, or
- 29.1.4 the Supplier ceases or threatens to cease to carry on business or takes or suffers any similar analogous action under any other applicable law, or
- 29.1.5 the Supplier is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (as amended by Section 123 of the Companies Act, 1990) or any analogous provision of law, or
- 29.1.6 an order is made or an effective resolution is passed for the winding up of the Supplier's company other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the Purchaser, or

- 29.1.7 a petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, administrative receiver, trustee or any similar officer over the Supplier's company, or
- 29.1.8 the Purchaser reasonably believes that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly, or
- 29.1.9 any representation made by the Supplier in connection with this Agreement shall in the opinion of the Purchaser prove to be untrue or incorrect in a material respect as of the date when made or
- 29.1.10 the Supplier has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Agreement.
- 29.2 If, during the course of this Agreement, new products or processes become available which, in the view of the Purchaser, would significantly improve the treatment or quality of life of their customers or patients, the Purchaser reserves the right to terminate this Agreement, or the relevant portion thereof, after one month's notice.
- 29.3 Unless otherwise stated in the Invitation to Tender Letter, the Purchaser shall be entitled to terminate this Agreement without liability to the Supplier on giving three month's written notice to the Supplier.
- 29.4 Termination of this Agreement pursuant to **Condition 29.2 or 29.3 above** shall not relieve or discharge either party from any obligations which have accrued prior to such termination. The right to terminate pursuant to **Condition 29.2 or 29.3** shall be without prejudice to the rights of the Purchaser pursuant to the above **Condition 29.1**.
- 28.5 The provisions of **Conditions 1, 9.10, 12.4, 14, 15, 16, 22 and 25** shall survive the termination or expiry of this Agreement.

I. GENERAL PROVISIONS

30 TRANSFER AND SUB-CONTRACTING

This Agreement is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or obligations under this Agreement, without the express written authorisation of the Purchaser.

The Purchaser is entitled to assign and transfer all or part of its rights and obligations under this Agreement.

31 OTHER PARTICIPANTS

The Purchaser reserves the right to include within this Agreement the requirements of other establishments situated within the geographical region(s) of the Purchaser, where such establishments are funded or partly funded by the Purchaser, and the Supplier shall be required to supply the Supplies to such other establishments for the Price and on the same terms as quoted in this Agreement.

32 PUBLICITY

The Supplier shall not advertise or publicly announce that it is supplying Supplies to the Purchaser without prior written consent of the Purchaser, such consent not to be unreasonable withheld.

33 NOTICES

Any notice or other communication whether required or permitted to be given by one party hereto to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and:

- if delivered, at the time of delivery to the addressee or its duly authorised agent,
- if sent by pre-paid post, four days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other party hereto)
- if transmitted electronically on receipt of 'read receipt' or equivalent.

All notices to the Supplier under this Agreement shall be in writing and sent to the address specified on the Purchase Order/award letter.

All notices, documents and communications provided under this Agreement shall be in the English language.

34 WAIVER

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

35 VALIDITY

If any provision of these Conditions of Contract 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 of Contract and the remainder of the provision in question shall not be affected thereby.

36 RELATIONSHIP

Neither party shall have the right or authority either express or implied to create or incur any liability against or on behalf of any other party other than those obligations and liabilities in this Agreement.

37 FORCE MAJEURE

- 37.1 For the purposes of this Agreement, the expression "Force Majeure" shall mean any governmental regulations, fire, flood, or any disaster affecting or delaying the performance by a party of its obligations. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the party seeking to rely on it, or of that party's agents or employees.
- 37.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever directly or indirectly caused or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 37.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 37.4 In the event that the Force Majeure event is continuing for a period at least one (1) month, the other party shall have the right to terminate this Agreement upon seven (7) days notice.
- 37.5 It is expressly agreed that any failure by the Supplier to perform, or any delay by the Supplier in performing its obligations under this Agreement, which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier has a contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 37.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be events falling within the definition of Force Majeure set out in sub-clause 1 above, and therefore exclude other events such as strikes, lock-outs or industrial disputes of the Supplier.

38 GOVERNING LAW

These conditions shall be governed by and shall be read and construed in all respect in accordance with Irish law and each of the parties hereto submit to the jurisdiction of the Irish courts. This jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to issue proceedings against the Supplier in any other court or regulatory body of a competent jurisdiction.

39 ABRITRATION

Any unresolved question, dispute or difference concerning this Agreement may arise between the parties hereto shall be and is hereby referred to a single arbitrator in to be agreed between the parties, or, failing such agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator to be appointed on the request of either party by the President for the time being of the Law Society of Ireland. The decision of the arbitrator appointed under this clause shall be final and binding on the parties. Such arbitration shall be governed by the Arbitration Acts 1954 and 1980 or any statutory variation, modification or re-enactment thereof for the time being in force.