

- pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.
5. The Seller shall not be liable for any costs incurred for whatever reason after delivery of the Goods is deemed to have taken place. Where Goods are sold inclusive of any or all of the freight, handling, port or insurance charges, any increases in, or in the rates for, such charges arising after the date of the Contract and before the Goods are delivered or arising through deviation to a new port or airport necessarily or at the Buyer's request or through any delay however caused shall be for the Buyer's account subject to the absolute discretion of the Seller.
 6. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-
 1. act of God, explosion, flood, tempest, fire or accident;
 2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 4. import or export regulations or embargoes;
 5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 7. power failure or breakdown in machinery.
- 9. Insurance**
1. Unless otherwise expressly agreed in writing by the Buyer and the Seller, Goods sold c.i.f. will be insured from time to time the Goods leave the warehouse or place of storage at the commencement of transit, throughout the ordinary course of transit and until:-
 1. delivery to the Buyer's or other final warehouse or place of storage at the destination named in the Buyer's order;
 2. delivery to any other warehouse or place of storage whether prior to delivery at the destination named in the Buyer's order or acknowledgement or order which the Buyer may elect to use either:
 1. for storage other than in the ordinary course of transit; or
 2. for allocation or distribution;
 2. All costs arising from the insurance being effected by the Buyer's request on Goods sold other than c.i.f. shall be for the Buyer's account.
- 10. Risk and Property**
1. Risk of damage to or loss of the Goods shall pass to the Buyer in accordance with the relevant provision of Incoterms or where Incoterms do not for any reason apply/-
 1. in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or
 2. in the case of Goods to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
 2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
 3. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 11. Warranties and Liability**
1. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be of satisfactory quality.
 2. The Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subject to abnormal conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Goods without the Seller's approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.
 3. The mixing or use of the Goods is beyond the Seller's control and accordingly all conditions and warranties, statutory or otherwise, as to fitness of the Goods for any particular purpose are expressly excluded.
 4. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
 5. No Goods may be returned to the Seller without the prior agreement in writing of the Seller. Subject thereto any Goods returned which the Seller is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection may be replaced free of charge or, at the Seller's sole discretion the Seller may refund or credit to the Buyer the price of the defective Goods but the Seller shall have not further liability to the Buyer.
 6. Except as expressly provided in these Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including, without limitation, loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.
 7. The Buyer shall ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory and other regulatory requirements and that the storage and handling of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority and the Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.
- 12. Buyer's Default**
1. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
 1. cancel the order or suspend any further deliveries to the Buyer;
 2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
 3. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate consistent with EU late payment legislation at the time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
 4. where the price is to be paid in a currency other than Euro charge to the Buyer the reduction in the amount of Euro dollar receivable by the Seller on conversion of the proceeds by the Seller's bankers as a result of variations in the rate of exchange between the due date and the date of actual payment.
 2. This Condition applies if:-
 1. the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
 2. the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
 3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 4. the Buyer ceases, or threatens to cease, to carry on business; or
 5. the Seller reasonably apprehends that any of the events mentioned above is about to concur in relation to the Buyer and notifies the Buyer accordingly.
 3. If Condition 12.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but no paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 13. Confidentiality, Publications and Endorsements**
1. The Buyer undertakes to the Seller that:-
 1. the Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default;
 2. the Buyer will not use or authorise or permit any other person to use any name, trade mark, house mark, emblem or symbol which the Seller is licensed to sue or which is owned by the Seller upon any premises, notepaper, visiting cards, advertisements or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor;
 3. the Buyer will use all reasonable endeavours to ensure compliance with this condition by its employees, servants and agents. This Condition shall survive the termination of the Contract.
- 14. General**
1. When placing the order the Buyer must advise the Seller in writing of any special, legal, administrative or regulatory requirements applying in the territory in which the Buyer is to import, use or sell the Goods as to composition labelling distributors or sale of the Goods and the Buyer must advise the Seller immediately of any change made in such requirements.
 2. The Buyer may not assign the benefit of the Contract without the written consent of the Seller.
 3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
 4. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
 5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 15. Applicable Law and Jurisdiction**
1. The Contract shall be governed by the laws of The Republic of Ireland.
 2. The Uniform Laws on the International Sale of Goods laid down in the 1980 United Nations Convention shall not apply unless expressly agreed between the parties in writing.