

# M Kelliher (1998) Ltd

## Credit Account Application TO BE COMPLETED BY APPLICANTS

Please complete all sections and read the Terms and Conditions of Trade overleaf.

CUSTOMER'S LEGAL NAME: .....	DATE: .....		
CUSTOMER'S TRADE NAME: .....	VAT REG NO. ....		
VAT EXEMPT NO .....	PRSI NO. IF SOLETRADER .....		
ELECTRICAL <input type="checkbox"/> NON ELECTRICAL <input type="checkbox"/> NO OF EMPLOYEES 1-5 <input type="checkbox"/> 6-49 <input type="checkbox"/> <50 <input type="checkbox"/>			
TYPE OF COMPANY SOLE TRADER <input type="checkbox"/> LIMITED <input type="checkbox"/> PLC <input type="checkbox"/> (TICK AS APPROPRIATE)			
TYPE OF BUSINESS .....	YEAR BUSINESS COMMENCED .....	DATE OF BIRTH .....	(compulsory)
PURCHASE ORDER REQUIRED Yes ..... No ..... Would you prefer an electronic fund transfer mode of payment? ____YES ____NO			

Phone: .....	Fax: .....	Mobile: .....	Email: .....
Company Registration No: .....	Requested Credit Limit: .....	Date Established: .....	
Contact 1: .....	Accounts Contact: .....		
Position: .....	Position: .....		
Phone: .....	Phone: .....		
BILLING ADDRESS: .....	PHYSICAL ADDRESS: .....		
.....	.....		
.....	.....		
<b><u>DETAILS OF PARTNERS (If Partnership) OR DIRECTORS (If Company)</u></b>			
Full Name: .....	Full Name: .....		
Home Address: .....	Home Address: .....		
.....	.....		
.....	.....		
Home Phone: .....	Home Phone: .....		

CUSTOMER'S BANK ACCOUNT NO.: .....	SORT CODE: .....
NAME OF BANK: .....	BRANCH ADDRESS .....
ACCOUNT NAME .....	

<b><u>TRADE REFERENCES</u></b>	
Business Name 1: .....	Business Name 2: .....
Address or A/C No: .....	Address or A/C No: .....
Phone: .....	Phone: .....
Fax: .....	Fax: .....
<b>SOLE TRADERS PLEASE SUPPLY COPY PROOF OF ID WITH THIS APPLICATION</b>	

I certify that the above information is true and correct and that I am authorised to make this application for credit. I irrevocably and unconditionally consent to the use of my personal information as required by the Data Protection Acts 1988-2003, and in particular the disclosure of my information to any credit reporting agency for the purposes of listing a default should I default in payment of any accounts. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf) of M. Kelliher 1998 Limited T/A Fitzpatrick Electrical and/or C.T. Electric and/or Kelliher's Electrical and/or Astrotek Ireland Ltd (T/A Rexel Energy Solutions) which form part of, and are intended to be read in conjunction with this New Account Application and agree to be bound by these conditions.

Please tick this box if you do NOT wish to receive our promotional information.

<b>Application MUST be signed by: Sole Trader; two Active Partners; or if a Company, two Active Directors.</b>			
SIGNED: .....	SIGNED: .....		
Name: .....	Name: .....		
Position: .....	Position: .....		
ID: .....	ID: .....		
Date: ____/____/____	Date: ____/____/____		

<b><u>INTERNAL USE ONLY</u></b>			
CUSTOMER ACCOUNT No: .....	Customer Group: .....	Credit Limit: .....	
Internal Signature: .....	Date: .....		

# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of M. Kelliher 1998 Limited T/A Fitzpatrick Electrical and/or C.T. Electric and/or Kelliher's Electrical and/or Astrotek Ireland Ltd(T/A Rexel Energy Solutions) and its successors and assigns ("the Seller") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

\_\_\_\_\_ ("the Customer")

## I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to the Seller of all moneys which are now owing to the Seller by the Customer and all further sums of money from time to time owing to the Seller by the Customer in respect of goods and services supplied or to be supplied by the Seller to the Customer or any other liability of the Customer to the Seller, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Seller. If for any reason the Customer does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the relevant amount to the Seller.
- HOLD HARMLESS AND INDEMNIFY** the Seller on demand as a separate obligation against any liability (including but not limited to damages costs losses and legal fees (as defined hereunder in paragraph (b) hereof)) incurred by or assessed against the Seller in connection with:
  - the supply of goods and/or services to the Customer; or
  - the recovery of moneys owing to the Seller by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Seller's nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
  - moneys paid by the Seller with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Seller, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Seller to the Customer.

## I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Seller by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Seller's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
- If any payment received or recovered by the Seller is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Seller shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Seller.**
- I/we irrevocably authorise the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes. I/We further irrevocably authorise the Seller to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
- The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and the subsequent enforcement of the same.

### GUARANTOR-1

SIGNED: \_\_\_\_\_

FULL NAME: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_ OCCUPATION: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

### GUARANTOR-2

SIGNED: \_\_\_\_\_

FULL NAME: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_ OCCUPATION: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

- Note:
- If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
  - If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member.

**WARNING: THIS IS AN IMPORTANT DOCUMENT  
YOU SHOULD SEE YOUR OWN SOLICITOR OR ADVISOR BEFORE SIGNING IT**

**M. Kelliher 1998 Limited T/A Fitzpatrick Electrical and/or C.T. Electric and/or Kelliher's Electrical  
and/or Astrotek Ireland Ltd(T/A Rexel Energy Solutions).  
Registered in Ireland – Company Registration No: 273572**

#### Branches:

Cork – **Tramore Road** Tel: 021 4704100  
Cork – **Mallow Road** Tel: 021 4932300  
Cork – **Eastgate** Tel: 021 4296230  
Cork – **Clonakilty** Tel: 023 63420  
Dublin – **Ballymount** Tel: 01 4566717  
Dublin – **Croke Park** Tel: 01 8554704  
Dublin – **Sandyford** Tel: 01 2952011

Ennis – Tel: 065 6844233  
Killarney – Tel: 064 33985  
Kilkenny – Tel: 056 7750410  
Limerick – Tel: 061 417442  
Naas – Tel: 045 447860  
Waterford – Tel: 051 377755  
Portlaoise – Tel: 050 264660

#### C.T. Electric

Athlone – Tel: 090 6494681  
Castlebar – Tel: 094 9023650  
Ballina – Tel: 096 60420  
Galway – Tel: 091 745300  
Sligo – Tel: 071 9145068

#### Fitzpatrick Electrical Distributors

Dundalk – Tel: 042 9327854

#### Astrotek Ireland Ltd

Dublin- Tel: 01 456 8009

## 1. Definitions

- 1.1 "Seller" shall mean M. Kelliher 1998 Limited T/A Fitzpatrick Electrical and/or C.T. Electric and/or Kelliher's Electrical and/or Astrotek Ireland Ltd (T/A Rexel Energy Solutions), its' and/or their successors and assigns or any person acting on behalf of and with the authority of M. Kelliher 1998 Limited T/A Fitzpatrick Electrical and/or C.T. Electric and/or Kelliher's Electrical and/or Astrotek Ireland Ltd (T/A Rexel Energy Solutions). 4.4
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity. 4.5
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis. 4.6
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms provided by the Seller to the Customer. 4.7
- 1.5 "Services" shall mean all services supplied by the Seller to the Customer and include any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above). 4.8
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Customer subject to clause 3 of this contract. 5.1
- 1.7 "Intellectual Property Rights" shall mean all or any intellectual and industrial property rights, including without limitation patents, copyright, design rights, trade marks, know-how and confidential information, in each case whether registered, unregistered or in the process of being registered. 5.2

## 2. Acceptance

- 2.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein. 6.
- 2.2 No order placed by the Customer shall be deemed to be accepted by the Seller until written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Customer. 6.1
- 2.3 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price. 6.2
- 2.4 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Seller. 6.3
- 2.5 The Customer undertakes to give the Seller at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details. 6.3

## 3. Price And Payment

- 3.1 At the Seller's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or
- (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 The Seller reserves the right to make a handling charge on any orders, the total invoice price of which (excluding VAT) is less than the Seller's small order value as notified to the Customer from time to time.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 Until such time as the Seller has confirmed credit account facilities in writing, at the Seller's sole discretion, payment shall be due:
- (a) on delivery of the Goods, or
- (b) before delivery of the Goods.
- 3.6 The Seller may at its discretion establish a credit account for the Customer (subject to receipt of references or such other conditions as the Seller sees fit). The Seller shall be entitled to refuse to establish or to continue such an account without providing any reason. If such an account is established and remains in operation, payment is due in full in euro 30 days from the end of the month in which the invoice is dated.
- 3.7 Payment will be made by cheque, or by direct credit, or by any other method as agreed to between the Customer and the Seller.
- 3.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Delivery Of Goods

- 4.1 At the Seller's sole discretion delivery of the Goods shall take place when;
- (a) the Customer takes possession of the Goods at the Seller's address, or
- (b) the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent. 8.1
- 4.2 At the Seller's sole discretion the costs of delivery are;
- (a) included in the Price, or
- (b) for the Customer's account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer fails to accept

delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Seller's negligence); and
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Seller may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and the Seller shall be entitled to charge the Customer any increase in the Seller's list price of the Goods between the due date for despatch or collection and the date on which despatch or collection is actually affected.

Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

The Customer shall take delivery of the Goods notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;

- (a) such discrepancy in quantity shall not exceed 3%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.

The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

## Risk

If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

## Title

It is the intention of the Seller and agreed by the Customer that ownership of the Goods shall not pass until:

- (a) the Customer has paid all amounts owing for the particular Goods, and
- (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.

Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.

It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
- (f) the Customer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
- (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

## Customer's Disclaimer

The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

## Defects

The Customer shall inspect the Goods on delivery and shall within seven (7) days notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed

to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

## 9. Returns

9.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 8.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within eight (8) days of the delivery date; and
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

9.2 The Seller may (in its discretion) accept the return of Goods for credit or refund but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.

## 10. Warranty

10.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

10.2 Where the Seller is the manufacturer of the Goods, it warrants that the Goods shall at the time of delivery meet its written specifications in all material respects.

10.3 To the fullest extent permitted by law, the Seller shall not be liable for any business interruption, loss of production, loss of profit, contracts, goodwill or anticipated savings, loss arising from any third party claims or any special, indirect or consequential loss (whether or not foreseeable) in respect of defects in the nature of or the quality of any Goods supplied by the Seller whether or not caused by the negligence of the Seller its employees or agents.

## 11. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980

11.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).

11.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.

11.3 In particular where the Customer buys Goods as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.

## 12. Intellectual Property

12.1 With the exception of any Intellectual Property Rights in the Goods which are either owned by or licensed by a third party to the Customer, all Intellectual Property Rights in the Goods are and shall remain the absolute and exclusive property of the Seller.

12.2 The Customer shall not use any trademarks or trade names applied to or used by the Seller in relation to the Goods in any manner not approved in advance in writing by the Seller.

## 13. Default & Consequences of Default

13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

13.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

13.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.

13.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.

13.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 14. Security and Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

## 15. Cancellation

15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

## 16. Data Protection Act 1988 & Data Protection Act 2003

16.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to:

- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- (b) to disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.

16.2 Where the Customer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.

16.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.

## 17. Unpaid Seller's Rights

17.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Seller is in possession of the item;
- (c) a right to sell the item.

17.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

## 18. Descriptive matter and illustrations

18.1 All descriptive and forwarding specifications, drawings and particulars of weights and dimensions issued by the Seller are approximate only and are intended only to present a general idea of the Goods described therein and nothing contained in any of them shall form part of any contract with the Seller.

18.2 The Seller reserves the right to vary the technique, design, construction and specifications of Goods without notice. Such changes may result in slight variations in detail from the description or illustrations in Seller literature which shall not entitle the Customer to rescind the Contract.

## 19. Customer's Responsibilities

19.1 It is the Customer's responsibility to:

- (a) ensure that the terms of the Customer's order and any applicable specification are complete and accurate; and
- (b) provide at the location specified for delivery and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

## 20. General

20.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.

- 20.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 20.4 Nothing in these conditions shall exclude or limit the liability of the Seller for:
- (a) death or personal injury resulting from its negligence; or
  - (b) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
  - (c) for fraud or fraudulent misrepresentation.
- 20.5 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 20.6 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 20.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.