

## Bostik Industries Limited's Standard Terms and Conditions for the Purchase of Goods and Services.

### 1 Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions **(Conditions)**.

**Bostik:** BOSTIK INDUSTRIES LIMITED of Newtown, Swords, County Dublin, Ireland and Registered Company Number: 15670.

**Contract:** the Order and Bostik acceptance of the Order.

**Goods:** any goods agreed in the Contract to be bought by Bostik from the Supplier (including any part or parts of them).

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** Bostik's written instruction to supply the Goods and/or Services, incorporating these Conditions.

**Replacement Supplier:** any subsequent supplier to Bostik providing services the same as or similar to the Services.

**Services:** any services (including any products of the services) agreed in the Contract to be bought by Bostik from the Supplier.

**Supplier:** the person, firm or company who accepts Bostik's Order.

**Transfer Regulations:** the European Communities (Protection of Employees on Transfer of Undertaking) Regulations 2003 and any modification or re-enactment thereof.

**VAT:** value added tax chargeable under Irish law for the time being and any similar additional tax.

1.2 A reference to one gender includes a reference to the other gender.

1.3 Condition headings do not affect the interpretation of these Conditions.

1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 A reference to **writing** or **written** includes faxes but not e-mail.

1.8 Where the words **include(s)**, **including** or **in particular** are used in these Conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

- 1.9 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

## 2 Application of terms

- 2.1 Subject to any variation under condition 2.4, these Conditions are the only Conditions upon which Bostik is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2 Each Order for Goods and/or Services by Bostik from the Supplier shall be deemed to be an offer by Bostik to buy Goods and/or Services subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all Bostik's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by The Purchasing Manager, Deputy Purchasing Manager or a Director of Bostik.

## 3 Commencement and Duration

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to Bostik from the date specified in the Order.
- 3.2 The Services supplied under the Contract shall continue to be supplied until the Services are completed in accordance with the Order or (unless the Order provides for some other period of notice) the Contract is terminated by Bostik giving to the Supplier not less than one month's written notice.

## 4 Change Control

- 4.1 If Bostik requests a change to the scope or execution of the Services:
- (a) the Supplier shall, within a reasonable time (and in any event not more than five working days after receipt of Bostik's request), provide a written estimate to Bostik of:
    - (i) the likely time required to implement the change;
    - (ii) any necessary variations to the Supplier's charges arising from the change;
    - (iii) any other impact of the change on the terms of the Contract.
  - (b) if Bostik does not wish to proceed, there shall be no change to the Contract; and
  - (c) if Bostik wishes the Supplier to proceed with the change, the Supplier shall do so after agreement on the necessary variations to its charges, the Services and any other relevant terms of the Contract to take account of the change and the Contract shall be varied in accordance with condition 2.4.

## **5 Quality and defects of the Goods**

- 5.1** The Goods shall be fit for purpose, of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by Bostik to the Supplier. No change to the specification of any Goods shall be made or introduced without Bostik's agreement in writing. Any request for such change shall be made in writing and with reasonable notice.
- 5.2** Bostik's rights under these conditions are in addition to the statutory conditions implied in favour of Bostik by the Sale of Goods and Supply of Services Act 1980.
- 5.3** Without prejudice to conditions 5.1 and 5.2, for a minimum period of 12 months (unless agreed otherwise in writing) from the date of delivery, the Goods shall be free of all defects, faults or contamination.
- 5.4** At any time prior to delivery of the Goods to Bostik, Bostik shall have the right to inspect and test the Goods at all times. The Supplier shall furnish Bostik with reports and details in the format and at the time required by Bostik in order that Bostik can verify the actual progress of work to be executed under the Contract.
- 5.5** If the results of such inspection or testing cause Bostik to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by Bostik to the Supplier, Bostik shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition Bostik shall have the right to require and witness further testing and inspection.
- 5.6** Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 5.7** If any of the Goods fail to comply with the provisions set out in condition 5 Bostik shall be entitled to avail itself to any one or more remedies listed in condition 15.

## **6 Quality of the Services**

- 6.1** The Supplier represents, warrants and undertakes to Bostik that:
- (a) the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
  - (b) the Services will conform with all descriptions and specifications provided to Bostik by the Supplier, in the Order; and
  - (c) the Services will be provided in accordance with all applicable legislation from time to time in force and the Supplier will inform Bostik as soon as it becomes aware of any changes in that legislation.
- 6.2** Bostik's rights under the Contract are in addition to the statutory terms implied in favour of Bostik by the Sale of Goods & Supply of Services Act 1980 and any other statute.
- 6.3** The provisions of this condition 6 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial services provided by the Supplier.

## **7 Indemnity**

- 7.1** The Supplier shall keep Bostik indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Bostik as a result of or in connection with:
- (a) defective workmanship, quality or materials relating to any Goods or Services;
  - (b) any alleged or actual infringement whether or not under Irish law, of any third party's Intellectual Property Rights or other rights caused by the use, manufacture or supply of the Goods or arising out of the use or supply of the Services; and
  - (c) any claim made against Bostik in respect of any liability, loss, damage, injury, cost or expense sustained by Bostik's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods or from the provision of the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

## **8 Insurance.**

- 8.1** The Supplier shall maintain at its own cost a comprehensive policy of insurance to cover the liability of the Supplier in respect of any act, neglect or default for which it may become liable to indemnify Bostik under the terms of the Contract, such policy being extended to indemnify Bostik, and shall arrange that the total cover of that policy is appropriate to the Supplier's indemnity under condition 7.
- 8.2** Whenever required by Bostik, the Supplier shall produce the policies of insurance and the receipts for payment of the current premiums, or such evidence of the existence of adequate insurance arrangements as Bostik may require.

## **9 Delivery of Goods and provision of Services**

- 9.1** The Goods shall be delivered, carriage paid, to Bostik's place of business or to such other place of delivery as is agreed by Bostik in writing prior to delivery of the Goods. The Supplier shall off-load the Goods at its own risk as directed by Bostik. If any employee or contractor of Bostik undertakes or assists in undertaking any off-loading of Goods from any vehicle, this is at the Supplier's sole risk.
- 9.2** The Supplier shall provide the Services, in accordance with the Order and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 9.3** The date for delivery of the Goods shall be specified in the Order and the date for commencement of the Services and completion of the same (if relevant) shall be specified in the Order but if no such date is specified then delivery of any Goods and commencement of any Services shall take place within 28 days of the date of the Order.
- 9.4** The Supplier shall invoice Bostik upon, but separately from, dispatch of the Goods, or completion of the provision of the Services Bostik provided that if no date is specified for the completion of the Services in the Order, the Supplier shall invoice Bostik for the provision of the Services in respect of any month no earlier than the first day of the month following that month in which the Services were provided.

- 9.5** The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 9.6** Time shall be of the essence for delivery of Goods and for completion of the Services in accordance with the Order.
- 9.7** Unless otherwise stipulated by Bostik in the Order, deliveries shall only be accepted by Bostik in normal business hours.
- 9.8** If the Goods are not delivered on the due date or the Services not delivered in accordance with the Order without prejudice to any other rights which it may have, Bostik reserves the right to:
- (a) cancel the Contract in whole or in part;
  - (b) refuse to accept any subsequent delivery of the Goods or any subsequent performance of the Services which the Supplier attempts to make;
  - (c) recover from the Supplier any expenditure reasonably incurred by Bostik in obtaining the Goods or purchasing services in substitution from another supplier; and
  - (d) claim damages for any additional costs, loss or expenses incurred by Bostik which are in any way attributable to the Supplier's failure to deliver the Goods on the due date to deliver the Services.
- 9.9** If the Supplier requires Bostik to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to Bostik and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 9.10** Where Bostik agrees in writing to accept delivery of Goods by installments the Contract shall be construed as a single contract in respect of each installment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle Bostik at its option to treat the whole Contract as repudiated.
- 9.11** If the Goods are delivered to Bostik in excess of the quantities ordered Bostik shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 9.12** Bostik shall not be deemed to have accepted the Goods until it has had 7 days to inspect them following delivery. Bostik shall also have the right to reject the Goods as though they had not been accepted for 28 days after any latent defect in the Goods has become apparent.

## **10 Risk/property**

- 10.1** The Goods shall remain at the risk of the Supplier until delivery to Bostik is complete (including off-loading and stacking) when ownership of the Goods shall pass to Bostik.

## **11 Price**

- 11.1** The price of the Goods and/or Services shall be stated in the Order and unless otherwise agreed in writing by Bostik shall be exclusive of value added tax but inclusive of all other charges.
- 11.2** Subject to condition 2.4 no variation in the price nor extra charges shall be accepted by Bostik.
- 11.3** Without prejudice to the generality of condition 10.2 any request for any increase in the price of the Goods or Services shall be made in writing and provide a minimum of 3 calendar months notice.

## **12 Payment**

- 12.1** Invoices shall be prepared by the Supplier in duplicate in the case of Goods after every delivery and in the case of Services in accordance with condition 8.4. All invoices shall be in compliance with all applicable laws and the provisions of the Contract. Invoices shall be addressed to Bostik at the address specified by Bostik in the Order and shall quote the order reference.
- 12.2** Bostik shall pay the price of the Goods and/or Services 60 days following the end of the month in which the Goods are delivered, the Services are performed or the invoice is issued (whichever is the later) but time for payment shall not be of the essence of the Contract.
- 12.3** Payment shall be made by cheque or bank transfer. Payment of the invoice shall not affect Bostik's right to dispute in writing any unjustified charge.
- 12.4** Without prejudice to any other right or remedy, Bostik reserves the right to set off any amount owing at any time from the Supplier to Bostik against any amount payable by Bostik to the Supplier under the Contract.

## **13 Confidentiality**

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

## **14 Bostik's Property**

- 14.1** Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of Intellectual Property Rights in all drawings, specifications and data supplied by Bostik to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods or the provision of the Services shall at all times be and remain the exclusive property of Bostik but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to Bostik and shall not be disposed of other than in accordance with Bostik's written instructions, nor shall such items be used otherwise than as authorised by Bostik in writing.

## **15 Termination**

- 15.1** Bostik shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and if Bostik exercises its rights under this condition 15.1 (but not in the event of any other termination by Bostik in accordance with the Contract) Bostik shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss
- 15.2** Bostik shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
  - (a) the Supplier commits a material breach of any of the Conditions or any other terms of the Contract; or

- (b) any distress, execution or other process is levied upon any of the assets of the Supplier; or
- (c) the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors, or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
- (d) the Supplier ceases or threatens to cease to carry on its business; or
- (e) the financial position of the Supplier deteriorates to such an extent that in the opinion of Bostik the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

**15.3** The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Bostik accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **16 Remedies**

**16.1** Without prejudice to any other right or remedy which Bostik may have, if any Goods or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract Bostik shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and Services have been accepted by Bostik:

- (a) to rescind the Contract;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- (c) at Bostik's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods or the provision of Services but without any liability to the Supplier;
- (e) to carry out at the Supplier's expense any work necessary to make the Goods or Services comply with the Contract;
- (f) to require immediate repayment by the Supplier in respect of all sums previously paid by Bostik in respect of any Goods or Services not supplied; and
- (g) to claim such damages as may have been sustained in consequence of the Supplier's breach of breaches of the Contract.

## **17 Assignment**

- 17.1** The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of Bostik.
- 17.2** Bostik may assign the Contract or any part of it to any person, firm or company.

## **18 Force majeure**

- 18.1** Bostik reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods or Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Bostik including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **19 No Partnership or Agency**

- 19.1** Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **20 Employees**

- 20.1** All the Supplier's employees shall be retained by the Supplier on completion or on termination of the Contract and the Supplier agrees and will ensure that none of its employees nor the employees of any other party who have been involved in the provision of any of the Services will become the employees of Bostik or any Replacement Supplier on completion or on termination of the Contract by reason of the transfer of the provision of any of the Services to Bostik or any Replacement Supplier and/or the operation of the Transfer Regulations.
- 20.2** The Supplier shall indemnify and keep indemnified Bostik and any Replacement Supplier in respect of any claims, costs, demands, liabilities, damages and awards Bostik or any Replacement Supplier incurs or suffers by reason of the operation of the Transfer Regulations on completion or on termination of the Contract.
- 20.3** The Supplier shall indemnify and keep indemnified Bostik and any Replacement Supplier in respect of any claims, costs, demands, liabilities, damages and awards which Bostik or any Replacement Supplier incurs or suffers in relation to any person whose contract of employment transfers to Bostik or any Replacement Supplier by reason of the operation of the Transfer Regulations including without limitation any claims arising from the dismissal of any such person by Bostik or any Replacement Supplier.

## **21 General**

- 21.1** Each right or remedy of Bostik under the Contract is without prejudice to any other right or remedy of Bostik whether under the Contract or not.
- 21.2** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or

unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 21.3** Failure or delay by Bostik in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 21.4** Any waiver by Bostik of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 21.5** The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of any person that is not a party to it save that a Replacement Supplier shall be entitled to enforce the provisions of condition 20. The parties to the Contract may by agreement rescind or vary the Contract without the consent of any Replacement Supplier notwithstanding that such rescission or variation may extinguish or alter a Replacement Supplier's entitlement under this condition 21.5.
- 21.6** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Irish law and the parties submit to the exclusive jurisdiction of the Irish courts.