

## GENERAL CONDITIONS OF PURCHASING UPMC WHITFIELD TERMS & CONDITIONS OF PURCHASE

### PART 1 - TERMS APPLICABLE TO ALL CONTRACTS WITH SUPPLIERS

#### 1. Definitions and Interpretation

1.1 Words and expressions used in the Contract shall have the meanings ascribed to them as follows:-

"Business Hours" means 9.00am - 5.00pm on Monday to Friday (excluding Bank Holidays) or such hours as the parties may otherwise agree.

"Completion Date" means the date by which the Supplier shall have completed the Works, as stated on the Order.

"Confidential Information" means as defined in Part 1 Clause 9.

"Contract" means the contract for the supply of the Goods, the provision of the Services and/or the carrying out of the Works which shall comprise the Contract Schedule, these General Conditions of Purchase and Appendices, the Supplier Services Agreement (if any), the Scope of Services, the Specification (if any), the Programme (if any), the Order and any attachments to the Order, which documents shall take precedence in the order set out herein.

"Contract Schedule" means the contract schedule (if any) provided to the Supplier by UPMC Whitfield.

"Date of Taking-Over" means the date of acceptance and taking-over of the Works by UPMC Whitfield, as certified by UPMC Whitfield in writing.

"Defects" means as defined in Part 1 Clause 7.1.

"Defects Liability Period" means as defined in Part 1 Clause 7.1.1.

"Delivery Date" means the date for delivery of the Goods as stated in the Order unless the Goods are to be delivered by instalments in which case delivery shall be in accordance with the Programme.

"General Conditions of Purchase" means these general terms and conditions of purchase (as amended from time to time).

"Goods" means the materials, goods, equipment and other items (including any instalment of them or any part of them) to be supplied by the Supplier as specified on the Order.

"Intellectual Property Rights" means any patents, trade marks, service marks, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names or other similar rights whether registerable or not in any country including, but not limited to, Ireland.

"Loss" means losses, damages, liabilities, fines, costs and expenses of whatever nature.

"Order" means a written purchase order issued by UPMC Whitfield to the Supplier for the supply of the Goods, the provision of the Services and/or the carrying out of the Works, as the case may be and shall not include any Supplier order form(s).

"Price" means the price as specified in the Order or the Contract Schedule.

"Programme" means any programme or times for the delivery of the Goods and/or the provision of the Services and/or the carrying out of the Works.

"Scope of Services" means the list of Services set out in the Contract Schedule.

"Services" means the services to be provided by the Supplier as specified on the Order, the Contract Schedule and/or the Supplier Services Agreement.

"Site" means the location at which the Goods are to be delivered, the Services are to be provided and/or the Works are to be carried out as stated in the Order.

"Specification" means any plans, drawings, data, samples or other descriptions or information relating to the Goods, Services and/or Works prepared by UPMC Whitfield or the Supplier in connection with the Contract.

"Supplier" means the supplier of the Goods, the Services and/or the Works, or any or all of them, as the case may be.

"Supplier Services Agreement" means the services agreement between UPMC Whitfield and the Supplier in the form provided by UPMC Whitfield.

"UPMC Whitfield" means the UPMC Whitfield Contracting Party as specified on the Order and its successors and assigns.

"UPMC Whitfield Contracting Party" means one, some or all of the following companies (as appropriate): (i) Euro Care Healthcare Limited; (ii) Euro Care Infrastructure Limited; (iii) Euro Care Property Management Limited; (iv) Waterford Oncology Associates Limited.

"UPMC Whitfield Invoicing Criteria" means UPMC Whitfield's invoicing criteria as notified to the Supplier and as may be amended from time to time.

"Works" means the Works to be carried out by the Supplier as specified on the Order.

1.2 Any reference in the Contract to a statute or a provision of a statute shall be construed as a reference to that statute or provision as may be amended, re-enacted or extended from time to time. The headings in these General Conditions of Purchase are for convenience only and shall not affect their interpretation.

## 2. The Contract

2.1 The Contract sets out the terms and conditions upon which UPMC Whitfield is prepared to deal with the Supplier and operates to the exclusion of all other terms and conditions including, without limitation, those of the Supplier. The Contract shall supersede all previous communications and/or agreements between the Supplier and UPMC Whitfield whether oral or written relating to the Goods, the Services and/or the Works. Notwithstanding the absence of any express reference to "goods", "services" and/or "works" on the face of the Order, the Contract shall apply to all agreements for: (i) the supply of goods to UPMC Whitfield; (ii) the provision of services to UPMC Whitfield; and (iii) the carrying out of any works for UPMC Whitfield; or any combination thereof.

2.2 Each Order is conditional upon acceptance by the Supplier of these General Conditions of Purchase.

2.3 No variation to the Contract shall be binding on UPMC Whitfield unless expressly agreed in writing by UPMC Whitfield.

2.4 No indulgence shown by UPMC Whitfield shall prevent it subsequently relying upon its rights and remedies under the Contract. No waiver by UPMC Whitfield of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

2.5 If any provision of the Contract is held by any competent authority to be invalid or unenforceable, whether in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.

## 3. Price and Payment

3.1 The Price shall be as stated on the Order or the Contract Schedule (as applicable) and no increase in the Price, whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise howsoever arising, may be made without the prior consent of UPMC Whitfield in writing or the issue of a separate Order accepted by UPMC Whitfield.

3.2 The Price shall be exclusive of any applicable value added tax (which shall be payable by UPMC Whitfield subject to receipt of a valid VAT invoice).

3.3 Subject to Part 1, Clause 10.1, upon receipt of a valid invoice submitted by the Supplier in accordance with UPMC Whitfield's Invoicing Criteria, UPMC Whitfield shall pay all undisputed amounts in accordance with its credit terms of thirty (30) days from end of month in which invoice is dated (subject to any deductions for Services not provided in accordance with the terms of the Contract and/or Works not yet completed to UPMC Whitfield's satisfaction).

3.4 Payment of any invoices by UPMC Whitfield shall be subject to the Supplier having provided all relevant worksheets and certificates, as applicable, to demonstrate its entitlement to payment under the Contract.

## 4. Liability

4.1 Subject to Part 1, Clause 4.2, the Supplier shall indemnify and keep UPMC Whitfield fully indemnified against any and all Loss (including reasonable legal and other professional fees and expenses) awarded against or incurred or paid by UPMC Whitfield as a result of or in connection with (i) defective workmanship, quality or materials; (ii) the negligence of the Supplier or its employees and/or agents; (iii) any infringement or alleged infringement of the Intellectual Property Rights of a third party as a result of the use of the Goods or the Services and/or the carrying out of the Works; and (iv) any claim for any Loss sustained by UPMC Whitfield or any of its employees, agents, customers or any third party to the extent that such Loss was caused by, relates to or arises from the supply of the Goods, the provision of the Services and/or the carrying out of the Works, as the case may be, by the Supplier or the Supplier's breach of the Contract.

4.2 Notwithstanding anything else contained in the Contract, in no circumstances shall either party be liable to the other, whether in contract or tort or

otherwise (including for negligence or breach of statutory duty) howsoever arising, and whatever the cause thereof, for: (i) any indirect or consequential loss; (ii) the following types of financial loss: loss of profits, loss of earnings, loss of business or goodwill, loss of revenues or loss of contracts, even if that party had notice of the possibility of the other party incurring such losses; or (iii) anticipated or incidental losses including, without limitation, loss of anticipated savings; and/or (iv) any other special, indirect, incidental or consequential loss or damage of any nature whatsoever arising out of or in connection with the Contract.

In no event shall UPMC Whitfield's liability to the Supplier in relation to or arising out of the Contract exceed the Price.

4.3 Nothing in the Contract shall affect the duty of either party to mitigate any losses which may be incurred by it in connection with the Contract or shall operate to exclude or limit the liability of either party for death, personal injury, fraud or fraudulent misrepresentation.

## 5. Insurance

5.1 The Supplier shall, at its own expense, arrange for, procure and maintain during the term of the Contract adequate insurance cover with a reputable insurance company in respect of:

5.1.1 Employer's Liability in the amount of not less than €13,000,000 (thirteen million Euro);

5.1.2 Public Liability with an indemnity limit of not less than €6,500,000 (six million, five hundred thousand Euro);

5.1.3 Product Liability of not less than €6,500,000 (six million five hundred thousand Euro);

5.1.4 Professional Liability of not less than €6,500,000 (six million five hundred thousand Euro); and

5.1.5 Motor Insurance Liability of not less than €1,300,000 (one million three hundred thousand Euro) covering ownership, maintenance and use of all vehicles used in the performance of the Contract whether owned, leased, hired or borrowed.

Any changes from the above minimum cover levels must be agreed by UPMC Whitfield in writing in advance.

5.2 The Supplier shall on demand provide UPMC Whitfield with evidence to its satisfaction of the Supplier's insurance policies. Such insurance shall be maintained in force throughout the duration of the

Contract and for a continuous period of six years thereafter.

5.3 The Supplier undertakes to UPMC Whitfield that it has not breached and will not, whether by act or omission, breach, cause or otherwise allow to be breached any warranty contained in the insurance policies effected by the Supplier as same may be amended from time to time and agrees to indemnify and keep UPMC Whitfield fully indemnified on demand from and against any and all Loss which UPMC Whitfield may incur as a result of any breach by the Supplier of this Part 1 Clause 5.3.

## 6. Termination and Breach

6.1 Without prejudice to any other remedies which may exist, UPMC Whitfield may at its option suspend or terminate the Contract forthwith by written notice to the Supplier if the Supplier is in material breach of any of its obligations hereunder and fails to remedy such breach within fifteen (15) days of receiving written notice thereof from UPMC Whitfield.

6.2 UPMC Whitfield shall be entitled to terminate the Contract with immediate effect at any time on written notice to the Supplier if:

6.2.1 the Supplier enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made for the winding up of the Supplier (otherwise than for the purpose of a solvent amalgamation or reconstruction);

6.2.2 a petition is presented to court for the appointment of a receiver/manager, receiver, administrative receiver, examiner or analogous appointee or an encumbrancer takes possession of any or all of the property or assets of the Supplier;

6.2.3 the Supplier ceases or threatens to cease to carry on business;

6.2.4 the financial position of the Supplier deteriorates to such an extent that, in the opinion of UPMC Whitfield, the ability of the Supplier to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

6.2.5 UPMC Whitfield reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

6.3 Notwithstanding Part 1 Clauses 6.1 and 6.2, UPMC Whitfield shall be entitled to terminate the Contract at any time subject to its providing the Supplier with thirty (30) days' prior written notice of its intention to terminate. In such circumstances, UPMC Whitfield

shall reimburse the Supplier such proportion of the Price as relates to the actual quantity of the Goods supplied, the Services provided and/or the Works completed as at the date of termination.

6.4 The termination of the Contract, howsoever arising, shall be without prejudice to the rights and duties of the parties accrued prior to termination. The provisions of Part 1 Clauses 1, 4, 5.2, 8, 9 and 16, Part 2 Clause 2.1, Part 3 Clause 1.7 and Part 4 Clause 1.8 shall continue in full force and effect notwithstanding termination.

## 7 Defects

7.1 Subject to UPMC Whitfield's rights pursuant to Part 2 Clause 5.4, any defects or deficiencies in the Goods, Services and/or Works ("Defects") which:-

7.1.1 appear within twelve (12) months of:

7.1.1.1 in the case of Goods, the later of the Delivery Date and the actual delivery date of the Goods; or

7.1.1.2 in the case of Works, the later of the Date of Taking-Over and the Completion Date; or

7.1.1.3 such other time period as may be agreed between the parties (the "Defects Liability Period"); or

7.1.2 arise from a breach of Part 2 Clause 2.1 (in the case of Goods); or

7.1.3 arise from a breach of Part 4 Clause 1.8 (in the case of Works); shall be made good by the Supplier entirely at its own cost promptly following receipt of written notification of any such Defects and at a time convenient to UPMC Whitfield (acting reasonably) provided that such notification is given to the Supplier:-

7.1.4 in the case of Defects arising under Part 1 Clause 7.1.1, during the Defects Liability Period or within fourteen (14) days of its expiry; and

7.1.5 in the case of Defects arising under Part 1 Clause 7.1.2 or 7.1.3 within 12 months of the date of the Order or within 30 days of the discovery of the Defect by UPMC Whitfield, whichever is the later.

7.2 If the Supplier shall fail to promptly make good any Defects as required pursuant to the Contract, UPMC Whitfield may engage others to carry out the necessary work and the Supplier agrees to indemnify and keep UPMC Whitfield fully indemnified in respect of any and all Loss incurred by UPMC Whitfield in connection with such Defects. If UPMC Whitfield exercises its right to make good any Defects in accordance with this Part 1 Clause 7.2, such work

shall be deemed to have been carried out by the Supplier and the liability of the Supplier in relation to the Goods and/or the Works shall be unaffected thereby.

## 8 Intellectual Property Rights

8.1 All Intellectual Property Rights in all drawings, specifications, worksheets, plans and any other documents of whatever nature prepared by the Supplier or on the Supplier's behalf relating to the Contract shall vest in UPMC Whitfield and the Supplier hereby assigns all right, title, benefit and interest it may have in such documents to UPMC Whitfield.

## 9. Confidential Information

9.1 Neither party shall, without the prior written consent of the other, disclose to any person or otherwise make use of any technical or commercial know-how, business information, specifications, inventions, processes or initiatives of the other party whether relating to the Contract or otherwise which has been disclosed to it in the course of the Contract ("Confidential Information") nor shall it disclose to any person whatsoever anything contained in the Contract. This restriction shall continue to apply except where:-

9.1.1 the Confidential Information comes properly into the public domain through no fault of such party;

9.1.2 such party is required by law to disclose the Confidential Information in question and provides the disclosing party with prior written notice of such requirement;

9.1.3 such party discloses the Confidential Information to its bankers or financial, economic, legal or other advisers and such disclosures are subject to obligations of confidentiality no less strict than those contained in these Terms and Conditions; or

9.1.4 UPMC Whitfield discloses Confidential Information to its employees, subcontractors, agents and employers as reasonably required in connection with the services for which it has been engaged in relation to the Contract.

9.2 The obligations of the parties under this Part 1 Clause 9 shall apply for the duration of the Contract and for a period of five (5) years following termination of the Contract.

## 10. Set Off

10.1 UPMC Whitfield shall be entitled at any time to set off against the Price any amounts owing to UPMC

Whitfield by the Supplier whether under the Contract or any other contract or arrangement between the parties.

## 11. Force Majeure

11.1 Neither the Supplier nor UPMC Whitfield shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, the Services and/or the Works if the delay or failure arose by reason of circumstances beyond its reasonable control and which could not have been avoided by the exercise of reasonable care (excluding strikes, lock-outs and labour disputes).

11.2 In the event that either party is unable to, delayed in or prevented from performing its obligations under the Contract for a period of more than sixty (60) days by reason of circumstances beyond its reasonable control, either party shall be entitled to terminate the Contract by giving fourteen (14) days notice of termination to the other party. In such circumstances, UPMC Whitfield shall reimburse the Supplier such proportion of the Price relating to the quantity of the Goods supplied, the Services provided and/or the proportion of the Works completed by the Supplier as at the date of termination.

## 12. Notices

12.1 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or such other address as may at the relevant time have been notified in writing pursuant to this provision to the other party. Notices given by personal delivery shall be deemed to be received on the day of service (if within Business Hours) and on the next working day (if outside working hours). Notices served by post shall be deemed to be received on the second day after posting.

## 13. Assignment and Subcontracting

13.1 The Supplier shall not assign or transfer or purport to assign or transfer any of its rights under the Contract without UPMC Whitfield's prior written approval.

13.2 The Supplier shall not sublet or subcontract the whole or any part of its obligations under the

Contract without the prior written consent of UPMC Whitfield and then only to suppliers approved in writing by UPMC Whitfield, which consent shall be at the sole discretion of UPMC Whitfield. Notwithstanding UPMC Whitfield's consent to any subcontract or subletting arrangement, the Supplier shall remain fully responsible for all acts and omissions of such subcontractors and/or suppliers and the Supplier shall ensure that the insurance cover maintained by such subcontractors and/or suppliers provides the same minimum level of cover as that required pursuant to the Contract.

13.3 UPMC Whitfield may assign, transfer or delegate any or all of its rights under the Contract to any of the members of the UPMC Whitfield group or to any third party.

## 14. UPMC Whitfield Policies

14.1 The Supplier shall at all times comply with the terms of the UPMC Whitfield Anti-Corruption and Anti-Bribery Policy, UPMC Whitfield Environmental Health and Safety Policy, UPMC Whitfield Security Rules and UPMC Whitfield Invoicing Criteria (and to the extent applicable, the UPMC Whitfield IT Policy) as notified to it from time to time.

## 15. No Partnership

15.1 Nothing in the Contract shall be deemed to constitute either party as the employee, partner or agent of the other.

## 16. Governing Law and Disputes

16.1 The Contract shall be construed and governed in all respects in accordance with the laws of the Republic of Ireland and any disputes or differences in relation to the Contract shall be subject to the exclusive jurisdiction of the Irish courts.

16.2 In the event that any dispute may arise out of or in connection with the Contract, the parties shall firstly attempt in good faith to resolve the matter between their respective authorised representatives, but if the dispute remains unresolved, then a director of UPMC Whitfield and a director of the Supplier shall meet and make a bona fide attempt to reach settlement. Thereafter the dispute shall be subject to the exclusive jurisdiction of the Irish courts.

## 17. Sustainable Development Commitment and Corporate Responsibility

UPMC Whitfield is committed to sustainable development within its group business activities as set out in our Environmental and Health and Safety Policies and would like to see our suppliers share this approach. To this end, the Supplier will upon UPMC Whitfield's request send a report to UPMC Whitfield which states the actions they have taken to promote sustainable development, in particular in respect of:

- Reductions in energy consumption (water, gas, electricity);
- Reductions in waste into the water, air and the soil; and
- Reductions in waste produced during different stages of production

The Supplier must comply with all existing laws and regulations including, but without limitation, those relating to the employment of clandestine workers, children and forced labour, as well as those relating to health and safety, environmental protection and unlawful discrimination.

The Supplier agrees to provide any documents relating to the above which may reasonably be required by UPMC Whitfield

## **PART 2 - THE FOLLOWING ADDITIONAL CLAUSES SHALL APPLY WHERE ANY GOODS ARE TO BE SUPPLIED BY THE SUPPLIER**

### **1. The Contract**

1.1 The Supplier shall supply the Goods in accordance with the terms of the Contract.

1.2 Where UPMC Whitfield agrees in writing to accept delivery of the Goods by instalments, the Contract will be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle UPMC Whitfield at its option to treat the entire Contract as repudiated.

1.3 In the absence of any specific date for delivery, the Supplier shall deliver the Goods with all due diligence and expedition and in accordance with any requirements as notified by UPMC Whitfield.

### **2. Supplier's Responsibilities**

2.1 The Supplier warrants to UPMC Whitfield that the Goods will:

2.1.1 be of merchantable quality (within the meaning of the Sale of Goods and Supply of Services Act 1980 and fit for any purpose held out by the Supplier or

made known to the Supplier on or before the date of the Order (whether expressly or by implication);

2.1.2 be free from defects in design, materials and workmanship;

2.1.3 correspond with the Specification or (if applicable) any sample previously provided by the Supplier;

2.1.4 be supplied to UPMC Whitfield with the benefit of all additional guarantees and warranties attaching to the Goods;

2.1.5 comply with all applicable statutory requirements and regulations; and

2.1.6 not infringe the rights of any third party.

2.2 The quantity, quality and description of the Goods supplied under the Contract shall be as specified on the Order and/or the Contract Schedule or the Specification.

2.3 UPMC Whitfield's rights under the Contract are in addition to all rights implied by the Sale of Goods Act 1893. The Supplier shall comply with all regulations and/or other legal requirements applicable to the Goods including, without limitation, concerning their manufacture, packaging, packing and delivery.

2.4 The Supplier shall not unreasonably refuse any request by UPMC Whitfield to inspect and test the Goods, and provide sight of relevant documentation, during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch and the Supplier shall provide UPMC Whitfield or any person to whom this right has been delegated by UPMC Whitfield with all facilities reasonably required for such inspection and/or testing.

2.5 If, as a result of inspection or test of the Goods, UPMC Whitfield is not satisfied that the Goods will comply in all respects with the Contract and UPMC Whitfield so informs the Supplier within seven (7) days of such inspection or test, the Supplier shall (at his own cost) take such steps as are necessary to ensure such compliance.

### **3. Price**

3.1 The Price shall include all charges in respect of the Goods including, subject to Part 1 Clause 3.2, all applicable duties, imposts and/or levies.

### **4. Payment**

4.1 Unless otherwise stated in the Order, the Supplier shall be entitled to invoice UPMC Whitfield on or at any time after delivery of the Goods, and each invoice

shall quote a valid Order number and shall be in accordance with the UPMC Whitfield Invoicing Criteria.

## 5. Delivery and Title

5.1 The Goods shall be delivered, carriage paid, to the Site by the Supplier during Business Hours on the Delivery Date in accordance with the requirements stated in the Contract and/or in accordance with any Programme stated therein.

5.2 Where the date of delivery of the Goods is to be specified after the placing of the Order, the Supplier shall give UPMC Whitfield reasonable notice of the specified date. The Supplier shall deliver the Goods on the specified date within Business Hours.

5.3 The Supplier shall provide with each delivery or consignment of the Goods a prominently displayed packing note quoting the number of the Order together with all necessary information on storage requirements and/or lifting hazards. The Goods shall be marked in accordance with UPMC Whitfield's instructions and any applicable regulations or requirements of the carrier and properly packed and secured to ensure that they reach their destination in an undamaged condition in the ordinary course of business.

5.4 UPMC Whitfield shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until it has had a reasonable opportunity to inspect such Goods following delivery. If a Defect arises in relation to the Goods after delivery, UPMC Whitfield shall be entitled to reject such Goods for a period of fourteen (14) days after any latent defect in the Goods has become apparent.

5.5 The Supplier shall supply UPMC Whitfield in good time (and in any event at least seven (7) days before delivery of the Goods) with all instructions or other information it may require in order to enable UPMC Whitfield to accept delivery of the Goods.

5.6 UPMC Whitfield shall not be obliged to return any packaging or packing materials relating to the Goods to the Supplier regardless of whether such Goods have been accepted by UPMC Whitfield.

5.7 Subject to Part 2 Clause 5.8, title in the Goods shall pass to UPMC Whitfield upon delivery.

5.8 If payment for the Goods is made prior to delivery, title in the Goods shall pass to UPMC Whitfield on the making of such payment and the Goods shall be considered to have been appropriated to the Contract and shall be marked "Property of UPMC Whitfield". For the avoidance of doubt, title in all Goods paid for by UPMC Whitfield shall vest in UPMC Whitfield on termination of the Contract regardless of whether such Goods are on the Site on the date of termination.

5.9 The Goods shall remain at the risk of the Supplier at all times until properly delivered to UPMC Whitfield (including during off-loading and stacking).

## 6. Termination and Breach

6.1 If the Goods are not delivered on the Delivery Date then, without prejudice to any other remedy, UPMC Whitfield shall be entitled to deduct from the Price or, if UPMC Whitfield has paid the Price, to claim from the Supplier all costs incurred by UPMC Whitfield as a result of such delay including, without limitation, any penalties which it may incur in connection with other agreements to which it is a party.

6.2 In the event that delivery of the Goods is delayed for a period of thirty (30) days or more following the Delivery Date, UPMC Whitfield may immediately terminate the Contract.

6.3 Without prejudice to any other remedies which may exist, if any Goods are not supplied or do not comply with the terms and conditions of the Contract, UPMC Whitfield shall be entitled:

6.3.1 to require the Supplier to repair or replace the Goods, as appropriate, within seven (7) days of receiving written notice to such effect from UPMC Whitfield (or such longer period as may be specified in such notice); or

6.3.2 at UPMC Whitfield's sole discretion, if the Supplier fails to comply with Part 2 Clause 6.3.1, to treat the Contract as repudiated by the Supplier's breach immediately following notice from UPMC Whitfield and to require the repayment by the Supplier of any part of the Price which has been paid by UPMC Whitfield.

## **PART 3 - THE FOLLOWING ADDITIONAL CLAUSES SHALL APPLY WHERE ANY SERVICES ARE TO BE PROVIDED BY THE SUPPLIER**

### 1. Supplier's Responsibilities

1.1 The Services shall be provided by the Supplier using all due skill and care, in compliance with industry best practice and in accordance with the terms of the Contract.

1.2 The Services shall be provided during Business Hours, unless otherwise authorised by UPMC Whitfield in writing.

1.3 The Supplier shall ensure that all plant or equipment supplied as part of the Services corresponds with the Specification, is of reasonable quality and fit for any purpose held out by the Supplier or made known to the Supplier on or before the date of the Order (whether expressly or by implication). The Supplier shall be responsible for insuring all plant and/or equipment used in the provision of the Services to the levels required in Part 1 Clause 5.1.

1.4 The Supplier shall comply with all relevant statutory requirements, health and safety requirements, security and other site regulations applicable to the Services.

1.5 The Supplier shall provide its full co-operation where integration of the provision of the Services with the activities of any other suppliers or sub-contractors is required. In the event that UPMC Whitfield incurs any additional costs or expenses as a result of failure by the Supplier to provide such co-operation or to fully integrate its provision of the Services with the activities of any other suppliers or sub-contractors to UPMC Whitfield, the Supplier shall be liable for such additional costs and hereby agrees to indemnify UPMC Whitfield in full in respect of all such costs and expenses.

1.6 The Supplier shall be responsible for the provision of all notices and the payment of all related fees which may be required by law in connection with the Services.

1.7 On termination of the Contract for whatever reason the Supplier shall provide all reasonable assistance as may be required by UPMC Whitfield to facilitate the handover of the Services to a new provider and shall leave the Site in a condition acceptable to UPMC Whitfield.

### 2. Payment

2.1 Unless otherwise stated in the Order, the Supplier shall be entitled to invoice UPMC Whitfield for the Services on a monthly basis in arrears.

## **PART 4 - THE FOLLOWING ADDITIONAL CLAUSES SHALL APPLY WHERE ANY WORKS ARE TO BE CARRIED OUT BY THE SUPPLIER**

### 1. Supplier's Responsibilities

1.1 The Supplier shall carry out and complete the Works using all due skill and care, in compliance with industry best practice and in accordance with the requirements, terms and conditions of the Contract.

1.2 The Supplier shall be fully responsible for all aspects of the design of the Works save as specifically excluded by the Specification.

1.3 The Supplier shall promptly notify UPMC Whitfield in writing in the event that the Supplier becomes aware of any ambiguity or error in the Specification or of any respect in which the Works to be undertaken may not meet UPMC Whitfield's requirements.

1.4 The Supplier shall be given access to the Site and shall thereupon proceed regularly and diligently with the Works in accordance with the Programme but in any event execute the Works by the Completion Date. The Supplier shall submit a progress report to UPMC Whitfield on a monthly basis (or at such other intervals as the parties may agree).

1.5 The Supplier shall provide its full co-operation where integration of the Works with the activities of any other suppliers or sub-contractors is required. In the event that UPMC Whitfield incurs any additional costs or expenses as a result of failure by the Supplier to provide such co-operation or to fully integrate the Works with the activities of any other suppliers or sub-contractors to UPMC Whitfield, the Supplier shall be liable for such additional costs and hereby agrees to indemnify UPMC Whitfield in full in respect of all such costs and expenses.

1.6 The Supplier shall be responsible for the provision of all notices in respect of the Works including, without limitation, to municipal or planning authorities and the payment of all fees which may be required by law in connection with the Works. The Supplier shall promptly notify UPMC Whitfield in writing of:-



1.6.1 any requirement to obtain consent(s) of any kind in relation to the Works and any matters required to comply with such consents; and

1.6.2 any claim or circumstances which may lead to a claim for the payment of any sum in excess of the Price. Failure by the Supplier to notify UPMC Whitfield in writing of a claim under Part 4 Clause 1.6.1 within fourteen (14) days of its becoming aware of such a claim shall constitute a waiver by the Supplier in respect of any such claim against UPMC Whitfield.

1.7 Notwithstanding the Supplier's obligation to complete the Works on or before the Completion Date, the Supplier may be required to install, test and/or commission certain sections of the Works in order to comply with the Programme. For the avoidance of doubt, the Price shall be deemed to include all costs incurred in connection with complying with such requirement.

1.8 The Supplier warrants to UPMC Whitfield that all materials, plant and/or equipment used or installed as part of the Works shall:-

1.8.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1980 (as amended)) and fit for any purpose held out by the Supplier or made known to the Supplier (whether expressly or by implication) on or before the placing of the Order;

1.8.2 be free from any material defects including, without limitation, in design, materials and workmanship;

1.8.3 correspond with the Specification or, where applicable, any sample previously provided;

1.8.4 comply with all statutory requirements and regulations relating to the Works; and

1.8.5 not infringe the rights of third parties.

1.9 The Supplier shall comply with all applicable statutory requirements (including, without limitation, health and safety requirements), security and other site regulations concerning the Works.

1.10 The Supplier shall not unreasonably refuse any request by UPMC Whitfield to inspect the Works. If, as a result of such inspection, UPMC Whitfield is not satisfied that the Works comply in all respects with the Contract, and UPMC Whitfield so informs the Supplier within seven (7) days of such inspection, the Supplier shall (at his own cost) take all steps necessary to ensure compliance of the Works with the Contract.

## 2. Insurances

2.1 Where the Contract involves the Supplier undertaking any design responsibility for the Works or any part of the Works, the Supplier shall maintain professional indemnity insurance with a reputable insurance company in Ireland with a limit of indemnity of not less than €6,000,000 (six million Euro) on an each and every claim basis and such insurance shall be maintained in force by the Supplier for the duration of the Contract and for a continuous period of six years thereafter.

## 3. Termination and Breach

3.1 Subject to Part 4 Clause 3.3, if the Works are not executed by the Completion Date, then without prejudice to any other remedy, UPMC Whitfield shall be entitled to deduct from the Price or (if UPMC Whitfield has paid the Price) to claim from the Supplier by way of liquidated damages for delay one per cent (1%) of the Price for every one week's delay, up to a maximum of ten per cent (10%) of the Price or such other liquidated damages as are specified in the Contract.

3.2 Subject to Part 4 Clause 3.3, in the event that the Works are not executed within ten (10) weeks of the Completion Date, UPMC Whitfield may terminate the Contract pursuant to Part 1 Clause 6.1.

3.3 On termination, UPMC Whitfield may take over the Works or make such arrangements as it considers necessary to have the Works completed otherwise than by the Supplier, who shall thereafter be excluded from further performance of the Works. In such event, UPMC Whitfield shall cease to be obliged to make any further payment under the Contract until the Works are completed.

Upon completion of the Works, the Supplier shall pay to UPMC Whitfield an amount calculated as follows:-

((b) + (c)) - (a)

where:-

(a) is the Price;

(b) is the certified cost to UPMC Whitfield of having the remainder of the Works completed plus any Loss suffered or incurred by UPMC Whitfield;

and

(c) is an amount equal to any amount already paid to the Supplier plus any sum due to UPMC Whitfield under Part 1 Clause 10.

3.4 In the event that the Works are not completed by the Completion Date and such delay is as a result of default by UPMC Whitfield,

then the parties shall in good faith agree a new completion date allowing the Supplier reasonable time, taking into account all circumstances, in which to complete the Works.

## INVOICING CRITERIA

### FAO: ACCOUNTS RECEIVABLE

Below are clear guidelines on our invoicing criteria, please ensure you follow these guidelines to ensure prompt payment of invoices.

The following must be clearly stated on every invoice:

1. Our company names and address. Note: There are number of different statutory entities in the group, please refer to the order for the correct company.
2. A Valid Purchase Order Number
3. Quantity
4. Description of Works / Services / Provided (Must match the description on the P.O.)
5. Unit Cost
6. Line Value
7. VAT Rate & Value (If applicable)
8. Your Company Name
9. Your company VAT number (where applicable)
10. Your company address
11. Your company contact details
12. Invoice Date
13. Your company invoice number
14. Currency you are invoicing in
15. Signed Delivery / Works Docket should be attached
16. Total Net
17. Overall Total

## Additional Guidelines

- Any price variations should be billed separately and require a new P.O. Number.
- You cannot invoice for multiple sites or statutory entities on one invoice
- If there is 4 visits per year, separate invoices must be issued by you for each of the visits. Each invoice must detail the periods this visit is for and cross reference to the line numbers on the original UPMC Whitfield Purchase order
- Remedial works – If it is found that remedial works are required this must be brought to the attention of your buyer by written quotation. A new purchase order will be issued by UPMC Whitfield to cover these new works. Note: UPMC Whitfield will not pay out on unauthorised works or invoices that do not have a signed-off backup schedule.