

eircom Limited standard conditions of purchase

1. SCOPE OF CONTRACT

1.1 eircom contracts with each Supplier subject to and upon these terms and conditions ("Conditions"). These Conditions subject to any variation under Clause 1.2, apply to the Contract to the exclusion of all other terms and conditions which the Supplier may stipulate, incorporate, refer to or purport to apply in writing or orally whether in any quotation, acknowledgement of a Purchase Order, correspondence or elsewhere, or implied by law, trade, custom or course of dealing.

1.2 These Conditions apply to all eircom's purchases and any variation to these Conditions will not be effective unless agreed in writing and signed by the Head of Procurement of eircom.

1.3 eircom reserves the right to update these Conditions from time to time. Contracts are subject to the version of the Conditions in force at the time of Contract.

2. CONTRACT FORMATION

2.1 Each Purchase Order issued by eircom constitutes an offer by eircom to purchase Goods or acquire Services from the Supplier on a non exclusive basis subject to these Conditions.

2.2 A Contract is made between the parties on the earlier of:

2.2.1 notification of written acceptance by the Supplier of a Purchase Order; or

2.2.2 fulfilment of a Purchase Order in whole or in part by the Supplier.

3. VARIATION OF PURCHASE ORDER

3.1 eircom may, at any time vary or add to the Goods or Services and the Supplier will carry out such variation as if they were incorporated in the Contract upon receipt of an amended Purchase Order.

4. PRICE

4.1 The Price of the Goods or Services is as stated in the Purchase Order and is exclusive of VAT.

4.2 No increase in the Price or extra charges will be accepted by eircom.

4.3 The Supplier agrees to grant any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier or as set out in a Purchase Order.

4.4 The Supplier will pass on any cost savings to eircom resulting from a reduction of raw material costs, labour costs or otherwise.

4.5 The Supplier will (unless otherwise agreed in writing by eircom) bear the cost of unanticipated expenses or cost overruns required to ensure the Goods or Services are provided in accordance with the terms of the Contract.

5. PAYMENT

5.1 Unless otherwise stated in the Purchase Order, eircom will pay invoices within sixty (60) days of receipt of a valid invoice. Time for payment shall not be of the essence of the Contract.

5.2 Invoices must be submitted to eircom Limited, Accounts Payable Section, P.O. Box 9, Knockmay, Portlaoise, Co. Laois, Ireland.

5.3 The Supplier may invoice eircom in respect of each Purchase Order at any time after delivery of the Goods or completion of the Services.

Each invoice must be addressed to eircom Limited, quote the Suppliers unique invoice number, the date, eircom's Purchase Order Number, eircom's item code, unit price, quantity and description of Goods or Services, details of the Supplier's name and registered address, VAT number (if appropriate) amount of VAT payable and value of invoice both gross and net, inclusive and exclusive of VAT and the Supplier's banking details. The Supplier must submit a separate invoice in respect of each instalment delivered under the Purchase Order.

5.4 Credit notes, in order to be valid, must comply with the criteria for valid invoices set out above in 5.3 unless otherwise agreed in writing by eircom.

5.5 eircom may withhold payment if a current revenue clearance certificate is not provided by its Supplier.

5.6 The Supplier must inform eircom immediately, by sending an email to vendorcontractmgt@eircom.ie of any changes to the status of the Supplier including any change of name, bank details, VAT registration or company registration details.

5.7 In the event that eircom disputes an invoice, eircom may withhold payment until the dispute is resolved. If any sum of money shall be due from the Supplier to eircom, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under the Contract or any other agreement or contract with eircom.

6. INSPECTION AND PROGRESS

6.1 The Supplier agrees to allow eircom to carry out such inspections, audit of records where applicable, or tests as eircom may reasonably require. Any such inspection or testing will not diminish or otherwise affect the Supplier's obligations under the Contract.

6.2 If eircom is not satisfied that the Goods or Services will comply with the Contract the Supplier will immediately take all steps necessary to ensure compliance with the Contract within seven (7) days of the date of inspection.

6.3 A failure by eircom to make a complaint at the time of inspection in accordance with 6.1 will not constitute a waiver by eircom of any of its rights or remedies.

7. DELIVERY AND PERFORMANCE

7.1 The Supplier will deliver the Goods to or perform the Services at the Delivery Address on the date or within the time scale for completion as specified in the Purchase Order, and in any event during eircom's Normal Business Hours. If a date is not specified then delivery or performance must be within twenty eight (28) days of the date of the Purchase Order.

7.2 Time is of the essence in relation to delivery of the Goods or performance of the Services by the Supplier.

7.3 Without prejudice to Clause 9.1, the Supplier will inform eircom immediately in circumstances where it has reason to believe that Goods or Services will not be delivered or completed by the date specified in the Purchase Order.

7.4 Each delivery of Goods must be accompanied by a delivery note, quoting the Purchase Order number, and containing the same level of detail

- as the Purchase Order, and in the case of instalment sent, the outstanding balance remaining to be delivered. A service work sheet or delivery docket for Services, containing the same level of detail as the Purchase Order must be submitted on completion of Services.
- 7.5 If eircom agrees that the Goods can be delivered by instalments, the failure by the Supplier to deliver any one instalment in accordance with this Contract entitles eircom at its discretion to treat the entire Contract as repudiated.
- 7.6 If Goods or Services are delivered in excess of the quantities ordered, eircom is not bound to pay for the excess and the excess remains and is returnable at the Supplier's risk and expense.
- 7.7 Title and property in the Goods and Deliverables passes to eircom upon delivery.
- 7.8 eircom has the right to reject any Goods or Services which are not in accordance with the Contract and will not be deemed to have accepted all or part of the Goods or Services (notwithstanding the signature of a delivery note or any other acknowledgement of delivery) until:
- (a) eircom has had a reasonable opportunity to test or inspect the Goods or Services;
 - (b) the completion of any acceptance tests eircom considers necessary;
 - (c) lapse of a reasonable time after any latent defect has become apparent.
- 7.9 The Supplier shall assign or procure the benefit of any manufacturers' warranties or guarantees in respect of the Goods to or for eircom and will provide all reasonable assistance in enforcing the same.
- 8. WARRANTIES**
- 8.1 The Goods will be of satisfactory 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 expressly or implicitly prior to or at the time the Purchase Order is placed;
- 8.2 The Goods will be free from defects in design, material and workmanship;
- 8.3 The Goods and Services will conform in every respect with any relevant Specification or sample;
- 8.4 The Goods and Services will be supplied in accordance with Applicable Law and the Environmental Regulations;
- 8.5 The Services will be performed with due care, skill and diligence in accordance with recognised commercial practices and standards in accordance with any Timetable or by the Delivery Date agreed by eircom and by appropriately qualified and trained personnel;
- 8.6 The Deliverables will meet any agreed Specification and will be free from computer virus;
- 8.7 The supply of the Goods or Services and eircom's use of the Goods or Services will not infringe the intellectual property rights of any other parties;
- 8.8 To the extent that the Supplier or it's personnel have access to eircom's computer system in performing the Services under the Contract, the supplier warrants that it shall not (and will procure that it's personnel, sub contractors or agents do not) deliberately or negligently introduce any computer virus into those systems.
- 8.9 The provisions of conditions 8.1 to 8.8 will survive any performance, acceptance or payment pursuant to the Contract and will extend to any substituted or remedial Goods or Services provided by the Supplier.
- 8.10 eircom's rights under the Contract are in addition to the statutory implied terms implied in favour of eircom by the Sale of Goods and Supply of Services Act, 1980 and any other statute.
- 9. REMEDIES**
- 9.1 Without prejudice to any other remedy, eircom may have, in the event of late delivery, or if the Goods or Services or Deliverables including any software, are not supplied or performed in accordance with the Contract, then eircom may, (whether or not any part of the Goods or Services have been accepted by eircom):
- 9.1.1 cancel the Contract in whole or in part;
 - 9.1.2 postpone or refuse to accept any further delivery of Goods or Services without liability;
 - 9.1.3 require the Supplier at its expense to fulfil its obligations in accordance with the Contract within 7 (seven) days;
 - 9.1.4 whether or not eircom has previously required the Supplier to fulfil its obligations above, reject the Goods or Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier;
 - 9.1.5 recover from the Supplier any expenditure incurred by eircom in obtaining Goods or Services in substitution from another supplier;
 - 9.1.6 claim damages for all additional costs, losses or expenses incurred as a result of the Supplier's breach or breaches of the Contract;
 - 9.1.7 in the case of late delivery of Goods or delay in performance of the Services, deduct from the Price by way of liquidated damages for delay, five (5%) of the Price for each week of delay.
- 10. PACKAGING & ENVIRONMENTAL MATTERS**
- 10.1 In performing its obligations under the Contract the Supplier must comply with Applicable Law relating to the prevention of harm to humans or to the environment and in all respects with the Environmental Regulations.
- 10.2 The Supplier must, before delivery, provide eircom with a list of any harmful or potentially harmful properties or substances in the Goods supplied. eircom will rely on such information from its Supplier to satisfy its own obligations under Applicable Law.
- 10.3 On delivery, the Supplier must provide eircom with comprehensive information on the origin or source of the Goods and, where applicable details in respect of the manufacture of the Goods including but not limited to batch number(s) to enable eircom to trace the source of supply.
- 10.4 The Supplier must ensure that packaging is designed and produced to:
- 10.4.1 minimise the volume and weight used;
 - 10.4.2 limit its impact on the environment when managed as a waste;
 - 10.4.3 permit its reuse or recovery; and
 - 10.4.4 manufactured so as to limit the

- presence of noxious and hazardous constituents.
- 10.5 The Supplier must provide eircom with information on the weight and category of packaging of the Goods supplied. This information must be submitted by the Supplier to eircom in advance of delivery of Goods by completing eircom's Packaging Waste Statistical Return Form No.72110 and forwarding same to eircom Quality Assurance, Crag Avenue, Clondalkin, Dublin 22.
- 10.6 eircom may at the Supplier's expense return all or any empty packaging materials to the Supplier.
- 11. DAMAGE IN TRANSIT**
- 11.1 The Supplier must immediately repair or replace (at eircom's discretion) at it's own cost any Goods damaged in transit.
- 12. SOFTWARE**
- 12.1 Where there is a supply of software to eircom (whether software proprietary to the Supplier or to a third party), subject to Clause 16.1 the Supplier grants, or must procure the grant of an irrevocable, worldwide, non-exclusive, perpetual and royalty-free licence to eircom and its Affiliates to use and copy the software and any associated documentation.
- 12.2 The Supplier shall promptly notify eircom of any modifications, maintenance, release or new version of the software, and shall offer them to eircom on such terms as they are generally made available to the Supplier's customers and in accordance with 4.3 and 12.3 below.
- 12.3 The Supplier warrants that:
- 12.3.1 the software will conform to its published or agreed specification and will be free from defects;
- 12.3.2 no virus or malicious software will be contained in any software or in any media on which the software is delivered to eircom under this Contract; and
- 12.3.3 it has full right and authority to grant a licence of the software to eircom.
- 12.4 The Supplier will provide eircom with such technical advice, assistance, data and documentation including source code and support contacts where necessary to allow eircom to maintain the software.
- 13. INDEMNITY**
- 13.1 In this clause a reference to eircom includes eircom's Affiliates and the provisions of this condition shall be for the benefit of and enforceable by eircom's Affiliates. A reference to the Supplier includes its employees, subcontractors or agents. Without any prejudice to any other rights or remedies of eircom, the Supplier will indemnify and to keep eircom, indemnified against all damages, costs, expenses (including legal costs) injury or death to third parties, all claims for loss, incurred by eircom arising out of or connection with:
- 13.1.1 any breach of any of the warranties given by the Supplier;
- 13.1.2 any negligent or deliberate act or omission of the Supplier;
- 13.1.3 any claim that the Goods, Services, software or Deliverables breach any third party intellectual property rights in relation to the supply or the use of them by eircom.
- 14. INSURANCE**
- 14.1 The Supplier must maintain sufficient insurances with a reputable insurer to cover any potential liability under the Contract. As a minimum, where relevant, the Supplier must maintain the following insurances at the following indemnity levels:
- 14.1.2 Public Liability EUR12.7m for each and every incident;
- 14.1.3 Product Liability cover with of EUR12.7m for each and every incident;
- 14.1.4 Employer Liability cover of EUR13m for each and every incident ;
- 14.1.5 insurance as required under the Road Traffic Acts in respect of any vehicles or machinery used in connection with the execution or performance of this Contract; and
- 14.1.6 Professional Indemnity of EUR5.0m.
- 14.2 The Supplier agrees on request by eircom to provide evidence of such insurances to eircom or to amend any insurance cover to meet any specific requirements of eircom.
- 15. TERMINATION**
- 15.1 The Contract or any Purchase Order may be terminated in whole or in part by eircom by giving written notice to the Supplier at any time prior to the delivery of the Goods or Services and eircom's sole liability will be to pay the Supplier the Price for any Goods delivered or Services performed up to and including the date of termination. eircom will not be liable to pay any further costs.
- 15.2 Without prejudice to any other rights or remedies eircom may have, eircom may terminate the Contract with immediate effect and without liability upon written notice in the event that;
- 15.2.1 the Supplier commits a breach of any of the terms of the Contract which if remediable, it fails to remedy within fourteen (14) days of the date of the breach;
- 15.2.2 the Supplier is deemed bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of amalgamation or reconstruction, is the subject of a winding up petition or compounds with its creditors generally or has a receiver or manager appointed over all or any of its assets or anything analogous to any of the above.
- 15.3 Termination of the Contract shall not affect the rights of either party existing at the date of termination.
- 15.4 Notwithstanding termination of the Contract those provisions which expressly or by implication survive termination will continue in full force and effect.
- 15.5 On termination of the Contract the Supplier must immediately return all documentation or materials containing confidential information, information relating to eircom's intellectual property and any property belonging to eircom.
- 16. INTELLECTUAL PROPERTY**
- 16.1 The Supplier agrees that all intellectual property rights in the Deliverables, Services and any software developed for eircom provided under the Contract shall vest in and be the absolute property of eircom.

16.2	The Supplier will at eircom's request do all such further acts to secure for eircom the full benefit of any intellectual property rights in accordance with Clause 16.1.		respect of the Goods or Services prior to eircom issuing a Purchase Order.
17.	REPUTATION AND INDUCEMENT	22.	PUBLICITY
17.1	The Supplier must not do or omit to do anything which may damage the reputation of eircom or its Affiliates.	22.1	The Supplier must not, without the prior written consent of the Head of Procurement at eircom, advertise or publicly announce that the Supplier is supplying Goods or Services to eircom.
17.2	The Supplier must not offer or agree to give to any employee or other person within eircom or any agent of eircom any gift, reward, advantage, benefit or consideration of any kind as an inducement or reward for doing, or not doing any action, in relation to the granting of a Contract by eircom or its Affiliates.	23.	RELATIONSHIP
18.	CONFIDENTIALITY	23.1	Neither party has the right or authority express or implied to create or incur any liability on behalf of the other party.
18.1	The Supplier will, and will procure that, all of its employees, agents or sub-contractors or advisors will keep all information relating to the business or the operations of eircom or its Affiliates which is not in the public domain confidential subject to any obligations under law.	24.	SEVERANCE
18.2	The obligation in Condition 18.1 will survive termination of the Contract.	24.1	Any provision of the Contract which is or held to be invalid or unenforceable (in whole or in part) will be treated as severable from the remainder of the Contract and shall not affect the validity or enforceability of the remaining provisions of the Contract.
19.	ASSIGNMENT AND SUBCONTRACTING	25.	WAIVER
19.1	The Supplier may not assign, novate, sub-contract or otherwise dispose of its rights or obligations or any part of them under the Contract without the prior written consent of eircom.	25.1	No waiver by eircom of any breach of the Contract by the Supplier will be considered as a waiver of any subsequent breach of the same or any other provision.
19.2	The appointment of a sub-contractor or agent in accordance with eircom's consent will not relieve the Supplier of any of its obligations under the Contract. The Supplier agrees on request by eircom to provide details of all contractual arrangements in place with sub-contractors or agents in relation to the supply of Goods or Services to eircom and if requested will obtain collateral warranties from such sub-contractors in favour of eircom in a form required by eircom. The Supplier will indemnify and keep indemnified eircom from and against all damages, costs, charges and expenses (including legal costs) amounting from or incurred by reason of any act or omission of its sub-contractors or agents.	26.	AUDIT
20.	ACTS BEYOND THE CONTROL OF A PARTY	26.1	The Supplier must maintain up to date records of all Purchase Orders issued by eircom, details of all Goods or Services and invoices and to allow eircom or its auditors the right to inspect all such records on request by eircom.
20.1	Neither party will 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 under this Contract arising from any cause beyond its reasonable control including, without limitations, any act of God, any act of government, war, civil disturbance, fire, flood, explosion, strike or other industrial action.	27.	DATA PROTECTION
20.2	In the event that such delay or prevention continues for more than three (3) months, then either party may terminate the Contract by notice in writing to the other. The Supplier will assist and facilitate eircom and any alternative supplier of eircom to ensure continuity of supply and mitigation of loss.	27.1	The Supplier warrants that it is and will remain in compliance with the Data Protection Acts 1988 and 2003 (the "DPA") and that it has all appropriate procedures in place to ensure its compliance with the DPA whether the Supplier is a data controller or data processor for the purposes of the DPA.
21.	ENTIRE AGREEMENT	27.2	The Supplier shall process personal data only to the extent, and in such a manner, as is necessary for the purposes of this Contract and in accordance with eircom's instructions from time to time and shall not process personal data for any other purpose. The Processor will keep a record of any processing of personal data it carries out on behalf of eircom.
21.1	This Contract constitutes the entire understanding between the parties relating to the subject-matter of this Contract except that eircom may rely on any verbal or other representations made by the Supplier in	27.3	The Supplier shall not transfer any personal data outside the European Economic Area without the prior written consent of eircom.
		28.	SECURITY AND BUSINESS CONTINUITY
		28.1	The Supplier will take all appropriate technical, organisational and security measures in line with best industry practice to protect against unauthorised access to eircom data, and to limit access to eircom to staff necessary for the provision of the Service.
		28.2	On request by eircom, the Supplier will provide details of such technical, organisational and security measures implemented and will allow eircom, on reasonable notice, to audit such security measures.
		28.3	The Supplier will notify eircom promptly of any security breach impacting or potentially impacting on eircom data or on the provision of the Services, and will immediately implement all remedial actions necessary as a result of the breach.
		28.4	The Supplier will ensure that all eircom data is erased, destroyed and/or at eircom's request returned to eircom on termination or expiry of the Contract.
		28.5	The Supplier will establish and maintain contingency plans and risk controls to ensure

the Supplier is capable of delivering the Goods or providing the Services. The Supplier will provide details of such plans and controls on request to eircom.

29. NOTICES

29.1

Any notice required or permitted to be given by either party to the other under this Contract shall be in writing and shall be delivered by certified or registered mail, postage, prepaid and return receipt requested or by courier and will be deemed effective upon receipt by the addressee at the address in the Purchase Order or such other address or facsimile number as the parties may designate by written notice to each other. For the purposes of this clause all notices shall be served on eircom to the Head of Procurement with a copy to the Legal Department at 1 Heuston South Quarter, Dublin 8, Ireland.

30. GOVERNING LAW

30.1

The Contract shall be governed by and construed in accordance with the laws of Ireland and the parties submit to the exclusive jurisdiction of the Irish Courts

31. DEFINITIONS & INTERPRETATION

31.1

The following definitions apply in these Conditions:

Affiliate: any subsidiary or parent company of a party from time to time, as the terms "subsidiary" and "parent" are defined in Section 155 of the Companies Act 1963 and "Affiliates" shall be interpreted accordingly;

Applicable Law: any law of Ireland and the European Union and any other laws or regulations, directives, regulatory policies, guidelines, rules or industry codes for the time being in force and taking account of any amendments, relevant to the performance of the Supplier's obligations under the Contract;

Contract: the contract between eircom and the Supplier, for the purchase of Goods or Services by eircom incorporating the Purchase Order, these Conditions and any Specification;

Deliverables: any deliverables provided by the Supplier in connection with the Services, including all hardware, software and documentation provided in connection with each deliverable;

Delivery Address: the address(es) for delivery of the Goods or performance of the Services specified by eircom in the Purchase Order;

Delivery Date: the date for delivery of the Goods or performance of the Services specified by eircom in the Purchase Order;

eircom: eircom Limited whose registered address is at 1 Heuston South Quarter, St. John's Road, Dublin 8;

eircom's Normal Business Hours: 9am to 5pm, Monday to Friday excluding public holidays and any other times which may be agreed between eircom and the Supplier;

Environmental Regulations: the Waste Management (Waste Electrical and Electronic Equipment) Regulations (S.I. 340 of 2005), as amended, the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations (S.I. 341 of 2005), as amended, and the Waste Management (Batteries and Accumulators) Regulations 2008 (S.I. No. 268 of 2008);

Goods: the goods, (or any instalment or any part of them), as described in the Purchase Order;

Purchase Order: eircom's Purchase Order for Goods or Services incorporating these Conditions;

Price: the price of the Goods or the charge for the Services, including carriage, packing, insurance, logistics costs, license or royalty payments, payable in Euro as set out in the Purchase Order;

Processor: the data processor, as defined in the DPA;

Purchase Order Number: the unique number set out on the Purchase Order;

Services: the services to be provided by the Supplier (or any part of them), described in the Purchase Order or more particularly described in a statement of work;

Specification: any specification, statement of work, description, plan, drawing or sample relating to the Goods or Services approved by eircom;

Supplier: the company/person named in the Purchase Order;

Timetable: a timetable agreed by eircom for the provision of the Goods or performance of the Services;

VAT: value added tax chargeable under Irish law for the time being.