# Bond – Unfixed Works Items[[1]](#footnote-1)

(Clause 11.2)

Bond No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ BOND AMOUNT: €

**THIS BOND** (the Bond)is made on

**BETWEEN**

|  |  |  |
| --- | --- | --- |
| 1. | *The Contractor* |  |
|  | *Registered office of Contractor* |  |
| 2. | *The Surety* |  |
|  | *Registered office of Surety* |  |

and

|  |  |  |
| --- | --- | --- |
| 3. | *The Employer* |  |
|  | *Principal office of Employer* |  |

## BACKGROUND

A. The Contractor has been appointed by the Employer for

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|  | *Name of Contract* |  |

(the Contract).

B. The Contractor has agreed to furnish this bond to the Employer as a condition of payment for certain offsite Works Items.

C. Terms defined in the Contract have the same meaning in this Bond.

## IT IS AGREED AS FOLLOWS:

1. The Surety guarantees to the Employer that if the Contractor breaches the Contract or the Contractor’s obligation to complete the Works is terminated under clause 12.1 of the Conditions the Surety will, subject to this Bond, pay all amounts for which the Contractor is liable under or as damages for breach of the Contract, as established under the Contract, taking into account all sums due to the Contractor under the Contract.
2. The liability of the Surety under this Bond will not exceed €                           .   
   When the Employer’s Representative notifies the Employer

2.1 that any of the off-site Works Items referred to in recital B above have been delivered to the Site and all of the requirements of clause 11.2(1) of the Conditions have been met in regard to them and

2.2 the amount that the Contractor would be entitled to be paid when the Works Items have been delivered to the Site and all the requirements of clause 11.2(1) of the Conditions met

the Surety’s maximum liability will be reduced by the amount so notified.

1. No alteration in the Contract or in the extent or nature of the Works, and no allowance of time under the Contract, and no forbearance or forgiveness concerning the Contract by the Employer, will in any way release the Surety from liability under this Bond.
2. The Surety will be released from its liability under this Bond on certification of Substantial Completion of the Works, except in relation to any breach by the Contractor or termination that has occurred before that date, written notice (including particulars of the breach or termination) of which the Employer has given the Surety within 4 weeks after this expiry date.
3. The Contractor undertakes to the Surety to perform its obligations under the Contract. This undertaking does not limit any rights or remedies of the Employer or the Surety.
4. The Contractor must promptly, and the Employer may, provide to the Surety by registered or hand-delivered letter to the Surety’s registered office given above or to the agent named in clause 12 below a copy of any notice that the Contractor gives to or receives from the Employer under clause 12 of the Conditions. Breach by the Contractor of this obligation or failure to give notice will not give any defence to a call on this Bond.
5. The decision of a court or arbitrator in a dispute between the Employer and the Contractor will be binding on the Surety as to all matters concerning a breach of the Contract, termination under the Contract, and the Contractor’s liability.
6. If the Surety is called on to pay the Employer’s loss following a termination under clause 12.1 of the Conditions, the Surety may suggest a completion contractor to the Employer, but the Employer has no obligation to accept the suggestion.
7. The Surety will not be liable under this Bond for a breach or termination caused solely and directly by war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution or military or usurped power.
8. The Employer may assign the benefit of this Bond, without the Surety’s or the Contractor’s consent, by giving written notice to the Surety.
9. This Bond is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.
10. The Surety appoints

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|  | *Name of Agent* |  |
|  | *Address of Agent* |  |

as its agent for service of legal proceedings. The Surety confirms that the named agent has been irrevocably appointed and the failure of the agent to notify the Surety of receipt of a document will not invalidate any proceedings or the service of the document.[[2]](#footnote-2)

1. Money payable by the Surety under this Bond will be paid in euro in Ireland.

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| **Given[[3]](#footnote-3) under the Contractor’s common seal** | |
| *Affix Contractor’s common seal* |  |
| *Signatures of persons authorised to authenticate the seal* |  |

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| OR | | |
| **Signed and delivered as a Deed by** | | |
| *Name of attorney* |  | |
| *Signature of attorney* |  | |
| *As lawful attorney of the Contractor under a power of attorney dated* | |  |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |

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| OR | |
| **Signed on behalf of** | |
| *Name of Contractor* |  |
| *Signature of authorised person* |  |
| **In the presence of** |  |
| *Name of witness* |  |
| *Signature of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

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| OR (if the Contractor is an individual) | |
| **Signed and delivered as a Deed by** | |
| *Name of Contractor* |  |
| *Signature of Contractor* |  |
| **In the presence of** |  |
| *Signature of witness* |  |
| *Name of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |
| OR | |
| **Signed by** | |
| *Name of Contractor* |  |
| *Signature of Contractor* |  |
| **In the presence of** |  |
| *Signature of witness* |  |
| *Name of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

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| OR (if the Contractor is a joint venture, execution must be by each member, using the blocks below) | | | | |
| ***Joint Venture Member 1*** | | | | |
| **Given under the common seal of** | | | | |
| *Name of joint venture member 1* | |  | | |
| *Affix common seal* | |  | | |
| *Signatures of persons authorised to authenticate the seal* | |  | | |
| OR | | | | |
| **Signed and delivered as a Deed by** | | | | |
| *Name of attorney* | |  | | |
| *Signature of attorney* | |  | | |
| *As lawful attorney of joint venture member 1 under a power of attorney dated* | | | |  |
| **In the presence of** | |  | | |
| *Name of witness* | |  | | |
| *Signature of witness* | |  | | |
| *Witness’s occupation* | |  | | |
| *Witness’s address* | |  | | |
| OR | | | |
| **Signed on behalf of** | | | |
| *Name of joint venture member 1* | |  | |
| *Signature of authorised person* | |  | |
| **In the presence of** | |  | |
| *Name of witness* | |  | |
| *Signature of witness* | |  | |
| *Witness’s occupation* | |  | |
| *Witness’s address* | |  | |

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| ***Joint Venture Member 2*** | | | |
| **Given under the common seal of** | | | |
| *Name of joint venture member 2* |  | | |
| *Affix common seal* |  | | |
| *Signatures of persons authorised to authenticate the seal* |  | | |
| OR | | | |
| **Signed and delivered as a Deed by** | | | |
| *Name of attorney* |  | | |
| *Signature of attorney* |  | | |
| *As lawful attorney of joint venture member 2 under a power of attorney dated* | | |  |
| **In the presence of** |  | | |
| *Name of witness* |  | | |
| *Signature of witness* |  | | |
| *Witness’s occupation* |  | | |
| *Witness’s address* |  | | |
| OR | | | |
| **Signed on behalf of** | | | |
| *Name of joint venture member 2* | |  | |
| *Signature of authorised person* | |  | |
| **In the presence of** | |  | |
| *Name of witness* | |  | |
| *Signature of witness* | |  | |
| *Witness’s occupation* | |  | |
| *Witness’s address* | |  | |

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| ***Joint Venture Member 3*** | | | | |
| **Given under the common seal of** | | | | |
| *Name of joint venture member 3* | |  | | |
| *Affix common seal* | |  | | |
| *Signatures of persons authorised to authenticate the seal* | |  | | |
| OR | | | | |
| **Signed and delivered as a Deed by** | | | | |
| *Name of attorney* | |  | | |
| *Signature of attorney* | |  | | |
| *As lawful attorney of joint venture member 3 under a power of attorney dated* | | | |  |
| **In the presence of** | |  | | |
| *Name of witness* | |  | | |
| *Signature of witness* | |  | | |
| *Witness’s occupation* | |  | | |
| *Witness’s address* | |  | | |
| OR | | | |
| **Signed on behalf of** | | | |
| *Name of joint venture member 3* | |  | |
| *Signature of authorised person* | |  | |
| **In the presence of** | |  | |
| *Name of witness* | |  | |
| *Signature of witness* | |  | |
| *Witness’s occupation* | |  | |
| *Witness’s address* | |  | |

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| **Given under the Surety’s common seal** | | |
| *Affix Surety’s common seal* |  | |
| *Signatures of persons authorised to authenticate the seal* |  | |
| OR | | |
| **Signed and delivered as a Deed by** | | |
| *Name of attorney* |  | |
| *Signature of attorney* |  | |
| *As lawful attorney of the Surety under a power of attorney dated* | |  |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |

1. If the Contractor and/or Surety is/are not incorporated in Ireland, execution will be in accordance with the law of its jurisdiction of incorporation for execution in Ireland. [↑](#footnote-ref-1)
2. An address in Ireland is required when the Surety does not have a registered office in Ireland. [↑](#footnote-ref-2)
3. If the Contractor and/or Surety is/are not incorporated in Ireland, execution will be in accordance with the law of its jurisdiction of incorporation for execution in Ireland. [↑](#footnote-ref-3)