

**TERMS AND CONDITIONS
HYROCHEM (U.K.) LIMITED**

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 DEFINITIONS:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 3.3.

Force Majeure Event: has the meaning given to it in clause 14.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Hydrochem (U.K.) Limited registered in England and Wales with company number 02562697 trading as 'Hydrochem Group'.

Supplier Materials: has the meaning given in clause 7.1(h).

1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including** or **include** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued for the sole purpose of giving an approximate idea of the Services and/or Goods. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for 20 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. DELIVERY OF GOODS

3.1 The Goods are described in the Supplier's catalogue.

3.2 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note showing the date of the Order, the type and quantity of the Goods, storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

3.3 The Supplier shall deliver the Goods to the location set out in the Order or another location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

3.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

3.5 Any dates quoted for delivery of the Goods are approximate and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions.

3.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

3.7 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice.

4. QUALITY OF GOODS

4.1 The Supplier warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (c) be fit for any purpose held out by the Supplier.

4.2 Subject to clause 4.3, the Supplier shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full if:

- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer returns such Goods to the Supplier's place of business at the Customer's cost.

4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;
- (b) the defect arises because the Customer failed to follow the Supplier's instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2

Title to the Goods shall not pass to the Customer until the Supplier receives payment in full for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all sums.

5.3

Until title to the Goods has passed to the Customer, the Customer shall store the Goods separately so that they remain readily identifiable as the Supplier's property, not remove or obscure their packaging, keep the Goods insured against all risks for their full price on the Supplier's behalf from the date of delivery, notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(d) and give the Supplier such information relating to the Goods as the Supplier may require.

5.4

If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(d), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time require the Customer to deliver up all Goods in its possession which have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. SUPPLY OF SERVICES

6.1

The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

6.2

The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any dates shall be estimates only and time shall not be of the essence for performance of the Services.

6.3

The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

6.4

The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7. CUSTOMER'S OBLIGATIONS

7.1

The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, and subcontractors, with access to the Customer's premises as reasonably required by the Supplier to provide the Services; provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate;
- (e) prepare their premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which they are to start;
- (g) comply with all applicable laws, including health and safety laws; and
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

7.2

If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

8.1

The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's price list as at the date of the order and shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

8.2

The charges for Services shall be as set out in the Order.

8.3

The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

8.4

In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

8.5

The Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer and in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

8.6

All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

8.7

If the Customer fails to make a payment due to the Supplier by the due date, then, without limiting the Supplier's remedies under clause 12 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10. CONFIDENTIALITY

10.1

Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 0.

12.2

Each party may disclose the other party's confidential information to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses

	the other party's confidential information comply with this clause 10 and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.		agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
10.2	Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.	15.6	Entire agreement.
11.	LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.		(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
11.1	Nothing in these Conditions shall limit or exclude the Supplier's liability for:		(b) Each party acknowledges that it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
	(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;		(c) Nothing in this clause shall limit or exclude any liability for fraud.
	(b) fraud or fraudulent misrepresentation;	15.7	Third parties rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
13.2	(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);	15.8	Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
	(d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or	15.9	Governing law and jurisdiction. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
	(e) defective products under the Consumer Protection Act 1987.		
11.3	Subject to clause 11.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits, loss of sales or business; loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill; or any indirect or consequential loss.		
11.4	Subject to clause 11.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the lesser of £100,000.00 or 100% of the total charges paid under the Contract. The Customer is advised to insure accordingly.		
11.5	The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.		
12.	This clause 11 shall survive termination of the Contract.		
12.1	TERMINATION		
12.2	Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 3 months' written notice.		
	Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:		
	(a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;		
	(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;		
	(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or		
	(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.		
	Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment or there is a change of control of the Customer.		
12.3	Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.		
13.	CONSEQUENCES OF TERMINATION		
13.1	On termination of the Contract:		
	(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices including interest, and in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;		
	(b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.		
13.2	Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.		
13.3	Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.		
14.	FORCE MAJEURE		
	Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.		
15.	GENERAL		
15.1	Assignment and other dealings		
	(a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.		
	(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.		
15.2	Notices.		
	(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order.		
	(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after it was sent.		
	(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.		
15.3	Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.		
15.4	Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.		
15.5	No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the		