

HOLCHEM LABORATORIES LIMITED

TERMS AND CONDITIONS OF SALE

1. Definitions

In these terms, the following words shall have the following meanings:

"Confidential Information"	means any information of a confidential nature embodied in data, technical knowledge, specifications, chemical and physical compositions, formulations, blends, materials, raw materials, process information, know-how, ideas, plans, drawings, designs and/or other communications, in tangible or non-tangible form, relating to or useful in connection with the Goods and/ or the development, processing, the production and/ or marketing and sales of any Holchem Goods and technologies (including the Goods) (and any substance derived from or incorporating any Holchem composition, the Goods or technology; including the Goods) disclosed or provided by Holchem to the Purchaser and all information not in the public domain concerning Holchem, its business and its technical or commercial know-how which the Purchaser may become aware of in connection with the Contract.
"Returnable Containers"	means any container marked as the property of Holchem which shall be returnable to Holchem if of a size of 20 litres, 200 litres or 1000 litres.
"Contract"	means any contract between Holchem and the Purchaser for the sale and purchase of the Goods incorporating these terms.
"Delivery Location"	means the delivery location set out in the Order.
"Force Majeure Event"	means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (other than by the party seeking to rely on this clause), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors
"Goods"	means goods sold to the Purchaser by Holchem as set out in the Order.
"Holchem"	means Holchem Laboratories Limited whose company number is 01686721 and whose registered office is at Gateway House, Pilsworth Road, Pilsworth Industrial Estate, Bury, Lancashire, BL9 8RD.
"HSE"	means the Health and Safety Executive.
"Incoterms"	means the terms of trade for international sales of goods published by the International Chamber of Commerce applicable at the date of the formation of a contract of sale between Holchem and the Purchaser.
"Intellectual Property Rights"	means all trade marks, service marks, trade names, logos, get-up, inventions (whether patentable or not), patents, utility models, trade secrets, know-how (including confidential technical, industrial and commercial information in any form), designs, copyright works, as well as any other intellectual property rights of whatsoever nature which may subsist in any part of the world; and includes, where such rights are obtained or enhanced by registration, any registration of the above and applications and rights to apply for such registration, as well as any confidential information relating to that subject matter.
"Order"	the Purchaser's order for the Goods, as set out in the Purchaser's purchase order form or the Purchaser's written acceptance of Holchem's quotation, as the case may be.
"Purchaser"	means any person, firm or company to whom Holchem sells the Goods.
"Specification"	means Holchem's specification for the Goods set out in Holchem's product data sheets prevailing from time to time.

2. Basis of Contract

- 2.1. These terms apply to the Contract to the exclusion of any other terms that the Purchaser may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these terms. The Purchaser is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when Holchem issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4. The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Holchem which is not set out in the Contract.
- 2.5. Any samples, descriptive matter, or advertising produced by Holchem and any descriptions contained in Holchem's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6. A quotation for the Goods given by Holchem shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3. The Goods

- 3.1. The Goods are described in Holchem's product data sheets.
- 3.2. Holchem reserves the right to amend the Specification from time to time, or if required by any applicable statutory or regulatory requirements.

4. Quality

- 4.1. Holchem warrants that on delivery, and for a period specified in the corresponding product data sheets from the date of delivery (**warranty period**), the Goods shall:
 - 4.1.1. conform in all material respects with their applicable Specification;

- 4.1.2. be free from material defects in design, material and workmanship; and
- 4.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
42. Holchem shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Goods.
43. Subject to clause 4.4, if:
- 4.3.1. the Purchaser gives notice in writing to Holchem during the warranty period and 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;
- 4.3.2. Holchem is given a reasonable opportunity of examining such Goods and agrees that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- Holchem shall replace the defective Goods, or refund the price of the defective Goods in full at its entire discretion.
44. Holchem shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:
- 4.4.1. the Purchaser makes any further use of such Goods after giving notice in accordance with clause 4.3.1; or
- 4.4.2. the defect arises because the Purchaser failed to follow Holchem's oral or written instructions as to the storage, use and maintenance of the Goods; or
- 4.4.3. the defect arises as a result of Holchem following any Specification supplied by the Purchaser; or
- 4.4.4. the Purchaser mixes the Goods with other goods without the written consent of Holchem; or
- 4.4.5. the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or
- 4.4.6. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
45. Except as provided in this clause 4, Holchem shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
46. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
47. These terms shall apply to any replacement Goods supplied by Holchem.

5. Delivery

- 5.1. Holchem shall ensure that:
- 5.1.1. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers of Holchem and the Purchaser, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 5.1.2. if Holchem requires the Purchaser to return any packaging materials in accordance with clause 14, that fact is clearly stated on the delivery note.
52. Subject to clause 5.4, or unless otherwise agreed between the parties, Holchem shall deliver the Goods DAP in accordance with Incoterms to the Delivery Location (carriage to place of destination) at any time after Holchem notifies the Purchaser that the Goods are ready.
53. Subject to clauses 5.4 and 5.5, delivery of the Goods shall be completed upon arrival of the Goods at the Delivery Location.
54. Where the Goods are transported by tank container, the Holchem delivery specialist shall arrange for the Goods to be blown out from the tank container into a receptacle which the Purchaser shall ensure is suitable to receive the Goods. Prior to the Goods being blown out, the Holchem delivery specialist and a representative of the Purchaser shall sign a delivery approval form confirming the correct Goods are present and that the Purchaser's receptacle is suitable for receiving the Goods.
55. Delivery of Goods transported by tank container shall be completed following completion of the blow out from the tank container. After completion of the blow out from the tank container, the Holchem delivery specialist and a representative of the Purchaser shall sign a further delivery confirmation form confirming that the correct Goods were delivered to the correct receptacle with the correct volume.
56. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Holchem shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Purchaser's failure to provide Holchem with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
57. If Holchem fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Holchem shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide Holchem with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
58. If the Purchaser fails to accept delivery of the Goods within three Business Days of Holchem notifying the Purchaser that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Holchem's failure to comply with its obligations under the Contract:
- 5.8.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Holchem notified the Purchaser that the Goods were ready; and either
- 5.8.2. Holchem shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance); or
- 5.8.3. terminate the Contract in accordance with clause 12.1.4 and claim damages.
59. In the event of clause 5.8.2, if 10 Business Days after the day on which Holchem notified the Purchaser that the Goods were ready for delivery, the Purchaser has not accepted delivery of them, Holchem may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable transport, storage, administration and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.
- 5.10. Holchem may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

6. Acceptance and defective Goods

- 6.1. The Purchaser may reject any Goods delivered to it that on normal visual inspection do not comply with clause 4.1 provided that notice of rejection is given to Holchem within three Business Days of delivery and none of the events listed in clause 6.3 apply.
- 6.2. If the Purchaser fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted the Goods.

63. Holchem shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 in any of the events set out in clause 4.4.
64. If the Purchaser rejects Goods pursuant to clause 6.1, clause 4.3 shall apply.

7. Risk and Title

- 7.1. In relation to Goods that are transported by tank container, risk in the Goods shall pass to Purchaser on completion of blow out in accordance with clause 5.4 above. In all other cases, risk in the Goods shall pass to the Purchaser upon completion of delivery, unless otherwise agreed in writing.
- 7.2. Ownership of the Goods shall not pass to the Purchaser until Holchem has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1. the Goods; and
- 7.2.2. all other sums which are or which become due to Holchem from the Purchaser on any account.
- 7.3. Until ownership of the Goods has passed to the Purchaser, the Purchaser shall:
- 7.3.1. hold the Goods on a fiduciary basis as Holchem's bailee;
- 7.3.2. store the Goods (at its own cost) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as Holchem's property;
- 7.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.4. maintain the Goods in satisfactory condition and keep the Goods insured on Holchem's behalf for their full price against all risks to the reasonable satisfaction of Holchem. On request the Purchaser shall produce the policy of insurance to Holchem.
- 7.4. Subject to clause 7.5, the Purchaser may resell or use the Goods in the ordinary course of its business (but not otherwise) before Holchem receives payment for the Goods. However, if the Purchaser resells the Goods before that time:
- 7.4.1. it does so as principal and not as Holchem's agent; and
- 7.4.2. title to the Goods shall pass from Holchem to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- 7.5. If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clauses 12.1.1 to 12.1.3, then, without limiting any other right or remedy Holchem may have:
- 7.5.1. the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 7.5.2. Holchem may at any time:
- 7.5.2.1. require the Purchaser to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 7.5.2.2. if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.
- 7.6. Holchem shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Holchem.
- 7.7. The Purchaser grants Holchem, its agents and employees an irrevocable licence at any time to enter any premises where the Goods may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them in accordance with clause 7.5.2.2.
- 7.8. Where Holchem is unable to determine whether any of the Goods are goods in respect of which the Purchaser's right to possession has terminated, the Purchaser shall be deemed to have sold all goods of the kind sold by Holchem to the Purchaser in the order in which they were invoiced to the Purchaser.
- 7.9. On termination of the Contract, howsoever caused, Holchem's (but not the Purchaser's) rights contained in this clause 6 shall remain in effect.

8. Price

- 8.1. The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Holchem's published price list in force at the date of delivery.
- 8.2. The price of the Goods is exclusive of value added tax and all other governmental taxes, duties or levies relating to sale, possession or use of the Goods (including export charges), which shall be paid by the Purchaser. Where the Goods are supplied to the Purchaser free of tax or duty but such tax or duty shall subsequently be or become payable, then the Purchaser shall forthwith pay to the relevant authority the full amount of tax or duty due in respect of such Goods and shall indemnify Holchem against all liability in respect thereof.

9. Payment

- 9.1. Holchem may require payment on or before delivery. If Holchem does not do so, then unless otherwise agreed in writing, payment shall be made to Holchem in full and cleared funds within thirty (30) days of the end of the month in which the invoice was issued. Time of payment is of the essence of the Contract.
- 9.2. Holchem reserves the right to charge interest at the rate of 4% above the base lending rate of the Bank of England base in force from time to time, to accrue on a daily basis, on any sum owed to Holchem which is not paid by the due date. The Purchaser may not withhold payment or make any set-off on any account, but Holchem may set-off any sums received from the Purchaser against any debt the Purchaser owes to Holchem.

10. Limitation of Liability

- 10.1. Nothing in these terms shall limit or exclude Holchem's liability for:
- 10.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.1.2. fraud or fraudulent misrepresentation;
- 10.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 10.1.4. any matter in respect of which it would be unlawful for Holchem to exclude or restrict liability.
- 10.2. Subject to clause 10.1:
- 10.2.1. Holchem shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 10.2.2. Holchem's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £10 million.

11. Force Majeure

- 11.1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 11.2. Holchem may, without liability, where reasonable in all circumstances, suspend or terminate (in whole or in part) its obligations to the Purchaser if Holchem's ability to manufacture, supply or deliver the Goods or to acquire materials for the production of the Goods, in each case by Holchem's normal means, is impaired because of a Force Majeure Event or if a Force Majeure Event does or threatens to prevent, hinder or delay the receipt by Holchem of the full price of any the Goods or which may result in Holchem bearing any expense or loss which Holchem would not otherwise have borne.

12. Termination and Suspension

- 12.1. Holchem may (without prejudice to any other remedies) terminate or suspend forthwith Holchem's performance of the whole or any part of its obligations to the Purchaser, if:
- 12.1.1. the Purchaser is a corporation and has a receiver or administrator appointed or passes a resolution for winding-up or suffers an order of court to that effect or applies to a court for an interim order in connection with a voluntary arrangement with its creditors or if the Purchaser is a partnership and the partnership is dissolved or, if the Purchaser is an individual and a bankruptcy order is made against it; or
 - 12.1.2. the Purchaser becomes unable to pay its debts as they fall due, or if an encumbrancer or creditor takes any steps to enforce a security given by the Purchaser; or if the Purchaser enters into any composition or arrangement with creditors;
 - 12.1.3. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 12.1.1 to 12.1.2.
 - 12.1.4. the Purchaser fails to take delivery or pay for the Goods on the due date; or
 - 12.1.5. the Purchaser is in material breach of any obligations to Holchem or the warranty given at clause 13.1 is untrue; and/or
 - 12.1.6. Holchem has any reasonable ground for suspecting that any of the circumstances set out in sub-clauses 12.1.1 to 12.1.5 have occurred or may occur.

13. Health and Safety

- 13.1. The Purchaser warrants that it has disclosed to Holchem in writing details of any and all:
- 13.1.1. investigatory action by any governmental or regulatory body, including the HSE, in respect of or which may concern the Purchaser; and
 - 13.1.2. litigation, arbitration, mediation, prosecution or any other legal proceedings or claims regarding health and safety which the Purchaser is party to or which concerns the Purchaser;
- whether in the past, pending or threatened and any and all outstanding complaints against the Purchaser regarding health and safety.
- 13.2. Holchem shall provide the Purchaser with all relevant health, safety and environmental information concerning the Goods.
- 13.3. The Purchaser shall ensure that all appropriate health, safety and environmental information relating to the Goods is distributed to its employees, contractors and customers and is observed by those of its employees who require it for handling or use of the Goods.
- 13.4. At all times each of the parties shall comply with:
- 13.4.1. Regulation No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH Regulation"); and
 - 13.4.2. Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on Classification, Labelling and Packaging of Substances and Mixtures ("CLP Regulation"); and
 - 13.4.3. all other applicable laws and regulations concerning the Goods, including export control laws.
- 13.5. The Purchaser shall inform Holchem in writing as soon as possible if it becomes aware of any matter which relates to or may impact upon the health and safety obligations of Holchem in connection with the Goods.

14. Returnable Containers

Returnable Containers shall remain the property of Holchem following delivery of the Goods to the Purchaser. The Purchaser shall arrange for them to be collected by Holchem at Holchem's cost as soon as possible following unloading of the Goods. The Purchaser shall comply with all directions received from Holchem regarding unloading and the cleaning and securing of empty Returnable Containers. Any Returnable Containers not returned or not returned in good condition in accordance with the provisions of these terms within a reasonable period shall be paid for by the Purchaser at Holchem's standard rate. The rights set out in clauses 7.5.2 and 7.7 shall apply in analogy.

15. Confidentiality and Intellectual Property Rights

- 15.1. Save if and to the extent otherwise required by law, the Purchaser shall keep in strict confidence all Confidential Information. The Purchaser shall only use the Confidential Information in connection with the Contract and for no other purpose.
- 15.2. All Intellectual Property Rights in the Goods and any associated literature are owned by Holchem and Purchaser shall not acquire any such rights.

16. General

- 16.1. No Contract between Holchem and the Purchaser shall be assigned by the Purchaser without Holchem's prior written consent.
- 16.2. No delay or failure by Holchem to enforce any of its rights shall be construed as a waiver of that right or of any other right nor shall such delay or failure by Holchem sanction any delay or failure by the Purchaser to comply with its obligations.
- 16.3. Notices shall be in writing and sent by letter addressed to a party at its given address. Notice shall be deemed to have been received at that time at which the letter would have been delivered in the ordinary course of post or at the time of delivery if the notice was delivered personally.
- 16.4. 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.
- 16.5. All disputes arising between Holchem and the Purchaser in connection with the supply of the Goods shall be settled in accordance with the laws of England and Wales and the courts of England shall have exclusive jurisdiction to settle such disputes.