

Serchem Limited Trading Terms and Conditions: 2022

These terms and conditions apply to all Goods Ordered from and supplied by Serchem Limited save as may be amended in writing by the specific terms of the Customer's Order or any supply agreement with the Customer and in the case of conflict between these terms and conditions and the Order or supply agreement, those other terms will prevail.

1. Interpretation

1.1 Definitions: In these conditions, the following definitions apply:

Business Day: a day (other than Saturday, Sunday or UK Public Holiday) when banks in London are open for business
Conditions: the terms and conditions set out in this document.

Chemicals: the chemical products, as set out in the Order, which the Customer wishes to purchase from the Supplier.

Contract: the Contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these conditions
Customer: the person or firm who purchases the Goods from the Supplier.

Equipment: the equipment, as set out in the Order, which the Customer wishes to purchase from the Supplier.

Force Majeure Event: has the meaning given in clause 10.

Goods: the Chemicals and/or the Equipment (or any part of them) as set out in the Order.

Order: the Customer's Order for the Goods.

Supplier: Serchem Limited (registered in England and Wales with company number (1554016)).

1.2 Construction

- 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 personal representatives, successors or permitted assigns;
- c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- e) A reference to writing or written includes faxes and e-mails.

2. Basis of Contract

- 2.1 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 the trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier 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 Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and illustrations contained in the Supplier's catalogues or brochures or website 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 the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 days from its date of issue.
- 2.7 the Supplier may for any reason by notice in writing cancel any Order prior to delivery or collection and if this is done the extent of the Supplier's liability to the Customer will be return of all monies paid.

3. Goods

- 3.1 The onus is on the Customer to check the specification of the Goods meet with their requirements prior to placing an Order and to raise any queries with the Supplier prior to placing any Order.
- 3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.3 The Customer shall ensure that the Supplier's standards for storage and (unless transport is the responsibility of the Supplier) transport of Goods are adhered to at all times during the Chemical Warranty Period and Equipment Warranty Period (where applicable).
- 3.4 The Customer must not use the Goods after the expiry of the shelf-life indicated on each product.

4. Delivery

- 4.1 Unless the Customer is to arrange delivery of Goods the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at

- any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by Force Majeure Events or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 Any shortages or damages to the Goods must be reported immediately and, in any event, within 3 working days of the date of delivery.
- 4.5 If the Supplier notifies the Customer that it is unable to fulfil an Order owing to non-availability of raw materials or otherwise, the Supplier may cancel the Order and refund to the Customer any monies paid whereupon the liability of the Supplier to the Customer shall cease.
- 4.6 In the case of an Order where the Customer is arranging collection, if the Customer fails to collect the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- a) 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 the Supplier notified the Customer that the Goods were ready; and
- b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for collection the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of all or part of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods Ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 The Supplier 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 Customer to cancel any other instalment.
- 5. Quality**
- 5.1 The Supplier warrants that on delivery, and for a period of 3 months from the date of delivery (Chemical Warranty Period), the Chemicals shall:
- a) conform in all material respects with their description and specification;
- b) be free from material defects in design, material and workmanship;
- c) be of satisfactory quality (within meaning of the Sale of Goods Act 1979); and
- d) be fit for purpose held by the Supplier.
- 5.2 The supplier is not responsible for how the Chemicals are used by the customer for any particular purpose.
- 5.3 Subject to clause 5.4, if:
- a) the Customer gives notice in writing to the Supplier during the Chemical Warranty Period within a reasonable time of discovery that some or all of the Chemicals do not comply with the warranty set in clause 5.1;
- b) the Supplier is given a reasonable opportunity of examining such Chemicals; and
- c) the Customer (if asked by the Supplier) return such Chemicals to the Suppliers' place of business at the Customer's cost, the Supplier shall, at its option, replace the defective Chemicals, or refund the price of the defective Chemicals in full.
- 5.4 The Supplier shall not be liable for the Chemicals' failure to comply with warranty set in clause 5.1 in any of the following events:
- a) the Customer makes any further use of such Chemicals after giving notice in accordance with clause 5.2;
- b) the defect arises because the Customer failed to follow the Supplier's instructions as to storage, commissioning, installation, use and maintenance of the Chemicals or (if there are none) good trade practice regarding the same;
- c) the defect arises as a result of the Supplier following any design or specification supplied by the Customer;
- d) the Customer alters such Goods without written consent of the Supplier;
- e) the defect arises as a result of, willful damage, negligence, or abnormal storage or working conditions;
- f) the Chemicals differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 The Supplier shall have no liability for any consequential losses of the Customer and except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the

- Chemicals failure to comply with the warranty set out in clause 5. 1.
- 5.6 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.
- 5.7 These conditions shall apply to any replaced Chemicals supplied by the Supplier.
- 6. Title and Risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 The title of Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- the Goods; and
 - any other Goods or services that the Supplier has supplied to the Customer In respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as the Supplier's Bailee;
 - store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating Goods;
 - maintain the Goods to a satisfactory condition and keep them insured against risks for their full price from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title of the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated another product, and without limiting any other right or remedy the Supplier may have. the Supplier may at any time require the Customer to deliver up the goods 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.
- 7. Price and Payment**
- 7.1 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 the Supplier's published price list in force as at the date of delivery and the Goods shall be paid for in full before collection or delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 30 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond the Supplier's control (including foreign exchange, fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs;
 - any request by the Customer to change the delivery date(s), quantities or types of Goods Ordered, or the specification; or
 - any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). 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 chargeable on the supply of Goods
- 7.5 The Supplier may invoice the Customer for the Goods on or at any time alter the completion of delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds by the earlier of; the date specified in the Order, or prior to collection or delivery or within 20 business days of the date of the invoice. Payments shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment stated on the invoice (Due Date), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in Order to justify with holding payment of any such amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8. Equipment Warranty**
- 8.1 This clause will only apply to any Equipment purchased by the Customer from the Supplier under

- the Contract. This clause 8 will not apply to any Chemicals purchased by the Customer.
- 8.2 We guarantee that for a period of 12 months from the date of delivery or collection (in accordance with clause 4) (**Equipment Warranty Period**) that the Equipment will be free from material defects (the **Equipment Warranty**). The Equipment Warranty is subject to the exceptions listed in clause 8.3.
- 8.3 The Equipment Warranty does not apply to:
- a) any defects in the Equipment that the Supplier reasonably believes have been caused by normal wear and tear, deliberate damage and/or misuse of the Equipment or abnormal storage or working conditions; or
 - b) where the Supplier reasonably believes that the defect arises because the Customer failed to follow the Supplier's instructions as to storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same; or
 - c) Equipment which has not been properly maintained in accordance with the Supplier's instructions; or
 - d) Equipment being in any way altered, modified or repaired without the prior written consent of the Supplier; or
 - e) the Customer continues to use the Equipment after giving notice in accordance with clause 8.4; or
 - f) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer; or
 - g) the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 Subject to clause 8.3, if:
- a) the Customer gives notice in writing to the Supplier during the Equipment Warranty Period within a reasonable time of discovery that the Equipment does not comply with the warranty set in clause 8.2;
 - b) the Supplier is given a reasonable opportunity of examining the Equipment;
 - c) the Customer (at the Supplier's request) provides evidence that the Equipment has not been tampered or modified and that it has been correctly maintained, stored and used in accordance with the Supplier's instructions and/or good trade practice;
 - d) the Customer (if asked by the Supplier) returns such Equipment to the Suppliers' place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Equipment.
- 8.5 The Supplier shall have no liability for any consequential losses of the Customer and except as provided in this clause 8, the Supplier shall have no liability to the Customer in respect of the Equipment failing to comply with the warranty set out in clause 8.2.

9. Customer's Insolvency or Incapacity

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

9.2 For the purpose of clause 9.1, the relevant events are: a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning section 123 of the Insolvency Act 1986, or (being individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply: b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise arrangement with its creditors: c) (being a company) a petition is tiled, a notice is given, a resolution is passed, or an Order is made, for or in connection with a winding up of the Customer,, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer: d)(being an Individual) the Customer is the subject of a bankruptcy petition Order: e)a creditor or encumbrance of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; f)(being a company) an application is made to court, or an Order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; g)(being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver: h) a person becomes entitled to appoint a receiver over the Customer's assets or

a receiver is appointed over the Customer's assets; 1) 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 clause B.2(a) to clause B.2(h) {inclusive}; j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of the business; k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy and l) (being an individual) the Customer dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under mental health legislation.

9.3 Termination of the Contract, however arising, shall not effect any of the parties' rights and remedies that have accrued as a termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. Limitation of Liability

10.1 Nothing in these conditions shall limit or exclude the Suppliers liability for:

- a) death or personal injury caused by its negligence. or the negligence of its employees, agents or sub-Contractors (as applicable);
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- d) defective products under the Consumer Protection Act 1987; or
- e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

- a) the Supplier shall under no circumstances whatever be liable to the Customer, 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
- b) the Supplier's total liability to the Customer 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 £5,000,000.

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. A Force Majeure Event means any event beyond party's 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. (whether involving its own workforce or a third party's), failure of energy sources or transport networks, 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 or adverse weather conditions, or default of Suppliers or sub-Contractors.

12. General

12.1 Assignment and Subcontracting

- a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without prior written consent of the Supplier.

12.2 Notices

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
- b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11 2(a), if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date at the time that the courier's delivery receipt is signed; or if sent by fax or email, one Business Day after transmission.
- c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance

- a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable. that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions

of the Contract shall not be effected.

- b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 Waiver

A waiver of any right or remedy under Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.5 Third Party Rights

A person who is not a party to the Contract shall not have any rights under or in connection with it except as set out in these conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by the Supplier.

12.6 Governing Law and Jurisdiction

The Contract, and any dispute or claim arising out of or in conjunction with it or its subject matter or formation (including non-Contractual disputes or claims), shall be governed by, and constructed in accordance with, English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

13. The Supplier has the right to amend these terms and conditions where:

- 13.1 the Supplier considers it is needed in order to comply with changes in the law or for regulatory reasons;
- 13.2 the Supplier considers it necessary to correct any errors or omissions, as long as the correction is minor and does not materially affect the Contract.
- 13.3 This right includes the right to change any of the documentation which forms part of the Contract.
- 13.4 Where the Supplier is making any amendment it must give 14 days' prior notice unless the Contract is terminated before that period.