

Terms & Conditions

1. Interpretation

In these conditions: "The goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

"The Purchaser" means the person whose order for the goods is accepted by the Seller in accordance with these Conditions.

"The Seller" means Hypro EU Ltd.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Seller.

"The Contract Terms" means the terms relating to the goods agreed between the Seller and the Purchaser included in:

- (i) any estimate or quotation provided by the Seller or
 - (ii) any tender made by the Seller and accepted by the Purchaser or
 - (iii) any acknowledgement of order given by the Seller PROVIDED THAT in the event of conflict between the above, (iii) shall prevail over (ii) and (i), and (ii) shall prevail over (i).
- "Contract" means the contract for the purchaser and sale of the goods.

2. General

- (a) These Conditions will govern all sales by The Seller to the exclusion of any terms or conditions proposed by the Purchaser unless the Seller expressly agrees in writing to any variation.
- (b) All orders shall be executed on the understanding that placing of an order constitutes acceptance of these terms.
- (c) No order or variation shall be binding on the Seller unless and until accepted in writing by the Seller and shall then constitute the Contract and no agent or other representative of the Seller has any authority from the Seller to make or vary any agreement on behalf of the Seller unless subsequently notified by the Seller in writing.
- (d) Every order or variation accepted by the Seller includes only such goods and works as are expressly specified or incorporated in the acceptance in writing by the Seller of the order.
- (e) No quotation, estimate or tender issued by the Seller shall constitute an offer to sell the goods. Any order placed by the Purchaser in response to such a quotation or tender shall constitute an offer made to the Seller in accordance with the Contract Terms and shall only be binding on the Seller if it is accepted by the Seller in writing and shall then constitute the Contract.
- (f) Orders received by the Seller shall not be subject to cancellation without the Seller's consent, and cancellation of any Contract to which the Purchaser is a party will not constitute sufficient reason for cancellation of any order placed by the Purchaser.
- (g) Where the Purchaser is a consumer and any transaction between it and the Seller is or will be a consumer transaction any statement or term contained in the Contract Terms which would be void by virtue of the Unfair Contract Terms Act 1977 (amended 1/10/03 and by any subsequent statutory amendment or re-enactment thereof) shall be excluded from the Contract and nothing in these Conditions shall affect or shall be construed as affecting the statutory rights of a consumer.
- (h) These Terms shall in all respects be construed and have effect according to English Law, and the parties agree to submit to the jurisdiction of the English Courts.
- (i) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- (j) No waiver by the Seller of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (k) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

3. Price

- (a) Unless otherwise stated in the Contract Terms the Contract price of the goods is ex-works and is deemed to exclude V.A.T. which shall be charged at the rate applicable at the date of the invoice.
- (b) Prices quoted by the Seller are subject to variation at the time of delivery to meet any changes howsoever occasioned and notwithstanding anything contained in the Contract Terms the Seller may by giving written notice generally or particularly to the Purchaser at any time up to the actual date of delivery or performance increase the Contract price of the goods and the Seller reserves the right to invoice the Purchaser for the goods at the price ruling at the date of despatch and the Purchaser shall pay such invoiced price.

4. Delivery

- (a) Delivery of the goods shall be made by the Purchaser collecting the goods at the Seller's premises at any time after the Seller has notified the Purchaser that the goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the goods to that place.
- (b) The Seller will make every reasonable effort to deliver the goods at the time specified in the order, but accepts no liability for any loss, injury, damage, or expenses consequent upon delay in delivery from whatever cause nor shall delay entitle the Purchaser to cancel any order or to refuse to accept delivery. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.
- (c) The Purchaser shall pay for any loss or extra cost incurred by the Seller through the Purchaser's instructions or lack of instructions with regard to the delivery of the goods, or the Purchaser's delay or failure in taking delivery, or through any request, act or default on the part of the Purchaser or the Purchaser's employees.
- (d) Where delivery is to be made at the Seller's works the Seller shall if required by the Purchaser load the goods on to a vehicle specified by the Purchaser. Where goods are to be delivered by the Seller to the Purchaser other than at the Seller's works it shall convey the goods to the point nearest to the place of delivery to which there is suitable access and the Purchaser shall be responsible for unloading the goods.
- (e) Where goods are to be delivered by the Seller to the Purchaser other than at the Seller's works the Seller shall have the right to effect carriage by whatever means and by whatever route it shall select but normally will arrange delivery either by road transport or by second class post at its option.
- (f) The Seller shall be responsible for properly packing and securing the goods in such a manner as to reach their destination in good condition under normal conditions of transport, but shall not be liable for damage caused thereto by third parties (including carriers).
- (g) Except as otherwise expressly agreed in writing the risk of damage to or loss of the goods shall pass to the Purchaser as soon as they leave the Seller's premises whether the goods are being delivered by the Seller or collected by the Purchaser.
- (h) The Purchaser shall obtain all import licences and other necessary authorisation required for the transit of the Goods to and into the country of destination and the purchaser shall pay all customs and import duties on the Goods where levied outside the United Kingdom.

5. Return of Goods/Loss or Damage in Transit

- (a) The Purchaser shall inspect the goods immediately on the delivery thereof and shall within 10 days from such inspection give notice in writing to the Seller of any matter or thing by reason whereof he alleges that the goods are not in accordance with the Contract. If the Purchaser shall fail to give such notice the goods shall be deemed to be in all respects in accordance with the Contract and the Purchaser shall be bound to accept and pay for the same accordingly. Upon receiving permission from the Seller it shall be the Purchaser's responsibility to return the alleged defective goods to the Seller together with a completed Goods Return Note which will be provided by the Seller.
- (b) The Purchaser shall notify the Seller in writing of any damage to the goods in transit, or non-delivery of goods within 10 days from date of delivery specified in the order, failing which the Seller shall be under no liability whatsoever to the Purchaser. The Seller will repair or at its option replace free of charge any of the goods damaged or lost in transit to the place of delivery.

6. Title to The Goods

- (a) Notwithstanding that credit has been given for the payment of the price of the goods and notwithstanding delivery and the passing of note in the goods or any other provision of these Conditions, the property in the goods shall not pass to the Purchaser until the Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Purchaser for which payment is then due.

- (b) Until such time as the property in the goods passes to the Purchaser, the Purchaser shall hold the goods as the Seller's fiduciary agent and bailee, and shall keep the goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Purchaser shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Purchaser and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- (c) Until such time as the property in the goods passes to the Purchaser (and provided the goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Purchaser to deliver up the goods to the Seller and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the goods are stored and repossess the goods.
- (d) The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Seller, but if the Purchaser does so all moneys owing by the Purchaser to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7. Payment

- (a) Payment for goods shall if the Seller so requires be made in full prior to delivery of the goods and the Seller shall be entitled to withhold delivery until such payment is made and any cheque or other negotiable instrument given in settlement cleared.
- (b) If payment in advance is not so required in accordance with sub-clause (a) hereof the Contract price must be paid before the end of the month following the date of invoice (unless alternative credit terms have been agreed by the Seller in writing) notwithstanding that delivery may not have taken place and the property in the goods has not passed to the Purchaser. Credit terms granted may be altered or withdrawn by the Seller at any time without notice.
- (c) Interest will be payable on any sums outstanding after the due date at such rates as the Seller may in its absolute discretion think fit but at least at a rate of 2% per month.
- (d) The Seller shall have the right to nominate a date and notify the Purchaser in writing upon which the whole balance of all sums invoiced by or owing to the Seller together with all interest or other charges relative thereto shall become payable and service of any notice in accordance with this clause shall make time for payment of the essence of the Contract. Unless and until all such sums owing are paid to the Seller it shall be at liberty to suspend the performance of all or any of its obligations hereunder.
- (e) Save as hereinafter provided the purchase price specified in the order shall be paid on the date and in the manner appearing in the order and such time for payment shall be of the essence of the Contract.
- (f) Where there is a significant adverse change in the Purchaser's business that prevents the Seller from obtaining sufficient insurance cover over the Purchaser's account the Seller may, at its option, insist on immediate payment to bring the account down to a level the Seller can obtain insurance on. In the absence of suitable security, the Seller can, where it is unable to get sufficient cover from its insurers, terminate credit/business or reduce credit/business to a level the Seller is comfortable with.
- (g) The Seller reserves the right to pay for goods or to receive payment for goods by contra entry in its accounts in the event of a contra settlement. It will be deemed that the Title of the goods will have passed as if cheques had changed hands.

8. Warranty and Liability

- (a) If within a period of 6 months from the date of delivery of the goods the Purchaser gives notice in writing to the Seller of any defect in the goods from faulty goods or workmanship the Seller shall replace or repair the goods so as to remedy the defect PROVIDED THAT the Purchaser shall have installed and at all times used such goods properly and in accordance with operating instructions given by the Seller. The Seller shall be under no liability whatsoever for use of the goods in any manner otherwise than within the tolerances set out in the Seller's literature or as recommended by the Seller or its agents. The Seller shall be under no liability under any warranty if the total price for the goods has not been paid by the due date for payment.
- (b) The maximum damages recoverable in respect of the supply of defective goods or other breach of the Seller's obligations under this Contract shall be limited to the Contract price of the goods. Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law and the Seller shall in no circumstances be liable to the Purchaser for any injury, other than death or personal injury resulting from its negligence or any indirect or consequential loss or damage of any kind whatsoever arising out of any breach of the Contract.
- (c) The Purchaser is solely responsible for ensuring that goods bought from the Seller are fit for any particular purpose, and no warranty or condition of fitness for any particular purpose is given or to be implied in these Conditions.
- (d) All specifications, performance figures, drawings and particulars of weights and dimensions made available by the Seller and not included in the Contract Terms are approximate only and the description and illustrations included in the Seller's catalogues, price lists or publicity material are intended only to present a general idea of their subject matter and shall not form part of the Contract.
- (e) The Seller warrants that the goods supplied are in accordance with the Contract Terms but will accept no liability for failure to attain any performance figures unless such are specifically guaranteed in the Contract Terms.
- (f) In placing an order with the Seller for the goods the Purchaser acknowledges that it has not relied on any representation made to it by or on behalf of the Seller in relation to the goods save as expressly incorporated in the Contract Terms.
- (g) The method of application of sprays using the goods shall be the sole responsibility of the Purchaser and the Seller shall not be liable for any suggested or recommended method or methods whether by means of its literature, of any member, employee, representative or agent of the Seller. The Seller shall not be liable in any way whatsoever for the results of any spraying carried out by or on behalf of the Purchaser using the goods.
- (h) The Contract is not transferable nor assignable by the Purchaser without the Seller's written consent. The Seller shall be under no liability whatsoever for the use of the goods by anyone other than the Purchaser or its employees.
- (i) The Seller warrants that at the time of manufacture the goods did not infringe any trademark or letters patent in the country of manufacture PROVIDED ALWAYS that this warranty shall not extend to goods manufactured according to the Purchaser's designs or drawings and the Purchaser will indemnify the Seller against any actions, claims or demand whatsoever arising by virtue of such manufacture. The Seller does not warrant that the importation or use of the goods in any other country outside the country of manufacture is free of infringement of any patents or trademarks or copyright of such country and the Purchaser will indemnify the Seller against any actions, claims or demands howsoever arising in respect of the importation or use of the goods in any such country.

9. Force Majeure

The Seller shall be under no liability for any delay in fulfilling or for the non-performance of any of its obligations under these Conditions caused by any circumstance (including, but not limited to war, riots, trade disputes, fire, flood and storms), outside its reasonable control.

10. Insolvency of the Purchaser

- (a) This clause applies if:
 - (i) the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - (ii) an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Purchaser, or
 - (iii) the Purchaser ceases, or threatens to cease, to carry on business; or
 - (iv) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.
- (b) If this clause applies, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Seller, and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.