

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability). These are the conditions of supply Induchem (UK) Ltd (04370758) (Company) No terms or conditions submitted at any time by the Customer shall form any part of the Contract.

#### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

##### 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 16.7.

**Contract:** the contract between the Company and the Customer subject to these Conditions

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

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

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

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Company.

**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:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form and the Company's order acknowledgement overleaf.

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

**Service Specification:** the description or specification for the Services provided by the Company to the Customer.

##### Interpretation:

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

1.3 A reference to a **party** includes its successors and permitted assigns.

1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under it.

1.5 Any words following the terms **including, include, in particular, for example** 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.

1.6 A reference to **writing** or **written** includes fax and email.

#### 2. BASIS OF CONTRACT

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

2.2 The Order shall only be deemed to be accepted when the Company issues its written acceptance of the Order by way of the order acknowledgement at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's website, catalogues or brochures are issued

or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor 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 law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 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.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

#### 3. GOODS

3.1 The Goods are described on the Company's website as modified by any applicable Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Company reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Customer in any such event.

#### 4. DELIVERY OF GOODS

4.1 The Company shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Company. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.

4.2 The Company 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 Company notifies the Customer that the Goods are ready.

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

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company 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 Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Company notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Customer that the Goods were ready; and

(b) the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not [taken OR accepted] actual delivery of them, the Company may resell or otherwise dispose of part or all 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 Company 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 OF GOODS

5.1 The Company warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

(a) Conform in all material respects with their description and any applicable Goods Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Company.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Company during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) the Company is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Company;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

(f) the Goods differ from their description the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

#### 6. TITLE AND RISK

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

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

(a) the Company receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time of sale.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

(d) notify the Company immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d); and

(e) give the Company such information as the Company may reasonably require from time to time relating to:

(i) the Goods; and

(ii) the ongoing financial position of the Customer.

#### 7. SUPPLY OF SERVICES

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

7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in order acknowledgment, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Company 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 Company shall notify the Customer in any such event.

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

#### 8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Service Specification and/or the Goods Specification are complete and accurate;

(b) co-operate with the Company in all matters relating to the Services;

(c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;

(d) provide the Company with such information and parts and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Customer's premises so far as is reasonably required for the supply of the Services including access and sufficient space to carry out the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(g) comply with all applicable laws, including health and safety laws in receiving the Services;

(h) keep all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and

(i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

8.2 If the Company'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 Company 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 Company's performance of any of its obligations;

(b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2; and

(c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## 9. CHARGES AND PAYMENT

9.1 The price for Goods:

(a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Company's website and published price list as at the date of the order; and

(b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

(a) the charges shall be calculated in accordance with the Company's daily fee rates, as set out in its current price list at the date of the Contract or the Order;

(b) the Company's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

(c) the Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.

9.3 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 under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company 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.

9.4 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without

limiting the Company's remedies under clause 13, 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 9.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.5 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).

## 10. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Company.

## 11. CONFIDENTIALITY

11.1 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 11.2.

11.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 The limits and exclusions in this clause reflect the insurance cover the Company has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

12.2 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

(d) defective products under the Consumer Protection Act 1987.

12.5 The following types of loss will not be recoverable by the Customer from the Company notwithstanding any breach of contract or duty by the Company:

(i) loss of profits;

(ii) loss of sales or business;

(iii) loss of agreements or contracts;

(iv) loss of anticipated savings;

(v) loss of use or corruption of software, data or information;

(vi) loss of or damage to goodwill; and

(vii) indirect or consequential loss.

12.6 The terms implied by sections 13 to 15 of the Sale of Goods Act

1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 This clause 12 shall survive termination of the Contract.

## 13. TERMINATION

13.1 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 30 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), obtaining a moratorium, 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 [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];

(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 so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) there is a change of Control of the Customer.

13.3 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company 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 13.1(b) to clause 13.1(d), or the Company reasonably believes that the Customer is about to become subject to any of them.

## 14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract:

(a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Company Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company 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.

14.2 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.

14.3 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.

## 15. 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 (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 10 days' written notice to the affected party.

## 16. GENERAL ASSIGNMENT AND OTHER DEALINGS

16.1 The Company 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, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## 16.2 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:

(i) 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

(ii) sent by fax to its main fax number or sent by email to the address specified in the order acknowledgement.

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) 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

(iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 **Waiver.** No failure or delay or partial exercise by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy.

16.4 **No partnership or agency.** Nothing in the Contract shall or shall be deemed to, establish any partnership or joint venture between the parties, or constitute either party the agent of the other.

16.5 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supercedes and extinguishes all previous agreements and understandings between them, whether written or oral, relating to its subject matter. No liability for fraud is extinguished.

16.6 **Third party rights.** Unless it expressly states otherwise, 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.

16.7 **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).

16.8 **Governing law.** 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 and each party irrevocably submits to the jurisdiction of the courts of England and Wales.