

CONDITIONS OF SALE

1. In these conditions, unless the content requires otherwise: "Seller" means Prochem Services Limited (Company number 01793353) whose registered office is at 16 Kingsway, 2nd Floor Suite, Altringham, Cheshire, England, WA14 1PJ; and any subsidiary, assigns or sub-contractor of the Seller by which the Goods are sold; "Buyer" means the company, firm, body or person purchasing the Goods; "Goods" means the subject matter of the Contract including (but not limited to) raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities etc and whether one or a number of items whether or not identical or similar; "Order" means a purchase order in respect of the Goods issued by the Buyer to the Seller on the Buyer's official order form, together with all documents referred to in it. "Contract" means any contract between the Buyer and the Seller for the sale and purchase of Goods, incorporating these terms and conditions. "Seller's Works" means the Seller's principal place of business and unless otherwise stated in the Contract shall be the registered office of the Seller.
2. a. The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under the Order, confirmation of order, specification or other document). These terms and conditions apply to all the Seller's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative on behalf of the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
b. Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions. No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Company delivers the Goods to the Buyer.
3. Prices of all Goods are based upon the cost of the Seller materials and labour, fulfilment of statutory obligations etc prevailing at the date of Contract. If such costs shall increase (or decrease) between such date and the date or dates of despatch of the Goods, the price to be paid by the Buyer for the Goods shall be the Seller's price for the Goods based upon such increased or decreased cost ruling at the date or dates of despatch. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance (together with all other additional expenses, licence fees or duties payable as a result of the delivery address for the Goods not being in the United Kingdom), all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.
4. The Contract or any Order which the Seller has accepted orally or in writing may not be cancelled (in whole or in part) by the Buyer without the Seller's written consent.
5. The Buyer warrants that it is contracting as principal and not as agent. The Buyer shall not without prior consent of the Seller assign or attempt to assign its rights or obligations hereunder and the Seller shall not be bound to recognise any such assignment or purported assignment. For the avoidance of doubt, if the Buyer arranges credit facilities for payment for the Goods and as part of such facility request the Seller to invoice the credit provider directly, the Buyer acknowledges that it remains liable for payment for the Goods pursuant to Condition 10 hereof until such time as the credit provider has paid the Seller in full for the relevant Goods.
6. a. The Goods are at the risk of the Buyer from the time of delivery.
b. Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
 - (i) the Goods; and
 - (ii) all other sums which are or which become due to the Seller from the Buyer on any account.
c. Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - (i) hold the Goods on a fiduciary basis as the Seller's bailee;
 - (ii) store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (iv) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf with effect from the time of delivery for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
d. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - (i) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - (ii) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale;
 - (iii) in the event of such a sale, the Seller's beneficial entitlement shall attain to the proceeds and such sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Seller and until such assignment shall be held on trust in a separate identified account for the Seller by the Buyer and such proceeds shall not be mingled with other monies or paid into any overdrawn bank account and shall at all times be identifiable as the Seller monies.
e. The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
f. The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where:
 - (i) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (ii) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (iii) the Buyer encumbers or in any way charges any of the Goods; or
 - (iv) payment is overdue in whole or in part; or
 - (v) the Buyer is resident in a jurisdiction other than England & Wales and an event similar to any of those specified in Condition 6(f)(i) & (ii) above occurs; or
 - (vi) the Buyer commits an irremediable breach of the Contract; or
 - (v) there is any material change in the management, ownership or control of the Buyer,to recover them and, if applicable, the Seller shall procure that any third party which holds any Goods shall permit the Seller to inspect and/or recover the Goods and the Buyer shall indemnify the Seller against any liability which it may incur to such third party in connection with taking or attempting to inspect or take possession of the Goods.
g. Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Seller shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
h. On termination of the Contract in accordance with Condition 11, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
- i. Subject always to clauses 6(a)-(h) above where the place of delivery specified is the Seller's Works, the Buyer shall remove the Goods or any part thereof or cause the same to be removed within 48 hours after the Seller shall have notified the Buyer in writing that the same are ready for delivery. All such Goods shall be at the sole risk and expense of the Buyer as from the expiry of such period of 48 hours and if not so removed the Seller shall (without prejudice to all other remedies) be entitled to remove the same to such a place as the Seller shall in their discretion think fit at the sole risk and expense of the Buyer and to charge the Buyer for the storage thereof, whether at the Seller's Works or elsewhere.
j. Subject always to clauses 6(a)-(h) above where the place of delivery specified is other than the Seller's Works, the Seller shall arrange delivery to that place at the Buyer's expense by road, rail or otherwise. The Seller shall not, however, be under any liability whatsoever to the Buyer in respect of Goods lost or damaged in transit unless (a) the alleged loss or damage is notified in writing separately both to the carriers and to the Seller within three days from the day upon which the said Goods or any part thereof shall have been delivered to the Buyer and (b) the said Goods shall have been signed for by the Buyer as unexamined or as delivered damaged or as incompletely delivered as the case may be unless the Buyer complies with the foregoing conditions all such Goods shall be deemed to have been delivered to the Buyer in good condition and the price be payable accordingly. The Buyer shall not be entitled to reject the said goods or any instalment or part thereof by reason of the fact that they or some of them have been delivered damaged or have been incompletely delivered.
- k. Each clause and sub-clause of this clause 6 is separate and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.
7. a. Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and the Seller cannot give any guaranteed date of delivery. Time for delivery shall not be made of the essence by notice. The Seller accepts no liability for delay on production manufacture or delivery of the Goods or any part thereof from any cause whatsoever howsoever arising.
b. The Buyer shall be deemed to accept the Goods on delivery notwithstanding any late delivery by the Seller.
c. Deliveries may be particularly or totally suspended by the Seller during any period in which the Seller may be prevented from the manufacturing, supplying or delivering by normal route or means of deliver the Goods covered by the contract through any circumstances falling within ordinary meaning of force majeure including strikes, lockouts or differences with workmen, civil disturbances, war, Queen's enemies, Act of God, storm, flood, volcanic eruptions, tempest, seizure, arrest or requisition of the Goods or of the raw materials which they are ordinarily made Government requirements or licence restrictions shortage or delays in obtaining fuel power materials or labour. The Seller shall not be under any liability arising out of the Seller's failure to deliver which is directly or indirectly attributable to such event.
- d. In the event that the Seller is to install the Goods under the Contract, the Buyer shall provide full access to the place of delivery and installation to the Seller for the purposes of installing the Goods, shall undertake any preparatory work specified by the Seller and shall compensate the Seller for any additional costs which the Seller incurs by reason of the Buyer's failure to properly undertake any such preparatory work.
8. The Buyer shall examine all Goods delivered forthwith upon delivery. If following upon such examination any Goods are claimed to be defective by reason of bad workmanship or materials, such claim together with particulars of the matters complained of shall be notified in writing to the Seller within seven days from the day upon which such Goods shall have been delivered to the Buyer. The Buyer shall give to the Seller every reasonable opportunity of examining any Goods of which complaint is made. If it shall be agreed or determined that the Goods of which complaint is made are defective by reason of bad workmanship or materials, the same shall be replaced by the Seller free of expense to the Buyer but the Seller shall be under no obligation to replace the same unless said notification in writing shall have been duly given and the Seller shall have been given every reasonable opportunity of examining such Goods. Save as aforesaid the Seller shall be under no liability whatsoever to the Buyer in respect of Goods which are defective or do not comply with the Seller's obligations hereunder by reason of bad workmanship or materials or otherwise howsoever. Nothing herein contained shall relieve the Buyer of their obligation to pay the price of all Goods delivered hereunder.
9. Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Seller's Works at the Buyer's expense. Returnable packages and/or packaging materials are charged for but will be credited in full if returned carriage paid and received by the Seller in good condition.
10. a. Payment for the said Goods or any instalment thereof shall be made to the Seller in full cash without discount, rebate or allowances of any description (whether in cash or kind or otherwise) within 7 days of following the date of delivery at the Seller's Works, or where the place of delivery specified is other than the Seller's Works within 7 days of the date upon which the said Goods or any instalment or part thereof shall have been or shall be deemed to have been despatched by the Seller. If delivery is not taken by the Buyer as hereinbefore set out, payment for the said Goods or any instalment or part thereof of which delivery has not been taken shall be made as aforesaid within 7 days of the day upon which such delivery ought to have been taken by the Buyer.
b. If the Buyer shall commit any breach of Contract with the Seller or if any payments legally due to the Seller by the Buyer are not made on the due dates the Seller reserves the right to cancel or to suspend the whole of this Order (or such Goods not already delivered) and to cancel or suspend any other Contract existing between the parties at the date of such default.
c. Time of payment for the Goods shall be of the essence.
d. If the Buyer does not pay on the day when payment is due the Seller shall be entitled (without prejudice to any other rights or remedies it may have) to interest from the due date until payment is made at the rate of 5% above Bank of England Base Rate. The Seller also reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
11. If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him (being a Seller) it shall pass a resolution or the Court shall make an order that the Buyer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Buyer or if the Buyer suffers the appointment or the presentation of a petition for the appointment of an administrator or if the circumstances shall arise which entitle the Court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the Court to make a winding-up order of the Buyer takes or suffers any similar action in consequence of debt or if the financial responsibility of the Buyer shall, in the opinion of the Seller, become impaired or if the Buyer shall commit any breach of any part of the contract or any other event as set out in Condition 6.f occurs, the Seller may without prejudice to its rights and remedies under these conditions stop all Goods in transit and suspend further deliveries and by notice to the Buyer may terminate the Contract immediately.
12. If the Buyer shall at any time commit any breach of any contract with the Seller by reason whereof the Seller becomes entitled to treat such Contract as at an end are no longer bound thereby, the Seller shall in addition to all other sums recoverable to them as damages for such breach, be entitled to recover by way of damages all additional loss occasioned to them in respect of disorganisation of the Seller's business or by reason of the Seller having cut dies installed special machinery for the fulfilment of such contract or being left with a stock of specially printed, decorated or lithographed goods or otherwise howsoever any rule of law to the contrary notwithstanding.
13. a. The Seller shall not be liable for any costs, claims (including for indirect, special or consequential loss), damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.
b. The aggregate liability of the Seller (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods.
c. The Seller does not seek to exclude or limit its liability for death or personal injury resulting from negligence of the Seller or its employees.
14. The Seller reserves the right to make any changes in the specifications of the Goods which are required to conform with any applicable safety or other requirements or which do not materially affect their quality of performance.
15. a. The Buyer shall indemnify the Seller against all costs, claims, losses, expenses and damages incurred by the Seller or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.
b. Unless otherwise agreed in writing:
 - (i) all intellectual property rights (including, without limitation, patents, registered designs and any rights to apply for the same copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and subsisting at any time in the Goods or arising out of or relating to the design and/or manufacture of the Goods ("IPR") shall belong to and remain vested in the Seller. The Buyer, in consideration for the Seller supplying the Goods, shall assign with full title guarantee to the Seller all its right, title and interest in and to the IPR and agrees to do all things reasonably requested by the Seller to vest the IPR in the Seller;
 - (ii) all specifications, drawings, designs, computer software, documents and other information disclosed to the Buyer by the Seller shall not be disclosed by the Buyer to a third party and shall be used by the Buyer only to the extent necessary for the Buyer to use the Goods or Services provided; and
 - (iii) all designs, sketches, stones, plates, blocks, engravings or similar articles supplied or submitted in confidence, remain the property of the Seller and are not to be disclosed copied or otherwise reproduced.
16. The Buyer agrees upon demand to indemnify the Seller against all losses, damages, injury, costs and expenses of whatever nature suffered by the Seller to the extent that the same are caused by or related to:
 - a. design, drawings or specifications given to the Seller by the Buyer in respect of the Goods;
 - b. defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller in the Goods; or
 - c. the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer.
17. a. None of the rights or obligations of the Buyer under the Contract may be assigned or transferred in whole or in part without prior written consent of the Seller.
b. The Seller shall be entitled to subcontract any work relating to the Contract without obtaining the consent of, or giving notice to, the Buyer.
18. The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Seller (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above. For these purposes the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.
19. Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 72 hours from the date of posting and, if deemed receipt under this condition is not within business hours (meaning 9.00 am to 5.30 pm GMT Monday to Friday on a day that is a business day), at 9.00 am GMT on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
20. Other than expressly set out in these conditions, the parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
21. For the purposes of the Data Protection Act 1998, the Buyer acknowledges and agrees that details of the Buyer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Seller in connection with the Goods.
22. The failure or delay of the Seller to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
23. The construction, validity and performance of the Contract is governed by English Law and the parties accept the jurisdiction of the English Courts.