

Multichem Ltd. – Terms and Conditions

1. Interpretation

1.1 The definitions and rules of interpretation in this clause 1.1 apply in these conditions.

Buyer	the person, firm or company who purchases the Goods from the Company;
Company	Multichem Limited registered in England and Wales with company number 01100854 whose registered office is at Unit 1, Tyne Mills Industrial Estate, Hexham, Northumberland, NE46 1XL, England;
Components	any whiteboards, fabric, paper or other surfaces, materials and associated products with which the Goods will be used;
Contract	any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions;
Delivery Point	the place where delivery of the Goods is to take place under condition 4;
Goods	any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them); and
Repeat Orders	orders for Goods made by the Buyer to the Company placed following a single quotation from which the prices quoted shall apply to any supply of those Goods by the Company to the Buyer subject to price changes made on notification by the Company to the Buyer or on written agreement between the Company and the Buyer.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. Application of Terms

2.1 Subject to any variation under condition 2.3 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 any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such a document being referred to in the Contract.

2.3 These conditions apply to all the Company'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 of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.4 Each order placed or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given by the Company to the Buyer on the basis that no Contract shall come into existence until the Company despatches a written acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it. Repeat Orders may be placed by the Buyer with the Company.

3. Description

3.1 The quantity and description of the Goods shall be as set out in the Company's acknowledgement of order.

3.2 All performance data, specifications and schedules of tolerances of the Goods are based on testing carried out in specified conditions determined by the Company. It is the Buyer's sole responsibility to ascertain the suitability of the Goods for use in the conditions in which the Buyer intends to use the Goods and/or the Components with which the Buyer intends the Goods to be used.

3.3 All advertising material issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures whether in durable or electronic form are issued or published for illustrative purposes only and shall not form part of the Contract.

4. Delivery

4.1 Delivery of the Goods shall be on the terms set out in the Company's acknowledgement of order. Orders for a quantity of Goods less than one tonne in weight shall be delivered at the Company's place of business unless otherwise agreed in writing or specified on the acknowledgement of order.

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (including, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

4.4.2 the Goods shall be deemed to have been delivered; and

4.4.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.6 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall.

4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment. In the event of payment for a consignment remaining outstanding, without prejudice to any other remedies, the Company shall be entitled to suspend delivery of any remaining consignments under the Contract.

4.9 Delivery of Goods shall be made on an order by order basis and Goods shall not be held as consignment stock unless agreed in advance between the Company and the Buyer and in the event that Goods are to be held as consignment stock then the basis and terms of delivery of such consignment stock shall be set out in the Company's acknowledgement of order.

5. Non-delivery

5.1 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

5.2 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. Risk/title

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

- 6.4** The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1** any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 6.4.2** any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5** The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1** 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
- 6.5.2** 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
- 6.5.3** the Buyer encumbers or in any way charges any of the Goods.
- 6.6** The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7** The Buyer grants the Company, 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 the Buyer's right to possession has terminated, to recover them.
- 6.8** On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. Price

Unless otherwise notified by the Company in writing, the price for the Goods shall be the price set out in the Company's acknowledgement of order. The Company reserves the right to adjust the price for the Goods up to 7 days before delivery to reflect the increase in the cost to the Company due to factors beyond the reasonable control of the Company including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs.

8. Payment

- 8.1** Subject to condition 8.4, payment of the price for the Goods is due in such currency and on such terms as are set out in the Company's acknowledgment of order.
- 8.2** Time for payment shall be of the essence.
- 8.3** No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4** All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5** The Buyer shall make all payments due under the Contract in full or shall ensure that all payments due are made without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.6** If the Buyer (or its nominated import clearing agent) fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Lloyds TSB Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.7** All payments due under these conditions shall be paid by telegraphic transfer unless otherwise agreed by the parties and each party shall bear its own related bank charges.

9. Quality

- 9.1** The Company warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 12 months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 9.2** The Company shall not be liable for a breach of the warranty in condition 9.1 unless the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods and associated goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.3** The Company shall not be liable for a breach of the warranty in condition 9.1 if:
- 9.3.1** the Buyer makes any further use of such Goods after giving such notice; or
- 9.3.2** the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, use or processing of the Goods or (if there are none) good trade practice;
- 9.3.3** the Buyer alters or repairs such Goods without the written consent of the Company; or
- 9.3.4** the Buyer has failed to ascertain the suitability of the Goods for use in the conditions in which they are to be used or in conjunction with Components or other associated goods not supplied by the Company.
- 9.4** Subject to condition 9.2 and condition 9.3, if any of the Goods do not conform with the warranty in condition 9.1 the Company shall at its sole option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's reasonable expense, either return the Goods or the part of such Goods which is defective to the Company or arrange for such Goods to be destroyed and confirm that such destruction has taken place to the Company in writing.

- 9.5** If the Company complies with condition 9.4 it shall have no further liability whatsoever, howsoever arising, for a breach of the warranty in condition 9.1 in respect of such Goods.
- 9.6** Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period referred to in condition 9.1.

10. Limitation of Liability

- 10.1** Subject to condition 10.3 and condition 10.4:
- 10.1.1** the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 10.1.2** the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.2** Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, distributors and sub-contractors) to the Buyer in respect of:
- 10.2.1** any breach of these conditions;
- 10.2.2** any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 10.2.3** any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.3** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4** Nothing in these conditions excludes or limits the liability of the Company:
- 10.4.1** for death or personal injury caused by the Company's negligence; or
- 10.4.2** under section 2(3), Consumer Protection Act 1987; or
- 10.4.3** for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 10.4.4** for fraud or fraudulent misrepresentation.

11. Assignment

- 11.1** The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2** The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the

reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

- 13. General**
- 13.1** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3** Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4** Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5** 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.
- 13.6** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 14. Communications**
- 14.1** All communications between the parties about the Contract shall be in writing and sent by e-mail, fax or post:
- 14.1.1** (in case of communications to the Company) to the address set out in these conditions or to such address, fax number or e-mail address as the Company may notify the Buyer from time to time;
- 14.1.2** (in the case of communications to the Buyer) to any postal address, fax number or e-mail address as the Buyer may notify the Company from time to time.
- 14.2** Communications shall be deemed to have been received:
- 14.2.1** if sent by fax or e-mail on transmission;
- 14.2.2** if sent by pre-paid UK first class post 2 business days from the date of posting; or
- 14.2.3** if sent by airmail 10 business days from the date of posting.