

CONDITIONS OF SALE

- 1.0 **DEFINITIONS & INTERPRETATION**
In these terms and conditions the following terms have the following meanings:
- "Buyer"** means the customer detailed on the Order;
- "Conditions"** means these terms and conditions of sale;
- "Delivery Address"** means the address for delivery of the Goods which shall be Seller's principal place of business (as may be communicated to the Buyer from time to time) or such other address as may be specified in the Order;
- "Estimated Delivery Date"** means the anticipated delivery date detailed on the Order or otherwise notified to the Buyer by the Seller;
- "Goods"** means the goods detailed on the Order;
- "Liability"** means liability arising out of or in connection with these Conditions, any Order or any contract for the sale of Goods (including, in each case, all costs, damages, charges and expenses relating thereto), whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under these Conditions, any Order or any contract for the sale of Goods and/or any defect in any of the Goods, in each case howsoever caused including if caused by negligence, and "Liable" shall be construed accordingly;
- "Order"** means an order for goods which is subject to these Conditions;
- "Price"** means the price payable by the Buyer for the Goods as detailed on the Order (or if no price is detailed on the Order, the Seller's standard price for the Goods from time to time) in each case as may be varied in accordance with Condition 6; and
- "Seller"** means Kromachem Ltd (company number 01662012), of Unit 10, Moor Park Industrial Centre, Tolpits Lane, Watford, Hertfordshire, WD18 9ER, or group company of Kromachem Ltd (where "group company" means another company that directly or indirectly Controls, is Controlled by, or is under common Control with, Kromachem Ltd, where "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such company, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or non-management services), or otherwise, which issues these Conditions to the Buyer in respect of a contract for the sale of Goods.
- 2.0 **BASIS OF CONTRACT**
2.1 These Conditions apply to every contract for the sale of Goods entered into by the Seller. By placing an Order the Buyer agrees to deal with the Seller on these Conditions to the exclusion of all other terms, conditions, warranties or representations (unless given fraudulently) including, without limitation, any terms and conditions appearing on the Buyer's purchase order, confirmation of order or other similar document or implied by trade, custom, practice or a course of dealing.
- 2.2 Each Order contains all the terms agreed by the Buyer and Seller in relation to its subject matter and supersedes all prior agreements, understandings and arrangements whether oral, in writing or arising from a course of dealing.
- 2.3 All Orders (whether oral or in writing) are subject to acceptance at the Seller's absolute discretion and shall not be binding upon the Seller unless and until accepted by it in writing.
- 2.4 If there is a conflict between these Conditions and an Order, the terms of the Order shall take precedence but only to the extent that a term is unambiguously and expressly stated to vary these Conditions.
- 2.5 The Seller may alter these Conditions from time to time. Any change shall apply to all Orders placed after the date of the change. The Buyer is reminded of the need to periodically check these Conditions for changes.
- 2.6 All goods supplied under these Conditions are intended for professional and/or industrial use only and are packaged accordingly. They are not intended or suitably packaged for sale to or use by the general public and the Seller accepts no responsibility and shall have no Liability for any claims arising from the Goods failure to comply with any packaging regulations governing retail sales.
- 2.7 The Seller reserves the right to change the specification of the Goods without notice to the Buyer, including (without limitation) to comply with safety, regulatory and other requirements.
- 2.8 The Buyer may not cancel or vary any Order which the Seller has accepted orally or in writing without the Seller's express written consent. The Seller reserves the right to charge the Buyer reasonable cancellation charges and/or a restocking fee in the event of any such cancellation.
- 2.9 The Buyer is responsible for assessing the Goods' suitability for the Buyer's intended purpose. The Seller shall not be Liable for any advice or recommendations given by any employees or agents of the Seller to the Buyer in relation to the Goods which has not been confirmed in writing by an authorised officer of the Seller. The Buyer acknowledges that it has not relied upon any matter not so confirmed or set out in the Order.
- 3.0 **DELIVERY**
3.1 Unless otherwise specified in an Order, delivery of the Goods shall be made by the Buyer collecting the goods from the Delivery Address and will be deemed to take place when the Goods are made available for collection at the Delivery Address.
- 3.2 The Buyer shall collect (or procure the collection of) the Goods during the Seller's business hours within 3 working days of the Seller notifying the Buyer the Goods are ready for collection.
- 3.3 The Seller will use its reasonable endeavours to make the Goods available for collection by the Buyer (or its nominated carrier) on or around the Estimated Delivery Date but time for delivery shall not be of the essence. The Goods may be delivered by the Seller in advance of the Estimated Delivery Date upon the Seller giving reasonable notice to the Buyer.
- 3.4 If the Seller agrees to deliver the Goods to a place nominated by the Buyer then the Seller shall use reasonable endeavours to deliver the Goods to the Delivery Address on or before the Estimated Delivery Date but time of delivery shall not be of the essence. The Buyer will reimburse the Seller in full for the costs of such delivery, upon receiving a request for the same from the Seller.
- 3.5 In respect of any Goods supplied:
3.5.1 the suitability of the Goods supplied including any specification, instruction or design will be the Buyer's responsibility and in the event of a failure of the Goods or a failure of the products supplied by the Buyer to perform following incorporation/mixing/blending and the like with any Goods the Seller will not accept Liability without the Buyer being able to prove that the Goods supplied were faulty or defective and without the Buyer having tested the Goods on receipt. Any such tests must have been formally recorded by the Buyer and the original batch/samples/records retained by them as evidence of the testing; and
3.5.2 the Buyer will indemnify the Seller against any loss, damage or expense in respect of any liability arising under the Consumer Protection Act 1987 by reason of the specification or design of the Goods; and
3.5.3 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including one per cent (1%) more or less than the quantity of Goods ordered and no adjustment in the Price shall be made to the Order and the quantity so delivered shall be deemed to be the quantity ordered.
- 3.6 The Seller may deliver the Goods in instalments in which case each instalment shall constitute a separate contract. The Seller's default or breach in respect of any one instalment shall not entitle the Buyer to cancel the remainder of the relevant Order or any part of it. Notwithstanding this, a failure to accept delivery of and/or pay for any instalment shall entitle the Seller to cancel any other instalment or treat the whole Order as repudiated.
- 3.7 If for any reason the Buyer fails to collect the Goods or accept delivery of any of the Goods when they are ready for delivery or, the Seller is unable to deliver the Goods because the Buyer has not provided adequate delivery instructions, risk in the Goods shall pass to the Buyer (including, without limitation, for loss or damage caused by the Seller's negligence) on the estimated delivery date which the Seller had intended for the Goods to be delivered or collected and without prejudice to any other right or remedy available to the Seller:
3.7.1 the Goods shall be deemed to have been delivered but the Buyer shall remain liable to pay the Price by the date specified in the Order or, if different within 30 days of the Seller's invoice; and
3.7.2 the Seller may store the Goods until actual delivery and the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) until such time as the Goods are collected by the Buyer and/or delivered by the Seller; or
3.7.3 the Seller may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price paid by the Buyer or charge the Buyer for any shortfall below the Price.
- 3.8 If the Seller fails to deliver the Goods and either Condition 9 does not apply or the failure is not attributable to the act or omission of the Buyer, the Buyer's sole remedy (and the Seller's sole Liability) in respect of such failure will be at the Seller's sole discretion) (i) repair or replacement of the Goods not delivered or (ii) a refund of the proportion of the Price relating to the relevant Goods.
- 4.0 **INSPECTION AND ACCEPTANCE**
The Buyer shall inspect the Goods immediately on collection or delivery (as the case may be) and must notify the Seller (and if appropriate, the carrier) in writing of any visible defect, damage or shortfall within 7 days following delivery or collection. The Seller will not be liable for any visible defect, damage or shortfall that is not notified to the Seller within such timescale and the Goods shall be deemed to have been accepted. The Buyer's sole remedy in respect of any such damage and/or shortfall will be at the Seller's sole discretion) (i) repair or replacement of the defective Goods or (ii) a refund of the proportion of the Price relating to the defective Goods.
- 5.0 **WARRANTIES**
5.1 Notwithstanding Condition 4, the Seller warrants that the Goods shall comply in all material respects with the standard specifications provided to Buyer by the Seller (subject always to the appropriate national or international commercial tolerances applicable to those Goods) for a period of 4 months from the date of delivery provided that:
5.1.1 any defect that would have been apparent to the Seller on reasonable inspection is notified to the Seller within 7 days of receipt of the Goods;
5.1.2 all other defects are notified to the Seller in writing immediately upon discovery and in any event within 48 hours of the expiry of the warranty period;
5.1.3 the Seller is given a suitable opportunity to examine the allegedly defective Goods and the Buyer shall return the Goods to a site nominated by the Seller for such inspection;
5.1.4 the Seller shall have no Liability in respect of any defects arising from (i) any specifications supplied by the Buyer; (ii) wilful damage or negligence by the Buyer or persons using the Goods; (iii) alteration or repair of the Goods without the Seller's prior approval; or (iv) the Buyer's failure to follow the Seller's instructions (whether oral or in writing) or to use the Goods in accordance with their specification (if any); and
5.1.5 the Buyer does not make any further use of such Goods after giving written notice of an alleged breach of warranty.
- 5.2 The Buyer's only remedy in respect of a breach of Condition 5.1 will be (at the Seller's sole discretion) (i) repair or replacement of the defective Goods or (ii) a refund of the proportion of the Price relating to the defective Goods.
- 6.0 **VARIATION OF PRICE**
6.1 The Seller reserves the right to increase the Price at any time prior to delivery to reflect any increase in the cost of supplying the Goods due to factors beyond the Seller's reasonable control (including without limitation changes in exchange rates or legislation or any tariffs, export or import duties payable or any costs arising as a consequence of the United Kingdom leaving the European Union).
- 6.2 If the Price at the date of delivery is higher than the Price at the date of Seller's acceptance of an Order, the Buyer may, within 7 days of receiving notice from the Seller of the adjusted price and provided always that the Goods are not in transit,

- terminate the Order in so far as it relates to those Goods without further obligation or liability on the part of either party.
- 7.0 PAYMENT (AND CONSEQUENCES OF NON-PAYMENT)**
- 7.1 Unless otherwise agreed in writing, the Price will be invoiced on delivery of the Goods (or each instalment of Goods, as applicable). Each invoice must be paid without set off or deduction in such currency, using such method and by such due date as the Seller specifies on its invoice and where no such date is specified, within 30 (thirty) days of the date of the invoice. Time of payment shall be of the essence.
- 7.2 Subject to Condition 3.4, where the Delivery Address is within the UK, the Price shall be inclusive of delivery, packing and insurance charges but exclusive of VAT and other applicable taxes, duties, import levies and charges all of which the Buyer will be liable to pay to the Seller in addition to the Price. Where the Delivery Address is outside the UK, unless otherwise specified on the Order, the Price shall be exclusive of the costs of delivery, packing, insurance, VAT and other applicable taxes, duties, import levies, export levies, tariffs and charges all of which the Buyer will be liable to pay to the Seller in addition to the Price. In each case, if the Seller incurs any costs or expenses on behalf of the Buyer these costs or expenses shall be included in the Buyer's invoice together with the Price.
- 7.3 If the Buyer fails to pay any amount in full when it is due, the Seller may:
- 7.3.1 treat such failure as a repudiation of contract and suspend deliveries to Buyer and to recover damages for breach of contract; and/or
- 7.3.2 charge interest on the overdue amount at the rate of 3% above the official dealing rate of the Bank of England from time to time calculated on a daily basis from the due date until the date of payment.
- 7.4 The Buyer shall indemnify and hold the Seller harmless in respect of any loss, liability, damage, cost and expense (including, without limitation, legal costs) suffered or incurred by the Seller in recovering any sums which the Buyer did not pay when due.
- 8.0 LIMITATION OF LIABILITY**
- 8.1 Save as provided in Condition 8.3, the Seller's total aggregate Liability to the Buyer in respect of each Order (whether in contract, tort (including, but not limited to, negligence) or otherwise) shall not exceed the Price paid or payable under such Order or, if the Order is delivered in instalment pursuant to clause 3.6, the Price paid or payable under each instalment.
- 8.2 In no event shall the Seller be Liable for any claim to the extent that it relates to:
- 8.2.1 loss of profits;
- 8.2.2 loss of goodwill;
- 8.2.3 loss of business opportunity;
- 8.2.4 loss of anticipated savings;
- 8.2.5 injury to reputation;
- 8.2.6 third party losses; or
- 8.2.7 indirect, consequential or special loss or damage, regardless of the form of action, whether in contract, tort (including, but not limited to, negligence) or strict liability and regardless of whether the Seller knew or had reason to know of the possibility of the loss or damage in question.
- 8.3 Nothing in these Conditions or an Order will exclude or limit the Seller's liability for:
- 8.3.1 death or personal injury caused by Seller's negligence;
- 8.3.2 for damage (if any) for which Seller is liable under Part 1 of the Consumer Protection Act 1987;
- 8.3.3 fraud or fraudulent misrepresentation; or
- 8.3.4 any other loss or damage the exclusion or limitation of which is prohibited by English law.
- 8.4 All conditions, warranties, guarantees, representations or other terms that may be implied into these Conditions or an Order by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.
- 8.5 These Conditions and any contract entered into pursuant to these Conditions constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 8.5.1 neither party has entered into these Conditions or any contract pursuant to these Conditions in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in these Conditions or any contract pursuant to these Conditions;
- 8.5.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into these Conditions or any contract pursuant to these Conditions and which is expressly set out in these Conditions or any contract pursuant to these Conditions will be for breach of contract; and
- 8.5.3 nothing in this Condition 8.5 will be interpreted or construed as limiting or excluding the Liability of any person for fraud or fraudulent misrepresentation.
- 9.0 FORCE MAJEURE**
- The Seller shall not be liable for failure or delay in performing its obligations under these Conditions or an Order caused by a circumstance or event beyond its reasonable control including, without limit, strikes or industrial disputes (whether involving the Seller's workforce or that of a third party), shortages of or inadequate sources of raw materials, component parts or essential utilities. In case of any shortages of raw materials or component parts the Seller reserves the right to apportion Goods on an equitable basis in the Seller's sole discretion.
- 10.0 RISK AND TITLE**
- 10.1 The risk of loss of or damage to the Goods passes to the Buyer upon delivery.
- 10.2 Ownership of the Goods will not pass to the Buyer until the Seller receives payment of the Price in full in cleared funds.
- 10.3 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.
- 10.4 Until ownership of the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep them properly stored, insured and marked as the Seller's property. Prior to the passing of ownership the Buyer shall be entitled to sell (at full market value) or otherwise use the Goods at its own risk in the ordinary course of its business and in its own capacity.
- 10.5 Until such time as title to the Goods passes to the Buyer and, providing the Goods are still in existence and have not been re-sold or incorporated into other goods, the Seller shall be entitled to require the Buyer to deliver up the Goods and, if the Buyer fails to do so, to enter upon the premises where the Goods are kept to re-possess the same.
- 10.6 The Buyer shall indemnify and hold the Seller harmless against:
- 10.6.1 all costs (including (but not limited to) legal and other professional costs and costs of enforcement), expenses, damages and liabilities that the Seller does or will incur or suffer;
- 10.6.2 all claims or proceedings made, brought or threatened against the indemnified party by any person; and
- 10.6.3 all losses (including (but not limited to) all direct, indirect and consequential losses), liabilities, costs, damages and expenses the Seller does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising as a result of any third party action or claim brought in connection with any re-possession or attempted re-possession.
- 10.7 If the Buyer incorporates (including without limitation by mixing or blending) the Goods into other goods, the Seller shall automatically acquire the ownership of the incorporated goods.
- 10.8 Notwithstanding Condition 10.7, in respect of such part of the new object or objects which is not made from the Goods, but is made either from goods or materials belonging to the Buyer or a third person, the Seller shall automatically become the joint owner of such new object or objects with the Buyer or the said third person in the proportion of the commercial value which shall, however, not be less than the Price charged by the Seller for the Goods delivered to the Buyer and used in the making of the new object or objects.
- 10.9 The Buyer may not pledge or charge the Goods by way of security for any indebtedness but, if it does so, all monies due to the Seller from the Buyer shall become immediately due and payable.
- 11.0 INSOLVENCY OF BUYER**
- 11.1 The Seller shall be entitled to terminate an Order if the Buyer makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any similar process or event whether in the United Kingdom or elsewhere is otherwise unable to pay its debt as they fall due.
- 11.2 If the Seller becomes aware following acceptance of an Order, of circumstances which bring the creditworthiness of the Buyer into doubt, or if the agreed payment terms are not observed, the Buyer is entitled, at its absolute discretion, to:
- 11.2.1 consider all outstanding claims against the Buyer as due for payment immediately; or
- 11.2.2 to require the lodging of the appropriate securities; or
- 11.2.3 to withdraw from the Order or suspend any further deliveries of Goods without any liability to the Buyer.
- 11.3 If the Seller is entitled to terminate an Order and the Goods have been delivered but not paid for the Price shall become immediately due and payable. The termination of an Order shall be without prejudice to the Seller's rights and obligations accrued at the date of termination.
- 12.0 NOTICES**
- 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 its 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.
- 13.0 GENERAL**
- 13.1 The Buyer may not transfer, assign or otherwise part with its rights under these Conditions or an Order, whether in whole or in part, without the Seller's prior written consent. The Seller shall be permitted to sub-contract any of its obligations provided that the Seller shall remain liable to the Buyer in respect of those obligations.
- 13.2 The Seller's failure to enforce or rely on or delay in enforcing or relying on any right that it may have under these Conditions will not prevent the Seller from later enforcing or relying upon that or any other right.
- 13.3 If a court or other regulatory body finds that any part of these Conditions is invalid or unenforceable, the remainder shall not be affected and shall be construed as if such invalid or unenforceable part did not exist.
- 13.4 Nothing in these Conditions shall confer any right upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.5 In these Conditions, the headings are included for convenience only; the singular includes the plural and vice versa; and references to persons include all legal persons.
- 13.6 References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.
- 14.0 ENGLISH LAW**
- These Conditions and each Order (and any associated non-contractual claims or disputes) shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.



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