



NCH (CHEM-AQUA) REPUBLIC OF IRELAND GENERAL TERMS & CONDITIONS OF SUPPLY

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1 DEFINITIONS

- 1.1 “Seller” means NCH (UK) Limited, a company incorporated and registered in England and Wales with company number 00816221, whose registered office address is NCH House, Springvale Avenue, Bilston, West Midlands, WV14 0QL.
- 1.2 “Buyer” means the person, company or firm by whom the Goods were purchased and/or to whom the Services are supplied.
- 1.3 “The Goods” means the goods the subject of the contract or contracts to which these conditions apply.
- 1.4 “The Services” means the services the subject of the contract or contracts to which these conditions apply.
- 1.5 “The Sales Order” means any order for the Product issued to the Seller by the Buyer.
- 1.6 “The Product” means the Goods and/or the Services.
- 1.7 “Specification” means the standard specification of the Seller in respect of the Goods at the time of shipment.

2 THESE CONDITIONS

Every sale of the Product by Seller shall be subject to these conditions which shall apply to the exclusion of any items issued by Buyer or otherwise arising expressly or implied.

3 PRICE

- 3.1 Prices quoted are exclusive of value added tax and any other Government tax or duty applicable which is chargeable at the rate in force on invoicing.
- 3.2 Products are supplied at the price ruling at the time of despatch or performance (as the case may be), or as specified in the Sales Order.
- 3.3 Prices for equipment do not include the cost of installation or any pipe work required.
- 3.4 Seller reserves the right to charge Buyer for any increase in freight and carriage charges over those on which the Seller’s price is based.

<https://www.ncheurope.com/en/nch-chem-aqua-republic-of-ireland-general-terms-conditions-of-supply>

4 PAYMENT OF SELLER'S INVOICES

- 4.1 Payment for the Product shall become due immediately after 30 days of the date of a Seller's invoice.
- 4.2 Time for payment is of the essence.
- 4.3 If any sum remains unpaid after the due date for payment, Seller may require Buyer to pay a surcharge of 2% per month, or part thereof, on such unpaid sum until full payment of the invoice and interest is received.
- 4.4 All payments by Buyer shall be made in full without any deduction whatsoever, whether by way of set-off, counter claim or otherwise.

5 SELLER'S WARRANTIES AND LIABILITY

- 5.1 Seller warrants that subject to the normal limits of industrial quality the Goods shall at the time of delivery comply with the Specification and be free from defects in materials and workmanship. If the Goods do not conform to that warranty, Seller will, at its option, repair or replace the Goods, and/or refund and/or invoice credit Buyer in respect of the whole or the proportionate price paid by Buyer for the Goods.
- 5.2 Seller warrants that the Services will be carried out with reasonable skill and care. If the Services do not conform to the warranty, Seller will, at its option, carry out remedial works to, or re-perform, such Services and/or refund and/or invoice credit buyer in respect of the whole or the proportionate price paid by Buyer for the Services.
- 5.3 The forgoing warranties under conditions 5.1 and 5.2 are conditional upon the following:
 - 5.3.1 Buyer giving written notice to Seller of the alleged defect in the Goods and/or Services, with such notice to be received by the Seller within seven days of the time when Buyer discovers or ought to have discovered the defect, and in any event within six months of delivery of the Goods and/or provision of the Services;
 - 5.3.2 Buyer affording Seller a reasonable opportunity to inspect the Goods or if so requested by Seller returning the allegedly defective Goods to Seller's works carriage paid by Buyer at Seller's request for inspection to take place there;
 - 5.3.3 Buyer making no further use of the Goods after the time at which Buyer discovers or ought to have discovered the defect(s);
 - 5.3.4 The defective Goods, having been used, stored and maintained in accordance with any instructions, information or literature issued or made available by Seller, or in accordance with general trade practice, and there being no negligence or misuse on the part of Buyer, its servants or agents, nor the Goods having been altered or repaired by any person other than Seller or those authorised by Seller; and
 - 5.3.5 Seller being satisfied that the defect(s) in the Goods and/or Services was/were due to defective workmanship or use of defective materials, and without prejudice to the forgoing, Seller shall be under no liability whatsoever for defects due to wear and tear or neglect or use of the Goods for any purpose other than those for which they are designed.
- 5.4 Save as otherwise provided for in these conditions, and to the full extent permitted by law:

- 5.4.1 All conditions and warranties express or implied are hereby expressly excluded (save for section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 and section 2(3) of the Consumer Protection Act 1987);
- 5.4.2 Seller shall be under no liability for any loss or damage howsoever caused which arises in respect of Buyer's liabilities to any third party; and
- 5.4.3 Seller shall be under no liability for any direct, indirect or consequential loss or damage howsoever caused, and without prejudice to the foregoing, Seller shall not be liable for any costs claims or damages or expenses, arising out of any tortious acts or omissions or any breach of contract or statutory duty or misrepresentation, 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.
- 5.5 Nothing herein contained shall be construed as an attempt to exclude or limit the liability of Seller: (i) in negligence for the death of or injury to any person; or (ii) for fraud or fraudulent misrepresentation.
- 5.6 Subject to conditions 5.4 and 5.5 above, the maximum liability of Seller under or in connection with any contract to which these conditions apply (including for negligence) shall not exceed the price received by Seller from the Buyer under such a contract.
- 5.7 Seller shall not be liable for loss or damage suffered or incurred by Buyer to the extent resulting from Buyer's own negligence or wilful default.
- 5.8 Save to the extent that Seller is by this condition expressly made liable, Buyer shall indemnify and keep indemnified Seller against any and all expenses, liability, loss, claims or proceedings, arising out of, or caused by, or occurring in the course of the sale of the Goods and/or carrying out of the Services.
- 5.9 Seller accepts no responsibility for any drawing, design or specification not prepared by Seller, and Seller gives no warranty, guarantee, representation or opinion, on the practicability of construction or of the efficacy, safety or otherwise, of materials to be supplied or work to be executed by Seller in accordance therewith, and Buyer shall be responsible for the cost of any additional work caused by defects in any such drawings, designs or specifications.
- 5.10 Seller's water treatment program shall be fit for the purposes set out in writing by Seller, provided that the water treatment program does not cover, and Seller makes no warranties or representations with respect to, water system biohazards from waterborne pathogens, including but not limited to Legionella bacteria.

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6 DELIVERY

- 6.1 Delivery is deemed to have occurred at these times:
- 6.1.1 If Product is collected from Seller, at the time when loading of Product either in containers or through delivery line from Seller's storage tank commences; or
- 6.1.2 If Product is transported by Seller at request of Buyer, at the time when unloading of Product either in containers or through delivery line from delivery vehicle commences.
- 6.2 Deviations in quantity of Goods delivered, up to a maximum of either 10% of weight or volume, from that stated in any Sales Order, shall not permit the Buyer any right to reject

delivered Goods or to claim damages, and Buyer shall be obliged to accept the delivered Goods and to pay in full and on time, at the contract rate, for the quantity of Goods delivered.

6.3 Time for delivery shall not be of the essence.

7 TITLE AND RISK

7.1 Property in the Goods shall not pass to Buyer until the full price of the Product and every other sum whatsoever which is due from Buyer to Seller, whether under this Contract or otherwise, have been safely received in full by Seller in cash or cleared funds. This condition shall apply notwithstanding that the Goods have been affixed to or incorporated in real or other property.

7.2 Until property in the Goods has passed in accordance with condition 7.1 above, Buyer shall hold the Goods in a fiduciary capacity as bailee and shall store them in such a way that they are identifiable as the property of the Seller and are separate from all other goods in the possession of Buyer.

7.3 Until property in the Goods has passed in accordance with condition 7.1 above, Buyer shall have no right to sell the Goods without Seller's consent.

7.4 Until property in the Goods has passed in accordance with condition 7.1 above, Seller may, by notice in writing to Buyer, determine Buyer's right to use the Goods and Buyer shall thereupon at its own cost return the Goods to Seller and shall cease to be in possession of the Goods with the consent of the Seller. At any time after the giving of such a notice, Seller may enter upon premises where the goods are or are reasonably believed to be, and may remove the Goods.

7.5 Notwithstanding the forgoing:

7.5.1 The Goods are at the entire risk of Buyer from the time of delivery; and

7.5.2 Buyer shall not be entitled to return the Goods or any of them unless the Seller shall have given a notice pursuant to condition 7.4 above relating whether exclusively or not to the Goods.

7.6 Nothing in this condition 7 shall in any way limit or modify Buyer's obligation to pay for the Goods in full.

8 NON-DELIVERY AND DAMAGE IN TRANSIT

8.1 Buyer shall notify Seller in writing of any claim for non-delivery of the Goods or for damage in transit, within 7 days of the date of delivery or due date for delivery. Following such notification, Seller shall make good any shortage in the Goods delivered and will replace Goods damaged in transit as soon as it is reasonably able to do so, but shall not be under any additional liability, howsoever arising. Seller's obligation to replace damaged Goods shall be subject to such Goods being returned to the Seller.

8.2 If for any reason Buyer fails to accept delivery of the Goods, Buyer shall remain liable to pay the price for the Goods, with interest, at the time and at the rates specified in these conditions, and Seller shall be entitled to store the Goods and Buyer shall be liable to Seller for the costs of such storage, and shall be responsible for any and all loss or damage to the Goods howsoever arising during such storage.

8.3 Seller reserves the right to terminate any contract with the Buyer on these conditions in the event that the Buyer unreasonably refuses to accept delivery of the Goods.

9 HANDLING GOODS

- 9.1 Seller hereby gives notice to Buyer, that Seller has available for Buyer's inspection upon request, information and product literature concerning the conditions necessary to ensure that the Goods will be safe and without risk to health when properly used. If Buyer is not already in possession of such literature or requires any information or advice in connection with the safe and proper use of Goods, Buyer should immediately contact Seller to request the same.
- 9.2 Buyer undertakes to draw to the attention of his servants or agents or any person handling or otherwise using Product on behalf of Buyer, or having access to Product whilst in possession of Buyer, any information or warnings concerning the methods whereby or the conditions where under Product should be used or handled, contained in Seller's relevant literature.
- 9.3 Buyer shall indemnify and keep indemnified Seller against all costs, claims, demands and damages arising from any failure of Buyer to ensure that any person handling, using or having access to Product complies with information and warnings provided by Seller.

10 PACKAGES

- 10.1 Without prejudice to the generality of the word, "package" shall include drums, intermediate bulk containers, and other such containers.
- 10.2 Where Buyer has an option to return packages and chooses to exercise this option, Buyer must return such packages empty, securely closed, in a good reusable condition and to the location requested by Seller. Buyer must bear the costs of returning packages to Seller, and must advise Seller on date of despatch.
- 10.3 Any packages Seller lends to Buyer shall remain the property of Seller at all times. Buyer must make such packages available as soon as possible for return to Seller, and return such packages in accordance with condition 10.2 above. Any packages required to be returned which are not returned, or not returned in a good reusable condition, and within a reasonable period of time, shall be paid for by Buyer at Seller's standard rate operating at the date of issue by Seller to Buyer of a debit note relating to such packages.
- 10.4 All loss or damage to packages shall be Buyer's responsibility, howsoever caused.
- 10.5 Buyer must immediately notify Seller of any loss or damage to packages however caused upon Buyer's discovery of such loss or damage.

11 INSOLVENCY OF BUYER

In the event of Buyer entering into any arrangement or composition with its creditors, committing any act of bankruptcy, or (being a corporation) an order being made or a resolution being passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company), or a Receiver or Administrator being appointed in respect of the whole or any part of its undertaking or assets, Seller may without prejudice to its other rights terminate any contract to which these conditions apply forthwith by written notice to Buyer, and shall be entitled to suspend all or any work or future deliveries of Goods and/or the provision of Services under such contracts.

12 FORCE MAJEURE

- 12.1 Seller shall not be liable for any failure to deliver Product arising from circumstances beyond Seller's reasonable control. Non-exhaustive illustrations of such circumstances include: act of God; explosion; abnormal weather conditions; fire; flood; strikes; lockouts; Government action

or regulations (UK or otherwise); delay by suppliers; accidents and shortage of materials, labour or manufacturing facilities.

- 12.2 Should Seller be so prevented from delivering Product to Buyer, Seller shall give Buyer written notice of this fact as soon as reasonably practicable following discovery thereof.
- 12.3 If the circumstances preventing delivery of Product continue for more than three months after Buyer receives Seller's notice under condition 12.2 above, either party may give written notice to the other terminating any contract to which these conditions apply.
- 12.4 If a contract between the parties subject to these conditions is terminated under condition 12.3 above, Seller shall refund any payment which Buyer has already made towards the price of the Product (subject to deduction of any amount Seller is entitled to claim from Buyer), but Seller will not be liable to compensate Buyer for any further loss or damage caused by Seller's failure to deliver Product.
- 12.5 Any delay in delivery of Product which is excusable under this condition 12 shall be excused, notwithstanding that goods of the same description as the Goods and services of the same description as the Services may be available to purchase from another source by the Seller for supply to Buyer.

13 NOTICES

Any notice required to be given or served in accordance with these conditions shall be in writing (excluding fax and email) and shall be deemed to have been duly given if sent or delivered to the party concerned at its address detailed in the Sales Order.

14 ASSIGNMENT OF CONTRACT

No contract between the parties to which these conditions relate shall be assigned by Buyer. Nothing herein shall prevent Seller from sub-contracting all or part of any contract between the parties to which these conditions relate.

15 COMPUTATION OF TIME

In the computation of time under these conditions, Saturdays, Sundays and any public holidays shall not be included.

16 SELLER'S LIEN

In addition to any other right or lien to which Seller may by law or the other terms hereof be entitled, Seller shall be entitled to a general lien on all the goods and property of Buyer in Seller's possession.

17 INTELLECTUAL PROPERTY RIGHTS

- 17.1 Buyer shall not use the Goods or any specifications, designs or drawings or any other information supplied by Seller for the purpose of designing or manufacturing identical goods. All patents, registered designs, copyright and other intellectual property rights in or in connection with Goods which Seller may have shall remain the sole property of Seller at all times.
- 17.2 Buyer shall indemnify and keep indemnified Seller against all charges, damages, penalties, costs and expenses to which Seller may become liable as a result of supplying the Product to the Buyer further to a Sales Order, provided that said charges, damages, penalties, costs and expenses arise as a result of Seller's infringement of any patents, trademarks, copyright or registered designs or other intellectual property rights of any third party.

18 TERMINATION

The Seller may terminate any contract between the parties subject to these conditions upon providing the Buyer with 30 days' written notice.

19 GOVERNING LAW AND JURISDICTION

Any contract between the parties subject to these conditions shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Courts.

20 CONSIGNMENTS

- 20.1 In the event Seller supplies the Goods to Buyer on a consignment basis, Buyer shall provide an appropriate storage vessel or storage location, when appropriate, for each consignment. Buyer shall mark such storage vessel to show Seller's ownership of the delivered Goods, and agrees to execute such other documents, such as financing statements, as are deemed appropriate by Seller to protect its interest in any delivered Goods.
- 20.2 Title to the Goods forming part of any consignment shall pass from Seller to Buyer upon (i) removal of the consignment from a storage vessel for any reason other than return at Seller's request, or (ii) opening of a package holding a consignment.
- 20.3 Seller shall have the right to inspect any consignment. After delivery to and receipt by Buyer of a consignment, Buyer shall be responsible for loss of or damage to any consignment unless caused by or resulting from Seller's negligence or wilful misconduct. With respect to consignments, Buyer shall maintain appropriate insurance coverage and shall name Seller as a beneficiary thereunder.
- 20.4 Upon termination or expiration of any contract between the parties to which these conditions apply, Buyer shall purchase all remaining consignments from Seller at the then current price, and Buyer shall be wholly responsible for any shipping or delivery costs associated with the return of such consignments.

21 LEGIONELLA CONTROL

- 21.1 All quotations provided by the Seller shall, where applicable, be in accordance with the current requirements of the Health and Safety Executive's Approved Code of Practice and guidance L8 (fourth edition) ("the Code").
- 21.2 Buyer is hereby advised of its responsibility under paragraph 48 of the Code to appoint a person or persons to take managerial responsibility and to provide supervision for the implementation of precautions in relation to legionella control.
- 21.3 Legislative requirements for the control of legionellosis put the responsibility for compliance strictly on the owner/operator of water systems. Under the Health and Safety at Work etc Act 1974, and the Control of Substances Hazardous to Health Regulations 2002, as regards risks for legionellosis, all owners and operators of water systems have a responsibility to ensure that the risk is controlled and kept to an acceptable level. The Code stresses that whilst the tasks required to be undertaken to control the risk may be contracted out to an external specialist, the owner/operator must take all reasonable care to ensure the competence of the service provider to carry out such work.
- 21.4 Risk Assessment Services –

Where Chem Aqua a division of NCH (UK) Ltd undertakes or appoints a third party to undertake Legionella risk assessment works - For the completion of the Legionella Risk

Assessment to be of the correct standard (BS 8580-1:2019) NCH Chem Aqua will require from client

- Unimpeded and continual access to a system aware, trained and competent accompanying individual that knows the hazards and risks associated with the site/areas of working/ areas involved in the assessment, and who has access at time of the assessment to all key and relevant areas, plant and equipment, records and documentation relating to and/ or is relevant to the system(s) being assessed

This will include but not limited to

- Safety/Site Induction training
- Previous Legionella risk assessment
- Documentation for current control regime(s)
- These will be referenced in the final document to confirm and report on the effectiveness of or gaps in the current control regime(s)
- Comprehensive asset(s) register
- Schematic drawings, showing the system(s) to be assessed and any areas of alteration(s)

N.B. - Where this is not possible Chem-Aqua will endeavour to ensure the assessment is completed as accurately as possible but this will impact on the effective assessment of the system(s) and completion of an accurate Legionella risk assessment document for the system(s) assessed. Site agree to these conditions

NCH Chem Aqua will observe all booking in of work procedures defined by client and takes this as adequate notification of site visit to enable access to all required areas to be assessed

Where areas of repetition occur (e.g. identical flats or office spaces

- All areas will be accessed as is safe or permitted to do so.
- N.B. Where access is refused/denied /not permitted a comment documenting the reason will be recorded

Where access to areas are known to be frequently prohibited/denied client will be required to

- Provide evidence of the services located within the area and any documentation/records to confirm the current control scheme implemented
- During the booking in process propose convenient / alternative time where access would be possible to avoid the environmental impact of a revisit and any related charges
- N.B. a comment will be placed within the assessment to state where this occurs

Provision of schematic drawings, in line with BS 8580-1:2019 unless otherwise quoted for. Any schematic drawing included within the risk assessment service will be non-technical representations of the system(s) assessed (see BS 8580-1:2019 Annex G, Fig G.1 or G.2).

- N.B.- Where schematics are not stated and quoted for; these will not be included.

Photographs will be provide as is safe and permitted to do so

- N.B. Where access is not permitted/cameras or photography denied/ or the situation is not safe preventing images, a comment will be recorded to explain why the image is recorded/not recorded. If site require specific photographs to be included then this must be stated in the order

All sites will be accessed as is safe to do so

- N.B. Where access is refused/denied /not permitted a comment documenting the reason will be recorded

Written Scheme of Control – Unless otherwise stated this is not included. Reference to the relevant sections of the supporting Approved code of practice and supporting guidance will be referenced on the identifications of responsibilities form and within the risk assessment document. This reference does not constitute and should not be used as a written scheme of control alone.

Executive summaries will be provided per assessment, per site

Completed documentation –

- Unless where otherwise stated, one copy of the completed risk assessments will be issued digitally in a secured format and provided to the Chem Aqua appointing parties representative for distribution to end user(s).

Unless otherwise agreed and stated, any resulting queries are to be directed to the Chem-Aqua account manager

- in a formal documented manner i.e. Email
- Who will respond directly to the Chem Aqua appointing parties representative

Where Chem Aqua a division of NCH (UK) Ltd directs clients to but has no involvement with the appointing of, or client appoints a third party to conduct legionella risk assessment works; Chem Aqua a division of NCH (UK) Ltd takes no responsibility for the completed documentation and cannot attest to its correct completion, standard of the assessment or any identified remedial actions that maybe an outcome of the completed risk assessment.

- Chem Aqua a division of NCH (UK) Ltd would direct client to the Legionella Control Association website for further information on how to choose a Legionella Risk Assessment provided before appointing any subcontractor

21.5 Clean and disinfection Services –

For the completion of clean and disinfection works to be of the correct standard NCH Chem Aqua will require client to

- Clearly identified and formally confirm a correct “Drain to”/”Discharge to” point that is satisfactory for the discharge of process water and/or water containing chemical(s), before work can commence.

21.6 Identification of potential hazards and risks –

Before work can commence all potential hazards and risk associated with the area that work is to take place in, or hazards associated by access to or egress of the working area are to be formally reported to enable the correct control measures to be successfully implemented

- 21.7 All areas outside of areas Chem Aqua is taking responsibility for must to comply with the Health and safety at work Act 1974 be risk assessed with a view to remove or reduce the residual risk. A control scheme should be implemented to control the residual risk with records kept to document these actions and a review program implemented to ensure the controls are effective and to current requirements.

All records regarding Legionella activity must be maintained and the clients is responsible for maintaining these records

- 21.8 The Seller is a registered member of the Legionella Control Association (LCA). Seller's registration certificate is available upon request. Buyer is advised to read the LCA's Code of Conduct for Service Providers which is available free of charge at:
https://www.legionellacontrol.org.uk/_data/pdf/a-code-of-conduct-for-service-providers-70118-06-18.pdf

22 LIMITATIONS

- 22.1 Any issues, risks, areas of responsibility, or pieces of work not specifically listed and itemised in below or within Appendix 1 of the contract paperwork (hereafter "Scope of Works") are areas outside of NCH Chem Aqua's responsibility and no liability is accepted by NCH Chem-Aqua in relation to them. In addition, NCH Chem-Aqua is responsible to the Customer for items listed in the Scope of Works only for the duration of the contract. For the avoidance of doubt NCH Chem-Aqua takes no responsibility and accepts no liability for any acts or omissions on the part of the Customer to deal with obligations incumbent upon the Customer pursuant to the following: The Health and Safety at Work Act 1974; The Management Relations 1999 and Control of Substances Hazardous to Health Act 2002; ACOP L8 and HSG 274. The Customer is required to make its own enquiries and take whatever action they consider is necessary to ensure compliance with the above.