

Terms and Conditions

These Terms and Conditions apply to all sales of Goods and/or Services by Avonchem Diagnostics Limited of Ropewalks, Suite 11, 1st Floor Newton Street, Macclesfield Cheshire, SK11 6QJ UK, Company No: **07268954** (hereafter "**Avonchem**").

When you submit an order for Goods and/or Services, you will be deemed to accept these Terms and Conditions. If you are placing an order for and on behalf of your company or organisation you are confirming that your company or organization agrees to these Terms and Conditions; and you are authorized to place the order and agree to these Terms and Conditions on its behalf, and that you are not exceeding your authority.

1. DEFINITIONS

1.1 In these Terms and Conditions the following definitions apply:

"Business Day" means a day other than a Saturday, Sunday or bank or public holiday in England;

"Buyer" means the entity that purchases the Goods from Avonchem and whose details are set out in the Order;

"Confidential Information" means any commercial, financial or technical information, information relating to the Goods, all technical or commercial know-how, specifications, inventions or processes, which is of a confidential nature or has been identified as such;

"Contract" means the contract formed between Avonchem and the Buyer for the sale and purchase of Goods, incorporating these Terms and Conditions and the Order;

"Force Majeure Event" means any event or circumstance arising after the date of the Contract which prevents or hinders Avonchem's performance of its obligations under the Contract and which is beyond the reasonable control of Avonchem;

"Goods" means the goods set out in the Order and to be supplied by Avonchem;

"Order" means an order for the Goods from Avonchem placed by the Buyer in accordance with Clause 3.3;

"Insolvency Event" has the meaning given in Clause 14.1.3;

"Intellectual Property Rights" means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; (v) to which the relevant party is or may be entitled; and (vi) in whichever part of the world existing;

"Services" means the services set out in the Order and to be supplied by Avonchem;

"Specification" means the description or specification of the Goods set out or referred to in the Order;

"Terms and Conditions" means Avonchem's terms and conditions of sale as set out in this document; and

"VAT" means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods and Services.

1.2 In these Terms and Conditions: (i) a reference to a statute or statutory provision is a reference to it as it is amended, re-enacted or replaced from time to time; (ii) the words "including", "includes" or "for example" are to be construed without limitation; and (iii) clause headings are inserted for convenience only and shall not affect the construction or interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 These Terms and Conditions apply to and form part of the Contract between Avonchem and the Buyer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms and conditions endorsed on, delivered with, or contained in the Buyer's purchase order, confirmation of order, specification or other document unless otherwise agreed in writing by Avonchem.

- 2.3 No variation or addition to these Terms and Conditions or to an Order or to the Contract shall have effect or be binding, unless expressly agreed in writing and signed by a duly authorised representative of Avonchem.
- 2.4 Avonchem's employees, distributors or agents are not authorised to make any representations or warranties beyond those that appear in the Specification, unless confirmed by Avonchem in writing.
- 2.5 Any advice or recommendation given by Avonchem or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Avonchem, is followed or acted upon entirely at the Buyer's own risk and Avonchem shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 Avonchem reserves the right (but does not assume the obligation) to make any changes in the Specification of the Goods which are required to conform with any applicable legislation or regulatory requirement, or which do not materially adversely affect their quality or performance.

3. ORDERS

- 3.1 Any quotation provided by Avonchem to the Buyer is for information only and shall not at any time be deemed to be an offer to supply Goods which is capable of acceptance by the Buyer. Unless otherwise agreed in writing by Avonchem, any quotation provided by Avonchem to the Buyer shall expire 30 days after the date of the quotation.
- 3.2 Each Order placed by the Buyer with Avonchem shall be an offer by the Buyer to purchase the Goods subject to these Terms and Conditions.
- 3.3 The Buyer shall place each Order either: (i) in writing on the Buyer's letterhead, signed by an authorised signatory; (ii) by email sent from the Buyer's email system; or (iii) by completing Avonchem's Order form and each Order shall include: (i) a purchase order number; (ii) the name, phone number and email address of the Buyer's authorised purchasing officer and any other member of staff that has previously contacted Avonchem in relation to that particular Order; (iii) delivery location and any specific delivery requirements; and (iv) the Buyer's VAT number or its certificate of VAT exemption.
- 3.4 Avonchem may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of: (i) Avonchem's written acceptance of the Order or (ii) Avonchem delivering the Goods or Services.
- 3.5 Goods are subject to availability. If, on receipt of an Order, the Goods ordered are no longer available, Avonchem will inform the Buyer as soon as possible.
- 3.6 Avonchem may at any time amend or cancel an Order to comply with applicable laws and regulations.

4. DELIVERY OF GOODS

- 4.1 This Clause 4.1 applies unless the Order specifies that the Buyer will be responsible for collecting the Goods. The Goods shall be delivered to the address specified by the Buyer in the Order (or such other address agreed by the parties in writing) by the method of delivery deemed suitable for the Goods by Avonchem. Delivery charges will be as specified and confirmed at the time of the Order and the Goods shall be deemed delivered by Avonchem only on the arrival of the Goods at the location specified in the Order.
- 4.2 This Clause 4.2 applies if the Order specifies that the Buyer will be responsible for collecting the Goods. Avonchem will affect delivery of the Goods by informing the Buyer that they are available for collection by the Buyer from the agreed location, whereupon the Buyer will promptly arrange for collection of the Goods. In circumstances where it has been agreed that the Buyer will collect the Goods, the Buyer is responsible for loading of the Goods. The Buyer or its representative must ensure that all statutory requirements relating to the transport, carriage and handling of the Goods are complied with.

- 4.3 The Services shall be performed by Avonchem at the address specified by the Buyer in the Order (or such other address agreed by the parties in writing). The Services shall be deemed delivered by Avonchem only on completion of the Services.
- 4.4 If the Buyer has not collected or accepted delivery of the Goods (as the case may be) within 5 Business Days of the first delivery attempt by Avonchem in accordance with Clause 4.1 or of the Buyer first being informed that they are available for collection in accordance with Clause 4.2 (as the case may be), Avonchem may store the Goods until actual delivery and charge the Buyer for reasonable costs (including insurance) of storage. If 5 Business Days after the first delivery attempt or the Buyer being informed the Goods are available for collection (as the case may be), the Buyer has not collected or accepted delivery of the Goods, Avonchem may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Goods.
- 4.5 Time is not of the essence in relation to performance or delivery of the Goods. Any dates specified by Avonchem for delivery are estimates only. For Goods in stock Avonchem will use reasonable endeavours to deliver the Goods in line with agreed delivery date.
- 4.6 Avonchem shall not be liable for any delay or failure of performance caused by:
- 4.6.1 the Buyer's failure to: (i) provide all necessary access and facilities required for delivery or performance or (ii) provide Avonchem with adequate instructions for performance or delivery; or
- 4.6.2 Force Majeure.
- 4.7 Avonchem may deliver the Goods in separate instalments and each instalment shall be deemed to be a separate Contract. Any delay in performance or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 4.8 Avonchem shall have no liability in respect of Goods which are not delivered or are lost or damaged in transit unless the Buyer notifies Avonchem in writing within 7 Business Days of delivery. Failure to notify in that time period shall invalidate any claim.
- 4.9 Avonchem reserves the right to deliver Goods in pack sizes which are different from those set out in the Order.
- 4.10 Avonchem shall not be liable for any damage or deterioration of the Goods during storage where the Goods are being stored pursuant to Clause 4.4 as a result of the Buyer's failure to accept or take delivery of them.

5. RISK AND TITLE IN GOODS

- 5.1 Risk in the Goods shall pass to the Buyer on completion of delivery or where Avonchem is responsible for carriage of the Goods, upon the Buyer's first failure to accept delivery in accordance with Clause 4).
- 5.2 Title to the Goods shall not pass to the Buyer until Avonchem has received in full (in cleared funds) all sums due to it in respect of the Goods.
- 5.3 Until title in the Goods passes to the Buyer in accordance with Clause 5.2 , the Buyer shall:
- 5.3.1 hold the Goods on a fiduciary basis as Avonchem's bailee;
- 5.3.2 ensure that the Goods are readily identifiable as belonging to Avonchem;
- 5.3.3 ensure the Goods are properly stored, protected and maintained in satisfactory condition;
- 5.3.4 not remove, deface or obscure any identifying mark or packaging relating to the Goods;
- 5.3.5 keep the Goods insured for their full replacement value, against all risks with a reputable insurer;
- 5.3.6 on reasonable notice permit Avonchem to inspect the Goods; and
- 5.3.7 inform Avonchem immediately if it becomes subject to an Insolvency Event.

- 5.4 Notwithstanding Clause 5.3, the Buyer may use the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an Insolvency Event has occurred or is likely to occur.
- 5.5 Until title to the Goods has passed to the Buyer, Avonchem may;
- 5.5.1 require the Buyer, at the Buyer's expense, to re-deliver the Goods to Avonchem; and
- 5.5.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored at any time to repossess the Goods.

6. USE OF THE GOODS AND SERVICES

- 6.1 The Buyer acknowledges and accepts that:
- 6.1.1 where relevant diagnosis must always be undertaken by a duly qualified clinician;
- 6.1.2 all persons intending to use the Goods must rely on their own knowledge and judgment in the selection and use of those Goods; and
- 6.1.3 Goods may have a limited usable life and require storage and use in controlled conditions.
- 6.2 The Buyer:
- 6.2.1 is responsible for complying with any applicable legislation and regulations governing the importation of the Goods into the territory in which they are to be used;
- 6.2.2 shall use and handle the Goods in accordance with applicable laws, including applicable health and safety regulations; and
- 6.2.3 shall ensure that it and/or its personnel handling the Goods have the appropriate qualifications and training necessary to handle such Goods.
- 6.6 The Buyer shall compensate Avonchem in full for any liabilities, losses, damages, penalties, costs or expenses of any kind whatsoever incurred or suffered by Avonchem as a result of use of the Goods or Services by or on behalf of the Buyer in contravention of the provisions of this Clause 6.

7. BESPOKE GOODS

- 7.1 If the Buyer requests that Avonchem prepares the Goods in a non-standard size or other special format, Avonchem will require that the Buyer completes a specification sheet detailing its requirements. Avonchem will confirm if it is able to prepare the Goods in accordance with the Buyer's specification and any additional costs in doing so. If it is possible for Avonchem to comply with Buyer's specification and the Buyer has accepted any additional costs in writing, the Goods will be prepared in accordance with the details in the Buyer's specification sheet. Avonchem will ensure that the Goods have passed Avonchem's standard quality control tests before release but shall have no liability to the Buyer if the Goods fail to pass these tests as a result of Avonchem following the Buyer's specification.
- 7.2 Avonchem shall have no liability or responsibility for any failure to comply with an amended or additional Specification following its acceptance of the Order and failure to meet any such amended or additional Specifications will not entitle the Buyer to reject the Goods in accordance with Clause 8.

8. WARRANTIES

- 8.1 Avonchem warrants that at the time of performance and/or delivery, and for a period of 1 year thereafter (or if less, until the expiry date indicated on the Goods or accompanying documentation), the Goods shall:
- 8.1.1 conform in all material respects with their description and any applicable Specification;
- 8.1.2 be free from material defects in design, material and workmanship; and
- 8.1.3 if Services, be supplied with reasonable skill and care.

- 8.2 Avonchem shall, at its option, replace or refund the Goods that do not comply with Clause 8.1, provided that the Buyer:
- 8.2.1 gives written notice of the defect to Avonchem within 7 days of delivery or performance in the case of defects discoverable by physical inspection, or within 7 days of discovery in the case of latent defects;
 - 8.2.2 gives Avonchem reasonable opportunity to examine the Goods; and
 - 8.2.3 shall, if requested by Avonchem, return the Goods to Avonchem's place of business (or such other place as may be reasonably notified by Avonchem to the Buyer). Avonchem shall be responsible for the reasonable costs of return provided that they are agreed in advance by Avonchem in writing.
- 8.3 Avonchem shall have no liability for any Goods' failure to comply with the warranty at Clause 8.1 if:
- 8.3.1 the Buyer makes any further use of the Goods after discovering the defect;
 - 8.3.2 the defect arises as a result of Avonchem following any specification or instruction supplied by the Buyer;
 - 8.3.3 the defect arises as a result of the Buyer failing to follow Avonchem's instructions (including instructions with respect to storage or use), or failing to follow good practice in relation to the Goods;
 - 8.3.4 the Buyer modifies the Goods without the written consent of Avonchem;
 - 8.3.5 the defect has been caused as a result of damage, mishandling, misuse, neglect, wilful damage, abnormal conditions, accident or any other adverse event occurring after delivery;
 - 8.3.6 the Goods have passed their product expiry date as indicated on the Goods or the accompanying documentation; or
 - 8.3.7 the defect relates to any component not manufactured by Avonchem, in which case Avonchem shall pass to the Buyer the benefit of any manufacturer's warranty in respect of such components in so far as such warranties are assignable without expense to Avonchem.
- 8.4 Except as set out in this Clause 8:
- 8.4.1 the Buyer shall have no right or remedy for a breach of the warranty set out in Clause 8.1;
 - 8.4.2 Avonchem gives no warranty and makes no representations in relation to the Goods; and
 - 8.4.3 all warranties, conditions or other terms, whether express or implied by statute, common law or otherwise are excluded to the fullest extent permitted by law. Without prejudice to the foregoing the Buyer shall satisfy itself that the Goods are suitable for the purpose for which it intends to use them.

9. PRICES AND PAYMENT

- 9.1 The price for the Goods shall be the price set out in the Order or subsequently agreed in writing.
- 9.2 The prices are exclusive of:
- 9.2.1 loading, unloading, carriage and insurance, an estimate of which shall be given to Avonchem following receipt of an Order unless Avonchem, at its sole discretion, waives such costs;
 - 9.2.2 VAT and all other applicable taxes and duties.
- 9.3 Subject to Clause 9.4, the Buyer will pay any applicable VAT to Avonchem on receipt of a valid VAT invoice.
- 9.4 Avonchem shall not charge the Buyer any VAT where the Buyer is based within the UK but is exempt from paying VAT, provided that the Buyer has submitted to Avonchem a valid exemption certificate with its Order. For Buyers outside the EU, UK VAT will not be charged but the Buyer has responsibility to ensure that VAT, import taxes and duties in the Goods' destination country are paid by the Buyer, as applicable.
- 9.5 Payments are accepted in Pound Sterling, Euro or US Dollars but the currency used must be the currency denominated on Avonchem's invoice.

- 9.6 Avonchem may, by giving notice to the Buyer at any time before delivery, increase the price of Goods to reflect any increase in the cost of the Goods that is due to any factor beyond Avonchem's control (including foreign exchange fluctuations, increases in taxes and duties in connection with the Goods, and increases in labour, materials and other manufacturing costs or in prices charged by Avonchem's suppliers).
- 9.7 Avonchem may invoice the Buyer for the Goods upon receipt of the order. Avonchem reserves the right to charge for the Goods delivered, even though some items in an Order may not have been delivered.
- 9.8 The Buyer shall pay all invoices to the bank account nominated by Avonchem and in line with the terms of the Order or as agreed in writing.
- 9.9 If the Buyer fails to pay Avonchem any sum due in full by the due date, without prejudice to any other right or remedy available to Avonchem, the Buyer shall pay interest to Avonchem on such sum at the statutory rate for late payments from the due date for payment, until payment is made in full, whether before or after any judgment.

10. CANCELLATION

- 10.1 Orders for Goods may only be cancelled or amended with the prior written consent of Avonchem.
- 10.2 The Buyer will reimburse Avonchem for all costs incurred as a result of any change or cancellation of an Order, including in relation to the costs which Avonchem has incurred in fulfilment of the Order prior to cancellation or amendment and for Goods which cannot be used for other orders.
- 10.3 Should a cancellation or variation of an Order be agreed by Avonchem, Avonchem will endeavour to process a refund for any sums already paid, after deduction of any sums due to Avonchem, within 14 Business Days.

11. RETURNS

- 11.1 The Buyer may not return Goods which have been supplied pursuant to Clause 17.
- 11.2 Subject to Clause 8 and except where the contents of the delivery do not comply with the Order, the Buyer may not return Goods unless prior written consent has been given by Avonchem. Not all items will be authorised for return due to temperature and packing requirements.
- 11.3 The Buyer shall be responsible for the cost and risk of returning the Goods and the Goods but be returned in their original packaging, in the same condition in which they were received by the Buyer.
- 11.4 If Avonchem accepts the return of the Goods, it shall issue a refund to the Buyer for the value of the Goods (for the avoidance of doubt, shipping charges will not be refunded).
- 11.5 Avonchem will not consider a request to return the Goods for refund after 14 Business Days after the Buyers' receipt of the Goods.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Subject to Clause 12.3, all Intellectual Property Rights in the Goods, or created by Avonchem in connection with the Contract or in any goods, drawings, specifications and data or any other materials supplied by Avonchem to the Buyer be and remain the exclusive property of Avonchem or its licensors. The Buyer shall hold all such materials supplied by Avonchem in safe custody until returned to Avonchem and shall not use them other than in accordance with Avonchem's written instructions.

- 12.2 Avonchem does not grant the Buyer by implication, estoppels or otherwise, any right, title, licence or interest in any Intellectual Property Rights of Avonchem or any affiliate of Avonchem provided that the Buyer shall be entitled to use the Goods supplied by Avonchem for their intended purpose and subject to these Terms and Conditions.
- 12.3 All Intellectual Property Rights in any materials supplied by the Buyer to Avonchem in connection with the Contract shall be and remain the property of the Buyer. The Buyer grants to Avonchem a non-exclusive licence to use its Intellectual Property Rights to the extent necessary in connection with the supply and performance of the Goods.
- 12.4 The Buyer shall indemnify Avonchem from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that Avonchem's use or possession of the Buyer's Intellectual Property Rights infringes the Intellectual Property Rights of any third party.

13. EXPORT

- 13.1 Where the Goods are to be exported outside of the United Kingdom, the Buyer shall:
- 13.1.1 be responsible for obtaining any necessary import licences or permits necessary for entry of the Goods into the relevant territory, or their delivery to the Buyer;
 - 13.1.2 be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Goods; and
 - 13.1.3 be responsible for ensuring that the Goods comply with all laws and regulations affecting the Goods which are in force in the relevant territory.
- 13.2 The Buyer shall:
- 13.2.1 not, directly or indirectly, export the Goods or any other product incorporating the Goods without first obtaining an appropriate licence to do so;
 - 13.2.2 comply with all applicable export and import laws and regulations;
 - 13.2.3 not offer the Goods for resale in any country if the laws of the United Kingdom prohibit the supply of such Goods to such country, or to sell the Goods to any person if the Buyer knows, or has reason to believe that, that person intends to resell the Goods or Services in any such country.

14. TERMINATION

- 14.1 Avonchem may (without prejudice to any other rights or remedy) terminate any Contract with immediate effect by giving written notice to the Buyer:
- 14.1.1 if the Buyer fails to pay any amount due under these Terms and Conditions by the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - 14.1.2 if the Buyer commits a material breach of the Contract which, if such breach is remediable, it fails to remedy within a period of 30 days after being notified in writing to do so; or
 - 14.1.3 if:
 - 14.1.3.1 the Buyer makes or offers to make any voluntary arrangement or composition with or for the benefit of its creditors or (being an individual) becomes bankrupt or (being a company) becomes subject to administration, or liquidation;
 - 14.1.3.2 the Buyer ceases or threatens to cease to carry on business or suspends or threatens to suspend all or substantially all of its operations;
 - 14.1.3.3 the Buyer suspends payments of its debts or becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 where applicable);
 - 14.1.3.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;

14.1.3.5 Avonchem reasonably believes that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, (each an “**Insolvency Event**”).

14.2 Without prejudice to any other right or remedy available to Avonchem, Avonchem shall be entitled to suspend the supply of further deliveries of Goods under the Contract without any liability to the Buyer if the Buyer suffers an Insolvency Event or fails to pay any amount due under a Contract by the due date for payment.

14.3 On termination of any Contract for any reason:-

14.3.1 any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination shall not be effected;

14.3.2 the Buyer shall immediately pay to Avonchem, all of Avonchem’s outstanding unpaid invoices and any accrued interest thereon. In respect of Goods supplied but for which no invoice has yet been submitted, Avonchem shall submit an invoice for such Goods which shall be payable by the Buyer immediately on receipt; and

14.3.3 any provision of these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination of a Contract shall remain in full force and effect.

15. LIABILITY

15.1 Subject to Clause 8, the extent of the parties’ liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Clause 15.

15.2 Nothing in these Terms and Conditions shall exclude or limit the liability of either party in respect of any of the following:

15.2.1 death or personal injury caused by negligence; or

15.2.2 fraud or fraudulent misrepresentation; or

15.2.3 any indemnity given; or

15.2.4 any other losses which cannot be excluded or limited by law.

15.3 Subject to Clause 15.2, Avonchem’s total liability shall not exceed the totality of the funds received in respect of the Order to which the claim relates.

15.4 Subject to Clause 15.2, Avonchem shall not be liable to the Buyer whether in tort (including but not limited to negligence or breach of statutory duty), contract or otherwise, arising under or in connection with the Contract for: any loss of use, loss of profits, loss of anticipated profits, loss of business or contracts, loss of data, loss of reputation or goodwill, loss of opportunity, business interruption, or any type of special, indirect or consequential loss, damage costs or expenses.

16. BUYER OBLIGATIONS

16.1 The Buyer shall:

16.1.1 ensure that the terms of the Order and are complete and accurate, and promptly inform Avonchem of any inaccuracies or discrepancies;

16.1.2 ensure that all details provided to Avonchem for the purpose of placing the Order are correct;

16.1.3 ensure that all necessary access and facilities to facilitate delivery are provided to Avonchem;

16.1.4 cooperate with Avonchem in all matters relating to the Goods and provide Avonchem with adequate instructions for performance or delivery;

16.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the delivery or the Goods or performance of the Services before the date on which the Goods are to be delivered or performance of the Services is to start;

- 16.1.6 shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract and/or the Goods;
 - 16.1.7 provide Avonchem, its employees, agents, consultants and subcontractors, with clear, uninterrupted access to the premises set out in the Order in order to provide the Services; and
 - 16.1.8 provide Avonchem with such information and materials as Avonchem may reasonably require to supply the Goods and ensure that such information is complete and accurate.
- 16.2 If Avonchem's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation:
- 16.2.1 without limiting or affecting any other right or remedy available to it, Avonchem shall have the right to suspend performance or delivery of the Goods until the Buyer remedies the default;
 - 16.2.2 Avonchem shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Buyer's failure to perform, or delay in performing, any of its obligations; and
 - 16.2.3 the Buyer shall reimburse Avonchem on demand for any costs or losses sustained or incurred by Avonchem arising directly or indirectly from the Buyer's default.

17. FORCE MAJEURE

- 17.1 Avonchem shall not have any liability under or be deemed to be in breach of the Contract for any failure or delay in performance of its obligations under any Contract which is caused by a Force Majeure Event.
- 17.2 If the Force Majeure Event continues for a period of more than 90 days after its commencement, then the Buyer may terminate that Contract by giving at least 10 Business Days' written notice to Avonchem.

18. CONFIDENTIALITY

- 18.1 The Buyer shall keep confidential all Confidential Information of Avonchem and shall only use the same as required to perform the Contract. The provisions of this Clause shall not apply to:
 - 18.1.1 any information which was in the public domain at the date of the Contract;
 - 18.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 18.1.3 any information which is independently developed by the Buyer without using information supplied by Avonchem; or
 - 18.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 18.2 This Clause shall remain in force in perpetuity.

19. GENERAL

- 19.1 **Notice.**
 - 19.1.1 All notices shall be given in writing and delivered by first class post, by hand, or by pre-paid first class post or recorded delivery post other party at its address set out in the Order, or such other address, as may be notified by that party in writing for such purposes from time to time.
 - 19.1.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first business day following delivery). A correctly addressed notice sent by pre-paid first class post or recorded delivery post shall be deemed to have been served 48 hours after the time it was posted (or if delivery is not in business hours, at 09:00 on the first business day following delivery) and in proving such service it shall be sufficient to prove that the notice was properly addressed.

- 19.2 **Waiver.** No failure or delay by Avonchem to exercise any right or remedy provided under these Terms and Conditions or by law shall not be deemed a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.3 **Entire Agreement.**
- 19.3.1 These Terms and Conditions and the Order constitute the whole agreement, between the parties and supersede any previous arrangement, understanding, assurances, warranties, representations and understandings between them relating to its subject matter.
- 19.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.
- 19.4 **Assignment.** Avonchem may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions. The Buyer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions without the prior written consent of Avonchem.
- 19.5 **No partnership or agency.** Nothing in the Contract will constitute or be deemed to constitute a partnership between the parties nor will it constitute, or be deemed to constitute, either party the agent of the other party for any purpose.
- 19.6 **Changes to these Terms and Conditions.** Avonchem reserves the right to make changes to these Terms and Conditions at any time. Any amended Terms and Conditions shall be effective from the date specified on the amended Terms and Conditions.
- 19.7 **Severance.** If any provision (or part provision) of these Terms and Conditions is or becomes invalid, void, unenforceable or illegal, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this Clause will not affect the validity and enforceability of the rest of the Contract.
- 19.8 **Third Party Rights.** The Contracts (Rights of Third Parties) Act 1999 shall not apply in relation to these Terms and Conditions.
- 19.9 **Set off.**
- 19.9.1 Avonchem shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Buyer under the Contract or under any other contract which Avonchem has with the Buyer.
- 19.9.2 The Buyer shall pay all sums that it owes to Avonchem under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

20. GOVERNING LAW AND JURISDICTION

- 20.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or its formation, validity or interpretation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.
- 20.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims), except that Avonchem shall have the right to seek payment of any sums due under a Contract in any the courts in the country of the Buyer's place of business.