



## Hydrasun GmbH – Standard Terms and Conditions of Purchase

Multiple Solutions – One Company



## 1. INTERPRETATION

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

**Affiliate:** any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company.

**Company:** means Hydrasun GmbH (registered in Germany under number HRB: 736767) with its registered office at Ewald-Renz-Str. 1, D-76669 Bad Schönborn;

**Company Group:** the Company, its Affiliates and its and their respective directors, officers and employees (including agency personnel), but not any member of the Seller Group.

**Contract:** the Order and the Seller's acceptance of the Order.

**Deliverables:** all documents, products and materials developed by the Seller or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Goods:** any goods agreed in the Contract to be bought by the Company from the Seller (including any part or parts of them) and accompanying documentation (as is customary for these goods or as specified in the Order).

**Order:** the Company's written instruction to the Seller for supply of Goods and/or Services, incorporating these conditions.

**Seller:** the person, firm or company who accepts the Company's Order.

**Seller Group:** the Seller, its subcontractors, its suppliers, its and their Affiliates, its and their respective directors, officers and employees (including agency personnel), but not any member of the Company Group.

**Services:** the services, including without limitation any Deliverables, to be provided by the Seller under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in the Contract to be provided to the Company by the Seller (or as specified in the Order).

**UK/Germany/EU Trade Laws:** means: (i) the Export Control Act 2002 and any secondary legislation made under the powers thereof including, but not limited to, the Export Control Order 2008; (ii) Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items; (iii) the German Foreign Trade and Payments Act ("*Außenwirtschaftsgesetz*"); and (iv) any UK or EU embargoes and economic or financial sanctions of certain countries, persons and entities or bodies administered and implemented by the Department for Business, Innovation and Skills (Export Control Organisation) and HM Treasury (Asset Freezing Unit) or their successors.

**US Trade Laws:** means: (i) the Export Administration Regulations and the International Traffic in Arms Regulations administered by the US Department of the Treasury (Bureau of Industry and Security) and the US Department of State (Directorate of Defence and Trade Controls); and (ii) any US embargoes and economic or financial sanctions of certain countries, persons and entities or bodies administered and implemented by the US Department of the Treasury (Office of Foreign Assets Control) acting under Presidential national emergency powers contained in the International Emergency Economic Powers Act or under authority granted by specific legislation.

- 1.2 A reference to a particular 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 A reference to one gender includes a reference to the other gender.
- 1.4 Condition headings do not affect the interpretation of these conditions.

## **2. APPLICATION OF TERMS**

- 2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2 Each Order for the supply of Goods and/or Services by the Company from the Seller shall be deemed to be an offer by the Company to buy Goods and/or Services subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These conditions apply to all the Company's purchases of Goods and/or Services from the Seller and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised individual of the Company.
- 2.5 All of these conditions shall apply to the purchase of both Goods and Services except where the application to one or the other is specified.

## **3. QUALITY AND DEFECTS**

- 3.1 The Seller warrants to the Company that the Goods shall be of the best available design, of the best quality, material and workmanship, meet best industry standards, be without fault, be free from defects in design, materials and workmanship and conform in all respects with and be fit for the purpose of the Order and specification supplied or advised by the Company to the Seller. The Seller shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Seller warrants that the supply of Goods and/or Services under the Order will not infringe any third party intellectual property rights. In respect of the Goods and any goods that are transferred to the Company as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Seller warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Company, it will have full and unrestricted rights to sell and transfer all such items to the Company. The Seller assigns to the Company, free from all encumbrances and third party rights, all intellectual property rights in the products of the Services, including for the avoidance of doubt the Deliverables. In case the assignment of such rights is not permitted under statutory law, the Seller grants to the Company an exclusive, sublicensable, transferable, irrevocable and perpetual right to use such intellectual property rights without any territorial, timely or functional restrictions.
- 3.3 Subject to condition 3.4, the Seller shall repair, replace or rectify any of the Goods (or any replacement) which are defective. The Seller's obligation shall cease 24 months from delivery of the original Goods.
- 3.4 The Seller shall rectify any defects in the Goods or defective performance of the Services within a reasonable time of being called upon to do so provided that if it fails to do so, the Company may undertake the work itself (or authorise others to do so) and the Seller shall reimburse the Company for all costs arising therefrom.
- 3.5 The Company's rights under these conditions are in addition to any statutory rights of the Company.
- 3.6 At any and all times prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods at the Seller's premises (or as otherwise agreed between the Seller and the Company) provided that such inspection shall not reveal any information which is covered by existing non-disclosure obligations of the Seller and any personal data. At the reasonable request of the Company, the Seller shall use its reasonable endeavours to arrange with any of its suppliers

that the Company may attend the supplier's premises for the purposes of inspecting and testing the Goods.

- 3.7 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.8 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.9 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and shall comply with all applicable laws and regulations.
- 3.10 If any of the Goods fail to comply with the provisions set out in this condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 13.
- 3.11 The Seller shall provide the Services to the Company in accordance with the terms of the Contract and shall meet any performance dates for the Services specified in the Order or notified to the Seller by the Company.
- 3.12 In providing the Services, the Seller shall:
- (a) co-operate with the Company in all matters relating to the Services, and comply with all instructions of the Company;
  - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with this Contract;
  - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Seller by the Company;
  - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Company, will be free from defects in workmanship, installation and design;
  - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises;
  - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Company to the Seller (and which shall remain the exclusive property of the Company) (**Company Materials**) in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company,

and not dispose or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and

- (j) not do or omit to do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Seller acknowledges that the Company may rely or act on the Services.

3.13 If any of the Services fail to comply with the provisions set out in this condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 13.

#### **4. DELIVERY**

4.1 The Goods shall be delivered, carriage paid (unless otherwise agreed in the Contract), to the Company's place of business or to such other place of delivery as is specified in the Contract or otherwise agreed by the Company in writing prior to delivery of the Goods. The Services shall be provided at the Company's place of business or at such other place as is specified in the Contract or otherwise agreed by the Company in writing prior to provision of the Services.

4.2 The date for delivery of Goods or provision of Services shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.

4.3 In respect of Goods, the Seller shall invoice the Company upon, but separately from, receipt of the Goods by the Company, with invoice date being no earlier than such date. In respect of Services, the Seller shall invoice the Company on completion of the Services, with invoice date being no earlier than such date. Each invoice shall include such supporting information reasonably required by the Company to verify the accuracy of the invoice, including but not limited to the relevant Order number.

4.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

4.5 Where a time for delivery is specified in the Contract it shall be of the essence.

4.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.

4.7 If the Goods are not delivered or the Services performed on the due date then, without prejudice to any other rights which it may have and after expiry of a reasonable deadline set by the Company (save for where setting of such reasonable deadline is not required following statutory law), the Company reserves the right to:

- (a) cancel the Contract in part or, where the Company has no interest in partly performance, in whole;
- (b) refuse to accept any subsequent delivery of the Goods or performance of the Services which the Seller attempts to make;
- (c) recover from the Seller any expenditure incurred by the Company in obtaining substitute goods and/or services from another supplier;
- (d) where the Company has paid in advance for Services that have not been provided by the Seller and/or Goods which have not been delivered by the Seller, have such sums refunded by the Seller; and
- (e) claim damages for any additional costs, loss or expenses as may have been sustained in consequence of the Seller's culpable late delivery or performance (which shall include, for the avoidance of doubt, costs losses or expenses claimed by any customer of the Company Group where such costs losses or expenses



arise in respect of, as a result of or in connection with the Seller's late delivery or performance).

- 4.8 If the Seller requires the Company to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material shall only be returned to the Seller at the cost of the Seller.
- 4.9 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess. Statutory rights of the Seller shall remain unaffected.
- 4.10 The Company shall not be deemed to have accepted the Goods until it has had a reasonable time (a reasonable time for the purposes of this condition being not less than 2 business days for obvious and apparent defects and 10 days for defects that can be detected by a business as usual inspection) to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for 21 days after any latent defect in the Goods has become apparent.

## **5. RISK/PROPERTY**

The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) when ownership of, and risk in, the Goods shall pass to the Company.

## **6. PRICE**

- 6.1 The price of the Goods shall be stated in the Order and shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Company. The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Seller in respect of the performance of the Services. Unless otherwise agreed in writing by the Company, the charges shall include every cost and expense of the Seller directly or indirectly incurred in connection with the performance of the Services. Unless otherwise agreed in writing by the Company, all amounts payable under the Contract shall be exclusive of Germany value added tax but inclusive of all other charges and taxes.
- 6.2 No variation in the price nor extra charges shall be accepted by the Company.

## **7. PAYMENT**

- 7.1 The Company shall pay the price of the Goods and/or the Services within sixty days from receipt of an accurate and correctly rendered invoice.
- 7.2 The Seller shall maintain complete and accurate records of the time spent and materials used by the Seller in providing the Services, and the Seller shall allow the Company to inspect such records at all reasonable times on request provided that such inspection shall not reveal any information which is covered by existing non-disclosure obligations of the Seller and any personal data.
- 7.3 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing or contingently owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

## **8. CONFIDENTIALITY**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company

and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller. This clause 8 shall survive termination of the Contract.

## **9. THE COMPANY'S PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

## **10. INSURANCE**

The Seller shall maintain levels of insurance sufficient to cover its liabilities and obligations under the Contract and at law, and shall exhibit such certificates of insurance where reasonably requested by the Company.

## **11. TERMINATION**

11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and, in a case where the Company's bespoke design or specification has been incorporated into the Order (but in no other case), the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include any consequential loss (consequential loss for the purpose of this condition 11.1 means (i) consequential or indirect loss; and (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the date of the Order).

11.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

- (a) the Seller commits a material breach of any of the terms and conditions of the Contract; or
- (b) the Seller commits a breach of condition 13 of these conditions; or
- (c) any distress, execution or other process is levied upon any of the assets of the Seller; or
- (d) the Seller suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of the German Insolvency Code ("*Insolvenzordnung*"); or
- (e) the Seller has a bankruptcy order made against him, commences negotiations with all or any class of his creditors with a view to rescheduling any of his debts or makes a proposal or 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 (or is entitled to have) a receiver 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 Seller or notice of intention to appoint an administrator is given by the Seller or its directors, or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration



order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller or any event occurs, or proceeding is taken, with respect to the Seller in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this condition 11.2; or

- (f) the Seller ceases or threatens to cease to carry on its business.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

11.4 On termination of the Contract or any part of it for any reason, where the Services are terminated, the Seller shall immediately deliver to the Company all Deliverables, whether or not then complete, and return all Company Materials. If the Seller fails to do so, the Company may, without limiting its other rights or remedies, enter the Seller's premises and take possession of them. Until they have been returned or delivered, the Seller shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

## 12. REMEDIES

12.1 Without prejudice to any other right or remedy which the Company may have under these conditions or under statutory provisions, if any Goods are not supplied or Services performed in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion:

- (a) to rescind the Order, after expiry of a reasonable deadline set by the Company for re-performance of the Seller's obligations (save for where setting of such reasonable deadline is not required following statutory law);
- (b) to reject the Goods partly or, where the Company has no interest in partly performance, in whole and return them to the Seller at the risk and cost of the Seller;
- (c) at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or performance of the Services or to supply replacement Goods or re-perform the Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to recover from the Seller any costs incurred by the Company in obtaining substitute goods and/or services from a third party, after expiry of a reasonable deadline set by the Company for re-performance of the Seller's obligations (save for where setting of such reasonable deadline is not required following statutory law);
- (e) where the Company has paid in advance for Services that have not been provided by the Seller and/or Goods which have not been delivered by the Seller, to have such sums refunded by the Seller;
- (f) to carry out at the Seller's expense any work necessary to make the Goods or Services comply with the Contract after expiry of a reasonable deadline set by the Company for re-performance of the Seller's obligations (save for where setting of such reasonable deadline is not required following statutory law); and
- (g) to claim damages for any additional costs, loss or expenses as may have been sustained in consequence of the Seller's culpable breach or breaches of the Contract (which shall include, for the avoidance of doubt, costs, losses or expenses claimed by any customer of the Company Group where such costs

losses or expenses arise in respect of, as a result of or in connection with the Seller's culpable breach or breaches of the Contract).

12.2 These conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Seller.

12.3 The Company's rights under this Contract are in addition to its rights and remedies implied by statutory law.

### **13. ANTI-BRIBERY AND CORRUPTION/TRADE SANCTIONS**

The Seller irrevocably and unconditionally warrants and represents:

13.1 that throughout the duration of the Contract it will comply with all applicable laws (including statutes), regulations, and codes relating to bribery, corruption, anti-trust, money laundering, import/export controls, trade sanctions, financial sanctions and criminal matters including, but not limited to, the Bribery Act 2010, UK/Germany, EU Trade Laws and US Trade Laws, and all such legislation as the same may be modified, supplemented or replaced; and

13.2 that it has, and shall maintain in place throughout the duration of the Contract, its own policies and procedures to prevent contravention of the laws and regulations referred to in condition 13.1 and to ensure compliance with local law and will enforce them where appropriate.

### **14. ASSIGNATION**

14.1 The Seller shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of the Company.

14.2 The Company may assign the Contract or any part of it to any person, firm or company.

### **15. FORCE MAJEURE**

Neither party shall be liable for failure to perform its respective obligations hereunder if the failure is due to circumstances beyond its reasonable control including, acts of God, governmental actions, war or national emergency, acts of terrorism, fire, or flood. If such a situation lasts for more than 15 days the Company will have the right to terminate the Contract without liability on the Company and without prejudice to the Company's right to claim for losses and/or any other remedies which the Company may have.

### **16. GENERAL**

16.1 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.

16.2 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. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the Parties shall agree on a provision which is legal, valid and enforceable.

16.3 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.

16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller shall be in writing and shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

- 16.5 Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Company.
- 16.6 Where they are specifically identified in these conditions, such conditions are intended to benefit and confer direct rights of enforcement on those members of the Company Group who are not a direct party to these conditions and such conditions shall be enforceable by them to the fullest extent permitted by law.
- 16.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by German law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties submit to the exclusive jurisdiction of the courts of Karlsruhe.

\*\*\*