

Hydratron Terms and Conditions of Sale (2021)

DEFINITIONS

In these Conditions, the following definitions apply:

“Conditions” the terms and conditions set out in this document as amended from time to time in accordance with clause 10.4.

“Contract” the contract between Hydratron and the Customer for the sale and purchase of the Products in accordance with these Conditions.

“Customer” the person or firm who purchases the Products from Hydratron.

“Force Majeure Event” means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to industrial disputes, failure of energy sources or transport network, acts of God, war, terrorism, breakdown of plant or machinery, nuclear, chemical or biological contamination, collapse of building structures, fires, loss at sea, natural disasters or extreme adverse weather conditions, or default of suppliers or Subcontractors.

“Order” the Customer’s order for the Products as set out in the Customer’s purchase order form.

“Products” the products (or any part of them) set out in the Order.

“Specification” any specification for the Products, including any related plans and drawings, that is agreed in writing by the Customer and Hydratron, subject to any amendments as may be required by any applicable statutory or regulatory requirements.

“Hydratron” Hydratron Limited (registered in England and Wales with company number 01548328).

“Warranty Period” the period of 12 months from the date of delivery.

BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.2 The Order shall only be deemed to be accepted when Hydratron issues a written acceptance of the Order, at which point the Contract shall come into existence. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Hydratron which is not set out in the Contract.

2.3 Any samples, drawings, descriptive matter, or advertising produced by Hydratron and any descriptions or illustrations contained in Hydratron’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract or have any contractual force.

PRODUCTS

Hydratron Limited

L5 19 High Flatworth, Tyne Tunnel Trading Estate, North Shields,
Tyne & Wear, NE29 7UT

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A Pryme Group Company



3.1 To the extent that the Products are to be manufactured in accordance with a Specification agreed between Hydratron and the Customer, the Customer shall indemnify Hydratron against all liabilities, costs and expenses suffered or incurred by Hydratron in connection with any claim made against Hydratron for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Hydratron's use of the Specification. This clause 3.1 shall survive termination of the Contract.

3.2 Hydratron reserves the right to alter the design or specification of the Products from time to time provided that such alterations do not adversely affect the quality of the Products. Any such alterations shall not impose an obligation on Hydratron to make equivalent alterations to any Products already ordered or supplied.

3.3 In the event that the Products include an element of design, title to, copyright in and ownership of all things created under the Contract by Hydratron, including but not limited to all data (including that stored on computers and computer aided design models), drawings, specifications, calculations, other documents, shall vest in Hydratron. All rights of title to, copyright in and ownership of any such items which Hydratron provides in relation to the Contract and which is merely supplemented, enhanced, modified or adapted in the course of the Contract shall remain with Hydratron.

DELIVERY

4.1 The Customer shall not alter or make any addition to the labelling or packaging of the Products. The Customer shall not alter, deface or remove any model numbers or serial numbers or any reference to any of Hydratron's intellectual property, its name or any other name displayed on the Products, their packaging or labelling.

4.2 The Customer shall collect the Products from Hydratron's premises at Manchester, U.K. or such other location as may be advised by Hydratron prior to delivery within 3 days of Hydratron notifying the Customer that the Products are ready. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.3 If Hydratron fails to deliver the Products (provided that such failure is not caused by a Force Majeure Event or the Customer's failure to provide any other instructions that are relevant to the supply of the Products), its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products.

4.4 If the Customer fails to take delivery of the Products within 3 days of Hydratron notifying the Customer that the Products are ready, then, Hydratron shall store the Products until delivery takes place, and reserves the right to charge the Customer for all related costs and expenses (including insurance) from the date of notification to the Customer.

4.5 Hydratron may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.6 The Customer is not entitled to return any Products which are made to the Customer's Specification or are obsolete. Hydratron may at its sole discretion accept return of Products within 7 days of delivery to the Customer provided that such Products are accompanied by full details relating to their return. Hydratron may in its absolute discretion credit the Customer for such return after taking in account a restocking fee based on Hydratron's sole determination of the re-usability or re-saleability of such Products.

QUALITY

5.1 Subject to clause 5.2 Hydratron warrants that on delivery, and during the Warranty Period, the Products shall conform in all material respects with their description and any applicable Specification; and be free from material defects in design, material and workmanship.

5.2 No warranty is given in respect of soft goods, consumable items and the resistance to or effect of corrosion of any type on any Products. Products supplied by but not manufactured by Hydratron (including for the avoidance of doubt any component parts) are not covered by the warranty in clause 5.1 and such Products are subject to the applicable manufacturer's warranty terms and conditions.

5.3 Subject to clause 5.4, if the Customer gives notice in writing to Hydratron during the Warranty Period as soon as it discovers that the Products do not comply with clause 5.1, Hydratron is given a reasonable opportunity of examining such Products (either itself or through its authorised representative ("AR")); and the Customer (if asked to do so by Hydratron) returns such Products to Hydratron (to such premises as are notified by Hydratron to the Customer) at the Customer's cost, along with a full description of the conditions under which the alleged failure occurred, Hydratron shall, at its option, repair or replace the defective Products.

5.4 Hydratron shall not be liable for Products' failure to comply with clause 5.1 where:

5.4.1 the defect arises as a result of mishandling or during transportation;

5.4.2 the Customer makes any further use of such Products after giving notice in accordance with clause 5.3;

5.4.3 the defect arises because the Customer failed to follow Hydratron's oral or written instructions as to the storage, installation, application use and maintenance of the Products or (if there are none) good trade practice regarding the same;

5.4.4 the defect arises as a result of Hydratron following any drawing, design or Specification supplied by the Customer;

5.4.5 the Customer alters or repairs such Products without the written consent of Hydratron;

5.4.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

5.4.7 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or

5.4.8 the defect arises as a result of the use of component parts not supplied by Hydratron or fitted by Hydratron or its AR.

5.5 Except as provided in this clause 5, Hydratron shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

TITLE AND RISK

6.1 The risk in the Products shall pass to the Customer on completion of delivery. Title to the Products shall not pass to the Customer until Hydratron has received payment in full (in cash or cleared funds) for the Products.

6.2 Until title to the Products has passed to the Customer, the Customer shall store the Products separately from all other Products held by the Customer so that they remain readily identifiable as Hydratron's property; not remove, deface or obscure any identifying mark or packaging on or relating to the Products; maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and notify Hydratron immediately if it becomes subject to any of the events in clause 8.1, but the Customer may resell or use the Products in the ordinary course of its business.

6.3 If before title to the Products passes to the Customer the Customer becomes subject to any of the events in clause 8.1, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Hydratron may have, Hydratron may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, Hydratron (or any of its ARs) may enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

6.4 Should the delivery terms contained within the contract be specified as 'Collection' or 'Ex-works', a 'Bill and Hold' arrangement will be considered to be in operation; provided the goods have passed through the manufacturing process and have been packed ready for customer collection, the contract value is immediately considered billable, with the consequent invoice subject to the conditions detailed in clause 7.1.

PRICE AND PAYMENT

7.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price will be as set out in Hydratron's price list in force as at the date of delivery. The price of the Products is exclusive of the costs and charges of packaging, insurance and transport of the Products, which shall be arranged by and be payable by the Customer, unless agreed otherwise in writing by Hydratron prior to delivery. The price of the Products is also exclusive of all taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Products. The Customer shall be responsible for all such additional amounts as are chargeable on the supply of the Products. The Customer shall pay the invoice for the Products in full and in cleared funds within 30 days of the date of the invoice. Time of payment is of the essence. The Customer may not withhold any amount due to Hydratron because of any set-off, counterclaim, abatement or other similar deduction.

7.2 Where the Customer notifies Hydratron during the Warranty Period of a defect in a Product the Customer shall pay in full for any replacement part(s) until Hydratron (or its ARs) has received and evaluated the alleged defect. If Hydratron agrees with the Customer's allegation, it may at its sole discretion adjust the price paid by the Customer for the replacement part(s).

CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes insolvent and unable to pay its debts as they fall due, or an order is made or petition presented, meeting convened or resolution passed for the winding up of the Customer, or a receiver is appointed or any distress, execution or other process levied in respect of the business or the assets of the Customer or any of them and event(s) have occurred which would justify such proceedings, or Hydratron reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Hydratron, Hydratron may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Hydratron without incurring any liability to the Customer, and all outstanding sums in respect of Products delivered to the Customer shall become immediately due.

8.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude Hydratron's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or fraud or fraudulent misrepresentation.

9.2 Subject to clause 9.1:

9.2.1 Hydratron shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by Hydratron, its employees, agents or subcontractors); and

9.2.2 Hydratron's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise,

including losses caused by a deliberate breach of the Contract by Hydratron, its employees, agents or subcontractors shall not exceed the price of the Product in question.

9.3 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

GENERAL

10.1 Hydratron may and the Customer may not at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. A person who is not a party to the Contract shall not have any rights under or in connection with it.

10.2 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

10.3 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

10.4 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Hydratron.

10.5 This Contract constitutes the final and entire agreement by and between the Parties and shall supersede all previous negotiations, understandings and contracts between the Parties.

10.6 In the event of a dispute between Hydratron and the Customer in relation to the Contract or in relation to any other contract between the Parties, the Customer shall not be entitled to withhold any payment due to Hydratron under this Contract or any other contract as set off against disputes under this Contract or any other contract.

10.7 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.