

1. **INTERPRETATION**

1.1. In these Conditions:

“Authorised Representatives”	means the authorised representatives of each of the Customer and Hydrasun;
“Conditions”	means the terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Customer and Hydrasun;
“Contract”	means the contract for the sale of the Goods or Services pursuant to any Quotation or Order and governed by these Conditions;
“Customer”	means the person who accepts a Quotation or whose Order is accepted by Hydrasun;
“Document”	includes, in addition to a document in Writing, any plan, design drawing, data or other image or any other record of any information in any form;
“Electronic Document Interchange System”	means the electronic document interchange arrangements and protocols agreed, established and currently in force between Hydrasun and the Customer;
“Free Issue Material”	means any material provided by or on the Customer's behalf which is to be used in the provision of the Service or incorporated into the Goods;
“Goods”	means the goods (including any instalment of the goods or any parts for them) which Hydrasun is to sell or supply in accordance with these Conditions;
“Hydrasun”	means Hydrasun Limited (registered in Scotland under number SC059688) with its registered office at 392 King Street, Aberdeen AB24 3BU;
“Input Material”	means any Document or other material (including Free Issue Material), and any data or other information provided by the Customer relating to the Contract;
“Order”	means the Customer's Written order for Goods or Services subsequently accepted by Hydrasun;
“Output Material”	means any Document or other material and any data or other information provided by Hydrasun relating to the Service;
“Parties”	means the Customer and Hydrasun;
“Price”	means the price, exclusive of VAT, payable to Hydrasun by the Customer and as detailed in the Order or Quotation;
“Quotation”	means Hydrasun's Written quotation for Goods or Services subsequently accepted by the Customer;
“Service(s)”	means any service to be provided by Hydrasun for the Customer detailed in any Order or Quotation;
“Writing”	and any similar expression, includes Electronic Document Interchange System, electronic mail, facsimile transmission and comparable means of communication.

1.2. A reference in these Conditions to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. Words importing the singular include the plural and vice versa and words importing a particular gender include all genders.

1.4. The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2. BASIS OF SUPPLY**

- 2.1. Hydrasun shall sell or supply and the Customer shall purchase the Goods or Service in accordance with the Contract subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any Quotation is accepted or purported to be accepted, or any Order is made or purported to be made, by the Customer.
- 2.2. No variation to these Conditions shall be binding unless agreed in Writing between the Authorised Representatives.
- 2.3. Hydrasun's employees or agents are not authorised to make any representations concerning the Goods or Service unless confirmed by Hydrasun in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.
- 2.4. Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or Output Material issued by Hydrasun on whatever medium whether as hard copy, on CD Rom or otherwise shall be subject to correction without any liability on the part of Hydrasun.

**3. ORDERS AND SPECIFICATIONS**

- 3.1. No order submitted by the Customer shall be deemed to be accepted by Hydrasun unless and until confirmed in Writing by Hydrasun's authorised representative.
- 3.2. The Customer shall be responsible to Hydrasun for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer, and for giving Hydrasun any necessary information relating to the Goods or Service within a sufficient time to enable Hydrasun to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of the Goods or Service and any specification for them shall be as set out in any Quotation or Order.
- 3.4. Hydrasun reserves the right to make any changes in the specification of any Goods or Service which are required to conform with any applicable statutory or E.C. requirements or, where Goods or Services are to be supplied to Hydrasun's specification, which do not materially affect their quality or performance.
- 3.5. No Order or accepted Quotation may be cancelled or varied by the Customer except with Hydrasun's Written agreement and on terms that the Customer shall indemnify Hydrasun in full against all costs (including the cost of any labour and materials used) and expenses incurred by Hydrasun prior to or as a result of cancellation and the Customer shall pay any increased costs arising from such variation.

**4. PRICE**

- 4.1. The Customer shall pay to Hydrasun the Price and any additional sums which are agreed between Hydrasun and the Customer for the Goods or Service or which, in Hydrasun's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer.
- 4.2. The Price shall be Hydrasun's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Hydrasun's published price list current at the date of acceptance of the Order. Where the Goods are supplied for export from the United Kingdom, Hydrasun's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by Hydrasun without giving notice to the Customer.
- 4.3. Hydrasun reserves the right, by giving Written notice to the Customer at any time before delivery or completion of service, to increase the Price to reflect any increase in the cost to Hydrasun which is due to any factor beyond its control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, changes of legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods or Service which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Hydrasun adequate information or instructions.

- 4.4. Unless otherwise stated in the Quotation or any Hydrasun price list or unless otherwise agreed in Writing between the Parties the Price is on an ex works basis. Where Hydrasun agrees to deliver the Goods otherwise than at Hydrasun's premises, the Customer shall be liable to pay any charges for transport, packaging and insurance.
- 4.5. The Price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Hydrasun.

5. **CONDITIONS OF PAYMENT**

- 5.1. Subject to any special agreed Written terms between the Parties, Hydrasun may invoice the Customer for the Price on or at any time after delivery of the Goods or performance of the Service, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event Hydrasun may invoice the Customer for the Price at any time after Hydrasun has notified the Customer that the Goods are ready for collection or (as the case may be) Hydrasun has tendered delivery of the Goods.
- 5.2. The Customer shall pay the Price within 30 days of the date of Hydrasun's invoice, and Hydrasun shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in any Goods has not passed to the Customer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3. If the Customer fails to make any payment on any due date then, without prejudice to any other right or remedy available to Hydrasun, Hydrasun may:
  - 5.3.1. suspend or cancel the Contract or any other contract between the Parties or suspend any further deliveries to the Customer;
  - 5.3.2. appropriate any payment made by the Customer to such of the Goods or Services (or goods or services supplied under any other contract between the Parties) as Hydrasun may think fit (notwithstanding any purported appropriation by the Customer); and/or
  - 5.3.3. charge the Customer interest (both before and after any judgment) on any amount unpaid, at the rate of 8 per cent per annum above Bank of Scotland base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. **DELIVERY**

- 6.1. Delivery of the Goods shall be made by the earlier of:
  - 6.1.1. the Customer collecting the Goods at Hydrasun's premises;
  - 6.1.2. Hydrasun notifying the Customer that the Goods are ready for collection; or,
  - 6.1.3. if some other place for delivery is agreed by Hydrasun, by Hydrasun delivering the Goods to that place. Where Hydrasun agrees to deliver the Goods otherwise than at Hydrasun's premises, Hydrasun shall be under no obligation under Section 32(2) of the Sale of Goods Act 1979.
- 6.2. Any dates quoted for delivery of Goods or performance of Services are approximate only and Hydrasun shall not be liable for any delay in such delivery or performance however caused. Hydrasun will notify the the Customer of any such delay as soon as is reasonably practicable and the Parties shall arrange a revised delivery/performance date. Time for delivery/performance shall not be of the essence of the Contract unless previously agreed by Hydrasun in Writing. Goods may be delivered by Hydrasun in advance of any quoted delivery date on giving reasonable notice to the Customer.
- 6.3. Where delivery of the Goods is to be made by Hydrasun in bulk, Hydrasun reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the Price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Hydrasun to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

- 6.5. If Hydrasun fails to deliver the Goods or perform the Services (or any instalment) for any reason other than any cause beyond Hydrasun's reasonable control or the Customer's fault, and Hydrasun is accordingly liable to the Customer, Hydrasun's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods or services to replace those not delivered or performed over the price of the Goods or Services.
- 6.6. If the Customer fails to give Hydrasun adequate delivery instructions or fails to take delivery of the Goods at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Hydrasun's fault) then, without limiting any other right or remedy available to Hydrasun, Hydrasun may:
- 6.6.1. store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
  - 6.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the Price or charge the Customer for any shortfall below the Price.

## **7. RETURNS POLICY**

- 7.1. Subject to Hydrasun's prior written agreement and the following provisions, the Customer may, within 28 days of delivery, return unopened Goods to Hydrasun's premises provided such Goods have not been discontinued nor purchased or manufactured to meet a specific requirement.
- 7.2. When returning Goods, the Customer must include documentation detailing:-
- 7.2.1. Customer details;
  - 7.2.2. Order or Quotation number;
  - 7.2.3. a description and quantity of the Goods being returned;
  - 7.2.4. reason for the return of the Goods.
- 7.3. Where Goods are returned under this Condition 7 and subject to Condition 10.6, Hydrasun will provide credit, less a 25% re-stocking charge to the Customer's account.

## **8. INTELLECTUAL PROPERTY**

- 8.1. Subject to Condition 8.2, all intellectual property rights including but not limited to copyright and design right in:
- 8.1.1. any Input Material shall belong to the Customer or any relevant third party subject to Hydrasun's right to use the Input Material in the provision of the Service and subject to Condition 8.1.2; and
  - 8.1.2. any Output Material shall, unless otherwise agreed in writing between the Parties, belong to Hydrasun, subject only to the Customer's right to use the Output Material for the purposes specified in the Contract, such right being subject to receipt by Hydrasun of the Price and any further charges and costs relating to the Service.
- 8.2. Subject to Condition 8.1 above, Hydrasun shall retain title to and ownership of the Output Material until it has received payment of the Price.
- 8.3. Save where disclosure is required to be made by Hydrasun in the provision of any Service, any Input Material provided by the Customer which is so designated by the Customer and any Output Material shall be kept confidential by Hydrasun, and all Output Material provided by Hydrasun which is so designated by Hydrasun shall be kept confidential by the Customer; but the foregoing shall not apply to any Document, other material, or other information which is public knowledge at the time when it is so provided by either party, or which becomes public knowledge through no fault of the other party.

## **9. RISK AND PROPERTY**

- 9.1. Risk of damage to or loss of the Goods shall pass to the Customer:
- 9.1.1. where Goods are to be delivered at Hydrasun's premises, at the time when Hydrasun notifies the Customer that the Goods are available for collection; or

9.1.2. where Goods are to be delivered otherwise than at Hydrasun's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Hydrasun has tendered delivery of the Goods.

- 9.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, property in the Goods shall not pass to the Customer until Hydrasun has received in cash or cleared funds payment in full of the Price and the price of any other goods agreed to be sold by Hydrasun to the Customer for which payment is then due.
- 9.3. Until ownership of and title to the Goods has passed to the Customer (and provided the Goods are still in existence and have not been resold) Hydrasun may, at any time, require the Goods to be returned failing which Hydrasun shall be entitled to enter the Customer's premises, or those of any third party where the Goods are stored to take possession of the Goods without prejudice to the Customer's obligation to make payment for the Goods and to any other rights available to Hydrasun by statute or at common law.
- 9.4. Until ownership of and title to the Goods has passed to the Customer, the Customer shall hold the Goods as Hydrasun's agent and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Hydrasun's Goods, until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to Hydrasun for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds, properly stored, protected and insured.
- 9.5. Until ownership of and title to the Goods has passed to the Customer, the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Hydrasun, but if the Customer does so all monies owing by the Customer to Hydrasun shall (without prejudice to other right or remedy of Hydrasun) become immediately due and payable.

## 10. **WARRANTIES AND LIABILITY**

- 10.1. Subject to the following provisions Hydrasun warrants that the Goods will correspond with their specification at the date of delivery (the date of delivery being as determined in accordance with clause 6.1) and will be free from defects in material and workmanship for a maximum period of 12 months from such date.
- 10.2. The above warranty is given by Hydrasun subject to the following conditions:
- 10.2.1. Hydrasun shall have no liability for any defect in the Goods arising from any Input Material supplied by or on behalf of the Customer;
- 10.2.2. Hydrasun shall have no liability for any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Hydrasun's instructions (whether oral or Written), misuse or alteration or repair of the Goods without Hydrasun's approval;
- 10.2.3. Hydrasun shall have no liability under the above warranty (or any other warranty, condition or guarantee) if the Price has not been paid;
- 10.2.4. unless otherwise agreed in Writing by Hydrasun, the above warranty does not extend to parts, materials or equipment not manufactured by Hydrasun, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Hydrasun.
- 10.3. Subject as expressly provided in these Conditions, or where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, terms or other conditions implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.4. Where Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the Customer's statutory rights are not affected by these Conditions.
- 10.5. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to Hydrasun within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify Hydrasun accordingly, the Customer shall not be entitled to reject the Goods and Hydrasun shall have no liability for such defect or failure, and the Customer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

- 10.6. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to Hydrasun in accordance with these Conditions, Hydrasun may replace the Goods (or the part in question) free of charge or, at Hydrasun's sole discretion, refund to the Customer the Price (or a proportionate part of the Price), in which case Hydrasun shall have no further liability to the Customer.
- 10.7. Hydrasun warrants to the Customer that Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Contract and at the intervals and within the times referred to therein.
- 10.8. The Customer warrants that any Input Material and its use by Hydrasun for the purpose of providing the Service will not infringe the copyright or other rights of any third party, and the Customer shall indemnify Hydrasun against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 10.9. Hydrasun shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late or non-arrival, or any other fault of the Customer.
- 10.10. Except in respect of death or personal injury caused by Hydrasun's negligence or as expressly provided in these Conditions, Hydrasun shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit, business or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by negligence of Hydrasun, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or Service (including any delay in supplying or any failure to supply the Goods or Service in accordance with the Contract or at all) or their use or resale by the Customer, and Hydrasun's entire liability under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Conditions.

## 11. **FORCE MAJEURE**

- 11.1. Hydrasun shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Hydrasun's obligations under the Contract, if the delay or failure was due to any cause beyond Hydrasun's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Hydrasun's reasonable control:
  - 11.1.1. Act of God, explosion, flood, tempest, fire or accident;
  - 11.1.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 11.1.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 11.1.4. import or export regulations or embargoes;
  - 11.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Hydrasun or of a third party);
  - 11.1.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 11.1.7. power failure or breakdown in machinery.

## 12. **INSURANCE**

- 12.1. The Parties shall maintain levels of insurance sufficient to cover their liabilities and obligations under the Contract and at law, and shall exhibit such certificates of insurance and evidence of payment of premiums where reasonably requested by the other party.

## 13. **TERMINATION**

- 13.1. Without limiting any other right or remedy available to Hydrasun, Hydrasun may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer if:
  - 13.1.1. the Customer makes any voluntary arrangement with its creditors, becomes bankrupt, becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);

- 13.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;
- 13.1.3. the Customer ceases, or threatens to cease, to carry on business; or
- 13.1.4. Hydrasun reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

13.2. If this Condition applies and the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**14. EXPORT CONDITIONS**

14.1. In these Conditions "Incoterms" means the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

14.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 14 shall (subject to any special Written terms agreed between the Parties) apply notwithstanding any other provision of these Conditions.

14.3. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

14.4. Unless otherwise agreed in Writing between the Parties, the Goods shall be delivered ex works at Hydrasun's premises.

14.5. The Customer shall be responsible for arranging for third party testing and inspection (if applicable) of the Goods at Hydrasun's premises before shipment. Hydrasun shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

14.6. Subject to any other Written terms agreed between the Parties, payment of all amounts due to Hydrasun shall be made by irrevocable letter of credit opened by the Customer in favour of Hydrasun and confirmed by a bank in the UK acceptable to Hydrasun or, if Hydrasun has agreed in Writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to Hydrasun of a bill of exchange drawn on the Customer payable 30 days after sight to the order of Hydrasun at such branch of Barclays bank as may be specified in the bill of exchange.

14.7. Unless given prior written consent by Hydrasun, the Customer undertakes not to offer the Goods for resale or sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods.

**15. TESTING, INSPECTION AND DOCUMENTATION**

15.1. Hydrasun will carry out testing and inspection and provide such test certificate or delivery notification documents as are required by in-house procedure on delivery of Goods or completion of Services. Any additional inspection, testing or certification requires Hydrasun's Written agreement and any additional costs shall be borne by the Customer.

**16. PACKAGING AND MARKING**

16.1. Goods will be packed, secured and labelled in accordance with accepted industry practice and unless otherwise agreed in Writing, Hydrasun will apply its own labelling to the Goods.

**17. NON SOLICITATION OF STAFF**

17.1. The Customer agrees that during the term of the Contract and for an additional period of six months after termination, the Customer shall not directly or indirectly canvass with a view to offering or providing employment to, offer to contract with or entice to leave, any employee of or contractor to Hydrasun engaged in the performance of the Service without Hydrasun's prior Written consent.

18. **GENERAL**

- 18.1. These Conditions (together with the terms, if any, set out in the Quotation) constitute the entire agreement between the Parties, supersede any previous agreement or understanding and may not be varied except in writing between the Parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 18.2. Hydrasun may assign, novate or sub-contract any or all of its rights or obligations under the Contract.
- 18.3. A notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 18.4. No waiver by Hydrasun of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.5. If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 18.6. Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society of Scotland.
- 18.7. The law of Scotland shall apply to the Contract, and the Parties agree to submit to the non-exclusive jurisdiction of the Scottish courts in respect of all matters arising out of or connected with it.