



GENERAL TERMS AND CONDITIONS OF SALE

1. Definitions and interpretation

1.1 In these Conditions the following terms have the following meanings:

“Conditions”	the terms and conditions of sale set out in this document;
“Contract”	any agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Delivery Note.
“Customer”	the person who agrees to purchase the Goods from the Supplier subject to these Conditions who details are set out in the Delivery Note.
“Delivery Address”	the address for delivery of the Goods which shall be the Customer’s principal place of business unless specified the in the Delivery Note.
“Estimated Delivery Date”	the date on which the Supplier estimates that the Goods will be delivered to the Delivery Address which may be set out the Delivery Note.
“Goods”	the goods which the Supplier is to supply to the Customer as agreed in the Contract and listed in the Delivery Note.
“Delivery Note”	the Supplier’s written acceptance of the Customer’s order; and
“Supplier”	Hydroscand Ltd. a company registered in England with company number 04493409 whose registered address is at Westbury Court, Church Road, Westbury-On-Trym, Bristol, BS9 3EF.

2. Basis of sale

- 2.1 These Conditions apply to all contracts for the sale of Goods entered into by the Supplier. By placing an order with the Supplier or accepting the Supplier’s quotation, the Customer agrees to deal with the Supplier on these Conditions, subject to any terms specified in writing and to the exclusion of all other terms, conditions, warranties or representations (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or any other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer’s purchase order, confirmation of order, specification or other document shall form part of the Contract save where these conditions (and (where applicable) the terms which are to be overridden) are specifically referred to in that document and the document is signed by both the Customer and the Supplier.
- 2.3 No variation to these Conditions shall be binding unless made in accordance with clause 2.2 above or in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Customer and the Supplier.
- 2.4 The Supplier’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. The Customer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.
- 2.5 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer’s

own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3. **Sale and purchase**

- 3.1 The Customer agrees to purchase the Goods from the Supplier and the Supplier agrees to sell the Goods to the Customer.

- 3.2 Each order or acceptance of a quotation for Goods by the Customer from the Supplier shall be deemed to be an offer by the Customer to buy Goods subject to these Conditions and shall be binding on the Customer, but shall not bind the Supplier has accepted that order by issuing a Delivery Note or (if earlier) the Supplier delivers the Goods to the Customer.

- 3.3 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

- 3.4 Any quotation is given on the basis that no Contract shall come into existence until the Supplier issues a Delivery Note or (if earlier) the Supplier delivers the Goods to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Supplier has not previously withdrawn it.

- 3.5 The Customer shall not be entitled to cancel in whole or in part any order which the Supplier has accepted or any quotation of the Supplier which the Customer has accepted, except where such cancellation has been accepted by the Supplier subject to reasonable cancellation charges.

- 3.6 If the Goods are to be manufactured or any process is to be applied to them by the Supplier in accordance with the specifications submitted by the Customer, or if the Goods are to be marked with any trade mark at the request of the Customer, the Customer shall indemnify and hold the Supplier harmless against:

3.6.1 all, damages, costs and expenses awarded against or incurred by the Supplier in connection with any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights;

3.6.2 all, damages, costs and expenses paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights;

3.6.3 all, damages, costs and expenses awarded against or incurred by the Supplier in connection with any claim for misuse of any confidential information of any other person;

3.6.4 all, damages, costs and expenses paid or agreed to be paid by the Supplier in settlement of any claim for misuse of any confidential information of any other person;

3.6.5 any other liability whatsoever which results from the Supplier's use of the Customer's specifications or the marking of the Goods or from the sale or supply of such Goods by the Supplier.

- 3.7 No specifications submitted by the Customer will be binding on the Supply until the Supplier has accepted the customer specifications in writing.

- 3.8 Once the customer specifications have been accepted by the Supplier the Customer shall not be entitled to alter or vary the customer specifications without the Supplier's prior written consent which may be given subject to variations of the other terms of the Contract.

- 3.9 Whilst the Supplier will use reasonable endeavours to manufacture the correct size of Goods, slight variations are unavoidable and the Supplier shall be deemed to have fulfilled the Contract where the Goods are within 1% of hose cut length tolerance.



4. Description

- 4.1 The quantity and description of the Goods shall be as set out in the Supplier's Delivery Note.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

5. Delivery

- 5.1 The Supplier shall use its reasonable efforts to deliver the Goods to the Customer at the Delivery Address (provided there is a safe suitable route of access) on or around the Estimated Delivery Date, but time of delivery shall not be of the essence.
- 5.2 The Supplier shall be entitled to deliver the Goods in instalments in which case each instalment shall be treated as an entirely separate contract and any default or breach by the Supplier in respect of any such instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated.
- 5.3 Unless otherwise agreed in the Delivery Note, the Customer shall provide all necessary labour and equipment to enable the Goods to be safely unloaded at the Delivery Address.
- 5.4 The Customer shall inspect the Goods on delivery and if the Goods are damaged on delivery or less than the correct amount of the Goods is delivered then, unless the Customer notifies the Supplier and the carrier (otherwise than by a note on the delivery note) within 2 (*two*) days of delivery no claim against the Supplier may be made in respect of damage to or short delivery of such Goods.
- 5.5 The Customer shall be deemed to accept the Goods on delivery notwithstanding any late delivery by the Supplier.
- 5.6 Subject to the other provisions of these conditions the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 (*sixty*) days.
- 5.7 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
 - 5.7.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence);
 - 5.7.2 the Goods shall be deemed to have been delivered; and
 - 5.7.3 the Supplier may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6. Installation

- 6.1 If specified overleaf, or in the relevant quotation, or the Supplier's standard documentation for the Goods that the Supplier is to install the Goods then, as soon as reasonably possible after their delivery, the Supplier shall install them at the Delivery Address.
- 6.2 The Customer shall give full access to the Delivery Address to the Supplier for the purpose of installing the Goods, shall undertake any preparatory work specified by the Supplier overleaf, in the relevant quotation or in the Supplier's standard documentation and shall compensate the Supplier for any additional costs which the Supplier incurs by reason of the Customer's failure properly to undertake any such preparatory work.
- 6.3 The Supplier shall procure that its employees who install the Goods comply with all reasonable health and safety, security and other regulations which are in force or apply at the Delivery Address and the Customer shall indemnify and hold the Supplier harmless against

any loss, damage, cost and/or expense which the Supplier may suffer or incur as a result of any injury to its employees or damage to or loss of its property whilst at the Delivery Address resulting from anything other than the negligence of the Supplier or its employees or any non-compliance by the Goods with the warranty set out in clause 8 below.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Delivery Note or, if not specified, the price quoted by the Supplier or, if not specified and no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's published price list current at the date of delivery.
- 7.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 7.3 Unless otherwise stated overleaf or under the terms of any quotation or in any price list of the Supplier, all prices are given by the Supplier on an ex works basis, and the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance together with any additional expenses, licence fees or duties paid or incurred by the Supplier, whether as a result of the Delivery Address not being in the UK or otherwise.
- 7.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Supplier.
- 7.5 The Supplier shall be entitled to invoice the Customer for all amounts due under the Contract on or at any time after delivery of the Goods unless the Goods are to be collected by the Customer or the Customer wrongly fails to take delivery of them, in which case the Supplier shall be entitled to invoice the Customer at any time after the Supplier has notified the Customer that the Supplier has tendered delivery of the Goods.
- 7.6 Unless otherwise stated, the Customer shall make payment to the Supplier in respect of all invoices in full within 30 (thirty) days of the date of the invoice.
- 7.7 Time of payment shall be of the essence.
- 7.8 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 7.9 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.
- 7.10 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 7.11 All payments shall be applied to invoices and to Goods listed in such invoices in the order determined in its discretion by the Supplier.
- 7.12 If full payment is not received by the Supplier by the due date then without prejudice to its rights the Supplier shall be entitled:
- 7.12.1 to sue for the entire price; and/or
 - 7.12.2 to charge interest at 2% above the base rate of the Supplier's bank from time to time. Interest shall be payable at this rate both before and after any judgment is made against the Customer until the date on which payment in cleared funds is received in full, including all accrued interest;
 - 7.12.3 to suspend the further provision of Goods (without incurring any liability) until such time as full payment has been paid;
 - 7.12.4 to require the immediate return to the Supplier of all goods agreed to be sold by the Supplier to the Customer in which the property has not passed to the



Customer in accordance with the provisions of clause 9 below and the Customer hereby agrees to reimburse to the Supplier upon demand the Supplier's costs or expenses in recovering such goods.

8. Warranty and liability

- 8.1 The Supplier warrants that the Goods will correspond in all material respects with any specifications set out in the Delivery Note or in the Supplier's quotation or in the Supplier's standard documentation at the time of delivery and will be free from major defects in material and workmanship for a period of 12 (twelve) months from the date of delivery provided that:
 - 8.1.1 the Supplier shall be under no liability in respect of any defects in the Goods arising from any drawing, design or specifications supplied by the Customer;
 - 8.1.2 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Customer or persons using the Goods, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), or misuse or alteration or repair of the Goods without the Supplier's approval;
 - 8.1.3 the Supplier shall be under no liability if the total price of the Goods has not been paid by the due date for payment;
 - 8.1.4 any such defect in or failure to meet any such specification by the Goods shall be notified to the Supplier in writing as soon as reasonably possible after the Customer discovers such defect or non-conformity; and
 - 8.1.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, 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 the Supplier and which the Supplier hereby assigns to the Customer so far as it is able.
- 8.2 In the event of any valid claim under clause 8.1 above being made by the Customer, the Supplier shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price as appropriate) but the Supplier shall have no further liability to the Customer.
- 8.3 The Supplier shall be liable to the Customer for any direct physical damage (other than death or personal injury) to the extent that it results from the negligence of the Supplier or its employees up to a maximum of £5m.
- 8.4 The Supplier shall have no Liability to the Customer for:
 - 8.4.1 loss of profits;
 - 8.4.2 special damages;
 - 8.4.3 aggravated, punitive and/or exemplary damages;
 - 8.4.4 consequential losses and/or indirect losses; and/or
 - 8.4.5 business interruption, loss of business, loss of contracts, loss of opportunity and/or production.
- 8.5 Each of the limitations and/or exclusions in these Conditions shall be deemed to be repeated and apply as a separate provision for each of:
 - 8.5.1 Liability in contract (including fundamental breach);
 - 8.5.2 Liability in tort (including negligence);
 - 8.5.3 Liability for breach of statutory duty; and
 - 8.5.4 Liability for breach of Common Law and/or under any other legal basis;

except that clause above placing a financial cap on the Supplier's Liability shall apply once in respect of all of the said types of Liability.

8.6 Nothing in these Conditions shall exclude or limit the Supplier's Liability for death or personal injury due to its negligence or any Liability which is due to its fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

8.7 Nothing in these Conditions shall exclude or limit any statutory rights which cannot be excluded or limited due to the Customer acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent, have no force or effect.

8.8 The limitations in these Conditions are necessary in order to allow the Supplier to provide the Goods at its current prices. If the Customer requires greater protection then the Supplier will agree to modify the limitations and extend its guarantees in return for the payment of a higher price for the Goods.

9. **Risk and title**

9.1 The Goods are at the risk of the Customer from the time of delivery.

9.2 Ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) the price of the Goods and all other sums which are or which become due to the Supplier from the Customer on any account. The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Supplier.

9.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

9.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

9.3.2 store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;

9.3.3 grant the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them;

9.3.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

9.3.5 maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.

9.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

9.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

9.4.2 any such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale and in such circumstances legal title shall pass to the Customer immediately before title passes to the Customer's customer.

9.5 The Customer's right to possession of the Goods shall terminate immediately if:

9.5.1 the Supplier is entitled to terminate this Contract under clause 11.1.2 below; or

9.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under this Contract or any other contract between the Supplier and the Customer, or is unable to pay as they fall due or the Customer ceases to trade; or

- 9.5.3 the Customer encumbers or in any way charges any of the Goods.
- 9.6 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.
- 9.7 The Supplier shall be entitled to re-sell or otherwise dispose of recovered Goods in any way the Supplier in its absolute discretion, thinks fit. The Customer hereby grants the Supplier a non-exclusive, world-wide, royalty free, perpetual, irrevocable licence (with a right to sub-license) to use, for the purposes of such re-sale or other disposal, any and all trade marks which may have been applied to the Goods by the Customer and/or by the Supplier or any third party at the request or with the consent of the Customer
- 9.8 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this clause 9 shall remain in full force and effect.
10. **Laws and regulations**
- The Customer shall comply with all laws and regulations relating to the ownership and use of the Goods including without limitation health and safety requirements, export control legislation and US re-export control legislation.
11. **Termination**
- 11.1 The Supplier shall be entitled to terminate the Contract forthwith by notice in writing to the Customer if:
- 11.1.1 the Customer commits a material irremediable breach of the Contract, persistently repeats a remediable breach or commits any material remediable breach and fails to remedy it within 30 (thirty) days of receipt of notice of the breach requiring remedy of the same; or
- 11.1.2 the Customer makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere; or
- 11.1.3 the Customer ceases or threatens to cease to carry on business; or
- 11.1.4 there is at any time a material change in the management, ownership or control of the Customer; or
- 11.1.5 if the Supplier reasonably apprehends that any of the events specified in clause 11.1.2 is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 In the event of termination by the Supplier pursuant to clause 11.1 above then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Customer and, if the Goods have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Supplier shall be entitled to charge interest at 2% above the base rate of the Supplier's bank from time to time from the time of such cancellation or suspension until the Supplier receives payment.
12. **Force majeure**
- The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Supplier) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in

obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 (*one hundred and eighty*) days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.

13. General

- 13.1 The remedies available to the Supplier under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.
- 13.2 The failure or delay of the Supplier to enforce or to exercise, at any time, or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect the Supplier's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 13.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 13.4 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at its address set out above or to such other address which it has been previously notified to the sending party and shall be deemed to have been given on the day of delivery.
- 13.5 The Contract is personal to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of the Supplier.
- 13.6 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.
- 13.7 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation (unless made fraudulently), undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract. [Question: are there any other documents set out the terms
- 13.8 No variation or amendment to the Contract shall be effective unless in writing signed by authorised representatives of the parties.
- 13.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.10 Any reference in this agreement to any statute, law, statutory instrument, enactment, order, regulation or other similar instrument having the force of law shall be deemed to include any lawful amendment, re-enactment, extension, replacement, modification, consolidation and/or repeal thereof.
- 13.11 The formation, existence, construction, validity and performance and all aspects of the Contract are governed by the laws of England and the parties accept the exclusive jurisdiction of the English Courts.