

Terms & Conditions of Purchase

1. **INTERPRETATION**
- 1.1 **Definitions.** In these Conditions, the following definitions apply:  
**Business Day:** a day (other than a Saturday, Sunday or public holiday in England) when UK banks in the City of London are open for general business.  
**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.5.  
**Contract:** the contract between Hylomar and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.  
**Hylomar:** means Hylomar Limited registered in England and Wales with company number 04119677 whose registered office is at Hylo House, Cale Lane, Wigan, WN2 1JT  
**Goods:** the goods or services (or any part of them) set out in the Order.  
**Order:** Hylomar's purchase order form, or Hylomar's written acceptance with an order number of the Supplier's offer, quotation or other contractual document, as the case may be.  
**Specification:** any specification for the Goods, as specified by or on behalf of Hylomar.  
**Supplier:** the person, firm or company from whom Hylomar purchases the Goods.
- 1.2 **Construction.** In these Conditions, unless the context requires otherwise, the following rules apply:  
(a) A reference to a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).  
(b) A reference to a party includes its personal representatives, successors or permitted assigns.  
(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.  
(d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
2. **BASIS OF CONTRACT**
- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by Hylomar to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:  
(a) the Supplier issuing a written acceptance of the Order; or  
(b) the Supplier doing any act consistent with fulfilling the Order,  
at which point the Contract shall come into existence.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.5 These Conditions apply to all Hylomar's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of Hylomar.
- 2.6 For the avoidance of doubt, where there is any inconsistency between the terms of these Conditions, and any express provisions detailed by Hylomar in the Order, the provisions detailed in the Order shall take precedence and shall apply.
3. **THE GOODS**
- 3.1 The Supplier shall ensure that the Goods shall:  
(a) correspond with their description and any applicable Specification;  
(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Hylomar expressly or by implication, and in this respect Hylomar relies on the Supplier's skill and judgement;  
(c) where applicable, be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and  
(d) comply with all applicable statutory and regulatory requirements (including EU legislation) relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and  
(e) comply with any quality assurance programme specified or detailed by Hylomar.
- 3.2 Hylomar shall have the right to inspect and test the Goods at any time before delivery and for 5 business days after delivery.
- 3.3 If following inspection or testing Hylomar considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Hylomar shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.4 Notwithstanding any inspection or testing, the Supplier shall remain fully responsible for the Goods and any inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Hylomar shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.5 The Supplier hereby agrees to fully indemnify Hylomar against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Hylomar as a result of or in connection with a breach of the undertaking given by the Supplier under clause 3.1.
- 3.6 The Supplier undertakes to notify Hylomar if the base components, including ingredients, are modified or are proposed to be modified from the Specification required by Hylomar when Hylomar placed the Order and delivery taking place. Goods which do not conform to the Order and the Specification, and any quality assurance conditions must not be supplied without the prior written consent of the quality manager of Hylomar. Without prejudice to any other rights of Hylomar, Hylomar shall have the right to cancel the Contract, and reject the Goods if the base components, including ingredients, of the Goods are changed, modified or altered, including the use of substitute base components or ingredients at any time following Hylomar placing the Order.
- 3.7 If any of the Goods fail to comply with the provisions set out in clause 3.1 Hylomar shall be entitled, in addition to any statutory rights available to Hylomar, to avail itself of any one or more remedies listed in clause 5.
4. **DELIVERY**
- 4.1 The Supplier shall ensure that:  
(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;  
(b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered and  
(c) if the Supplier requires Hylomar to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:  
(a) on the date specified in the Order, or, if no such date is specified, within 14 days of the date of the Order and time shall be of the essence;  
(b) to Hylomar's premises at Hylo House, Cale Lane, Wigan, WN2 1JT or such other location as is set out in the Order, or as instructed by Hylomar prior to delivery (**Delivery Location**); and  
(c) during Hylomar's normal business hours, or as instructed by Hylomar.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4 Hylomar shall not be deemed to have accepted the Goods until it has had 7 days to inspect them following delivery. Hylomar shall also have the right to reject the Goods as though they had not been accepted for 7 days after any latent defect in the Goods has become apparent.
- 4.5 The Supplier shall not deliver the Goods in instalments without Hylomar's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Hylomar to the remedies set out in clause 5.
- 4.6 All records relating to the Order and the Goods shall be retained by the Seller for a period of not less than 6 years, (or such longer period as determined by Hylomar's client and/or statutory requirements) and shall be available to inspection by Hylomar, on reasonable notice during business hours.
- 4.7 The Seller undertakes to provide to Hylomar, on or before delivery with all instruction documentation and written safety information applicable to the Goods.
- 4.8 The Seller undertakes to provide to Hylomar, free of charge, certificates of conformity and/or analysis on request, or, if agreed, in advance of delivery, at any time.
5. **REMEDIES**
- 5.1 If the Goods are not delivered on the date they are due as referred to in clause 4.2(a), or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, Hylomar shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:  
(a) to terminate the Contract;  
(b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;  
(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);  
(d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;  
(e) to recover from the Supplier any costs incurred by Hylomar in obtaining substitute goods from a third party; and  
(f) to claim damages for any other costs, loss or expenses whatsoever arising incurred by Hylomar which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.3 The Supplier shall keep Hylomar indemnified in full against all costs, expenses, damages and losses (whether direct, indirect or consequential), including but not limited to any loss of profit, business, goodwill, interest, penalties, legal and other professional fees and expenses awarded against or incurred or paid by Hylomar as a result of or in connection with:  
(a) any claim made against Hylomar for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;  
(b) any claim made against Hylomar by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and  
(c) any claim made against Hylomar by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 5.4 This clause 5.3 shall survive termination of the Contract.
- 5.5 Hylomar's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.
6. **TITLE AND RISK**
- 6.1 Title and risk in the Goods shall pass to Hylomar on completion of delivery.
7. **PRICE AND PAYMENT**
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 7.2 The price of the Goods is ex works and exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Hylomar.
- 7.3 The Supplier may invoice Hylomar for the Goods on or at any time after the completion of delivery.
- 7.4 Hylomar shall pay correctly rendered invoices within a minimum of 40 days from the end of the month in which Hylomar receives:-  
(a) the Goods; or  
(b) the correctly rendered invoice; whichever is the later, unless otherwise agreed in writing from time to time.
- 7.5 Hylomar may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
8. **HYLOMAR PROPERTY**
- 8.1 The Supplier acknowledges that all materials, drawings, Specifications, and data (including formulations) supplied by Hylomar to the Supplier (**Hylomar Materials**) and all rights in Hylomar Material are and shall remain the exclusive property of Hylomar. The Supplier shall keep Hylomar Materials in safe custody at its own risk, maintain them in good condition until returned to Hylomar, and not dispose or use the same other than in accordance with Hylomar's written instructions or authorisation.
9. **INSURANCE**
- 9.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on Hylomar's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
10. **CONFIDENTIAL INFORMATION**
- 10.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, Specifications, formulations, inventions, processes or initiatives which are disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.
11. **TERMINATION**
- 11.1 Provided that the Goods have not been bespoke to Hylomar's specification at that time, Hylomar may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Hylomar shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2 Hylomar may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:  
(a) the Supplier 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 section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;  
(b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;  
(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;  
(d) (being an individual) the Supplier is the subject of a bankruptcy petition or order;  
(e) a creditor or encumbrance of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;  
(f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;  
(g) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;  
(h) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;  
(i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(a) to clause 11.2(h) inclusive;  
(j) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;  
(k) the Supplier's financial position deteriorates to such an extent that in Hylomar's sole opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or  
(l) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 11.3 Either party may terminate the Contract at any time by giving notice in writing to the other of a party's material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 Business Days of that party being notified in writing of the breach.
- 11.4 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.
12. **FORCE MAJEURE**
- 12.1 Neither party shall be liable to the other for any failure to perform or delay in performing any of its obligations hereunder where such delay or failure arises wholly or in part by reason of any factor beyond its direct control including without limitation lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order (including but not limited to any law and / or order in force from time to time relating to the control or prohibition of use of any substance used in the manufacture or packaging of any Goods), rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, shortage of raw materials, any other event reasonably regarded as being of force majeure event in our absolute discretion acting in good faith (**Force Majeure Event**).
- 12.2 If either party seeks to rely on a Force Majeure Event it shall forthwith notify the other and shall (subject to clause 12.3 below) immediately on such a Force Majeure Event ceasing to apply, forthwith perform all outstanding obligations under the Contract.
- 12.3 If a Force Majeure Event prevents the Supplier from providing the Goods for more than 10 Business Days, Hylomar shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Supplier.
13. **GENERAL**
- 13.1 **NOTICES.**  
(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery or commercial courier.  
(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.1(a); if sent by pre-paid first class post or recorded delivery, at 9:00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.  
(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.2 **Severance.**  
(a) 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.  
(b) 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.
- 13.3 **Waiver.** 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.
- 13.4 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it. The Contract (Rights of Third Parties) Act 1999 shall not apply.
- 13.5 **Variation.** 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 a director of Hylomar.
- 13.6 **Assignment.** The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of Hylomar.
- 13.7 **Governing law and jurisdiction.** 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 exclusive jurisdiction of the courts of England and Wales.
14. **COMPLIANCE**
- 14.1 The Supplier shall:  
(a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);  
(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;  
(c) comply with Hylomar's Anti-corruption and anti-bribery policy, in each case as Hylomar may update them from time to time (Relevant Policies);  
(d) have and shall maintain in place throughout the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and will enforce them where appropriate;  
(e) promptly report to Hylomar any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;  
(f) immediately notify Hylomar (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract);  
(g) certify to Hylomar in writing signed by an officer of the Supplier, compliance with this clause 14 by the Supplier and all persons associated with it under clause 14.2. The Supplier shall provide such supporting evidence of compliance as Hylomar may reasonably request.
- 14.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 14 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Hylomar for any breach by such persons of any of the Relevant Terms.
- 14.3 Notwithstanding any other provision of these Conditions (and without prejudice to clause 11), Hylomar shall have the right to terminate the Contract, (without liability whatsoever arising) by written notice to the Supplier in the event of a breach by the Supplier of any of the provisions of this clause 14.
- 14.4 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 14 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

Hylomar Limited

Registered in England No: 04119677 • VAT No: GB 768 202914

Registered Office: Hylo House, Cale Lane, New Springs, Wigan WN2 1JT, UK

29 February 2012