



## TERMS AND CONDITIONS

C4HYDRO

Update to October 4, 2017



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## ARTICLE 1. RECITALS - LEGAL NOTICE - CONTACT US

In accordance with current French legislation, our Terms and Conditions of Sale (TERMS AND CONDITIONS) are the sole basis for commercial negotiations with our customers. In the absence of a written agreement, any received order implies the unconditional acceptance of our TERMS AND CONDITIONS, notwithstanding any provisions to the contrary which may appear on customer order forms.

These TERMS AND CONDITIONS govern the relationship between the CLIENT and C4HYDRO SAS ("Hereinafter "C4HYDRO"), with a share capital of 1 153,5 €, registered at the Company Registry (RCS) of Marseille under number 821 975 844, VAT n° FR 43 821975844 whose head office is based at 163 Avenue de Luminy, Grand Luminy Technopole, Zone Luminy entreprise Biotech, case 922, 13288 Marseille CEDEX 09.

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## ARTICLE 2. APPLICABLE TERMS AND CONDITIONS

C4HYDRO reserves the right to change these TERMS AND CONDITIONS at any time without prior notice to the CUSTOMER.

The applicable TERMS AND CONDITIONS are those in effect on the day of the order made by the CUSTOMER. The CUSTOMER will thus take care to note any new TERMS AND CONDITIONS with each new order. The TERMS AND CONDITIONS in force may be consulted on the C4HYDRO website or may be communicated on request.

## ARTICLE 3. PURPOSE OF THE TERMS AND CONDITIONS

The purpose of these Terms and Conditions is to define the conditions under which C4HYDRO sells the Products defined in clause 5 to the CUSTOMER who orders it.

## ARTICLE 4. ORDER - MODIFICATIONS - COMMENCEMENT

To be valid, the order must specify in particular the quantity of the Products ordered as well as the price agreed, the payment terms, the place and the date of delivery or removal.

Orders are final, even through sales representatives or employees, only when they have been confirmed in writing and after payment of the full price in accordance with Article 7 of these Terms and Conditions.

The payment of the order entails for the CUSTOMER the acceptance of the TERMS AND CONDITIONS of C4HYDRO, the recognition of complete comprehension and a disclaimer with regard to its own conditions of purchase and correspondence.

The payment of the order by the CUSTOMER makes the order irrevocable, the CUSTOMER cannot modify it.

Any modification of the order made before payment shall be addressed in writing to C4HYDRO in order to be taken into consideration.

The order is personal to the CUSTOMER and non-transferable without the agreement of C4HYDRO.

## ARTICLE 5. PRODUCTS

These TERMS AND CONDITIONS apply for all the Products offered for sale by C4HYDRO, available on the [www.c4hydro.com](http://www.c4hydro.com) website and in the C4HYDRO catalogue.

These TERMS AND CONDITIONS apply to both "Consumables" and "Materials".

Consumables are given to mean products which can be used once only for a single analysis, which may include, in particular, a collector, a Petri dish, vials containing chemical solutions, a filtration unit.

Materials are given to mean reusable equipment enabling analysis to be carried out, which may include, in particular, an adapter, a syringe, a bottle, a pipe, a timer, a pump power supply unit, a vacuum pump, an Incubator feed, an incubator, a lid.

For further details, the CUSTOMER is referred to the C4HYDRO website and the operating manual.

## ARTICLE 6. PRICE - TAXES - CHARGES

The prices of the Products are those mentioned on the C4HYDRO price lists, which can be communicated on simple request. The price applicable to an order is the price given on the date of the CUSTOMER's order. The prices of the Products may be revised regularly by C4HYDRO, in particular to take account of changes in the cost of raw materials, supply costs and other constraints. The prices mentioned in the price lists are expressed in euros and are understood as prices excluding tax and excluding transportation costs and possibly customs and other fees inherent to the execution of the order which remain the exclusive responsibility of the CUSTOMER.

The price lists will indicate the Value Added Tax (VAT) rate for intra-Community acquisitions. Acquisitions outside Europe will be invoiced exclusive of taxes.

The transportation costs are determined on the day of the order and will be at the exclusive charge of the CUSTOMER.

## ARTICLE 7. INVOICING – PAYMENT – LIQUIDATED DAMAGES

An invoice shall be drawn up for each delivery, and issued when that delivery is made.

Unless otherwise agreed, payment is made immediately upon order.

Invoices issued by C4HYDRO are payable exclusively in EUROS (€), by bank transfer, debit or credit card.

All bank charges are the exclusive charge of the CUSTOMER, in particular in the case of an international transaction.

In the event of late payment, C4HYDRO may suspend all outstanding orders, without prejudice to any other right of action.

On failure to pay the totality of an invoice within the due period, C4HYDRO may automatically charge the CUSTOMER daily interest on the arrears at the rate applied by the European Central Bank to its operations, plus 10 basis points on the total amount due, including VAT, in the case where the order is subject to VAT.

The formal notices shall be sent by registered letter with acknowledgment of receipt or by any other means allowing proof of a certain date of receipt.

However, it is stipulated that penalties for late payment are automatically due when the conditions are fulfilled without formalities of recall or notice.

In case of late payment, a lump sum indemnity of 40 euros shall be due to C4HYDRO for recovery costs. This indemnity is automatically due the day after the due payment date.

In addition, C4HYDRO may claim for additional compensation for other expenses such as attorney's fees or other actors' fees.

## ARTICLE 8. DELIVERY

### 8.1. PRODUCT AVAILABILITY

The orders are completed within the limit of available stocks.

If Products are unavailable after the order is placed, the CUSTOMER will be informed by email or telephone of the delivery of a partial order and the date of availability of that remaining. The CUSTOMER can then maintain or cancel its order. In case of partial or total cancellation of the order, the CUSTOMER will be reimbursed within 1 month of the overpayment.

## 8.2. TRANSPORTATION

The carrier is chosen at the absolute discretion of C4HYDRO.

The delivery is made in accordance with the order either by direct delivery of the Products to the CUSTOMER, or by simple notice of availability or by delivery to a shipper or a carrier from the premises of C4HYDRO.

## 8.3. DELIVERY PERIOD

Deliveries are only made on the basis of availabilities and in the order of arrival of orders. C4HYDRO is authorized to make deliveries in whole or in part.

In the case of partial delivery, the additional transport costs incurred by the subsequent deliveries will be borne by C4HYDRO.

The delivery periods are given on an indicative basis as accurately as possible but are determined according to the possibilities of C4HYDRO's supply and transport. Delivery periods are not guaranteed.

Exceeding the delivery deadline shall not give rise to damages, withholding or cancellation of outstanding orders.

## 8.4. TRANSFER OF LOSS RISK

The Products are transported at the CUSTOMER's risk who undertakes to make all necessary observations in the event of damage or missing items and confirm its reserves by extrajudicial document or by registered letter with acknowledgment of receipt to the carrier in charge within three days following receipt of the Products.

Any loss or deterioration to the Products occurring after the transfer of risks to the CUSTOMER does not release the CUSTOMER from its payment obligation.

## 8.5. INSURANCE

The CUSTOMER assumes the responsibility of covering the Products it purchases from C4HYDRO through the insurance institution of its choice.

## 8.6. FINAL ACCEPTANCE OF THE DELIVERY

Without prejudice to the steps to be made with regard to the carrier, claims regarding apparent defects or non-conformity of the Products delivered with the Products ordered or the packing slip must be made in writing within eight days from the arrival of the Products. The CUSTOMER will bear the responsibility to provide any justification as to the reality of the defects or anomalies found. It shall allow C4HYDRO to proceed in the acknowledgement of

these defects and to remedy them. It shall refrain from intervening itself or allowing any third party to intervene for this purpose.

## ARTICLE 9. RETENTION OF TITLE

Material as defined in Article 5 "Product" remains the property of C4HYDRO until full payment of its price. The CUSTOMER may not resell the Products unless C4HYDRO expressly authorizes it in writing, as long as the retention of title will apply.

Regarding Consumables defined in Article 5, they do not benefit from any retention of title because of their expiration time. C4HYDRO shall not accept any return or refund on this Product.

## ARTICLE 10. PRODUCT RETURN – CLAIMS – REFUND

### 9.1. CONDITIONS

Except for Consumables which cannot be returned, any return of Product must be the subject of a formal agreement between C4HYDRO and the CUSTOMER. Any Product returned without this prior consent would be held at the disposal of the CUSTOMER and would not give rise to the establishment of a credit note. The costs and risks of return shall be the responsibility of the CUSTOMER.

Returned Products are accompanied by a return voucher to be affixed to the package and must be in the condition in which C4HYDRO delivered them.

### 9.2. CONSEQUENCES

Any recovery accepted by C4HYDRO will result in the establishment of a credit note to the benefit of the CUSTOMER, after qualitative and quantitative verification of the returned Products. Returns not in accordance with the above procedure will be penalized by the loss for the CUSTOMER of the sums paid.

In the event of apparent defect or non-conformity of the Products delivered, duly ascertained by C4HYDRO under the conditions provided above, the CUSTOMER may obtain the free replacement or the refund of the products, at the choice of the seller, excluding any indemnity or damages.

## ARTICLE 11. STORAGE – USE OF PRODUCTS

The CUSTOMER acknowledges having read the conditions of storage and use of the Consumables or Materials, as indicated in the operating manual supplied with the Products or available on the C4HYDRO website.

## ARTICLE 12. EXPORT

C4HYDRO hereby expressly authorizes the resale with the exception of the areas of the papermaking and power plant operators. C4HYDRO not authorizes export of the C4HYDRO Products.

## ARTICLE 13. WARRANTIES – WARRANTY DISCLAIMER

### 13.1. WARRANTY COVERAGE

In addition to the legal warranty under the provisions of article 1641 et seq. of the French Civil Code, C4HYDRO guarantees a reliability of the analytical results greater than 90% when the analysis complies with the protocol described in the operating manual provided.

C4HYDRO guarantees the quality of its Consumables and that they comply to their intended purpose.

"Materials" are guaranteed against defects in materials or workmanship for a period of six months from the date of Delivery. Intervention under the warranty shall not have the effect of extending the duration of the warranty.

Under this warranty, C4HYDRO's sole obligation shall be the free replacement or repair of the defective product or component by its services, at its sole discretion, unless such compensation is impossible or disproportionate. In order to benefit from the warranty, any product must first be submitted to C4HYDRO after-sales service, the approval of which is essential for any replacement. Any costs of postage will be borne by the CUSTOMER which cannot claim any compensation during the time the Product is kept due to the application of the warranty.

### 13.2. WARRANTY DISCLAIMER

The warranty does not apply:

- For apparent defects;
- In case of opening or dismantling any of the elements of the Product;
- In case of intervention on the Product within a maintenance release carried out by the CUSTOMER or a third party;
- When defects are due to natural wear and tear, to an external accident, in general to any incident which is not directly caused by C4HYDRO;

- When the defects are due to use by the CUSTOMER which does not comply with the true purpose of the Products or the recommendations specified by C4HYDRO in the operating manual supplied (or available on the C4HYDRO website) with the Product or in the present TERMS AND CONDITIONS;
- When the defects are due to use by the CUSTOMER not in compliance with standard practice relating to the handling of this type of product;
- Where defects are due to storage not in compliance with the recommendations of C4HYDRO or standard practice;
- When using chemical solutions not supplied by C4HYDRO during the analysis protocol.

## ARTICLE 14. LIABILITY – LIMITATION OF LIABILITY

C4HYDRO delivers Products that have the purpose of detecting *legionella pneumophila* bacteria that can be cultivated in water.

C4HYDRO accepts no responsibility for the results of analysis obtained with the use of the Product and for the interpretation of this result.

The CUSTOMER acknowledges and agrees that C4HYDRO cannot guarantee total reliability of the results provided by its Products.

The CUSTOMER acknowledges that the use of the Products does not exempt him from the precautionary hygiene and safety rules relating to the waters being analyzed and relating to the supplied Consumables, the precautionary specificities of which are indicated on each bottle by the regulatory pictograms.

The CUSTOMER is solely responsible for compliance with the legal and regulatory framework for health, safety and the environment and will ensure that the Products it orders are lawful in light of the legal rules applicable to it.

Consequently, C4HYDRO cannot be held liable for any damage suffered by the CUSTOMER or any third party who has had access to the waters that have been analyzed by using the Products.

Similarly, C4HYDRO cannot be held responsible for any damage suffered by any of the CUSTOMER's agents or staff during the handling of the Products. As such, the CUSTOMER acknowledges having read the safety recommendations provided by C4HYDRO in the operating manual or on its website.

The liability of C4HYDRO can only be held in case of characterized fault and will be limited, in any event, to direct damage only. Indirect and consequential damages such as loss of use, loss of margin, damage to reputation and others are expressly excluded from liability. The latter is also limited to the amount paid by the CUSTOMER at the time of the order in which the fault was committed.



In the event of damage suffered by one or more third parties during the use of the Products or following the decisions made by the CUSTOMER after the interpretation of the analyses, the CUSTOMER undertakes to guarantee C4HYDRO against any action, class action, claim or third parties and undertakes to do everything possible to assist C4HYDRO and to intervene as a guarantee in the event of legal proceedings.

## **ARTICLE 15. FORCE MAJEURE - INCIDENTAL EVENT**

Force Majeure covers any unforeseeable event at the time of the validation of the Order and which the parties have not been able to avoid or overcome at the time of its occurrence, making impossible the full or partial performance of the obligations stipulated in the present TERMS AND CONDITIONS.

In particular, shall be considered as or liken to a case of Force Majeure:

- A geopolitical conflict, whether armed or not, affecting international trade, the production and distribution chain;
- Any act of terrorism affecting the activity of C4HYDRO and its capacity to complete its orders;
- Severe weather, earthquake, or other natural disaster or other event affecting the activity of C4HYDRO;
- A change in local or European legislation or regulation that makes it impossible to commercialize or simply deliver the Products;

In the event of such Force Majeure, and generally in case of special difficulty, the concerned contracting party undertakes to inform the other contracting party without delay.

If the event is only temporary, the order will be suspended until the situation is normal.

In the event that the duration of the impossibility of execution is greater than thirty (30) days, the order will be canceled only on express and written request of the CUSTOMER and the sums already collected returned to the CUSTOMER in the event that the Delivery, as defined in these TERMS AND CONDITIONS, has not been performed. In the event of delivery of the Products, the risk transfer regime provided for in Article 8.4 shall apply.

## **ARTICLE 16. INTELLECTUAL PROPERTY**

C4HYDRO is the owner of the trademarks "C4HYDRO" and "Legio EZ-Test".

Some Products are covered by patents owned by C4HYDRO or licensed to it.

Some Products are protected by the secret of know-how.

The purchase and use of the Products does not in any way constitute an assignment or license on these trademarks or patents to the benefit of the CUSTOMER.

The CUSTOMER acknowledges that it does not have any right to information on the formulas used for the composition of Consumables.

In the event that C4HYDRO voluntarily or unintentionally discloses to the CUSTOMER certain information about the nature, composition, manufacture, design, origin of the Products, the CUSTOMER is bound by a confidentiality obligation.

## ARTICLE 17. PERSONAL DATA

The computerized processing of the personal data that can be collected has as purpose the customer management in the processing of the orders.

In accordance with national and European regulations, the CUSTOMER and its agents have the right to access, rectify and, subject to the legal provisions applicable to the matter, to delete the data.

## ARTICLE 18. TECHNICAL SUPPORT

C4HYDRO provides technical support to the CUSTOMER for any difficulty in using the Product by writing to the following address: [support@c4hydro.com](mailto:support@c4hydro.com).

## ARTICLE 19. COMMERCIAL REFERENCE

The CUSTOMER agrees that its commercial name will be used by C4HYDRO as a reference in its communication to third parties, in particular on its website or its commercial brochures.

## ARTICLE 20. MISCELLANEOUS

The nullity of any of the obligations resulting from the TERMS AND CONDITIONS, for any reason whatsoever, will not affect the validity of the other obligations.

The titles and subheadings included herein are included for convenience only. By express agreement between the parties, these titles and sub-titles shall in no case be used to interpret any provision of the Contract.

The fact that a party does not claim the application of any stipulation of the TERMS AND CONDITIONS or tolerates its non-performance temporarily or permanently cannot in any case be interpreted as a waiver by that party to exercise the rights which it holds in respect of the said TERMS AND CONDITIONS.

The fact that a party tolerates non-performance or imperfect performance or, more generally, tolerates any act, abstention or omission of the other party not in accordance with TERMS AND CONDITIONS shall not grant any right on the party enjoying such tolerance.

## **ARTICLE 21. JURISDICTION – AMICABLE SETTLEMENT**

In the event of any difficulty regarding the validity, interpretation or execution of the TERMS AND CONDITIONS, the parties undertake to make their best efforts to settle the dispute amicably.

If the dispute persists and cannot be settled amicably, the dispute regarding the validity, interpretation, execution or termination of the TERMS AND CONDITIONS will be brought before the Commercial Court of Marseille.

## **ARTICLE 22. APPLICABLE LAW**

These TERMS AND CONDITIONS are governed by the French Law.

## **ARTICLE 23. LANGUAGE**

These TERMS AND CONDITIONS are written in French and English.

In the event of any conflict in the interpretation of these TERMS AND CONDITIONS, the French version shall prevail if the CUSTOMER is an entity established in a French-speaking country. The English version shall prevail if the CUSTOMER is a foreign entity of a non-French-speaking country.

## **ARTICLE 24. AGREED OFFICIAL ADDRESS**

The address of each Party is the registered office of their company.

Unless otherwise provided, the address of the CUSTOMER's registered office will be the billing address.

