

Darchem Engineering Ltd
General Conditions of Fire Test and Thermal Performance Test Services
March 2019

Darchem's provision of Services is expressly conditioned on Client's assent to the terms of this Agreement. Any acceptance of Darchem's offer is expressly limited to acceptance of this Agreement and Darchem expressly objects to any additional or different terms proposed by Client. Any order to perform work and Darchem's performance of work shall constitute Client's assent to this Agreement. Unless otherwise specified in the quotation, Darchem's quotation shall expire 30 days from its date and may be modified or withdrawn by Darchem before receipt of Client's conforming acceptance.

1. Interpretation

- 1.1. In this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:
- 1.2. **"Agreement"** means this agreement entered into between Darchem and the Client;
- 1.3. **"Charges"** shall have the meaning given in Clause 5.3;
- 1.4. **"Client"** means the entity to which Darchem is providing Services
- 1.5. **"Confidential Information"** means all information in whatever form or manner presented which: (a) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (b) (i) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or identified by any means as confidential by the disclosing party at the time of such disclosure; and/or (ii) is information, howsoever disclosed, which would- reasonably be considered to be confidential by the receiving party.
- 1.6. **"Intellectual Property Right(s)"** means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights howsoever existing;
- 1.7. **"Report(s)"** shall have the meaning as set out in Clause 2.3 below;
- 1.8. **"Services"** means the fire testing and thermal performance test services set out in any relevant Darchem Proposal, any relevant Client purchase order, or any relevant Darchem invoice, as applicable, and may comprise or include the provision by Darchem of a Report;
- 1.9. **"Proposal"** means the proposal, estimate or fee quote, if applicable, provided to the Client by Darchem relating to the Services;
- 1.10. The headings in this Agreement do not affect its interpretation.

2. The Services

- 2.1. Darchem shall provide the Services to the Client in accordance with the terms of this Agreement which is expressly incorporated into any Proposal Darchem has made and submitted to the Client.
- 2.2. In the event of any inconsistency between the terms of this Agreement and the Proposal, the terms of the Proposal shall take precedence.
- 2.3. The Services provided by Darchem under this Agreement and any data, calculations, measurements, estimates, notes, certificates and other material prepared by Darchem in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed (Report(s)) shall be for the Client's use and benefit.
- 2.4. The Client acknowledges and agrees that if in providing the Services Darchem is obliged to deliver a Report to a third party, Darchem shall be deemed irrevocably authorised to deliver such Report to the applicable third party. For the purposes of this clause an obligation shall arise on the instructions of the Client, or where, in the reasonable opinion of Darchem, it is implicit from the circumstances, trade, custom, usage or practice. The Client acknowledges and agrees that any Services provided and/or Reports produced by Darchem are done so within the limits of the scope of work agreed with the Client in relation to the Proposal and pursuant to the Client's specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice. The Client further agrees and acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that reliance on any Reports issued by Darchem is limited to the facts and representations set out in the Reports which represent Darchem's review and/or analysis of facts, information, documents, samples and/or other materials in existence at the time of the performance of the Services only.
- 2.5. Client is responsible for acting as it sees fit on the basis of such Report. Neither Darchem nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any actions taken or not taken on the basis of such Report.

- 2.6. In agreeing to provide the Services pursuant to this Agreement, Darchem does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person or any duty or obligation of any person to the Client.

3. Darchem's Warranties

- 3.1. Darchem warrants exclusively to the Client:
- a) that it has the power and authority to enter into this Agreement and that it will comply with relevant legislations and regulations in force as at the date of this Agreement in relation to the provision of the Services;
 - b) that the Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances;
 - c) that the Reports produced in relation to the Services will not infringe any legal rights (including Intellectual Property Rights) of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Darchem's reliance on any information, samples or other related documents provided to Darchem by the Client (or any of its agents or representatives).
- 3.2. In the event of a breach of the warranty set out in Clause 3.1 (b), Darchem shall, at its own expense, perform services of the type originally performed as may be reasonably required to correct any defect in Darchem's performance.
- 3.3. Darchem makes no other warranties, express or implied. All other warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information or advice provided by Darchem (including its agents, sub-contractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

4. Client Warranties etc.

- 4.1. The Client represents and warrants:
- a) that it has the power and authority to enter into this Agreement and procure the provision of the Services for itself;
 - b) that it is securing the provision of the Services hereunder for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity;
 - c) that any information, samples and related documents it (or any of its agents or representatives) supplies to Darchem (including its agents, sub-contractors and employees) is, true, accurate representative, complete and is not misleading in any respect. The Client further acknowledges that Darchem will rely on such information, samples or other related documents and materials provided by the Client (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services;
 - d) that any samples provided by the Client to Darchem will be shipped pre-paid and will be collected or disposed of by the Client (at the Client's cost) within thirty (30) days after testing unless alternative arrangements are made by the Client. In the event that such samples are not collected or disposed of by the Client within the required thirty (30) days period, Darchem reserves the right to destroy the samples, at the Client's cost; and that any information, samples or other related documents (including without limitation certificates and reports) provided by the Client to Darchem will not, in any circumstances, infringe any legal rights (including Intellectual Property Rights) of any third party.
 - e) In the event that the Services provided relate to any third party, the Client shall cause any such third party to acknowledge and agree to the provisions in this Agreement and the Proposal prior to and as a condition precedent to such third party receiving any Reports or the benefit of any Services.
- 4.2. The Client further agrees:
- a) to co-operate with Darchem in all matters relating to the Services and appoint a manager in relation to the Services who shall be duly authorised to provide instructions to Darchem on behalf of the Client and to bind the Client contractually as required;
 - b) to provide Darchem (including its agents, sub-contractors and employees), at its own expense, any and all samples, information, material or other documentation necessary for the execution of the Services in a timely manner sufficient to enable Darchem to provide the Services in accordance with this Agreement. The Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold Darchem harmless from any and all responsibility for such alteration, damage or destruction;
 - c) that it is responsible for providing the samples/equipment to be tested together, where appropriate, with any specified additional items;
 - d) to provide instructions and feedback to Darchem in a timely manner;

- e) to notify Darchem promptly of any risk, safety issues or incidents in respect of any item delivered by the Client, or any process or systems used at its premises or otherwise necessary for the provision of the Services;
- f) to inform Darchem in advance of any applicable import and/or export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/ imported to or from a country that is restricted or banned from such transaction;
- g) in the event of the issuance of a certificate, to inform and advise Darchem immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification;
- h) to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;
- i) that it will not use any Reports issued by Darchem pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;
- j) in no event, will the contents of any Reports or any extracts, excerpts or parts of any Reports be distributed or published without the prior written consent of Darchem (such consent not to be unreasonably withheld) in each instance; and
- k) that any and all advertising and promotional materials or any statements made by the Client will not give a false or misleading impression to any third party concerning the services provided by Darchem.
- l) Darchem shall be neither in breach of this Agreement nor liable to the Client for any breach of this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations as set out in this Clause 4. The Client also acknowledges that the impact of any failure by the Client to perform its obligations set out herein on the provision of the Services by Darchem will not affect the Client's obligations under this Agreement for payment of the Charges pursuant to Clause 5 below.

5. Charges, Invoicing And Payment

- 5.1. The parties agree that the Services are provided on the terms and subject to the conditions set out or referred to in this Agreement, and that this Agreement shall take precedence over any terms and conditions which the Client has provided or may in the future provide to Darchem, whether in a purchase order or any other document.
- 5.2. Unless acceptance of this Agreement by the Client occurs at an earlier time, submission of samples or any other testing material from the Client to Darchem shall be deemed to be conclusive evidence of the Client's acceptance of this Agreement.
- 5.3. The Client shall pay Darchem the charges set out in the Proposal, if applicable, or as otherwise contemplated for provision of the Services (the Charges).
- 5.4. If pricing factors, such as salaries and/or rates are subject to change between the conclusion date of the Contract and the completion date of the Contract, Darchem has the right to adjust the Charges accordingly.
- 5.5. The Charges are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, on the issue by Darchem of a valid invoice.
- 5.6. The Client agrees that it will reimburse Darchem for any expenses incurred by Darchem relating to the provision of the Services and is wholly responsible for any freight or customs clearance fees relating to any testing samples.
- 5.7. The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by Darchem will be charged on a case-by-case basis.
- 5.8. Darchem shall invoice the Client for the Charges and expenses, if any. For Services provided over the course of a period of greater than thirty (30) days the Client agrees that at the end of each calendar month Darchem will issue an invoice for the cost of the Services provided in the month. A final invoice will be issued on the date of the completion of the Services.
- 5.9. The Client is required to pay all invoiced amounts without any deduction, discount or set-off no later than thirty (30) days after the invoice date. No deduction for bank charges incurred can be made. Payments, which must be denominated in the currency indicated in the invoice, must be made by means of money transfer to a bank account designated by Darchem.
- 5.10. If Darchem believes that the Client's financial position and/or payment performance justifies such action, Darchem has the right to demand that the Client immediately furnish security or additional security in a form to be determined by Darchem and/or make an advance payment. If the Client fails to furnish the desired security, Darchem has the right, without prejudice to its other rights, to immediately suspend the further execution of all or any part of the Services, and any Charges for any part of the Services which has already been performed shall become immediately due and payable.
- 5.11. If the Client fails to pay within the period referred to in 5.9 above, it is in default of its payment obligations and this Agreement after having been reminded by Darchem at least once that payment is due within a reasonable period. In that case, the Client is liable to pay interest on the credit balance with effect from the date on which the payment became due until the date of payment. The interest rate applied is deemed to be the Bank of

England base rate plus 5%. In addition, all collection costs incurred after the Client's default, both judicial and extrajudicial, are for the Client's account. The extrajudicial costs are set at an amount equal to least 10% of the principal plus interest, without prejudice to Darchem's right to collect the actual extrajudicial costs in excess of this amount. The judicial costs comprise all costs incurred by Darchem, even if they exceed the Bank of England base rate.

- 5.12. If the Client objects to the contents of the invoice, details of the objection must be raised with Darchem within seven (7) days of receipt of electronic invoice, otherwise the invoice will be deemed to have been accepted. Any such objections do not exempt the Client from its obligation to pay within the period referred to in 5.9 above.
- 5.13. Any request by the Client for certain information to be included in or appended to the invoice must be made at the time of setting out the Proposal. A later request by the Client for changes to the agreed format of the invoice or supplementary information will not discharge the Client from its obligation to pay within the period referred to in 5.9 above. Darchem reserves the right to charge an administration fee per invoice for issuing additional copies of invoices or amending invoice detail, format or structure from that agreed in the Proposal. Darchem maintains the right to reject such an invoicing amendment request and such a rejection by Darchem of the Client's request will not exempt the Client from its obligation to pay within the period referred to in 5.9 above.
- 5.14. If actions by the Client delay completion of the Services, Darchem has the right to invoice the Client for the cost of all Services provided to date. In such a scenario the Client agrees to pay this invoice within thirty (30) days of the invoice date.

6. Intellectual Property Rights and Data Protection

- 6.1. All Intellectual Property Rights belonging to a party prior to entry into this Agreement shall remain vested in that party. Nothing in this Agreement is intended to transfer any Intellectual Property Rights from either party to the other.
- 6.2. Any use by the Client (or the Client's affiliated companies or subsidiaries) of the name "Darchem" or any of Darchem's trademarks or brand names for any reason must be prior approved in writing by Darchem. Any other use of Darchem's trademarks or brand names is strictly prohibited and Darchem reserves the right to terminate this Agreement immediately as a result of any such unauthorised use.
- 6.3. In the event of provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws and regulations.
- 6.4. All Intellectual Property Rights in any Reports, document, graphs, charts, photographs or any other material (in whatever medium) produced by Darchem pursuant to this Agreement shall belong to Darchem. The Client shall have the right to use any such Reports, document, graphs, charts, photographs or other material for the purposes of this Agreement.
- 6.5. The Client agrees and acknowledges that Darchem retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by Darchem to the Client) and the provision of the Services to the Client.
- 6.6. Both parties shall observe all statutory provisions with regard to data protection including but not limited to the requirements of the General Data Protection Regulation 2016/679 ("GDPR") and shall comply with all applicable requirements of the GDPR. To the extent that Darchem processes personal data in connection with the Services or otherwise in connection with this Agreement, it shall take all necessary technical and organisational measures to ensure the security of such data (and to guard against unauthorised or unlawful processing, accidental loss, destruction or damage to such data) in line with the GDPR.

7. Confidentiality

- 7.1. Where a party (the Receiving Party) obtains Confidential Information of the other party (the Disclosing Party) in connection with this Agreement (whether before or after the date of this Agreement) it shall, subject to Clauses 7.2 to 7.4:
 - a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;
 - b) use that Confidential Information only for the purposes of performing obligations under this Agreement; and
 - c) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.
- 7.2. The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis:
 - a) to any legal advisers and statutory auditors that it has engaged for itself;
 - b) to any regulator having regulatory or supervisory authority over its business;
 - c) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is

bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this Clause 7; and

- d) where the Receiving Party is Darchem, to any of its subsidiaries, affiliates or subcontractors.
- 7.3. The provisions of Clauses 7.1 and 7.2 shall not apply to any Confidential Information which:
- a) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;
 - b) is or becomes public knowledge other than by breach of this Clause 6.6;
 - c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - d) is independently developed by the Receiving Party without access to the relevant Confidential Information.
- 7.4. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, any regulatory authority or the rules of any stock exchange on which the Receiving Party is listed, provided that the Receiving Party has given the Disclosing Party prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.
- 7.5. Each party shall ensure the compliance by its employees, agents and representatives (which, in the case of Darchem, includes procuring the same from any sub-contractors) with its obligations under this Clause 7.
- 7.6. No licence of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.
- 7.7. With respect to archival storage, the Client acknowledges that Darchem may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.

8. Amendment

- 8.1. No amendment to this Agreement shall be effective unless it is in writing, expressly stated to amend this Agreement and signed by an authorised signatory of each party.

9. Force Majeure

- 9.1. Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of:
- a) war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;
 - b) natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lighting; explosions and fires;
 - c) strikes and labour disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party; or
 - d) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.
- 9.2. For the avoidance of doubt, where the affected party is Darchem any failure or delay caused by failure or delay on the part of a subcontractor shall only be a Force Majeure Event (as defined below) where the subcontractor is affected by one of the events described above.
- 9.3. A party whose performance is affected by an event described in Clause 9.1 (a Force Majeure Event) shall:
- a) promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations;
 - b) use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and
 - c) continue to provide Services that remain unaffected by the Force Majeure Event.
- 9.4. If the Force Majeure Event continues for more than sixty (60) days after the day on which it started, each party may terminate this Agreement by giving at least ten (10) days' written notice to the other party.

10. Limitations and Exclusions Of Liability

- 10.1. neither party excludes or limits liability to the other party:
- a) for death or personal injury resulting from the negligence of that party or its directors, officers, employees, agents or sub-contractors; or
 - b) for its own fraud (or that of its directors, officers, employees, agents or sub-contractors).
- 10.2. SUBJECT TO CLAUSE 10.1, THE MAXIMUM AGGREGATE LIABILITY OF DARCHEM IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY BREACH OF THIS AGREEMENT OR ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THE SERVICES TO BE PROVIDED IN ACCORDANCE WITH THIS

AGREEMENT SHALL BE THE AMOUNT OF CHARGES DUE BY THE CLIENT TO DARCHEM UNDER THIS AGREEMENT.

10.3. SUBJECT TO CLAUSE 10.1, NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) OR OTHERWISE FOR ANY:

- a) LOSS OF PROFITS;
- b) LOSS OF SALES OR BUSINESS;
- c) LOSS OF OPPORTUNITY (INCLUDING WITHOUT LIMITATION IN RELATION TO THIRD PARTY AGREEMENTS OR CONTRACTS);
- d) LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION;
- e) LOSS OF ANTICIPATED SAVINGS;
- f) COST OR EXPENSES INCURRED IN RELATION TO MAKING A PRODUCT RECALL;
- g) LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION; OR
- h) ANY INDIRECT, CONSEQUENTIAL LOSS, PUNITIVE OR SPECIAL LOSS (EVEN WHEN ADVISED OF THEIR POSSIBILITY).

10.4. ANY CLAIM BY THE CLIENT AGAINST DARCHEM (ALWAYS SUBJECT TO THE PROVISIONS OF THIS CLAUSE 10) MUST BE MADE WITHIN NINETY (90) DAYS AFTER THE CLIENT BECOMES AWARE OF ANY CIRCUMSTANCES GIVING RISE TO ANY SUCH CLAIM. FAILURE TO GIVE SUCH NOTICE OF CLAIM WITHIN NINETY (90) DAYS SHALL CONSTITUTE A BAR OR IRREVOCABLE WAIVER TO ANY CLAIM, EITHER DIRECTLY OR INDIRECTLY, IN CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH THE PROVISION OF SERVICES UNDER THIS AGREEMENT.

11. Indemnity

11.1. The Client shall indemnify and hold harmless Darchem, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with:

- a) any claims or suits by any governmental authority or others for any actual or asserted failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
- b) claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Services provided hereunder by Darchem, its officers, employees, agents, representatives, contractors and sub-contractors;
- c) the breach or alleged breach by the Client of any of its obligations set out in Clause 4 above;
- d) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in Clause 10 above;
- e) any claims or suits arising as a result of any misuse or unauthorised use of any Reports issued by Darchem or any Intellectual Property Rights belonging to Darchem (including trade marks) pursuant to this Agreement; and
- f) any claims arising out of or relating to any third party's use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.

11.2. The obligations set out in this Clause 11 shall survive termination of this Agreement.

12. Insurance Policies

12.1. Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, professional indemnity, employer's liability, motor insurance and property insurance.

12.2. Darchem expressly disclaims any liability to the Client as an insurer or guarantor.

12.3. The Client acknowledges that although Darchem maintains employer's liability insurance, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services.

13. Termination

13.1. This Agreement shall commence upon the first day on which the Services are commenced and shall continue, unless terminated earlier in accordance with this Clause 13, until the Services have been provided.

13.2. This Agreement may be terminated by:

- a) either party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that Party by recorded delivery or courier requesting the other to remedy such breach;
 - b) Darchem on written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment; or
 - c) either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business.
- 13.3. In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay Darchem for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.
- 13.4. Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.

14. Assignment and Sub-Contracting

- 14.1. Darchem reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to one or more of its affiliates and/ or sub-contractors when necessary. Darchem may also assign this Agreement to any company within the Darchem group on notice to the Client.

15. Governing Law and Dispute Resolution

- 15.1. This Agreement and the Proposal shall be governed by English law. The parties agree to submit to the exclusive jurisdiction of the English Courts in respect of any dispute or claim arising out of or in connection with this Agreement (including any non-contractual claim relating to the provision of the Services in accordance with this Agreement).

16. Miscellaneous

- 16.1. Severability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, Darchem and the Client shall immediately commence good faith negotiations to agree an alternative arrangement.
- 16.2. **No Partnership or Agency.** Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or legal representative of the other.
- 16.3. **Waivers.** Subject to Clause 10.4 above, the failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.
- 16.4. No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.
- 16.5. **Whole Agreement.** This Agreement and the Proposal contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, statement or other similar document will add to or vary the terms of this Agreement.
- 16.6. Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
- 16.7. Nothing in this Agreement limits or excludes any liability for fraudulent misrepresentation.
- 16.8. **Third Party Rights.** A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 16.9. **Further Assurance.** Each party shall, at the cost and request of any other party, execute and deliver such instruments and documents and take such other actions in each case as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.