

THESE TERMS GOVERN THE USE OF THE GATEWAY SERVICE. PLEASE READ THEM CAREFULLY.

By clicking “Accept” below or by using the Services you are agreeing to the Terms.

Background:

- (A) Holchem has developed the Software which it makes available to customers via the internet for the purpose of creating Cleaning Instruction Cards.
- (B) The Customer wishes to use Holchem’s service in its business operations.
- (C) Holchem has agreed to provide and the Customer has agreed to take Holchem’s Services subject to these terms, which shall form the basis of a legal agreement between the Customer and Holchem.

IT IS HEREBY AGREED as follows:-

1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply to these Terms, including the Background above.

"Authorised User"	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.
“Business Day”	a day other than a Saturday, Sunday or public holiday in England.
“Cleaning Instruction Card”	a document created by using the Software which details the method by which an area or individual item of plant should be cleaned.
“Confidential Information”	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 8.
“Customer”	a business that purchases products supplied by Holchem and wishes to use the Services.
"Customer Data"	the data inputted by the Customer, Authorised Users or by Holchem on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
"Data Protection Legislation"	up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter: (a) unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable in the UK, the GDPR and any national

implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then

(b) any successor legislation to the GDPR or the Data Protection Act 1998.

"Documentation"	the user manual made available to the Customer by Holchem online via www.gateway.holchem.co.uk or such other web address notified by Holchem to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
"Holchem"	Holchem Laboratories Limited whose company number is 01686721 and whose registered office is at Gateway House, Pilsworth Road, Pilsworth Industrial Estate, Bury, Lancashire, BL9 8RD.
"Normal Business Hours"	09:00 to 17:00 local UK time, each Business Day.
"Services"	the services provided by Holchem to the Customer under these Terms, particularly use of the Software to assist in the creation of Cleaning Instruction Cards.
"Software"	the online software applications provided by Holchem as part of the Services.
"Terms"	the terms and conditions set out herein.
"Virus"	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. Clause headings shall not affect the interpretation of these Terms.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms and shall include all subordinate legislation made as at the date of these Terms under that statute or statutory provision.

2. **Services**

- 2.1. Holchem hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation solely for the Customer's internal business operations.
- 2.2. Holchem shall periodically issue passwords to the Customer for the use of the Services and Documentation which the Customer undertakes to keep secure at all times.
- 2.3. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - 2.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.3.2. facilitates illegal activity;
 - 2.3.3. depicts sexually explicit images;
 - 2.3.4. promotes unlawful violence;
 - 2.3.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.3.6. in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Holchem reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to, or remove, any material that breaches the provisions of this clause 2.3.

- 2.4. The Customer shall not:
 - 2.4.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - 2.4.1.1. and except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 2.4.1.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- 2.4.2. access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - 2.4.3. use the Services and/or Documentation to provide services to third parties; or
 - 2.4.4. subject to clause 12.7, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, or
 - 2.4.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation.
- 2.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of discovery of any such unauthorised access or use, promptly notify Holchem.
- 2.6. The rights provided under these Terms are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. **Services**

- 3.1. Holchem shall provide the Services and make available the Documentation to the Customer on and subject to these Terms.
- 3.2. Holchem will provide to the Customer a reasonable level of technical support in respect of its use of the Software during Normal Business Hours by telephone on 0161 7965772 or via its local technical sales consultants.

4. **Customer Data**

- 4.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2. The Customer shall retain copies of the Customer Data. Holchem shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data in connection with the Customer's use of the Services however caused.
- 4.3. The parties do not envisage that the Customer Data shall include any personal data. However, both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.4. The parties acknowledge that:
 - 4.4.1. if Holchem processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the data controller and Holchem is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation); and

- 4.4.2. the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Holchem's other obligations under this agreement.
- 4.5. Without prejudice to the generality of clause 4.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Holchem for the duration and purposes of this agreement so that Holchem may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Customer's behalf.
- 4.6. Without prejudice to the generality of clause 4.3, Holchem shall, in relation to any Personal Data processed in connection with the performance by Holchem of its obligations under this agreement:
 - 4.6.1. process that Personal Data only on the written instructions of the Customer unless Holchem is required by the laws of any member of the European Union or by the laws of the European Union applicable to Holchem to process Personal Data (**Applicable Laws**). Where Holchem is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Holchem shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Holchem from so notifying the Customer;
 - 4.6.2. not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - 4.6.2.1. the Customer or Holchem has provided appropriate safeguards in relation to the transfer;
 - 4.6.2.2. the data subject has enforceable rights and effective legal remedies;
 - 4.6.2.3. Holchem complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 4.6.2.4. Holchem complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - 4.6.3. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 4.6.4. notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 4.6.5. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

- 4.6.6. maintain complete and accurate records and information to demonstrate its compliance with this clause 4.
- 4.7. Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 4.8. Either party may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

5. **Disclaimers**

- 5.1. The Customer acknowledges and agrees that:
- 5.1.1. Holchem does not monitor the Customer Data for legality, reliability, integrity, accuracy or quality and is not responsible for reviewing the content of Cleaning Instruction Cards created by the Customer for compliance with applicable legislation, regulations or industry best practice, including but not limited to those relating to health and safety;
- 5.1.2. it is solely responsible for any Cleaning Instruction Cards it may create or amend using the Services and for liability which may arise from the use thereof. Clause 9.5 shall apply;
- 5.1.3. Holchem does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 5.1.4. Holchem is not responsible for any delays or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6. **Customer Obligations**

- 6.1. The Customer shall:
- 6.1.1. provide Holchem with:
- 6.1.1.1. all necessary co-operation in relation to these Terms;
and

6.1.1.2. all necessary access to such information as may be required by Holchem;

in order to provide the Services, including but not limited to Customer Data;

- 6.1.2. comply with all applicable laws and regulations with respect to its activities under these Terms;
- 6.1.3. ensure that, prior to circulation and/or use, the Cleaning Instruction Cards comply with all applicable laws, regulations and industry best practice, including but not limited to those relating to health and safety, which may involve seeking advice from a legal professional;
- 6.1.4. use the Services and the Documentation in accordance with these Terms; and
- 6.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for Holchem, its contractors and agents to perform their obligations under these Terms, including without limitation the Services.

7. **Intellectual Property**

- 7.1. The Customer acknowledges and agrees that Holchem and/or its licensors own all intellectual property rights in the Software, Services, Documentation and the Cleaning Instruction Cards (except to the extent that the content of the Cleaning Instruction Cards is Customer Data). Except as expressly stated herein, these Terms do not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Documentation or the Cleaning Instruction Cards.
- 7.2. The Customer and/or its licensors own all intellectual property rights in the Customer Data and the Customer grants to Holchem a non-exclusive licence to use the Customer Data for the purpose of providing the Services to the Customer and fulfilling its obligations under these Terms. In addition, the Customer agrees that Holchem may, on a non-exclusive licence basis, re-use the any wording, data or information that the Customer uses in the creation of the Cleaning Instruction Cards, which has general application, to provide services to others, provided that such wording, data or information does not identify the Customer.

8. **Confidentiality**

- 8.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:
 - 8.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 8.1.2. was in the other party's lawful possession before the disclosure;
 - 8.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

- 8.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 8.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 8.2. Except as expressly permitted by these Terms, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms.
- 8.3. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Holchem's Confidential Information.
- 8.4. Subject to clause 7.2, Holchem acknowledges that Customer Data may constitute the Customer's Confidential Information.

9. **Warranties and Liability**

- 9.1. This clause 9 sets out the entire financial liability of Holchem (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
 - 9.1.1. arising under or in connection with these Terms;
 - 9.1.2. in respect of any use made by the Customer of the Services, the Documentation or any part of them;
 - 9.1.3. in respect of any use made by the Customer of the Cleaning Instruction Cards or the content of them; and
 - 9.1.4. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.
- 9.2. The Customer acknowledges that the Services and Documentation are provided free of charge on an "as is" basis and, except as expressly and specifically provided in these Terms, the Customer assumes sole responsibility for the content, creation and use of the Cleaning Instruction Cards.
- 9.3. The express terms of these Terms are in lieu of all warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, course of dealing or otherwise all of which are hereby excluded to the fullest extent permitted by law.
- 9.4. **The Customer shall use the Services at its own risk and, subject to clause 9.8, in no event shall Holchem be liable to the Customer for any loss or damage of any kind arising from the Customer's use of or inability to use the Services or from errors, omissions, faults or defects in the Services and/or Documentation or any information, instructions, photographs or pictorial representations which form the Cleaning Instruction Cards, whether caused by negligence or otherwise, including any impact upon the Customer, its data, its systems, its machinery or its business.**

- 9.5. **The Customer shall indemnify Holchem against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Holchem arising out of or in connection with the content of Cleaning Instruction Cards created or amended by the Customer.**
- 9.6. Subject to clause 9.8, Holchem shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information or any indirect or consequential loss.
- 9.7. Subject to clause 9.8, in the event that Holchem is found to be liable under or in connection with these Terms, in no circumstances will Holchem's liability exceed £5,000,000.
- 9.8. Nothing in these Terms shall limit or exclude either party's liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation or any other liability that cannot be excluded or limited by English law.
10. **Termination**
- 10.1. Holchem may terminate these Terms and withdraw all rights granted herein at any time giving 7 days written notice to the Customer.
- 10.2. Upon termination:
- 10.2.1. all licences granted under these Terms shall immediately terminate;
 - 10.2.2. except as provided under these Terms, each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 10.2.3. the Customer shall make no further use of the Cleaning Instruction Cards;
 - 10.2.4. Holchem may destroy or otherwise dispose of any of the Customer Data in its possession; and
 - 10.2.5. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Terms which existed at or before the date of termination shall not be affected or prejudiced.
11. **Notices**
- 11.1. Any notice required to be given under these Terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or by fax to the other party at its address set out in these Terms, or such other address as may have been notified by that party for such purposes.
- 11.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9 am on the first Business Day

following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

- 11.3. This clause 11 does not apply for the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause 11 "writing" shall not include e-mail.

12. **General**

- 12.1. Holchem shall have no liability to the Customer under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Holchem or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
- 12.2. No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.3. No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.4. Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
- 12.5. If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 12.6. These Terms, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into these Terms it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms or not) relating to the subject matter of these Terms, other than as expressly set out in these Terms.
- 12.7. The Customer shall not, without the prior written consent of Holchem, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms. Holchem may at any time assign, transfer,

charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

- 12.8. Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 12.9. These Terms do not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 12.10. These Terms 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 the law of England and Wales.
- 12.11. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).

For placement above the "Accept" button which enables access to the Services:

BY CLICKING "ACCEPT" YOU WARRANT THAT YOU HAVE AUTHORITY FROM THE CUSTOMER TO ENTER INTO THESE TERMS.
