

1. Interpretation and Definitions

- 1.1 In this Agreement the following words have the following meanings:
"Acknowledgement Sheet" the acknowledgement sheet provided pursuant to clause 2.4;
"AnTech": AnTech Limited (Reg. No. 2962739) whose address for service is Unit 7, Newbery Centre, Airport Business Park, Exeter, UK EX5 2UL;
"Buyer": the person(s), firm or company who purchases the Goods from AnTech;
"Certification" the certification provided by AnTech to confirm that the Goods meet the Standards;
"Contract" these terms and conditions and the Quotation Sheet (as may be amended by the Acknowledgement Sheet);
"Goods": any goods agreed in the Quotation Sheet (as amended by the Acknowledgement Sheet) to be supplied to the Buyer by AnTech (including any part or parts of them);
"IPR" all intellectual property rights including without limit all patents, design rights, registered designs, copyright, know-how, trademarks and services marks (whether registered or not) together with the right to register, protect and enforce the same anywhere in the world;
"Quotation Sheet" the quotation sheet attached to these Conditions;
"Software" any software provided as part of the Goods;
"Standards" the industry standards (if any) identified on the Quotation Sheet (as may be amended by the Acknowledgement Sheet) (including without limit ATEX standards).
- 1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

2. Application of conditions

- 2.1 Unless agreed by AnTech in writing, all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) are hereby excluded.
- 2.2 These conditions shall not be varied unless agreed by AnTech in writing.
- 2.3 Each order for Goods by the Buyer from AnTech shall be deemed to be an offer by the Buyer to purchase Goods subject to these conditions.
- 2.4 No order placed by the Buyer shall be deemed to be accepted by AnTech until a written acknowledgement of order is issued by AnTech or (if earlier) AnTech delivers the Goods to the Buyer.
- 2.5 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6 Subject to clause 8.3 and clause 7.9 any quotation set out on the Quotation Sheet (as amended by the Acknowledgement Sheet) is valid for a period of 30 days only from its date, provided that AnTech has not previously withdrawn it.

3. Description

- 3.1 The description of the Goods shall be materially as set out in the Quotation Sheet (as amended by the Acknowledgement Sheet).
- 3.2 All drawings, descriptive matter, specifications and advertising issued by AnTech and any descriptions or illustrations contained in AnTech's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

4. Delivery

- 4.1 AnTech will use its reasonable endeavours to deliver the Goods to the Buyer at the address and by the date set out on the Quotation Sheet (as amended by the Acknowledgement Sheet). Time shall not, however, be of the essence unless agreed in writing.
- 4.2 If for any reason AnTech is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations or the Buyer refuses (for whatever reason) to accept the delivery of such Goods, then:
- (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by AnTech's negligence);
- (b) the Goods will be deemed to have been delivered; and
- (c) AnTech may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.3 The Buyer will provide at its expense at the delivery site adequate and appropriate equipment and manual labour for unloading the Goods.

5. Non-Delivery

- 5.1 The quantity of any consignment of Goods as recorded by AnTech upon despatch from AnTech's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 Any liability of AnTech for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* contract rate against any invoice raised for such Goods.

6. Risk/Title

- 6.1 Unless otherwise agreed between the parties in writing, the Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Subject to these conditions, ownership of the Goods shall not pass to the Buyer until AnTech has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
- (b) other sums which are or which become due to AnTech from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- (a) hold the Goods on a fiduciary basis as AnTech's bailee;
- (b) store the Goods (at no cost to AnTech) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as AnTech's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on AnTech's behalf for their full price against all risks to the reasonable satisfaction of AnTech; and
- (e) hold the proceeds of the insurance referred to in clause 6.3d on trust for AnTech and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between AnTech and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.
- 6.5 AnTech shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from AnTech.
- 6.6 The Buyer grants AnTech, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.7 AnTech shall be entitled to retain (or refuse to complete) the Certification associated with the Goods until such time as Goods have been paid for by the Buyer in full.

7. Price

- 7.1 Save as may be amended by these conditions or unless otherwise agreed by AnTech in writing the price for the Goods shall (be the price set out in the Quotation Sheet (as amended by the Acknowledgement Sheet).
- 7.2 The price for the Goods shall be exclusive of any value added tax or delivery, insurance, carriage or licence charges. Unless otherwise stated all prices are in pound sterling. All currency risks will be borne by the Buyer.
- 7.3 Payment of the price for the Goods is due within 30 days from the date set out in AnTech's applicable invoice.
- 7.4 Time for payment shall be of the essence.
- 7.5 No payment shall be deemed to have been received until AnTech has received cleared funds.

- 7.6 All payments payable to AnTech under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 7.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 7.8 AnTech reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.9 AnTech reserves the right to amend the price for the Goods if any specification agreed as part of the Quotation Sheet (as amended by the Acknowledgement Sheet) is changed.
- 8. IPR**
- 8.1 The Buyer acknowledges and accepts that the Goods incorporate certain IPR (including without limit IPR in the Software) which belongs (and will remain so) the property of AnTech. Under no circumstances shall the Buyer use such IPR independently of the Goods or in a manner which is inconsistent with its use of the Goods for the purpose for which they have been supplied by AnTech.
- 8.2 Subject to clause 8.1, AnTech hereby grant the Buyer a non-exclusive licence to use such IPR provided that:
- (a) such licence shall not commence until the Buyer has paid for such Goods in full;
- (b) such licence shall terminate immediately in the event that the Contract is terminated (for whatever reason).
- 8.3 In the event that the Goods incorporate any third party IPR then AnTech reserve the right (and the Buyer will accept) to pass on any obligations and/or increases in licence fees associated with such IPR to the Buyer.
- 9. Quality**
- 9.1 AnTech warrants that (subject to the other provisions of these conditions) upon delivery and (subject to clause 9.1 and clause 9.2) for a period of 1 year thereafter, the Goods will:
- (a) be of satisfactory quality within the meaning of the Sale of goods act 1994;
- (b) materially comply with the Standards.
- 9.2 AnTech shall not be liable for a breach of any of the warranties in clause 9.1 unless:
- (a) the Buyer gives written notice of the defect to AnTech, and (if the defect is as a result of damage in transit) to the carrier, within 5 days of the date of delivery; and
- (b) AnTech is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by AnTech) returns such Goods to AnTech's place of business at the Buyer's cost for the examination to take place there.
- 9.3 AnTech shall not be liable for a breach of any of the warranties in clause 9.1 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow AnTech's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of AnTech.
- 9.4 Subject to clause 9.2 and 9.3, if any of the Goods do not conform with any of the warranties in clause 9.1 AnTech shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate.
- 9.5 If AnTech complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in clause 9.1 in respect of such Goods.
- 9.6 For the avoidance of doubt and without further liability on AnTech, AnTech shall be entitled at anytime to refuse or withdraw Certification if the Buyer fails to comply with the Contract.
- 9.7 The warranty given pursuant to clause 9.1 shall only apply to the Buyer and not to any subsequent purchaser, licensee, sub-contract or lessee of the Goods.
- 9.8 The warranty given pursuant to clause 9.1 shall not apply if there should be a change of control of the Buyer. For the purpose of this clause "change of control" shall have the meaning set out in the Companies Act 1985 (as amended).
- 10. Limitation of Liability**
- 10.1 Subject to clause 10.3, the following provisions set out the entire financial liability of AnTech (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these Conditions; and
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of AnTech for death or personal injury caused by AnTech's negligence or fraudulent misrepresentation.
- 10.4 Subject to clause 10.2 and 10.3:
- (a) AnTech's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the amount set out in the acknowledgement provided pursuant to clause 2.4; and
- (b) AnTech shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11. Assignment**
- 11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of AnTech.
- 11.2 AnTech may assign the Contract or any part of it to any person, firm or company.
- 12. Force Majeure**
- AnTech reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of AnTech including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to AnTech to terminate the Contract PROVIDED that the Buyer shall pay all reasonable costs incurred by AnTech at the date of termination in respect of the Goods (including without limit all manufacturing, design and part costs).
- 13. General**
- 13.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of the same be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.2 Failure or delay by AnTech in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.3 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.4 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 14. Communications**
- 14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission or sent by e-mail:
- (a) (in case of communications to AnTech) to its registered office or such changed address as shall be notified to the Buyer by AnTech; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to AnTech by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- (b) if delivered by hand, on the day of delivery;
- (c) if sent by facsimile or e-mail transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.