

# Terms and Conditions for the Sale of Goods



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## 1. GENERAL

1.1 The following conditions shall apply to all Bentec deliveries. They shall, to the fullest extent permitted by law, apply to the exclusion of all other terms and conditions including, without limitation, any terms and conditions of the customer or those which are implied by trade, custom, practice or course of dealing.

Other conditions shall be binding upon Bentec only, if Bentec has acknowledged them in writing. For services offered by Bentec supplementary separate service conditions shall apply. The following conditions shall also apply, if Bentec executes the delivery without objection in knowledge of customer's conditions which are contrary to these conditions or differ from them.

1.2 Amendments, additions and verbal agreements shall be invalid without Bentec's written confirmation.

1.3 Cost estimates shall be non-binding. Bentec's offers shall be non-binding unless they are expressly designated as binding. Binding offers shall expire 90 days after the date of the offer, unless they are extended by Bentec in writing.

1.4 These conditions shall also apply to all future deliveries to the customer, except when agreed otherwise.

## 2. INFORMATION, DOCUMENTATION

2.1 Details of weights and measures, drawings, explanations, descriptions and illustrations contained in Bentec's brochures or other sales literature shall be approximately authoritative; they shall represent a general description of materials and shall not be construed as part of the offer, unless the corresponding data is expressly included in the contract.

2.2 Bentec reserves the right to modify the technical concept on which the offer is based, provided that this has no adverse effect on the performance and quality of the item offered, the price or the delivery date.

2.3 Bentec shall retain sole ownership and copyright in respect of all software, drawings and other documentation.

The drawings and other documentation may not be made accessible to third parties without Bentec's consent and shall be returned on request.

2.4 Orders shall only be binding when they are confirmed by Bentec in writing.

## 3. PACKAGING, SHIPMENT

3.1 Goods shall be shipped EX Works in accordance with Incoterms 2010 from a place to be determined by Bentec.

3.2 Unless otherwise specified, prices shall include the costs of a packing based on Ex Works terms (Incoterms 2010).

3.3 Transport insurance shall be arranged only at the request and expense of the customer.

## 4. DELIVERY

4.1 Unless expressly specified otherwise, agreed delivery periods shall relate to shipment from Bentec's factory or forwarding department. They do not begin before the customer has fulfilled its obligations to co-operate, in particular by supplying documentation required from it and the agreed advance payments.

4.2 Reasonable partial deliveries are permitted.

4.3 Delivery periods shall be extended reasonably if the agreed delivery deadlines cannot be met due to Force Majeure or other events beyond Bentec's reasonable control, e.g. mobilisation, war, earthquake, flood, fire or other natural disasters, strikes, lock-out, shortage of materials or power, delivery delays on the part of suppliers, national or international import and export restrictions and the like.

Should Bentec be unable to fulfil an order for longer than 2 months due to the aforementioned events Bentec shall have the right to cancel all or part of the order with no resulting entitlement to compensation on the part of the customer.

4.4 Should Bentec be in delay with a delivery to an extent that leads to a breach of contract and customer has either set an appropriate term for delivery or special circumstances justify upon consideration of both parties' interests the immediate claim of damages the customer shall upon Bentec's request declare within 5 working days from the date of fulfilment of the aforementioned requirements whether it wishes to claim damages instead of the delivery or insist on delivery. The other rights of the customer remain unaffected. In case the customer elects to claim damages it shall be entitled to claim liquidated damages in an amount of 0.5% of the price of the part of the delivery which is in delay for each completed week of delay. The aggregate amount of liquidated

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damages must not exceed 5% of the price of the part of the delivery which is in delay.

4.5 We reserve the right to prove that the actual damage was lower.

4.6 Claims for damages which go beyond the limits mentioned in Section 4.4 shall be excluded in all cases of damages for delay, even after expiration of a grace period which may have been granted to Bentec. This shall not apply in cases of mandatory liability for intentional misconduct or gross negligence.

## 5. FORCE MAJEURE

Neither Bentec nor the customer shall be responsible for any failure to fulfil any term or condition of the contract, if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this clause and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against.

For the purposes of the contract only the following occurrences shall be force majeure ('force majeure occurrence'):

- Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- Earthquake, flood, fire, explosion, volcanic ash and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
- Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers and which affect a substantial or essential portion of the products and/or services;
- Maritime or aviation disasters;
- Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of

any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.

Save as otherwise expressly provided in this contract, no payment of whatever nature shall be made in respect of or during a force majeure occurrence and the date of delivery shall be postponed by the length of the period of time of the force majeure occurrence. If any force majeure occurrence delaying either party lasts more than thirty (60) days, the respective other party may terminate the contract without penalty or further liability and with immediate effect by written notice.

## 5. RETENTION OF TITLE

5.1 Bentec shall retain the right of ownership of the delivered goods until the fulfilment of all claims to which Bentec is entitled under the terms of the commercial relationship, regardless of the legal grounds on which they are based.

5.2 The customer shall be entitled to process Bentec's products or combine them with other products in the course of its normal commercial operations. Bentec shall acquire joint ownership, which the customer shall hereby transfer to us, of the items produced by the processing or combination, as a security for our claims mentioned in Section 5.1.

5.3 We shall grant our customers a revocable right of resale as part of the customer's normal business operations. This right shall lapse in the event of a cessation of payments. The customer shall hereby assign all claims to which he is entitled from the resale, with all associated rights; we hereby accept this assignment. The assigned debts shall serve as a security for all debts under Section 5.1. The customer shall be entitled to collect the assigned debts unless Bentec has revoked the authorisation for cause (in particular delayed payment). The collection authorisation shall lapse even without express revocation in the event of cessation of payment or insolvency.

At Bentec's request, the customer shall inform Bentec immediately in writing of the recipient of the sold goods and of the payments due to it as a result of the sale, and shall provide us at its own expense with publicly authenticated documentation relating to the assignment of the claim. Furthermore Bentec may, following prior warning and allowing a suitable period of grace, disclose the assignment and realise the ensuing claims.

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5.4 The customer shall not be entitled to otherwise dispose of the items in which Bentec retained the title or for which the corresponding debts were assigned to Bentec. The customer shall inform Bentec immediately of any third-party attachments or other legal impediments.

5.5 In the event of a breach of essential contractual duties attributable to the customer, in particular in case of delay in payments or, in the event of a substantial deterioration of the customer's financial situation, Bentec shall be entitled at any time to cancel the contract and to demand the return of the goods.

## 6. SOFTWARE, USER RIGHTS

6.1 The customer shall be granted a non exclusive and non transferable right to use the standard software with the agreed performance features in unchanged form on the equipment agreed upon.

6.2 Ownership and/or all other rights to the software shall be retained by us. Programs may neither be reproduced or modified or be disclosed to third parties without our prior written consent.

## 7. TRANSFER OF RISK

7.1 The delivery shall be carried out "ex works" (in accordance with Incoterms 2010) unless a different delivery term has been agreed between the Parties.

7.2 The risk shall pass to the customer upon delivery or, in case of delivery including installation, upon taking into operation or, if so agreed, after successful trial operation.

7.3 If dispatch, delivery, beginning or execution of the assembly, taking into operation or trial operation is delayed for reasons attributable to the customer or the customer fails to accept delivery in good time, then the risk shall pass to the customer with the beginning of the delay.

## 8. COMPLAINTS AND NOTIFICATION OF DEFECTS

8.1 The customer shall promptly upon receipt check the goods and notify us in writing, at the latest within 7 working days of receipt of the goods of any apparent defects. Carton stickers, contents labels or control slips enclosed with the shipment must be enclosed with the notification. The customer shall notify us of any other defects in writing prompt-

ly after discovery. The receipt of the notification by us shall be taken into account when considering the timeliness of the notification.

8.2 If a customer's defect notification is found to be without merit, we shall be entitled to claim damages from the customer to cover costs incurred by us due to the unjustified complaint.

8.3 In case the customer fails to provide us with a timely notification of a defect, subsequent warranty claims based upon such defect shall be excluded.

8.4 The customer shall be responsible for the costs of transportation of the defective goods to Bentec. The repaired or replaced goods shall be shipped to the customer at Bentec's costs. When the goods are repaired on the location of operation, then the costs for boarding, lodging and transportation from customer's place to the location and back shall be borne by customer.

## 9. RECEIPT

The customer may not refuse receipt of deliveries because of defects.

## 10. DEFECTS

10.1 Warranty claims for defects of new products expire after 12 months (warranty period). The preceding provision shall not apply in cases where law stipulates longer warranty periods, in which case the shortest legally possible period shall apply. Used Products are sold on an as-is-where-is-basis without any warranty.

10.2 The warranty period starts with the transfer of risk.

10.3 In case a defect occurs and the cause thereof was set already in the time before the transfer of risk, Bentec may at its discretion either repair the defect or re-supply a defect free product. The repair may, at Bentec's discretion, be performed at Bentec's premises or at the location, where the goods are operated.

10.4 The performance of warranty work does not trigger a renewed warranty period to commence.

10.5 If the warranty work should fail, the customer may withdraw from the contract or claim for a reduction of the original purchase price..

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- 10.6 The customer's claims for recovery of costs suffered because of the warranty work, particularly cost for transportation, logistics, time and material costs shall be excluded to the extent these costs occurred or were increased because the object of the delivery has been brought to another place  
than the branch office of the customer subsequent to the delivery, unless this change in place corresponds to its agreed use.
- 10.7 Warranty claims shall be excluded in cases where there is only an insignificant deviation of the qualities agreed upon or only an insignificant impairment of the usefulness.
- 10.8 The following are not defects and thus not covered under the warranty conditions:
- natural wear and tear;
  - Defects of the product or damages which occurred after the transfer of risk and which result from the non-observance of installation and treatment guidelines or excessive use or because of improper treatment, storage or placement;
  - Defects of the product or damage, due to force majeure or which arise due to particular external influences which were not provided for in the contract, or due to the use of the product outside the use which was provided for in the contract or outside its ordinary use;
  - costs for the opening or disassembling of other items to reach the defective goods
  - costs for transportation of the goods or transport of personnel to repair the goods when the goods are operated in remote areas
- Defect claims are excluded, if the product is changed by third parties or by installation of parts from third parties, unless there is no causal link between the defect and the change.
- Bentec shall not be liable for qualities of the product which are due to the construction or the choice of material for the product, if the customer has ordered the construction or the material.
- 10.9 We accept warranty claims of the customer against Bentec only as far as the customer has not made any agreements with its potential own customer in excess of the legal warranty obligations.
- 10.10 Subsections 10.3, 10.6, 10.7 shall not apply as far as it can be proven that our product was sold to a consumer by the customer or customer of the customer without processing or installation into another product.
- 10.11 Bentec's liability for damages is further regulated by Section 11. The rights and remedies set out in this Section 10 shall be the customers sole and exclusive remedies for defective products.
- 10.12 Legal deficiencies in the products supplied by Bentec shall be governed also by the provisions set out in this Section 10, unless the deficiency consists in a third party intellectual property right infringement.
- 10.13 In the event, Bentec manufactures or modifies Products in accordance with the plans or specifications furnished by Customer, then Bentec only warrants the proper performance of the manufacturing or modifying process, but not  
the product itself, and the warranty provisions as per this Clause 10 shall only apply when defects in the products are caused by Bentec's not manufacturing according to the customers plans and/ or specifications or deficiencies in the manufacturing process.

## 11. OTHER CLAIMS FOR COMPENSATION

- 11.1 Unless something different is set out in these Terms and Conditions of Sale, Bentec shall be liable for damages and compensation of incurred costs (hereinafter referred to as "damages") due to breach of contractual or extra-contractual obligations only in case of wilful misconduct or gross negligence of Bentec's legal representatives or agents, in case of personal injury or death, in case Bentec has extended a guarantee or taken over the risk to achieve specific results, in case of a breach of essential contractual duties, in case of strict liability under the product liability act or any other form of strict liability. The liability for breach of essential contractual duties is limited, however, to foreseeable damage typical for such a contract, as far as there is no intentional misconduct or gross negligence of Bentec's legal representatives or agents or any liability because of personal injury or death or because Bentec has extended a guarantee or taken over the risk to achieve specific results. A change of the burden of proof to the disadvantage of the customer is not intended with the preceding provisions.
- 11.2 After the transfer of the risk as per Clause 7, Customer shall indemnify and hold Bentec harmless from and against any and all claims, charges, demands, damages, causes of actions, expenses (including reasonable attorney's fees and court costs) or suits at law or in equity, against it on account of, relating to, or arising from, or connected with, (i) injury to death of any person or persons whomsoever, (ii) damage to or destruction of any personal or real property (including subsurface property or property rights), resulting from

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or alleged to result from, directly or indirectly, the manufacture, use or sale of the products, except in the event of wilful misconduct or gross negligence on the side of Bentec.

## 12 INTELLECTUAL PROPERTY RIGHTS: COPYRIGHTS

12.1 Bentec shall be liable for claims which arise from the violation of intellectual property rights and copyrights only, if the intellectual property right or copyright is not or was not property of the customer or a company which was directly or indirectly controlling, controlled by or under common control with the customer, the customer notified us promptly after becoming aware of any risk of infringement or (alleged) case of infringement and afforded us at our request – as far as possible – the opportunity to conduct any legal disputes (also out of court) and in case of registered intellectual property rights only where at least one registered intellectual property right out of the property right family concerned has been published either by the European

Patent Authority or in one of the following states: Germany, France, United Kingdom, Austria or USA.

12.2 At Bentec's discretion Bentec may either for the benefit of the customer procure a license for the product (allegedly) infringing an intellectual property right or copyright, or modify the product such that it does not infringe the intellectual property right or copyright anymore or replace it by a product which is similar and does not infringe the intellectual property right or copyright anymore. Should this prove unfeasible for us on adequate terms or in an adequate period, the customer is entitled to withdraw from the contract, provided that he has afforded us the opportunity to modify the product. Under the same conditions Bentec shall be also entitled to withdraw from the contract. The provision of Subsection 10.9 shall apply correspondingly. Bentec reserves the right to take the measures provided for in this Subsection 12.2 Sentence 2 even if an infringement of an intellectual property right or copyright has not been finally determined by a court or such an infringement has not been recognised by Bentec.

12.3 Furthermore claims of the customer are excluded if the products are manufactured in accordance with the specification or the instructions of the customer or the (alleged) infringement of the intellectual property right results from the use in combination with another object which did not originate from Bentec or the products are used in a way which Bentec could not foresee.

12.4 Bentec's liability for damages is further regulated by Section 11.

12.5 Subsections 10.1 and 10.2 apply correspondingly to the time barring for claims due to infringement of intellectual property rights and copyrights.

12.6 This Section 12 sets forth the sole and exclusive remedies of the customer for infringement of third party intellectual property rights and copyrights.

12.7 In the event, Bentec manufactures or modifies Products in accordance with the plans or specifications furnished by Customer, then Customer shall indemnify and hold Bentec harmless from and against any and all claims, charges, demands, damages, causes of actions, expenses (including reasonable attorney's fees and court costs) or suits at law or in equity, against it, on account of, relating to, or arising from, or connected with, the infringement or alleged infringement of any patent, design, or other intellectual property rights arising out of, directly, or indirectly, the manufacture, use or sale of the Products.

## 13. EXPORTATION

13.1 Unless the goods delivered by Bentec have been installed into a larger system, they may be exported to other countries only with Bentec's written consent. This shall not apply to re-exportation within the EC.

13.2 In the case of violations Bentec shall be entitled to claim damages besides the right to withdraw from current orders.

13.3 The customer undertakes to adhere to the German export control regulations, to the US Export Control Administration Regulations as well as any other export control regulations which may apply, whenever exporting products supplied by Bentec.

## 14. TERMS OF PAYMENT

14.1 Prices are quoted ex works (INCOTERMS 2010 apply) including customary packaging, excluding the applicable value added tax (VAT); charging of the VAT shall only be waived in case the prerequisites for tax exemption of exportation deliveries are met and documented by the customer.

14.2 Payments shall be made in accordance with the terms of payment set by Bentec; as a rule, payment shall

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become due within 30 days after delivery. Bentec is authorised to allocate payments to the oldest, payable invoice. In the case of a currency exchange rate deterioration of the amounts paid in a currency not agreed upon between the Parties, the customer shall compensate for the shortfall by additional payment.

14.3 As far as Bentec's payment claim is jeopardised due to circumstances which cause a substantial deterioration of the customer's financial situation, Bentec is authorised to declare all payment obligations arising under the business relationship as immediately due and payable; this shall also apply for deferred payments or acceptance of bills of exchange or checks. Under such circumstances Bentec shall also be entitled to demand advance payments or payment securities for all regular business. The legal remedies for delay in payment shall not be affected by this provision.

14.4 The customer may only make use of any retention rights or use the right to set off in connection with undisputed or finally adjudicated demands.

14.5 Invoicing shall be made in EUR. If foreign currency amounts are indicated in the invoices besides the EUR amount, the EUR amount shall govern. Amounts received in foreign currency shall be credited with the proceeds obtained in EUR from them.

## 15. CONFIDENTIALITY

The contracting parties undertake not to make any information received by the other contracting party including this contract accessible to third parties either directly nor indirectly verbally or written or in any other way with the exception of members of their respective corporate group.

The obligation for confidentiality does not apply in case information is disclosed to the third party with the express written consent of the disclosing contracting party. The disclosing party reserves all rights for its information.

## 16. TERMINATION OF CONTRACT

16.1 In the event that either party commits a material breach of this contract the non-defaulting party shall give the defaulting party written notice of the alleged breach and a reasonable time within which to remedy the alleged breach. In the event that the defaulting party fails to remedy the alleged breach within such period the non-defaulting party may upon giving 14 days written notice to the defaulting party (without affecting any other claim or remedy) immediately terminate the

Contract (and the license granted herein) or any part thereof.

16.2 Termination for any reason shall not discharge the customer from performing any obligation or from payment of any sums already due or becoming due at the date of termination.

16.3 If either party files for bankruptcy or goes or is put into liquidation (other than solely for amalgamation or restructuring) or if a receiver is appointed over any part of the party's business or if the party suffers the seizure of any property for non-payment of debt, then the other party may regard any such circumstances as grounds for immediately terminating the contract (and in the event that Bentec is the terminating party, any license granted therein) without notice.

## 17. INDEMNITY ARRANGEMENTS

Bentec group shall be responsible for and shall save, indemnify, defend and hold harmless customer group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of:

- (a) loss of or damage to property of Bentec whether owned, hired, leased or otherwise provided by Bentec arising from, relating to or in connection with the performance or non-performance of the contract; and
- (b) personal injury including but not limited to death or disease to any member of Bentec arising from, relating to or in connection with the performance or non-performance of the contract; and
- (c) subject to any other express provisions of the contract, personal injury including but not limited to death or disease or loss of or damage to the property of any Third Party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Bentec. For the purposes of this clause "Third Party" shall mean any party, which is not a member of Bentec or the customer.

The customer group shall be responsible for and shall save, indemnify, defend and hold harmless Bentec group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of:

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- (a) loss of or damage to property of the customer whether owned, hired, or leased or otherwise obtained under arrangements with financial institutions by the customer arising from, relating to or in connection with the performance or non-performance of the contract, but excluding the products and/or services and/or materials, tools, equipment or supplies associated with the work performed by Bentec prior to delivery and acceptance; and
- (b) personal injury including but not limited to death or disease to any member of the customer arising from, relating to or in connection with the performance or non-performance of the contract; and
- (c) subject to any other express provisions of the contract, personal injury including but not limited to death or disease or loss of or damage to the property of any Third Party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the customer. For the purposes of this clause "Third Party" shall mean any party which is not a member of Bentec or the customer.

Unless otherwise expressly provided for in the contract, exclusions, liabilities and indemnities given under the contract shall apply irrespective of cause and notwithstanding the negligence, breach of duty (statutory or otherwise) or other failure of any nature of the indemnified party and shall apply irrespective of any claim in tort, contract or otherwise at law. All indemnities under the contract shall be full and primary and shall be fully enforceable irrespective of any separate right of indemnity or contribution from any party unless otherwise provided for herein. Notwithstanding the above, the liabilities, exclusions and indemnities given under the contract shall not apply in case of gross negligence or willful misconduct of the parties.

If either party becomes aware of any incident likely to give rise to a claim under the above indemnities it shall notify the other and both parties shall co-operate fully in investigating the incident.

Each party expressly agrees that the indemnities set out in this clause do not extend to criminal sanctions, fines or penalties imposed upon it, arising from, relating to or in connection with the performance of the contract.

## 18. CONSEQUENTIAL LOSS

For the purposes of this clause the expression "Consequential Loss" shall mean:

- all consequential or indirect loss or damage under applicable law; and
- loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each of the aforementioned cases whether classed as direct or indirect to the extent that these are not included in (a), arising out of or in connection with the performance or non-performance of this contract and whether or not foreseeable at the date the contract entered into force.

Notwithstanding any provision to the contrary elsewhere in the contract and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the contract, Bentec group shall save, indemnify, defend and hold harmless the customer from Bentec's own Consequential Loss and the customer group shall save, indemnify, defend and hold harmless Bentec group from the customer's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the contract.

## 19. AUDIT AND STORAGE OF DOCUMENTS

During the course of performance of the contract and for a period ending six (6) years after the date of completion or earlier termination of the contract, or longer as required by applicable law, both parties or their duly authorised representatives shall have the right to audit at all reasonable times and, upon request, take copies of all of the other party's records (howsoever stored), books, personnel records, accounts, correspondence, memoranda, receipts, vouchers and other papers of every kind relating to:

Any provision of the contract under which the parties have obligations regarding the performance of the contract of which is capable of being verified by the audit.

The respective party shall cooperate fully with the other party and/or its representatives in the carrying out of any audit required by that other party. The respective party will conduct an audit in a manner which will keep to a reasonable minimum any inconvenience to the other party.

The parties shall keep all documents and data (howsoever stored), related to this contract for a period of not less than seven (7) years, or longer as required

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by applicable law, after the date of completion or earlier termination of the contract.

## 20. BUSINESS ETHICS AND ANTI-BRIBERY

Both parties shall uphold the highest standards of business ethics in the performance of the contract. Honesty, fairness and integrity shall be paramount principles in the dealings between the parties.

Neither party shall knowingly involve itself in any business in connection with, or use information arising from, the contract, in any manner which conflicts with the interests of the other party.

Both parties represent and warrant that they will comply with all applicable laws in respect of the performance of their obligations under the contract including without limitation all applicable laws and regulations relating to taxation, exchange controls, customs matters, anti-corruption, anti-trust, anti-money laundering, trade sanctions and criminal matters. In particular, the parties shall fully comply with the provisions of: (i) the Bribery Act 2010 (as enacted in the United Kingdom and as supplemented and/or amended from time to time), (ii) the Foreign Corrupt Practices Act 1977 (as enacted in the United States of America, supplemented and/or amended from time to time), and (iii) all applicable laws of any countries or countries in which any of the obligations of the contract are to be performed, collectively "Applicable Anti-Bribery Laws", and the parties represent and warrant that they will not do anything which could contravene the Applicable Anti-Bribery Laws or cause the other party to contravene the Applicable Anti-Bribery Laws. Furthermore, the parties represent and warrant that they will not receive, make payment of or offer to make payment of or receive any inducement, improper payment or bribe in relation to the products and services.

The parties expressly prohibit payment of bribes and also payment of any "facilitation" or "grease" payments in connection with business operations by any contractor or agent engaged to provide goods or services. The parties agree, undertake and confirm that each member of the parties has not and will not give or receive or authorize to give or receive or promise to give (either directly or indirectly) any money, personal services or any other thing of value (with the exception of customary promotional materials and occasional reasonable business entertainment) to influence, obtain, induce or reward any improper advantage in connection with the award of any contract, including but not limited to this contract, or any other business transactions involving the parties

and/or their affiliates. The parties also undertake not to engage in any activity which may reasonably be deemed to be a corrupt practice. The parties represent and warrant that no portion of the money paid to it and no proportion of any other benefit provided to it pursuant to the contract has been or shall be directly or indirectly granted, paid, offered or promised for the purpose of influencing the award or retention of business from the parties.

The parties shall ensure that neither it nor anyone acting on their behalf, including any Third Party retained by them to provide services directly or indirectly to the parties pursuant to the contract, either directly or indirectly makes, offers, promises or authorises payment of a bribe or an improper payment to any government official in connection with the contract. For the purposes of this clause, the term "government official" shall include (i) any minister, civil servant, director, officer or employee or other official of any government or any department, agency or instrumentality thereof, and/or of any government-owned or controlled company, any company or enterprise in which a government owns interest, and/or of any public international organization, or (ii) any close family member of any of the foregoing. This term also includes any person acting in any official, legislative, administrative or judicial capacity for or on behalf of such government or department, agency, instrumentality, company, or public international organization, including without limit, any judges or other court officials, military personnel and customs, police, national security or other law enforcement personnel.

The parties will promptly report to the respective other party if the parties become aware that any bribe or improper payment has been paid in relation to the products and services or if the parties have reasonable grounds to believe that any such bribe or improper payment has been paid. In such a circumstance, the parties shall also cooperate in good faith with any investigations which the other party may seek to initiate in order to determine whether any such bribe or improper payment has been paid.

The parties shall maintain internal controls systems that are sufficient to ensure proper authorisation, recording and reporting of all transactions to provide reasonable assurance that violations of the anti-corruption laws of the applicable jurisdiction will be prevented, detected, and deterred.

The parties shall have in place, maintain and enforce their own policies and procedures which are designed to ensure, and which are reasonably expected to continue to ensure, compliance with anti-corruption



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laws and obligations and which are sufficient to enable verification of the parties' compliance with anti-corruption laws and obligations.

The parties agree that all members of the parties shall comply with any codes of conduct issued by the parties from time to time in relation to anti-corruption matters. The parties shall cooperate where one party requests that the respective other party receives its anti-corruption training.

The parties agree and acknowledge that the parties, themselves or through their duly appointed representatives, shall have the right to inspect and audit any and all books and records of the parties relating to the parties' compliance with their obligations under this clause 20, and to make copies, at its expense, of any such books and records.

The parties may withhold any payments which are payable to the respective other party or withhold any deliveries or services under the contract and the parties may also suspend the contract at any time and without liability if they believe, in good faith, that the other party has breached any of the obligations it has undertaken under this clause 20. The parties agree that if any member of the parties breaches this clause 20, the respective other party shall have the right to terminate the contract.

The parties represent and warrant that, except as otherwise disclosed by notice, as of the date of signature and for the duration of the contract, (i) no government official will have a direct or indirect interest in the parties or in this contract, or the proceeds thereof; (ii) none of their directors, officers, employees or other service providers in connection with this contract is a government official; (iii) they shall notify the other party promptly and in writing of any change in the foregoing. Additionally, the parties represent and warrant that none of their directors, officers or key employees in connection with this contract have in the last ten years been convicted of any offense involving bribery, corruption, or money laundering, or have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offense or alleged offense involving bribery, corruption or money-laundering.

The parties further agree and undertake that with respect to any subcontractor or third party they may engage in connection with this contract that (i) they will conduct appropriate due diligence prior to appointing or engaging such subcontractor or third party to ensure that they are duly qualified to perform the tasks for

which they have been engaged and that they are of good reputation, and (ii) they will cause any such subcontractor or third party to agree, in writing, to compliance with laws and anti-corruption obligations and undertakings substantially equivalent to those set forth in this clause and audit and inspection provisions substantially equivalent to those set forth in this clause 20, such that both parties shall each have the same rights with respect to any subcontractor (including without limit the same rights of inspection and audit with respect to the books and records of that subcontractor) that the parties have under this contract.

Both parties shall be responsible for and shall save, indemnify, defend and hold harmless the other party on demand from any and all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of any breach of the obligations set out in this clause 20 by the parties, any person working for the parties, or any third party retained by the parties. The indemnity set out in this clause 20 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the parties and/or any person working for the parties, and/or any third party retained by the parties.

## 21. NOTICES

All formal notices in respect of the contract shall be given in writing and delivered by hand, by fax, or by courier to the relevant authorities specified in the contract and copies to such other office(s) of the parties as shall from time to time be nominated by them in writing to the other.

Such notices shall be effective:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by fax, on the first working day following the date of sending as evidenced by the transmission report produced by sender's fax machine;
- (c) if sent by courier, forty eight (48) hours after the time of posting.

Subject to any specific administrative instructions agreed between the parties, any standard business correspondence associated with the contract and/or the products and/or the services may be sent by email, fax, or letter.

# Terms and Conditions for the Sale of Goods



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May 2018

## 22. PLACE OF PERFORMANCE, APPLICABLE LAW

- 22.1 Place of performance is the forwarding location chosen by Bentec.
- 22.2 The contract, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter, shall be governed and construed in accordance with English Law excluding those conflict of law rules and choice of law principles which would deem otherwise, and subject to the provisions of Clause 23 (Dispute Resolution), shall be subject to the exclusive jurisdiction of the English Courts.

## 23. DISPUTE RESOLUTION

- 23.1 Any dispute between the parties in connection with or arising out of the contract or the products and/or services shall be resolved by means of the following procedure:
- (a) the dispute shall initially be referred, by means of a formal notice sent by either party in accordance with Clause 21 (Notices), to the Bentec representative or customer representative who shall discuss the matter in dispute and make all reasonable efforts to achieve an agreement;
  - (b) if no agreement is reached under Clause 23.1 (a) above within fourteen (14) days of the service of such formal notice, the dispute shall be referred to such senior managers as nominated by the parties;
  - (c) if no agreement is reached under Clause 23.1(b) above within fourteen (14) days of the expiry of the period referred to in Clause 23.1(b) (that is, within twenty-eight (28) days of the service of the formal notice referred to in Clause 23.1(a)), the dispute shall be referred to the appropriate senior executive of each of the parties, being a more senior person than the person referred to in Clause 23.1(b), who shall discuss the matter in dispute within twenty one (21) days of expiry of the period referred to above (that is forty-nine (49) days of the service of the formal notice referred to in Clause 23.1(a)).
- 23.2 If no agreement is reached under Clause 23.1 above, either party shall initiate arbitration proceedings in accordance with the London Court of International Arbitration (LCIA) Rules (applicable at the time of submission of the dispute to arbitration) and the parties

shall submit to final, binding arbitration by three (3) arbitrators appointed in accordance with such rules. The law of the arbitration shall be the Arbitration Act 1996. The conduct of the arbitration proceedings shall be in English and the venue of the arbitration shall be London, England. The arbitral award shall be final and binding on the parties.

- 23.3 Whilst any matter or matters are in dispute, both parties shall comply with all provisions of the contract.

## 23. SUPPLEMENTARY PROVISIONS

- 1.2 Should a provision of these conditions and the further agreements concluded between the parties be or become invalid, then the validity of the remaining provisions shall be unaffected by such partial invalidity. The parties agree to attempt to substitute, for any such invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.