



## **TERMS AND CONDITIONS OF PURCHASE**

### **1 Interpretation and Definitions**

Any reference in these T&Cs to any statute, law, statutory instrument, regulation or other similar instrument having the force of law shall be deemed to include any lawful amendment, re-enactment, extension, replacement, modification, consolidation and/or repeal thereof. Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender:

- 1.1 **"Agreement"**  
means the agreement between Dantec and the Seller comprising the Purchase Order, the T&Cs, any Authorised Amendments together with any other document referred to in the Purchase Order;
- 1.2 **"Authorised Amendment"**  
means any form, side-letter or other document recording Dantec's amendment or series of amendments (authorised by the Authorised Representative) to any part of the Agreement, each Authorised Amendment having precedence over any earlier Authorised Amendment unless stipulated to the contrary;
- 1.3 **"Authorised Representative"**  
means Dantec's authorised representative, *[insert name]*;
- 1.4 **"Business Day"**  
means Monday to Friday excluding English public holidays;
- 1.5 **"Dantec"**  
means Dantec Limited (company number 01057158) whose registered office is at Tarran Way Moreton Wirral CH46 4TL or the relevant affiliate of Dantec detailed in the Purchase Order;
- 1.6 **"Intellectual Property Rights"**  
means all intellectual property rights, including (without limitation) patents, trade marks, service marks, registered designs, applications for any of those rights, copyrights, all moral rights and topography rights, know-how and goodwill and whether registered or unregistered;
- 1.7 **"Packaging"**  
means any type of packaging used in respect of the Products including bags, cases and other containers;
- 1.8 **"Products"**  
means the materials, articles, works and services described in the Agreement;
- 1.9 **"Price"**  
means the price stated in the Purchase Order or an Authorised Amendment;
- 1.10 **"Purchase Order"**  
means Dantec's purchase order, authorised by the Authorised Representative, including the T&Cs on its reverse or attached to it or referring to the T&Cs;
- 1.11 **"Seller"**  
means the person, firm or company to whom a Purchase Order is addressed;

- 1.12 **"SOGA"**  
means the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994;
- 1.13 **"SOGS"**  
means the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994;
- 1.14 **"Specialist Tooling"**  
all jigs, tools, fixtures, moulds, patterns and/or other equipment supplied, or paid for by Dantec or developed at Dantec's expense;
- 1.15 **"T&Cs"**  
means these Terms & Conditions of Purchase.

## 2 **The Agreement**

- 2.1 The Seller agrees to sell and Dantec agrees to purchase the Products in accordance with the Agreement.
- 2.2 In the event that the Agreement is held by a court of competent jurisdiction to include the Seller's terms and conditions of sale then should any conflict or apparent conflict arise between such terms and conditions of sale and the T&Cs, the T&Cs shall always prevail.
- 2.3 The Seller's delivery of Products pursuant to a Purchase Order shall be taken as the Seller's acceptance of the terms and conditions of the Agreement.
- 2.4 The Price shall exclude VAT but shall include storage, packing, insurance, delivery and installation and any other charges
- 2.5 Prior to delivery, Dantec shall have the right to inform the Seller of an Authorised Amendment which shall have the effect of adding to, deleting or modifying the Agreement, as applicable.
- 2.6 Where Authorised Amendments made pursuant to these T&Cs cause a change to the Price or delivery date, the Seller shall notify Dantec without delay, calculating the new Price and delivery date at the same level of cost and profitability as the original Price. The Seller shall allow Dantec at least 10 Business Days to consider any new Price and delivery date. The Authorised Amendment shall take effect upon (but no sooner than) Dantec's Authorised Representative's acceptance of the new Price and delivery date in writing within the time the Seller stipulates (provided that such time is not less than 10 Business Days). Should Dantec's Authorised Representative fail to confirm the Authorised Amendment within the time stipulated by the Seller, then the Seller shall proceed as though the said Authorised Amendment had not been issued (except that Dantec may still exercise Dantec's right of cancellation in accordance with clause 2.7 below).
- 2.7 Without prejudice to Dantec's other rights under the Agreement, Dantec shall be entitled to cancel any Purchase Order and any Authorised Amendment pertaining to it at any time, by giving the Seller notice in writing of such cancellation.
- 2.8 The Seller and Dantec agree that where there is a breach of a condition or warranty (whether express or implied) by the Seller, Dantec's remedies are not to be limited in any way notwithstanding the fact that the breach of the condition may be slight.

## 3 **The Products**

- 3.1 The Seller shall comply with any and all instructions issued by Dantec with regard to the Products.

**Comment [JL1]:** Each case is different

- 3.2 The Seller warrants to Dantec that the Products:
- 3.2.1 will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller by Dantec;
  - 3.2.2 will be free from defects in design, material and workmanship;
  - 3.2.3 will correspond with any relevant drawing, plan, specification or sample;
  - 3.2.4 will comply with all relevant statutes, laws and codes of practice including those relating to health and safety affecting the sale of the Products.
- 3.3 The Seller shall give Dantec's Authorised Representative access at all reasonable times to the Seller's premises and permit the Representative to inspect and examine the Products to be supplied during the manufacture thereof and the material and any equipment to be used in the manufacture. If part or the whole of the Products are being manufactured on other premises the Seller shall obtain permission for Dantec to inspect and examine as if the Products were being manufactured on the Seller's premises.
- 3.4 The Authorised Representative shall have the right to reject any Products (or part of the Products) which, in the Authorised Representative's reasonable opinion, fail to meet the specification contained in the Agreement. All inspection, tests, analysis of material that may be required by Dantec shall be undertaken at the Seller's expense. The provisions of this condition shall not release the Seller from any of its obligations under the Agreement.

#### **4 Delivery and Acceptance**

- 4.1 The Products shall be delivered at the Seller's cost to the place, on the date or dates within the times stated in the Purchase Order or any Authorised Amendment, as applicable. If requested by Dantec, the Seller shall provide a certificate of conformity to Dantec at the time of delivery. Time of delivery shall be of the essence.
- 4.2 On delivery Dantec shall not be deemed to accept the Products until Dantec has had a reasonable opportunity to examine the Products. Dantec shall have the right to reject any Products or part thereof which, in its opinion, fails to meet the specification contained in the Agreement.
- 4.3 Dantec may reject all or part of the Products if an excess or shortfall in the quantity requested in the Purchase Order occurs notwithstanding the fact that the excess or shortfall may be slight. For the avoidance of any doubt, Dantec may exercise the right of rejection notwithstanding any provision contained in section 11 or section 15A or section 30 (subsections 2A and 2B) or section 35 of SOGA.
- 4.4 Dantec shall give the Seller a reasonable opportunity to replace the Products with new Products that conform with this Agreement, after which time Dantec shall be entitled to cancel the Purchase Order and purchase the nearest equivalent goods elsewhere. In the event of cancellation under this clause 4.4 the Seller shall repay any moneys paid under the Agreement without any retention or offset whatsoever upon demand by Dantec. Cancellation of the Purchase Order under this clause 4.4 shall not affect any other rights Dantec may have. The Seller must collect all rejected Products within a reasonable time of rejection or Dantec shall be entitled to return them to the Seller at the Seller's risk and expense.
- 4.5 Where the Products are supplied by weight, all Packaging shall be deducted from the gross weight and only the net weight of the Products supplied shall be invoiced and paid for. No charge shall be made for any Packaging.
- 4.6 Unless agreed otherwise between the parties, all Packaging shall be non-returnable. If the Agreement states that Packaging is returnable to the Seller, the Seller shall provide Dantec with full disposal instructions before the time of delivery and the Seller must pay the cost of all carriage and

handling in respect of the return of any Packaging from Dantec. Dantec shall not be liable for any Packaging lost or damaged in transit.

## **5 Payment**

5.1 Unless stated otherwise in the Agreement Dantec shall pay the Seller within ninety (90) Business Days of receipt of a correctly rendered invoice. The Seller's invoice must be addressed to the Authorised Representative or any other person whose identity is notified to the Seller by the Authorised Representative in advance of rendering the invoice and must quote the full Purchase Order number and description of the Products. VAT shall be identified as a separate item. Dantec shall not be held responsible for delays in payment caused by the Seller's failure to comply with Dantec's invoicing instructions.

5.2 Any payment made by Dantec under the Agreement shall not prevent Dantec from recovering any amount overpaid or wrongfully paid however such payment may have arisen, including but not limited to those sums paid to the Seller by mistake of law or of fact. Dantec shall be entitled to withhold such amount from any sums due or which may become due to the Seller from Dantec or Dantec may recover such amount as a debt.

## **6 Risk, Title and Insurance**

6.1 Delivery shall occur when the Products have been delivered at the location specified in the Purchase Order or an Authorised Amendment, as applicable, without prejudice to Dantec's right of rejection under this Agreement.

6.2 The Seller shall bear all risks of loss or damage to the Products until delivery to Dantec.

6.3 Ownership of the Products shall pass to Dantec:

6.3.1 when the Products have been delivered at the location specified in the Purchase Order or an Authorised Amendment, as applicable, without prejudice to Dantec's right of rejection under this Agreement; and

6.3.2 if Dantec make any advance or stage payment, at the time such payment is made, in which case the Seller must as soon as possible mark the Products as Dantec's property.

6.3.3 The Seller shall be responsible for and insure against the loss, destruction and damage of Products completely or partially manufactured until such time as the Products are delivered to Dantec.

## **7 Health & Safety**

7.1 Should the Agreement involve the provision of services or performance of any work by the Seller on Dantec's premises, the Seller shall ensure that it, its employees, its sub-contractors (and their employees) and any other person associated with the Seller will:

7.1.1 adhere in every respect to the obligations imposed on the Seller by relevant statutes, laws and codes of practice; and

7.1.2 comply with any health & safety or other regulations that Dantec may notify to the Seller from time to time.

## **8 Tooling**

8.1 All Specialist Tooling shall remain or become Dantec's property. The Seller shall be responsible for maintaining Specialist Tooling in good condition and except in respect of fair wear and tear shall immediately replace at its own cost any such items which are lost, damaged or destroyed. In

addition the Seller shall be responsible for adequate insurance for full replacement value of all Specialist Tooling against loss damage or destruction.

- 8.2 Whilst Specialist Tooling is on the Seller's premises, the Seller shall clearly label it as Dantec's property. The Seller may not at any time move Specialist Tooling from its premises or dispose of Specialist Tooling belonging to Dantec without prior written approval from the Authorised Representative.
- 8.3 The Seller may not use any Specialist Tooling for the production, manufacture or design of any Products or other materials other than those which are to be supplied to Dantec pursuant to the Agreement in question.
- 8.4 All Intellectual Property Rights arising from and pertaining to the Specialist Tooling shall be and remain the property of Dantec.
- 8.5 Dantec shall have the option to purchase any specialist tooling which is not Dantec's property at a fair price less any sum already paid by Dantec towards the cost of Specialist Tooling.

## **9 Termination**

- 9.1 Dantec may terminate the Agreement by giving the Seller 30 days' written notice.
- 9.2 Without prejudice to clause 9.1, Dantec may, by notice in writing to the Seller, terminate the Agreement immediately if:
  - 9.2.1 the Seller commits an irremediable material breach of the Agreement, persistently repeats a material remediable breach or commits any material remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or
  - 9.2.2 the Seller becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding-up, is unable to pay its debts or becomes the subject of any distraint, execution, insolvency, bankruptcy or other similar process (whether in the UK or otherwise), or ceases or threatens to cease to carry on business.
- 9.3 For the avoidance of any doubt, upon termination of this Agreement, Dantec shall be at liberty to enter into any agreement with such other persons, companies or firms as Dantec may think fit in respect of the provision of Products and, where such termination is pursuant to clause 9.2 above, Dantec shall be entitled to recover from the Seller all costs and damages incurred by Dantec in consequence of the termination of the Agreement.
- 9.4 The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which has accrued or shall accrue to either party.

## **10 Confidentiality**

- 10.1 All documents and information provided by Dantec to the Seller during or in connection with the performance of the Agreement shall be treated as confidential. Such documents and information shall not be used by the Seller except for the purposes of performing its obligations under the Agreement and such documents and information shall not be disclosed by the Seller to any other person without the prior written consent of Dantec. The Seller shall ensure that its employees and/or sub contractors are under similar obligations of confidentiality in respect of the relevant documents and information. The above restriction shall not apply to information which:-
  - 10.1.1 is already in the public domain; or
  - 10.1.2 the Seller can show from its written records to have been known to it before it was acquired from Dantec; or

10.1.3 was obtained lawfully and properly after the date of the Agreement otherwise than directly or indirectly from Dantec and free from a duty of confidentiality.

10.2 The Seller shall not, except with the prior written consent of Dantec, make any press or other public announcements relating to this Agreement or publicise this Agreement in any other way.

## 11 **Warranty and Indemnities**

11.1 The Seller shall replace free of charge any Products or any part of the Products which is found within a period of twelve months (or other period stated in the Purchase Order if greater) after the date the Products were delivered to be defective. Defective Products shall be returned at the Seller's expense and risk. Nothing in this condition shall prejudice any rights which Dantec may have including rights of rejection under this Agreement. Replacements will themselves be covered by the above warranty for a period of 12 months from acceptance of them by Dantec.

11.2 The Seller will ensure that compatible spares are available to facilitate repairs or replacements (where applicable) for a period of at least 10 years from the date of delivery of the Products.

11.3 With the exception of Products made to Dantec's design or instructions, the Seller warrants that neither the Products nor Dantec's use of them will infringe any Intellectual Property Rights or other rights of any third party and the Seller undertakes to indemnify Dantec against all actions claims demands costs charges expenses losses or any other liability whatsoever arising from or incurred by reason of any infringement or alleged infringement of any such rights of any third party.

11.4 The Seller shall indemnify Dantec against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which Dantec may suffer:

11.4.1 in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of Dantec or of any person for whom Dantec is responsible) which shall have occurred in connection with any work executed by the Seller under the Agreement or shall be alleged to be attributable to some defect in the Products;

11.4.2 (other than as a result of any default or neglect of Dantec or of any person for whom Dantec is responsible) in respect of personal injury to or death of any of the Seller's or Dantec's employees, agents, sub-contractors or other representatives while on Dantec's premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment;

11.4.3 whether directly or as a result of the action, claim or demand of any third party by reason of any breach by the Seller of the T&Cs or of any terms or obligations on the Seller's part implied by SOGA, SOGS or by any other statute or statutory provision relevant to the Agreement or to the Products. This indemnity shall not be prejudiced or waived by or as a result of Dantec's exercise of any of its other rights under the Agreement.

11.5 In order to ensure that the Seller has sufficient finances to meet any claim under the indemnities set out in this clause 11, the Seller will take out and maintain for the term of the Agreement and for a period of 2 years thereafter a policy of insurance with a reputable insurance provider against those risks that a prudent, risk adverse, seller having regard to its obligations and its potential liabilities hereunder would insure against and to such level of cover as a prudent, risk adverse, seller would seek to obtain.

## 12 **Liability**

12.1 The Seller shall at all times be responsible for the acts and omission of its employees, sub-contractors or agents in connection with the Agreement.

- 12.2 Subject to clause 12.4, Dantec's total aggregate liability to the Seller in respect of all causes of action arising out of or in connection with the agreement (whether for breach of contract, strict liability, tort (including, without limitation, negligence), misrepresentation or otherwise) shall be limited to the total amount paid to the Seller by Dantec in respect of Products supplied to Dantec under the Agreement.
- 12.3 Dantec shall not in any event be liable for any indirect, special or consequential damages, howsoever arising (including, but not limited to, loss of anticipated profits) in connection with or arising out of the Agreement and shall not be liable for any other damages except as provided in this Agreement.
- 12.4 Dantec does not seek to exclude or limit its liability for death or personal injury arising from negligence or for fraud or fraudulent misrepresentation or other rights or remedies which may not be excluded.
- 13 **Notice**
- 13.1 A notice under or in connection with the Agreement (a "**Notice**"):
- 13.1.1 shall be in writing; and
- 13.1.2 unless otherwise stated may be delivered personally or sent by first class post to the party due to receive the Notice to the address specified in this clause 13 in respect of that party or to another address or person notified by that party to the other.
- 13.2 The address referred to in clause 13.1 is:
- 13.2.1 in respect of Dantec: Tarran Way Moreton Wirral CH46 4TL; and
- 13.2.2 in respect of the Seller: the address of the Seller set out on the Purchase Order.
- 13.3 Unless there is evidence that it was received earlier, a Notice is deemed given:
- 13.3.1 if delivered personally, when left at the address referred to in clause 13.2;
- 13.3.2 if sent by post two days after posting it (7 days if posted internationally).
- 14 **General**
- 14.1 Dantec's failure or delay to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect Dantec's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 14.2 The invalidity or unenforceability of any term of, or any right arising pursuant to the T&Cs shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 14.3 Dantec shall not be liable to the Seller if its performance of its obligations under the Agreement is prevented or hindered due to any circumstances outside its control.
- 14.4 The Agreement is personal to the Seller and the Seller may not assign, transfer, sub-contract or otherwise part with the Agreement or any right or obligation under it without the prior written consent of Dantec.

- 14.5 Without prejudice to any provision concerning Authorised Amendments, no variation or amendment to the Agreement shall be effective unless in writing signed by Dantec.
- 14.6 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that statute.
- 14.7 The construction, validity and performance of the Agreement shall be governed by the law of England and the parties accept and submit to the jurisdiction of the English Courts.