



# GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY

## 1. PARTIES

MGT is the brand name trading under the legal entity of Brightek (Europe) Limited registered in England with office located in London, United Kingdom. The “Company” hereinafter references the seller being the titled name set out on the Quotation, Order Confirmation and/or Acknowledgement and Invoice, while the “Buyer” references the addressee set out on the said Quotation, Order confirmation and/or Acknowledgement and Invoice.

## 2. ACCEPTANCE

THE FOLLOWING TERMS AND CONDITIONS ARE AN INTEGRAL PART OF THE COMPANY’S INVOICE, QUOTATION AND ORDER CONFIRMATION AND/OR ACKNOWLEDGEMENT. ACCEPTANCE IS EXPRESSLY MADE SUBJECT TO THESE TERMS AND CONDITIONS. NONE OF THE TERMS AND CONDITIONS MAY BE ADDED TO, MODIFIED, SUPERSEDED OR OTHERWISE CHANGED EXCEPT AS AGREED IN WRITING BY THE COMPANY. ALL ORDERS RECEIVED FROM THE BUYER BY THE COMPANY SHALL BE GOVERNED ONLY BY THE TERMS AND CONDITIONS CONTAINED IN THIS REGARDLESS OF THOSE THAT MAY BE STATED ON BUYER’S PURCHASE ORDER, RELEASE OR OTHER DOCUMENT FOR THE PURCHASE OF PRODUCTS.

## 3. DELIVERY

All products will be shipped in accordance with the terms of delivery agreed between the parties in an accepted purchase order (“Purchase Order”) as set out in the Company’s Quotation and Order Confirmation or Acknowledgement. All shipments should be inspected by the Buyer immediately upon receipt and should there be evidence of damage or loss in transit, claims or tracers upon carrier must be filed by the Buyer. The Company will assist in tracing shipments upon request. Any trade terms mentioned shall be interpreted in accordance with the Incoterms 2010 of the International Chamber of Commerce, unless otherwise specified in the Quotation and Order Confirmation and/or Acknowledgement. The Company will exercise reasonable business practice to meet the delivery date(s) set forth on the front or as otherwise agreed, provided it has been given all shipping information sufficiently prior to the shipment date(s). If the Buyer is not ready to accept delivery, then the Company reserves the right to deliver the products in consignment at the Buyer’s cost. The Company may under- or overship deliveries to a maximum of two percent (2%) of the quantity of any purchase order line item. Rescheduling requests are subject to Seller’s rescheduling policy. The Company’s minimum order quantities (MOQ) shall apply. In the event of shortages, the Company may allocate available products among its customers.

## 4. DELIVERY DELAY

Compliance with the agreed date(s) of delivery is conditioned upon receiving the necessary documents, confirmations, permits and releases, including export licenses, in time and that such documents, confirmations, permits and releases were not suspended or revoked before delivery. In case the inability to deliver products continues for more than six weeks from the agreed date of delivery due to delays or refusals to grant an export license or the suspension or revocation thereof, either party may terminate affected parts of a Purchase Order by providing written notice to the other party. In such cases, neither party shall be obliged to pay compensation to the other party.

## 5. WARRANTY

The Company hereby warrants that all products furnished under the Buyer's Purchase Order shall: (i) conform to the specifications agreed to by the parties in writing; (ii) shall be free from defects in material and workmanship, and (iii) that the Company has good title to the products. In no event shall the Company have any obligation to make repairs, replacements or corrections required, in whole or in part, as a result of: (i) normal wear and tear, (ii) accident, disaster or force majeure event (as set forth in Section 12 below), (iii) misuse, fault or negligence of the Buyer, (iv) causes external to the products such as, but not limited to, power failure or electrical power surges; (v) improper storage and handling of the products; (vi) use of the products in a manner for which they were not designed; or (vii) alteration or modification made by anyone other than the Company to any products furnished by the Company. All of the rejected defective or non-conforming products shall be returned to the Company in accordance with the Company's RMA return procedure. The Company will be responsible for the commercially reasonable cost of returning any defective products. No product shall be returned to the Company without its prior written consent. Such warranties shall survive any inspection, delivery, acceptance or payment for one (1) year from date of shipment. The warranty extends directly to the Buyer and not to the Buyer's customers, agents or representatives.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR, REPLACE OR REFUND FOR A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF THE BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. THE COMPANY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

## 6. LIMITATION OF LIABILITY

EXCEPT AS LIMITED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR CONTINGENT DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION LOSSES AND LOSS OF GOODWILL (COLLECTIVELY, "DAMAGES"), OR UNDER ANY OTHER THEORY OF LAW, NOR FOR ANY DAMAGE THAT MAY BE CAUSED BY A DELAY IN DELIVERY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY REASON. THESE LIMITATIONS REFLECT A SEPARATE ALLOCATION OF RISK AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL

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FURTHER, EXCEPT AS EXPRESSLY INDICATED IN WRITING, THE PRODUCTS ARE NOT DESIGNED FOR USE IN MEDICAL, LIFESUSTAINING APPLICATIONS OR FOR ANY OTHER APPLICATION IN WHICH THE FAILURE OF ANY PRODUCT COULD RESULT IN PERSONAL INJURY OR DEATH. FURTHER, THE COMPANY DOES NOT RECOMMEND, ENDORSE OR SUPPORT THE SALE OF PRODUCTS IN LIFE SUPPORT SYSTEMS. THE BUYER USING OR SELLING ANY PRODUCT NOT EXPRESSLY INDICATED FOR USE IN SUCH APPLICATION, DOES SO AT ITS OWN RISK AND THE BUYER AGREES TO FULLY INDEMNIFY AND HOLD THE COMPANY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, EXPENSES AND DAMAGES ARISING OR RESULTING IN CONNECTION WITH SUCH USE OR SALE, INCLUDING ATTORNEY'S FEES, EVEN IF SUCH CLAIM ALLEGES THAT THE COMPANY WAS NEGLIGENT REGARDING THE DESIGN OR MANUFACTURE OF THE PRODUCTS.

## 7. OWNERSHIP OF SPECIAL ITEMS

Payment by the Buyer for charges, regardless of form, related to tools, dies, jigs, fixtures and/or equipment used specially for the production of its order will not convey ownership to the Buyer of such items, unless specifically agreed upon in an acknowledgement or other document in writing signed by the Company.

## 8. PRICES & TAXES

The prices set forth in the quote or acknowledgement, as applicable, supersede all previous prices or quotations. All quotations are in effect for a period of sixty (60) days, except as may be specifically noted on the face of the quotation. The prices shown will not include sales, excise or other government charges payable by the Company to local authority. Any such tax, duty or charges now or hereafter imposed upon the sale or shipment of the product to the Buyer will be added to the purchase price. The Buyer agrees to reimburse the Company for such tax or charge or provide the Company with an acceptable exemption certificate. It is fully understood that it is a matter of principle to these Terms and Conditions that, unless expressly stated otherwise, the prices specified reflect a standard allocation of risk provided by the limited remedies and limitations of liability set forth here. Any modification of the allocation of risk would affect the prices. Failure of any limited remedy in these Terms and Conditions to fulfil its essential purpose shall not be ground to set aside the limitations of the Company's liability

## 9. PAYMENT

Payment shall be Cash on Delivery (COD) unless other payment terms have been agreed in writing between the parties prior to the sale. The Company may charge interest on any over payment and if so, at a rate of 12% per annum, with a minimum of 1.0%. If due to the Buyer's failure to pay when payments are due, the Company would incur exchange rate losses, which it would not have incurred when payment would have been made in time, the Company shall be entitled to an equivalent compensation from the Buyer for such losses. If at any time the financial condition of the Buyer so warrants, or if the Buyer fails to make payment when due, or defaults in any way, the Company may either alter the terms of payment, suspend credit and withhold further shipment or pursue any remedies available at law or under these Terms and Conditions. In such event, the Company will be entitled to compensation from the Buyer for its reasonable expenses, including attorney's fees.

## 10. CANCELLATION

The Buyer may cancel its order or any part thereof, by sending written notice of cancellation to the Company and paying a reasonable cancellation fee. The reasonable cancellation fee will reflect among other factors, the expenses already incurred, and commitments made by the Company, sales and administrative cost and profit as determined by the Company. If the Buyer received a reduced price based on quantity of products ordered but has not purchased the applicable quantity at the time of cancellation, the Buyer will pay the difference between the price the Buyer paid and the price it would have paid had the Company's prices been based on the quantity actually purchase.

## 11. CHANGES

If the Buyer makes any changes in its drawings, designs or specifications applicable in any resulting contract that causes an increase or decrease in the cost of performance of the contract, or if such changes result in rework or obsolescence, an equitable adjustment shall be made to the affected contract. The Company will provide 60-days advanced notification of the following changes: 1) manufacturing location; 2) design; 3) process; or material changes; each to the extent affecting the form, fit, function, reliability or manufacturability of the Company's products. Examples include changes in raw materials, lead frame material or design, manufacturing location, component package material or design. Notification will not be required for minor changes such as equipment additions (same as existing type), minor process adjustments or supplier changes, as long as the supplier's material is of the same composition and meets the Company's raw material specification.

## 12. EXCUSABLE DELAY

The Company will be excused from delays in delivery and performance of contractual obligations under any Purchase Order by acts or omissions that are beyond the reasonable control and without the fault or negligence of the Company including but not limited to (1) delays or refusals to grant an export licence or the suspension or revocation thereof, (2) any other acts of any government that would limit the ability for contract performance, (3) labour strikes or lockouts, (4) shortages or inability to obtain materials or components, (5) explosion, riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property), (6) quarantines or regional medical crisis', (7) fires, earthquakes, floods, severe weather conditions, or any other acts of God. The due date of any performance affected by such an event will be extended accordingly. If the inability to perform continues for longer than six months, either party may terminate the affected parts of a Purchase Order by providing written notice to the other party.

## 13. PATENTS

The Company will defend, or at its option, settle the portion of any action brought against the Buyer by an unaffiliated third party to the extent the third party asserts that the products sold by the Company to the Buyer under these Terms and Conditions directly infringe the third party's patent, copyright or trademark rights ("an Intellectual Property Infringement Claim") in the England, European Union, Canada, Japan, South Korea or the People's Republic of China, and the Company will pay those costs and damages (including reasonable attorney's fees) awarded against the Buyer in a final non-appealable judgement that are specifically attributable to such Intellectual Property Infringement Claim or settlement agreed to by the Company. This is on the condition that the Buyer promptly notifies the Company in writing, allows the Company to assume the defence and provides information and assistance (at the Company's expense) for such defence. In no event will the Company have any indemnification obligation or any other liability under this section if the Intellectual Property Infringement Claim would not have occurred but for one of the following: (i) compliance with the Buyer's design requirements, specifications or instructions; (ii) the combination of a product furnished to the Buyer with any other product not supplied by the Company; (iii) modifications made by anyone other than the Company to a product furnished to the Buyer; (iv) a product furnished to the Buyer being used in a manner for which the product was not designed or in any manner not otherwise authorized under these Terms and Conditions or other written agreement between the parties; (v) the Buyer's rejection of the Company's recommended changes or modifications to a product, where the Company has offered to implement those changes or modifications; (vi) use of a product after the Company has advised the Buyer that a non-infringing alternative is not available on reasonable terms and has requested the return of such products as specified above; (vii) any claims or actions initiated by the Buyer or any of its affiliates against the person making the indemnified claim or any of its affiliates (including without limitation any counterclaims brought by any such person against the Buyer or its affiliates); (viii) the Buyer's marketing, advertising, or promotion of any apparatus or method that uses the products; or (ix) products manufactured or designed by the Buyer; (x) the Buyer's negligence or more culpable act or omission (including recklessness and wilful misconduct); or (xi) bad faith failure to comply with any of the material obligations set forth in these Terms and Conditions. In the event that any of exceptions (i) through (xi) apply, or actions, statements or admissions by the Buyer have a material adverse impact on the Intellectual Property Infringement Claim, and as a result the Company incurs any costs or damages, including reasonable attorney's fees, the Buyer shall indemnify and hold the Company harmless from and against all such expenses. In no event will the Company be liable for enhanced damages resulting from wilful infringement by the Buyer or any punitive damages resulting from the Buyer's actions or inactions, nor will the Company be liable for any of the Buyer's or the Buyer's customer's lost profits, indirect, special or consequential damages or business interruption expenses. The Company shall have no liability for actual or alleged intellectual property infringement or misappropriation, or representation or warranty of noninfringement, except as provided in this Section 13.

#### **14. PROPRIETARY INFORMATION AND PUBLICITY**

“Intellectual Property” or “Intellectual Property Rights” means all current and future rights in copyrights, trade secrets, trademarks, mask works, patents, design rights, trade dress, and any other intellectual property rights that may exist anywhere in the world, including, in each case whether unregistered, registered or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing. Subject to any rights, title or interests expressly granted by these Terms and Conditions, the Company shall retain sole ownership of all Intellectual Property that (a) was the property of the Company prior to the effective date of these Terms and Conditions, or (b) is independently developed or acquired outside the scope of these Terms and Conditions. The Buyer shall not acquire any right, title, or interest in or to any Intellectual Property of the Company unless otherwise expressly provided herein. Brighttek (Europe) Limited and its affiliates (“Brighttek”) owns the entire right, title, and interest, including all inventions (whether patentable or not), patents, copyrights, and other rights in Intellectual Property developed in performance of these Terms and Conditions or developed for Brighttek or derived from use of Brighttek facilities, personnel, or proprietary information, unless otherwise agreed to in writing by the parties. For avoidance of doubt, all Intellectual Property developed outside of these Terms and Conditions shall remain the property of its respective owner and except as explicitly provided in these Terms and Conditions, neither party receives any right to such Intellectual Property. No patent, copyright, trademark, or other proprietary right is licensed, granted, or otherwise transferred by Brighttek pursuant to these Terms and Conditions or any disclosure hereunder. Except where intended to serve as instructions for use or advertising matter, all technical information in relation to the Company’s products and their maintenance remains the Company’s property and may without its consent not to be utilized or copied, reproduced, transmitted or communicated to third parties. Illustrations, catalogues, colours, drawings, dimensions, statements of weight and measurements and media presentations made available by the Company are only meant to present a general idea of the products to which they refer; they are approximate only and therefore not binding upon the Company. Neither party shall, without the other party’s prior written consent, use the other party’s name or trademark as such and/or use same in connection with any advertisement or sales literature. Both the Company and the Buyer shall protect each other’s confidential and proprietary information using the same degree of care used to protect their own confidential or proprietary information, but in any case no less than a reasonable degree of care. In the event of a conflict between the terms of the nondisclosure agreement entered into between the Company and the Buyer (“NDA”) and these Terms and Conditions, the terms of the NDA General Terms & Conditions of Sale and Delivery of Brighttek (Europe) Limited. Brighttek (Europe) Limited General Terms & Conditions of Sale and Delivery shall apply.

#### **15. ASSIGNMENT**

These Terms and Conditions shall be binding upon and inure to the benefit of the successors and assigns of the Company but shall not be assignable by the Buyer voluntarily or involuntarily without the written consent of the Company.

#### **16. SEVERABILITY**

In the event that any provision(s) of A these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions hereof.

#### **17. WAIVER**

The failure on the part of either party to exercise, or any delay in exercising, any right or remedy hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or future exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or by law.



## 18. SET OFF

The Buyer hereby waives any and all rights to offset existing and future claims against any payments due for products sold hereunder or under any other agreement that the Buyer and the Company may enter into and agrees to pay the amounts due regardless of any claimed offset which may be asserted by the Buyer or on its behalf.

## 19. APPLICABLE LAW

This document and any resulting contract shall be governed by and construed in accordance with the laws of the England or Country of the Company as set out in the preamble, exclusive of its choice of law rules and the UN convention for the International Sales of Goods.

## 20. MODIFICATION

The aforesaid terms and conditions along with the prices, quantities, delivery schedules and other provisions and instructions on the written Quotation and Order Confirmation and/or Acknowledgement document shall constitute the entire agreement between the Company and the Buyer pertaining to any resulting contract. They can only be modified in writing.

## 21. EXPORT CONTROL

These Terms and Conditions and any related Purchase Order(s) are made subject to any and all applicable export laws and regulations, including but not limited to the International Traffic in Arms Regulations or Export Administration Act Regulations (“Export Regulations”), concerning the export of products or technical information (“Restricted Information”) from the England or other countries that may be imposed on the parties from time to time. The Company and the Buyer each agrees that it shall not export, directly or indirectly, any Restricted Information acquired from the other party under these or any products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity in accordance with applicable law. Further, a disclosing party shall identify any Restricted Information to a receiving party in advance of disclosure. In the event that Restricted Information is disclosed to a receiving party, for each unique item and every transference of data, such Restricted Information must be clearly and prominently identified with a marking or legend of a disclosing party’s language stating the technical data is subject to the applicable Export Regulations.