

TERMS AND CONDITIONS OF PURCHASE

The following terms and conditions shall apply to the purchase of all goods by and between **API Microwave Ltd or API Microelectronics Ltd**, trading as **API Technologies Corporation** ("the Buyer") from any Seller of goods ("the Seller") and also where appropriate, to any work or services carried out by the Seller for the Buyer.

1. Agreement

The purchase order issued by the Buyer (the "Purchase Order"), together with these terms and conditions and any specifications contained or referred to herein or attached hereto, constitute the sole and entire agreement between the parties (the "Contract"). The Seller's acceptance of the Contract is made subject to these terms and conditions and the Seller's written confirmation hereof or commencing performance or making deliveries hereunder constitutes such acceptance at which point and on which date the Contract will come into existence. The Seller's quotation is incorporated and made a part of this Contract only to the extent of specifying the nature and description of the goods and services ordered and then only to the extent that such items are consistent with the terms of this Contract. All the Seller's conditions of sale and any other terms that the Seller may seek to impose or incorporate are hereby excluded and no course of prior dealings between the parties and no usage of the trade shall be relevant to, supplement or explain any of the terms or conditions hereof.

2. Delivery of goods and supply of services

Delivery of goods:

- (a) The agreed time of delivery shall be specified in the Purchase Order and time for delivery of the goods shall be of the essence of the Contract.
 - (b) The goods properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport, shall be delivered by the Seller at, or dispatched for delivery to, the place or places and in the manner specified in the Purchase Order or as subsequently agreed.
 - (c) The Buyer shall not be required to take delivery prior to the agreed date if not convenient to the Buyer.
 - (d) Where it is evident or should be evident to the Seller that goods or the quality and quantity specified in the Purchase Order will not be delivered by the agreed date, the Seller shall without delay give notice of this to the Buyer and failure by the Seller to give such notice will be treated by the Buyer as a breach of condition. The Buyer shall on receipt of such notice or on non-delivery of the goods on the specified date, have the option to treat the Contract as repudiated and place orders elsewhere, the Seller being liable for any increased costs or other loss incurred thereby, and the Buyer will not be guilty of any anticipatory or other breach of the Contract should it exercise such option. The Buyer shall have the right to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to meet agreed delivery dates. Any failure by the Buyer to exercise its option with respect to any shipment of goods shall not be deemed to constitute a waiver with respect to subsequent shipments.
 - (e) No substitute materials should be used without the prior written consent of the Buyer.
 - (f) The Buyer shall not be liable to return any packing materials, cases or other containers, unless it has been agreed in writing to do so.
 - (g) A statement of contents must accompany the goods. The Buyer's order number, part number and quantity shipped must be marked on each statement, and if there is any delay in non-receipt of statements, or error in or omissions from them, the Buyer will be entitled to withhold payment without loss of any cash discount until the statement has been received or rectified as the case may be.
 - (h) Shipping terms shall be in accordance to Incoterms 2010. For specific explanations of the functions of each Incoterm go to the webpage at: <http://www.iccwbo.org/incoterms/id3040/index.html>
 - (i) All deliveries submitted to the Buyer shall be accompanied by a certificate of conformance. As a minimum requirement this shall reference the Seller's name address, date of shipment, the Buyer's order number, the Buyer's specification/drawing and issue status, the quantity of products supplied, the Seller's product identification and issue status, associated manufacturing lot traceability, and any applicable concessions that have been pre-approved by the Buyer. This record shall be authorised by the Seller's Quality Management Representative or their delegated authority.
 - (j) No deliveries shall be made from the Seller of product/service/material that do not fully comply with the requirements of the Buyer's Purchase Order unless a pre-approved concession has been authorised by the Buyer (such concession to be authorised at the Buyer's sole discretion).
- All deliveries shall include all the Buyer's requested quality records as defined within the Purchase Order. No deliveries shall be made in advance of quality records without the prior agreement of the Buyer.
- (k) The Seller shall inform the Buyer of changes to location/processes/products/suppliers/subcontractors that may affect the quality/safety or environmental impact of the goods supplied to the Buyer. The Seller shall notify the Buyer of any such change in accordance with the product change notification ("PCN") procedure set out in the Purchase Order.
- If a specific supplier/subcontractor is defined within the Buyer's Purchase Order, the Seller shall not change the source of supplier/subcontractors without prior written approval from the Buyer.
- (l) The Seller shall also supply as required additional records that are required to satisfy the defined order requirements, to satisfy regulatory or statutory requirements or as otherwise may be required by the provisions of this Contract.
 - (m) The Seller shall flow down to all sub-tier suppliers/subcontractors all applicable requirements defined in the Buyer's Purchase Order.

Supply of services:

- (a) The Seller shall from the date set out in the Purchase Order and for the duration for the Contract provide such services as have been requested by the Buyer in the Purchase Order in accordance with the terms of the Contract. The Seller shall meet any performance dates for the services specified in the Purchase Order or notified to the Seller by the Buyer.
- (b) In providing the services, the Seller shall: co-operate with the Buyer in all matters relating to the services, and comply with all instructions of the Buyer; perform the services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade; ensure that the services will conform with all descriptions and specifications set out in the Purchase Order and shall be fit for any purpose expressly or impliedly made known to the Seller by the Buyer; obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations; observe all health and safety and environmental rules and regulations and any other security requirements that apply at any of the Buyer's premises; and not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Seller acknowledges that the Buyer may rely on the services.

3. Warranties

The Seller warrants to the Buyer and its successors and assigns:

- (a) That the goods and/or services shall be of the quality specified, or of the best grade of their respective kind if no quality is specified, shall conform to specifications, drawings, samples and other descriptions contained herein, all relevant British standard specifications whether specifically mentioned or not, and to any representation made by the Seller or its representatives.
- (b) That the Seller will perform the services with reasonable care and skill and in accordance with generally recognised commercial practices and standards.

- (c) That the goods shall be merchantable and that the installation of the goods shall so conform to and operate in the Buyer's product so as not to prejudice the proper operation thereof.
- (d) That at the time the goods are accepted by the Buyer they shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws, ordinances, regulations, rules, labour agreements and working conditions to which the goods are subject and that the services will be provided in accordance with all applicable legislation from time to time in force.
- (e) That the goods furnished hereunder are free of any claims or liens of whatever nature whether rightful or otherwise, of any person, corporation, partnership or association.
- (f) Without limitation, the Seller warrants that the goods shall fully comply with all the requirements of the Registration, evaluation, authorisation and restriction of chemicals (REACH) and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)
- (g) The Buyer's rights under these conditions are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979 and by the Supply of Goods and Services Act 1982 and any other statute.

4. Fit for Buyer's Purpose

In performing this Contract, the Seller, as a person or company supplying goods or performing work or services in the course of his or its business, shall exercise his or its skill and judgment so as to ensure that the goods or work or services shall be fit for the purposes of the Buyer and the Buyer will rely thereon. The Seller shall ensure that it understands the Buyer's requirements in time to prevent delay on account of any alterations or modifications that may be necessary to meet the Buyer's needs. The cost of such alterations or modifications shall be deemed to be included in the price, and the cost of returning the goods for such alterations or modifications shall be borne by the Seller. All relevant British standard specifications shall be deemed to have been specified unless expressly excluded.

5. Modifications / Record retention

- (a) Save as in herein expressly provided this Contract can be modified or varied only in writing signed by both parties, or their duly authorized agents.
- (b) The Seller shall notify the Buyer of any changes in product and/or process changes of suppliers, changes of manufacturing facility location in accordance with the PCN procedure set out in the Purchase Order. Any changes deemed to disadvantage the Buyer in any manner are rightfully rejected and alternative options are to be agreed between the parties prior to fulfilment of the Purchase Order. This flows down through the entire supply chain and includes any applicable customer requirements.
- (c) The Seller shall maintain all records relating to this Contract for a period of 7 years from the date on which goods are delivered or services are provided (or such longer period as the Buyer may notify to the Seller in writing from time to time).

6. Waiver

No waiver by either Seller or Buyer with respect to any breach or default of or with respect to any provision or condition of this Contract and no course of dealing shall be deemed to constitute a continuing waiver or any other breach or default of or with respect to the same or any other provisions or condition of this Contract. No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

7. Inspection

- (a) The Buyer shall have a reasonable time after delivery within which to inspect the goods, and the Buyer shall not be deemed to have accepted the goods, nor shall title in the goods pass from the Seller to the Buyer until the Buyer has completed its inspection and has acknowledged that they correspond with the specifications, requirements or samples as notified to the Seller, provided that where the inspection of the goods has been made before delivery and the Buyer has acknowledged that they correspond with its specifications, requirements or samples as notified to the Seller, title in the goods shall pass when the Seller delivers the goods to the Buyer at the place designated by the Buyer. If the Buyer refuses to accept the goods or part of them, having the right to do so, it will, at the Seller's expense, return the goods to the Seller or otherwise dispose of them as the Seller shall reasonably request. The cost of inspection of goods rightfully rejected shall be charged to the Seller, if part only of the goods are found on inspection to be defective or not in accordance with the Buyer's specifications, requirements, or samples, the Buyer shall have the right to cancel any unshipped portion of the order.
- (b) At the Buyer's discretion, the Seller may be given the opportunity to inspect goods rejected by the Buyer, in which event such inspection must be made within seven days of notification by the Buyer and shall take place at the Buyer's premises. At the expiration of such period the goods will be dispatched without further notice to the Seller's address.
- (c) Payment for goods prior to inspection or failure to inspect the goods shall not constitute acceptance thereof and is without prejudice to any and all claims the Buyer may have against the Seller.
- (d) The risk of loss or damage to the goods shall remain with the Seller until title in the goods has passed to the Buyer in accordance with this clause 7.

8. Right To Independent Inspection

The Buyer has the right, at its expense, to engage an independent inspector, to inspect and/or test the purchased goods prior to shipment. The Seller shall provide all reasonable facilities and assistance for the safety and convenience of such inspector in the performance of their duties. Based upon such inspection, the Buyer has the right to reject nonconforming or defective purchased goods and/or packaging or to require their correction. Furthermore, the Buyer, including its customers and any regulatory authorities, reserves all right of access to records and applicable areas of the Seller's facilities, to include the entire supply chain in fulfilling the Contract.

9. Defects/ Non-conforming products

If the Buyer discovers any defect in the goods within four months of acceptance of the goods by the Buyer, or where the Buyer discovers that any work performed by the Seller for the Buyer does not conform with the Contract within four months of the acceptance of the work by the Buyer, the Buyer shall have the right to request the Seller to, and the Seller shall immediately replace the defective goods by goods free from defects or to refund monies paid at the Buyer's option within a period stipulated by the Buyer PROVIDED THAT where the defect in the goods is latent, or where the Buyer discovers after the lapse of the said four months that any work performed by the Seller for the Buyer does not conform with Contract, and the Buyer could not reasonably have been expected to discover such non-conformity within the said four months, then the Seller shall replace the said goods or perform any further work which is necessary for the work to conform with the provisions of the Contract even after the lapse of the said four months at the Seller's expense.

10. Reach

The Seller is legally required to declare any Candidate List Substances of very high concern (SVHC) in spares and whole products where present above 0.1% w/w. Data to be declared through the Certificate of Conformity provided with each delivery. Enforcement through national Competent Authority for UK is HSE. Unlimited on fines and up to 2 years' imprisonment. The Seller should ensure that its IT systems can provide the information required, now and in the future. For further information please refer to: www.hse.gov.uk/reach <http://echa.europa.eu/web/guest/candidate-list-table>

11. Counterfeit Avoidance

Definition: "Counterfeit Supplies" means any material, component, part, assembly, sub-assembly, product and any other item forming part of the Supplies (together referred to as "Items" and separately as "Item") in which there is an indication by visual inspection, testing, or other information that it may be a copy or substitute made without legal right or authority or one whose material, performance, identity or characteristics have been misrepresented by the Supplier, manufacturer or a supplier in the Supplier's supply chain.

(a) The Seller warrants that counterfeit parts or parts suspected of being counterfeit shall not be supplied as part of the order requirements of the Buyer. All parts supplied shall be new, unused, authentic, genuine and legitimate.

(b) The Seller may only source items directly from the Original Equipment Manufacturer ("OEM") or from OEC authorised distribution. The use of any other source is prohibited without prior consent from the Buyer.

(c) The Seller shall have a system that allows tracking to the OEM manufacturing traceability data.

This data shall include, but not be limited to original certificate of conformance, purchase orders, test/inspection data and/or certificates. Additional requirements shall be defined in the purchase order/procurement specification, however presented.

(d) The Seller shall have access to the OEM and any intermediary quality documentation and records as requested by the Buyer.

(e) The Seller shall make the Buyer aware **immediately** that counterfeit parts, or those suspected of being suspect have been supplied to the Buyer.

(f) The Seller shall have a counterfeit parts avoidance, detection, mitigation and disposition program that is in accordance with the appropriate requirements of Aerospace AS5553 Standard.

(g) The Seller shall ensure that the requirements for counterfeit avoidance as set out in this Contract shall be flowed down into its supply chain, employees and other third parties engaged in work connected with any Purchase Order from the Buyer.

(h) In a case of conflict between any order requirements and the requirements of section 11 of this document, Section 11 of the Terms and Conditions of purchase shall take precedence.

12. International Traffic in Arms Regulations (ITAR)

The Seller shall take note that it is a contravention of US legislation to supply any US origin defense equipment, service and/or technical data as defined in the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), unless the prior written authorisation of the US Office of Defense Trade Control (DTC) (refer to ITAR 120.12) has been obtained.

Where applicable, it is the responsibility of the Seller to identify all US origin defense equipment, services and technical data as defined in the ITAR, to be transferred and further ensure that written DTC authorisation for the transfer of all US origin defense equipments, services and technical data, identified in the terms of this clause, has been granted, before the transfer of such items.

13. Export Administration Regulations (EAR) of the US Department of Commerce

Where applicable, prior to order placement the Seller must identify any Supplies or components thereof to which a license is required under the EAR, the category in the Commercial Control List (CCL) they fall under and provide full details of what restrictions are applied. If a license is not required the Seller must identify if they are categorised as NLR or NLR EAR99.

14. Conflict Mineral Compliance

The goods being supplied under this Contract must be purchased from legitimate and responsible sources which are in compliance with United Nations resolutions and which are not in any way involved in funding conflict. At the request of the Buyer, the Seller shall provide to the Buyer all relevant information showing the source of such items and materials.

www.apitech.com/resources

15. Continuity of Supply/Obsolescence

If the Seller or any supplier to a Seller intends to discontinue parts or components used to manufacture said product or components then the Seller shall:

(a) not unreasonably refuse to provide further supplies under this Contract;

(b) prior to any action to discontinue the provision of any supplies under this Contract, the Seller shall provide the Buyer with a "Last Time Buy Notice" at least Twelve (12) months prior to any such action. At such time, the Seller shall offer to the Buyer the opportunity to purchase discontinued products at a unit price to be agreed with the Buyer but in no event shall be greater than the price of the supplied article. The Seller agrees to work with the Buyer to mitigate the overall cost of any "Last Time Buy Notice" exposure;

(c) assist the Buyer with identifying a replacement product, component and/or supplier (as applicable); and

(d) follow the Buyer's instructions with respect to last time manufacture of the product or component. The Seller shall ensure that each of its suppliers is required to notify the Seller and/or the Buyer of any component discontinuance.

The Seller's notice of component discontinuation shall not relieve the Seller from any other obligation set forth in this Contract.

The Seller shall offer to the Buyer, during the term of the Contract and for a period to be agreed upon by the parties but not to exceed seven (7) years thereafter, full maintenance / repair / replacement service and support of and for the goods.

Repair and replacement shall be accomplished within the Buyer's published repair intervals or as otherwise agreed to in writing by the parties. Notwithstanding the foregoing, in the event the Seller is engaged in a Field Replaceable Unit (FRU) program, the Seller shall still be responsible for providing FRU support per agreed upon FRU support requirements.

16. Buyer's Options

The Buyer reserves the right, acting reasonably, to change specifications and delivery dates. Any difference in price required by such changes shall be equitably adjusted and the Contract shall be modified in writing accordingly.

17. Price

The price as agreed between the Seller and the Buyer and as set out in the Purchase Order shall not be subject to change without the written consent of the Buyer and (Domestic orders only) shall include packing, delivery at the place stipulated by the Buyer and all Customs and Excise duties. Value added tax, where applicable, shall be shown separately on all invoices at the prevailing rate.

18. Payment

The following terms with respect to payment are applicable to this Contract:

(a) invoices will be paid sixty (60) days from end of month that goods or services are received at the Buyer's premises unless otherwise stated on the Purchase Order or agreed to in writing by both parties. If the Buyer receives Seller's invoice prior to such receipt of Goods or Services, the terms of payment shall be measured from the date of such receipt of Goods or Services rather than date of receipt of invoice

(b) payment by the Buyer shall be subject to set-off in respect of all claims for breach of contract and any sums due from the Seller to the Buyer in respect of any other contract or transaction between the Buyer, the Seller and or in conjunction with other persons or not.

(c) invoices discounted at 2% or greater will be paid in fifteen (15) days from the invoice date.

The acceptance of discount offers will be at the discretion of the Buyer.

19. Indemnity and insurance

(a) The Seller agrees to protect, indemnify, save and hold harmless the Buyer, its officers and employees from and against all losses (whether direct or indirect), costs and expenses and from and against all claims, demands, suits and actions for damages, losses (whether direct or indirect), costs and expenses and from and against all liability, awards, judgments and decrees of whatsoever nature for any and all damages to property of the Buyer or others (including third parties) of whatsoever nature, any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the goods, or receipt, use or supply of the services, and for any and all death or injury to any persons (including third parties) arising out of or resulting from the negligence of the Seller, its servants or agents, breach of this Contract in manufacturing the goods, any defects in the material or workmanship, the failure of the goods to perform their full capacity as specified in the order or specification or other data, from the breach of any express or implied conditions or warranties, and from the presence of any of the Seller's workmen upon any premises, plant, vessel or erection in the occupation of or under the control of the Buyer.

(b) For the duration of the Contract, the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

20. Patent Indemnification

(a) The Seller warrants that it has full clear and unencumbered title to any goods purchased by the Buyer under this Contract and that at the date of delivery of such items to the Buyer; it will have full and unrestricted rights to sell and transfer all such items to the Buyer.

(b) The Seller shall indemnify the Buyer against any claim or demand by any third party under patent design, trade mark or any other monopoly or proprietary rights in the goods or materials supplied under this Contract and all costs and expenses relating thereto, whether the claim or demand is justified or not.

21. Confidential Information

All information, specifications, drawings, designs and samples communicated or supplied by the Buyer to the Seller shall be treated by the Seller as confidential and shall not be disclosed to any third party without the Buyer's written consent. The Seller shall, at the request of the Buyer, forthwith return to the Buyer all documents containing such information, specifications, drawings or designs, and all samples communicated or supplied by the Buyer to the Seller.

22. Restrictions on Use

The Seller shall not manufacture, sell or supply directly or indirectly for the benefit of itself or any third party any item made in accordance with the Buyer's information, specifications, designs, drawings or samples without the Buyer's prior written consent.

23. Termination

Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by giving written notice to the Seller if:

(a) the Seller commits any material breach of any of the terms of this and that breach (if capable of remedy) is not remedied within 30 days of notice being given requiring it to be remedied;

(b) an order is made or a resolution is passed for the winding-up of the Seller or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the Seller or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the Seller's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the Seller takes or suffers any similar or analogous action in consequence of debt; (c) the Seller ceases, or threatens to cease, to carry on business; or

(d) the Seller purports to assign its rights or obligations under this Contract.

Without limiting its other rights or remedies, the Buyer may terminate the Contract:

(a) in respect of the supply of services, by giving the Seller three months' written notice; and

(b) in respect of the supply of goods, with immediate effect by giving written notice to the Seller, in which case the Buyer shall pay the Seller fair and reasonable compensation for any work in progress on any other goods manufactured (whether in whole or in part) within the scope of the Purchase Order at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

In any of the circumstances in this Contract in which the Buyer may terminate the Contract, where both goods and services are supplied, the Buyer may instead terminate part of the Contract in respect of the goods, or in respect of the services, and the Contract shall continue in respect of the remaining supply.

On termination of the Contract or any part of it for any reason the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination and clauses which expressly or by implication have effect after termination shall continue in full force and effect.

24. Force Majeure

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Seller from supplying the goods and/or services for more than four weeks, the Buyer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Seller.

25. Assignment and sub-contracting

(a) The Seller shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.

(b) The Buyer may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

26. Third parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

27. No partnership

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the

parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

28. Notices

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next business day after transmission.

(c) This clause 28(c) shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

29. Governing Law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.