



TERMS AND CONDITIONS OF SALE

AMOXTEC INC.

Amoxtec Inc., dba Analox Sensor Technology (hereafter referred to as “AST” or the “Seller”), conducts business only upon and subject to the terms and conditions printed below. References to “goods” shall mean reference to all goods and services supplied by AST. References to the “Purchaser” are to any party purchasing goods from AST.

1.	GENERAL CONDITIONS
	1.1 All price quotations are subject to change until acceptance by AST of Purchaser’s order and are further subject to the provisions set forth in Section 3 herein.
	1.2 In the event of any inconsistencies in any terms or conditions proffered by AST and the Purchaser, those terms and conditions set forth by AST shall prevail. Any variation or alteration of any AST term and/or condition[s] shall only be binding upon AST if evidenced in writing signed and approved by a duly authorized representative of AST.

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	<p>1.3 These terms and conditions contain the entire understanding of the parties herein, and no prior or contemporaneous negotiations, discussions, or materials shall be considered a part of the contract between the parties. Without limiting the foregoing, nothing contained in any other document, technical data, literature or catalogue shall be deemed to be incorporated in any contract with AST unless expressly incorporated by reference or executed in writing.</p> <p>1.4 Except as provided in Sections 1.1 and 3 herein, this Agreement may not be amended, modified, or supplemented except by written agreement signed by the party against which the enforcement of the amendment, modification, or supplement is sought. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision. No waiver shall be binding unless executed in writing by the party making the waiver.</p>
	<p>1.5 Except as otherwise stated herein, trade terms such as CIF and FOB when used in the Contract will have the meaning assigned to them by Incoterms (2000 Edition).</p> <p>1.6 In the event any provision of this Agreement is deemed to be invalid, illegal, or unenforceable, all other provisions of the Agreement that are not affected by the invalidity, illegality, or unenforceability shall remain in full force and effect.</p> <p>1.7 Except as may be expressly provided in a writing signed by the parties to this Agreement, the failure or delay of either party to this Agreement to insist in any instance on strict performance of any provision of this Agreement shall not be construed as a waiver of that provision or the relinquishment of any rights under that provision in the future, but the provision shall continue and remain in full force and effect.</p>
	<p>1.8 AST has adopted a minimum advertised price (“MAP”) policy for its products. The MAP policy may be amended from time to time to be consistent with changes in product pricing. AST will make the current MAP policy available to Purchaser as published, but Purchaser shall be responsible for ensuring that its advertising and advertised prices for AST products are in compliance with the current MAP policy at all times. The current MAP policy shall, be incorporated by reference into these Terms and Conditions.</p>



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2.	DELIVERY
	<p>2.1 The shipping dates will be established by AST upon receipt of orders from Purchaser. Any dates and/or times for shipment and/or delivery of goods are good faith estimates and are provided with the express understanding and agreement that, while AST will make every attempt to ship and/or deliver said goods by the estimated date and time, AST cannot guarantee actual shipment and/or delivery dates quoted. AST assumes no liability for loss, damage or consequential damage due to delays, and shall not be liable in damages or otherwise for any loss of whatever kind or nature that may occur from any delays or delivery after such estimated date. Purchaser shall not have the right to rescind the contract on account of late or delayed delivery of goods.</p>
	<p>2.2 In the event of interruption of AST's business in whole or in part by reason of fire, flood, wind, storm, earthquake, war, strike, embargo, acts of God, governmental action, one or more acts of terrorism, or any cause beyond AST's control, AST shall have the option of cancelling or deferring undelivered orders in whole or in part by verbal or written notification to Purchaser.</p>

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	<p>2.3 If any order for goods is to be shipped and/or delivered on a periodic or scheduled basis, each such shipment and/or delivery shall be treated as a separate and identifiable event and contract, notwithstanding that there may only be one written agreement for said order. Each shipment and/or delivery of goods by AST shall constitute full performance by AST of the order for goods shipped and/or delivered, and payment by Purchaser shall be deemed full performance and payment for said shipment and/or delivery. AST may suspend future scheduled shipments and/or deliveries of goods where payment for prior shipments and/or deliveries of goods have not been made.</p> <p>2.4 In the event of any failure or refusal by the Purchaser to accept delivery of any scheduled shipment and/or delivery of goods, the Purchaser shall remain liable for payment for said shipment and/or delivery, as well as any storage costs and other incidental and consequential damages that may accrue or result from said failure and/or refusal. Storage of goods shall be at Purchaser's risk of loss.</p> <p>2.5 Time shall not be deemed of the essence in respect to any times for performance on the part of AST or for shipment and/or delivery of any products or services.</p>
3.0	PRICE

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3.1 Prices quoted for products and/or services are good faith estimates based upon the costs of labour, materials, and other factors including international monetary exchange rates. Consequently, all prices quoted for products and/or services are subject to adjustment and/or change at any time, without notice, prior to AST's acceptance of a purchase order, to prices prevailing at the time of acceptance.

3.2 Prices may also be subject to change following changes or modifications to pending orders. Where such changes or modifications are requested by the Purchaser, AST will provide a new quote for such goods and/or services.

3.3 If there is a delay in completion of shipment of any order, due to any change requested by Purchaser or as a result of any delay on Purchaser's part in furnishing information required for completion of the order, the price agreed upon at time of acceptance of order is subject to change.

3.4 Prices quoted shall exclude and Purchaser shall be responsible for all sales, use, excise, value-added or other taxes and duties.

3.5 Purchaser's late payment shall constitute a material breach of the Contract and shall result in a service charge against Purchaser of the lesser of 1½ % per month of the Contract amount or the maximum amount permitted by law, and shall entitle AST to cancel or delay performance under the Contract.

3.6 AST shall retain a purchase money security interest or similar lien or right of repossession on all goods and/or products shipped to Purchaser under the Contract until paid in full. Purchaser shall execute documents and make filings or recordings as requested by AST for the perfection or other protection of such security interest.

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	3.7 Unless otherwise agreed in writing, expenses and/or charges for shipping, handling and insurance shall be borne by the Purchaser.
4.0	TITLE AND RISK
	4.1 Title, (legal, equitable and beneficial), to any goods and/or products shipped and/or delivered to Purchaser shall pass to the Purchaser only upon full payment to AST, including shipping, handling and any/all other related expenses. Payment of the full price of the goods shall include the amount of any interest, debt recovery costs or other sum payable under the terms of this and all other contracts between AST and the buyer under which the goods were delivered.
	4.2 Purchaser shall bear all risk of loss on all goods and products shipped and/or delivered upon placement with, or delivery of said goods and/or products to the freight carrier designated for freight or carriage to the Purchaser. Risk of loss shall be borne by the Purchaser regardless of the means of carriage or transport, and whether said carriage or transport be by land, sea or air.
	4.3 Where the Purchaser re-sells the goods and/or products, the Purchaser shall hold the proceeds of the sale in trust for AST, and shall keep the proceeds of sale in separate account of, and on behalf of AST.
	4.4 In addition to any other remedy available at law or in equity, AST shall be entitled at any time, until legal and beneficial title in the goods has passed to the Purchaser, to recover possession of such goods and for such purpose shall have the right to enter any premises.
5.0	CLAIMS

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	<p>5.1 The shipping dates will be established by AST upon receipt of orders from Purchaser. The promised delivery date is the best estimate possible based on current and anticipated factory loads of when the product will be shipped. AST assumes no liability for loss, damage or consequential damage due to delays.</p> <p>5.2 Risk of loss shall pass to Purchaser upon delivery of the goods and/or products to the freight carrier designated for freight or carriage to the Purchaser regardless of the means of carriage or transport, and whether said carriage or transport be by land, sea or airfreight.</p> <p>5.3 Purchaser shall promptly inspect the goods and/or products upon receipt. If the goods and/or products are found to be defective or damaged, Purchaser must notify AST and the freight carrier of any damage and/or defective goods and/or products within 3 days of delivery.</p> <p>5.4 Claims arising out of an incomplete or missing delivery of goods and/or products must be lodged with AST and, where appropriate, with the freight carrier within seven days of delivery to the Purchaser, or fourteen days of failure of the goods to reach their destination.</p>
	<p>5.5 AST shall not be liable for any incorrect receipt or quantity delivery error of any goods where the error would be apparent upon inspection, unless the Purchaser, within seven days after receipt of the goods, gives AST a written notice specifying the matter complained of and shall thereafter promptly return any incorrect or non-conforming goods to AST's premises before they have been used, processed or sold for the purpose of inspection by AST.</p>
	<p>5.6 Purchaser shall have the sole responsibility and obligation, at its own expense, to procure any license[s], authority and/or consent of any government, governmental agency or other authority for the export and/or import of any goods or product[s] before delivery or shipment of said goods or product[s] by AST. AST shall have no obligation to seek, solicit or procure any license[s], authority or consent from any government, governmental agency or other authority whatsoever, for the import or export of any goods or product[s], and shall not be deemed, or held responsible, legally or in damages, for any refusal by any government, governmental agency or other authority to permit such import or export of any goods or product[s].</p>

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6.0	TERMS OF PAYMENT
	6.1 Unless otherwise expressly agreed in writing, full payment for all goods, product[s] and services shall be tendered 30 days from date of invoice and shall be free of deductions of any kind. Payment shall not be held on account of any cross or counter claim by the Purchaser against AST.
	6.2 Where the Purchaser requests a specific means of transport of goods and/or products, payment shall be due 30 days from notification or invoice by AST that the goods are ready for shipment.
	6.3 AST reserves the right (without prejudice) to suspend or cancel any unfulfilled contract for the supply of goods where:
	6.3.1 Payment for any previous contract, shipment or delivery remains outstanding after due date for payment or wherein the reasonable opinion of AST the Purchaser is unlikely or unable to pay its debts as they fall due.
	6.3.2 If the Purchaser has failed to provide within the time specified and/or requested by AST any letter of credit, bill of exchange, bill of lading, warehouse receipt, or any other security or document required by the contract.
	6.3.3 Where the Purchaser has failed to take delivery of any goods under the contract otherwise than in accordance with the Purchaser's contractual rights and obligations.

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	<p>6.3.4 If (a) the Purchaser becomes insolvent, (b) a resolution is passed by its governing body for its dissolution or winding up (except solely for the purpose of amalgamation, reconstruction, or merger), (c) a court of competent jurisdiction orders the Purchaser's dissolution or winding up, (d) a receiver is appointed for any substantial portion of the business or assets of the Purchaser, (e) the Purchaser is adjudicated bankrupt or becomes a debtor under the United States Bankruptcy Code or any similar law of any jurisdiction (and in the case of an involuntary petition under the United States Bankruptcy Code, such petition is not dismissed within 60 days of filing), (f) the Purchaser makes a general assignment for the benefit of creditors, (g) the Purchaser suspends substantially all payment of its debts, or (g) the Purchaser convenes a meeting or enters into any composition or arrangement with his creditors.</p>
	<p>6.3.5 If the prompt transfer of funds from the country of the Purchaser's residence, or from the country from which Purchaser is to transfer funds to AST, is impeded either by laws or acts or of any government, or by reason of strikes or breakdowns in the banking system in the country of the Purchaser's residence or the country from which Purchaser is to transfer funds to AST.</p>
7.0	DESCRIPTION AND TECHNICAL INFORMATION
	<p>7.1 AST reserves the right to make without notice any modifications, improvements or alterations to goods described in any catalogue, data sheet or any other specification.</p>
8.0	WARRANTY
	<p>8.1 AST warrants that all goods supplied shall on shipment be in accordance with the specification and calibration set out in the test certificate issued with the goods, but AST shall not be liable under this warranty if the goods have been mishandled, used for a purpose unintended by AST, incorrectly installed or used.</p>
	<p>8.2 Except as expressly stated otherwise in these terms and conditions or in AST's order confirmation, AST makes no express or implied warranties AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.</p>

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	<p>8.3 AST shall not be liable for any defects in the quality or state of the goods not apparent on inspection unless the Purchaser shall, within 12 months from the date of shipment of the goods from AST's premises have given to AST a written notice specifying the matter complained of and shall thereafter if requested by AST return the goods to AST at the cost of the Purchaser for the purpose of inspection by AST. AST will be liable only for repair of any defective goods at the premises of AST, all costs of disassembling and re-delivery being for the account of the Purchaser. If it is commercially unreasonable to return the goods to AST, AST will, upon the request of the Purchaser, send its representative(s) to the Purchaser's place of business to inspect the goods. The purchaser shall bear all costs of such representative(s) and AST will be entitled to adequate assurances of payment before sending such representative(s).</p> <p>8.4 Except as provided herein, AST makes no further warranties, express or implied.</p> <p>8.4.1 Notwithstanding, AST may issue additional or differing warranties on specific AST products and, where appropriate, said warranties shall be identified in a separate document entitled Warranties List.</p>
9.0	DESIGNS, DRAWINGS, CUSTOM DESIGN WORK, VARIATIONS AND TRADE MARKS
	<p>9.1 All designs or drawings supplied by AST in connection with any quotation or contract shall remain the property of AST unless otherwise agreed in writing. The supply of goods by AST shall not confer any right on the Purchaser to use any of AST trade names or designs, which shall remain the property of AST.</p> <p>9.2 AST reserves and retains all intellectual property rights included but not limited to trademark and copyright in all drawings, designs, materials and other media utilized in the production of the product or services. Under no circumstance will any right, title or interest to any intellectual property rights pass to the customer except by express written consent signed by AST.</p>

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	<p>9.3 AST warrants that goods, products and services provided to Purchaser based upon details and specifications provided by Purchaser shall be suitable for the stated application. AST shall not be responsible for any goods, products or services that are manufactured or provided based upon missing or an absence of, or faulty or defective details and/or specifications provided by the Purchaser.</p> <p>9.4 Notwithstanding the limitations of liability in this agreement, as well as that set forth in paragraph 9.3 herein, the maximum liability exposure of AST for any failure of any goods, products or services provided shall be the purchase price of any affected goods, products or services provided by AST.</p> <p>9.5 Any such specification or information received after the date on which the contract is made will be deemed to be an order for variation and dealt with as set out below.</p>
	<p>9.6 No variations to contract will be undertaken or accepted without a detailed written order for the same and, if accepted, will operate to vary the terms of the Contract as a whole including but not limited to reference to price and time for delivery or completion. At no time will AST be under any obligation to accept any order for variation.</p>
	<p>9.7 In the event that the customer raises an issue or problem as to failure in performance on the part of AST or a defect in product or services supplied by same must be notified to AST in writing within three working days of delivery of product or services (and if delivered in instalments within three working days of delivery of each respective instalment) and at the end of three working days if no such notice is received by AST it shall be conclusively deemed that the product or services are accepted as being fully in compliance in every respect with the terms of the contract.</p>
10.0	CANCELLATION AND RETURNED GOODS

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	<p>10.1 AST shall be entitled to levy a cancellation charge when any order, or part thereof, is cancelled more than 24 hours after receipt of order. Except as provided in paragraph 10.2 below, the cancellation charge assessed by AST shall at the time of cancellation not normally exceed 80% of the appropriate invoice value.</p> <p>10.2 In the event of cancellation of an order for custom design work product or services by the customer AST reserve the right to charge proportionately for the work done up to that date.</p> <p>10.3 AST, at its sole discretion, reserves the right to refuse to accept notice of cancellation by the Purchaser.</p>
11.0	LIMITATION EXCLUSION
	<p>11.1 AST shall not be liable for indirect, incidental, consequential, special, punitive, or exemplary damages, including, without limitation, loss of profit, damage to plant, even if AST is advised of the possibility of such damages.</p> <p>11.2 AST's total liability in damages or otherwise to Purchaser and its affiliates shall not exceed payments received by Purchaser for the unit of Product furnished or to be furnished resulting in the loss or damage claimed.</p>
12.00	CHOICE OF LAW

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12.1 If this Contract concerns the sale of Products to be delivered to U.S. destinations, it shall be governed by the laws of the State of California, U.S.A. (excluding choice of law rules and the provisions of the Convention for the International Sale of Goods (CISG)). Any dispute or claim arising out, relating to or in connection with such a Contract shall be resolved exclusively by final, binding arbitration pursuant to the rules of the American Arbitration Association, provided that, Seller may seek injunctive or other relief in any court of law in order to prevent any unauthorized copying, disclosure, use, retention or distribution of its intellectual property. If this Contract concerns the sale of Products to be delivered to non-U.S. destinations, it shall be governed by CISG and (for issues not addressed by CISG) by local law applied pursuant to choice of law rules or mutual agreement of the parties and any disputes or claims may be resolved in any court of competent jurisdiction.



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