

TERMS AND CONDITIONS OF SALE & DELIVERY

1. GENERAL

- 1.1. These Terms and Conditions of Sale & Delivery (including any attachment(s) referenced herein) shall apply to all sales and deliveries of Product(s) by Napatech to Buyer, and supersede all other agreements and understandings (including, but not limited to, any terms or conditions which may be included in Buyer's purchase order, order confirmation or similar document), whether written or oral, between the parties with respect to the purchase. Any sales and deliveries of Napatech Software shall further be subject to the Napatech Software License Agreement which can be found at: "https://www.napatech.com/terms-and-conditions/".
- 1.2. All orders for Product(s) shall be deemed to be an offer by the Buyer to purchase Product(s) pursuant to these Terms and Conditions of Sale & Delivery (as amended from time to time).
- 1.3. Acceptance of delivery of the Product(s) shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions of Sale & Delivery.
- 1.4. Any variation to these Terms and Conditions of Sale & Delivery (including any special terms and conditions agreed between the parties including without limitation as to discounts) shall be inapplicable unless agreed to in writing by Napatech.
- 1.5. Any advice, recommendation or representation given by Napatech or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Product(s) or otherwise which is not confirmed in writing by Napatech is followed or acted upon entirely at the Buyer's own risk, and, accordingly, Napatech shall not be liable for any such advice, recommendation or representation which is not so confirmed in writing.
- 1.6. Any reference in these Terms and Conditions of Sale & Delivery to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.
- 1.7. The headings in these Terms and Conditions of Sale & Delivery are for convenience only and shall not affect their interpretation.
- 1.8. Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Napatech shall be subject to correction without any liability on the part of Napatech.
- 1.9. Any notice required or permitted to be given by either party to the other under these Terms and Conditions of Sale & Delivery shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party given the notice.

2. DEFINITIONS

- 2.1. "**Buyer**" means the person or entity who accepts a quotation from Napatech for the sale of the Product(s) or whose order for the Product(s) is accepted by Napatech.
- 2.2. "**Napatech**" means Napatech Inc. or Napatech A/S according to the order confirmation.
- 2.3. "**Product**" means any agreed deliverable (including, but not limited to, any hardware, software and/or services) from Napatech to Buyer or any third-party appointed to receive the deliverable as may be further specified in any document agreed between the parties.
- 2.4. "**VAT**" means value added tax, sales tax, or any similar tax (if any) properly chargeable in any relevant jurisdiction.

3. ORDERS AND SPECIFICATIONS

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by Napatech unless and until confirmed in writing by Napatech's order handling representative.
- 3.2. The Buyer shall be responsible to Napatech for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving Napatech any necessary information relating to the Product(s) within a sufficient time to enable Napatech to perform the agreement in accordance with its terms.
- 3.3. The quantity, quality, and description of and any specification for the Product(s) shall be those set out in Napatech's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Napatech).
- 3.4. If the Product(s) are to be manufactured or any process is to be applied to the Product(s) by Napatech in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Napatech against all losses, damages, costs and expenses awarded against or incurred by Napatech in connection with or paid or agreed to be paid by Napatech in settlement of any claim of infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Napatech's use of the Buyer's specification.

- 3.5. All information on design, weight, dimensions, capacity, technical specifications, etc., given in catalogues, prospects, advertisements, illustrations, and price lists is only binding to the extent expressly referred to in Napatech's order confirmation.

- 3.6. Reference is also made to the Napatech Terms of Warranty, Support and Change Notification (as amended from time to time).

4. PRICES

- 4.1. All prices quoted are valid for thirty (30) calendar days only or such lesser period as shall be stated by Napatech in the relevant quotation or until earlier acceptance by the Buyer, after which time they may be altered by Napatech without giving notice to the Buyer. Prices quoted by Napatech includes only the Product(s) comprised by the quote.
- 4.2. All prices given in Napatech's price quote(s) are current prices. Napatech reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Product(s) to reflect any increase in the cost to Napatech which is due to any factor beyond the reasonably control of Napatech (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture) or to any change in delivery dates, quantities or specifications for Product(s) which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Napatech adequate information or instructions.
- 4.3. Prices do not include any privilege, occupation, personal property, VAT, excise, use or other taxes, or any tariffs or customs duties, and Buyer shall be liable for all such taxes and duties, whether or not Napatech invoiced Buyer for them. In case of any withholdings of tax on the payments made by Buyer to Napatech, Buyer is obliged to provide Napatech with all relevant documentation concerning the withholding
- 4.4. A dispatch fee of USD 200.00 is charged for each order with a value of less than USD 1,000.00, excluding VAT.
- 4.5. When Napatech has sent a written order confirmation, the order to purchase is considered binding. Changes can only be effected with written consent from Napatech. If cancellation is accepted, a fee of 20% of the amount of the order value can be charged by Napatech.

5. PAYMENT

- 5.1. Subject to any special terms agreed in writing between the Buyer and Napatech, Napatech shall be entitled to invoice the Buyer for the price of the Product(s) at any time before or after delivery of the Product(s).
- 5.2. Payment is due thirty (30) calendar days following the date of invoice.
- 5.3. Napatech shall be entitled to charge interest on overdue payments from the date when payment becomes due in the amount of 2% for each month or fraction thereof following the date of payment.
- 5.4. Even if the Buyer may have a counterclaim against Napatech, such claim cannot be set off against the payment due unless the claim is acknowledged in writing by Napatech.
- 5.5. Napatech reserves the right to grant, refuse restrict, cancel, or alter credit terms at its sole discretion at any time.
- 5.6. If payment or any part thereof is not made by the due date, Napatech shall be entitled to:
 - 5.6.1. require payment in advance of delivery in relation to any Product(s) not previously delivered;
 - 5.6.2. refuse to make delivery of any undelivered Product(s) whether ordered under the same agreement or not and without incurring any liability whatsoever to the Buyer for non-delivery or any delay in delivery;
 - 5.6.3. appropriate any payment made by the Buyer to such of the Product(s) (or Product(s) supplied under any other contract) as Napatech may think fit;
 - 5.6.4. terminate the agreement concerning the Product(s).
- 5.7. In the event that Napatech terminates the agreement pursuant to Section 5.6.4 above, the Buyer shall indemnify Napatech in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Napatech as a result of such termination.

6. DELIVERY

- 6.1. Products are delivered **FCA INCOTERMS 2020** at the location specified by Napatech in connection with Napatech's price quote or order confirmation (or, if no location is specified, Connecticut, USA).
- 6.2. Unless otherwise agreed in writing, delivery of the Product(s) shall take place on the date specified by Napatech. The Buyer shall make all arrangements necessary to take delivery of the Product(s) whenever they are tendered for delivery.

- 6.3. The date of delivery specified by Napatech is an estimate only. Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery date stated.
- 6.4. The Product(s) may be delivered by Napatech in advance of the quoted delivery date upon giving reasonable notice to the Buyer. Napatech shall be entitled to make part delivery of the Product(s) at any time upon giving reasonable notice to the Buyer.
- 6.5. If the Buyer fails to accept delivery of Product(s) on the delivery date or within three (3) calendar days of notification that they are ready for delivery, the Buyer shall then pay reasonable storage charges or demurrage as appropriate in the circumstances until the Product(s) are either delivered to the Buyer or disposed of elsewhere.
- 6.6. If the delivery is delayed in whole or in part, Napatech is not liable unless it can be proven that the delay is due to errors or negligence on the part of Napatech and if the Buyer can prove that it has suffered a documented loss. Damages cannot exceed more than 10% of the invoice value of the delayed delivery, exclusive of VAT and import levy.
- 6.7. If the Buyer fails to take delivery of the Product(s) or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Napatech's fault) then, without prejudice to any other right or remedy available to Napatech, Napatech may:
- 6.7.1. store the Product(s) until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.7.2. sell the Product(s) at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the agreement or charge the Buyer for any shortfall below the price under the agreement.
- 7. RETENTION OF PROPERTY**
- 7.1. Notwithstanding delivery and the passing of risk in the Product(s), or any other provision of these Terms and Conditions of Sale & Delivery, the title and right of ownership in the Product(s) shall not pass to the Buyer until Napatech has received in cash or cleared funds payment in full of the price of the Product(s) and payment in full of all sums due from the Buyer to Napatech whether under the agreement or by virtue of any other liability of the Buyer to Napatech.
- 7.2. Until such time as the title and right of ownership in the Product(s) passes to the Buyer, the Buyer shall hold the Product(s) as Napatech's fiduciary agent and bailee and shall keep the Product(s) separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Napatech's property. Until that time the Buyer shall be entitled to resell or use the Product(s) in the ordinary course of its business, but shall account to Napatech for such part of the proceeds of sale or otherwise of the Product(s), whether tangible or intangible, including insurance proceeds, as is equivalent to the invoice value of the Product(s) and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.3. Until such time as the property in the Product(s) passes to the Buyer (and provided the Product(s) are still in existence and have not been resold), Napatech shall be entitled at any time to require the Buyer to deliver back the Product(s) to Napatech and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Product(s) are stored and repossess the Product(s).
- 7.4. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Product(s) which remain the property of Napatech but if the Buyer does so all moneys owing by the Buyer to Napatech shall (without prejudice to any other right or remedy of Napatech) become due and payable.
- 7.5. For the avoidance of doubt, nothing contained in this Section 7 shall entitle the Buyer to return any of the Product(s) to Napatech save as expressly provided in these Terms and Conditions of Sale & Delivery or as expressly agreed in writing between Napatech and the Buyer.
- 8. LIMITED WARRANTIES, SUPPORT AND CHANGE NOTIFICATION**
- 8.1. Napatech provides limited warranties, support and change notifications to Buyer in relation to the Product(s) as provided in the attached "Napatech Terms on Warranty, Support and Change Notification" (as amended from time to time) which are an integral part of these Terms and Conditions of Sale & Delivery and which can also be found at: <https://www.napatech.com/terms-and-conditions/>.
- 9. LIMITATION OF LIABILITY**
- 9.1. In no event shall Napatech be liable for any special, indirect or consequential damages whatsoever, including, without limitation, damages for loss of profits, loss of business, corruption or loss of data, failure to transmit or receive any data or information, business interruption or any other commercial damages or losses, arising out of or related to the use or inability to use the Product(s), however caused, regardless of the theory of liability (contract, tort or otherwise) and even if Napatech has been advised of the possibility of such damages.
- 9.2. Napatech shall not be liable to the Buyer or be deemed to be in breach of the agreement by reason of any delay in performing, or any failure to perform, any of the Napatech's obligations in relation to the Product(s) if the delay or failure was due to any cause beyond Napatech's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Napatech's reasonable control:
- 9.2.1. act of God, explosion, flood, tempest, fire or accident;
 - 9.2.2. war or threat of war, sabotage, insurrection, civil disturbance, or requisition;
 - 9.2.3. acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 9.2.4. import or export regulations or embargoes;
 - 9.2.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Napatech or of a third party);
 - 9.2.6. difficulties in obtaining raw materials, labor, fuel, parts or machinery; or
 - 9.2.7. power failure or breakdown in machinery.
- 9.3. Napatech's total cumulative liability to Buyer, including for direct damages and any indemnification obligation under the agreement (and whether the breach arises because of breach of contract, negligence, or for any other reason), will not exceed the sum paid or payable to Napatech by Buyer under the agreement for the Product(s) that are the subject of and directly affected by such claim.
- 9.4. To the extent that Napatech should be held liable by a third party in excess of the liability of this Section 9 Buyer shall hold Napatech harmless from such liability.
- 10. PRODUCT LIABILITY**
- 10.1. To the extent permitted under applicable law, Napatech shall not be liable for personal injury or property damage which is caused by defects in the Product(s) whether caused to the Buyer, the Buyer's personnel, the Buyer's contractors, or any third party, unless it is demonstrated that the damage is due to Napatech's gross negligence or willful conduct.
- 10.2. If any third party should claim damages from the Buyer based on allegations of product liability in relation to the Product(s), the Buyer must notify Napatech thereof immediately in writing.
- 10.3. The Buyer shall accept to be sued at the court or other venue that tries any product liability case against Napatech arising out of or related to Product(s) sold to Buyer under the agreement.
- 10.4. For the sake of clarity, Napatech will have no liability and Buyer shall indemnify Napatech for product liability if and to the extent that a claim of product liability is based on (a) a product modification made by Buyer or a third party, (b) a product modification made by Napatech at Buyer's request, (c) use or interconnection by Buyer of the Product(s) in combination with other products not made or sourced by Napatech, or (d) Product(s) made to specifications not provided by Napatech.
- 11. INSOLVENCY OF BUYER**
- 11.1. If Napatech reasonably apprehends that Buyer is not or will not be able to make payments to Napatech as they come due and notifies the Buyer accordingly, then, without prejudice to any other right or remedy available to Napatech, Napatech shall be entitled to cancel the agreement with Buyer or suspend any further deliveries under the agreement without any liability to the Buyer, and if the Product(s) have been delivered, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12. INTELLECTUAL PROPERTY AND RESTRICTIONS**
- 12.1. Napatech retains title and ownership to any and all intellectual property rights (whether registered or not) in the Product(s) (including, but not limited to, copyrights, rights in source code, trade secrets, confidential information, rights in inventions, patents, trademarks and designs), except that Buyer may use the Product(s) for their intended purpose.
- 12.2. Except as expressly agreed by the parties in writing, Buyer shall not (a) manufacture or have manufactured any products or provide any services utilizing the intellectual property of Napatech; (b) alter, enhance or otherwise modify the Product(s) or intellectual property or any parts thereof; (c) disassemble, decompile or reverse engineer any of the Product(s) or intellectual property or any parts thereof or prepare derivative works of any of these; (d) distribute, sublicense or transfer the source code, trade secrets or confidential information contained in any Product(s) or any derivatives thereof to any third party, and/or (e) use any trademarks or similar marks of Napatech for marketing and sales purposes or any other commercial purpose.
- 12.3. Napatech will indemnify and defend Buyer against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Product(s) of a third-party intellectual property right. If a claim under Section 12.3 results, or is likely to result, in an injunction or other order that would prevent Napatech from supplying or Buyer from using Product(s) for their intended purpose, Napatech will at its option and expense either (a) secure a license of the intellectual property right that permits Napatech to continue supplying the Product(s) to Buyer respectively permits the Buyer to use the Product(s) for their intended purpose, or (b) modify the Products so that they become non-infringing, so long as the modification does

- not materially alter the operation or performance of the Products, or (c) replace the Products with non-infringing but practically equivalent products.
- 12.4. Napatech will have no liability under Section 12.3 unless Buyer provides Napatech with full information, cooperation, and assistance regarding, and authority to defend, a claim covered by Section 12.3. Napatech will further have no liability under Section 12.3 if and to the extent that a claim of infringement is based on (a) a product modification made by Buyer or a third party, (b) a product modification made by Napatech at Buyer's request, (c) use or interconnection by Buyer of the Product in combination with other products not made or sourced by Napatech, or (d) Product(s) made to specifications not provided by Napatech.
- 13. CONFIDENTIALITY**
- 13.1. Unless the parties have entered, or later enter into, a non-disclosure agreement applying to this agreement, the following shall apply:
- 13.1.1. From time to time Napatech and Buyer may disclose to each other confidential and proprietary information relating to the Product(s) (a) which information is clearly marked as confidential or proprietary or (b) which information would, under the circumstances, clearly appear to a reasonable person to be confidential or proprietary. Such confidential information shall not include information which (a) is now available or becomes available to the public without breach of this Section 13; (b) is approved for release by the disclosing party; (c) is lawfully obtained from a third party or parties without a duty of confidentiality; (d) is known to the receiving party prior to such disclosure as demonstrated by files in existence at the time of disclosure; (e) is independently developed by the receiving party without the use of any of disclosing party's confidential information or any breach of Section 13 as demonstrated by files in existence at the time of development; or (f) is required to be disclosed under applicable law or rules of a relevant stock exchange.
- 13.1.2. The receiving party shall (a) not disclose the other party's confidential information to any third party; (b) restrict disclosure of such confidential information to only those employees, agents or consultants who must be directly involved with the confidential information for the purposes of the agreement and who are bound by confidentiality terms substantially similar to those in Section 13; (c) not reverse engineer, decompile or disassemble any confidential information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against unauthorized disclosure of confidential information; and (e) promptly notify the disclosing party upon discovery of any unauthorized use or disclosure of the confidential information and take reasonable steps to regain possession of the confidential information and prevent further unauthorized actions or other breach of Section 13.
- 14. Personal DATA**
- 14.1. In connection with the agreement, Napatech may gain access to and/or acquire the ability to transfer, store and process personal data of employees of Buyer.
- 14.2.
- 14.3. Napatech will only process such personal data to the extent reasonable required to enable it to provide the Product(s) as well as fulfil its other obligations and uphold its rights under the agreement or as requested by and agreed with Buyer. Napatech will not retain personal data longer than necessary.
- 14.4. Napatech will not disclose personal data to any third parties other than employees, directors, agents, subcontractors, or advisors in a strict "need-to-know" basis.
- 14.5. Napatech will maintain technical and organizational security measures to protect the personal data.
- 14.6. Further information on Napatech's approach to data protection can be found on the Napatech website.
- 15. INTERNATIONAL RELATIONS**
- 15.1. Notwithstanding any other restrictions in these Terms and Conditions of Sale & Delivery, the Buyer shall comply with all applicable laws, rules and regulations governing the export, import or re-export or re-import of the Product(s) or any work deriving from the use of the Product(s) and will obtain all necessary licenses, permits and similar.
- 15.2. Buyer will, if reasonably requested by Napatech, provide all necessary or appropriate assistance and information to Napatech at all relevant times to allow Napatech to comply with all export controls, including information regarding the end-user(s) and the end use of the Product(s).
- 15.3. Buyer will notify Napatech of the requirements of any applicable legislation or regulations requiring action on the part of Napatech and for the payment of any duties or similar in connection with the Product(s).
- 15.4. Napatech may restrict the sale of Product(s) within specific geographic regions because of various contractual arrangements or governmental restrictions.
- 15.5. The Buyer is responsible in every respect and at its own account for ensuring that Napatech's Products comply with the national legislation of the country or countries in which the Buyer markets or uses Napatech's Products.
- 15.6. The Buyer shall indemnify Napatech for any claim, loss or fine related to the Buyer's non-compliance with Section 15.
- 16. VENUE AND GOVERNING LAW**
- 16.1. Any dispute arising out of or in connection with the delivery of Product(s), the agreement concerning the Product(s) respectively these Terms and Conditions of Sale & Delivery including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. The arbitral tribunal shall be composed of three arbitrators. Each party shall appoint one arbitrator, while the chairman of the arbitration will be appointed by the The Danish Institute of Arbitration. The place of arbitration shall be Copenhagen, Denmark. The language to be used in the arbitral proceedings shall be English.
- 16.2. The substantive law of Denmark shall apply, not taking into account its provisions that may lead to the application of any other substantial law than Danish law.

TERMS OF WARRANTY, SUPPORT AND CHANGE NOTIFICATION

1. GENERAL

- 1.1. These Terms of Warranty, Support and Change Notification are an attachment to and integral part of the Napatech Terms and Conditions of Sale & Delivery which can be found at: "https://www.napatech.com/terms-and-conditions/".
- 1.2. Unless as otherwise provided herein,
 - 1.2.1. these Terms of Warranty, Support and Change Notification shall apply and can be amended or varied to the same extent as the Napatech Terms and Conditions of Sale & Delivery;
 - 1.2.2. the terms and definitions used in the Napatech Terms and Conditions of Sale & Delivery shall apply.

2. WARRANTIES TO BUYER

- 2.1. Standard Warranty. Subject to the conditions set out below Napatech warrants to the Buyer that:
 - 2.1.1. for eighteen (18) months after delivery, the Product(s) will (a) correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade, (b) be free from defects in material and workmanship at the time of delivery and (c), at the time of delivery, comply with all health and safety and other applicable legal requirements;
 - 2.1.2. Napatech has good title to the Product(s) at the time of delivery.
- 2.2. Extended Warranty. Buyer may choose to purchase an Extended Warranty concerning the Product(s) whereby the warranty in Section 2.1.1 above is extended by (i) additionally 12 months or (ii) additionally 24 months, provided such Extended Warranty is purchased by Buyer before the end of the period in Section 2.1.1 above.
- 2.3. Premium Warranty. Buyer may choose to purchase a Premium Warranty in connection with the purchase of the Product(s) whereby Napatech:
 - 2.3.1. warrants to the Buyer that for (i) sixty (60) months or (ii) 84 months, after delivery, the Product(s) will (a) correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade, (b) be free from defects in material and workmanship at the time of delivery and (c), at the time of delivery, comply with all health and safety and other applicable legal requirements;
 - 2.3.2. warrants to the Buyer that Napatech has good title to the Product(s) at the time of delivery;
 - 2.3.3. undertakes to provide the Premium Warranty services set out in Section 2.11 below;
 - 2.3.4. undertakes to show commercially reasonable efforts in ensuring that the Buyer can for (i) sixty (60) months or (ii) 84 months, after delivery of the Product(s) purchase additional Product(s) as originally delivered.
- 2.4. EXCEPT AS STATED IN THIS CLAUSE 2, NAPATECH DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY AS TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE WARRANTIES HEREIN ARE PROVIDED TO THE BUYER ONLY.
- 2.5. Any warranty given herein by Napatech is subject to the following conditions:
 - 2.5.1. Napatech shall be under no liability in respect of any defect in the Product(s) arising from any drawing, design or specification supplied by the Buyer;
 - 2.5.2. Napatech shall be under no liability in respect of any defect arising from fair wear and tear, insufficient maintenance, incorrect installation, willful damage, negligence, abnormal working conditions, failure to follow Napatech's instructions, misuse, alteration or repair of Product(s) without Napatech's approval;
 - 2.5.3. Napatech shall be under no liability under any warranty (or any condition or guarantee) if the total price for the Product(s) has not been paid by the due date;
 - 2.5.4. Any warranty provided herein does not extend to product(s) not manufactured by Napatech, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Napatech.
- 2.6. Only upon written approval from the management of Napatech may Napatech's Product(s) be applied as critical components of the Buyer's equipment, such as, but not limited to, application in resuscitation equipment, airplanes, nuclear power stations and within the space industry. Furthermore, reference is made to the note in the manual pertaining to each Product. Any performance tests and ratings included in the specifications or otherwise are measured using specific computer systems and/or components and reflect the approximate performance of the Product(s) as measured by those tests. Any difference in system hardware or software design or configuration may affect actual performance. Buyer should consult other sources of information to evaluate the performance of systems or components Buyer is considering purchasing from Napatech.
- 2.7. The Buyer shall examine and test each Product thoroughly immediately upon delivery.

- 2.8. Any claim by the Buyer which is based on any defect in the quality or condition of the Product(s) or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified in writing to Napatech immediately and, in any case, within ten (10) days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, immediately upon discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Napatech accordingly, the Buyer shall not be entitled to reject the Product(s) and Napatech shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Product(s) had been delivered in accordance with the agreement.
- 2.9. In addition to Support as provided in Section 4 below, where any valid claim in respect of any of the Product(s) is covered by the Standard Warranty or an Extended Warranty (see Section 2.1 above and 2.2 above) is notified to Napatech, Napatech shall, at its discretion, be entitled to:
 - 2.9.1. remedy the defect;
 - 2.9.2. replace the Product(s) with an equivalent Product(s); or
 - 2.9.3. refund to the Buyer the price of the Product(s) (or a proportionate part of the price);
- 2.10. Napatech shall have no further liability to the Buyer. If Napatech offers to remedy the defect or replace the Product, the Buyer is not entitled to rescind the contract of sale or demand proportionate price reduction or damages because of the defect. Napatech is not liable for any delay caused by the remedy or replacement. The Buyer is not entitled to dispose of the Product(s) or return them to Napatech without Napatech's written approval thereof. Any costs associated with transporting the Product(s) to Napatech for remedy or replacement shall be at Buyer's expense and any return of the Product(s) will be at Napatech's expense (CIP Incoterms 2020), regardless of a defect being found or not.
- 2.11. In addition to Support as provided in Section 4 below, where any valid claim in respect of any of the Product(s) is covered by the Premium Warranty under Section 2.3 above is notified to Napatech, Napatech shall:
 - 2.11.1. replace the Product(s) with the same Product(s) as originally delivered (except for Product(s) experiencing systemic defects) or, at the Buyer's option, an equivalent Product(s) as offered by Napatech; or
 - 2.11.2. if the Buyer does not want replacement of the Product(s), then Napatech shall, at its discretion, be entitled to either (a) remedy the defect or (b) refund to the Buyer the price of the Product(s) (or a proportionate part of the price).
 - 2.11.3. undertake to provide the Advance Replacement Right services set out in Section 3.2 below without any further payment(s) from Buyer in connection with the replacement Product(s);

However, Napatech shall have no further liability to the Buyer. If Napatech replaces the Product(s) or offers to remedy the defect, the Buyer is not entitled to rescind the contract of sale or demand proportionate price reduction or damages because of the defect. Napatech is not liable for any delay caused by the replacement or remedy. The Buyer is not entitled to dispose of the Product(s) or return them to Napatech without Napatech's written approval thereof. Any costs associated with transporting the Product(s) to Napatech and back will be at Napatech's expense (CIP Incoterms 2020), regardless of a defect being found or not.

- 2.12. Provided the Product(s) are under warranty, Napatech will show reasonable efforts in issuing, within 1 business day, a Return Material Authorization ("RMA"), meaning written confirmation that Buyer can return Product(s) for replacement or remedy (as the case may be). Further, Napatech will show reasonable effort in investigating and taking appropriate actions to complete replacement or remedying of defective Product(s) within 30 days following receipt of the Product(s).
- 2.13. It is noted that Napatech liability for any breach of warranties are subject to the limitation of liability in the Terms and Conditions of Sale & Delivery.

3. ADVANCE PRODUCT DELIVERY IN CASE OF SUSPECTED DEFECT

- 3.1. Provided that the Product(s) are within a warranty period as set out in Section 2 above, the Buyer may, if a defect in the Product(s) is suspected, choose to buy an Advance Replacement Product(s). If the Product(s) in question are then later found to be actually defective, Napatech will (a) credit Buyer the price for the original purchased Product(s) found to be defective, and (b) retain the defective Product(s) as received from Buyer. Napatech will show commercially reasonable efforts in shipping the purchased replacement Product(s) to Buyer within 5 business days following the receipt of the Buyer standard Purchase Order.
- 3.2. At the time of purchasing the Product(s) or the Extended Warranty, the Buyer may choose to buy Advance Replacement Right for the Product(s). If the Buyer, within the warranty period as set out in Section 2 above, suspects a defect in the Product(s) and request a Return Material Authorization ("RMA"), Napatech will provide the advance replacement service (a) without any further payment(s) from Buyer in connection with the replacement Product(s), and (b) use commercially reasonable efforts in shipping replacement Product(s) to Buyer within 3 business days of the RMA request from Buyer (CIP Incoterms

2020). The potential defect Product(s) must be returned to Napatech whether or not actually defective.

- 3.3. At the time of purchasing the Product(s), the Buyer may alternatively choose to buy a Premium Advance Replacement Right for the Product(s). If the Buyer, suspects a defect in the Product(s) and request a replacement Product(s), Napatech will provide the advance replacement service (a) without any further payment(s) from Buyer in connection with the replacement Product(s), and (b) use commercially reasonable efforts in in delivering and replacing on-site, an equivalent Product(s) to Buyer within 24 hours of the request from Buyer. The potential defect Product(s) must be returned to Napatech whether or not actually defective. Special terms may apply.

(usually six (6) months after the EOLA), provided that, such Purchase Orders are confirmed for delivery before the last-time-delivery date (LTD) specified by Napatech in the EOLA (usually six (6) months after the LTB).

4. SUPPORT TO BUYER

- 4.1. During the warranty period as provided in Section 2 above, Napatech shall upon request show commercially reasonable efforts in providing support to the Buyer in addressing problems or questions pertaining to the Product(s) in the form of (a) providing guidance and information on installation, deinstallation, use and maintenance of the Product(s), (b) providing guidance and information on software maintenance or bugfix updates and releases pertaining to the Product(s), (c) addressing issues pertaining to the products via work-arounds, software updates or software bugfixes, and (d) advice on operation environment and compatibility ("**Support**").
- 4.2. Buyer's requests for Support and communication between Buyer and Napatech concerning Support must be conducted via the Napatech Support e-mail "ntsupport@napatech.com" or via the Napatech Support Portal at "https://supportportal.napatech.com".
- 4.3. Upon receipt of a request for Support from the Buyer, Napatech will show commercial reasonable effort in:
- 4.3.1. Issuing e-mail confirmation to Buyer of receipt ("Request Accepted") in less than 15 minutes;
 - 4.3.2. Initiating relevant steps in addressing Buyer's request within 1 business day following receipt and confirming this to Buyer ("Request Handling Initiated");
 - 4.3.3. Providing a resolution to a request for Support concerning guidance and information in relation to the Product(s) within 5 business days, depending on the complexity of the matter as well as access and information provided by Buyer; and
 - 4.3.4. Providing a resolution to a request for Support that does goes beyond providing guidance and information, within 1-3 months, depending on the complexity of the matter as well as access and information provided by Buyer.
- 4.4. Buyer shall, as requested by Napatech, provide Napatech with reasonable access to the Product(s) (including online access and/or physically access) as well as information for Napatech to effectively undertake the Support.
- 4.5. Provided Napatech has shown commercially reasonable effort in addressing any valid request for Support, Napatech shall not be liable to Buyer for any issues not resolved through the Support provided. This Section 4 shall however not serve to bar any claims concerning breach of warranty under Section 2 above.

5. CHANGE OR DISCONTINUATION NOTIFICATION

- 5.1. Napatech reserves the right to make any changes in the specification of the Product(s) which are required to conform with any applicable safety or other statutory requirements or, where the Product(s) are to be supplied to Napatech's specification, which do not materially affect their quality or performance. Similarly, Napatech reserves the right to discontinue any Product(s).
- 5.2. Napatech further reserves the right, at its sole discretion and at any time with prior written notice as listed below to, change any Product(s) as follows:
- 5.2.1. Napatech can add, change or modify any Product(s) with three (3) months' prior written notice to Buyer (unless otherwise required by applicable law, regulation or judgment) by issuing a product change notification (PCN);
 - 5.2.2. Buyer may continue to submit non-cancellable, non-refundable Purchase Orders for Product(s) included in Napatech's PCN until the last-time-buy date (LTB) as specified by Napatech in the PCN (usually tree (3) months after the PCN), provided that, such Purchase Orders are confirmed for delivery before the last-time-delivery date (LTD) specified by Napatech in the PCN (usually tree (3) months after the LTB).
- 5.3. Napatech further reserves the right, at its sole discretion and at any time with prior written notice as listed below to discontinue any Product(s) as follows:
- 5.3.1. Napatech can discontinue (end of life (EOL)) any Product(s) with six (6) months' prior written notice to Buyer (unless otherwise required by applicable law, regulation, or judgment) by issuing a product end-of-life announcement (EOLA);
 - 5.3.2. Buyer may continue to submit non-cancellable, non-refundable Purchase Orders for Product(s) included in Napatech's EOLA until the last-time-buy date (LTB) specified by Napatech in the EOLA

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