Trading Terms

These Terms and any documents referred to in them constitute the entire agreement under which Astron Technology NZ Limited (NZBN 9429053836786) (“Astrontech”) supplies Products and services to Customer.

A reference in these Terms to the singular includes the plural and vice versa, the word “including” means “including, but not limited to,” and the word “includes” means “includes, without limitation”. A reference to a gender includes all genders; and a reference to a person (including a party) includes an individual, company, other body corporate, partnership, firm, joint venture, or a trust.

1. Definitions

1.1. In these terms:

"Buffer Stock" means Product that Astrontech agrees under clause 11 to acquire and hold in reserve for supply to Customer.

"Buffer Stock Agreement" means a written agreement between Astrontech and Customer entered into under clause 11.1 which defines the procedure for determining restocking levels for Buffer Stock.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in Auckland, New Zealand.

"Consumer Law" means the Consumer Guarantees Act 1993 (NZ) and the Fair Trading Act 1986 (NZ).

"Customer" means the person, business or company that is the purchaser of the Products.

"Products" means any products (including software) or services (where applicable) supplied to Customer by Astrontech and described in Astrontech's invoice.

"Sales Contract" means any sales contract or agreement entered into by Customer and Astrontech in respect of the Products and services supplied to Customer.

"Terms" means these Trading Terms.

2. Orders

2.1. All orders for Products placed by Customer are subject to acceptance by Astrontech, and no order will be deemed to have been accepted by Astrontech unless Products are supplied, or a back-order or delivery delay is confirmed in writing by an authorised representative of Astrontech to Customer.

2.2. Astrontech may reject any order placed by Customer if there is an insufficient supply of Products which prevents Astrontech from being able to fulfil such an order.

2.3. Astrontech will not be bound by any terms attaching to Customer's order and unless those terms are expressly agreed to in writing by an authorised representative of Astrontech, Customer agrees that those terms are hereby excluded.

2.4. Customer acknowledges that the supply of information technology hardware, software, and related products is dependent on third-party manufacturers, distributors, and vendors and is subject to global market conditions beyond the reasonable control of Astrontech. Such conditions may include vendor allocation policies, component shortages, global supply chain disruptions, logistics constraints, product discontinuations, foreign exchange fluctuations, and vendor price changes.

2.5. All quotations provided by Astrontech for hardware or vendor-supplied products are based on vendor pricing, stock availability, and lead times at the time the quotation is issued. Unless otherwise stated in writing, quotations are valid for fourteen (14) days and remain subject to confirmation of vendor pricing and availability at the time Customer places an order.

2.6. Where a vendor or distributor changes pricing, lead times, product availability, or specifications prior to Astrontech confirming the order with the vendor, Astrontech reserves the right to revise the quoted price, amend delivery timeframes, or propose an equivalent alternative product of similar specification. Astrontech will notify Customer of such changes as soon as reasonably practicable.

2.7. Certain products, including build-to-order (BTO) or configure-to-order (CTO) items, may be classified by the vendor or distributor as non-cancellable and non-returnable once an order has been submitted. Where this occurs, Customer acknowledges that orders placed for such products cannot be cancelled or amended once confirmed with the vendor.

2.8. Astrontech shall not be liable for delays in delivery, partial fulfilment, or failure of supply where such events are caused by manufacturer, vendor, or distributor constraints or decisions. Astrontech will use reasonable endeavours to assist Customer in identifying suitable alternative products or revised delivery arrangements where available.

3. Payment

3.1. The price of the Products will be Astrontech's quoted price.

3.2. Payment is required prior to delivery of the Products to Customer unless an Astrontech Credit Application form has been completed and approved by Astrontech. If Customer fails to make payment in accordance with this clause after demand for payment by Astrontech, all amounts owing by Customer to Astrontech on any account will immediately become due and payable together with legal costs of enforcement.

3.3. Astrontech may, in its sole discretion: suspend the provision of credit to Customer until all amounts owing are paid for in full; and from time to time and at any time, vary or cancel any credit facility it makes available to Customer.

3.4. Customer must pay Astrontech, on demand, any tax (other than income tax) payable under these Terms, any matter or thing done under these Terms, or any payment, receipt or other transaction contemplated by these Terms, including any goods and services tax (GST) imposed in New Zealand, value-added tax, customs duty, sales tax, excise duty, other duty, governmental charge, fee, levy, or impost, together with any fine, penalty or interest payable because of a default by Customer.

3.5. Customer shall pay the amount due to Astrontech under this clause in full, despite any right of set-off that Customer may have. Customer shall not deduct from that amount any tax in relation to purchase of the Products. Customer shall reimburse Astrontech for any taxes Astrontech pays on its behalf.

3.6. Upon written demand from Astrontech, the Customer will pay interest on any invoiced amount not paid by the due date. The interest will be calculated on the daily balance of the invoiced amount that remains unpaid at the rate of 2% per annum above the 90-day bank bill yield published by the Reserve Bank of New Zealand on the first Business Day after the due date. Astrontech may apply any subsequent payment from the Customer first to payment of interest and then to payment of any invoiced amount. Astrontech reserves the right to put a hold on rendering further services until full payment of the outstanding invoiced amount and interest has been received.

4. Delivery

4.1. Delivery times advised to Customer are estimates only and Astrontech will not be liable for any loss, damage or delay suffered or incurred by Customer or its customers arising from late or non-delivery of the Products.

5. Part deliveries

5.1. Customer agrees to accept partial delivery of Products ordered unless otherwise mutually agreed by the parties in writing. Where the Products are delivered in instalments, each delivery shall constitute a separate Sales Contract. Failure by Astrontech to deliver any one or more of the instalments in accordance with these Terms or any claim by Customer in respect of any one or more instalments shall not entitle Customer to treat a Sales Contract as repudiated or to cancel any other instalment.

6. Software

6.1. To the extent that a Product supplied under these Terms is a software Product then, in addition to these Terms, that Product will be supplied subject to the terms and conditions of the relevant licence agreement applicable to it.

6.2. Software licence agreements may be packaged with the software, may be separately provided to Customer for execution or may require on-screen acceptance by Customer. Customer agrees to use the software Product in accordance with the terms and conditions of the relevant licence agreement.

6.3. Where the term "supply" is used in these Terms to refer to a software Product, such term means the sale and purchase of the licence to use that software Product.

7. Inspection and acceptance

7.1. Customer must:

(a) in the case of all Products ordered (other than software Products), inspect such Products upon delivery to Customer's premises; or

(b) in the case of software Products, test or inspect such software Products upon those Products being authorised by Astrontech for downloading by Customer, and must, within 7 days of delivery or downloading (as the case may be), give written notice to Astrontech of any matter or thing by which Customer alleges that the Products do not accord with Customer's order.

7.2. Failing such notice and to the extent permitted by law, the Products will be deemed to have been accepted by Customer. This clause does not limit any non-excludable rights under the Consumer Law.

8. Title and risk

8.1. Title in and ownership of the Products does not pass to Customer, and is retained by Astrontech, until Astrontech has received payment in full and in cleared funds of all amounts owing by Customer to Astrontech on any account. Until title passes, Customer holds the Products as bailee for Astrontech, must store the Products separately and in a manner that enables them to be identified as Astrontech's property, and must not encumber, charge or otherwise deal with the Products except by sale in the ordinary course of Customer's business.

8.2. Products supplied by Astrontech to Customer will be at Customer's risk immediately upon delivery of the Products to the Customer, Customer's agent or into the Customer's custody or control or collection of the Products by the Customer's nominated carrier or agent.

8.3. Risk in the Products will always remain with Customer unless Astrontech retakes possession of the Products in accordance with clause 8.4.

8.4. If Customer has breached these Terms or the terms of any relevant Sales Contract, Customer authorises Astrontech, at any time, to enter onto any premises upon which Astrontech's Products are stored to enable Astrontech to inspect the Products and/or reclaim the Products.

8.5. Customer acknowledges that in the case of software Products, any refusal or failure to pay may result in cancellation of the licence to use the software Product.

8.6. Customer agrees that the provisions of this clause 8 apply despite any arrangement under which Astrontech grants credit to Customer.

8.7. These Terms and each Sales Contract constitute a security agreement for the purposes of the Personal Property Securities Act 1999 (NZ) (PPSA). Customer grants to Astrontech a security interest in all Products supplied to Customer, and in their proceeds, to secure payment of all amounts owing by Customer to Astrontech on any account. Because Astrontech retains title to the Products under clause 8.1 until it has been paid in full, that security interest is a purchase money security interest.

8.8. Customer must do all things reasonably required by Astrontech to enable Astrontech to register its security interest and maintain its perfection, and must not create or allow to exist any other security interest over the Products without Astrontech's prior written consent.

9. Returns

9.1. Customer must notify Astrontech in writing of any Products it wishes to return within 7 days from the date of the invoice relating to those Products.

9.2. Return of faulty products will be subject to Astrontech's Faulty Products Returns Procedure as advised to Customer and amended by Astrontech from time to time.

9.3. A No-Fault Product is a Product returned by the Customer to Astrontech in circumstances where the return is not due to the fault of Astrontech or any fault with the Product.

9.4. Return of No-Fault Products will be subject to Astrontech's No-Fault Products Returns Procedure as advised to Customer and amended by Astrontech from time to time.

9.5. Astrontech will not be liable for any damage or defects in the Products caused by improper storage, warehousing or transport, or by neglect, abuse or improper use, installation, maintenance or repair of the Products by Customer or any third party.

9.6. The provisions of this clause 9 do not extend to any Products which have been added to, varied, or otherwise modified by, any person other than Astrontech.

10. Force majeure

10.1. If the performance of Astrontech's obligations under these Terms or any relevant Sales Contract is prevented, restricted, or affected by force majeure including acts of God, natural disaster, war, terrorism, civil unrest, government action, pandemic, strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Astrontech, Astrontech will give notice of such cause to Customer and after 60 days from the receipt by Customer of such notice, either party may terminate the relevant Sales Contract without penalty.

11. Buffer Stock

11.1. If Astrontech agrees to hold Product as Buffer Stock to assist Customer to manage supply lead times and demand variability, Customer must commit to take delivery and pay for all Product acquired by Astrontech within a mutually agreed time period, not exceeding 90 days, and enter into a Buffer Stock Agreement that defines the procedure for determining restocking levels.

12. Customer's cancellation

12.1. Unless otherwise agreed in writing by an authorised officer of Astrontech, Customer may not cancel an order which has been accepted by Astrontech.

12.2. If Customer's right of cancellation is agreed to by an authorised officer of Astrontech in writing, the right must be exercised by notice in writing from Customer to Astrontech not later than 7 days before the estimated date of shipment by the manufacturer or Astrontech (as the case may be).

12.3. Unless otherwise agreed between Customer and Astrontech, upon cancellation prior to shipment, any deposit paid by Customer will be forfeited to Astrontech.

12.4. Orders for “Configure To Order” (CTO) products are not eligible for cancellation.

12.5. Buffer Stock Product Orders are not eligible for cancellation.

13. Default of Customer

13.1. Without prejudice to any of Astrontech's other rights under these Terms, if Customer fails to make any payment due to Astrontech under these Terms, Astrontech may, in its sole discretion, and without further liability to Customer:

(a) refuse to make further supplies to Customer under the relevant Sales Contract;

(b) suspend performance of any Sales Contract or any other agreement with Customer;

(c) terminate the Sales Contract without notice;

(d) recover from Customer all reasonable costs incurred by Astrontech in recovering the overdue amount, including debt collection agency fees, legal costs on a full indemnity basis and enforcement expenses; and

(e) exercise any rights it has under the Personal Property Securities Act 1999 (NZ), including enforcing any security interest granted in favour of Astrontech in respect of the Products.

14. Warranty

14.1. Products are covered by manufacturers' warranty. To the extent permitted by law, Astrontech's entire responsibility with respect to warranties for the Products is to pass on to Customer the benefit of any such warranties.

14.2. Software Products are not warranted by Astrontech under these Terms. Such software Products are warranted in accordance with the relevant licence agreements governing their use.

14.3. To the extent permitted by law, the manufacturers' warranties referred to in clause 14.1 are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantable quality and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.

14.4. Certain legislation may imply warranties or conditions or impose obligations upon Astrontech which cannot be excluded, restricted or modified or can only be excluded, restricted or modified to a limited extent, including under the Consumer Law. These Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent permitted by law, Astrontech's liability will be limited, at its option, to:

(a) in the case of Products:

(i) replacement of the Products or supply of equivalent Products;

(ii) repair of the Products;

(iii) payment of the cost of replacing the Products or acquiring equivalent Products; or

(iv) payment of the cost of having the Products repaired; and

(b) in the case of services:

(i) supplying of the services again; or

(ii) payment of the reasonable cost of having the services supplied again.

14.5. Astrontech does not warrant that repair facilities or parts will be available in respect of any of the Products.

14.6. Astrontech will provide warranty on refurbished products for a period of 14 days from the date of invoice that the equipment and its components appearing on the invoice (excluding batteries) will be free from any material defect.

14.7. Laptop batteries are sold on an as-is basis unless a manufacturer's warranty applies.

14.8. Astrontech will undertake to either repair, replace or credit the Product sold at its sole discretion. If the equipment cannot be repaired cost-effectively, it will be replaced with the same or like product at Astrontech's discretion. If no product is available, Astrontech will credit the total purchase price provided that notification has been received within the stated 14-day period from invoice.

14.9. Customer acknowledges that it acquires the Products and services for the purposes of a business and that Astrontech and Customer are each in trade. To the maximum extent permitted by section 43 of the Consumer Guarantees Act 1993 (NZ), the parties agree that the provisions of that Act do not apply to the supply of Products and services under these Terms. To the maximum extent permitted by section 5D of the Fair Trading Act 1986 (NZ), the parties also agree to contract out of sections 9, 12A, 13 and 14(1) of that Act. The parties agree that it is fair and reasonable that they be bound by this clause. This clause prevails over any other provision of these Terms to the extent of any inconsistency.

15. Liability

15.1. To the extent permitted by law, Astrontech will not be liable to Customer or any other person for any loss of use, profit, revenue, interest, goodwill, or data, or for any indirect, incidental, or consequential loss or damage sustained or incurred by Customer.

15.2. Subject to any non-excludable rights under applicable law (including the Consumer Law), Astrontech's aggregate liability arising out of or in connection with any Sales Contract or these Terms is limited to the total price paid or payable by Customer for the Products under the relevant Sales Contract.

16. Credit assessment

16.1. If any Products are supplied to Customer on credit, Astrontech may need to disclose to a credit reporting agency certain information referred to in clause 016.3 about Customer when assessing Customer's application for credit and managing Customer's account with Astrontech. Customer authorises Astrontech to disclose such information to a credit reporting agency for these purposes.

16.2. Subject to Astrontech's obligations under the Privacy Act 2020 (NZ) and the Credit Reporting Privacy Code 2020 and any other applicable laws, Astrontech may provide the information referred to in clause 016.3 to a credit reporting agency to obtain a consumer credit report about Customer or to allow the credit reporting agency to create or maintain a credit information file about Customer. Customer agrees that Astrontech may disclose a credit report about it to any credit provider, debt collecting agency or Astrontech's insurers for the purposes of assessing Customer's creditworthiness or collecting any overdue payments (as the case may be).

16.3. Astrontech may disclose the following information relating to Customer in accordance with clauses 016.1 and 016.2:

(a) Customer's name and address;

(b) credit limits on Customer's accounts;
(c) the amount of any payments which are overdue for at least 60 days;

(d) where an overdue payment has been previously reported, advice that the payment is no longer overdue;

(e) any method of payment including, but not limited to, cheques, electronic funds transfer, direct debit, credit card payments which have been dishonoured;

(f) information that, in the opinion of Astrontech, Customer has committed a serious breach of its payment obligations or engaged in conduct adversely affecting its creditworthiness; and

(g) information that Astrontech has ceased to supply the Products and services to Customer.

16.4. Customer agrees that Astrontech may obtain information about Customer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing Customer's application to purchase the Products on credit and collecting any overdue amounts.

16.5. Astrontech may refuse to supply the Products to Customer on credit on the basis of Astrontech's credit assessment of Customer.

17. Privacy

17.1. Customer agrees to Astrontech collecting, using and disclosing information about Customer of the kind referred to in clause 016.3 for various purposes, including to: assess creditworthiness as outlined in clause 16; supply the Products and services to Customer and the management of Customer's account, including suppliers; communicate with Customer about the Products and services which Astrontech or its partners or affiliates may provide to Customer; implement these Terms and any Sales Contract; and comply with relevant laws.

17.2. Astrontech, at the written request of Customer, will: provide Customer with access to any personal information relating to Customer held by Astrontech; and correct or amend any personal information relating to Customer held by Astrontech which is inaccurate or out of date.

17.3. Astrontech will handle Customer's personal information in accordance with relevant laws, including the Privacy Act 2020 (NZ).

18. Intellectual Property

18.1. Customer acknowledges that: all trade marks, copyright and other intellectual property rights ("Intellectual Property") embodied in or in connection with the Products and any related documentation, parts or software are the sole property of Astrontech or its suppliers; and all Intellectual Property of Astrontech or its suppliers may only be used by Customer with the express written consent of Astrontech or its suppliers, during the continuance of any relevant Sales Contract, and such consent extends only to use essential for the purposes stated in it.

18.2. Customer must not register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by Astrontech or its suppliers in connection with the Products.

18.3. Customer will indemnify Astrontech against all liabilities, damages, costs, and expenses which Astrontech may suffer or incur as a result of any work performed by Astrontech in accordance with Customer's specifications or as a result of the combination or use of the Products with other equipment, parts or software not supplied by Astrontech, and which results in the infringement of any Intellectual Property of any person.

19. Confidentiality

19.1. Customer acknowledges that Astrontech has disclosed and may from time to time disclose to Customer certain confidential information and documentation of Astrontech relating to the Products, their marketing, use, maintenance, and software, including technical specifications ("Confidential Information").

19.2. Subject to the exceptions in this clause 19.5 Customer must use the Confidential Information solely for the purposes contemplated under any relevant Sales Contract; and not, during the continuation of such Sales Contract or thereafter, disclose (whether directly or indirectly) to any third party the Confidential Information, other than is required to carry out such purposes.

19.3. If disclosure of Confidential Information to third parties is necessary, Customer will obtain from such third parties binding agreements to maintain in confidence the Confidential Information disclosed at least to the same extent as Customer is bound to protect Astrontech's Confidential Information under this clause 19.

19.4. Upon the expiry or termination of any relevant Sales Contract, Customer must cease to use and must return or destroy (as Astrontech may direct), all copies of Astrontech's Confidential Information in its possession or control, except to the extent required to be retained by law.

19.5. This clause does not apply to information which:

(a) is lawfully known to Customer before disclosure and is not subject to an obligation of confidentiality;

(b) becomes publicly available other than through a breach of this clause;

(c) is approved in writing by an authorised officer of Astrontech for disclosure; or

(d) is required to be disclosed by law, a court order or a government authority, provided that, where legally permitted, Customer gives Astrontech prior notice of the required disclosure.

20. General

20.1. Astrontech may amend these Terms by giving Customer at least 30 days' prior written notice by email or mail. Amended Terms apply only to orders placed after the effective date stated in the notice. If Customer does not agree to an amendment, Customer may stop placing orders. Placing an order after the effective date constitutes acceptance of the amended Terms for that order.

20.2. Any provision of these Terms which is invalid or unenforceable will be read down to the extent necessary, and the remaining provisions will continue unaffected.

20.3. Customer acknowledges that some Products may be controlled under export laws in force at the time of the Sales Contract. Customer shall not export, re-export, or distribute Products, in violation of any such export control laws or regulations.

20.4. Customer acknowledges that certain Products may be subject to licence requirements or other restrictions specific to certain transactions. Where applicable, Customer agrees to be bound by any such terms and conditions and/or restrictions and shall indemnify Astrontech for any liability suffered by it arising from Customer's breach.

20.5. Customer may not assign or attempt to assign any of its rights and obligations under these Terms without Astrontech's prior written consent. Astrontech may assign or novate its rights and obligations under these Terms on notice to Customer.

20.6. These Terms are governed by the laws of New Zealand and the courts of New Zealand shall have exclusive jurisdiction to hear any disputes arising from or relating to this agreement.

20.7. These Terms are incorporated into, and form part of, each Sales Contract.