



5355 Mira Sorrento Place, Suite 300
San Diego, California 92121
Phone: 858-792-9910

TERMS AND CONDITIONS OF SALE

- Scope:** These Terms and Conditions of Sale shall be the sole terms and conditions governing the sale of products ("Products") of Anokiwave, Inc., to the party listed on the purchase order or other order agreement ("Buyer"). Anokiwave's acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of these terms and conditions. Any and all Buyer terms and conditions are hereby rejected and shall be of no effect. Buyer shall be conclusively deemed to have accepted these terms and conditions upon any of the following by Buyer: (i) written or electronic acknowledgement or acceptance of the Anokiwave terms and conditions, (ii) transmission to Anokiwave, its agents or representatives of any order for Anokiwave Products or services, or (iii) acceptance of or payment for any Product or service covered hereby. Anokiwave's failure to object to any provision contained in any communication from Buyer shall not be deemed a waiver of any provision hereof.
- Prices:** All prices are invoiced and payable in U.S. Dollars. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions that are not a part of the original price quotation. Prices are exclusive of all federal, state, municipal or other government excise, value added tax, sales, use, occupational or like taxes, tariffs, customs, duties and importing fees, the payment of which shall be the sole responsibility of Buyer regardless of whether invoiced to Buyer by Anokiwave. Prices are consequently subject to increase by the amount of any such tax, tariff, duty or fee that Anokiwave pays or is required to pay or collect upon sale or delivery of the Products. Any certificate of exemption or similar document or proceeding required to exempt the sale of Products from sales or use tax liability shall be obtained by Buyer at its expense. Prices may be adjusted if Products are not tendered for delivery within twelve (12) months after Anokiwave's receipt of the order for such Products. If Buyer fails to take delivery of the quantity of Products upon which a quantity discount price, if any, is based, Buyer will be back-billed an amount based on the quantity actually delivered hereunder and upon the quantity pricing schedule in effect at the time the order was placed. Such charges will be in addition to any cancellation charges.
- Terms of Payment:** Terms are net thirty (30) days from the date of invoice. Anokiwave reserves the right at any time, in its sole discretion, to revoke any credit extended to Buyer. Anokiwave will issue invoices on shipment of all Products; and if deliveries are authorized in installments, each shipment shall be invoiced and paid when due without regard to other scheduled deliveries. Overdue payments shall be subject to finance charges computed at a periodic rate (to the extent permitted by law) of 1.5% per month (18% per year). Amounts owed by Buyer shall be paid without set-off or deduction. Anokiwave reserves the right to suspend shipments until any overdue payments are made.
- Shipment:** Anokiwave will deliver Products Ex Works (EXW) (Incoterms 2016). All Products will be scheduled for shipment in accordance with Anokiwave's minimum order policy and applicable shipment sequence. Anokiwave reserves the right to make shipments when Product is available, in installments, and shall invoice shipments as made. Anokiwave reserves the right to allocate production and deliveries among its various customers under any circumstances. Anokiwave will confirm in writing, and amend as appropriate, the shipment schedule. Anokiwave will not assume any liability in connection with the shipment or constitute any carrier as its agent. Buyer shall be responsible for making all claims with carriers, insurers, warehousemen and others for non-delivery, loss, damage or delay. All claims for damages to the Products or shortages must be made within thirty (30) days of shipment. Under no circumstances shall Anokiwave be liable to Buyer for any delay either in shipment or in delivery. Products held or stored by Anokiwave, at Buyer's request or due to Buyer's failure to accept delivery, after the scheduled shipment date in the applicable order, shall be at the sole risk of Buyer, and Buyer shall pay to Anokiwave all Anokiwave's expenses associated with holding or storing such Products.
- Cancellation, Rescheduling, Returns and Modifications:** Any request for order cancellation, rescheduling, return, or modification must be made in writing and such action must be approved in writing by an authorized agent of Anokiwave. Anokiwave, at its option, may accept or reject any such request by Buyer, and Anokiwave

reserves the right to impose charges on Buyer in connection therewith. Buyer shall not return any Products for any reason without issuance of a Material Return Authorization (MRA) number by Anokiwave for such Products.

6. **Product Warranty:** Except as otherwise provided herein, Anokiwave warrants to Buyer that for one (1) year from the date title to the Product passes, each Product sold hereunder will be free of significant defects in materials or workmanship and will conform in all material respects to specifications set forth in Anokiwave's published data sheets in effect at the time title passes.
7. **Product Warranty Limitation:** Buyer assumes full responsibility to ensure compliance with the appropriate handling, assembly and processing of Products (including, as applicable, related assembly and test activities), and compliance with all guidelines set forth in the applicable Anokiwave specifications. Anokiwave assumes no responsibility for environmental effects on Products, static discharge, components not provided by Anokiwave, or for any activity of Buyer or a third party that damages the Products due to improper use, abuse, negligence, improper installation, accident, loss, damage in transit, or repair or alteration by a person or entity other than Anokiwave. The warranty of replacement products shall terminate with the warranty of the original product. Except as expressly provided herein, Buyer shall assume responsibility for all warranty issues with respect to its customers and end users.
8. **Warranty Remedy:** Anokiwave's sole liability and responsibility for Products under this warranty is for Anokiwave to repair or replace any Product that is returned to it by Buyer or credit Buyer's account for such returned Product, provided that Anokiwave shall have the right to reject any such remedy where Anokiwave determines that the Warranty does not apply. Any Product returned to Anokiwave for warranty service will be shipped to Anokiwave at Buyer's expense and will be returned to Buyer at Anokiwave's expense. Anokiwave's obligation to honor its warranty for a Product is contingent upon receipt of payment in full for such Product.
9. **Warranty Disclaimer:** EXCEPT AS PROVIDED HEREIN, ANOKIWAVE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. LABELING ON PRODUCTS AND PACKAGING IS INTENDED SOLELY FOR COMPLIANCE WITH APPLICABLE LAW AND ANOKIWAVE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, THAT ARISE FROM SUCH LABELING OTHER THAN AS REQUIRED BY APPLICABLE LAW. Unless separate terms are provided, all software is expressly provided "as is."
10. **Limitations of Liability:** In no event shall Anokiwave be liable for special, incidental, consequential, exemplary, punitive or other indirect damages, or for loss of profits, loss of data, or loss of use damages, due to any cause whatsoever, whether based upon warranty, contract, tort, strict liability or otherwise, even if Anokiwave has been advised of the possibility of such damages or losses. No suit or action shall be brought against Anokiwave more than one year after the related cause of action has accrued. The total liability of Anokiwave to Buyer and/or any other party from any lawsuit, claim, warranty or indemnity shall not exceed the aggregate amount actually paid by Buyer to Anokiwave for the specific products (as identified by part number) sold under the order shipment(s) at issue within the prior twelve (12) months that gave rise to the lawsuit, claim, warranty or indemnity. The existence of multiple claims related to the same product at issue shall not enlarge or extend this limit.
11. **Intellectual Property Rights Indemnity:** Anokiwave agrees to defend Buyer against any claim brought against Buyer that a Product, as delivered, infringes a valid and enforceable United States patent, copyright, trademark or other intellectual property right of a third party ("IP Claim"), and indemnify Buyer against any damages resulting from such IP Claim that are awarded to a third party by a court of competent jurisdiction or in a settlement approved in writing by Anokiwave, provided that Buyer (a) promptly notifies Anokiwave in writing of any such IP Claim or related action, (b) provides Anokiwave with sole control of the defense and settlement of any such action, and (c) provides Anokiwave with all information and assistance reasonably requested by Anokiwave to defend any such IP Claim. Anokiwave shall not be responsible for any settlement or compromise made without its prior written consent. If at any time use of a Product is the subject of a IP Claim or, in the opinion of Anokiwave, is likely to become the subject of an IP Claim, Anokiwave shall have the right, but not the obligation, at its sole option and expense, to either procure for Buyer the right to continue using the Product, replace or modify the Product so that it becomes non-infringing, or accept the return and grant Buyer a credit for the Product as depreciated. If Anokiwave elects to accept the return of Products, then Buyer shall return to

Anokiwave any and all such Products remaining in Buyer's possession, custody or control. Anokiwave shall not have any liability to Buyer for any infringement or other violation of a third party right that is based in any way upon (a) the use of the Product in combination with other components, equipment or software not furnished by Anokiwave, or the use of any third party software furnished by Anokiwave; (b) the use of the Product in practicing any process or method; (c) any Product that has been modified or altered; (d) the manner in which the Product is used even if Anokiwave has been advised of such use; (e) Anokiwave's compliance with Buyer's designs, specifications or instructions; (f) the use of the Product after Buyer has received notice of such infringement or other violation, and Anokiwave has offered a replacement, modification or refund therefor, or (g) compliance with an industry standard or communication protocol. The above indemnity states Buyer's sole and exclusive remedy for infringement.

12. **Software License:** Anokiwave grants to Buyer, subject to the terms and conditions of this Agreement and payment of all applicable fees, a nonexclusive, nontransferable right to use any software provided by Anokiwave for Buyer's internal business purposes and solely (a) in conjunction with the hardware with which such software is provided and (b) to integrate such software into Buyer's own product for sale to Buyer's customers. Buyer may copy the software in object code form only for licensed use, archival and back-up purposes. Ownership of, and title to, the software and any documentation accompanying the software is and will be held by Anokiwave and/or its licensors. Buyer may not rent, lease, sublicense, distribute, transfer, copy, reproduce, modify or time-share the software or documentation, nor permit publication or distribution of results of any benchmark tests run on the software. Buyer is not permitted to translate, decompile, disassemble or reverse-engineer the Software or to use any similar means to discover the source code of the software. Buyer may not remove or alter any copyright notice or restrictive rights legend from the software.
13. **Assignment:** These terms and conditions are not assignable by Buyer without Anokiwave's prior written consent and any unauthorized attempt to assign any rights, duties or obligations arising hereunder shall be void. Anokiwave may, as it deems necessary, subcontract any part of the work or services to be provided pursuant to these terms and conditions. These terms and conditions shall be binding upon each party and their successors and permitted assigns.
14. **Governing Law:** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts, exclusive of its conflict of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from these terms and conditions.
15. **Force Majeure:** Anokiwave shall not be liable for any delay in delivery or failure to perform when such delay or failure is due to any cause or event beyond Anokiwave's control, including, without limitation, acts of nature, pandemics, epidemics, unavailability of supplies or sources of energy, riots, wars, terrorist acts, sabotage, fires, strikes, labor difficulties, delays in transportation, embargoes, delays in delivery or defaults by Anokiwave's vendors, or acts or omissions of Buyer. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay, and Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of one hundred twenty (120) days, Anokiwave or Buyer shall have the right by written notice to the other to cancel the order for the Products subject to the delayed delivery without further liability of any kind.
16. **Export Control:** Buyer acknowledges and agrees that the Products being sold hereunder are subject to the export control laws and regulations of the United States and/or other national governments. Buyer will comply with these laws and regulations. These laws and regulations include, but are not limited to, the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) and export laws and regulations of the European Union (EU) and/or any of its member states. Buyer shall not, without prior U.S. Government authorization, export, re-export, or transfer any commodities, software, or technology, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction or to any resident or national of said countries, or to any person, organization, or entity on any of the restricted parties lists maintained by the U.S. Departments of State, the Treasury, or Commerce. In addition, any Products sold hereunder may not be exported, re-exported, or transferred to any end-user engaged in activities, or for any end-

use, directly or indirectly related to the design, development, production, use, or stockpiling of weapons of mass destruction (e.g., nuclear, chemical, or biological weapons, and the missile technology to deliver them).

17. **Sales and Distribution to the United States Government:** In any contract with the United States government or in any contract that is a subcontract of any tier under a United States government contract:
 - A. Anokiwave accepts only those clauses of the United States Federal Acquisition Regulations (FAR) that the regulations themselves mandate be flowed-down to a party in Anokiwave's position, given all relevant limitations, including Anokiwave's status as a customer or a subcontractor and the size and type of contract; and
 - B. Anokiwave retains proprietary rights in all technical data and computer software provided under such contract. Neither the United States government nor any higher-tier contractor under a United States government contract receives any rights in technical data and computer software beyond the rights provided to all commercial customers under these terms and conditions, except that Anokiwave grants to the United States government the minimum additional rights required under the narrowest applicable provisions of the FAR or DFARS. Except as specifically agreed in writing, Anokiwave will not provide certified cost and pricing data and therefore does not accept any Cost Accounting Standards, defective pricing, or audit requirements.
18. **Compliance with Laws:** Buyer shall comply, and shall cause its employees to comply, with all applicable local, national, regional and international laws, ordinances, regulations, codes, standards, directives and international conventions and agreements to the extent that any of the foregoing have the force of law by being directly enforceable by a governmental authority, a court or other proper tribunal (collectively "Laws"), including but not limited to (i) anti-bribery and recordkeeping Laws, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD"), and the Inter-American Convention Against Corruption, (ii) environmental Laws, and (iii) import and export control Laws, including but not limited to the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of the Treasury Office of Foreign Assets Controls (OFAC), export laws and regulations of the European Union (EU) and/or any of its member states and export laws of other national governments. Buyer shall comply, and shall cause its employees to comply, with all applicable laws, ordinances and/or directives of countries in which they conduct business as they relate to the Universal Declaration of Human Rights, child labor laws, data privacy laws, criminal reporting laws, Environmental, Health and Safety laws or any similar laws, including, but not limited to identifying and filing or purchasing (as applicable) any and all required permits, certificates, licenses, insurance, approvals and inspections required in performance of its obligations hereunder. Buyer will indemnify and hold Seller harmless to the full extent of any loss, liability, damage, or expense, including but not limited to lost profits, fines, penalties, attorneys' fees, defense expenses and court costs, for any failure or alleged failure of Buyer, its officers, employees, agents, or subcontractors to comply with the requirements of this clause.
19. **Bankruptcy or Insolvency:** Anokiwave reserves the right, by written notice of default, to cancel any order, without further obligation or liability to Buyer, on the occurrence of any of the following: (i) the insolvency of Buyer; (ii) the filing of a voluntary petition in bankruptcy by Buyer; (iii) the filing of an involuntary petition to have Buyer declared bankrupt; (iv) the appointment of a receiver or trustee for Buyer; (v) the execution by Buyer of an assignment for the benefit of creditors; (vi) the discontinuance of business by Buyer; or (vii) the sale by Buyer of the bulk of its assets other than in the usual course of business.
20. **Retention of Rights.** Anokiwave retains all intellectual property rights in the Products.
21. **Severability:** Should any of these terms and conditions be held by a court of competent jurisdiction to be contrary to law, that term or condition will be enforced to the maximum extent permissible and the remaining terms and conditions will remain in full force and effect.
22. **No Agency:** Anokiwave and Buyer are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by these terms and conditions. Buyer is solely responsible for its employees and agents and shall indemnify Anokiwave against any claim,

liability, cost or damage related to Buyer's actions or those of its employees or agents, including, but not limited to, the making of unauthorized warranties or representations on behalf of Anokiwave.

23. **Third Party Beneficiaries:** The parties agree there are no third-party beneficiaries hereunder.
24. **Basis of Bargain:** The parties agree that the warranty disclaimer, the limitation of liability and exclusive remedy provisions are material, bargained terms that are fundamental to these terms and conditions and are reflected in the consideration to be given by both parties under these terms and conditions and in the decision by both parties to accept these terms and conditions.
25. **Separate Transactions:** Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, Anokiwave may decline to make further shipments. If Anokiwave elects to continue making shipments, such action shall not constitute a waiver of any default by Buyer or in any way affect Anokiwave's legal remedies for such default.
26. **Entire Agreements and Amendments:** These terms and conditions constitute the entire agreement between the parties and supersede all previous communications, whether oral or written. Any change to these terms and conditions may be made only upon mutual agreement of the parties in writing.