

TERMS AND CONDITIONS OF SALE

1. General

In these Terms and Conditions of Sale:

'Seller' means Spectris Australia Pty Limited.

'Buyer' means the purchaser of the Goods, specified overleaf.

'Conditions' means these Terms and Conditions of Sale.

'Contract' means the agreement between the Seller and Buyer arising as a result of the Buyer submitting an order to the Seller for the supply of Goods and the Seller accepting such order in writing, which Contract shall be deemed to incorporate these Conditions. The Contract constitutes the entire agreement between the parties and no modification shall be binding on the Seller unless agreed to in writing.

'Goods' means the products specified overleaf.

2. Terms of Sale

The Goods and all other products sold by the Seller are sold on the terms set out in these Conditions (which Conditions shall only be waived or modified in writing signed by the Seller). The Buyer shall be deemed to have accepted these Conditions upon the Buyer submitting an order to the Seller. Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Trade Practices Act 1974*) and which by law cannot be excluded, restricted or modified.

3. Quotations

Prices, specifications and dates for delivery referred to in the Seller's quotations are for information purposes only and shall not be binding on the Seller until the Seller has accepted the Buyer's order in writing. Unless previously withdrawn, Seller's quotations are open for acceptance within 60 days only.

4. Prices and Taxes

Unless otherwise stated, all prices quoted by the Seller:

(1) include standard commercial packing and freight to Australian capital cities. Any special packing and packing materials are at the Buyer's expense;

(2) are exclusive of duties, Goods and Services Tax (GST) and other taxes and charges. All duties, taxes and other charges will be paid by the Buyer.

(3) are those applicable at the date of issue of quotation and are based on information as to rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges applicable as at the date of quotation. If the Seller makes any alterations to the price of the Goods as a result of changes in the costs and charges on which such prices are based, either before acceptance or during the currency of the Contract, such alterations will be paid by the Buyer.

5. Drawings and Specification

All specifications, drawings, and particulars of weights and dimensions submitted to or by the Seller are approximate only and any deviation from any of these things does not vitiate any contract between the Seller and Buyer or form grounds for any claim against the Seller. The Seller may modify specifications provided the modifications do not adversely affect the performance of the Goods to be supplied. The Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or nonavailability of materials from suppliers. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising material do not form part of the Contract or of the description applied to the Goods. Where specifications, drawings or other particulars are supplied by the Buyer, the Seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Seller and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out overleaf or in the quotation.

6. Shipment and Delivery

Delivery will be deemed to have been effected when the Goods leave the premises of the Seller or, as the case may be, the premises of suppliers to the Seller if the Goods are delivered to the Buyer direct from such suppliers. Delivery times are estimates only and the Seller is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery. If the Seller, at its option, delivers Goods to the Buyer in instalments and any one of those instalments is defective or delayed for any reason, this will not entitle the Buyer to treat the Contract as repudiated or to damages. The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 7 days from the date of receipt of Goods by the Buyer.

7. Payment

Payment of the price of the Goods must be made within 7 days after the date of delivery of the Goods. The Seller may at any time, in its sole discretion, require the Buyer to make payment in advance or provide other assurance of payment to the satisfaction of the Seller and, if such payment or assurance is not met, the Seller may cancel the order of any part thereof and receive reasonable cancellation fees. If the Buyer fails to make any payment under these Conditions when due, the Seller may recover, in addition to the payment, interest on the outstanding amount at the rate of 10% per annum calculated daily from the due date until the payment is made. The Buyer acknowledges that the interest payable under this clause is a genuine pre-estimate of the loss incurred by the Seller as a result of the Buyer's failure to make the payment when due.

8. Risk

Risk in the Goods shall pass to the Buyer when the Goods are delivered to or collected by the Buyer or its agent. Transport from and/or storage on the premises of the Seller or the premises of any supplier to the Seller if the Goods are delivered direct to the Buyer from such supplier, is at the risk of the Buyer and the Buyer must take out its own insurance. The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage).

9. Passing of Property and Rights

(1) Despite risk in the Goods passing in accordance with clause 8, title in the Goods shall not pass to the Buyer until payment under the Contract for the supply of the Goods and any other amounts owing under these Conditions is received by the Seller.

(2) Until title passes in accordance with clause 9(1) the Buyer: (a) is a bailee of the Goods; (b) has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Seller owes to the Buyer; (c) cannot claim any lien over the Goods; (d) will not deliver the Goods or any document of title to the Goods to, or create or purport to create any interest in the Goods in favour of any person except as authorised or directed by the Seller; (e) shall keep the Goods separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and shall store the Goods in such a way that they are clearly identifiable as belonging to the Seller; (f) shall ensure that no other person acquires any security interest in the Goods; and (g) must insure the Goods for their full insurable or replacement value (whichever is higher).

(3) Despite clause 9(2), if the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer have been paid to the Seller, the Buyer agrees that: (a) it holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when

they are receivable or are received; (b) it must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution as trustee for the Seller; (c) if the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Seller to the Buyer, the Seller may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so.

10. Intellectual Property Rights

(1) The Seller shall retain copyright and any other intellectual property rights in the Goods and in all software, firmware programming routines and documentation relating thereto (collectively referred to as 'software') supplied by the Seller for use with the Goods. The Seller grants the Buyer a non-exclusive and non-transferable licence to use the Goods and such software and documentation solely for use with the Goods.

(2) The Seller shall defend any suit or proceeding brought against the Buyer to the extent that it is based on a claim that any Goods manufactured by the Seller directly infringes the intellectual property rights of another person, and the Seller shall indemnify the Buyer against all costs, damages and expenses finally awarded against the Buyer provided that the Buyer notifies the Seller promptly in writing of any such claim and gives the Seller full and complete authority, information and assistance for the defence of such claim and provided further that the Seller shall have sole control of the defence and of the negotiations for settlement (if any) of such claim. The indemnity referred to in this clause is limited to the value of the Goods supplied by the Supplier under the Contract. If any Goods are, or in the opinion of the Seller may be, held to directly infringe any intellectual property rights, the Seller may at its expense and option either (a) procure for the Buyer the right to continue using the Goods, (b) replace the Goods with suitable noninfringing Goods, (c) suitably modify the Goods, or (d) refund the purchase price of the Goods less depreciation at 20% per year, and accept return of the Goods. The Seller shall not be liable for any costs incurred without the Seller's written authorisation and shall not be obliged to defend, or be liable for, costs and damages if the infringement arises out of compliance with the Buyer's specifications, or a combination with or an addition to Goods not manufactured by the Seller, or a modification of the Goods after delivery, or the use of the Goods beyond that established by the Seller or approved in writing by the Seller. This clause 10(2) states the entire liability of the Seller and the exclusive remedy of the Buyer with respect to any alleged infringement of intellectual property rights by the Goods.

11. Warranties

(1) The Seller warrants that all Goods manufactured by it will be free from defects in material and workmanship under normal use for a period of one year from the date of shipment to the Buyer save that the Seller does not warrant that the operation of any software supplied for use with the Goods will be completely uninterrupted or error free or that all program errors will be corrected. The Buyer shall be responsible for determining that the Goods are suitable for the Buyer's use and that such use complies with any applicable law. Provided that the Buyer notifies the Seller in writing of any claimed defect in the Goods immediately upon discovery and such Goods are returned at the Buyer's risk to the original shipping point, transportation charges prepaid, within one year from the date of shipment to the Buyer, and upon examination the Seller determines to its satisfaction that such Goods are defective in material or workmanship (ie. contains a defect arising solely out of the manufacture of the Goods and not caused by any other circumstances), the Seller shall at its option repair or replace such Goods within a reasonable time. Any repair or replacement shall not extend the period of warranty. The warranty in this clause is exclusive and to the extent permitted by law the Seller's liability for defects in Goods manufactured by it is limited as set out in this clause.

(2) If the Goods are not manufactured by the Seller the warranty of the manufacturer of those Goods is the only warranty given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request the benefit of any warranty that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of such warranty is assignable.

12. Limitation of Liability

(1) The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing in which case the Seller's liability is limited as set out in clause 12(4).

(2) Except as provided in these Conditions and to the extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.

(3) The Seller's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the *Trade Practices Act 1974* (other than s 69) is limited to (a) replacement or repair of the Goods in accordance with clause 11(1) or (b) the supply of equivalent goods.

(4) The Seller's liability under Div 2A of Pt V of the *Trade Practices Act 1974* is limited to paying the Buyer an amount equal to the cost of: (a) replacing the Goods; (b) obtaining equivalent goods; or (c) having the Goods repaired, whichever is the lowest amount.

(5) The Buyer indemnifies and shall keep indemnified the Seller, its officers, agents, employees, related companies and insurers from and against all liabilities, damages, losses and claims, including without limitation legal costs, arising from death or injury to any person or loss of any property whatsoever to the extent that such death, injury or loss was caused or contributed to by the Buyer's abnormal or negligent use of the Goods.

13. Cancellation

Orders accepted by the Seller may be cancelled or rescheduled by the Buyer only with the Seller's written consent (which may be withheld in its absolute discretion) and upon payment of the Seller's cancellation and rescheduling charges. The Seller may without penalty cancel any order accepted if (a) the Buyer fails to make any payment when due under this or any other contract, (b) any act or omission of the Buyer delays the Seller's performance, (c) the Buyer breaches any of these Conditions, or (d) the Buyer's credit becomes impaired, and in the event of such termination, the Buyer must pay the Seller's cancellation charges.

14. No Waiver

No waiver of any breach of these Conditions shall constitute a waiver of any prior or subsequent breach of any provision of the Contract. All rights and remedies available to the Seller are cumulative and may be exercised singularly or concurrently.

15. Assignment

The contract is binding on the parties and their respective successors and permitted assigns. The contract may not be assigned by the Buyer without the prior written consent of the Seller (which may be withheld in its absolute discretion).

16. Applicable Law

The contract is made in and shall be governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State.