

TERMS AND CONDITIONS OF SALE AND SUPPLY

1. Interpretation

1.1 For the purposes of these Terms and Conditions of Sale and Supply ("Conditions"):

"Buyer" means the person, firm or company which places an order for purchase of Products and/or Services as identified in any such order or Proposal as the case may be.

"Conditions" means these terms and conditions of sale and supply as from time to time varied by the Supplier.

"Contract" means the agreement between the Supplier and the Buyer arising as a result of the Buyer's submission of an order for the Supplier's Products and Supplier's written acceptance and/or, in the case of Services, an agreement between such parties for the provision of Services by Supplier, as constituted by a Proposal. Such Contract shall be deemed to incorporate and be governed by these Conditions.

"Products" means goods supplied as agreed to be supplied by the Supplier to the Buyer under any Contract including, where applicable, any Software.

"Proposal" means a proposal document signed by the Supplier and the Buyer describing Services to be provided to or for the Buyer, subject to these Conditions.

"Services" means any services which the Supplier has agreed to provide to or for the Buyer under any Contract, as more fully described in the relevant Proposal.

"Supplier" means [Spectris Plc] or any of its affiliates as named in any quotation or Proposal.

2. **Basics of Sale: THESE CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN THE BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN THE BUYER'S ORDER.** No term or condition of the Buyer's order additional to or different from these Conditions shall become part of any Contract unless explicitly agreed to in writing by the Supplier. Retention by the Buyer of any Products delivered by the Supplier, receipt by the Buyer of any Services performed by the Supplier or payment by the Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions. The Supplier's failure to object to any provision contained in any communication from the Buyer shall not be construed as a waiver of these Conditions nor as an acceptance of any such provision.

3. **Quotations:** Prices, specifications and delivery date referenced in the Supplier's quotations are for information only and shall not be binding on the Supplier until all technical requirements have been agreed and the Supplier has accepted the Buyer's order. Quotations terminate if the Buyer does not place an order with the Supplier within 60 days.

4. **Orders:** By submitting an order to the Supplier, the Buyer agrees to be subject to these Conditions in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by the Supplier, shall be binding upon the Supplier until accepted in writing by the Supplier.

5. **Prices and Taxes:** The prices for Products shall be the price quoted by the Supplier to the Buyer, and the fee for Services shall be the fee agreed in the Proposal or, in either case, as otherwise agreed between the parties in writing. Prices and fees do not include taxes, transport charges, insurance and export and/or import charges or duties including without limitation sales, value added tax, use or excise taxes, applicable to the Products sold and/or Services supplied under any Contract, which taxes and other charges may, in the Supplier's discretion, be added by the Supplier to the sale price and/or fees or billed separately and which taxes and other charges shall be paid by the Buyer unless the Buyer provides the Supplier with any necessary tax exemption certificate. Unless otherwise agreed in writing, the Buyer shall be liable to pay the Supplier's charges for transport, packaging, insurance and export and/or import clearance.

6. **Shipment and Delivery:**

6.1 The Supplier shall deliver or arrange for delivery of Products Delivered Duty Unpaid (DDU Incoterms 2000) (cleared for import) to the Buyer's premises or other delivery point agreed between the parties. Any dates quoted by the Supplier for delivery of Products are approximate only and the Supplier shall not be liable for any delay in delivery of Products howsoever caused and time for delivery is not of the essence.

6.2 The Supplier reserves the right to make delivery of Products by instalments and to tender a separate invoice in respect of each instalment. When delivery is to be by instalments or the Supplier exercises its right to deliver by instalments or if there is delay in the delivery of any one or more instalments for whatever reason the Buyer shall not be entitled to treat the Contract as a whole as repudiated.

7. **Risk and Passing of Title:** Title to, and risk of loss and damage to, the Products shall pass to the Buyer on delivery in accordance with Section 6. Any claims for loss, damage or misdelivery shall be filed with the carrier and notified to Supplier within 5 days of the date of delivery. Products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given to the Supplier within such period. Acceptance shall constitute acknowledgement of full performance by the Supplier of all obligations under the Contract except as stated in Section 11.

8. **Services:**

8.1 The Supplier shall provide Services in accordance with these Conditions and the terms of the relevant Proposal.

8.2 The Buyer shall, upon the Supplier's reasonable request and otherwise as required, provide the Supplier with all necessary information and materials to enable the Supplier to provide Services in accordance with the terms of any relevant contract. The Buyer will be responsible for the completeness and accuracy of all such information and materials provided, and will ensure that it is and remains entitled to provide the same to the Supplier for use in connection with provision of the Services.

9. **Terms of Payment:**

9.1 Each shipment of Products shall be a separate transaction and the Buyer will be invoiced on delivery. The Supplier shall be entitled to invoice the Buyer, in respect of Services, monthly in advance. Terms of payment shall be net thirty (30) days from date of invoice.

9.2 All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.

9.3 The Supplier may, in its sole discretion, determine at any time that the Buyer's financial condition requires full or partial payment in advance or the provision of security for payment by the Buyer in a form satisfactory to the Supplier.

9.4 If the Buyer fails to make any payment when due then, without prejudice to any other rights and remedies available to the Supplier, the Supplier shall (at its option) be entitled: (i) to treat the Contract as repudiated by the Buyer, to suspend or cancel further delivery of Products and/or the provision of Services or any part thereof under that Contract or any other Contract between them and claim damages and/or receive reasonable cancellation fees; (ii) to affirm the Contract and claim damages from the Buyer; and (iii) to recover, in addition to the payment, interest on the unpaid amount (both before and after judgement) at the rate of 15% per annum, until payment in full is made. Such interest shall be calculated daily.

10. **Products:**

10.1 The Supplier may modify specifications provided the modifications do not adversely affect the performance of the Products. In addition, the Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from its suppliers.

10.2 All descriptions, illustrations and any other information relating to the Products contained in the Supplier's catalogues, brochures, price lists, advertising material and any sales or other particulars or literature are made by way of general description, are approximate only and for the general guidance and information of the Buyer. They shall not constitute warranties or representations by the Supplier nor shall they form part of any Contract.

11. **Warranties:**

11.1 The Supplier warrants that all Products shall be free from defects in material and workmanship under normal use for a period of six months from delivery to the Buyer save that the Supplier does not warrant that operation of the Software (defined in Clause 13) will be uninterrupted or error free or that all program errors will be corrected. The Buyer shall be responsible for determining that the Product is suitable for the Buyer's use and that such use complies with any applicable law.

11.2 The Supplier warrants that it shall perform the Services substantially in accordance with the Proposal and with reasonable skill and care.

11.3 Provided that the Buyer notifies the Supplier in writing of any claimed defect in the Product immediately upon discovery and any such Product is returned at the Buyer's risk to the Supplier, transportation charges prepaid, within six months from date of delivery and upon examination the Supplier determines to its satisfaction, after a reasonable period to inspect such Products, that such Product is defective in material or workmanship, the Supplier shall, at its option, repair or replace the Products, shipment to the Buyer prepaid.

11.4 The Supplier shall have a reasonable time to make such repairs or to replace such Product. Any repair or replacement of Products shall not extend the period of warranty. This warranty is limited to a period of six months, without regard to whether any claimed defects were discoverable or latent on delivery.

11.5 Services which do not conform with the warranty under Section 11.2 and which are notified to the Supplier within 10 days of the Buyer becoming aware of the same, and in any event no later than 2 months after the date on which the Services were performed, shall, if the Supplier agrees they were non-conforming, be re-performed as soon as reasonably practicable after the Supplier's receipt of notice of the non-conforming Services. If the Supplier fails to rectify any deficient performance of the Services, the Buyer's sole remedy shall be reimbursement of that portion of the fees attributable to the Services concerned.

11.6 The Supplier shall not be liable for the breach of the warranty in respect of Products supplied if: (i) the Buyer makes further use of such Products after giving the notice required in Section 11.3; (ii) the defect or failure arises from the Buyer's own fault; (iii) the defect arises from any drawing, design or specification supplied by the Buyer or from other materials or other property supplied by the Buyer or from any parts or items that have not been completely manufactured by the Supplier; (iv) the defect arises other than out of manufacture including without limitation, circumstances of accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing; (v) the defect arises out of the use of the Products in conjunction with products or materials not reasonably contemplated by the Supplier; (vi) the failure or defect results from the Buyer's unauthorised addition to or modification of, or failure to comply with the Supplier's written instructions relating to, the Products or Services; and (vii) the failure or defect arises out of any breach by the Buyer of its obligations to provide information to the Supplier under this Agreement.

11.7 If the Buyer fails to pay when due any portion of any payment due from the Buyer to the Supplier under a Contract or otherwise, all warranties and remedies granted under this section may, at the Supplier's option, be terminated.

11.8 The foregoing warranties are exclusive and in lieu of all other warranties, terms and conditions, express or implied by statute or otherwise, to the extent permitted by law, including without limitation warranties of quality or fitness for a particular purpose. The Supplier's sole and exclusive liability, and the Buyer's sole and exclusive remedy, for breach of the warranties in this Section 11 shall be as set forth in subsection 11.3 and 11.5 hereof.

12. **Liability:**

12.1 Nothing in these Conditions shall exclude or limit the Supplier's liability for (i) fraud, (ii) death or personal injury caused by its negligence, (iii) breach of terms regarding title implied, or (iv) any other liability to the extent that the same may not be excluded or limited as a matter of law.

12.2 Subject to Section 12.1, in relation to Products, the Supplier's maximum aggregate liability under or in connection with the supply, non-supply or purported supply of Products under any Contract, whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed 100% of the total amount payable by the Buyer in respect of Products under that Contract.

12.3 Subject to Section 12.1, in relation to Services, the Supplier's maximum aggregate liability under or in connection with the supply, non-supply or purported supply of Services under any Contract, whether arising in contract, or otherwise, shall in no event exceed 100% of the total amount payable by the Buyer in respect of Services under that Contract and, in respect of Services continuing beyond one year, shall in no event exceed in any year 100% of the total amount payable by the Buyer in respect of Services in that year.

12.4 Subject to Section 12.1, the Supplier shall be under no liability to the Buyer for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in tort (including negligence), contract or otherwise.

12.5 Any claim arising out of or in connection with a Contract must be commenced against the Supplier within three years of (i) delivery of the Products, or (ii) provision of the Services (as applicable), giving rise to the claim, and Supplier shall have no liability to the Buyer under or in connection with any claim commenced after such time.

13. **Software:** The Supplier shall at all times have and retain title and full ownership of all software, firmware, programming routines, and documentation relating to such software supplied by the Supplier for use with the Products, and of all copies made by the Buyer (collectively "Software") and grants the Buyer a non-exclusive and non-transferable licence to use such Software solely for use with the Products.

14. **Intellectual Property Rights:**

14.1 Notwithstanding delivery of and the passing of title in any Products and subject to section 13 and 14.3, nothing in these Conditions or any Contract shall have the effect of granting or transferring to, or vesting in, the Buyer any intellectual property rights in or to any Products and/or Services.

14.2 Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by the Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Supplier and the Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions.

14.3 The Supplier grants to the Buyer a non-exclusive, non-transferable licence to use such of the Works as are necessary, and to the extent necessary, for the Buyer to obtain and utilise the intended benefit of the Services.

14.4 If any claim is made against the Buyer that the Products or Services infringe the patent, copyright or other rights subsisting in Japan of any third party, the Supplier shall indemnify the Buyer against all losses, damages, costs and expenses awarded against, or incurred by, the Buyer in connection with the claim or paid, or agreed to be paid, by the Buyer in settlement of the claim provided that: (i) the Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) the Buyer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier; (iv) the Buyer shall do nothing which would or might vitiate any insurance policy or cover which the Buyer may have in relation to such infringement and shall use its best endeavours to recover any sums due thereunder and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover; (v) the Supplier shall be entitled to the benefit of, and the Buyer shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and (vi) without prejudice to any statutory duty of the Buyer, the Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such losses, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under this section 14.4, which steps may include (at the Supplier's option) accepting from the Supplier non-infringing, modified or replacement Products or Services.

14.5 The Supplier shall have no obligation or liability under Section 14.4 insofar as the infringement arises from: (i) any additions or modifications made to the Products and/or Services in question, otherwise than by the Supplier or with its prior written consent; (ii) any information provided by the Buyer to the Supplier including without limitation any specification; (iii) performance by the Supplier of any work required to any Products, or performance of any Services, in compliance with the Buyer's requirements or specification; (iv) a combination with or an addition to equipment not manufactured or developed by the Supplier; or (v) the use of Products beyond that scope established by the Supplier or approved in writing by the Supplier.

14.6 Without prejudice to Section 12.1, this Section 14 states the entire liability of the Supplier and the exclusive remedy of the Buyer with respect to any alleged infringement of intellectual property rights belonging to a third party arising out of or in connection with the performance of any Contract. This Section 14 shall be subject to the limits of liability in Sections 12.2, 12.3 and 12.4.

15. **Force Majeure:** Notwithstanding anything to the contrary in these Conditions, the Supplier shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Products or Services being prevented, delayed or rendered uneconomic by reason of circumstances or events beyond the Supplier's reasonable control. If due to such circumstances or events the Supplier has insufficient stocks to meet all its commitments the Supplier may apportion available stocks between its customers at its sole discretion.

16. **Confidential Information:** Each party undertakes to keep confidential, not use for its own purposes and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this Section) or is required to be disclosed by order of a competent authority.

17. **Cancellation, Rescheduling, and Termination:**

17.1 Orders for Products accepted by the Supplier may be cancelled or rescheduled by the Buyer only with the written consent of the Supplier (which consent the Supplier may withhold for any reason) and the Buyer shall indemnify the Supplier against the cost of all labour and materials used in connection with the order so cancelled or varied and against all loss, damage cost, charges and expenses suffered or incurred by the Supplier as a result of that cancellation or variation.

17.2 Contracts for Services shall commence on the commencement date identified in the relevant Proposal and, subject to earlier termination in accordance with Section 17.3 or 17.4, shall continue in force for the initial term as prescribed in such Proposal and thereafter for any renewal period (if any) set out in the Proposal and thereafter without limit of period unless or until terminated by either party in accordance with Section 17.3 or 17.4.

17.3 Without prejudice to Section 17.4, either party may terminate a Contract for Services by giving ninety days (90) written notice to the other party.

17.4 Either party may terminate a Contract for Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services which is incapable of remedy or which it fails to remedy within thirty days (30) of receiving written notice requiring it to be remedied.

17.5 Upon termination or expiry of any Contract for Services, each party shall, except to the extent permitted or required to exercise of perform its continuing rights, or obligations hereunder, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.

17.6 Termination of any Contract in accordance with these Conditions shall not affect the accrued rights or liabilities of the parties at the date of termination.

18. **Insolvency of the Buyer:** If: (i) the Buyer becomes insolvent or bankrupt, receives an order for attachment, receivership, auction sale, provisional attachment, provisional disposition or any similar action on the whole or any part of its assets or business, takes or suffers proceedings for bankruptcy, civil rehabilitation, corporate arrangement or corporate reorganization or any similar proceedings, suffers disposition for delinquent tax, or makes a resolution to dissolution; or (ii) the Buyer ceases, or threatens to cease to carry on business then, without prejudice to any other right or remedy available to the Supplier, the Supplier may treat any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to the Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

19. **General:**

19.1 These Conditions and any Contract shall be governed by the laws of Japan. Claims or disputes arising out of or in connection with these Conditions or any Contract shall be referred to the Tokyo District Court as the exclusive competent court of first instance.

19.2 Failure by the Supplier to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bear the exercise or enforcement thereof any time or times thereafter.

19.3 If any provision or part of a provision of these Conditions is or is held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not affect the enforceability of any other provision.

19.4 The Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or delegate any of its obligations thereunder, in whole or in part, without the prior written consent of the Supplier.

19.5 These Conditions and the relevant Contract constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract. The Buyer shall not have any remedy in respect of any untrue statement made by the Supplier upon which the Buyer relied in entering into a Contract (unless such untrue statement was made fraudulently or was as to a fundamental matter including a matter fundamental to the Supplier's ability to perform its obligations under the Contract) and the Buyer's only remedies shall be for breach of contract as provided for in these Conditions. Misrepresentations as to fundamental matters shall be subject to the terms of Section 12.

19.6 Variation to any Contract must be in writing and signed by the authorised representatives of the parties.

19.7 All notices given under these Conditions shall be sent to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice. Notice shall be regarded as properly given if sent in writing and shall be deemed to have been served on delivery if sent by hand, 2 days after despatched if sent by post, and on confirmation of transmission, if sent by facsimile.

08/2004