

TERMS AND CONDITIONS OF SUPPLY

1. General

- a. Spectrolytic Ltd. (the “**Company**”) offers to sell products (“**Products**”) and/or Services to the buyer (“**Buyer**”) subject to the conditions (“**Conditions**”) set out below. These Conditions will apply to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- b. Each order (“**Order**”) for Products and/or Services shall be deemed to be an offer by the Buyer to purchase the Products and/or Services subject to the Conditions. A contract (“**Contract**”) will only be formed when the Company confirms a written acceptance of the Order. The Buyer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Buyer are complete and accurate.

2. Price

- a. The price of the Products and/or Services shall be the price set out in the Order, or if no price is quoted, the price set out in the Company’s published price list in force as at the date of delivery.
- b. The Company may, by giving written notice to the Buyer at least 5 calendar days before delivery, reasonably increase the price of the Products and/or Services to reflect any increase in the cost of the Products that is due to:
 - i. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - ii. any request by the Buyer to change the delivery date(s), quantities or types of Products and/or Services ordered; or
 - iii. any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate or accurate information or instructions.

3. Terms of Payment

- a. The Company may invoice the Buyer for the Products on or at any time after the completion of delivery or completion of Services.
- b. The Buyer shall pay the invoice in full within 30 days of the date of the invoice unless specifically agreed in writing with the Company. Payment shall be made to the bank account nominated in writing by the Company from time to time
- c. The Buyer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim against the Company which the Buyer may have or allege to have or for any reason whatever.
- d. If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then the Company in its discretion may charge the Buyer interest on the overdue amount at the rate of 6% per annum above The Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgement.
- e. The Company shall be entitled to recover from the Buyer its reasonable costs (including legal costs) in relation to any action required to recover sums due under a contract.

4. Delivery

- a. Delivery of the Products shall be ex works (EXW Incoterms 2010) from the Company’s premises, or such other location set out in the Order as the parties may agree. Delivery of the Products shall be completed on the Products’ arrival at the delivery location specified in the Order. Products delivered may be subject to German and EU export control regulations, compliance with which is the responsibility of the Buyer. The Buyer shall indemnify the Company against all loss incurred by the Company caused by the Buyer’s failure to comply with such regulations.
 - b. Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence unless previously agreed in the Contract. The Company shall not be liable for any delay in delivery of the Products that is caused by circumstances outside the Company’s reasonable control or for the Buyer’s failure to provide the Company with instructions relevant to the supply of the Products. The Products may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
 - c. If the Buyer fails to take delivery of the Products within three days of the Company notifying the Products are ready (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Company’s fault) then delivery is deemed completed at 9 am on the third day after the day the Company notified the Buyer the goods were ready and the Company may store the Products and charge the Buyer for the reasonable costs and expenses (including insurance).
 - d. If the Company is unable to supply Products to the Buyer due to circumstances beyond its reasonable control, the Company shall refund any payment which the Buyer has already made on account of the price.
 - e. Subject to 4.d, if the Company fails to deliver the Products its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining commercially available replacement products of similar description and quality in the cheapest market available, less the price of the Products
 - f. Where the Products being purchased by the Buyer include stand-alone software products (“**Software Products**”) such Software Products shall be delivered by the particular medium set out in the Order or as otherwise agreed between the parties in writing.
- ### 5. Warranties and Liabilities
- a. The Company warrants that the Products that are supplied will at the time of delivery be free from defects in all material respects.
 - b. If the Buyer gives notice in writing to the Company within 12 months of delivery that any of the Products do not comply with condition 5a above and the Company is given a reasonable opportunity of examining such Products after the Buyer returns the Products to the Company at the Buyer’s cost, then the Company shall at its option repair, replace, or refund the price of the defective Products in full
 - c. The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damages, negligence, failure to follow the Company’s instructions (whether oral or in writing), misuse or alteration of the Products without the Company’s approval.
 - d. The Company shall be under no liability under the above

warranty (or any other warranty, condition or guarantee, if any) if the total price for the Products has not been paid by the due date for payment.

- e. Some Products from the Company should be recalibrated annually in order to function appropriately. The Company offers recalibration services to the Buyer. The Buyer acknowledges that failure to appropriately recalibrate any Products may result in erroneous data, and the Buyer will not hold Company responsible in any way due to invalid or erroneous data for failure to recalibrate annually, or for using an unauthorised third party provider to recalibrate the Products.
- f. In providing the Services, the Company shall supply the Services to the Buyer in accordance with the terms of the Contract. The Supplier shall perform the Services with all reasonable care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade.

6. Title

- a. The risk in the Products shall pass from the Company to the Buyer upon delivery of such Products to the Buyer. Notwithstanding such delivery, the title in the Products shall not pass to the Buyer until the price of the Products has been paid in full. This does not affect any other rights of the Company.
- b. Until title to the Products has passed to the Buyer, the Buyer shall:
 - i. hold the Products on a fiduciary basis on behalf of the Company;
 - ii. store the Products separately from all other products held by the Buyer so that they remain readily identifiable as the Company's property;
 - iii. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - iv. maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - v. notify the Company immediately if it becomes subject to any of the events listed in condition 9 below; and
 - vi. give the Company such information relating to the Products as the Company may require from time to time,

but the Buyer may, subject to Clause 7, resell or use the Products in the ordinary course of its business.

- c. If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in condition 9 below, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Products and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored in order to recover them.

7. Representations

- a. The Buyer will not redistribute any of the Products to any third party retailer or distributor unless otherwise agreed in writing with the Company and shall not sell the Products through commerce websites or social media sites without written permission from the Company.

8. Software

- a. All Software Products purchased by the Buyer are provided under a non-transferable, non-sub-licensable and non-exclusive licence to use solely for the purpose for which such Software Products are made available by the Company, and are subject to any end-user licence agreement which may be incorporated into the download, installation and /or use process(es) for such Software Products.
- b. The Buyer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software Products (or any software which is pre-installed with or integrated into other Products) in whole or in part except to the extent that any reduction of such software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of such software with the operation of other software or systems used by the Buyer, unless the Company is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Buyer shall request the Company to carry out such action or to provide such information before undertaking any such reduction.
- c. All intellectual property of the Company in the Products (including Software Products) shall remain owned by or validly licensed to the Company and no rights to such intellectual property are created under the Contract beyond the limited software licence referred to above.

9. Insolvency

Any Contract shall be terminated immediately by notice in writing if the Buyer makes any voluntary arrangement with its creditors, becomes bankrupt or subject to an administration order, or goes into liquidation. The Company shall suspend any further deliveries under the Contract or if the Products have been delivered and not paid for then the price shall become due immediately.

10. Limitation of liability

- a. Subject to condition 10.c, the Company shall in no circumstances whatever be liable to the Buyer, whether in contract, delict, breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.
- b. The Company shall not be held liable for any expense or loss resulting from the infringement of a third party's intellectual property rights as a consequence of the Company complying with any specification provided by the Buyer.
- c. Nothing in this condition 10 shall limit or exclude the Company's liability for death or personal injury caused by its negligence or the negligence of its employees, fraud or fraudulent misrepresentation, or any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- d. Subject to condition 10.c above, the Company's total liability to the Buyer in respect of all direct losses, costs or damages for any Products or Services shall in no circumstances exceed Euros the amounts paid by the Buyer to the Company within the previous 12 months.

11. Intellectual Property

- a. All current and future intellectual property rights, including but not limited to trademark rights, copyrights, patent rights, design rights and database rights, with respect to any and all Specifications and in or to any and all Products shall vest in the Company. Notwithstanding delivery of and the passing of title in any Products, nothing in any Contract shall have the effect of granting, licensing, or transferring to, or vesting in, Buyer any intellectual property rights, including but not limited to trademark rights, copy rights, patent rights, design rights and data base rights, in or to any Products.
 - b. Buyer may not reproduce, copy or in any manner disclose the Specifications of the Products to third parties without Company's consent in writing. In the event that Company gives written consent to Buyer to disclose the Specifications to third parties, Buyer shall ensure that such third parties shall have the same obligations as set forth in condition 11.a
 - c. If any claim is made against Buyer that the Products infringe the intellectual property rights of any third party, Company shall (save to the extent such infringement is attributable to a design specification or instruction provided by Buyer in which case the provisions of clause 11.d shall apply) indemnify Buyer against all losses, damages, costs and expenses awarded to such third party against or incurred by Buyer in connection with the claim, or paid or agreed to be paid by Buyer in settlement of the claim and provided that:
 - i. Company is given full control of any proceedings or negotiations in connection with any such claim;
 - ii. Buyer shall give Company all reasonable assistance for the purposes of any such proceedings or negotiations;
 - iii. Buyer shall not pay, accept or settle any such claim, or compromise any such proceedings or negotiations without the prior written consent of Company;
 - iv. the alleged infringement is not caused by the use of the Products with other products or services, not caused by use by the Buyer in violation of the conditions of the Contract or any underlying agreement, and not caused by modifications to the Products by the Buyer or anyone else.
 - v. Company shall be entitled to the benefit of, and Buyer shall accordingly account to Company for, all damages and costs (if any) awarded in favour of Buyer to be paid by any other party in respect of any such claim; and
 - d. Buyer warrants that any design specification or instruction provided by it to Company shall not cause Company to infringe any rights of any third party in the performance of the Contract, and Buyer undertakes to indemnify and keep indemnified Company against all claims, actions, losses, damages, liabilities, costs and expenses incurred by or awarded against Company as a result of work required to be done to the Products in accordance with design specification, instruction or other requirements of Buyer which results in any allegation or claim that Company has infringed any rights of any third party.
 - e. Buyer will not do or authorize any third person to do any act which would or might impair, damage or be inconsistent with the trade mark rights owned or used by Company in relation to the Products or to the goodwill associated therewith and, in particular, will not do or authorize the alteration, obliteration, covering up or incorporation of other trademarks (in whole or in part) on the Products. The Buyer shall further not use the Company's trademark rights, trade name, logo or any other identification marks for the purpose of advertising or publicity or otherwise without the Company's prior written consent.
- 12. Orders and Specifications**
- The Company reserves the right to make any changes in the specification of the Products that are required to conform to any statutory requirement.
- 13. Export Compliance**
- Buyer hereby agrees to comply fully with all applicable sanctions and export control laws and regulations, including without limitation those of the the European Union. To the extent required, Buyer further covenants to screen all customers and business partners against all embargoed countries lists, all relevant lists of persons denied export privileges or otherwise subject to trade, export, or financial sanctions, including without limitation the most current versions of OFAC's list of Specially Designated Nationals and Blocked Persons and BIS's Denied Persons List and Entity List, before providing or agreeing to provide any Products to any person.
- b. Buyer's breach of these sanctions and export compliance provisions shall entitle Company to immediately terminate any Contract concluded with Buyer. Buyer agrees to indemnify and hold harmless Company for Purchaser's noncompliance with these controls in connection with the Products.
 - c. Notwithstanding any other provision of these Conditions, Company shall not be required to commit or omit any action that is prohibited under or penalized by any applicable sanctions and/or export control laws and regulations.
- 14. Maintenance Services**
- a. In the event the Buyer elects to purchase maintenance services from the Company, this Clause 14 shall apply.
 - b. The Buyer has three options for the Company to carry out maintenance services:
 - i. The Company will recalibrate the Product and provide appropriate software to ensure the Product is working in material conformance with this agreement on an annual basis.
 - ii. The Buyer may return the Product to the Company at the Buyer is cost, and the Company will conduct recalibration tests. The Company will return the Product with results of recalibration at Buyer is cost.
 - iii. The Company may, at Buyer's option and expense, go to the Buyer's location (as agreed) and carry out recalibration services there. The Buyer shall pay a day rate as outlined in the Order in addition to all reasonable travel costs and expenses invoiced by Company separately. The Company shall procure that any personnel (including employees, agents or subcontractors) while on site of the Buyer's location shall comply with Buyer's reasonable health and safety and security policies provided these policies have been shown to the personnel. Any specific training and access the Company will require in order to reasonably access the Buyer's location shall be carried out by the Buyer at its own cost.

15. Data Analysis

- a. In the event the Buyer elects to purchase Data Analysis services from the Company, this Clause 15 will apply.
- b. The Company will analyse data received from the Product based on the written instructions and requests from the Buyer. The analysis will result in models that the Buyer may elect to use for predictive maintenance.
- c. The Company will provide only indicative data and models. These models are not advice and any reliance on the models are at the Buyer's own risk.
- d. If the Product has not been recalibrated within 12 months of the analysis, the Company shall not be held responsible for any errors or inaccuracies produced in the models.
- e. It is the responsibility of the Buyer to ensure all data transferred to the Company is appropriate backed up. The Company shall not be responsible for any loss or corruption of data provided by Buyer.

16. Termination

- a. The Company may terminate this Contract with immediate effect by giving written notice to the Buyer if the Buyer commits a material breach of the Contract and, if such breach is remediable, fails to remedy that breach within 5 days of being told to do so, or if the Buyer fails to pay any amount due on the date due for payment.
- b. The Buyer may terminate that the Contract if the Company commits a material breach of the Contract and, if such breach is remediable, fails to remedy that breach within 5 days of being told to do so.
- c. Termination shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages regarding any breach of Contract that existed at or before the date of termination.

17. Severance

In the event that any provision of these conditions is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the remaining provisions of these conditions shall remain in full force and effect.

18. Third Party Rights

- a. No one other than a party to the Contract shall have any right to enforce any of its terms.

19. Waiver

No failure or delay on the part of the Company to exercise any right or remedy under these conditions shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

20. Governing Law and Jurisdiction

These conditions shall be governed, construed by and interpreted in accordance with the laws of England and Wales. Each party agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or their subject matter or formation (including non-contractual disputes or claims).