

Spectrum Technologies Ltd Purchasing Terms and Conditions - Revision 4, 14 Oct 2020

PART ONE: GENERAL INFORMATION

Save for [special] condition(s) stipulated in the Purchase Order which are contrary to these Terms and Conditions, these **Terms and Conditions** apply in preference to and supersede any Terms and Conditions referred to, offered, or relied on by the parties at any stage in the dealings between the Buyer and the Seller with reference to the Goods or Services to which this Contract relates.

Without prejudice to the generality of the aforementioned, the Buyer will not be bound by any standard or printed terms referred to, or furnished by the Seller in any of its documents, unless the Seller specifically states in writing, separately from such terms, that such terms are required to apply, and the Buyer acknowledges this in writing. Any reference to the Seller's quotation, specification, price list or like document shall be solely for the purpose of describing the Goods and/or Services to be supplied and no terms and conditions endorsed upon, delivered with or referred to in such apply to the Contract.

These conditions apply to all the Buyer's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a Director of the Buyer.

In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to the statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced and includes any subordinate legislations for the time being in force made under it.

PART TWO: DEFINITIONS

a. 'Amendment' shall mean any variation to the Contract confirmed by an Authorised Purchase Order Form carrying the words 'Purchase Order Amendment'.

b. 'Authorised Purchase Order Form' shall mean a Purchase Order signed by an authorised signatory of the Buyer.

c. 'Background Intellectual Property' shall mean any Intellectual Property, other than Foreground Intellectual Property, owned developed or licensed by a party arising in respect of the Goods or Services and which is used in the performance of the Contract.

d. 'Buyer' shall mean Spectrum Technologies PLC or any wholly owned or associated subsidiary so named at the address stated on the Purchase Order.

e. 'Contract' shall mean the instructions of the Buyer contained in the Purchase Order, any other documents referred to in the Purchase Order, and these terms and conditions accepted by the Seller.

f. 'Firm and Fixed Price' shall mean no variation of price, nor reconciliation of costs, is permitted without the prior consent of the Buyer in writing.

g. 'Foreground Intellectual Property' shall mean any Intellectual Property that arises or is obtained or developed by, or by the Seller on behalf of, the Buyer in respect of the Goods or Services in the course of or in connection with the Contract.

h. 'Free Issue Material' shall mean all raw materials and/or packaging supplied by the Seller to the Buyer for use in the production of the Goods.

i. 'Goods' shall mean any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

j. 'Intellectual Property' shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other Intellectual Property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

k. 'Order' shall mean the Buyer's order for the supply of Goods and/or Services, as set out in the Purchase Order form, which details the instructions to the Seller.

l. 'Packaging' includes bags, cases, carboys, cylinder, drums, pallets, tank wagons and other containers.

m. 'Purchase Order' shall mean the Buyer's instructions to buy the Goods and/or Services.

n. 'Seller' shall mean the person, firm, or company to whom the Purchase Order is issued.

o. 'Services' shall mean any services agreed in the contract to be supplied by the Seller to the Buyer.

p. 'Specification' shall mean any plans, drawings, data or other information relating to the Goods and Services.

PART THREE: SPECIFICATION

a. The quantity, quality and description of the Goods and/or Services shall be as specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.

b. The Seller shall not alter any of the Goods, except as directed by the Buyer. The Buyer shall have the right, from time to time during the performance of the Contract, by amendment to the Order, to direct the Seller to add or omit, or otherwise vary, the Goods and/or Services, and the Seller shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Contract.

PART FOUR: PRICES

a. The price of the Goods shall be stated in the Purchase Order and unless specifically agreed in the Contract, shall be firm and fixed for the duration of the Contract. The price of goods shall be exclusive of VAT but inclusive of all other charges, including the costs of packaging, insurance, carriage and import duties of the Goods, unless otherwise agreed in writing by the Buyer. No extra charges shall be effective unless agreed in writing and signed by the Buyer.

b. The charges for the Services shall be set out in the Purchase Order, and shall be the full payment to the Seller in respect of the performance of the Services. Unless otherwise agreed in writing by the Buyer, the charges shall be exclusive of VAT and every cost and expense of the Seller directly or indirectly incurred in connection with the performance of the Services.

PART FIVE: PAYMENT

a. Provided the Goods have been received and comply with the requirements of the Purchase Order, unless otherwise agreed, payment shall be made 60 days from the end of month of invoice, or the goods are delivered, whichever is the later.

b. Payment for the Services shall be made 60 days from the end of the month of invoice, or when the Services are completed, whichever is the later.

c. Value Added Tax, where applicable, must be shown separately on all invoices.

d. Payment may be delayed but no prompt payment discount shall be forfeited by the Buyer, if the Seller fails to mark the Buyer's Order number on the consignment, package packing notes, invoices, monthly statements and all other correspondence.

e. Any payment shall be without prejudice to the Buyer's rights, should the Goods or Services prove unsatisfactory, or not in accordance with the Contract.

f. The Seller shall not be entitled to assert any credit, set-off or counterclaim against the Buyer in order to justify withholding payment of any such amount in whole or in part. The Buyer may, without limiting its other rights or remedies, set off any amount owing to it by the Seller against any amount payable by the Buyer to the Seller.

PART SIX: WARRANTY

a. The Seller warrants to the Buyer that the Goods:-

i. will, at the time of delivery and for twelve months thereafter, be of the best available design, quality, material and workmanship and conform in all respects with the Order and Specification supplied or advised by the Buyer to the Seller;

ii. will be free from defects in design, material and workmanship;

iii. will correspond with any relevant Specification or sample; and

iv. will comply with all statutory requirements and regulations relating to the Sale of the Goods Act 1979.

b. The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill and in accordance with the Purchase Order and or Specification and that it will only use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with the Contract.

c. Where the Seller supplies in connection with the provision of the Services any Goods supplied by a third party, the Seller shall assign to the Buyer the benefit of any warranty, guarantee or indemnity given by the person supplying the Goods to the Seller.

d. The Seller warrants that its Background Intellectual Property does not, so far as it is aware, infringe the rights of any third party. No third party has threatened or, so far as it is aware, is currently threatening proceedings in respect of such infringement and none of its Background Intellectual Property is the subject of any actual or threatened challenge, opposition or revocation proceedings.

SEVEN: INDEMNITY

a. The Seller shall indemnify the Buyer in full against all direct, indirect or consequential liabilities, (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss) loss, damages, injury costs and expenses (including legal expenses and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:-

i. breach of any warranty given by the Seller in relation to the Goods; ii. any infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture (including importation) or supply of Goods, or receipt, use or supply of the Services.

iii. any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering or installing the Goods.

iv. all claims by the customer of the Buyer (and their sub-buyers) arising out of any breach whatever by the Seller of this contract for sale of Goods and or supply of Services.

v. any act or omission of the Seller or its employees, agents or sub-contractors in performing the Services.

vi. any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

b. For these purposes, the Seller shall have, and maintain at its expense, insurance with a maximum cover of at least five million pounds sterling per incident or series of incidents in any one year to cover the Seller's potential liabilities under this Contract.

EIGHT: REMEDIES

a. If the Seller fails to deliver the Goods and/or perform the Services by the applicable date, the Buyer shall, without limiting its other rights or remedies, have one or more of the following rights:

i. to terminate the Contract with immediate effect by giving written notice to the Seller;

ii. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Seller attempts to make;

iii. to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party;

iv. where the Buyer has paid in advance for Services that have not been provided by the Seller and/or Goods which have not been delivered by the Seller, to have such sums refunded by the Seller; and

v. to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to meet such dates.

b. If the Seller has delivered Goods that do not accord with the Contract, then, without limiting its other rights or remedies, the Buyer shall have one or more of the following rights, whether or not it has accepted the Goods:

i. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Seller at the Seller's own risk and expense;

ii. to terminate the Contract with immediate effect by giving written notice to the Seller;

iii. to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods [(if paid)];

iv. to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

v. to recover from the Seller any expenditure incurred by the Buyer in obtaining substitute goods from a third party; and

vi. to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Seller's failure to supply Goods.

c. If any Services are not supplied in accordance with, or the Seller fails to comply with, any terms of this Contract, the Buyer shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

i. to terminate the Contract with immediate effect by giving written notice to the Seller;

ii. to refuse to accept the provision of any further Services by the Seller and to require the immediate repayment by the Seller of all sums previously paid by the Buyer to the Seller for Services under this Contract;

iii. to require the Seller, without charge to the Buyer, to carry out such additional work as is necessary to correct the Seller's failure;

iv. to recover from the Seller any expenditure incurred by the Buyer in obtaining substitute services from a third party; and

v. to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Seller's failure to supply the Services.

d. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Seller.

e. The Buyer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

PART NINE: ASSIGNMENT & SUB-CONTRACTING

The Seller shall not assign or contract any of its rights or duties under this Contract without the prior written authority of the Buyer. Where the Buyer agrees to the Seller sub-

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contracting the Contract, or any of the Seller's obligations under this Contract, the Seller shall ensure that any sub-contract contains the same obligations that are imposed by these terms and conditions.

PART TEN: CANCELLATION

a. Any time or period of delivery, dispatch or completion shall be of the essence. The Buyer shall also be entitled to cancel an Order or any part thereof and/or claim reimbursement for all losses and expenses suffered in the event that:

- i. The Seller fails to deliver Goods and/or Services in accordance with the terms of the Order.
- ii. The Seller being given a reasonable period to rectify the situation, fails to provide an adequate or satisfactory Service.
- iii. The Seller becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors or, being a corporation, commences to be wound up or if the Seller attempts to carry on its business under a receiver for the benefit of any of its creditors.
- iv. The Seller ceases to trade or threatens to cease to trade.
- v. The financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer, the capability of the Seller to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- vi. The Seller encumbers or in any way charges any of the Goods.

b. In the event of cancellation for any of the foregoing reasons, or, in the event of circumstances unforeseen at the time of placing the Order resulting in the Goods and Services being no longer required, the Buyer shall not be liable for any unfulfilled commitment.

PART ELEVEN: PACKAGING, DELIVERY AND MARKING

a. The Goods shall be delivered to the Buyer's place of business or to such other address as is agreed by the Buyer in writing prior to delivery of Goods on the date or within the period stated in the Order, and in either case during the Buyer's usual business hours.

b. The Seller must notify the Buyer of any delay.

c. All Goods supplied against the Order must be adequately protected against damage and deterioration in transit and delivered, carriage paid.

d. The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents [and in the case of part delivery, the outstanding balance remaining to be delivered].

e. Any information related to the handling and storage of the Goods upon receipt is to be clearly marked on the packaging and accompanying paperwork.

f. If the Goods are delivered to the Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

g. The acceptance of a delivery of Goods on a date earlier than the applicable date in the Order shall be at the Buyer's exclusive discretion. For avoidance of doubt the date for payment for early deliveries shall be calculated from the applicable date stated in the Order, or 60 days from the end of month of invoice, *whichever is later*.

h. Unless otherwise provided in the Order, the Seller shall be considered responsible for the collection and disposal of all returnable packaging at no cost to the Buyer.

PART TWELVE: INTELLECTUAL PROPERTY

a. All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable the third party from whom its right to use the Background Intellectual Property has derived).

b. All Foreground Intellectual Property shall vest in and be owned absolutely by the Buyer. To the extent that the Seller sub-contracts performance of any part of a Contract, the Seller shall ensure that any Foreground Intellectual Property arising from the work of its sub-contractor shall be assigned to the Buyer absolutely.

c. The Seller warrants that having carried out all reasonable investigations, the Goods and further sale, incorporation, exercise or other use of the Goods by the Buyer will not infringe any Intellectual Property rights of any third party existing or pending at the date of the Order. In case of infringement the seller shall indemnify and hold harmless Spectrum against all claims from third parties.

d. The Seller shall obtain waivers of all moral rights in the Foreground Intellectual Property, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

e. The Seller hereby grants a royalty free, irrevocable, worldwide, perpetual non-exclusive licence in respect of the Seller's Background Intellectual Property to the extent it is required by the Buyer in connection with the Goods and Services and any associated Foreground Intellectual Property.

f. The Seller acknowledges that all materials, equipment and tools, drawings, specifications, data (including without limitation any reports) supplied by the Buyer to the Seller (Buyer's Materials) and all rights in the Buyer's Material are and shall remain the exclusive property of the Buyer.

g. The Seller shall keep the Buyer's Materials in safe custody at its own risk, maintain them in good condition until returned to the Buyer, and not dispose or use the same other than in accordance with the Buyer's written instructions or authorisation.

h. The Seller hereby acknowledges that all Intellectual Property in the Buyer's Material shall vest in the Buyer and nothing in this Contract grants to the Seller any right, title or interest in the Intellectual Property rights in the Buyer's Materials.

i. The Seller shall assign any Intellectual Property that arise from its use of the Buyer's Materials.

j. Except as expressly provided in this Contract, no rights or obligations in respect of a party's Intellectual Property, are granted to the other party or to be implied from this Contract.

PART THIRTEEN: REGULATIONS & HEALTH & SAFETY

a. The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and/or Services and comply with all applicable laws and regulations.

b. In particular the Seller shall observe all health and safety rules and regulations in relation to the packing, labelling and carriage of hazardous goods.

c. Any safety precautions required for the handling of materials covered by the Order are to be clearly indicated on each consignment and the Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings.

PART FOURTEEN: PROPERTY & RISK

a. Property and risk in the subject matters of the Order shall pass to the Buyer when delivery is complete (including off loading and stacking), provided that such passing shall not prejudice either the Buyer's right to reject for non-conformity with Specification, or any other rights that the Buyer may have under the Order.

b. Where advance or progress payments are made title but not risk shall pass to the Buyer as soon as items are allocated to the Order. All items so allocated shall be adequately marked and recorded as being the property of the Buyer.

c. Where payment has been made and the parties agree that the Goods are to be stored at the Seller's premises until an agreed date for delivery is confirmed, title but not risk shall pass to the Buyer. The Seller shall ensure that the Goods are adequately marked and recorded as being the property of the Buyer, and that the Goods are maintained in satisfactory condition and kept insured against all risks for their full price.

d. The Seller shall notify the Buyer immediately if it becomes subject to any of the events listed in Part Ten (iii) to (v).

PART FIFTEEN: INSPECTION & ACCEPTANCE

a. The Buyer shall have the right to inspect and test the Goods at any time before delivery.

b. If following such inspection or testing the Buyer considers that the Goods do not conform, or are unlikely to conform with the Specification, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance.

c. Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract, and the Buyer shall have the right to conduct further inspections and tests after the Seller have carried out its remedial actions.

d. The Buyer shall not be deemed to have accepted the Goods until it has had 30 days to inspect them following delivery. In the case of Goods delivered by the Seller not conforming with the Contract whether by reason of not being of quality, or the quantity, or fit for the purpose stipulated, the Buyer shall have the right to reject such Goods and to purchase equivalents elsewhere without prejudice to any other right which the Buyer may have against the Seller.

e. The Buyer shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent.

f. Before exercising the said right to purchase elsewhere, the Buyer shall give the Seller 14 days from the date that the Seller was notified of the nonconformity to replace the rejected Goods with Goods which conform to the Contract.

g. When goods are rejected, they will be collected at the Seller's risk and expense within 7 days. The making of payment shall not prejudice the Buyer's right of rejection.

PART SIXTEEN: CONFIDENTIALITY

The Seller shall keep in strict confidence the terms and conditions of this Contract and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

PART SEVENTEEN: VARIATIONS

No variation of the Contract or any of the documents referred to in not shall be valid unless it is in writing and signed by or on behalf of the Buyer.

PART EIGHTEEN: FORCE MAJEURE

a. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable, including without limitation, acts of God, governmental action, acts of terrorism, war or national emergency, protests, riot, civil commotion, fire, explosion and flood.

b. If such event or circumstances prevent the Seller from supplying the Goods and/or Services for more than 180 days, the Buyer shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving written notice to the Seller.

PART NINETEEN: LOSS OR DAMAGE

The Seller shall be liable for any loss or damage, (including any consequential or indirect loss), howsoever arising, which may be suffered by the Buyer, by reason of any defect in, or failure to perform, on the part of the Goods and/or Services.

PART TWENTY: Key Performance Indicators (KPIs)

Should both parties agree that the achievement of KPIs by the Seller forms a part of the Contract, then the Seller shall throughout the term of the Contract comply with the KPIs as agreed. In the event of failure by the Seller to comply, the Buyer may at its discretion impose penalties and/or sanctions as agreed by both parties.

PART TWENTY ONE: CONSIGNMENT STOCK

The Buyer may at its discretion supply to the Seller raw materials or packaging free of charge for use in the production of the Goods ("Free Issue Material"). Free Issue Material shall be held and used by the Seller subject to conditions to be agreed prior to the issue of any Order or Contract.

PART TWENTY TWO: GENERAL

a. Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

b. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

c. Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

d. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

e. A person who is not a party to the Contract shall not have any rights under or in connection with it.

f. The construction validity and performance of the Contract shall be governed by the laws of England and Wales and subject to the exclusive jurisdiction of the English and Welsh courts.

PART TWENTY THREE: ETHICAL AND RESPONSIBLE SOURCING

a. The Buyer's policy of sourcing components/raw materials within the supply chain prohibits any direct or indirect funding of groups whose activities violates human rights.

b. The Buyer's policy of sourcing components/raw materials within the supply chain exercises due diligence and compliance with relevant laws and regulations in the use of certain ores [Tin, Tungsten, Tantalum and Gold] to prevent direct or indirect funding of groups in conflict zones and/or activities violate human rights.