

## **Terms and Conditions of Trade – Spectrum Analytical Pty Ltd Pty Ltd Trading As Spectrum Fluid Technologies**

### **1. Interpretation**

In these Terms and Conditions of Sale "the Company" means Spectrum Analytical Pty Ltd trading as Spectrum Fluid Technologies; "the Buyer" means the person or company purchasing the goods; "the Goods" means the materials and/or services subject to the contract between the Buyer and the Company.

### **2. General**

- 2.1 Unless otherwise agreed in writing, every order, sale, quotation and contract placed with the Company shall be subject to these Terms and Conditions of Sale to the extent that the same are applicable which are deemed to be agreed and accepted by all parties involved and over-ride any standard terms and conditions stipulated, incorporated or referred to in the Buyer's order.
- 2.2 These Conditions of Sale shall be governed by the laws applicable in Victoria and the Buyer submits to the jurisdiction of the Victorian Courts and Tribunals.
- 2.3 If any clause or part of these Terms and Conditions of Sale not being of a fundamental nature is held to be illegal or unenforceable, the legality, validity and enforceability of the remainder of these Conditions of Sale shall not be affected.

### **3. Price**

- 3.1 The buyer shall pay the price of the Goods stated in the invoice which will be the price ruling at the date of delivery or collection ("Price").
- 3.2 The Buyer shall pay GST at the rate specified on the invoice.
- 3.3 Unless otherwise agreed in writing the price is exclusive of packaging costs, freight charges, delivery costs, bank charges and such other charges notified by the Company to the Buyer all of which costs if incurred are payable by the Buyer ("Price Additions").
- 3.4 If the cost to the Company of supplying the goods not yet delivered shall be increased materially by any dispute of cause, and the parties concerned cannot agree on how such increase shall be borne, the Company may cancel the Contract without liability in respect of such undelivered goods.
- 3.5 Where delivery of the Goods is to be made by installments, each delivery shall be treated as a separate contract and failure, suspension or delay in any delivery or defect in the Goods delivered shall not vitiate the Contract as to other deliveries.

### **4. Acceptance and Risk**

- 4.1 The Buyer accepts the Goods and the Goods are at the Buyer's risk immediately upon leaving the Company's premises, whether the Goods are delivered by the Company or by someone other than the Company or collected by the Buyer. If the Buyer wishes to insure against loss or damage to the Goods after they have left the Company's premises it shall be the Buyer's responsibility to do so.
- 4.2 All delivery dates are estimates only and the Company shall not be liable in damages for any delay nor shall the Buyer be entitled to refuse to accept delivery except where a delay of an unreasonable length has occurred due to circumstances within the Company's control without limiting the generality of the foregoing. The following circumstances shall be deemed NOT to be within the Company's control.
  - Act of God, war, riots, civil commotions, strikes, lockouts, trade disputes, fires, breakdowns, interruptions of transport, Government action, and delay in delivery by the Company's suppliers.
  - During any such period of delay the Buyer after giving reasonable prior written notice of his intention to do so shall be at liberty to purchase elsewhere such Goods only as shall be necessary for the buyer's requirements and to cancel a delivery from the Company of any corresponding quantities so purchased.

### **5. Terms of Payment**

- 5.1 The Buyer shall pay the Price and Price Additions (Total Price including GST) before the 25th day of the month following the month of invoice ("due date"). Unless otherwise stated on the invoice this shall be deemed the due date.
- 5.2 If the Buyer does not pay the full amount of the Total Price on or before the due date the Company may charge interest at the rate specified on the monthly statement on the outstanding balance of the Total Price from the due date until the full amount of the Total Price has been paid to the Company.
- 5.3 All expenses incurred by the Company in collecting overdue payment from the Buyer including debt collection agency, legal and court fees shall be payable by the Buyer to the Company as a debt due forthwith upon demand by the Company.
- 5.4 The Buyer shall send all amounts due under these Terms and Conditions of Sale to the address of the Company printed on the front of the invoice, or deposit directly into the Company's bank account, details of which are printed on the front of the invoice.
- 5.5 If the Buyer shall fail to make any payment on the due date or becomes bankrupt or enters into liquidation (other than for the purposes of amalgamation or reconstruction) or makes any composition arrangement with creditors or has a receiver appointed to its undertaking property or assets or any part thereof, the Company shall have the option to withhold or cancel further deliveries provided that the failure on the part of the Company to exercise such option in respect to one or more deliveries shall not affect their right to exercise it in respect of other deliveries.

### **6. Claims**

- 6.1 The Buyer shall inspect or shall be deemed to have inspected the Goods upon delivery. Where the Goods supplied are not in accordance with the contract, the Buyer shall give notice in writing within 7 days of receipt. The Company will at their option: -
  - (a) Credit the Buyer with the price; or
  - (b) Replace same.All other warranties or conditions as to the Goods or their fitness for any purpose are excluded except where by statute such exclusion are prohibited. Slight changes to product composition do not constitute sufficient ground for complaint.

### **7. Returns**

- 7.1 The Buyer may only return goods to the Company for credit if: -
  - The prior written approval of the Company for the return has been obtained; AND
  - The freight costs on the return have been paid by the Buyer.
- 7.2 If the Buyer returns the Goods otherwise than in accordance with Clause 7.1:-
  - The Company may at its sole discretion accept the return and grant a credit to the Buyer: -

- If the Company does not accept the return, the Company may hold the goods on the Buyer's behalf at the Buyer's expense until arrangements satisfactory to the Company are made by the Buyer for the disposal of the goods

## 8. Cancellation

No order for Goods placed by the Buyer and accepted by the Company may be cancelled or deferred without prior consent in writing of the Company and in the case of custom blended goods ordered by the Buyer no order for such goods may be cancelled after: -

- The Company has scheduled manufacture of such goods; or
- The Company has purchased the materials required for the manufacture of such Goods.

## 9. Personal Property Security

9.1 The Company and the Buyer agree that ownership of the goods shall not pass until: -

- The Buyer has paid the Company all amounts owing for the particular Goods; and
- The Buyer has met all other obligations due by the Buyer to the Company in respect of all contracts between the Company and the Buyer.

9.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.

9.3 It is further agreed that: -

- Where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations by the Buyer are met; and
- Until such time as ownership of the Goods shall pass from the Company to the Buyer the Company may give notice in writing to the Buyer to return the Goods or any of them to the Company. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and
- The Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- If the Buyer fails to return the Goods to the Company, the Company or the Company's agent may enter upon and into land and premises owned, occupied, or used by the Buyer or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods; and
- The Buyer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal or otherwise benefit of the Goods, up to and including the amount the Buyer owes to the Company for the Goods, on trust for the Company; and
- The Buyer shall not deal with the money of the Company in any way which may be adverse to the Company; and
- The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
- The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and
- Until such time that ownership in the Goods has passed to the Buyer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

## 10. Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause;

10.1.1 financing statement has the meaning given to it by the PPSA.

10.1.2 financing change statement has the meaning given to it by the PPSA.

10.1.3 security agreement means the security agreement under the PPSA created between the Buyer and the Company by these terms and conditions; and

10.1.4 security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions: -

10.2.1 constitute a security agreement for the purposes of the PPSA and

10.2.2 create a security interest in: -

- All Goods previously supplied by the Company to the Buyer (if any);
- All Goods that will be supplied in the future by the Company to the Buyer.

10.3 The Buyer undertakes to: -

10.3.1 promptly sign any further documents and/or provide any further information (such as information to complete, make accurate and up to date in all respects) which the Company may reasonably require to: -

- Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- Register any other document required to be registered by the PPSA; or
- Correct a defect in a statement referred to in clause 9.3.

10.3.2 Indemnify, and upon demand re-imburse the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby.

10.3.3 not register a financing change statement in respect of a security interest without the prior written consent of the Company.

10.3.4 not register, or permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company; and

10.3.5 immediately advise the Company of any material change in its business of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

10.4 The Company and the Buyer agree that Section 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions

10.5 The Buyer hereby waives its rights to receive notices under sections 94, 118, 121(4) 130, 132(3)(d) and 132(4) of the PPSA.

10.6 The Buyer waives its rights as a grantor and/or a debtor under Section 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Company, the Buyer waives its rights to receive a verification statement in accordance with Section 157 of the PPSA.

10.8 The Buyer shall unconditionally ratify any actions taken by the Company under Clauses 9.3

## **11. Security and Charge**

- 11.1 Despite anything to the contrary contained herein or any other rights which the company may have howsoever: -
- 11.1.1 where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - 11.1.2 should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clause, the Buyer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a Solicitor and own Buyer basis.
  - 11.1.3 the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

## **12. Buyer's Statutory Rights**

These Terms and Conditions of Sale shall not exclude, limit, restrict or modify the rights, entitlement and remedies conferred upon the Buyer, or the liabilities imposed upon the Company, or any Commonwealth or Victorian legislation rendering void or prohibiting such exclusion, limitation restriction or modification, but subject thereto all excludable conditions and warnings are hereby excluded.