

TERMS AND CONDITIONS OF SUPPLY

1. General

- a. Spectrolytic GmbH (the “**Company**”) offers to sell products (“**Products**”) 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. All orders (“**Order**”) for Products shall be deemed to be an offer by the Buyer to purchase the Products 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 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 notice to the Buyer at any time before delivery, increase the price of the Products 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 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.
- 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.
- 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 Buyer shall pay interest on the overdue amount at the rate of 6% per annum above The Deutsche Bundesbank 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. The Buyer shall pay the interest together with the overdue amount.
- 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 however caused. 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 or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Company’s fault) then, without prejudice to any other right or remedy available to the Company, the Company may store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage.
- 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 (subject to deduction of any amount the Company is entitled to claim from the Buyer) but the Company accepts no liability to compensate the Buyer for any further loss or damage caused by the failure to deliver.
- e. If the Supplier fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Products. The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by an unforeseen event beyond its reasonable control or the Buyer’s failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply 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 which 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 of any Products that some or all of those 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, or replace the defective Products.

- 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.

6. Title

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

but the Buyer may 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, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, 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.
- b. Whilst the Company takes every precaution in the

preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

8. Software

- a. All Software Products purchased by the Buyer are provided under a non-transferable 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 or becomes bankrupt or becomes subject to an administration order or goes into liquidation or the Company reasonably believes that any of the events mentioned above or any analogous event is about to occur. 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. 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. Subject to condition 10.d. below, the Company's total

liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict, breach of statutory duty, or otherwise, shall in no circumstances exceed the sums paid to date by the Buyer for the Products.

- d. 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.
- e. In the event we are found liable to you, the maximum amount which may be claimed in respect of all loss or damage or any costs incurred is Euros 5,000,00.

11. Intellectual Property

- a. All current and future intellectual property rights, including but not limited to trademark rights, copy rights, patent rights, design rights and data base rights, with respect to any and all Specifications and in or to any and all Products shall vest in the Seller. Buyer may not reproduce, copy or in any manner disclose the Specifications of the Products to third parties without Seller's consent in writing. In the event that Seller 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 this Article 11.a) 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. If any claim is made against Buyer that the Products infringe the intellectual property rights of any third party, Seller 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.c) 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, subject to the limitations of clause 10 and provided that:
 - i. Seller is given full control of any proceedings or negotiations in connection with any such claim;
 - ii. Buyer shall give Seller 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 Seller;
 - iv. the alleged infringement is not caused by the use of the Products with other products or services, or if the Products are used by Buyer in violation of the conditions of the Contract, or any underlying agreement, or if Buyer or anyone other has modified the Products concerned.
 - v. Buyer shall do nothing which would or might vitiate any insurance cover which Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that Buyer recovers any sums under any such policy or cover

- (which Buyer shall use its best endeavours to do);
- vi. Seller shall be entitled to the benefit of, and Buyer shall accordingly account to Seller 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
- vii. Seller shall be entitled to require Buyer to take such steps as Seller may reasonably require to mitigate or reduce any such loss, damage, cost or expense for which Seller is liable to indemnify Buyer under this clause.

- c. Buyer warrants that any design specification or instruction provided by it to Seller shall not cause Seller to infringe any rights of any third party in the performance of the Contract, and Buyer undertakes to indemnify and keep indemnified Seller against all claims, actions, losses, damages, liabilities, costs and expenses incurred by or awarded against Seller 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 Seller has infringed any rights of any third party.
- d. 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 Seller 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 Seller's trademark rights, trade name, logo or any other identification marks for the purpose of advertising or publicity or otherwise without the Seller's prior written consent.

12. Orders and Specifications

The Company reserves the right to make any changes in the specification of the Products which 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. Specifically, Buyer covenants that it shall not -- directly or indirectly -- sell, provide, export, re-export, transfer, divert, loan, lease, consign, or otherwise dispose of any Products, received from Seller under the Contract to any person, entity, or destination, or for any activity or use prohibited by aforementioned laws and regulations without obtaining prior authorization from the competent government authorities as required by those laws and regulations. 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 Seller to immediately terminate any Contract concluded with Buyer. Buyer agrees to indemnify and hold harmless Seller for Purchaser's noncompliance with these controls in connection with the Products.

- c. Notwithstanding any other provision of these Conditions, Seller 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. 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.

15. 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.

16. Governing Law and Jurisdiction

These conditions shall be governed, construed by and interpreted in accordance with the laws of Germany. Each party agrees that the courts of Germany 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).