

# GENERAL TERMS & CONDITIONS



# SPECTRAL INDUSTRIES

General Terms & Conditions issue 5, of the private company Spectral Industries B.V.

## **Article 1: Definitions**

- 1.1 "Supplier" refers to the private limited company Spectral Industries B.V., having its registered office and principal place of business in Delft (The Netherlands), registered with the Chamber of Commerce under number 60235772, as well as its legal successor by universal or singular title and all parties and companies that are part of the group that Spectral Industries B.V. is part of.
- 1.2 "Customer" refers to any (natural or legal) person, company or other party who or which enters into a purchase or other agreement with the Supplier or who or which receives or sends any offer from or to Supplier.
- 1.3 "Product" refers to all products sold or delivered by Supplier as well as business and services such as maintenance, installation, measurements, experiments, advice and inspection provided by Supplier.
- 1.4 "Force majeure" refers to any circumstance beyond the control of the Supplier which prevents normal fulfilment of an agreement. This includes amongst other things strikes, import-, export- and transport bans, virus outbreaks and/or other government measures.

## **Article 2: Applicability**

- 2.1 These general terms and conditions apply to all agreements entered into by Supplier with a Customer and to all offers sent to a Customer by Supplier.
- 2.2 Any general terms and conditions used by the Customer are not applicable, unless these are explicitly accepted in writing by the Supplier.
- 2.3 Deviations to the provisions in these general terms and conditions are only permitted if agreed upon in writing between Supplier and Customer. Deviations and/or additions to these general terms and conditions only apply to the relevant agreement.

## **Article 3: Offers**

- 3.1 All offers are free of obligation, unless explicitly otherwise agreed upon in writing. If an offer stipulates a period in which it must be accepted, this means that the offer will expire at the end of said period.
- 3.2 The brochures, price lists and other information provided by the Supplier in relation to offers are only informal by nature and are not binding. The models, images and descriptions of Products in the documents provided by the Supplier are not binding in relation to the delivered Products.
- 3.3 The visual images, drawings and models in any form provided by the Supplier in relation to offers remain the property of the Supplier at all times and must be returned at the first request of the Supplier. Written consent from the Supplier is required for the reproduction of visual images, drawings and models in any form.

## **Article 4: Formation of the agreement, exclusivity**

- 4.1 Agreements, including amendments and additions thereto, will first be concluded if and when the Supplier has provided written confirmation thereof (e.g., in the form of an order confirmation) or the Supplier has commenced the execution of an order placed with Supplier.
- 4.2 The Supplier reserves the right to refuse any orders of Customer without giving reasons.
- 4.3 Unless explicitly agreed upon otherwise in writing, Supplier is in no event exclusively bound to Customer and Customer cannot derive any implicit exclusivity rights from any agreement entered into with Supplier.

**Article 5: Prices / VAT registration number**

5.1 Unless otherwise agreed, all prices are in Euros, excluding VAT and based on delivery Ex Works (as referred to in the Incoterms 2010).

5.2 If requested by Supplier, the Customer is obliged to provide the Supplier with the correct VAT number and to inform him immediately of any change therein.

**Article 6: Third parties**

If this is required for the proper execution of this agreement, the Supplier is entitled to deploy third parties.

**Article 7: Timeframes, delivery**

7.1 The standard delivery is Ex Works.

7.2 The specified periods, including delivery times, assembly, installation and/or repair durations are always estimated times and may never be regarded as firm deadlines, unless explicitly agreed otherwise in writing.

7.3 The moment of delivery of the Products is the moment of actual disposition of said Products by Customer at its premises.

7.4 The Customer is responsible towards the Supplier for the correct and timely execution of all fittings, provisions and/or conditions required to install and assemble the Product and/or for the correct operation of the Product when assembled, and to strictly comply with all other instructions given by Supplier.

**Article 8: Force majeure**

8.1 In a case of Force Majeure, the Supplier is entitled to comply with any agreement as much later as the Force Majeure continues. If said Force Majeure lasts longer than six (6) continuous months, both parties are entitled to dissolve the agreement only with regard to the part concerning work not yet performed or delivered.

8.2 In the case of a dissolution pursuant to the provisions in this Article 8, the Supplier is entitled to claim payment for the part of the work (or for the Products) that was or were executed or delivered already. Supplier is in no event obliged to pay any damages to Customer in relation to any event of Force Majeure and the consequences thereof.

**Article 9: Guarantee**

9.1 For delivered Products, the Supplier guarantees normal operation for a period of one year, starting at the date of delivery, unless explicitly agreed upon otherwise in writing.

9.2: Warranty does not apply, inter alia:

- 1) to faults or defects caused by normal wear and tear;
- 2) to faults or defects caused by negligent or inexperienced use by Customer;
- 3) to faults or defects caused by external factors such as fire- or water damage, or caused by any repair actions performed by Customer or third parties or
- 4) if Customer has not fulfilled any obligation towards Supplier.

9.3 The repair or replacement of parts or Products during the guarantee period does not result in the extension of said guarantee period.

**Article 10: Liability**

10.1 The liability of the Supplier is limited to those cases where any damage is the result of an intentional act or gross negligence of Supplier or if the Supplier is liable pursuant to the mandatory regulations concerning product liability. Supplier's liability is limited to those cases where any damage results from intent or gross negligence on the part of the Supplier or if the Supplier is liable under the mandatory provisions on product Liability, insofar as the conditions in these general terms and conditions are met.

10.2 Supplier shall never be liable for indirect or consequential damage, which in any case includes:

- damages other than damages for Supplier to remedy the direct consequences of the non-performance;
- damage due to loss of profit, production stoppage, business interruption, missed savings, reduced

- goodwill or destruction or deterioration of goods;
- damages resulting from claims by third parties, including customers of Customer;
- damage relating to the use of items prescribed by Customer to Supplier, including: installations, tools, machines, materials or data, information or software of third parties;
- damage relating to the engagement of suppliers, programmers, consultants or controllers prescribed by Customer to Supplier;
- damage resulting from mutilation, destruction, or loss of data, settings of digital equipment, software, information, data or documents.

Customer is further obliged to perform software updates if Supplier requires Customer to do so.

10.3 Any liability of Supplier is further limited to the relevant invoice amount of the products, at least up to the amount paid under the professional/business liability insurance policy in the relevant case.

10.4 If and to the extent no payment is made under said professional/company liability insurance for whatever reason, the aforementioned liability shall be limited to € 150.000,-.

#### **Article 11: Payment, interest and costs**

11.1 Unless explicitly agreed upon otherwise in writing, payments must be made in Euros and must be paid within thirty (30) days of the date of the invoice. The Customer cannot appeal for any discount or to suspension of payment and/or settlement.

11.2 If the Customer considers that an invoice is incorrect, he must indicate this in writing to the Supplier within eight (8) days of the date of invoice. If this term is exceeded, the Customer will be deemed to have accepted the invoice.

11.3 If any amount due by Customer to Supplier is not paid within the term of payment, the Supplier is entitled to increase the due amount by the statutory commercial interest, at least legal interest per month.

11.4 Ownership of the deliverables transfers to Customer until after Customer has fulfilled all payments to Supplier.

#### **Article 12: Dissolution and suspension**

12.1 In cases that the Customer:

- a) is declared bankrupt or submits a request for a moratorium on payments;
  - b) proceeds to a strike or transfer of his company or an important part thereof, including the incorporation of his company in a new or existing company, or change of his company's objectives;
  - c) dies, is placed under guardianship or is declared subject to the Debt Rescheduling (Natural Persons) Act or any foreign (non-Dutch) equivalent thereof; or
  - d) is in default under the agreement entered into with the Supplier;
- all invoices sent by Supplier become immediately due and payable and Supplier has the right to
- 1) (wholly or partially) suspend its obligations until the Customer has provided sufficient security concerning the compliance with its obligations or
  - 2) (wholly or partially) dissolve the agreement whereby the Customer is liable for all direct and indirect damage suffered by the Supplier, without any form of compensation being due by Supplier, all without prejudice to any other rights of Supplier.

12.2 The Customer is not entitled to dissolve the agreement totally or partially or suspend or settle its obligations, except in the events described explicitly in these terms and conditions.

#### **Article 13: Intellectual and industrial property rights / Software**

13.1 All intellectual property rights to the goods delivered, made available or developed by Supplier to Customer (as referred to below) are owned and held exclusively by Supplier or its licensor(s) or supplier(s). Intellectual property rights include among other things: inventions, ideas, documentation, software, ICs, data files, software, diagrams, equipment, samples, circuits, methods, set-ups, installations, solutions, analyses, designs, reports, quotations.

13.2 Unless otherwise agreed in writing, in connection with the agreed deliveries, the Supplier acquires - to the extent applicable - for an indefinite period of time the non-exclusive and non-transferable rights of use for the specific application for which the delivery was intended, such exclusively for the use in the country where, according to the agreement, the delivery took place or was to take place.

- 13.3 The rights of use mentioned in Articles 13.1 and 13.2 shall pass to Customer as soon as the relevant deliveries are complete and Customer has fulfilled all obligations under the agreement towards Supplier.
- 13.4 If it appears that an item delivered to Customer by Supplier infringes an intellectual property right of a third party and Customer is held liable on that account, Customer is obliged to inform Supplier immediately in writing. In that case Supplier is entitled, at its own discretion, to remedy this infringement and - if necessary - to repair, replace or (partially) dissolve the delivered good.
- 13.5 Supplier is not liable for the infringement of any right of intellectual property or any other exclusive right, if it results from:
- modifications by Customer or a third party in or to the good sold/delivered by Supplier to Customer;
  - use/integration/application of the good sold/delivered by Supplier to Customer in any way other than as prescribed by Supplier;
  - a software modification not carried out by or on behalf of Supplier.
- 13.6 Customer is not allowed to use products supplied by Supplier, including software, reproduce or make copies thereof, unless expressly agreed in writing.

**Article 14: Confidentiality**

- 14.1 Customer shall not disclose any confidential information regarding the (business of) Supplier to any third party.
- 14.2 Nothing in this Article 14 prevents any announcement being made or any confidential information being disclosed:
- a) with the written approval of Supplier;
  - b) to the extent required by law or any competent regulatory body, but if Customer is required to disclose any confidential information it shall promptly notify Supplier;
  - c) to professional advisors of Customer on terms that such professional advisors undertake to comply with the provisions of Article 14.

**Article 15: Applicable law and disputes**

- 15.1 All agreements and disputes between Contractor and Client shall be governed exclusively by Dutch law. The applicability of the Vienna Sales Convention is expressly excluded.
- 15.2 Disputes will exclusively be submitted to the competent court in the district of The Hague, The Netherlands.

**Article 16: Privacy**

Supplier will treat confidentially any privacy-sensitive information relating to Customer. If Supplier processes Customer's personal data, such processing shall take place in accordance with Supplier's privacy policy. This can be accessed at: <https://spectral-i.com>