

Sales Terms and Conditions

The Sales Terms and Conditions ("Terms") as contained herein shall govern all sales of products (the "Products") Spectrum Controls Inc. and its subsidiaries (collectively "Spectrum") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders or electronic orders via facsimile or EDI (collectively, "Purchase Orders"). Upon receipt by Buyer of an express acceptance by Spectrum, these Terms, the information concerning the product ordered, number of units, the price per unit and the delivery date as noted on the face of the Purchase Order all as modified by Spectrum's acceptance or order acknowledgment, whether in tangible or electronic form, become a binding contract between Buyer and Spectrum on the terms reflected in those documents (the "Sales Agreement"). In case of a conflict between the Purchase Order and Spectrum's written acceptance or order acknowledgment, Spectrum's written acceptance or order acknowledgment prevails. In all cases, any and all terms and conditions as may be contained on the reverse side of any request for quotations, request for bids, purchase orders, payments and similar documents issued by Buyer are hereby expressly rejected in their entirety and shall have no force or effect. Spectrum is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction.

- 1) **SPECIFICATIONS:** The specifications applicable to the Products shall be Spectrum's standard specifications or, in the case of items other than Spectrum's standard Products, such specifications as are agreed to in writing signed by both Spectrum and Buyer.
- 2) **CHANGES:** Spectrum reserves the right to make process and design changes in the Products which do not adversely affect form, fit or function without the prior approval of or notification to Buyer. Buyer may request changes in process, design or method of shipment of the Products only if Buyer agrees to accept such changes in delivery times or price which are, in Spectrum's judgment, reasonably necessitated thereby. Should Buyer request changes, which are, in Spectrum's judgment, beyond the ability of Spectrum to produce or deliver within the schedule or for the price proposed by Buyer, Spectrum shall have the right, in its sole discretion and without liability, to reject or cancel Buyer's order. If production on the order has commenced or expenses have been incurred or commitments made as a consequence thereof, Buyer shall pay all reasonable cancellation charges based on Spectrum's costs and commitments.
- 3) **SHIPMENT:** The method of packing and shipment of the Products sold hereunder shall be at the discretion of Spectrum, unless special written instructions have been received by Spectrum no less than five (5) days prior to shipment.
- 4) **DELIVERY:** The delivery schedule appearing on the face side of Spectrum's quotation or order acknowledgment is approximate only. Spectrum will make reasonable efforts to deliver in accordance therewith but shall have no liability for failure to do so. Pro rata payments will be due from Buyer as deliveries are made by Spectrum. If a delivery is delayed as a result of any action or inaction of Buyer, Spectrum may invoice Buyer for the Products as of the scheduled delivery date and may charge Buyer for warehousing and other expenses incurred because of the delay.
- 5) **EXCUSABLE DELAY:** Spectrum shall not be liable for delays or defaults in delivery due to acts of God or public enemies, war or military activity, riots, insurrection or sabotage, acts or threats of terrorism, fires, floods, explosions or other catastrophes, unusually severe weather, accidents, epidemics or quarantine restrictions, acts of local, state or national governments or public agencies, labor disputes or shortages, energy or material shortages, utility or communication failures or delays, delays of a supplier of Spectrum, or causes beyond reasonable control. In the event of any such delay, the date for delivery shall be deferred for a period equal to the time lost by reason of the delay.
- 6) **DOMESTIC DESTINATIONS ONLY:** Spectrum's obligation with respect to delivery ceases upon its tendering possession of the Products to the first common carrier at Spectrum's facility. Thereafter, all risk of damage, loss or delay in transportation shall be borne by Buyer.
- 7) **FOREIGN DESTINATIONS ONLY:**
 - a) Ownership, right to possession, legal title and all risk of loss or damage to the Products shall pass to the Buyer upon Spectrum's tendering of possession of the products to the first common carrier at Spectrum's facility or to the Buyer's designated freight forwarder at Spectrum's facility. These terms of ownership, right to possession, title and risk of loss or damage shall apply regardless of how the Products are shipped, for whom they are designed, the time or method of payment, and the commercial abbreviations or other terminology used to describe the sale.
 - b) Buyer shall, upon request, take all actions and provide all certificates, undertakings or other documents required to enable Spectrum to export the Products from the country of manufacture. When the Products arrive at a foreign point of entry, Buyer shall take all actions and pay all duties, taxes or other costs necessary to import them.
- 8) **PRICES:** The prices stated on the face of Spectrum's quotation shall apply to Products scheduled for shipment no more than twelve (12) months from the date of receipt of Buyer's order by Spectrum. Spectrum reserves the right to increase its prices for later shipments upon ninety (90) days written notice. Buyer shall have thirty (30) days from the date of such notice to cancel its order, without charge, with respect to any Products not scheduled for shipment prior to the effective date of the price increase. All costs of shipping the Products to Buyer, including without limitation, freight, insurance (for either Buyer's or Spectrum's benefit) and special packing or handling, shall be in addition to the stated prices and shall be paid by Buyer. All invoices issued by Spectrum are due and payable within thirty (30) days following the date of the invoice. Payment of all sums invoiced to Buyer shall be in U.S. Currency. Spectrum shall be entitled to interest on all unpaid sums from the due date at the rate of 1.5% per month or the maximum rate by law, whichever is less.
- 9) **TAXES:** In addition to the stated prices, Buyer shall pay Spectrum the amount of any excise, sales, use or other taxes incident to the sale of Products hereunder for which Spectrum may be liable or which Spectrum is required by law to collect unless Buyer provides Spectrum with a proper tax exemption certificate.
- 10) **WARRANTY:** Spectrum warrants that the Products sold to Buyer hereunder, with the exception of Experimental Products, will be free from defects in material and workmanship furnished by Spectrum and will conform to the applicable mutually agreed upon specifications. Except as otherwise provided herein, this warranty shall apply only where Buyer has given Spectrum written notice of such defect or nonconformity within twelve (12) months following the date of Spectrum's invoice for the sale of such Products by Spectrum, which such invoice shall not be dated earlier than the date of shipment for such Products. Buyer shall return to Spectrum any Product claimed by Buyer to be nonconforming for warranty validation purposes. Any returned Product that is determined by Spectrum to be within specifications shall be returned to Buyer at Buyer's sole cost and expense. This warranty does not extend to any Product that has been subjected to abuse, misuse, neglect or accident or stored in an improper manner nor does it apply to any Product that has been repaired or altered by any party other than Spectrum. Spectrum's liability for any Product that is validated by Spectrum as defective or nonconforming, whether based on breach of warranty, negligent manufacture or product liability is exclusively limited to repair or replacement, at Spectrum's election, of such Products. Spectrum

assumes no risk and shall be subject to no liability for any damages or loss resulting from the specific use or application made of the Products. NOTWITHSTANDING, THE FOREGOING HOWEVER, ALL SELF-CONTAINED SUBASSEMBLIES THAT ARE A PART OF THE PRODUCTS SOLD TO BUYER, BUT NOT MANUFACTURED BY THE ALLIED MOTION ARE LIMITED TO THE WARRANTY OF THE SPECIFIC MANUFACTURER OR SUPPLIER, WHICH SUCH WARRANTY SHALL BE ASSIGNED BY ALLIED MOTION TO THE BUYER, SUCH WARRANTY SHALL TERMINATE UPON THE EXPIRATION DATE OF SAID MANUFACTURER'S OR SUPPLIER'S WARRANTY. THE FOREGOING WARRANTY IS BUYER'S SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY, PRODUCTIVENESS, OR OTHERWISE.

- 11) **RETURNS:** Written authorization must be obtained from Spectrum prior to the return of any Products for any reason including return for repair, replacement or credit. Issuance of credit for any returned Products shall be made at Spectrum's option upon Buyer's request. Spectrum shall have the right prior to return to inspect, at Buyer's plant, any Products claimed to be defective or nonconforming. Risk of loss or damage to any Products returned to Spectrum for adjustment shall remain with Buyer until they are received by Spectrum. Shipping charges for returned Products will be paid by Spectrum only for Products repaired or replaced pursuant to warranty. Otherwise such charges will be Buyer's responsibility.
- 12) **EXPERIMENTAL PRODUCTS:** If Spectrum delivers Product identified as "prototypes", "samples", "for engineering approval", "for evaluation" or terms of similar import, Buyer agrees that such Products are confidential and experimental in nature, that Buyer will limit the availability of such only to those of its employees as are necessary to carry out the testing and evaluation contemplated by the parties and to no others without the prior written consent of Spectrum, and that all information concerning such Products received or generated by Buyer shall be and remain the proprietary property of Spectrum and shall not be disclosed to any third party. Buyer's receipt, use and evaluation of such Products shall be at Buyer's sole risk. It is anticipated that changes may be made in the manufacture of such Products based on such tests and, therefore, Buyer shall communicate to Spectrum the data accumulated during its testing and evaluation of the Products. Buyer shall return all such Products covered under this paragraph 12 to Spectrum within ten (10) days following Buyer's receipt of Spectrum's written request therefor. Buyer shall not compile, decompile, reverse engineer, disassemble or otherwise copy or reduce to practice any such Products so delivered hereunder.
- 13) **TOOLING:** Unless the Buyer pays the full cost of special tooling and other equipment necessary to manufacture the Products as a separately identified charge in a separately issued purchase order that is acknowledged and accepted by Spectrum in writing, such tools and equipment shall remain the sole property of Spectrum. Spectrum may charge Buyer for the cost of maintenance and rework of such tools and equipment owned and provided by Buyer. Notwithstanding the foregoing, however, Spectrum shall retain all rights in and to any and all intellectual property that may be contained or embodied in the Tooling irrespective of whether or not Buyer has paid the full cost of any such Tooling.
- 14) **INFRINGEMENT:** Subject to the conditions and limitations as provided for herein, Spectrum will defend and indemnify Buyer against so much of any claim, suit, action or proceeding ("Claim") as alleges that the Product, in the form supplied to Buyer, infringes a valid U.S. patent or copyright, and Spectrum agrees to pay all reasonable litigation and settlement costs and attorney's fees incurred by Buyer in connection with any such Claim. Spectrum shall have no obligation for any costs, fees or expenses incurred by Buyer without Spectrum's prior written consent, any Claim arising out of any similar product, or any special, consequential or incidental damages arising out of any Claim. This indemnity will not apply unless Buyer
- a) gives written notice to Spectrum within fifteen (15) days of receipt of service of any such Claim and informs Spectrum in writing of any subsequent communications regarding same;
 - b) fully cooperates with Spectrum in the defense of the Claim; and
 - c) provides Spectrum with information and assistance in defending the Claim. Spectrum shall have sole control of the defense of the Claim and of all negotiations for its settlement or compromise. This indemnity shall not apply to any Claim, or portion thereof, that arises from any negligent or willful act or omission by or attributable to Buyer, use or operation of the product in combination with materials of others, or any addition to or modification of the product, use of other than the current unaltered product or to any aspect of the Product that is designed, either in whole or in part, by Buyer. Upon receipt of notification of actual or alleged infringement of any patent, trademark, trade secret, copyright or any other proprietary right, Spectrum shall, at its option either
 - i) defend the allegation of infringement;
 - ii) modify the design of the challenged product;
 - iii) negotiate a reasonable licensing arrangement that permits Buyer to continue using the challenged product;
 - iv) substitute a non-infringing product which meets or exceeds the requirement and specifications of Buyer; or
 - v) terminate this Contract without further liability.
- 15) **PROPRIETARY RIGHTS:** Sale of the Products or the provision of prototypes or other items under section 12 above to Buyer does not convey a license, implied or otherwise, under any patent, trademark, copyright or any other intellectual property or right in which Spectrum has an interest, nor does it any convey rights to any descriptive data, including, but not limited to, Spectrum's drawings, secrets, processes or tooling. Buyer does hereby acknowledge and agree that Spectrum owns and does retain all right, title and interest to any and all intellectual property of whatever nature as may be embodied in any Product, prototypes or other times as may be sold or provided to Buyer hereunder.
- 16) **FINANCIAL RESPONSIBILITY:** In the event that Buyer fails to fulfill the terms of payment for any shipment of Products or if Spectrum shall have a reasonable doubt at any time as to Buyer's ability to pay for Products ordered Spectrum may, at its option and without liability, (i) change the terms of payment or (ii) defer further production and shipments until satisfactory performance has been made by Buyer and Spectrum is satisfied as to Buyer's financial ability; such change or deferment shall not prejudice any claim for damages Spectrum may otherwise have against Buyer.
- 17) **CANCELLATION:**
- a) Spectrum may, at its option and without liability, cancel Buyer's order if:
 - i) Buyer's payments are in default or Buyer breaches any material provision hereof,
 - ii) any cause specified in Paragraph 5 hereof ("Excusable Delay") makes it commercially impracticable, in Spectrum's judgment, to deliver the Products within a reasonable time, or
 - iii) Buyer becomes insolvent or the subject of a proceeding under any bankruptcy law. Such cancellation shall not prejudice Spectrum's rights to any amounts then due or affect any other rights Spectrum may have under applicable provisions of controlling law.
 - b) Buyer may cancel the remaining unfilled portion of its order upon forty-five (45) days written notice to Spectrum prior to the delivery date. Payment of reasonable cancellation charges invoiced by Spectrum may include, among other items, the profit that would

have been made on the cancelled portion of the order taking into account the Products already produced or in process, the expenses already incurred and the commitments already made as a consequence of the order. In no event will the cancellation charges exceed the purchase price of the cancelled Products.

- 18) **CLAIMS:** Claims for shortages, incorrect materials or invoicing errors must be made by Buyer within five (5) days after receipt of shipment. Claims for non-receipt of shipment must be made within five (5) days after receipt of Spectrum's invoice. If Spectrum has agreed to pay for any transportation charges, claims for such charges must be made within ninety (90) days after shipping date.
- 19) **PRODUCT LIABILITY:** Buyer shall indemnify and hold harmless Spectrum, its directors, officers, agents and employees against all expense, loss, costs, damage or liability, including attorney's fees, arising from any claim or action for Product defect where the alleged defect relates to design, labeling or manufacture specifications supplied by Buyer. At the request of Spectrum, Buyer shall defend at its own expense all such claims or actions, provided that Spectrum shall be entitled, at its election, to participate in such defense.
- 20) **LIMITATION OF LIABILITY:** ALLIED MOTION'S LIABILITY FOR DEFECTIVE OR NONCONFORMING PRODUCTS, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENT MANUFACTURE OR PRODUCT LIABILITY, IS EXCLUSIVELY LIMITED TO REPAIR OR REPLACEMENT, AT ALLIED MOTION'S ELECTION, OF SUCH PRODUCTS. ALLIED MOTION ASSUMES NO RISK AND SHALL NOT BE SUBJECT TO ANY LIABILITY FOR ANY DAMAGES OR LOSS RESULTING FROM THE SPECIFIC USE OR APPLICATION MADE OF THE PRODUCTS. ALLIED MOTION'S LIABILITY FOR ANY OTHER CLAIM, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE OR PRODUCT LIABILITY, RELATING TO THE PRODUCTS SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR SUCH PRODUCTS. IN NO EVENT SHALL ALLIED MOTION BE LIABLE FOR ANY COVER DAMAGES OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, AND CLAIMS OF THIRD PARTIES, HOWSOEVER CAUSED, WHETHER BY THE NEGLIGENCE OF ALLIED MOTION OR OTHERWISE.
- 21) **COMPLIANCE WITH LAWS:** Spectrum warrants and certifies that it complies with all applicable statutes, rules, regulations and orders including those pertaining to labor, wages, hours and other conditions of hiring and employment.
- 22) **U.S. GOVERNMENT CONTRACTS:** If the Products are to be used in fulfilling a contract with the United States Government, Spectrum will comply with all mandatory requirements of such contract which are applicable to Spectrum, provided that Spectrum has received written notice of such requirements from Buyer in sufficient time to incorporate their impact into the price and delivery schedule for such Products. In addition, Spectrum may at its option adopt any provisions of FAR or other federal statutes or regulations which are applicable to Spectrum.
- 23) **AUDITS:** Buyer shall not have the right to audit or examine Spectrum's financial records pertaining to the Products sold hereunder.
- 24) **WAIVER:** Failure by Spectrum to insist upon strict performance of any provision hereof by Buyer shall not be deemed to be a waiver by Spectrum of its rights or remedies, or a waiver by it of any subsequent default by Buyer.
- 25) **ASSIGNMENT:** Buyer shall not assign any of its rights or obligations hereunder without the prior written consent of Spectrum. Any attempted assignment without Spectrum's express written consent shall be void and of no effect.
- 26) **NOTICES:** Any notices and other communications required or permitted to be given hereunder shall be in writing and shall be effective when delivered personally or electronically transmitted (later confirmed in writing) or, if mailed, three (3) days after air mailing, postage prepaid.
- 27) **CORRECTIONS:** Clerical errors, typographical errors or obvious errors or omissions in any sales quotes, order acknowledgements, invoices and other similar sales related documents are subject to correction by Spectrum.
- 28) **SEVERABILITY:** In the event that one or more provisions hereof should be held to be unenforceable in any respect, this document shall be construed as if such unenforceable provision(s) had not been contained herein.
- 29) **ENTIRE AGREEMENT:** These terms and conditions supersede all other agreements, representations, warranties, undertakings and understandings of the parties with respect to the subject matter hereof and may not be modified except by a written document signed by an authorized employee of Spectrum. If Buyer and Spectrum have executed an overriding agreement covering the sale of Products to which this document relates, the terms of said overriding agreement shall prevail over the terms stated herein to the extent of any conflict.
- 30) **GOVERNING LAW, VENUE FOR DISPUTES AND WAIVER OF JURY TRIAL:** For sales of Product by Spectrum or any of its North American subsidiaries Spectrum's sale and Buyer's purchase of Products hereunder shall, in all respects, be governed by the laws of the state of New York, USA, without regard to its conflicts of laws provisions and the UN Convention on Contracts for the International Sale of Goods 1980 (Vienna Sales Convention). The Parties agree that venue for any action brought by either Party with respect to this agreement shall be brought in any state or federal court in the state of New York having competent jurisdiction. Each of the Parties hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury with respect to any action, suit or proceeding directly or indirectly arising out of, under or in connection with this Agreement, or any transaction contemplated hereby. For sales of Product by any Spectrum subsidiary that is located outside of North America, such sales and Buyer's purchase of Products hereunder shall, in all respects, be governed by the laws of the country in which such Spectrum subsidiary is located, without regard to that country's conflicts of law provisions and the UN Convention on Contracts for the International Sale of Goods 1980 (Vienna Sales Convention) and, further, the Parties agree that venue for any action brought by either Party with respect to this agreement shall be brought in any court of competent jurisdiction located in such country.