

## **SpectraKey Ltd - Terms of Trade**

### 1. Definitions

"SpectraKey" means SpectraKey Ltd of 13 Hazelwood Close, Chesham, Buckinghamshire, HP5 3DR;

"SpectraKey Premises" means any premises being owned or occupied by SpectraKey;

"Contract" means these Terms of Trade and the Quotation Document;

"Quotation Document" means that part of the SpectraKey Contract detailing the Customer, the Deliverables, the Goods, the Services, the Facilities, the Contract Price, the Contract Period and any Special Conditions;

"Contract Period" means, subject to Clause 24, the period specified in the Quotation Document; "Contract Price" means the amount payable by the Customer to SpectraKey as specified in the Quotation Document;

"Customer" shall be the organisation or individual as specified in the Quotation Document to whom SpectraKey is supplying the Deliverables and shall be, where relevant, deemed to include without limitation all of its officers, employees, sub-contractors and/or agents, engaged in any way in the Contract;

"Customer's Premises" means any premises being owned or occupied by the Customer;

"Deliverables" means any or all of the Goods, Facilities and/or Services;

"Facilities" means those parts of SpectraKey Premises made available to the Customer pursuant to the Contract;

"Goods" means any item(s) to be manufactured and/or provided by SpectraKey pursuant to the Contract including without limitation plant, machinery, equipment, designs, software, digital data, images, sounds and printed material;

"Dry Hire" means Goods hired to the Customer not under the control of SpectraKey personnel;

"Intellectual Property Rights (IPR)" means copyright, patent, trade mark, design right, topography right, database right, rights of confidence, broadcast rights and all other similar rights anywhere in the world whether or not registered and including applications for registration of any of them;

"Safety Requirements" means health, safety, fire and environmental requirements (whether legislative or otherwise), codes of practice, guidance and policy;

"Services" means the services of personnel supplied by SpectraKey pursuant to the Contract;

"Special Conditions" means any amendments or additional conditions specified in the Quotation Document which shall take precedence over these terms of trade;

"Material" means any good or material provided by the Customer to SpectraKey in connection with this Contract.

### 2. SpectraKey Quotation

(1) All orders made by the Customer for any SpectraKey Deliverables will be subject to a written quotation made by SpectraKey. The quotation is in good faith based on current costs and shall, if applicable, have VAT applied at the appropriate rate.

(2) Written acceptance of the quotation is deemed to be an order for the Deliverables which shall immediately become binding upon the parties and shall in all respects be subject to the Contract.

(3) The quotation shall be valid for a limited period as specified in the Quotation Document.

(4) Each SpectraKey quotation shall form a separate contract bound by these Terms of Trade.

### 3. Prevailing Contract

(1) The Contract shall prevail at all times to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply except as otherwise agreed in writing by SpectraKey. For the avoidance of doubt, the acceptance by SpectraKey of a Customer's purchase order which contains different terms and conditions does not constitute acceptance of those terms and conditions.

(2) The Contract and any appendices and any documents annexed thereto and/or referred to therein constitute the entire understanding between the parties with respect to the subject matter thereof and supersede all prior agreements, negotiations and discussions between the parties.

(3) The headings in these Terms of Trade are for convenience only and shall not affect interpretation thereof.

### 4. Contract Price/Payment

(1) In consideration of the Deliverables supplied under the Contract the Customer shall pay to SpectraKey the Contract Price (inclusive of any applicable VAT) subject to and in accordance with this clause 4.

(2) SpectraKey shall submit an invoice to the Customer for payment due at the address as specified in the Quotation Document and the Customer shall remit full payment by the due date as specified in the Quotation Document.

(3) In the event that the Customer fails to make payment by the due date, SpectraKey shall, without prejudice to its other rights under the Contract or otherwise, at law or in equity be entitled to:

(a) withdraw any applicable discount and to charge the full amount in accordance with the current SpectraKey rates; and

(b) charge the Customer interest from the due date specified upon the outstanding amount at the rate of 4% per annum above the Bank of England base rate in force during the period that this clause 4(3) is applicable accruing daily until payment is made in full; and

(b) require payment in advance for the continued performance of the Contract without incurring any liability whatsoever to the Customer; and

(c) refuse to further perform the Contract without incurring any liability whatsoever to the Customer; and

(d) suspend further performance of the Contract until the Customer has supplied a satisfactory credit reference or bank guarantee; and

(e) be reimbursed by the Customer for all costs and expenses incurred in the collection of any overdue amount; and

(f) retain possession of Goods created by SpectraKey in the course of the Contract.

## 5. Cancellation

(1) Subject always to the other provisions of the Contract, if the Customer wishes to cancel the Contract it shall provide written notification thereof.

(2) SpectraKey reserves the right at all times to make cancellation charges being 50% of the Contract Price. Any cancellation within 7 days prior to the start of the Contract Period may be charged in full.

(3) Notwithstanding the provisions of this clause 5 in the event of a cancellation of the Contract the Customer shall in addition remain liable to repay SpectraKey all monies committed or incurred by SpectraKey as a result of the Contract.

## 6. Expenses

Where the Contract Price does not include travel and subsistence expenses SpectraKey shall be entitled to reimbursement of all such reasonable expenses required to be made by any person engaged by SpectraKey for the performance of the Contract. The level of such expenses shall be at current SpectraKey rates or where appropriate at actual cost (net of recoverable VAT) and all payments made by the Customer to SpectraKey shall have VAT applied at the appropriate rate.

## 7. Supply of Goods, Facilities and/or Services

(1) SpectraKey shall use its reasonable endeavours to supply the Customer with Deliverables of such a standard as to enable SpectraKey to service adequately the requirements of the Customer.

(2) Where Services are supplied, any equipment supplied to perform the Services shall only be operated by SpectraKey personnel unless otherwise agreed between the parties.

(3) If requested by the Customer, SpectraKey shall within a reasonable time provide to the Customer any information and/or Materials as may be reasonably required for the purpose of the Contract as agreed between the parties.

(4) Subject always to the Contract, SpectraKey staff will use their own professionalism and initiative and will not be subject to supervision, direction or control by the Customer as to the manner in which the Deliverables are supplied.

(5) Where SpectraKey supplies personnel, whether named or otherwise, SpectraKey reserves the right to employ assistant personnel at SpectraKey's own discretion.

(6) SpectraKey reserves the right to sub-contract or substitute staff and/or facilities at its own discretion subject always to the sub-contractor or substitute being suitable in the opinion of SpectraKey.

#### 8. Additional Goods, Facilities and/or Services

In the event that the Customer requires any goods, facilities and/or services in addition to the Goods, Facilities and/or Services supplied pursuant to the Contract, upon prior notice by the Customer to SpectraKey thereof, SpectraKey shall use its reasonable endeavours subject always to its other commitments to provide such additional goods, facilities and/or services but shall be under no obligation. Payment thereof shall be negotiated at the time SpectraKey agrees to such supply and shall be in all respects subject to the Contract. Details of any budgetary limits relating thereto shall be agreed between the parties prior to the charges being incurred and the Customer warrants that all costs within such budgetary limits will be reimbursed.

#### 9. Warranty

(1) SpectraKey shall use its reasonable endeavours to remedy, free of charge, any material defect in the Goods and/or Facilities which becomes apparent up to twelve months or such other period as may be agreed from the date the Customer has beneficial use thereof (the "Warranty Period") provided that:

(a) such defects are notified to SpectraKey within a reasonable time of such defect becoming apparent to the Customer; and

(b) SpectraKey is permitted to make a full examination of the alleged defects; and

(c) the defect did not occur as a result of misuse, neglect, alteration, modification, mishandling or unauthorised adjustment by any person other than SpectraKey personnel; and

(d) the Customer undertakes to install free of charge to SpectraKey (if applicable) small replacement parts supplied by SpectraKey; and

(e) the defect did not arise out of any information, design specification or materials supplied by the Customer.

(2) Non payment by the Customer of any outstanding amount due under the Contract shall automatically cancel any Warranty Period.

#### 10. Health, Safety and Fire

(1) The Customer shall at all times comply with all Safety Requirements including but not limited to those issued by the Health & Safety Commission and Executive, the Home Office and those SpectraKey Safety Requirements notified orally or in writing to the Customer.

(2) SpectraKey and the Customer may agree Safety Requirements in addition to or different from those specified in clause 10(1).

(3) The Customer shall:

(a) assess reasonably foreseeable risks to health and safety (including fire) that may affect SpectraKey or any third party arising out of or in any way connected with the performance of the Contract, and provide a copy of such assessment to SpectraKey upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with SpectraKey accordingly;

(b) fully co-operate with SpectraKey and any others as necessary to ensure that all reasonably foreseeable risks to health and safety (including fire) that may affect SpectraKey arising out of or in any way connected with the performance of the Contract are eliminated or adequately controlled;

(c) consult with SpectraKey on the procedures to be followed in the event of serious and imminent danger to any persons that may affect SpectraKey arising out of or in any way connected with the performance of the Contract and shall comply therewith.

(4) SpectraKey shall notify the Customer of all risks to health and safety which are reasonably foreseeable to SpectraKey and which may affect the Customer or SpectraKey arising out of or in anyway connected with the performance of the Contract and the Customer shall have due regard to these.

(5) Where the health, safety and fire requirements of the Contract are additional to or differ from those as specified in clause 10(1), SpectraKey and the Customer shall agree such requirements and shall exchange such information as is necessary for that purpose (and they shall acknowledge receipt thereof in writing). SpectraKey and the Customer shall at all times comply with such requirements as agreed hereunder.

## 11. Usage of Deliverables

(1) Subject always to clause 7(4) and 7(5), the Customer shall ensure that any person engaged by it to carry out any duties in connection with the Deliverables:

(a) is competent for such duties (which includes having relevant experience, training and/or qualifications) and shall use such due care, skill and diligence as would reasonably be expected of a competent Customer whilst discharging its obligations under the Contract,

(b) hold any necessary licence, permit and/or certificate required by law relating to such duties.

(2) The Customer shall use the Deliverables only for the purpose as specified in the Quotation Document and for no other purpose.

(3) The Customer shall promptly inform SpectraKey of all relevant facts relating to the use of the Deliverables and shall within a reasonable time provide all such information as SpectraKey may reasonably require to execute the Contract.

(4) The Customer warrants that all information provided by it to SpectraKey under the Contract shall be accurate in all material respects and that the Customer is entitled to provide the information without recourse to any third party or that such third party approval has been obtained.

(5) The Customer shall not use the Goods and/or Facilities in any hazardous manner or at any location or in any manner other than as agreed with SpectraKey.

(6) Subject to clause 11(8), the Customer shall at all times keep the Goods and/or Facilities supplied under the Contract in good condition.

(7) The Goods and/or Facilities are supplied at the Customer's own risk and the Customer shall be liable to SpectraKey for any loss thereof or damage thereto (otherwise than in consequence of any negligence on the part of SpectraKey) and the Customer shall notify SpectraKey promptly of any such loss or damage.

(8) The Customer shall not carry out any repair to or replacement of the Goods without the prior consent of SpectraKey. The cost of any repair or replacement by SpectraKey shall be paid by the Customer.

(9) The Customer shall not make any alteration(s) or addition(s) to the Goods and/or Facilities without the prior consent of SpectraKey. Where SpectraKey so consents the Customer shall ensure that any such alteration(s) or addition(s) is of a temporary nature and the Customer shall be responsible for restoring the Goods and/or Facilities to their original condition where applicable at the end of each periodic use thereof (as agreed with SpectraKey) and either upon expiry of the Contract Period or upon termination of the Contract, whichever is the earlier. Where the restoration has not been made to the satisfaction of SpectraKey the cost of any further restoration by SpectraKey shall be paid by the Customer.

(10) SpectraKey reserves the right to be present at any premises where the Deliverables are being supplied at all times for the purpose of carrying out the Contract.

(11) The Customer shall allow SpectraKey full and convenient access at all reasonable times to the Customer's Premises or such other premises as required by SpectraKey for the purpose of carrying out the Contract.

(12) The Customer shall not take the Goods and/or Services outside the United Kingdom without the prior consent of SpectraKey. Where SpectraKey so consents the Customer shall within a reasonable time obtain all necessary import permits and export licences if appropriate, licences and customs clearances and any other permissions whatsoever as required for the Goods and/or Services and the Customer shall pay all customs and import duties and any other costs associated with the performance of its obligations under this sub-clause.

(13) Where applicable at the end of each periodic use of the Deliverables (as agreed with SpectraKey) and either upon expiry of the Contract Period or upon termination of the Contract, whichever is the earlier, the Customer shall:

(a) leave the Goods and/or Facilities in good condition;

(b) in respect of any property of the Customer remove from SpectraKey Premises all such property and in default SpectraKey shall be entitled to either arrange for transportation of such property to the Customer (and the provisions contained in clause 14(2) shall apply in respect thereto) or subject to giving the Customer a reasonable period of notice dispose of such property as SpectraKey sees fit. SpectraKey shall be entitled to recover from the Customer all costs relating to the transportation or disposal of such property and in the case of the latter shall be entitled to retain any portion of any proceeds of sale for that purpose;

(c) promptly vacate the Facilities and/or cease using the Goods and/or Services and where applicable return the Goods to SpectraKey (and the provisions contained in clause 15(1) and (2) shall apply in respect thereto). If any part of the Goods or Facilities is not returned SpectraKey reserves the right to make further charges to the Customer whilst the Goods or Facilities are inoperative. In the event that the Customer shall fail to comply with this clause 11(13) (c) SpectraKey shall be deemed to have irrevocably all reasonable powers and authority to do all things or acts necessary or advisable to retake possession of the Deliverables and shall be entitled to recover from the Customer all costs relating thereto.

(14) Any equipment supplied by the Customer that is to be used by SpectraKey whether at SpectraKey Premises or otherwise shall remain at the Customer's own risk and expense and SpectraKey shall not assume any responsibility for such equipment.

(15) Where the Contract includes the secondment of SpectraKey personnel (of whatsoever nature) to the Customer, they shall be subject to the direction, control and management of the Customer. The Customer shall be responsible for all tasks performed by such persons and SpectraKey shall not be liable to the Customer for any works which are performed by them.

(16) The Customer shall at its own expense make available for the use by SpectraKey for purposes of the Contract such supplies of electricity, water, gas, air and other services as agreed between the parties.

(17) Where the Customer is to use any Goods and/or Customer's property on SpectraKey Premises upon prior notification by the Customer SpectraKey shall use its reasonable endeavours to provide a secure area(s) for the Goods and such property as agreed between the parties. The secure area(s) shall be provided at the Customer's own expense (where the cost thereof is not included in the Contract Price) and SpectraKey accepts no liability for the Goods and such property whilst in the secure area(s) other than in consequence of any negligence on the part of SpectraKey.

(18) Where the Customer requires the use of any Services away from SpectraKey Premises the Customer shall use its reasonable endeavours to provide a secure area(s) for any SpectraKey property as agreed between the parties. The secure area(s) shall be provided at the Customer's own expense (where the cost thereof is not included in the Contract Price) and SpectraKey accepts no liability for such property whilst in the secure area(s) other than in consequence of any negligence on the part of SpectraKey.

(19) The Customer shall not move or otherwise interfere with any SpectraKey property unless specifically authorised by SpectraKey to do so.

## 12. Visitors to SpectraKey Premises

Where the Contract requires attendance at SpectraKey Premises:

- (a) the Customer shall provide to SpectraKey a list of all its personnel, agents and/or members of the public who will be attending at SpectraKey Premises 48 hours in advance of access being required or as soon as practical and shall update the list as necessary. Such persons shall be given entry permission or issued with SpectraKey identification (as determined by SpectraKey) and where identity cards or entry permits are issued they shall be displayed by such persons whilst on SpectraKey Premises and shall be returned to SpectraKey either upon expiry of the Contract Period or when no longer required by such persons or upon termination of the Contract, whichever is the earlier. The identification issued remains the property of SpectraKey;
- (b) the Customer shall ensure that any such persons comply with such rules, regulations and directions that are notified to them by SpectraKey;
- (c) The Customer shall take full responsibility for any such persons and shall indemnify SpectraKey from and against any loss, damage, liability or expense caused by any such person.
- (d) SpectraKey may request and shall be supplied with identification of any person engaged by the Customer whilst on SpectraKey Premises and conduct random security checks including checking the Customer's and/or any such person's possessions and vehicle(s) whilst on SpectraKey Premises;
- (e) SpectraKey shall at its discretion give to the Customer by prior agreement such access to SpectraKey Premises and such general facilities (for example, catering and sanitary) at the SpectraKey Premises as the Customer may reasonably require to fulfil its duties. However SpectraKey may refuse admission to, or remove from SpectraKey Premises any person whom SpectraKey deems unacceptable for whatsoever reason other than solely to frustrate the Contract.
- (f) SpectraKey may refuse permission for the Customer to bring on to SpectraKey Premises property not essential for the Customer's use of the Deliverables.

## 13. Delivery of Goods

- (1) Where the Goods are being supplied to the Customer away from SpectraKey Premises:
  - (a) the delivery instructions shall be as specified in the Quotation Document;
  - (b) they shall be supplied at the Customer's own expense;
  - (c) the risk in the Goods shall pass to the Customer at the time of despatch from SpectraKey Premises or any other premises from where they were despatched to the Customer.
- (2) In respect of any property of the Customer which SpectraKey transports on behalf of the Customer such transportation shall be carried out at the Customer's own risk and expense and insurance responsibility.

## 14. Title in Goods and/or Facilities and Storage of Material

- (1) Where the Contract consists of the hiring out or leasing of any Goods and/or Facilities, they shall remain at all times the sole and exclusive property of SpectraKey and the Customer shall not sell, assign, let, pledge, mortgage, charge, encumber or part with possession of or otherwise deal with the Goods and/or Facilities or any interest therein or create or allow to be created any lien thereon and SpectraKey may terminate the Contract with immediate effect upon written notice in the event of the Customer making any attempt to do so.
- (2) Where the Contract consists of the sale of any Goods, title shall pass from SpectraKey to the Customer when the Contract Price and any monies outstanding from the Customer to SpectraKey are paid in full. Notwithstanding that title to the Goods has not passed under this clause 14(2) SpectraKey shall be entitled to sue for the Contract Price and any other monies outstanding once payment thereof has become due.
- (3) Where the Contract involves storage of Goods and/or Material:
  - (a) any Goods and/or Material shall be stored only during the Contract Period; and

(b) after a period of three months from the end of the Contract Period title in such Goods and/or Material shall pass to SpectraKey and SpectraKey shall be entitled to dispose of such Goods and/or Material as it chooses and shall not be held liable to the Customer or any third party for any such disposal; and

(c) SpectraKey shall be entitled to charge for any additional storage and the Customer warrants that all such costs will be reimbursed; and

(d) any Goods and/or Material shall be stored at the Customer's sole risk and liability.

#### 15. Intellectual Property Rights (IPR)

(1) All IPR arising from the performance of the Contract shall vest in and be owned by SpectraKey.

(2) Subject to SpectraKey having received payment in full of all monies due, SpectraKey grants the Customer an exclusive licence to publish, copy, transmit, broadcast and otherwise use the Goods in an unmodified form (save that, unless otherwise agreed in writing, SpectraKey reserves the right to exhibit the Goods, or excerpts thereof, on websites, in press releases or other demonstration methods for the purposes of promoting SpectraKey).

(3) When the Customer provides SpectraKey with material and/or information which is subject to copyright or third party IPR or otherwise the Customer warrants that it has acquired, at the Customer's own expense, all necessary consents, permissions and/or clearances in the rights and shall hold SpectraKey harmless in respect of the same.

#### 16. Credits & Advertising Material

The Customer shall use its best endeavours to afford SpectraKey (and/or SpectraKey personnel) a credit, as appropriate to the nature of the Deliverables, printed and/or in the end roller credits of any programme(s) produced by the Customer utilising the Deliverables and in any associated advertising, packaging or other material.

#### 17. Indemnity

The Customer shall indemnify SpectraKey against all liabilities, claims, demands, damages, losses, costs and expenses (including legal costs) which may be incurred by or brought against SpectraKey respect of:

(a) injury to any person or loss of or damage to any property arising out of or in connection with the use by the Customer of any Goods and/or Facilities and/or Services as a result of any negligent act or omission by the Customer;

(b) any breach of or non-compliance by the Customer of any of its obligations or warranties under the Contract;

(c) the Customer's negligence or wilful default;

(d) any claims from third parties made as a result of its acts or omissions (including but not limited to infringement of any IPR supplied under or used in connection with the Contract).

#### 18. Liability

(1) Nothing in the Contract excludes either party's liability for death or personal injury caused by that party's negligence or wilful default.

(2) Subject to clause 18(1) SpectraKey shall only be liable to the Customer for accidental loss or damage caused by the negligence or default of SpectraKey.

(3) In no circumstances shall SpectraKey be liable for any loss of profits or any indirect or consequential loss of any nature whatsoever.

(4) In any event, and notwithstanding anything contained in the Contract, SpectraKey's liability in contract, tort (including but not limited to negligence or breach of statutory duty) or otherwise howsoever arising by

reason or in connection with this Contract (except in relation to death or personal injury) shall be limited to the Contract Price.

## 19. Insurance

(1) The Customer shall arrange and maintain insurance throughout the Contract Period to cover its legal liabilities and the responsibilities imposed by the Contract including but not limited to public liability insurance with a scope of cover appropriate to the Deliverables supplied under the Contract with an adequate indemnity limit which shall be no less than three million pounds sterling (£3,000,000) in respect of any one claim or incident. For the avoidance of doubt, such minimum insurance level shall not be a limit of liability under the Contract.

(2) Where the Customer engages a sub-contractor the Customer shall ensure that the insurance requirements as specified in clause 19(1) extend as necessary to cover the liabilities and responsibilities of the sub-contractor under the Contract or that the sub-contractor holds its own insurance in accordance with clause 19(1).

(3) The Customer shall provide to SpectraKey prior to the commencement of the Contract Period satisfactory evidence of compliance with this clause 19.

(4) Where the Contract consists of Dry Hire of Goods or Facilities,

(a) the Customer shall arrange and maintain adequate insurance in relation to the loss of or damage to any Goods or Facilities hired or loaned to the Customer by SpectraKey.

(b) the Customer shall be responsible to SpectraKey for the prompt repair or replacement (at SpectraKey's option) of Goods or Facilities lost or damaged whilst in the charge and control of the Customer, other than to the extent that the loss or damage is caused by SpectraKey's breach of any of the provisions of the Contract or any other of its omissions.

(5) SpectraKey shall not be liable for any consequential or indirect loss, including but not limited to any loss of profits revenues and/or business, anticipated savings, whether or not in the contemplation of the parties at the time of entering into the Contract, incurred by the Customer as a result of the loss of or damage to the Goods and Facilities (by whatever means) during the course of their being hired or loaned by SpectraKey, and the Customer is advised to arrange and maintain insurance in respect of such loss.

## 20. Warranties

The Customer undertakes, warrants and represents that:

(1) except as otherwise agreed prior to performance of the Contract, it shall obtain for SpectraKey all necessary consents, permissions and/or clearances in third party rights (including but not limited to IPR's) with respect to the Material; and

(2) all Material is fit for the purpose for which it is supplied and, where relevant, is of satisfactory quality, good construction, suitable and sound material and adequate strength and has been tested prior to delivery; and

(3) unless stated in writing, the Customer has made a safety copy of the Material.

## 21. Force Majeure

(1) Neither party shall be liable for any failure to fulfil its obligations under the Contract by reason of any event beyond its reasonable control including but not by way of limitation Acts of God, strikes, lockouts, war, riot, civil commotion, order or Act of Government (whether national or international), any such occurrence being deemed an event of force majeure.

(2) If either SpectraKey or the Customer is prevented or delayed from, or in, performing any of its obligations under the Contract by an event of force majeure then that party shall be entitled by notice in writing to the other party given at any time during the subsistence of the event to suspend the Contract for the duration of the event. Where the party giving notice is unable to proceed with the Contract by reason of matters arising from the event for a reasonable period of time following notice of suspension then such party shall have the right to terminate the Contract with immediate effect in writing.



## 22. SpectraKey Authority

The Customer shall comply with any directions given to it by any personnel or agent of SpectraKey with regard to a matter within the competence of such person and the Customer shall ensure that all its personnel and/or agents and any other person present at the instance of the Customer shall comply with such directions.

## 23. Compliance

The Customer shall provide, if requested by SpectraKey, evidence of compliance with any of its obligations under the Contract.

## 24. Termination

(1) SpectraKey shall be entitled to terminate the Contract with immediate effect in writing if at any time during the Contract Period:

(a) the Customer shall fail to make any payment due under the Contract in full in accordance with clause 4;

(b) the Customer shall commit or cause to be committed any breach of its obligations under the Contract and

(i) the breach is capable of remedy and the Customer fails to remedy the breach within 7 days (or such shorter period as may be reasonable) of receipt of a written notice to the Customer specifying the breach and requiring its remedy (in which case SpectraKey may remedy the breach and recover the costs thereof from the Customer and terminate the Contract in accordance with this clause 24; or

(ii) the breach is not capable of remedy; or

(iii) the breach is a material breach or a breach of a material term.

(c) the Customer commits an act of bankruptcy or insolvency, is unable to pay its debts as or when they fall due or makes any composition or arrangement with its creditors, or goes into liquidation whether voluntary or compulsory, or if any order is made or a resolution is passed for the winding up of the Customer (except for the purpose of a solvent amalgamation or reconstruction), or if it ceases or prepares to cease trading, or if it suffers the appointment of a receiver, administrative receiver, administrator or similar officer over the whole or part of any of its assets; or

(d) there is a change of control of the Customer. For the purposes of this paragraph (d) "control" means the ability to direct the affairs of the Customer whether by virtue of contract, ownership of shares or otherwise howsoever in relation to the subject matter of the Contract;

(e) SpectraKey exercises its rights under clause 14(1); or

(f) the continued performance thereof is prevented by reason of any event beyond the reasonable control of SpectraKey or the Customer (any such occurrence being deemed an event of force majeure); or

(g) the Customer's Materials are not of the necessary technical standard to enable SpectraKey to manufacture the Goods or to perform the Services.

(2) The Customer shall be entitled to terminate the Contract with immediate effect in writing if at any time during the Contract Period SpectraKey shall commit or cause to be committed any breach of its obligations under the Contract provided that in the case of a breach capable of remedy the Customer shall have first given written notice to SpectraKey specifying the breach complained of and requiring the same to be remedied within a reasonable period of time from notification thereof and SpectraKey shall have failed to comply therewith.

(3) Termination of the Contract howsoever arising shall be without prejudice to any rights accruing or already accrued to either party at the date of termination.

(4) Upon termination of the Contract for any cause whatsoever all sums accrued due to SpectraKey under the Contract shall immediately become due and payable to SpectraKey.

(5) The rights and obligations of either party arising under clauses 14, 15, 16, 17, 18, 21, 23, 24(5), 26, 29 and 33 shall survive termination of the Contract.

## 25. Assignment

The Customer shall not without the prior written consent of SpectraKey assign the benefit of the Contract in whole or in part or any of its obligations under the Contract.

## 26. Good Faith/Outside Activities

The Customer may make reference to SpectraKey in advertising, promotional or published material and speak in public about SpectraKey but the Customer shall act in good faith towards SpectraKey and shall not bring SpectraKey into disrepute.

## 27. Information and Confidentiality

(1) Except to the extent required for the purposes of performing its obligations under the Contract, the Customer will not use or make available at any time during or after the Contract to any third party any information relating to the business or affairs of SpectraKey which is disclosed or otherwise is in its possession under or in respect of the Contract, including this Contract and its subject matter except in relation to information which:

(a) is or later comes into the public domain otherwise than through an act or omission of the Customer; or

(b) was already known to the Customer at the time of disclosure otherwise by an unauthorised disclosure by a third party; or

(c) disclosure is required by law, order of court, the requirements of any regulatory authority or taxation authority or the rules of any stock exchange; or

(d) the Customer has the prior written consent of SpectraKey to do so.

(2) Notwithstanding clause 27(1), the Customer may disclose information to its employees, professional advisors, agents and subcontractors solely on a need-to-know basis provided that the Customer procures that the person to whom such disclosure is made complies with the obligations under this clause 27 as if it were a party to the Contract.

## 28. Notices

Any notice required to be given pursuant to the Contract shall be in writing and sent either by hand, prepaid recorded delivery, registered post or electronic mail to SpectraKey or the Customer at the address as specified in the Quotation Document and the notice shall be deemed to have been received by the addressee at the time of delivery (if by hand) or within seventy two (72) hours of posting or twenty four (24) hours if sent by electronic mail to the correct electronic mail address of the addressee.

## 29. Waiver

The failure of either party to exercise or enforce any right conferred upon it by the Contract shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter. No waiver of any term or condition of the Contract shall operate as a waiver of another or constitute a continuing waiver.

## 30. No Agency, Partnership, Employment Relationship or Joint Venture

Nothing in the Contract shall be deemed to constitute either party as the agent of the other or create a partnership, relationship of employer and employee or joint venture between the parties and the Customer shall have no power to bind SpectraKey or to contract in the name of or create a liability against SpectraKey in any matter whatsoever other than as set out in the Contract.

### 31. Variation

Any amendment or variation to the Contract shall be made by prior written agreement between the parties.

### 32. Severability

The unenforceability of any single provision of the Contract shall not affect any other provision thereof.

### 33. Law

The Contract shall be construed in accordance with the laws of England and Wales.