
STANDARD TERMS OF SALE
SPECTUR PTY LTD (ACN 140 151 579)

1. ACCEPTANCE OF TERMS

- 1.1 Any order, request or other instructions received by Spectur from the Customer for the supply of Products or Services, or the Customer's acceptance of Products or Services supplied by Spectur, constitutes acceptance of these Terms on the part of the Customer, following which these Terms will apply to and govern the purchase and supply of Products and Services.
- 1.2 Where there is more than one Customer, those Customers are jointly and severally liable for all money payable under these Terms.
- 1.3 These Terms are irrevocable as between Spectur and the Customer, unless rescinded or varied in accordance with these Terms or with the written consent of Spectur.
- 1.4 The Customer may not cancel or alter, in whole or in part, any order, request or other instructions provided to Spectur without Spectur's prior written consent.
- 1.5 An agent or representative of Spectur is not authorised to make any representation, statement, condition or agreement not expressed by Spectur's manager in writing, nor is Spectur bound by any unauthorised representation, statement, condition or agreement.
- 1.6 The Customer must give Spectur not less than 14 days prior written notice of any proposed change to the Customer's name or any details as previously advised to Spectur, including but not limited to changes to the Customer's address, contact details or business practice.

2. DESCRIPTION OF PRODUCTS AND SERVICES

The Products or Services (as applicable) are as described on the invoice, quote, work authorisation, work order or any other work commencement form as provided by Spectur to the Customer. Spectur may make such alterations to the specifications, design or construction of the Products as it deems fit, provided that the Products remain fit for any purpose which the Customer previously made known to Spectur.

3. PRODUCT PRICE AND PAYMENT

3.1 Product Price

- (a) At Spectur's sole discretion, the Product Price is;
 - (i) as indicated on invoices provided by Spectur to the Customer for the Products;
 - (ii) Spectur's then current publicly advertised list price at the date of delivery of the Products; or
 - (iii) subject to clause 3.1(b), Spectur's quoted price which is binding on Spectur provided that the Customer accepts Spectur's written quote within 30 days after it is given.
- (b) Spectur may charge the Customer for any variation to scheduled works or specifications in relation to the Products or Services and such variation will be shown as a variation on Spectur's invoice to the Customer. The Customer must make payment for all variations in full at the time that Products are delivered or Services are completed.
- (c) Unless expressly stated in a quote, invoice or other order confirmation from Spectur, the Product Price excludes all transport/freight costs, storage costs, security costs, insurance, customs and import duties and other out-of-pocket expenses. Spectur may charge the Customer an additional amount for any such items or expenses, if applicable. Without limiting this clause, Spectur may amend and increase the Product Price to account for any variation in currency exchange rates, taxes or other government charges.

3.2 Payment

- (a) Time is of the essence in relation to payment of the Product Price and will be stated on the invoice, quote or any other order confirmation from Spectur. If a time is not stated, payment must be made (subject to clause) by the Customer to Spectur on delivery of the Products or completion of the Services (as applicable).
- (b) Payment must be made from the Customer to Spectur by cash, bank cheque or electronic funds transfer or, at Spectur's discretion, by credit card, direct debit or any other method of payment.
- (c) Notwithstanding clause 3.2(a), Spectur may require that the Customer pays the full Product Price for any Products or a deposit equal to part of the Product Price for an amount that Spectur so determines (**Deposit**). Any such amount must be paid within 5 Business Days of Spectur making a request for the same and is not refundable after Spectur has commenced work and incurred costs in relation to the supply of the Products to which the amount pertains.
- (d) Spectur is not under any obligation to commence or continue work in relation to the supply of Products or Service unless a payment requested under clause 3.2(c) has been received.

4. DELIVERY OF PRODUCTS

4.1 Unless the invoice, quote or any other order confirmation from Spectur states otherwise:

- (a) Spectur will deliver the Products on a 'ex works' basis at Spectur's primary place of business in Western Australia (or other location nominated by Spectur) to the Customer or to a carrier or freight forwarder nominated by the Customer. Spectur is not obliged to deliver the Products unless and until the Customer nominates a carrier or freight forwarder under this clause, other than directly to the Customer at Spectur's place of business.
- (b) The Customer must make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery.
- (c) Delivery of the Products to a carrier or freight forwarder nominated by the Customer is deemed to be delivery of the Products to the Customer.

4.2 Spectur is not liable for any loss or damage due to a failure by Spectur to deliver the Products to the Customer promptly. The failure of Spectur to deliver the Products to the Customer does not entitle the Customer or Spectur to treat these Terms as repudiated.

4.3 Spectur is not liable in relation to loss or damage to Products in transit from Spectur's premises or otherwise in relation to the transportation of Products.

4.4 All Products are deemed accepted by the Customer if the Customer does not notify Spectur to the contrary within 7 days of those Products being delivered.

5. RISK AND TITLE

5.1 All risk for the Products passes to the Customer on delivery of those Products under clause 4.1(c) or, if the Products are delivered to the Customer (or an agent or contractor of the Customer) at an earlier point, at that earlier point. This clause applies to the extent that it is not inconsistent with any other arrangement agreed between the Customer and Spectur in writing.

5.2 If any Products are damaged or destroyed before title in those Products passes to the Customer, Spectur is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to recover payment of the balance of the Product Price for the Products), to receive all insurance proceeds payable for the Products. This applies whether or not the Product

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Price has become payable under these Terms. The production of these Terms by Spectur is sufficient evidence of Spectur's right to receive the insurance proceeds without the need for any person dealing with Spectur to make further enquiries.

- 5.3 Title in Products will not pass until the Customer has paid all amounts owing for the particular Products and the Customer has met all other obligations due by the Customer to Spectur in relation to all contracts between Spectur and the Customer.
- 5.4 The Customer must keep the Products separate until Spectur receives payment and all other obligations of the Customer are met under clause 5.3.

6. DEFECTS/RETURNS

- 6.1 The Customer may, within the Warranty Period, notify Spectur of any Products (other than materials used in Spectur's Products and other consumables) or Services that the Customer reasonably considers to be defective in any material respect, by giving written notice to Spectur to that effect (**Defect Notice**). The Customer must afford Spectur an opportunity to inspect all alleged defective Products or Services as soon as practicable following the issue of a Defect Notice.
- 6.2 Subject to clause 6.3, if Spectur, acting reasonably and in good faith, determines that Products or Services are defective in any material respect, Spectur's liability is limited to (at Spectur's discretion):
- (a) for Products – either replacing the Products or repairing the Products, provided that:
 - (i) the Customer has complied with clause 6.1 and the Products are returned at the Customer's cost within 30 days after the delivery date of those Products; and
 - (ii) the Products are returned to Spectur in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances; and
 - (b) for Services – re-perform or otherwise remedy the Services, provided that the Customer has complied with clause 6.1.
- 6.3 Spectur's obligation to take the actions in clause 6.2 are conditional upon the following:
- (a) Spectur does not have any liability to the extent that any damage or defect is caused, directly or indirectly, by any act or omission on the part of the Customer, nor in relation to Products which have not been transported, stored or used in accordance with any instructions by Spectur and otherwise with reasonable care and skill;
 - (b) Defects or damage which are caused or relate to any of the following are excluded:
 - (i) failure on the part of the Customer to properly maintain any Products;
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Spectur;
 - (iii) any use of any Products otherwise than for any application specified in any instructions or guidelines provided by Spectur or for their ordinary use or application;
 - (iv) the continued use of any Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or any act of God.
 - (c) Spectur will not be liable if the workmanship in relation to Products or Services is repaired, altered or overhauled without Spectur's consent.
 - (d) Spectur is not liable to compensate the Customer for any claim in either replacing or repairing the Products or in properly assessing the Customer's claim.
- 6.4 Spectur's obligations under clauses 6.1 and 6.2 are limited to the original Customer. If the Customer re-sells any Products, the Customer must ensure that the terms of such sale limit Spectur's liability in accordance with these Terms. The Customer indemnifies Spectur for any loss or damage incurred by Spectur from any failure of the Customer to do so.
- 6.5 For Products not manufactured by Spectur, to the extent permitted by law, the only warranty will be the current warranty provided by the manufacturer of those Products (if any). Spectur is not under any liability whatsoever, except to the extent of any express conditions detailed and stipulated in the manufacturer's warranty. The Customer may be liable for additional charges by Spectur in relation to repairs for such Products.
- 6.6 Spectur may (at its discretion) exchange defective Products (other than Products made to special order, Customer specifications or non-catalogue items) for credit but this may incur a handling fee of 10% of the value of the returned Products, plus any freight, as determined by Spectur. The Customer agrees to pay any handling fees or freight costs pursuant to this clause 6.6.

7. SUPPORT SERVICES

7.1 Provision of services

- (a) Spectur will provide the Customer with the Support Services on a month-to-month basis, as requested by the Customer.
- (b) All footage and data collected by Spectur from the Spectur Units will be held for 30 days' following which Spectur will archive the data. Spectur may charge the Customer a fee equal to Spectur's costs of retrieving any archived footage or data required by the Customer.
- (c) Spectur may permanently delete any archived footage or data after 12 months of it being archived.

7.2 Spectur User Interface (UI)

- (a) For the purposes of the Support Services, Spectur grants to the Customer a non-exclusive and non-transferrable licence for the period during which the Customer requests the Support Services (**Licence Term**), to access and use the Spectur UI in accordance with this clause 7.1 (**UI Licence**).
- (b) Spectur must provide the Customer with a unique username and password to allow the Customer to login and access the Spectur UI (**Access Code**).
- (c) The Customer must use the Spectur UI in accordance with all manuals for use, instructions, directions and training on the Spectur UI given by or on behalf of Spectur.
- (d) The Customer must not, and must not attempt to:
 - (i) make or distribute copies of the Spectur UI;
 - (ii) alter, modify, change, replicate, decompile, disassemble, reverse engineer, include in other software or translate the Spectur UI;
 - (iii) create derivative works or applications (in any format or medium) based upon the Spectur UI or the services that it performs;
 - (iv) licence, sub-licence, re-sell, assign, distribute or otherwise transfer the Spectur UI or the UI Licence and any purported attempt to do so is void and will not have any effect; or
 - (v) provide access to the Spectur UI to any third party or person not authorised to use it by Spectur, or assist any such unauthorised person to obtain access to the Spectur UI.

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- (e) Spectur (or any licensor pursuant to which Spectur operate the Spectur UI) remains the legal and beneficial owner of the Spectur UI and nothing in these Terms provides, or is intended to provide, the Customer with any legal or beneficial ownership interest in the Spectur UI whatsoever. Spectur reserves all rights not specifically granted under the UI Licence, including domestic and international Intellectual Property Rights.
- (f) Spectur must maintain and service the Spectur UI during the Licence Term to ensure that the Spectur UI is functional and operational in all material respects.
- (g) Spectur may update, amend or release new versions of the Spectur UI from time to time as it considers necessary, including conducting software updates.
- (h) Spectur must provide at least 2 Business Days prior notice to the Customer of any proposed maintenance, servicing or update to the Spectur UI where such maintenance, servicing or update will render the Spectur UI temporarily inoperable for a period of more than 4 hours, other than emergency or urgent maintenance for which prior notice cannot reasonably be provided.
- (i) Spectur must take all reasonable steps to ensure that the Spectur UI is operational and error free but Spectur does not warrant that the operation of the Spectur UI will be uninterrupted or error free and does not warrant against loss or damage caused by accident, abuse or misapplication of the Spectur UI by the Customer or any third party.
- (j) To the extent permitted by Law, Spectur is not liable, and the Customer must not make any claim against Spectur, for any loss or damage suffered or incurred by the Customer or any third party whatsoever as a result of
 - (i) the Spectur UI being inoperable whilst undergoing maintenance, servicing or updates by Spectur; or
 - (ii) any inoperability, malfunction or error in the systems, equipment or infrastructure of third party telecommunication services providers, internet service providers or data storage providers.
- (k) The Spectur UI is provided to the Customer on an "as is" basis, without any warranty of any kind other than those expressly stated in this Agreement.
- (l) Unless Spectur agrees to provide the Customer with an internet connection mechanism, the Customer must, at its own cost, procure the provision of adequate wireless or mobile internet access from a third party internet service provider to enable the operation of the Spectur UI on the Customer's computer systems.
- (m) If the Customer provides the internet connection mechanism, Spectur is not liable for any data or internet usage costs and expenses that the Customer incurs while using the Spectur UI. If Spectur provides the internet connection mechanism, Spectur may charge the Customer an additional amount for the costs of the mechanism.
- (n) The Spectur UI may enable access to other applications, third party services and web sites, the use of which may require internet access and that the Customer accepts additional terms of service. The Customer agrees to use these third party services at the Customer's sole risk and, to the extent permitted by law, Spectur is not liable for any loss or damage to the Customer whatsoever for content that may be found to be offensive, indecent or objectionable.
- (o) The Customer agrees that Spectur may collect, store and use technical data and related information, including but not limited to technical information about the Spectur UI, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to the Customer or any third parties (if any) related to the Spectur UI.
- (p) Spectur may use the information or statistics based on that information in clause 7.2(o), as long as it is in a form that does not personally identify the Customer to improve Spectur's products or to provide services or technologies to the Customer or other users of the Spectur UI.
- (q) The UI Licence will automatically terminate on the expiry of the Licence Term or if the Customer fails to comply with any of the terms and conditions of the UI Licence under these Terms. Upon termination for whatever reason, the Customer must cease all use of the Spectur UI and Spectur may terminate the Access Code and the Customer's other means of accessing the Spectur UI.

7.3 Support Fee

- (a) At Spectur's sole discretion, the Support Fee is:
 - (i) as indicated on invoices provided by Spectur to the Customer for the Support Services;
 - (ii) Spectur's then current publicly advertised fee for the Support Services at the date that those services are performed for the Customer; or
 - (iii) Spectur's quoted price which is binding on Spectur provided that the Customer accepts Spectur's written quote within 30 days after it is given.
- (b) The Customer must pay the Support Fee within 7 days of receiving an invoice from Spectur for the same.
- (c) Spectur may amend and increase the Support Fee:
 - (i) to account for any variation in currency exchange rates, taxes or other government charges; or
 - (ii) otherwise by giving the Customer 30 days' prior written notice of the proposed amendment.
- (d) The Support Fee must be paid by the Customer to Spectur within 7 days of an invoice being provided by Spectur to the Customer for that Support Fee.
- (e) Payment must be made from the Customer to Spectur by cash, bank cheque or electronic funds transfer or, at Spectur's discretion, by credit card, direct debit or any other method of payment.

7.4 Termination

- (a) The Customer may cancel its request for the Support Services by giving Spectur at least 30 days' written notice to that effect.
- (b) Spectur may cease to provide the Support Services:
 - (i) if any of the events in clause 14.4(a) to (c) occurs. Spectur must provide at least 7 days' prior written notice if it elects to cease providing the Support Services; or
 - (ii) otherwise by giving the Customer 60 days' written notice to that effect.

8. WARRANTIES

- 8.1 Any term, condition, guarantee or warranty which would otherwise be implied into these Terms is excluded to the maximum extent permitted by law.
- 8.2 Nothing in these Terms is intended to, or will, have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts.

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8.3 The liability of Spectur for any breach of any mandatory term, condition, guarantee or warranty implied into these Terms by statute is, to the extent permitted by law, limited at the option of Spectur, to any one or more of the following:

- (a) if the breach relates to the supply of goods:
 - (i) the replacement of the goods or the supply of equivalent goods, or payment for the same; or
 - (ii) the repair of such goods, or payment for the same; and
- (b) if the breach relates to the provision of services, the supplying of the services again or payment for the same.

9. PROTECTION OF TECHNOLOGY

9.1 Intellectual Property

- (a) All Intellectual Property Rights in relation to Spectur Background IP remain vested in Spectur.
- (b) All Intellectual Property Rights in the Contract IP vest in Spectur upon creation.
- (c) The Customer assigns to Spectur all Intellectual Property Rights (including future copyright) in the Contract IP upon the creation of those rights and, to the extent that any Intellectual Property Rights are not created at the time of creation of the Contract IP, upon the later creation of those rights.
- (d) In relation to any Intellectual Property Rights of Spectur, the Customer must:
 - (i) not use or exploit any such Intellectual Property Rights other than as expressly permitted by Spectur in writing; and
 - (ii) not do any act or omit to do any act, nor assist any other person to do or omit to do anything, which may:
 - A. prejudice an application for registration of any such Intellectual Property Rights which are registrable in any jurisdiction;
 - B. invalidate or oppose the registration of any such Intellectual Property Rights which are registered in any jurisdiction; or
 - C. file any application for registration of any such Intellectual Property Rights in any jurisdiction.

9.2 Prohibition on reverse engineering

- (a) The Customer acknowledges that the Products and Services may comprise valuable and commercially sensitive technology of Spectur and any unauthorised use or application of the same contrary to these Terms may result in Spectur suffering loss or damage.
- (b) The Customer must not (nor permit, allow or cause any third party to):
 - (i) copy, reproduce, reverse engineer or duplicate any Products or other products of Spectur; or
 - (ii) substantially disassemble or deconstruct any Products (or any part of any Products) that are security cameras or similar devices, except to the extent necessary for repairs and maintenance of those Products in the ordinary course, in accordance with Spectur's instructions.
- (c) The Customer indemnifies Spectur in relation to any breach of clause 9.2(b) by the Customer.

9.3 Infringement

- (a) Spectur is not liable for any claim of infringement of Intellectual Property Rights except bona fide infringement of third party rights by Products manufactured by Spectur in the form in which Spectur supplies such Products to the Customer, without regard to their use by the Customer (**Third Party Claim**).
- (b) If the Customer notifies Spectur promptly of any Third Party Claim of infringement and, if Spectur so requests, the Customer authorises Spectur to defend or settle any dispute or action involving such claim, Spectur will indemnify the Customer against the reasonable expenses of any such dispute or action and will satisfy any judgments or settlement to which Spectur acquiesces, but only to an amount not exceeding the price paid to Spectur for the allegedly infringing Products.
- (c) If the Customer is by injunction prohibited from further use of allegedly infringing Products, Spectur may procure for the Customer the right to use the Products, replace them with non-infringing Products, or remove them and refund the Product Price for those Products.
- (d) The Customer's rights and remedies for a Third Party Claim are limited to those under this clause 9.3. Spectur will not be liable for any damages whatsoever suffered by reason of any infringement claimed, except as proved in this clause.

9.4 Benefit for Related Bodies Corporate

In relation to this clause 9, Spectur:

- (a) acts in its own right and as agent for and on behalf of each of its Related Bodies Corporate;
- (b) holds the benefit of this clause 9 as trustee for each of Spectur's Related Bodies Corporate; and
- (c) may enforce this clause 9 on behalf of and for the benefit of each of Spectur's Related Bodies Corporate.

9.5 Survival

This clause 9 survives the termination of any contract between the Customer and Spectur.

10. CONFIDENTIALITY

10.1 Subject to clause 10.2, the Customer must at all times:

- (a) hold in strict confidence all Confidential Information;
- (b) not disclose or permit or cause the Confidential Information to be disclosed to any person other than any of the Customer's employees who require that Confidential Information for the purposes of ordering, receiving and applying (for their ordinary use) the Products and Services (**Approved Purpose**);
- (c) not make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from that Confidential Information) except and solely to the extent necessary for the Approved Purpose; and
- (d) ensure that any permitted person to whom the Customer passes any of the Confidential Information (unless disclosed under 10.2(b)) acknowledges and complies with the confidentiality obligations under this clause 10 as if that person were the Customer.

10.2 The obligations in clause 10.1 do not apply to the Customer to the extent that:

- (a) Spectur has provided its prior written consent to the use or disclosure of the Confidential Information in a manner that would, but for the consent, be contrary to clause 10.1;
- (b) disclosure of the relevant Confidential Information is required to comply with any law or order of a court, arbitrator or government body; and

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- (c) disclosure of the relevant Confidential Information made to any legal counsel, accountant, insurance advisor, bank or other professional adviser in relation to the Customer's affairs provided that the professional advisor is bound by an obligation or confidentiality in regards to the information disclosed.
- 10.3 The Customer agrees that damages may not be an adequate remedy for breach of this clause 10 and that Spectur will be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting a bond (cash or otherwise), in the event of actual or threatened unauthorised disclosure or use of Confidential Information in breach of this clause 10.
- 10.4 The obligations under this clause 10 survive the termination of any contract between the Customer and Spectur.
- 11. SECURITY INTERESTS**
- 11.1 Possession of Products is transferred to the Customer by Spectur on the basis that Spectur retains a purchase money security interest (pursuant to the PPSA) in the Products, proceeds of the Products and any other goods with which the Products are commingled.
- 11.2 The Customer:
- (a) must promptly do anything Spectur requires to ensure that any security interest arising under these Terms is a perfected security interest and has priority over all other security interests;
 - (b) undertakes not to register a financing change statement or make an amendment demand pursuant to section 178 of the PPSA in respect of such registration;
 - (c) agrees that the following provisions of the PPSA will not apply and the Customer will not have any rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143;
 - (d) agrees to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPSA;
 - (e) waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
 - (f) agrees that Spectur is required to give a notice under the PPSA only if the notice is obligatory and the giving of the notice cannot be excluded under the PPSA, and the Customer waives any rights to receive any notices unless they are required to be given and cannot be excluded; and
 - (g) agrees to notify Spectur in writing of any change to the Customer's details within 5 days from the date of such change.
- 11.3 The parties agree that these Terms constitute a security agreement for the purposes of the PPSA and, without prejudice to Spectur's rights under the PPSA:
- (a) Until the time when ownership of the Products passes from Spectur to the Customer, Spectur may give notice in writing to the Customer to return the Products to Spectur. Upon that notice being given, the rights of the Customer to obtain ownership or any other interest in the Products will cease.
 - (b) If the Customer fails to return the Products to Spectur, then Spectur or Spectur's agent as the invitee of the Customer, may enter land and premises owned, occupied, leased or otherwise used by the Customer, or any premises where the Products are situated and take possession of the Products without being responsible for any damage caused by that entry.
 - (c) The Customer is a bailee only of the Products and until the time when Spectur receives payment in full for the Products, the Customer must hold any proceeds from the sale or disposal of the Products on trust for Spectur.
- 11.4 The Customer must not charge the Products in any way nor grant or otherwise give any interest (including a security interest) in the Products while they remain the property of Spectur.
- 11.5 Spectur may require payment of the Product Price or the balance of the Product Price for the Products due together with any other amounts due from the Customer to Spectur, and Spectur may take any lawful steps to require payment of the amounts due and the Product Price.
- 12. GST AND DUTIES**
- 12.1 All amounts payable by the Customer to Spectur and all other references to monetary amounts under these Terms are exclusive of GST, unless expressly stated otherwise. The Customer must pay to Spectur an additional amount equal to the GST liability on a supply or transaction to which GST applies. Unless otherwise agreed in writing, the GST amount under this clause 12.1 must be paid within 5 Business Days of Spectur issuing to the Customer a tax invoice for the supply or transaction to which the GST liability applies.
- 12.2 The Customer is responsible for compliance with, and payment of the following applicable after the point at which Products are delivered:
- (a) all applicable taxes or tariffs imposed, claimed, levied or assessed by, or payable to, any applicable government bodies or agencies in relation to the import or export of goods and/or services;
 - (b) all taxes imposed by, or payable to, any applicable government bodies or agencies in relation to the production or manufacture of goods applicable to the supply under these Terms; and
 - (c) all other applicable import and export laws of any jurisdiction relating to the supply of the Products to the Customer.
- 13. LIEN**
- Without limiting clause 11, Spectur has the following rights where Spectur has not received the whole of the Product Price, or the payment has been dishonoured, and such rights will continue despite the commencement of legal proceedings or judgment for the Product Price having been obtained:
- (a) a lien on the Products;
 - (b) the right to retain them for the Product Price while Spectur is in possession of them;
 - (c) a right of stopping the Products in transit whether or not delivery has been made or ownership has passed;
 - (d) a right of resale; and
 - (e) the right of disposal in clause 20.
- 14. DEFAULT & CONSEQUENCES OF DEFAULT**
- 14.1 Interest at the rate of 10% per annum (calculated daily) accrues, and must be paid by the Customer to Spectur, on overdue amounts owed by the Customer, from the date when payment becomes due until the earlier of payment or judgment.
- 14.2 If the Customer defaults in payment of any invoice when due, the Customer indemnifies Spectur from and against all Spectur's costs and disbursements on a solicitor and own client basis, in addition to all of Spectur's nominee's costs of collection. The Customer's

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indemnity to Spectur extends to administrative, collection and solicitor fees (on a solicitor and own client basis) that are incurred by Spectur or will be incurred by Spectur in preserving and/or enforcing its rights under the PPSA.

14.3 Without prejudice to any other remedies Spectur may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Spectur may suspend or terminate the supply of Products or Services to the Customer and any of its other obligations under these Terms. Spectur will not be liable to the Customer for any loss or damage the Customer suffers because Spectur exercised its rights under this clause 14.3.

14.4 In the event that:

- (a) any money payable to Spectur becomes overdue, or in Spectur's opinion the Customer will be unable to meet its payments as and when they fall due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, receiver and manager, liquidator (provisional or otherwise), administrator, bankruptcy trustee or similar person is appointed in relation to the Customer or any asset of the Customer;
- then without prejudice to Spectur's other remedies at law or under these Terms:
- (d) Spectur will be entitled to cancel all or any part of any order of the Customer for Products and Services which remains unperformed in addition to and without prejudice to any other remedies; and
 - (e) all amounts owing to Spectur will, whether or not due for payment, immediately become due and payable.

15. CANCELLATION

Spectur may immediately cancel these Terms or cancel delivery by giving written notice to the Customer. Spectur will not be liable for any loss or damage arising from any cancellation.

16. FORCE MAJEURE

16.1 Spectur is not liable for failure to perform any obligations under these Terms during the time and to the extent that such performance is prevented, wholly or substantially, by a Force Majeure Event.

16.2 Spectur may terminate the contract or other engagement between Spectur and the Customer by written notice to the Customer if a Force Majeure Event has continued for more than 60 days. Spectur is not liable to the Customer for any loss or damage suffered by the Customer as a result of a Force Majeure Event or Spectur's exercise of the termination rights under this clause. Upon such termination, the Customer must pay any amount owed in respect of Products or Services provided to the Customer prior to the date of termination.

17. CUSTOMER'S ACKNOWLEDGEMENT, DISCLAIMER AND INDEMNITY

17.1 The Customer acknowledges and agrees that:

- (a) the Products are only intended to reduce the risk of loss of and damage to property and entry to persons in, on, or near the premises in which the Products are installed, to the extent that is reasonably practicable by use of such Products;
- (b) Spectur will not be liable for any direct, indirect, special or consequential damages whatsoever;
- (c) Spectur does not make any warranty, representation or other stipulation about the effectiveness or otherwise of the Products and associated security systems in relation to the apprehension, identification or curtailment of illegal or unwanted activities by persons not permitted to be on any particular premises at the time an event or events are recorded;
- (d) if an unauthorised access to the Customer's premises on which Spectur Units are located or other security breach event is detected, Spectur's UI will attempt to contact and send images to designated representatives of the Customer, but Spectur cannot guarantee that those persons will be contacted or will ultimately receive the images; and
- (e) Spectur will not make any recommendation in relation to security personnel, repair personnel or associated business in the event that the Customer's premises are damaged as a result of illegal or other unlawful activity, unless specifically contracted to do so by the Customer, and in any event, Spectur will not be liable for any third party or its personnel.

17.2 Subject to any express provisions of these Terms and to the extent permitted by law, the Customer disclaims any right to rescind or cancel these Terms or to sue for damages or to claim restitution in relation to any misrepresentation made to the Customer by any employee, agent or representative of Spectur, and the Customer acknowledges that the Customer relies solely upon the Customer's own skill and judgment and that Spectur is not bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which is personal to the Customer and not capable of assignment to any subsequent Customer of the Products.

17.3 The Customer indemnifies Spectur from and against all liabilities, losses, damages, costs and expenses (including consequential and indirect loss or damage) incurred or suffered by Spectur, and from and against all actions, proceedings, claims and demands made against Spectur caused (wholly or in part) by an act or omission on the part of the Customer in relation to these Terms, including without limitation any failure on the part of the Customer to follow Spectur's instructions for use in relation to Products or Services.

18. SURVEILLANCE LAWS

18.1 The Customer acknowledges and agrees that:

- (a) the Products and their use may be subject to surveillance device legislation and associated laws (**Surveillance Laws**), including the *Surveillance Devices Act 1998* (WA) or equivalent laws in other jurisdictions;
- (b) Spectur does provide any advice to the Customer in relation to the legal or regulatory requirements (including Surveillance Laws) applicable to any Products or their use; and
- (c) the Customer is responsible for identifying applicable Surveillance Laws and procedures for its compliance with those laws.

18.2 The Customer must comply at all times with applicable Surveillance Laws in relation to the Products and their use by the Customer (or any third party on behalf of the Customer). The Customer indemnifies Spectur from and against any claims or liability incurred by Spectur in relation to any failure by the Customer (or any of the Customer's officers, employees, agents or contractors) to do so.

19. PRIVACY ACT

The Customer agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) provided may be used and retained by Spectur for the following purposes and for other purposes as agreed between the Customer and Spectur or required by law from time to time:

- (a) provision of Services and Products;
- (b) marketing of Services and Products by Spectur, its agents or distributors in relation to the Services and Products;
- (c) analysing, verifying and checking the Customer's credit, payment and status in relation to provision of Services and Products;
- (d) processing of any payment instructions, direct debit facilities or credit facilities requested by the Customer; and

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- (e) enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Services and Products.

20. RIGHTS TO DISPOSE OF UNPAID PRODUCTS

Spectur may dispose of the Products and may claim from the Customer the loss to Spectur on that disposal if the following occurs, whether the property in the Products has passed to the Customer or has remained with Spectur:

- (a) Spectur retains possession or control of the Products;
- (b) payment of the Product Price is due to Spectur;
- (c) Spectur has demanded from the Customer in writing payment of the Product Price in accordance with these Terms; and
- (d) Spectur has not received payment of the Product Price of the Products.

21. GENERAL

21.1 These Terms (including any contract between Spectur and the Customer in relation to the supply of Products or Services) are governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia, the Federal Court of Australia and the Federal Circuit Court of Australia (as applicable).

21.2 If any provision of these Terms is invalid, void, illegal or unenforceable, then that provision is to be ignored in the interpretation of these Terms such that the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

21.3 Spectur is not under any liability whatsoever to the Customer for any indirect or consequential loss or expense (including loss of profit) suffered by the Customer relating to a breach of these Terms by Spectur.

21.4 The remedy of the Customer in relation to any cause of action that the Customer may have against Spectur is limited to damages. Spectur's maximum liability is the total Product Price and Support Fee for all Products and Services supplied to the Customer. Any action must be commenced within 1 year after the cause of action has accrued.

21.5 The Customer does not have any right to set-off against the Product Price or Support Fee any amounts due or claimed to be due from Spectur.

21.6 Spectur may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

21.7 Spectur reserves the right to review and amend these Terms at any time at its absolute discretion. If Spectur amends these Terms, that change will take effect from the date on which Spectur notifies the Customer of those amendments.

21.8 Neither party is liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party, provided that the party in default takes reasonable steps to mitigate any loss or damage arising as a result.

22. INTERPRETATION

22.1 The following words have the meaning given to them below when used in these Terms:

- (a) **Business Day** means a day other than a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.
- (b) **Confidential Information** means, other than to the extent that it constitutes Excluded Information, all records, documents or other information, in whatever form, which relate to the business, affairs or activities of Spectur (including a Related Entity of Spectur) or that is marked by or behalf of Spectur as being confidential or is of a confidential nature, including methods of operation, Intellectual Property Rights, customer lists, products, prices, fees, costs, technology, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialised information or proprietary matters.
- (c) **Contract IP** means all Intellectual Property Rights created, discovered, developed, derived or that otherwise come into existence in relation to performance of a contract between the Customer and Spectur or otherwise in relation to the supply of the Products or Services by one or both of the Customer and Spectur, including any Intellectual Property Rights developed or derived from Spectur Background IP.
- (d) **Customer** means a person who orders or otherwise requests goods or services from Spectur and any other person acting on behalf of and with the authority of the first-mentioned person.
- (e) **Excluded Information** means any records, documents or other information to the extent that such information:
 - (i) becomes publicly available (except if it is in the public domain by reason of the failure of a party to perform and observe its obligations under these Terms);
 - (ii) is acquired from a third party entitled to disclose it on a non-confidential basis; or
 - (iii) is independently developed without use of Confidential Information.
- (f) **Force Majeure Event** means an event beyond Spectur's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by Spectur, including any:
 - (i) act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land slide, mud slide, wash-out, explosion, radioactive contamination or natural disaster;
 - (ii) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
 - (iii) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances;
 - (iv) any failure, delay or suspension by any third party supplier of the supply in whole or in part of fuel, electricity, equipment, machinery, infrastructure (including telecommunications or internet infrastructure and systems) or materials to Spectur provided that Spectur has acted in a timely manner in endeavouring to secure the same (which does not require Spectur, to secure the same if the alternative supply is only available to Spectur at a materially increased or additional cost to it); or
 - (v) adverse application of any law or enforcement actions of any court or Government Agency.
- (g) **GST** means the tax levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (h) **Intellectual Property Rights** means all rights and interests throughout the world vesting or otherwise in relation to industrial or intellectual property protectable under law, whether registered, unregistered or registrable, and whether now existing or that come into existence in the future, including:
 - (i) any patent, trade mark, copyright (including future copyright), moral right, design, plant breeder's rights, circuit layout rights or any other corresponding property or right under the laws of any jurisdiction;
 - (ii) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, methodology, information (including, where applicable, Confidential Information), data, algorithm or formula; any right to apply for grant or registration of intellectual property or intellectual property rights; and

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- (iii) all renewals and extensions and all similar or equivalent rights or forms of protection in relation to intellectual property or intellectual property rights.
- (i) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (j) **Product Price** means the price for Products and/or Services (as applicable), excluding Support Services, as determined by Spectur under clause 3.1, which excludes GST.
- (k) **Products** means any goods, products, accessories or consumables (as applicable) sold, licensed or otherwise supplied, or the subject of an order or other request for supply, by Spectur to the Customer (and where the context permits includes any supply of any Services).
- (l) **Spectur Background IP** means any and all Intellectual Property Rights of Spectur (or licensed to Spectur by a third party) which are in existence before the date on which the Customer first engaged Spectur to supply Products or Services or which come into existence after that date, other than in relation to the supply of Products or Services, including Intellectual Property Rights in relation to Spectur Units and the Spectur App.
- (m) **Services** means all services performed or otherwise supplied, or the subject of an order or other request for performance or supply, by Spectur to the Customer, including Support Services and advice or recommendations.
- (n) **Spectur** means Spectur Pty Ltd (ACN 140 151 579) trading as 'Spectur' or 'Spectur HD Monitoring', and its successors and assigns.
- (o) **Spectur UI** means the user interface and associated software developed by Spectur which facilitates remote access to footage and data captured on Spectur Units.
- (p) **Spectur Units** means a remote security camera developed by Spectur which transmits images using the mobile telephone or wired or wireless network, or such other security camera device developed by Spectur from time to time.
- (q) **Support Fee** means the fee for the provision of Support Services, as determined under clause 7.3(a), which excludes GST.
- (r) **Support Services** means:
 - (i) provision of access to the Spectur UI;
 - (ii) provision of access to the footage and data captured on Spectur Units through the Spectur UI; and
 - (iii) if agreed between Spectur and the Customer, third party remote monitoring services in relation to the Spectur Units of the Customer.
- (s) **Terms** means these Standard Terms of Sale.
- (t) **Warranty Period** means the period of 12 months from the date Products are delivered or Services are completed, as the case may be, or such other period specified in invoice, quote or any other order confirmation from Spectur.

22.2 In these Terms:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) the words "includes" and "including" are not words of limitation;
- (e) a reference to a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement or re-enactment of the same;
- (f) a reference to person, includes a reference to:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity;
 - (ii) if the person is an individual, the person's personal representatives and assigns; and
 - (iii) if the person is not an individual, the person's successors and assigns;
- (g) an agreement, representation or term of these Terms in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- (h) a reference to currency is to the Australian currency;
- (i) a reference to time is to Australian Western Standard Time in Perth, Western Australia;
- (j) if the date on which an act, matter or thing must be done or take place is not a Business Day, then that act, matter or thing must be done or take place on the next Business Day;
- (k) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- (l) a provision in these Terms must not be construed adversely to a party solely on the ground that the party was responsible for the preparing these Terms or that provision;
- (m) a reference to "writing" or "written" includes any electronic transmission or communication by facsimile;
- (n) a reference to a right includes a benefit, remedy, discretion or power;
- (o) the terms **Related Bodies Corporate** and **Related Entity** has the meaning given to those terms in the *Corporations Act 2001* (Cth); and
- (p) the phrase "in relation to" has the widest possible import and encompasses the phrases "in connection with", "in respect of", "arising out of" and "resulting from".