

Contracts

The Product Terms and Conditions – [North America](#), [EMEA](#), [Asia-Pacific/Japan](#), [Master Services Agreement](#), and [Master License Agreement](#) set forth the terms and conditions governing the purchase of Spectra products, the provision of services by Spectra, and licensing of software. Previously executed purchase, support, and license agreements setting forth terms of purchase and/or license of products, and/or services from Spectra by end user purchasers (“Customer”) in effect at the time of purchase will take precedence over these Terms and Conditions. Otherwise, Spectra’s assent to any agreement between Spectra and Customer for any sale of license of products or services in connection with a Spectra Sales Quote (“Quote”) is expressly conditioned on Customer’s assent to the terms and conditions of the agreements referenced above. Customer’s assent will be conclusively presumed if Customer responds by issuance of a purchasing document. Any different, conflicting, or additional terms in Customer’s purchasing document are objected to and deemed rejected unless expressly approved in writing by an executive officer of Spectra and Customer.



CUSTOMER PURCHASE AGREEMENT

THIS AGREEMENT is made on the date a purchase order is issued (“Effective Date”).

PARTIES:

- 1. Spectra Logic Pty Ltd of D-LS 110, Quad D 10-14 Market Lane, Rouse Hill, NSW 2155, Australia (“Spectra”)**
- 2. The purchaser (“Purchaser”) described in the Spectra Quote (the “Quote”)**

RECITALS:

- A. Spectra supplies the goods described in the Quote provided to Purchaser**
- B. Spectra sells and Purchaser buys the products on the terms and conditions set out in this agreement**

THE PARTIES AGREE:

1. Prices, Terms and Delivery.

(a) In consideration of payment of the agreed price specified in relation to each of the products in the Quote (“Price”) by the Purchaser to Spectra, Purchaser may order Spectra products by issuing a purchase order that identifies Spectra products (“Products”) at the Price. If Purchaser is eligible for credit, the total amount due shall be paid not later than forty-five (45) days after shipment. Purchaser shall remit sales and use tax, if any, on the purchase price. Spectra may suspend all services and shipments until Spectra receives payment in full.

(b) Spectra will use its reasonable best efforts to meet any scheduled shipment date. However, Spectra will not be liable for shipping delays other than those caused by willful misconduct on the part of Spectra. Shipment shall be FCA Boulder, CO, USA.

2. Acceptance of Orders. Spectra may decline any order received from the Purchaser by written notice to the Purchaser within 10 business days of receipt of the order by Spectra. Any order not declined pursuant to this clause binds Spectra.

3. Payment. Unless stated otherwise the Price is exclusive of GST. The Reseller must pay the Price, plus the requisite GST, in relation to each order to SPECTRA on acceptance of the order by Spectra or if the Purchaser is eligible for credit, within forty-five (45) days of the receipt of the relevant order and a valid tax invoice.

4. Passing of risk. Risk in each Product order passes to the Purchaser upon delivery of that Product to the Purchaser or collection of that Product by the Purchaser’s agent or courier as the case may be.

5. Passing of Title. Title to the Products constituting an order passes to the Purchaser free of encumbrances and all other adverse interests upon payment in full by the Purchaser being received by Spectra in relation to such order. Until title to the Products constituting an order passes to the Purchaser, the title of Spectra is a security interest.

6. Rights in relation to Products

(a) Spectra reserves the following rights in relation to the Products until all accounts owed by the Purchaser to Spectra are fully paid:

(i) ownership of the Products;

(ii) to enter the Purchaser’s premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and

(iii) subject to, and in accordance with, the Personal Property Securities Act 2009, to keep or resell any Products repossessed pursuant to paragraph (ii) above.

(b) If the Products are resold, or products manufactured using the Products are sold, by the Purchaser, the Purchaser shall hold such part of the proceeds of any such sale as represents the invoice price of the Products sold or used in the manufacture of the Products sold in a separate identifiable account as the beneficial property of Spectra and shall pay such amount to Spectra upon request. Notwithstanding the provisions above, Spectra shall be entitled to maintain an action against the Purchaser for the purchase price and the risk of the Products shall pass to the Purchaser upon delivery.

7. **Warranty.**

(a) Spectra warrants that Spectra has good title to the Products and that the Products shall operate in accordance with published specification. The warranty period shall start on the ship date and shall continue for a period certain depending on the Product(s) purchased. The Spectra website may be viewed for warranty terms, conditions and details. If failure of a Product results from accident, abuse or misapplication, no warranty applies. Any replacement Product will be warranted for remainder of the original warranty period or 30 days, whichever is greater. Spectra will defend, settle and indemnify Purchaser with respect to any claim made or any suit or proceeding brought against Purchaser based on an allegation that the Products standing alone infringe a patent or copyright. Spectra will provide a reasonable means to remedy an infringement through product modifications or granting Purchaser a credit on Products.

(b) THERE IS NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NO ORAL OR WRITTEN INFORMATION GIVEN BY SPECTRA, ITS AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THE WARRANTY.

(c) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, ARISING OUT OF THE USE OF OR INABILITY TO USE SUCH PRODUCTS EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON TORT, CONTRACT, STRICT LIABILITY, PRODUCT LIABILITY OR OTHER LEGAL THEORY.

(d) This Warranty section may not apply to all purchases. Please refer to the Australian Consumer Law if your order is less than or equal to AUD \$40,000.00.

(e) Spectra uses new or equivalent to new products in all new products sold.

8. **Support Services.** Purchases of support Services on the Product shall be made in accordance with the standard Spectra Master Services Agreement located at www.spectrallogic.com/legal.

9. **Personal Property Securities Act 2009 (PPSA)**

(a) This agreement is a security agreement.

(b) The interest of Spectra in the Products and all proceeds from the sale of the Products by the Purchaser to a third party is a security interest.

(c) The Purchaser consents to Spectra registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonable required by Spectra to facilitate registration.

(d) Until such time as title in the Products has passed to the Purchaser as contemplated by clause 5 above, the Purchaser agrees not to in any way assign, charge, lease or otherwise deal with the Products in such a manner as to create a security interest over the Products in favour of the Purchaser or any third party. The parties agree that this clause will not prohibit the Purchaser from selling the Products in the ordinary course of business.

(e) The Purchaser waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.

(f) Spectra and Purchaser agree that this agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. Spectra and the Purchaser agree that Spectra will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

(g) Unless the Products are used predominantly for personal, domestic or household purposes, Spectra and the Purchaser agree each of the following requirements or rights under the PPSA do not apply to the enforcement of Spectra's security interest in the Products or of this agreement:

(i) any requirement for the Seller to give the Buyer a notice of removal of accession;

(ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the Goods;

(iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;

(iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;

(v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and

(vi) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.

(h) Expressions defined in the PPSA have the same meaning when used in this agreement.

10. **General.** The Products may contain software and firmware that is owned by or licensed to Spectra. The software and firmware is licensed hereunder and is not sold. Purchaser shall not reverse engineer, decompile or disassemble the software or firmware. The terms and conditions contained herein constitute the entire agreement of the parties and supersede all prior written and oral agreements and understandings relating to the subject matter hereof and shall govern and control over any standard printed terms and conditions which may be contained on quotations, orders, acknowledgments, invoices or other standard forms exchanged by the parties with respect to the Products. None of the provisions of this Agreement may be amended without the written consent of both parties. All Product sales are subject to compliance with any applicable export or import regulations, laws, regulations or rulings of governmental authorities.

11. **Proper Law.** This agreement is subject to the law of the state of Victoria.

12. **Acknowledgements.**

The Reseller expressly acknowledges the following:

- (a) the Reseller will not represent to the public that it is the manufacturer of the goods;
- (b) the purpose of the Products is data storage for business purposes;
- (c) the sale of the Products is not a sale by sample;
- (d) Spectra cannot repair the Products and/or provide parts after one year unless there is agreement for ongoing provision of support services.