

Terms and Conditions for the Purchase of Goods and Services (“Conditions”)

1. INTERPRETATION

- 1.1 In these Conditions the following words shall have the following meaning:
- “Company” Malvern Panalytical, a division of Spectris Canada inc.;
- “Contract” the agreement resulting from the Order and the Seller’s acceptance of the Order;
- “Goods” any goods delivered and to be delivered to the Company by the Seller (including any part or parts of them and any software);
- “Losses” losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis);
- “Services” any services provided and to be provided by the Seller to the Company;
- “Order” the Company’s written instruction to supply the Goods and/or Services;
- “Seller” the person, firm or company who accepts the Company’s Order.
- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these Conditions the headings will not affect the construction of these Conditions.

2. GENERAL

- 2.1 These Conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the offers to and Orders made by the Company and all Contracts, to the entire exclusion of all other terms or conditions. No terms or conditions endorsed upon, delivered with or contained in the Seller’s quotation, acknowledgement or acceptance of Order, specification or similar document will form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.2 Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorized officer of the Company.
- 2.3 Each Order shall be deemed to be an offer by the Company to purchase Goods and/or Services subject to these Conditions and an Order shall be deemed to be accepted by the Seller on the earlier of the Seller giving written notice of acceptance or any act by the Seller consistent with fulfilling the Order.

- 2.4 If the Seller’s order confirmation deviates from the Order, such deviations shall not be binding between the parties, unless the Company has expressly accepted such deviations in writing.
- 2.5 Unless explicitly agreed otherwise in writing, each Contract will be entered into for one specific and specified Order and the Company does not grant any exclusivity to the Seller.
- 2.6 The fact that the Company places Orders with the Seller on a regular basis will not entitle the Seller to claim that it has a continuing performance agreement whose termination requires the giving of notice.
- 2.7 Time for delivery of the Goods and/or the performance of the Services shall be of the essence of the Contract.
- 2.8 The Seller shall provide the Company with the correct Export Control Classification Numbers (ECCN), Harmonised System Code, Country of Origin and Preferential Origin Status. The Seller shall inform the Company immediately of any change in one of these classifications.
- 2.9 The Seller will perform the Contract entirely at its own risk. If the Seller fails to supply the Goods and/ or Services in accordance with the Order, the Seller shall notify the Company in writing and pay to the Company the penalties as specified in the Order.

3. PRICE AND PAYMENT

- 3.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company, shall be exclusive of all goods and services taxes but inclusive of all other charges, costs and expenses incurred in connection with the fulfillment of Seller’s obligations under the Contract.
- 3.2 No Price increase or extra charges will be applicable, unless expressly accepted in writing by a duly authorized representative of the Company.
- 3.3 In respect of Goods, the Seller shall invoice the Company on or at any time after completion of delivery. In respect of Services, the Seller shall invoice the Company on completion of the Services. The invoice shall be sent to the Company separately. Each invoice shall include such supporting information as is required by the Company to verify the accuracy of the invoice and shall quote the purchase order reference number (if any) of the Order to which it relates.
- 3.4 The Company shall pay the price within sixty (60) days of the end of the month after receipt by the Company of a valid invoice or, if later, after acceptance of the Goods or Services in question by the Company. Interest shall be payable on the late payment of any undisputed invoices for Goods or Services at 2 % per annum above HSBC bank’s base rate from time to time.
- 3.5 If the Company objects to the invoice or to the Goods delivered or the Services rendered it may suspend payment, without prejudice to any of its other rights by Contract or law.
- 3.6 Without prejudice to any of its other rights by Contract or law, the Company reserves the right to set off any amount owing or allegedly owed at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

4. CONFIDENTIALITY

4.1 The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

5. COMPANY PROPERTY

5.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other form of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods or rendering of Services (hereinafter jointly referred to as "Company Property") shall at all times be and remain the exclusive property of the Company but shall, where applicable, be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorized by the Company in writing.

5.2 The Seller is obliged to store the relevant Company Property in a manner that clearly identifies them as the Company's property; to the extent necessary, the Seller must mark the Company Property as the Company's property.

5.3 The Seller must immediately draw the attention to any third parties seeking recourse to the Company Property on the ownership of the Company Property by the Company and has a duty to protect the Company Property to the extent possible. The Seller must immediately inform the Company of any claims by third parties and of any measures it has taken in that context.

5.4 If the Seller creates a good with the use of any Company Property, it will be considered to create that good for the Company.

6. IP RIGHTS TO THE GOODS

6.1 Any intellectual property rights arising from Orders placed by the Company will vest in the Company and will be transferred to the Company. The Seller shall execute such documents and take all such actions at the Company's expense, as the Company may require to fully vest such intellectual property in the Company.

6.2 With respect to any intellectual property rights referred to under 6.1 that are not capable of being transferred to the Company, or with respect to any intellectual property rights that already existed at the moment of conclusion of the Contract, the Seller hereby grants to or shall procure the granting to the Company of the worldwide, perpetual, irrevocable right to use such intellectual property rights in such manner as the Company

requires, with the right to grant sublicenses, and such rights are hereby accepted by the Company.

6.3 The Seller warrants that the use of the Goods and Services does not violate any third party property rights.

7. COMPLIANCE WITH LAWS & BUSINESS ETHICS

7.1 The Seller is deemed to be aware of the legal requirements and governmental regulations relevant to the performance of the Contract, including safety, health and environmental rules and regulations, and shall comply with such requirements and regulations in performing the Contract. In particular, but without limitation, the Seller shall comply with the Restriction of Hazardous Substances Directive (RoHS), the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation and the Waste Electrical and Electronic Equipment Directive (WEEE) of the European Union, with Part 15 of the Federal Communications Commission's rules of the United States and with the Canadian Environmental Protection Act of Canada.

7.2 The Seller represents, warrants and undertakes that it has complied and shall continue to comply at all times with the EU General Data Protection Regulation 2016/679, the Regulation (the "GDPR"), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any applicable laws in any jurisdiction relating to the processing or protection of personal data and privacy, including where applicable the guidance and codes issued by any relevant supervisory authority from time to time (collectively the "Data Protection Laws").

7.3 The Seller represents, warrants, covenants and certifies that it is in full compliance with all applicable chemical/hazardous substances and conflict minerals laws and any applicable written standards, requirements, directives or policies relating thereto (e.g. EU-Regulations/EU-Directives, US Dodd-Frank-Act provisions).

7.4 The Seller shall conduct its business with equivalent ethical standards as the ones set forth in the Company's Code of Business Ethics and Seller is expected to contribute to a sustainable environment. The Company's Code of Business Ethics can be found on the Company's website, and will be sent to the Seller in a digital format upon request. The Company is entitled to verify Seller's level of sustainability in the form of a self-assessment questionnaire arranged by a third party.

7.5 Without limiting the generality of this Article 7, the Seller agrees that it shall, and that it shall procure that its employees and officers, agents, sub-contractors and any other person who performs services for the Seller in relation to the Contract shall comply with all applicable laws relating to (i) bribery and other corruption, including the Bribery Act 2010 of the United Kingdom and the Corruption of Foreign Public Officials Act of Canada and (ii) slavery and human trafficking, including the Modern Slavery Act 2015.

7.6 In view of Section 1502 of the Dodd-Frank Act, the Seller shall have a policy in place to reasonably assure that the tantalum, tin, tungsten and gold in the Goods do not directly or indirectly finance or benefit armed groups that are perpetrators of serious

human rights abuses in the Democratic Republic of Congo or an adjoining country. The Seller shall exercise due diligence on the source and chain of custody of these minerals and shall make their due diligence measures available to the Company upon the Company's request.

- 7.7 The Seller warrants that it will comply with all applicable export control laws and regulations, including by obtaining all necessary export licenses.
- 7.8 At the Company's request and cost, the Seller agrees to provide the Company with any reasonable assistance to enable it to perform any activity required by any relevant government or agency for the purpose of complying with laws and regulations.

REMEDIES & INSURANCE

- 8.1 Without prejudice to any other right or remedy which the Company may have, if any Goods or Services are not supplied or provided in accordance with, or the Seller fails to comply with, any of the terms of this Contract, the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services have been accepted by the Company:
- i) to cancel the Order and/or terminate the Contract;
 - ii) at the Company's option to give the Seller the opportunity at the Seller's expense to (a) reperform the Services; (b) remedy any defect in the Goods; (c) supply replacement Goods; and/or (d) carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - iii) to carry out at the Seller's expense any work necessary to make the Goods or Services comply with the Contract;
 - iv) to reject the Goods or Services (in whole or in part) and receive a full refund for the Goods or Services rejected, to be paid forthwith by the Seller;
 - v) to refuse to accept any further deliveries of the Goods or provision of the Services but without any liability to the Seller;
 - vi) to recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods or Services in substitution from another seller;
 - vii) to claim such Losses as may have been sustained in consequence of the Seller's breaches of the Contract.
- 8.2 Without prejudice to Article 8.1, it is expressly understood that if the Company has supplied any Goods that are not in conformity with the Contract to third parties, the Company may at its discretion either repair the Goods itself or require the Seller to repair such Goods, which the Company may require to take place at the site of the Seller or the third party. In all cases all costs incurred by the Company and the Seller (e.g. travelling and labour costs) will be borne by the Seller, without prejudice to any other rights of the Company under the Contract or the law.
- 8.3 The Seller shall, at its expense, maintain insurance in commercially reasonable amounts for operating its business, with reputable insurers. At the Company's request, the Seller shall provide copies of the insurance policy certificates and details of the cover provided.

9. CANCELLATION, SUSPENSION AND TERMINATION

- 9.1 The Company shall have the right at any time and for any reason to cancel an Order and/or terminate any Contract in whole or in part, by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller only fair and reasonable compensation for work-in-progress and costs actually incurred by the Seller up to the date of termination, which will in no case exceed the price stated in the Order. For the avoidance of doubt, such compensation shall not include loss of anticipated profits or any consequential loss.
- 9.2 Notwithstanding Article 9.1, if the Company cancels an Order and/or terminates a Contract for Services before the expiry of its contractual period or otherwise terminates the Contract prematurely, the Company will never be obliged to more than (i) payment for the Services actually performed in the event of periodic payment; or (ii) in the event of a fixed contract sum, payment of a proportional part of the compensation agreed, based on the contractual term already expired and the Services performed.
- 9.3 Without prejudice to any other rights that the Company may have under the Contract or law, the Company shall have the right at any time to forthwith suspend payment or cancel an Order and/or terminate any Contract, in whole or in part by giving notice in writing to the Seller, if: (i) the Seller commits a breach of any of the terms and conditions of the Contract; (ii) any distress, execution or other process is levied upon any of the assets of the Seller; (iii) the Seller enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Seller's undertaking or assets; (iv) the Seller ceases or threatens to cease to carry on its business; or (v) the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller to adequately fulfill its obligations under the Contract has been placed in jeopardy.
- 9.4 Cancellation or termination of the Contract, however arising, will be without prejudice to the rights and duties of the Company accrued prior to such cancellation or termination. The Conditions which expressly or impliedly have effect after cancellation or termination will continue to be enforceable notwithstanding cancellation or termination.

10. LIABILITY AND INDEMNITY

- 10.1 Improper performance of the Seller will render Seller in default immediately, without notice of default being required.
- 10.2 Without prejudice to any other rights of Company under the Contract or law, the Seller shall indemnify and keep indemnified the Company in full and hold it harmless on demand from and against any and all Losses suffered or incurred by the Company or for which the Company may become liable arising out of or in connection with:
- (i) defective design, workmanship, quality, materials or any other defect in the Goods or Services to the extent that the

defect is attributable to the acts or omissions of the Seller, its employees, agents or sub-contractors; (ii) any infringement or alleged infringement of any intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods or the supply, receipt or use of the Services; (iii) the supply of the Goods or Services, to the extent that such Losses arise out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller, its employees, agents or sub-contractors; and (iv) any breach or failure by the Seller or its representatives to comply with Article 7.

11. ASSIGNMENT

- 11.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.2 The Seller hereby agrees that the Company may assign the Contract or any part of it to any person, firm or company and hereby cooperates with such an assignment in advance.

12. FORCE MAJEURE

- 12.1 If any party is prevented from or delayed in the carrying out of its obligations due to circumstances beyond its reasonable control it shall not be liable provided it has demonstrated that it has explored and not been able to use reasonable alternatives. Such circumstances include acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic and pandemic.
- 12.2 The following failures will not be regarded as "force majeure": those arising from transport problems, illness of staff, strikes, stagnation in the Seller's or its suppliers' business, other shortcomings of the suppliers and product shortages.
- 12.3 The Seller shall immediately inform the Company of any event of force majeure experienced by the Seller, while submitting relevant evidence of the existence of the event, its anticipated duration (to the extent known), and any action being taken to avoid or minimize its effect.

13. MISCELLANEOUS

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other rights of the Company under the Contract or in law.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

- 13.5 The parties have requested that this Contract and all documents contemplated thereby or relating thereto be drawn up in the English language. *Les parties ont convenu que ce Contrat ainsi que tous les documents qui y sont envisagés ou qui s'y rapportent soient rédigés en langue anglaise.*

14. APPLICABLE LAW AND JURISDICTION

- 14.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and construed in accordance with the laws of the province of Quebec and the laws of Canada applicable therein and the parties irrevocably agree that the courts in the province of Quebec shall have exclusive jurisdiction to settle any such dispute or claim. The parties expressly exclude the application of the UN Convention on Contracts for the International Sale of Goods ('CISG').

PURCHASE OF GOODS

15. GENERAL

- 15.1 In addition to Articles 1 to 14, Article 15 - 17 will apply if and in so far a Contract relates to the purchase of Goods.

16. DELIVERY

- 16.1 Unless otherwise notified by the Company in the Order, the Goods shall be delivered Free Carrier (in accordance with the most recent version of the Incoterms), to such place of delivery as is indicated by the Company, provided that the Seller shall be responsible for loading the Goods. Notwithstanding the foregoing, the Company may request the Seller to arrange for transportation to the Company's premises through the carrier nominated by the Company.
- 16.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days after placing the Order. If the actual date of delivery to the Company's premises is later than that specified in the Order then without prejudice to any other rights it may have, the Company may apply the remedies as set forth in these Conditions.
- 16.3 The Seller warrants that all components and spare parts of the delivered Goods (including any software) will be available during the technical life of the delivered Goods and promptly dispatched to the Company upon its request.
- 16.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, line item number, date of Order, number of packages and contents and, in the case of partial delivery, the outstanding balance remaining to be delivered.
- 16.5 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.
- 16.6 If the Seller requires the Company to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Seller at the cost of the Seller.

- 16.7 Where the Company agrees in writing to accept delivery by installments the Contract will be construed as a single Contract in respect of each installment. Nevertheless, failure by the Seller to deliver any installment shall entitle the Company to avail itself of the remedies as set forth in Article 8.
- 16.8 If the Goods are delivered to the Company in excess of the quantities ordered, the Company shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

17. QUALITY AND DEFECTS

- 17.1 The Seller warrants that the delivered Goods (including the packaging materials) are in conformity with the Contract. This means at any rate that the Goods (including but not limited to any repaired Goods) shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Company to the Seller and that the Goods shall be fit for the particular purposes for which they are required by the Company and comply with all applicable statutory rules and regulations. By fulfilling the Order, the Seller acknowledges that the Company is relying upon the Seller's skill or judgment in providing such Goods.
- 17.2 Without prejudice to any other rights of Company under the Contract or the law, the warranty set forth in Article 17.1 shall extend for a period of two (2) years from the actual date of delivery of the Goods to the Company. Any Goods repaired or replaced during said warranty term are warranted for the remainder of the original warranty term or twelve (12) months following the delivery date of such repaired or replaced Good as specified by Article 16.2, whichever period is longer.
- 17.3 At any time prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods.
- 17.4 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform to the Contract, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 17.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 17.6 If any of the Goods fail to comply with the provisions set out in this Article 17, the Company shall be entitled to any one or more remedies listed in Article 8.

PERFORMANCE OF SERVICES

18. GENERAL

- 18.1 In addition to Articles 1 to 14, Articles 18 – 20 will apply if and in so far a Contract relates to the performance of Services.

19. OBLIGATIONS OF THE SELLER

- 19.1 The Seller shall perform the Services exercising the due diligence, reasonable care and skill required of a diligent contractor. The Seller warrants that, in performing the Contract,

it, its staff and any third parties that it employs with the Company's consent will strictly observe the instructions and wishes of the Company or other natural persons or legal entities designated by the Company.

- 19.2 The Seller warrants that the result of the Services to be performed by it or on its behalf will meet the qualifications set by the Company.
- 19.3 The Seller warrants that the staff employed to perform the Services will do so in accordance with any special requirements to be set by the Company or, absent such special requirements, in accordance with stringent requirements of professionalism and expertise and good industry practice.
- 19.4 The Company may require that staff who, in the Company's reasonable opinion, do not meet the above requirements be removed and replaced as soon as reasonably possible.
- 19.5 If the Company so desires, a responsible person designated by the Seller will always be present during the performance of the Services by the Seller. That person's name must be known to the Company. Upon commencement, interruption or termination of the work, that person must report to the Company, who will assess whether the Seller has acted in conformity with the arrangements made in this matter.
- 19.6 The Seller shall arrange for any permits or licenses that may be required in connection with the performance of the Services.
- 19.7 The Seller understands and acknowledges to retain at all times the capacity of employer of its personnel. In case of termination of the Contract or transfer of Contract to a third party, the Seller shall indemnify and hold harmless the Company and, if so directed by the Company, any of its service providers, from and against any claims of its personnel, including for any contribution, salary, severance pay, vacation, bonus, tax, insurance benefits or other penalty.
- 19.8 If any part of the provided Services, fail to comply with the provisions set out in this Article 19, the Company shall be entitled to any one or more remedies listed in Article 8.

20. DELIVERY OF THE SERVICES

- 20.1 The Seller will bear the risk of the goods, the ancillary materials and the material used by the Seller to perform the Services, including but not limited to the risk of theft, loss and damage.
- 20.2 The Services will be deemed to have been completed only after the Seller has notified the Company either in writing or orally that the Services have been completed and the Company has approved the Services and notified the Seller accordingly in writing. The Seller will be entitled to charge any additional work only with the Company's prior written approval.

SOFTWARE

21. GENERAL

- 21.1 In addition to the above, Article 22 applies if the Contract relates to the delivery, on any legal basis whatsoever, and/or installation of software.

22. DELIVERY AND INSTALLATION

- 22.1 The software shall be delivered entirely complete and ready for use on the agreed dates. The Seller shall inform the Company in its offer – and after the offer has been made – if a newer

version of the software in question is placed on the market. Unless otherwise agreed in writing, if new software is delivered, the latest release of that software will be delivered. All tools that are required for sound operation, additional documentation and application software will also be delivered, even if that has not been agreed explicitly.

- 22.2 If it follows from the Contract with the Seller, which includes these Conditions, that installation will also take place, the Seller will timely state the time that will be involved therein, as well as the consequences for the operation of the Company.
- 22.3 The Seller warrants that the software to be delivered is compatible with the automation and/or operation systems already present at the Company.
- 22.4 Any defect in the software will be repaired free of charge within 24 hours. If the software does not function properly, either in

combination with other software, it will be considered faulty and the Seller will be considered to be in default.

- 22.5 If the software has been produced at the instructions of the Company ('custom-made-work'), all rights will vest in the Company and, to the extent necessary, will be transferred at its first request. The source codes will be made available to the Company at its first request. The software produced will be stored only for the benefit of the Company and will be delivered only to the Company. The Seller may not use the know-how created or developed at the instructions of the Company for orders issued by third parties or otherwise.
- 22.6 Unless agreed otherwise in writing, the upgrade of software and the above providing of tools, documentation and application software will be free of any extra charge.

February 2022 edition