

**TERMS AND CONDITIONS OF SALE**

ALL SALES AND/OR LICENSES MADE BY SPIRENT COMMUNICATIONS INTERNATIONAL DIVISION, a trading division of Spirent Communications plc AND/OR ITS AFFILIATES, AS APPLICABLE (“SPIRENT”) TO BUYER (“BUYER”) FOR SPIRENT PRODUCTS ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS (“AGREEMENT”) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN BUYER’S FORM OF PURCHASE ORDER UNLESS THE PARTIES HAVE SIGNED A SEPARATE AGREEMENT THEREFOR.

**ORDERS.** All orders shall be initiated by written Spirent-issued quote or purchase order to Spirent that accepts a Spirent-issued quote or is otherwise accepted by Spirent (“Order”). Spirent shall not be bound by any terms or conditions which are inconsistent with the terms and conditions set forth herein. All purchase order acceptances are expressly conditioned upon Buyer’s unqualified acceptance of these terms and conditions. Retention by Buyer of any product (including Hardware and Software, as defined herein) delivered by Spirent (“Product”) shall be conclusively deemed acceptance of the terms hereof by Buyer.

**SHIPPING AND DELIVERY.** All tangible Products shall be packed for shipment in Spirent’s standard containers, marked for shipment to the address specified in Buyer’s Order. All such shipments will be FCA Spirent’s distribution facility and title (with the exception of Products that are or contain software (“Software”), which Software is licensed and not sold) and risk of loss shall pass to Buyer at time of delivery to the carrier or forwarding agent or when delivered electronically. Spirent will use reasonable efforts to meet Customer’s requested shipment schedule. In no event shall Spirent be liable for damages caused by failure to fulfill shipping commitments.

**PAYMENT AND TAXES.** Buyer shall pay Spirent net thirty (30) days from the date of the invoice, which shall be on or about the date of shipment. Except as required by applicable law or as otherwise expressly set forth herein, all fees are non-refundable and non-cancelable and will be paid in US dollars. Spirent reserves the right to establish or change credit terms based on Buyer’s payment history and financial condition. Any amounts not paid within such thirty (30) day period shall bear an annual finance charge of 10% to the amount due calculated on a daily basis from the due date. Buyer’s payment of such interest on late payments shall not prevent Spirent from exercising any other rights under this Agreement or applicable law. All amounts described herein are exclusive of all shipping and installation charges and all federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and accordingly, all fees are subject to an increase equal to the amount of any such charges or taxes Spirent may be required to collect or pay in connection with the Products, other than any tax on the net income of the Spirent.

**LIMITED WARRANTY.** Spirent warrants that it will convey good title to the hardware Product (“Hardware”) and that the Product will be delivered free from any lawful security interest or other lien or encumbrance. Spirent further warrants to Buyer that Hardware which it supplies and the tangible media on which it supplies Software will be free from significant defects in materials and workmanship for a period of twelve (12) months from the date of delivery (the “Hardware Warranty Period”), under normal use and conditions. With respect to any Software, Spirent warrants that the Software which it supplies, if properly used by Buyer in accordance with the Software License Agreement, will operate in material conformity with the documentation and/or specifications supplied by Spirent for such Software for a period of ninety (90) days from the date of delivery of the Software (the “Software Warranty Period”). For clarification, the Product Warranty Period (defined below) does not cover firmware or Software updates/upgrades, debugging or various maintenance/support service levels. These items which are excluded from the Product

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Warranty Period are available under a Spirent Maintenance & Support Agreement. The warranties set forth herein with respect to Software, do not apply to any material deviation from the accompanying documentation and/or specifications which results from (a) modification of the Software by anyone other than Spirent, (b) use of the Software for any purpose other than intended, (c) use of Software in combination with any other software if such claim would have been avoided but for such combination, (d) any misuse or incorrect use of the Software, or (e) any hardware malfunction. The “Product Warranty Period” shall mean the Hardware Warranty Period or the Software Warranty Period, as applicable. Spirent does not warrant that the functions contained in the Software will meet a specific requirement or that the operation of the Software will be uninterrupted or error free. Defective Hardware and Software under warranty shall, at Spirent’s discretion, be repaired or replaced or a credit shall be issued to Buyer’s account for an amount equal to the price paid for such Product provided that: (a) such Product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent’s approved location; (b) Buyer provides a written explanation of the defect or Software failure claimed by Buyer; and (c) the claimed defect actually exists and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake or alteration. Spirent will ship repaired or replacement Products to Buyer, freight prepaid, or issue a credit to Buyer, within ten (10) working days after receipt of defective Products. Except as otherwise stated, any claim on account of defective materials or for any other cause whatsoever will conclusively be deemed waived by Buyer unless written notice thereof is given to Spirent within the Product Warranty Period. Spirent reserves the right to change the warranty and service policy set forth above at any time, after reasonable notice and without liability to Buyer. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN AND THE SOFTWARE LICENSE AGREEMENT, ALL WARRANTIES (EXPRESS, IMPLIED, STATUTORY, OR OTHER WARRANTIES), INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED, AND THE LIABILITY OF SPIRENT, IF ANY, FOR DAMAGE RELATING TO ANY ALLEGEDLY DEFECTIVE PRODUCT, INCLUDING SOFTWARE, ANY BREACH OF THE APPLICABLE WARRANTY SHALL BE LIMITED TO THE ACTUAL PRICE PAID BY THE BUYER FOR SUCH PRODUCT. THE PROVISIONS SET FORTH ABOVE STATE SPIRENT’S ENTIRE RESPONSIBILITY AND BUYER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF ANY SUCH WARRANTY.

**SOFTWARE.** Buyer acknowledges that all Products that are or contain Software are proprietary to Spirent and its licensors and are subject to copyrights and other intellectual property rights owned by Spirent and its licensors. Any references to “purchases” of software products signify only the purchase of a license to use the software Product pursuant to the terms of the Spirent Software License Agreement, shipped with the Product or otherwise made available to Buyer at <https://www.spirent.com/assets/end-user-license-agreement-eula> (the “Software License Agreement”), and which is incorporated herein in its entirety by reference. Buyer agrees to be bound by all of the terms of such Software License Agreement and agrees that it will acquire no rights with respect to a software Product other than the right to use such software Product pursuant to the terms of such Software License Agreement. Spirent reserves the right to amend the Software License Agreement upon written notice to Buyer. Except for the limited licenses expressly granted in the Software License Agreement, no right or license (express, implied, or otherwise) under any intellectual property rights, including with respect to the Software, are granted to Buyer. In the event of any conflict or inconsistency between this Agreement and the Software License Agreement, the Software License Agreement will control with respect to any Software and this Agreement will control with respect to all other Products.

**INFRINGEMENT. Cure.** In the event of a determination that the Product or Buyer’s use of the Product

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in accordance with the terms of this Agreement infringes, or is likely to infringe, any proprietary right of any third party, Spirent shall have the option, at its own discretion and expense, to (a) obtain for Buyer the right to continue using the actual or potential infringing component of the Product or (b) replace the actual or potential infringing component of the Product or modify such component so that it becomes noninfringing, or (c) terminate the licensed rights granted herein, if applicable, and grant Buyer a refund of the license fee, less reasonable depreciation based on usage, which shall in no event be less than the result of a straight-line computation based upon a five (5) year usable life.

**Indemnification.** Spirent shall indemnify, defend and hold Buyer harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys) arising from any claim, demand, action or proceeding initiated by any third party alleging infringement of a copyright, US registered patent or trademark as a result of Buyer's use of the Product; provided, however, that as a condition to this indemnification obligation, Buyer shall promptly (a) notify Spirent of any threat or initiation of any claim, demand, action or proceeding to which the indemnification obligation may apply, and (b) assist Spirent in the defense or settlement of the matter, and (c) provide Spirent sole control over the defense and settlement of the matter.

**Exclusions.** Spirent shall have no obligations under this Section for any alleged infringement based upon: (a) modification of the Product by anyone other than Spirent, (b) use of the Product in combination with other Product or any other products or devices if such claim would have been avoided but for such combination, (c) Buyer's continued use of the infringing Product after receipt of notice of an infringement claim or after receipt of a remedy from Spirent under this Agreement, (d) Buyer's use of the Product other than in accordance with the terms of this Agreement, or (e) modifications made pursuant to Buyer's express instruction. THIS SECTION STATES SPIRENT'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, REGARDING ANY INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL SPIRENT OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION ANY DAMAGES OR LIABILITY RELATING TO THE INTERRUPTION OF THE PRODUCTS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS, OR LOSS OF DATA), INCURRED BY THE BUYER WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY AND REGARDLESS OF WHETHER OR NOT SPIRENT OR ITS SUPPLIERS WERE ADVISED SUCH DAMAGES MIGHT ARISE.

**Maximum Liability.** THE LIABILITY OF SPIRENT AND ITS SUPPLIERS UNDER THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER REASON, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID TO SPIRENT BY BUYER FOR TWELVE (12) MONTHS PRIOR TO THE EVENT TO WHICH SUCH LIABILITY RELATES.

**COMPLIANCE WITH LAWS.** Buyer shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Products. Buyer acknowledges that the Products may be subject to export controls imposed by the U.S. Export Administration Regulations (the "EAR"). Buyer will not export or reexport (directly or indirectly) the Products, or any derivatives of the Products without complying with the EAR or other applicable laws with respect to the export of technology from the United States.

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**CHANGES TO PRODUCT.** Spirent shall have the right to make substitutions for and/or modifications to the Products without notice to Buyer provided that such substitutions and/or modifications do not materially affect overall Product performance.

**GOVERNING LAW AND FORUM.** This Agreement and any disputes arising from or related to it, or its subject matters, shall be governed, resolved and remedied in accordance with the laws of England and Wales, without resort to conflict of law principles. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Any action to enforce, arising out of, or relating in any way to, any of the provisions of this Agreement shall be brought and prosecuted in the jurisdiction of the Courts of England and the parties consent to the jurisdiction of said courts and to service of process by registered mail, return receipt requested, or by any other manner provided by law.

**GENERAL PROVISIONS.**

**Entire Agreement.** This Agreement, together with all Orders and the Software License Agreement, embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all oral and written prior or contemporaneous agreements related to such subject matter.

**Amendment; Waiver.** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Failure of either party to insist upon strict performance of any of the terms and conditions hereunder, or the delay in exercising any of its remedies shall not constitute a waiver of such terms and conditions or a waiver of any default or remedy.

**Relationship of the parties.** Spirent and Buyer will be and shall act as independent entities, and neither party is authorized to act as an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party. Either party may pursue, independently, similar opportunities, provided that the obligations set forth herein are not breached.

**Assignment.** This Agreement and any rights granted hereby may not be assigned by Buyer, directly or indirectly, including without limitation by merger, sale of assets or stock, change of control, or operation of law, without the prior written consent of Spirent. Spirent may assign any or all of this Agreement and its rights and obligations hereunder. Any attempt by Buyer to assign any rights, duties or obligations without such consent shall be void and without force or effect.

**Force Majeure.** Spirent shall not be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder due to the elements beyond its reasonable control.

**Attorney's Fees.** If any action is necessary to enforce the terms of this Agreement, Spirent will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled.

**Headings.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purposes, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**Controlling Terms.** The terms and conditions of this Agreement will control over any conflicting or inconsistent terms contained in any Order unless otherwise mutually agreed to in writing by the parties. No

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terms in any quotation, purchase quote, acknowledgment, invoice, or other form provided by Buyer will modify this Agreement, regardless of whether Spirent objects thereto, and any such additional or contradictory terms are expressly rejected. The terms and conditions of this Agreement insofar as they relate to matters other than the rights licensed to the Software (which shall be governed by the Software License Agreement) shall be subject to the terms and conditions of the master purchase agreement between Spirent and Buyer (if any) (the “Master Agreement”) only to the extent that such Master Agreement expressly contradicts the terms and conditions of this Agreement.

**Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

**Survival.** Each party’s rights and obligations of a continuing nature shall survive termination of this Agreement.

SPIRENT COMMUNICATIONS INTERNATIONAL DIVISION, a trading division of Spirent  
Communications plc

By:

Name:

Title:

Date:

Buyer

By:

Name:

Title:

Date: