

# Spero Sensors and Instruments (Pty) Ltd 1998/003710/07 Standard Terms and Conditions

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## 1. TERM OF THE POLICY

The term of this policy shall commence on the same Date of accepting the terms and conditions of Spero Sensors and Instruments and shall expire on date as agreed by the Buyer & Sperosens, unless earlier terminated in accordance with the provisions hereof (the "Term"). The Term will automatically be for a one (1) year period. The rights and obligations of the parties which by their nature would continue beyond the termination, cancellation, or expiration of this Agreement, shall survive such termination, cancellation or expiration as defined by Spero Sensors and Instruments

## 2. SCOPE OF THE AGREEMENT

During the term of this Agreement, Buyer intends to purchase from Spero Sensors and Instruments and Spero Sensors and Instruments intends to sell to Buyer the products listed on the Spero Sensors and Instruments web page or pricelist, as may be supplemented by mutual written agreement of the parties from time to time, and other products that may become the subject of an Order accepted by Spero Sensors and Instruments during the term of this Agreement (the "Products"). All quotations issued by Spero Sensors and Instruments and all Orders submitted by Buyer with respect to the Products shall be deemed to incorporate and be subject to the terms and conditions of this Agreement. All other terms and conditions contained on any Order form or correspondence originated by either party are null and void and without effect notwithstanding acceptance of the Order by Spero Sensors and Instruments. Either party's failure to object to provisions contained in any communication from the other party shall not be deemed a waiver of the provisions of this Agreement. When necessary for purposes of applying different provisions, Product may also be referred to as "Custom Product / Specials" which is Product that is sold only to Buyer and to any Buyer Subcontractor; or "Standard Product," which is Product that is generally offered by Spero Sensors and Instruments to the general market.



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Buyer may place or enter into Orders under this Agreement for the purchase of Products in South Africa, Africa or any countries deemed good for business.

Acceptance of an Order will create a corresponding agreement, incorporating the terms and conditions of this Agreement, between Buyer or the Buyer Affiliate placing the Order and Spero Sensors and Instruments Affiliate accepting the Order. As used herein, "Spero Sensors and Instruments" refers to Sperosens or to the particular Spero Sensors and Instruments Affiliate accepting the Order.

- In addition to the above procedure, the parties may by mutual agreement decide that prior to submitting or entering into an Order under this Agreement, the non-South Africa Buyer and Spero Sensors and Instruments shall sign a Letter of Acceptance ("LOA") (in substantially the form set forth in Attachment E) committing them to utilize the terms and conditions of this Agreement in any forthcoming procurement of Products in their location, subject to any modified, additional, or deleted terms as set forth in the LOA. Each LOA shall state Spero Sensors and Instruments, the non-South Africa Buyer, the applicable Products, and the geographical area to which it applies. Each LOA will incorporate by reference the master terms and conditions of this Agreement and will specify any agreed upon changes required by local law or local operational practice. Such additional terms may include, but shall not be limited to delivery terms, passage of title, or choice of law. Notwithstanding the foregoing, any pricing terms shall continue to be subject to the Most Favoured Pricing provision.

The Parties intend that the terms and conditions of the Agreement shall apply, except with respect to those mutually agreed upon provisions which are required to address (1) local laws/regulations or (2) operational issues resulting from transacting in the particular country identified in the relevant LOA. Each LOA shall be deemed a separate contract between the parties who sign it, and each party identified in such LOA shall look only to the other for performance of their respective obligations under such LOA and any Order placed pursuant to it. Once an LOA has been executed by the relevant parties, multiple Orders may be placed under such LOA for deliveries outside of the South Africa only, should there be a conflict between the terms and conditions of a LOA and this Agreement, the terms of the LOA shall prevail. Once an LOA for a specific geographic area is executed by both parties, Orders may be placed under the LOA following the procedures set forth herein (unless modified or amended by the relevant LOA).

Buyer have the right to use sub-contractors and/or third party logistics or distributor partners ("Buyer sub-contractors") in the provisioning of Products covered under this Agreement, subject to Spero Sensors and Instruments' approval which shall not be unreasonably withheld. As a result, Buyer may request in writing Spero Sensors and Instruments and, if acceptable, Spero Sensors and Instruments shall agree in writing to sell and/or ship Products to such approved Sub-contractors involved in the



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production and provisioning of Buyer's requirement. Any Order issued by a Buyer Sub-contractor will be a contractual relationship between Spero Sensors and Instruments and the Buyer, and Spero Sensors and Instruments shall look only to such Buyer for performance of its respective obligations under such Order unless otherwise agreed in writing. Buyer acknowledges that Spero Sensors and Instruments' decision whether or not to sell to a particular Buyer Sub-contractor, may be based on credit worthiness of the Buyer Sub-contractor, reaching agreement between Spero Sensors and Instruments and Buyer on responsibility for funding support services (e.g., third party logistic partners), and whether or not the Buyer Sub-contractor competes against Spero Sensors and Instruments in the market with respect to the Products which would be sold to such Buyer Sub-contractor. All other provisions will be as separately agreed between the Buyer Subcontractor and Spero Sensors and Instruments. In addition, any Buyer Sub-contractor making a purchase of Product hereunder will be required to furnish to Spero Sensors and Instruments a letter or otherwritten document in which the Buyer Subcontractor acknowledges and agrees that (i) it shall comply with, and all purchases by the Buyer Sub-contractor will be governed by, all applicable terms and conditions of this Agreement shown above as though it were Buyer, (ii) it shall have no right to purchase Products or to purchase volumes in excess of Buyer's authorization to the Buyer Subcontractor, and (iii) it shall use and/or sell Product only to Buyer or for Buyer's account.

### **3. MINIMUM PURCHASE COMMITMENT**

No minimum purchase commitment is in place between Spero Sensors and Instruments and Buyer. A single unit may be ordered but delivery costs are subject to the terms set forth in section 6 of this contract.

### **4. PURCHASE ORDERS**

Purchase orders ("Orders") shall be placed under this Agreement from time to time by Buyer. All purchases and sales under this Agreement shall be subject only to the terms and conditions hereof. In the event that the terms of any Order, Order acknowledgment, invoice, confirmation or similar document conflict with, or are additional to, the terms of this Agreement, the terms of this Agreement alone shall apply and shall govern regardless of execution of such document by one or both parties. Notwithstanding, the parties may agree to negotiate non-pre-printed terms which shall be effective if executed in writing by both parties. Spero Sensors and Instruments shall accept and acknowledge in writing (or electronically) all Orders submitted by Buyer within five (5) working days after receipt thereof or indicate why an Order cannot be accepted. "Working day or business day" shall mean a regular weekday on which Spero Sensors and Instruments and Buyer and their respective sub-contractors are open for business. Delivery shall be in accordance with accepted Orders.



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### 5. PRICING

Spero Sensors and Instruments shall sell Products to Buyer at the prices listed in the standard pricelist or quotation set forth after a request for quotation. The prices may vary from time to time and Buyer shall be informed in writing at least 1 month prior to the commencement of such price increase. Discount may only be given with the sole permission of the CEO or Marketing Manager and will be handled on a case basis. No standard discounts will be given on large amount orders or tenders but may be negotiated with the said management representative. Any such agreement must be in writing and signed by Spero Sensors and Instruments and the Buyer.

### 6. DELIVERY

Shipment will be made in a manner determined by Spero Sensors and Instruments. The following delivery terms apply:

- Spero Sensors and Instruments may provide delivery on no cost basis under the following conditions:
  - o On acceptance of the order and agreement in writing that no cost will be added for delivery
  - o If it is not an emergency delivery and falls within Spero Sensors and Instruments' s normal delivery schedule
- Buyer shall be responsible for expenses incurred by Spero Sensors and Instruments where, at Buyer's request, Spero Sensors and Instruments ships or packs Product in other than its normal manner. Notwithstanding the foregoing, if Buyer requires shipment using a courier other than at Spero Sensors and Instruments' selection, Buyer shall pay for freight from Spero Sensors and Instruments' location to Buyer's location.
- Buyer may use his own transport to pick up or deliver product to Spero Sensors and Instruments as deemed necessary.
- All Emergency deliveries will be to the cost of Buyer.

### 7. TITLE AND RISK OF LOSS

Unless otherwise agreed to by the parties, title and risk of loss or damage to the Product shall pass to Buyer

- At the time Spero Sensors and Instruments delivers possession of the Product to a carrier at Spero Sensors and Instruments's plant or warehouse or other facility (without regard to notification of shipment or selection of carrier).
- At the time the courier designated by Buyer takes possession of the Product
- On signature of the Proof of Delivery by the Buyer

- In the vent of cross border delivery when product leaves the premises of Spero Sensors and Instruments

#### 8. TAXES PAYABLE BY BUYER

Buyer shall bear all taxes, duties, levies and similar charges (and any related interest and penalties), however designated, imposed as a result of the existence or operation of this Agreement, except (i) any tax imposed upon Spero Sensors and Instruments in a jurisdiction other than the jurisdiction under the laws of which Spero Sensors and Instruments was formed (hereinafter referred to as the "Resident Jurisdiction") if such tax is allowable as a credit against the Resident

Jurisdiction income taxes of Spero Sensors and Instruments; and (ii) any net income tax imposed upon Spero Sensors and Instruments by any government entity within Spero Sensors and Instruments' Resident Jurisdiction. In order for the exception contained in (i) to apply, Buyer must furnish Spero Sensors and Instruments with such evidence as may be required by the Resident Jurisdiction taxing authorities to establish that such tax has been paid within thirty (30) days of issuance of notice by the local taxing authority so that Spero Sensors and Instruments may claim the credit.

If Buyer is required to bear a tax, duty, levy or similar charge pursuant to the preceding paragraph, Buyer shall pay such tax, duty, levy or similar charge and any additional amounts as are necessary to ensure that the net amounts received by Spero Sensors and Instruments hereunder after all such payments or withholdings equal the amounts to which Spero Sensors and Instruments is otherwise entitled under this Agreement as if such tax, duty, levy or similar charge did not exist.

Spero Sensors and Instruments shall not collect an otherwise applicable tax if Buyer's purchase is exempt from Spero Sensors and Instruments' s collection of such tax and a valid tax exemption certificate is furnished by Buyer to Spero Sensors and Instruments.

All prices mentioned in this Agreement are exclusive of value added taxes, turnover taxes, sales taxes or similar taxes, including any related interest and penalties (hereinafter all referred to as "VAT"). In the event that any VAT is payable on the Products and/or services supplied by Spero Sensors and Instruments to Buyer under this Agreement, this VAT shall be added to the prices mentioned and shall be for the account of Buyer. If VAT on the supplies of Spero Sensors and Instruments is payable by Buyer under a reverse charge procedure (i.e., shifting of liability, accounting or payment requirement to recipient of supplies), Buyer shall ensure that Spero Sensors and Instruments will not effectively be held liable for this VAT by the relevant taxing authorities or other parties. Where applicable, Spero Sensors and Instruments shall use its reasonable commercial efforts to ensure that its invoices to



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Buyer are issued in such a way that these invoices meet the requirements for deduction of input VAT by Buyer, if Buyer is permitted by law to do so.

### **9. DISPOSITION OF DAMAGED OR NONCONFORMING DELIVERIES**

As to discrepancies in quantity of Product which are discovered by Buyer in the receiving process, Buyer shall (i) complete its normal receiving process on actual quantity of Product received and (ii) within two working days (48Hrs) of receipt of the Product notify Spero Sensors and Instruments (at the notice address set forth herein) of such discrepancy. Whenever unconcealed loss or damage has occurred to the Product prior to receipt by Buyer at the Buyer's site, Buyer should mark the delivery receipt with the appropriate exceptions describing the damage before signing and request the carrier to inspect the loss or damage and note the damage or loss on all copies of the delivery receipt. Each copy of the delivery receipt shall be signed by Buyer and the courier's agent. Buyer shall within 7 working days of time of its receipt of the Product notify Spero Sensors and Instruments of any concealed loss or damage of which it becomes aware. Spero Sensors and Instruments is under no obligation to make good such loss or damage when the Buyer have used own delivery and or shipment agent. In the event of delivery or shipment by Spero Sensors and Instruments or contracted agent Spero Sensors and Instruments will after considering Title and Risk loss, as per section 7, make good such loss or damage.

As to incorrect items in shipments of Product which are discovered by Buyer in the receiving process, Buyer shall promptly contact Spero Sensors and Instruments for direction on disposition of incorrect item(s). Freight cost to return incorrect items to Spero Sensors and Instruments will be paid by Spero Sensors and Instruments. Spero Sensors and Instruments shall promptly arrange for replacement shipment of correct Product.

Buyer shall take care to pack Products that are subject to any returns under this Agreement in a manner consistent with ensuring adequate protection from damage while the Product is in transit.

Buyer and Spero Sensors and Instruments agree to cooperate with each other to review and, if necessary, implement improvements to the above process.

### **10. FORECASTS**

Upon execution of this Agreement, Buyer shall make commercially reasonable efforts to provide Spero Sensors and Instruments with a non-binding forecast for each



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Product required. The forecast shall be a rolling forecast covering a period of twelve (12) months following the effective date of the forecast. In order for Spero Sensors and Instruments to plan efficiently for Buyer's Product Orders, the Buyer will make commercially reasonable efforts to implement a process for submitting forecasts that reflect the forecasts submitted by Buyer to Buyer Subcontractors, and ensure that Buyer's forecasted demands can be reconciled against Orders placed on Spero Sensors and Instruments by Buyer Subcontractors. Buyer will work with Spero Sensors and Instruments to reconcile any discrepancy in the Buyer forecasts versus Buyer Subcontractor Orders. Buyer shall submit the forecast so that Spero Sensors and Instruments receive it at least one week prior to its effective date.

### 11. FLEXIBLE DELIVERY

During the Term of this Agreement, Buyer may give written notice to Spero Sensors and Instruments requesting that Spero Sensors and Instruments implement certain forms of "Flexible Delivery Arrangements", including, but not limited to Blanket Orders, Consignment, Demand Pull, and Dock-to-Shop for designated Product(s). Such notice shall specify the particular ordering entity and/or facility location(s), Product, and the requested implementation date, and the proposed Flexible Delivery Arrangement.

Spero Sensors and Instruments agree to consider in good faith any such request. Upon receipt by Spero Sensors and Instruments to implement such Flexible Delivery Arrangement, the parties agree to negotiate in good faith the terms of such proposed Flexible Delivery Arrangement. The other terms and conditions of this Agreement shall also apply to such agreed to Flexible Delivery Arrangement(s); provided, however that if there is a conflict between the terms and conditions in the Flexible Delivery Arrangement and the other terms and conditions of this Agreement, the terms and conditions of this agreement shall prevail.



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### 12. RESCHEDULING OR TERMINATION OF ORDERS

Buyer may at any time terminate any or all Orders, or any portion thereof, upon written notice to Spero Sensors and Instruments. Unless otherwise specified in this Agreement, Buyer's liability to Spero Sensors and Instruments with respect to such terminated Order or Orders for Standard Product (not usable in Spero Sensors and Instruments' s other operations or sellable to Spero Sensors and Instruments' s other customers within a reasonable period of time) shall be limited to:

- (i) One hundred percent (100%) of the purchase price as set forth in this Agreement
- (ii) Applicable Order for the quantities scheduled to be shipped within four (4) weeks from the written notice of termination.

Unless otherwise specified in this Agreement, Buyer's liability to Spero Sensors and Instruments with respect to such terminated Order or Orders for Custom Product (not usable in Spero Sensors and Instruments' s other operations or sellable to Spero Sensors and Instruments' s other customers within a reasonable period of time) shall be limited to:

- (i) One hundred percent (100%) of the purchase price as set forth in this Agreement or applicable Order for the quantities scheduled to be shipped four (4) weeks from the written notice of termination;
- (ii) Sixty percent (60%) of the purchase price as set forth in this Agreement or applicable Order for the quantities scheduled to be shipped between five (5) and six (6) weeks from the written notice of termination;
- (iii) Forty percent (40%) of the purchase price as set forth in this Agreement or applicable Order for the quantities scheduled to be shipped between seven (7) and eight (8) weeks from the written notice of termination;
- (iv) Twenty percent (20%) of the purchase price as set forth in this Agreement or applicable Order for the quantities scheduled to be shipped between nine (9) and twelve (12) weeks from the written notice of termination.

Spero Sensors and Instruments will render invoice to Buyer for any termination charges, and Buyer shall pay Spero Sensors and Instruments in accordance with Section 17.

If Buyer terminates an Order for Product and then reorders the same Product within thirty (30) days of such termination, with delivery of the Products scheduled within ninety (90) days of the original acknowledged delivery date of the terminated Order, then Buyer will receive credit for any termination fees paid to Spero Sensors and





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Instruments, based on the quantities reordered. Notwithstanding the foregoing, no credit will apply in the case of any reorders where the terminated Order had been

- (i) Previously rescheduled
- (ii) A reorder of a previously terminated Order.

Upon such termination, Spero Sensors and Instruments shall work co-operatively with Buyer, at Buyer's request for orderly transfer of the terminated Product to Buyer or to Buyer's designated third party in a mutually established schedule and procedure so as to minimize impact to Buyer and Spero Sensors and Instruments. Upon termination, Spero Sensors and Instruments shall promptly return all Buyer's proprietary or proprietary restricted information related to the terminated Order to Buyer.

Buyer may, without liability, reschedule Orders, or any portion thereof, by providing written notice of reschedule (via facsimile or EDI) to Spero Sensors and Instruments at least thirty (30) calendar days prior to the scheduled ship date, provided however, that in no event shall any reschedule extend the delivery date to more than sixty (60) days out from Spero Sensors and Instruments original acknowledged delivery date. Spero Sensors and Instruments agree to negotiate in good faith any request by Buyer for reschedule that is an exception to the limits established above.

Any payment by Buyer under this Section 12 will be considered as liquidated damages and will not be viewed as a penalty.

Any payments made by Buyer under this Section will be applied to the Minimum Purchase Commitment.

### 13. WARRANTY

Spero Sensors and Instruments warrants the Product as a production item ("Item"), but not related services or prototypes of any such Items, to be free from defects in material and workmanship and in conformance with the written specification furnished by or agreed to by Spero Sensors and Instruments. If any failure to conform to such specification ("Defect") is suspected in any such Items, Buyer, after obtaining a Returned Material Authorization number from Spero Sensors and Instruments, shall ship suspected defective samples of the Items to Spero Sensors and Instruments, following Spero Sensors and Instruments's instructions regarding the return. No Item will be accepted for repair, replacement, credit or refund without the written authorization of Spero Sensors and Instruments and in accordance with Spero Sensors and Instruments's instructions. Spero Sensors and Instruments shall analyse the failures, making use, when appropriate, of technical information provided by Buyer relating to the circumstances surrounding the failures. Spero Sensors and Instruments will verify whether any Defect appears in the Items.



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If Spero Sensors and Instruments determines that the returned Items are not defective, Buyer shall pay Spero Sensors and Instruments all costs of handling, inspection, repairs and transportation at Spero Sensors and Instruments's then prevailing rates. Spero Sensors and Instruments shall, at Spero Sensors and Instruments's option, either repair or replace any Defective Item with the same or equivalent Item without charge at Spero Sensors and Instruments's manufacturing or repair facility, or credit or refund the purchase price, provided:

- (i) Buyer notifies Spero Sensors and Instruments in writing of the claimed Defect within the warranty period after Buyer knows or reasonably should know of the claimed Defect,
- (ii) Spero Sensors and Instruments's examination of the Items discloses that the claimed Defect actually exists and
- (iii) Unless a different warranty period is specified, the defect appears within twelve(12) months from the date of delivery / shipment of the Item. In the event of a replacement, Spero Sensors and Instruments shall ship the replacing items FCA point of origin, freight prepaid to Buyer's destination. Any replaced item shall become Spero Sensors and Instruments's property. The method of disposition of any replaced items will be as mutually agreed by both parties in writing. In no event shall Spero Sensors and Instruments be responsible for de-installation or re-installation of any Item or for the expenses thereof.
- (iv) The product isn't used outside it's manufactured purpose
- (v) No tampering or self-repairs was done to the Unit

Replacements covered by the above warranty are warranted to be free from Defects. All replacement units will bear the normal warranty as set out above.

Repairs are warranted to be free from Defects as set forth above except that the repaired unit only carries a warranty for:

- (i) Three (3) months from the date of repair
- (ii) Prior to the expiration of the warranty period, whichever is the latter. Inspection and acceptance of Items by Buyer and/or payment therefor shall not relieve Spero Sensors and Instruments of responsibilities hereunder
- (iii) On labour
- (iv) Only components changed during the repair. These components will only bear the warranty given by the manufacturer or supplier of such components.
- (v) The product isn't used outside it's manufactured purpose



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The above warranty does not apply to, and Spero Sensors and Instruments makes no warranties with respect to Items that are software programs, experimental products, prototypes or units from risk lots (all of which are provided "AS IS") or to Items which have been subjected to misuse, neglect, accident or abuse or operating or environmental conditions that deviate from the parameters established inapplicable specifications;

or have been improperly installed, stored, maintained, repaired or altered by anyone other than Spero Sensors and Instruments; or have had their serial numbers or month and year of manufacture or shipment removed, defected or altered.

This warranty does not extend to any system into which an Item is incorporated.

This warranty applies only to Buyer and may not be assigned or extended by Buyer to any of its customers or other users of the Items. Spero Sensors and Instruments will not accept any returns from Buyer's customers or users of Buyer's products.

As used herein "risk lots" refers to production units of Custom Product ordered by Buyer prior to formal production approval.

Spero Sensors and Instruments does not recommend the use of any of its Products for medical or lifesupport applications wherein a failure or malfunction of the Product may directly threaten life or cause injury and Spero Sensors and Instruments will not knowingly sell its Products for such use except pursuant to a written exception to this policy granted on a case-by-case basis. No warranty is made with respect to any such medical or life support use of any Product.

In effect of agency or bought out products obtained from supplier partners of Spero Sensors and Instruments or any item purchased as part of any product or used with or within any Spero manufactured product or system the suppliers own warranty will be applicable.

For any items used with or within any Spero manufactured product or system the warranty excludes the following:

- Any loss of usability due to incorrect storage
- Recalibration and service costs of such equipment
- Damage due to incorrect installation or use
- Any loss or malfunction due to cross sensitivity to other gasses

The warranty will be deemed Null & void if:

- For any items which is used with or within any Spero manufactured product or system any of the original components has been removed or replaced by any person other than a Sperosens approved technician
- The labels has been removed or damaged
- Software has been deleted or changed
- Any items which has an intrinsically safe or flame proof certificate has been tampered with in any way



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- Misuse and abuse of the product
- Use of the product outside its original designed purpose
- When a Spero product is used without the written consent of Spero Sensors and Instruments
- When any product sold by Spero Sensors and Instruments is not installed by an authorized or trained person deemed so by Spero Sensors and Instruments

EXCEPT AS STATED IN THIS SECTION, SPERO SENSORS AND INSTRUMENTS, IT'S SUBSIDIARIES AND AFFILIATES, SUBCONTRACTORS AND SPERO SENSORS AND INSTRUMENTS'S SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL BE SPERO SENSORS AND INSTRUMENTS'S OBLIGATIONS AS SET FORTH ABOVE.

#### 14. PRODUCT CHANGES

Spero Sensors and Instruments shall provide Buyer with at least sixty (60) days prior written notice of any changes proposed to be made by Spero Sensors and Instruments (i) in the Product or in manufacturing processes, that will affect form, fit or function of the Product, or (ii) in the sites of manufacturing of the Product. With regard to Spero Sensors and Instruments' manufacturing processes, Buyer also have the right to perform periodic quality audits, surveys, and evaluations, including, but not limited to, analysis of each manufacturing or assembly position for acceptability of procedures and equipment calibration, as well as evaluation of quality control/ quality assurance and data collection and analysis procedures. In no event shall Spero Sensors and Instruments be required to provide proprietary information to Buyer in connection with such audits, surveys and evaluations.

Notwithstanding any other provisions of this Agreement, if Buyer, in its sole discretion, does not agree to the change proposed by Spero Sensors and Instruments, Buyer shall have the right to lodge a complaint in a formal written manner with its reasons as to his opposition of such changes. Spero Sensors and Instruments shall use commercially reasonable efforts to facilitate a timely, smooth transition to an alternate component, if available.

Notwithstanding anything contained herein to the contrary, Spero Sensors and Instruments reserve the right to manufacture the Product in any facility qualified by Spero Sensors and Instruments.



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### **15. DISCONTINUANCE OF PRODUCT**

Spero Sensors and Instruments shall provide Buyer at least three (3) month's written notice that any Product covered by this Agreement is to be manufactured discontinued. Buyer may place Orders for such Product at the prices set forth in this Agreement or according to the quotation acquired during this three (3) month period and Spero Sensors and Instruments shall fill such Orders even if such three (3) month period extends beyond the term of this Agreement. Delivery schedules for this Product shall be negotiated by the parties at time of order placement, but delivery will not extend beyond six (6) months from date of notice of discontinuance unless Spero Sensors and Instruments agrees otherwise. Notwithstanding the foregoing, to the extent that an alternative product meeting Buyer's function all and cost requirements is reasonably available and can be qualified within three (3) months, as determined by Buyer, then notice of discontinuation may be reduced to two (2) months. Any Product for which a notice of discontinuation has been received by Buyer, shall be considered a Custom Product solely for purposes of Section 13, Cancellation and Rescheduling, effective as of receipt of such notice.

Spero Sensors and Instruments recognize that continuity of supply of Custom Product is a critical concern of Buyer. Therefore, in the event Spero Sensors and Instruments elects to discontinue supplying Custom Product, the parties agree to consider in good faith reasonable alternatives that may be available in addressing Buyer's concerns. In no event will this provision be construed as requiring the broadening of the scope of any licenses of intellectual property entered into between the parties by separate written agreement as of the Effective Date.

Repairs & services will continue for at least three (3) months after final discontinuation of such product.

### **16. PAYMENT TERMS**

Buyer shall pay the invoiced amount within thirty (30) days; unless otherwise agreed to between the parties; from the date of Spero Sensors and Instruments's invoice. Prices shall be quoted and invoices shall be rendered and paid in South African currency unless agreed to otherwise by the parties.

### **17. SOFTWARE**

No title or other ownership rights in any software, including related documentation or any licensed Product or any copies thereof shall pass to Buyer under this Agreement or any performance hereunder. Use of software in connection with



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purchase of certain products hereunder may require execution of separate software license agreements.

Buyer agrees that it will not alter any notices on, prepare derivative works based on, or reproduce, reverse engineer, disassemble or decompile any software embodied in licensed Products or recorded in the purchased Products furnished under this Agreement. Buyer's right to further distribute software embedded in Products furnished hereunder is limited solely to purposes in connection with incorporating such Products into Buyer products for resale to its customers.

### 18. INTELLECTUAL PROPERTY INDEMNITY

(a) With respect to any claim alleging that the installation, normal use, or sale of any Product (including its related documentation) furnished under this Agreement is an infringement of any patent, copyright, mask work or trademark or a misappropriation of a trade secret, Spero Sensors and Instruments will, subject to the conditions and exceptions stated below: (i) at its option, defend or settle such claim, at its expense, and (ii) pay damages and costs assessed by final judgment of such claim against such Product.

(b) If Buyer's or its customer's installation, sale or use of a Product (including its related documentation) shall be enjoined or, in Spero Sensors and Instruments's opinion is likely to be enjoined, Spero Sensors and Instruments shall have the right, at any time and at its option and expense to: (i) procure for Buyer or its customer the right to continue installation, sale or use of any such Product; or (ii) replace any such Product with a non-infringing substitute; or (iii) modify any such Product provided or to be provided to be free of the infringement; or (iv) if the product is still in the possession of Buyer and has not yet been incorporated into any other product by or for Buyer, and as long as return is feasible and commercially reasonable, require return of such Product and refund or credit to Buyer any amount(s) paid to Spero Sensors and Instruments for Product. Exercise of any of the options (i) through (iv) above shall release Spero Sensors and Instruments of any further liability to Buyer and Buyer's customer. In no event shall Spero Sensors and Instruments liability under this Section 19(b) exceed the amount(s) paid by Buyer to Spero Sensors and Instruments to purchase the allegedly infringing Product or the amount necessary to obtain the rights to use, install or sell such Product.

(c) Spero Sensors and Instruments obligations hereunder are conditioned upon:

- (i) Buyer giving Spero Sensors and Instruments written prompt notice of any such claim;
- (ii) Spero Sensors and Instruments having full and complete control of the defence and/or settlement thereof, including appeals; and

(iii) Buyer co-operating fully with Spero Sensors and Instruments to facilitate the defence or settlement of such claim.

(d) If any action or proceeding shall be brought in connection with any liability or claim to be indemnified under this Agreement, Spero Sensors and Instruments shall keep Buyer apprised as to the status of the defence or settlement of such action or proceeding.

(e) Notwithstanding the foregoing, Spero Sensors and Instruments shall have no obligation under this Section 18, and Buyer shall (except with respect to item (ii) below) defend, indemnify and save harmless Spero Sensors and Instruments and its affiliated companies, under the terms provided herein, from all costs, expenses, liabilities and claims, for any such claim, action, proceeding or suit alleging infringement:

- (i) Arising from Spero Sensors and Instruments compliance with specifications, modifications, drawings, designs or instructions furnished by, or on behalf of, Buyer; or
- (ii) Arising as a result of the combination, operation or use of any Product including documentation, furnished hereunder, or any component thereto, with item(s) not furnished by Spero Sensors and Instruments or furnished by Spero Sensors and Instruments but which combination was not recommended by Spero Sensors and Instruments; or
- (iii) Arises from adherence to instructions to apply Buyer's trademark, trade name or other company identification; or
- (iv) Resides in item(s) (including software) that is furnished by Buyer to Spero Sensors and Instruments for use under this Agreement; or
- (v) Is based upon modification made by Buyer of any Product or component thereof (including software and documentation).

(f) The sale of any Product by Spero Sensors and Instruments shall not in any way confer upon Buyer, or upon anyone claiming under Buyer, any license (expressly, by implication, or otherwise) under any patent claim of Spero Sensors and Instruments or others covering or relating to any combination, machine or process in which such Product is or might be used, or to any process or method of making such Product.

(g) Notwithstanding any other provision in this Agreement, Spero Sensors and Instruments' total liability to Buyer for all claims, actions, proceedings or suits alleging infringement of intellectual property rights because of, or in connection with, any items furnished pursuant to this Agreement shall be limited to the specific undertakings contained in this Section 18.



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### 19. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY

A. For purposes of the exclusive remedies and limitations of liability set forth in this Section, Spero Sensors and Instruments shall be deemed to include its subsidiaries and Affiliates and the directors, officers, employees, agents, representatives, sub-contractors and Spero Sensors and Instruments' suppliers of each of them; and "damages" shall be deemed to refer collectively to all injury, damage, loss or expense incurred.

B. Spero Sensors and Instruments' entire liability and Buyer's exclusive remedies against Spero Sensors and Instruments for any damages caused by any Product Defect or failure, or arising from the performance or non-performance of any work, regardless of the form of action, whether in contract, tort including negligence, strict liability or otherwise shall be:

- For infringement, the remedies set forth in the Section entitled Intellectual Property Indemnity;
- For failure of Product or work performed, the remedies stated in the Section entitled Warranty;
- For failure to deliver or for delays in delivery of production quantities, Spero Sensors and Instruments shall have no liability unless the delivery is delayed by more than ten (10) days by causes not attributable either to Buyer or to conditions beyond Spero Sensors and Instruments reasonable control as set forth in Section 21, in which case Buyer shall have the right, as its sole remedy, to terminate the Order without incurring termination charges and deduct from Buyer's Minimum Purchase Commitment the amount for which commitment has been made elsewhere;
- For bodily injury or death to any person proximately caused, Buyer's right to proven direct damages; and
- For claims other than set forth above, Spero Sensors and Instruments liability to Buyer shall be limited to direct damages per occurrence.

C. Except as otherwise expressly provided in this Agreement, neither party shall be liable for incidental, indirect, special, exemplary or consequential damages, including but not limited to lost profits, savings or revenues of any kind, whether or





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not such party has been advised of the possibility of such damages. This provision shall survive failure of an exclusive remedy.

**20. EXCUSE OF PERFORMANCE**

Except for Buyer's obligation to make timely payments when due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, inability to secure material due to a world-wide shortage, nature or the public enemy, act or omission of carriers or any other causes beyond its reasonable control.

**21. NOTICES**

Except as provided below, all notices, requests, demands and other communications required or permitted to be made hereunder shall be in writing and shall be deemed duly delivered against a signed receipt for same, sent by registered or certified mail, first class postage prepaid, or sent by nationally recognized overnight delivery service, addressed to the parties at the addresses below or to the addresses to be exchanged from time to time during the term of this Agreement for the particular kind of notice to be sent.

Notwithstanding the foregoing, in the event of any notice of breach or termination of this Agreement, the following provision shall apply:

All notices or other communications under this Agreement regarding breach or termination of this Agreement shall be in writing and shall be deemed to be duly given when (a) delivered in person or (b) deposited in the South African mail service or private express mail, postage prepaid, addressed as follows:

If to Spero Sensors and Instruments, to:  
32 Park Ave North  
Highway Business Park  
Rooihuiskraal  
0154

If to Buyer to:

.....  
.....  
.....



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Any party may, by notice to the other party, change the address to which such notices are to be given.

**22. SHIPPING DOCUMENTATION; INVOICING**

Spero Sensors and Instruments will ship Product with accompanying information and documentation that forms part of the normal business process of from Spero Sensors and Instruments as of the Effective Date of this Agreement. Spero Sensors and Instruments and Buyer agree to co-operate with each other to the extent that any changes may be requested by either party in connection with such matters. Invoice to Buyer will be rendered upon shipment, unless otherwise agreed in writing.

Spero Sensors and Instruments shall provide Buyer with a valid, accurately completed Exporters' Certificate of Origin prior to the first shipment of Product sufficient to be used by Buyer as proof of eligibility for any duty preferential treatment programs for which Buyer has advised Spero Sensors and Instruments. Spero Sensors and Instruments further agrees to provide full and reasonable cooperation to Buyer for substantiation of preferential duty program claims, responses to customs inquiries, or other treaty claims that arise out of Product provided under this Agreement or Order. Spero Sensors and Instruments shall notify Buyer in writing prior to making any pricing or sourcing changes for Product which may affect the application of preferential duty treatment programs, subject to Buyer having advised Spero Sensors and Instruments of the programs for which preferential treatment have been requested.

**23. PACKING, LABELING AND SERIALIZATION**

Packing, labelling and serialization of shipping packages will be performed consistent within the standard, stipulated by Spero Sensors and Instruments, to Buyer from as of the Effective Date of this Agreement. Spero Sensors and Instruments and Buyer agree to co-operate with each other to the extent that any changes may be requested by either party in connection with such matters.

**24. MARKING**

All Product furnished under this Agreement shall be marked for identification purposes in accordance with the Product and packaging Specifications as set forth by the Spero Sensors and Instruments or elsewhere in this Agreement and as follows:

- a) with partnumber



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- b) serial number
- c) intrinsically safe markings as set out according to the legal requirements (if applicable)
- d) flameproof markings as set out according to the legal requirements (if applicable)
- e) Spero Sensors and Instruments logo
- f) Any legal information that might be applicable to be displayed

### 25. NONDISCLOSURE AGREEMENT

During performance of this Agreement, the parties may disclose or furnish to each other proprietary or proprietary restricted marketing, technical, or business information, including, without limitation, products and/or software ("information"), relating to the subject of this Agreement.

Information provided in tangible form shall be clearly marked as proprietary or proprietary restricted. With respect to any integrated circuits, any technical information, including but not limited to circuit layout, design, or software, embedded in any such device is proprietary information notwithstanding the absence of any proprietary marking on such device. Information provided orally will be considered proprietary or proprietary restricted if the disclosing party says it is proprietary or proprietary restricted at the time of oral disclosure and summarizes it in a proprietary or proprietary restricted writing provided to the other party within twenty (20) days of the oral disclosure. Pricing to Buyer shall be deemed proprietary restricted information notwithstanding that such information is not in writing or if in writing is not marked proprietary restricted.

The receiving party shall:

- (i) Hold information in confidence using the same degree of care as it normally exercises to protect its own proprietary information or proprietary restricted information,
- (ii) Restrict disclosure and use of information to employees (including any contractors or consultants) with a need-to-know, and not disclose it to any other parties,
- (iii) Advise those employees, contractors and consultants of their obligations with respect to the information,
- (iv) Not copy, duplicates, reverse engineer or decompile information,
- (v) Use the information only in furtherance of performance under this Agreement, and
- (vi) Upon expiration or termination of this Agreement, return all information to the disclosing party or at the request of the disclosing party, destroy such information.



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The receiving party shall have no obligation to keep confidential information that:

- (i) Was previously known to it free of any confidentiality obligation,
- (ii) Was independently developed by it,
- (iii) Is or becomes publicly available other than by unauthorized disclosure,
- (iv) Is disclosed to third parties by the disclosing party without restriction, or
- (v) Is received from a third party without violation of any confidentiality obligation.

If a party is faced with legal action or a requirement under government regulations to disclose or make available proprietary or proprietary restricted information received hereunder, such party shall forthwith notify the furnishing party and, upon request of the latter, co-operate in contesting such action or requirement at the requesting party's expense. Neither party shall be liable for damages for any disclosure or unauthorized access pursuant to legal action or government regulations or for inadvertent disclosure, access, or use if the customary degree of care as it uses with respect to its own proprietary or proprietary restricted information has been exercised and if, upon discovery of such inadvertent disclosure, access, or use the furnishing or receiving party has endeavoured to prevent any further (inadvertent or otherwise) disclosure or use.

Except for the receiving party's obligation to keep confidential Buyer pricing information, the obligations imposed by this Section shall survive for a period of five (5) years after termination or expiration of this Agreement. The obligations imposed by this Section with respect to Buyer internal pricing information shall survive termination or expiration of this Agreement.



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### **26. EXPORT CONTROL**

The parties acknowledge that any Products, software, and technical information (including, but not limited to, services and training) provided under this Agreement are subject to South African or other applicable export laws and regulations and any use or transfer of such Products, software, and technical information must be authorized under those laws and regulations. The parties agree that they will not use, distribute, transfer, or transmit the Products, software, or technical information (even if incorporated into other products) except in compliance with South African export regulations. If requested by either party, the other party also agrees to sign written assurances and other export-related documents as may be required for the exporting party to comply with South African or other applicable export regulations.

### **27. ASSIGNMENT**

Neither party shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that either party may assign this Agreement or any rights or obligations hereunder to an entity which acquires all or substantially all of that party's assets which relate to performance under this Agreement. Any attempted assignment without the other party's consent shall be void and ineffective.

### **28. DISPUTE RESOLUTION**

Senior management of either party may, upon notice and within seven (7) businessdays of receipt of a notice from the other party elect to utilize a non-binding resolution procedure whereby each presents its case before a panel consisting of two (2) senior executives of each of the parties and, if such executives can agree upon such an individual, a mutually acceptable neutral advisor. If a party elects to use the procedure set forth in this Section, the other party shall participate. The hearing shall occur no more than ten (10) business days after a party serves notice to use the procedure set forth in this Section. If the matter cannot be resolved by such senior executives, the neutral advisor, if one has been agreed upon, may be asked to assist such senior executives in evaluating the strengths and weaknesses of each party's position on the merits of their dispute. The parties shall each bear their respective costs incurred in connection with the procedure set forth in this Section, except that they shall share equally the fees and expenses of the neutral advisor, if any, and the cost of the facility for the hearing.



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### **29. PUBLICITY; IDENTIFICATION**

Any disclosure of the terms and conditions of this Agreement shall be made only with the prior written agreement of both parties. Each party shall submit to the other all proposed copy of advertising and publicity material relating to the disclosure of this Agreement.

Neither Spero Sensors and Instruments nor Buyer shall use any identification of, or reference to, any code, drawing, specification, trade name, trademark, trade device, insignia, service mark, symbol, or any abbreviation, contraction, or simulation thereof, of the other party in any advertising or promotional efforts without such otherparty's prior approval.

Notwithstanding the foregoing, Buyer gives Spero Sensors and Instruments permission to list Buyer as one of Spero Sensors and Instruments's customers.

### **30. SEVERABILITY**

If any provision or part hereof shall be held to be invalid or unenforceable for any reason, then the meaning of such provision or part hereof shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save such provision or part hereof, it shall be severed here from, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect unless such severance effects such a material change as to render the Agreement unreasonable.

### **31. NON-WAIVER**

No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

### **32. COMPLIANCE WITH LAWS**

Each party, its agents, contractors and sub-contractors shall comply in performance under this Agreement with all applicable local, regional, national and international laws, ordinances, regulations and codes, standards, directives and international conventions and agreements (collectively "law(s) or Law(s)"), including, without limitation, those relating to (i) the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections and (ii) Product content requirements or restrictions applicable to the sale or distribution of Products manufactured by Spero Sensors and Instruments and supplied to Buyer.



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Spero Sensors and Instruments shall use commercially reasonable efforts to ensure that its activities in performance of this Agreement and an Order placed pursuant to this Agreement shall not put Buyer in violation of any South African or applicable foreign customs laws, statutes, or regulations.

### **33. RESPONSIBILITY FOR EMPLOYEES**

The personnel of Spero Sensors and Instruments and the Buyer shall, while on the premises of the other party ("host party"), comply with the host party's rules and regulations with regard to safety and security. The host party shall provide a written copy of such rules and regulations, on request, to the personnel of the visiting party. The visiting party shall maintain full control over its personnel and shall be entirely responsible for their complying with the host party's rules and regulations. The visiting party shall indemnify and hold the host party harmless from any claims or demands including the costs, expenses and reasonable attorney's fees on account thereof, that may be made by (i) anyone for injuries to persons or damage to property resulting from the negligent or wilful acts or omissions of the visiting party's personnel; or (ii) the visiting party's personnel under Worker's Compensation or similar laws. The visiting party shall defend the hostparty against any such claim or demand.

### **34. ENVIRONMENTAL COMPLIANCE**

Both parties shall adhere to legislation on environmental, health and safety obligations to ensure compliance while using, storing & transport of any Product sold by or bought from Spero Sensors and Instruments.

### **35. SPECIFICATIONS OR DRAWINGS**

The Product will comply with all legal and environmental requirements. All drawings will be done on the Spero Sensors and Instruments' templates and according to the Spero Sensors and Instruments' approved standards unless otherwise agreed to between the parties. All technical specifications regarding the product and its working will be available to Buyer unless otherwise stipulated in this agreement.

### **36. ENTIRE AGREEMENT**

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and shall constitute the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a writing signed by Buyer and Spero Sensors and Instruments. By accepting the terms and



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conditions set forth with the credit application all terms and conditions within this document is also accepted.