

TERMS OF SALE

Unless ELCAN agrees otherwise in writing, any purchase order or other contractual document ("Order") submitted by Buyer and any subsequent Order amendment(s) will only be accepted if such acceptance is provided to Buyer in writing and with the understanding that the products are being supplied pursuant to the following terms and conditions ("Terms and Conditions"); the Order and Terms and Conditions together constitute the agreement ("Agreement") between the parties. ELCAN rejects all additional or different terms, however proposed by Buyer, even if such terms and conditions are included on the Order from Buyer.

1. **Acceptance of Firm Orders.** Should ELCAN be unable to meet Buyer's delivery schedule or quantity requirements or otherwise be unable to accept a firm Order, ELCAN shall so notify the Buyer in writing. Any firm Order for products and/or services can only be cancelled, terminated or modified by Buyer with ELCAN's written consent and shall be subject to cancellation and/or other charges, as applicable.
2. **Prices.** Unless otherwise agreed to in writing, prices for products and/or services identified under a firm Order shall remain effective for the period covered by the firm Order. Any difference in quantity specified therein, additional products and/or services, or additions/modifications to the firm Order will be billed at the price prevailing at the time of shipment. If there is any delay in completion or shipment of an Order due to any change requested by Buyer, or as a result of any delay on Buyer's part in furnishing information required for completion or shipment of the Order, the price for products is subject to change. There will be added to the quoted price any sales or other tax or duty which ELCAN may be required to collect or pay upon the sale and/or delivery of products and/or services.
3. **Payment.** Following each shipment of products and/or completion of services, ELCAN shall submit invoices to Buyer stating amounts due. Payment for each shipment of products shall be made according to terms net 30 days. Payments for U.S. and Canadian sales are to be made to the remit to address indicated on ELCAN's invoices or by wire transfer with EDI transmission or confirmation of payment to ELCAN's accounts receivable systems for immediate credit. ELCAN may, at any time, require advance payment, suspend performance of any Order, or require payment in cash, security, or other adequate assurance satisfactory to ELCAN, when in ELCAN's reasonable opinion, the financial condition of the Buyer or any reasonable grounds for insecurity warrant such action.
4. **Shipment and Packing.** All products shall be sold EXW ELCAN's factory (Incoterms 2000) unless otherwise agreed to in writing. Delivery dates indicated on quotations are approximate only. Early and/or partial deliveries are permissible. It shall be the Buyer's Freight Forwarder's responsibility to provide Seller with all details for shipment of Products. ELCAN shall pack and mark the products according to its standard procedures for domestic and/or export shipment. Title to products shall transfer upon payment and risk for the products shall transfer upon delivery.
5. **Warranty.** All products sold by ELCAN are warranted to conform to drawings and specifications mutually agreed upon in writing and to be free from defects in material and workmanship under normal use and service for the time period the products are at Buyer's factory, but in no case longer than twelve (12) months. ELCAN's sole obligation, and Buyer's exclusive remedy, under this warranty is for ELCAN to repair or replace or refund Buyer's purchase price for any part of the product which fails to meet the foregoing warranty. Buyer shall notify ELCAN of any product or part thereof which fails to meet the foregoing warranty, and if ELCAN agrees that the product, or part thereof, is defective, Buyer shall complete and execute ELCAN's Return Application Form and provide to ELCAN for receipt of an RMA number. Upon receipt of said RMA number, and at ELCAN's option, Buyer shall return to an ELCAN plant location designated by ELCAN during the (12) twelve-month period, DDU ELCAN, any product for which a claim is made, with a written explanation of any claimed failure. The provisions of this warranty shall not apply to products (i) used for purposes for which they are not designated or intended; (ii) which have been repaired or altered without ELCAN's prior written consent; (iii) which have been subjected to misuse, negligence, accident or improper maintenance or installation; or (iv) which, based on ELCAN's examination, do not disclose to ELCAN's satisfaction non-conformance to the warranty. No other warranties, express or implied, are made with respect to the products including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose. ELCAN shall return the goods DDU Buyer's factory.
6. **Limitation of Liability.** The total liability of ELCAN, if any, and Buyer's sole and exclusive remedy for damages for any claim of any kind whatsoever with respect to this sale, any supplemental sale of products or with respect to any of the goods covered thereby, and regardless of the legal theory or the delivery or non-delivery of products, will not be greater than ten percent of the actual purchase price of the goods with respect to which such claim is made. Under no circumstances will either party be liable to the other for any indirect, special, incidental, multiple, punitive or consequential damages, or any damage deemed to be of an indirect or consequential nature, (including, but not limited to, costs of removal and reinstallation of items, loss of goodwill, loss of revenues or profits, loss of use, injury to persons or property) arising out of or related to its performance under an Order or related to any breach of this Agreement, whether based upon breach of the Order, warranty, or active or passive negligence, and whether such damages are labelled in tort, contract, or indemnity, even if ELCAN has been advised of the possibility of such damage.
7. **Product Changes.** The Buyer shall have the right by written Order to make changes from time to time in the products to be furnished or services to be rendered by ELCAN hereunder, or to make changes from time to time to the delivery date(s). If such changes cause an increase or decrease in the cost of performance of this Order or the time required for its performance, an equitable adjustment shall be negotiated promptly and the Order shall be modified in writing accordingly. Any claim by ELCAN for adjustment under this Article 7 must be asserted in writing within thirty (30) business days from the

date of receipt by ELCAN of notification of the change in products or services or delivery schedule and shall be followed as soon as practicable with specification of the amount claimed. However, nothing herein shall excuse ELCAN from proceeding with this Order as existing pending resolution of the claim.

8. **Intellectual Property (IP).** ELCAN makes no warranty or representation that any products purchased by Buyer hereunder will be free from infringement of any patent or any other IP right. ELCAN shall not be under any obligation to defend Buyer or anyone claiming under or through Buyer against any claim or suit arising out of Buyer's purchase hereunder, nor shall ELCAN be liable for any damage assessed as a result of such claim or suit. ELCAN's monetary liability under this Agreement of infringing products is, in any event, specifically limited in accordance with Article 6 herein. Buyer warrants that the specifications and designs that it furnished to ELCAN are free from infringement of any patent, and Buyer will indemnify, defend and hold ELCAN harmless against any such claim which arises out of ELCAN's reliance on Buyer's direction, specifications and/or design. Unless otherwise expressly agreed in writing to the contrary, any invention or intellectual property first made or conceived by ELCAN in the performance of this Order or which is derived from or based on the use of information supplied by Buyer shall be considered to be the property of ELCAN and Buyer shall execute such documents necessary to perfect ELCAN's title thereto.

9. **Cancellation of Order.** Either party may cancel any Order if the other party: (a) materially breaches the Order and does not take steps to correct such breach within thirty (30) days after receipt of written notice from the notifying party specifying such breach; (b) becomes insolvent, or enters or is placed in bankruptcy, receivership, liquidation, transfer of assets for the benefit of creditors, dissolution or similar proceeding, provided such event is not vacated or nullified within fifteen (15) days of such event; or (c) a significant portion of the assets of the other party necessary for the conduct of its business becomes subject to attachment, embargo or expropriation. In the case where ELCAN is the defaulting party, Buyer shall be responsible for those units delivered, or those units completed but not yet delivered plus work in process at a prorated value based on price of finished products, up to the point of termination. In the case where Buyer is the defaulting party, ELCAN shall be reimbursed for all costs incurred by ELCAN as a result of such termination, including, but not limited to any vendor cancellation costs, plus a reasonable profit thereon, which costs will be due immediately and shall be collectable by ELCAN through whatever means necessary. Further, upon such termination, the parties agree that any and all rights, title and interest in and to foreground intellectual property developed pursuant to this program will immediately be vested in ELCAN, and any and all limitations on the use thereof by ELCAN shall be immediately deemed null and void.

10. **Force Majeure.** Any delay or failure of ELCAN to perform its obligations hereunder shall be excused to the extent that it is caused by an event or occurrence beyond its reasonable control such as, by the way of example and not by way of limitation, acts of god, actions by any governmental authority at any level (whether valid or invalid), fires, floods, windstorms, explosions,

riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns) at ELCAN's facility, its source plant or suppliers, inability to obtain power, material, labor, equipment, or transportation, or court injunction or Order. ELCAN shall inform Buyer, in writing, within fifteen (15) calendar days of occurrence, about the circumstances in which a case of Force Majeure exists, as well as the cessation of the Force Majeure condition. Time for performance of ELCAN's contractual obligations shall be extended by a period at least equal to the duration of such event.

11. **Government Approvals.** ELCAN and Buyer, respectively, shall be responsible for compliance with and for the obtaining of such approvals and/or permits as may be required under national, provincial, and local laws, ordinances, regulations, and rules as may be applicable to the performance of their respective responsibilities and obligations under this Agreement. However, and notwithstanding the generality of the foregoing, it is understood and agreed that Buyer shall bear any and all responsibility for any regulatory requirements, domestic or foreign, for the products or services or as may be required relating to the use of the products in any way or form.

12. **Export Control.**

- a) Both parties shall comply with all applicable United States and Canadian export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774 the Defence Production Act R.S., 1985, c.D.1, and the Export and Import Permits Act R.S., 1985, c.E-19, all provided that such requirements are given to the Seller in writing by the Buyer at the time of Order placement
- b) Each Party shall notify other Party if any use, sale, import or export of products by the notifying party to be delivered under this Order is restricted by any export control laws or regulations applicable to the notifying party.
- c) Each Party shall provide reasonable assistance to the other Party to obtain necessary import authorizations, export licenses, permits, agreements or amendments thereto as may be required by law to effect the export or import of goods, technical data or services related to the work, provided, however, that each party provides in a timely fashion all information, duly executed International Import Certificates and/or end user statements required to support the other party's application for the export or import of goods, technical data or services. In the event that such required documentation is not provided by the other party when required, the requesting party shall not be held responsible for any resultant delays or consequences.
- d) Each party shall immediately notify the other party if the notifying party is listed in any denied parties list or if the notifying party's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

- e) For Orders related to ITAR controlled products, technical data, or services, the Buyer certifies that it is appropriately registered with its country's Department of State as an exporter, manufacturer and provider of defense services.
- f) For Orders concerning other non-ITAR controlled data, products, or services, Buyer hereby certifies that it is appropriately registered with its government's Department of State as an exporter, manufacturer, and provider of services pursuant to the products to be manufactured under this Order.
13. **Governing Law and Arbitration.** These items of sale shall be governed by and construed according to the laws of the Province of Ontario, Canada, specifically excluding application of the UN Convention on Contracts for International Sale of goods. If a dispute arises, the parties shall meet and negotiate in good faith to settle any allegation of breach or question of interpretation relating to these terms. If parties are unable to settle the matter within thirty (30) days after their first meeting, then upon the demand of either party, the matter shall be submitted to binding arbitration if a U.S. or Canadian Buyer in accordance with the rules of the American Arbitration Association; or in the case of other than a U.S. or Canadian Buyer, in accordance with the United Nations Commission on International Trade Law. The arbitration proceeding shall take place in Toronto, Ontario, Canada, and shall be conducted in the English language. The arbitration tribunal shall consist of three (3) members, one (1) appointed by each party and the third appointed by the first two members. The arbitration tribunal shall resolve the questions submitted, award the relief to which each party may be entitled, and allocate the costs of arbitration. The arbitration award shall be final, binding on the parties, not subject to appeal, and enforceable by any court having jurisdiction over the necessary party or its assets.
14. **Amendments and Waiver.** No amendment or modification to this Agreement shall be binding upon either party unless it is in writing and is signed by authorised representatives of both parties. Failure by either party at any time to enforce any of the provisions of these terms and conditions shall not be construed as a waiver by such party of any provision or in any way affect the validity of this Agreement or any part thereof. Waiver of any provision of this Agreement shall only be deemed to have been made if expressed in writing by the party granting such waiver.
15. **Severability.** If any provision of these terms of sale shall be held to be invalid, illegal, or unenforceable under any statute, regulation, ordinance, executive order, or other rule of law, that provision shall be deemed severed to the extent necessary to comply with such statute, regulation, ordinance, order, or rule. The remaining provisions hereof shall remain in effect.
16. **Assignment.** Neither party may assign any of its rights or delegate any of its obligations under this Agreement (other than for the purposes of corporate reconstruction, reorganisation, merger or analogous proceeding) without first obtaining the written consent of the other party.
17. **Language.** These Terms of Sale are prepared and shall be executed in the English language. Any translation of these Terms of Sale into another language shall be strictly for convenience, and the English language shall govern any question with respect to interpretation. All Orders shall be prepared and executed in the English language.
18. **Information of Buyer.** Buyer shall not provide any of Buyer's proprietary information to Seller without prior execution by both parties of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of work under this Order.
19. **Entire Agreement.** This Agreement constitutes a complete and exclusive final written expression of all the terms between the Buyer and ELCAN. It supersedes all previous understandings, agreements, and negotiations, oral or written, concerning the matters specified herein. Any representations, promises, or warranties made by either party that differ in any way from the terms of this Agreement shall be given no force or effect. No addition to or modification of any provision of this Agreement shall be binding unless made in writing and signed by both parties in accordance with Article 14 herein.