

ELLIOT SCIENTIFIC LTD
TERMS AND CONDITIONS OF SALE – BUSINESS CUSTOMERS ONLY

These terms and conditions govern the sale of all products and services ("products") by Elliot Scientific Ltd ("Seller") and apply for accepted orders, notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other document or communication ("purchase order") from buyer. These terms and conditions may only be waived or modified in a written agreement signed by an authorised representative of seller. Neither seller's acknowledgment of a purchase order nor seller's failure to object to conflicting, contrary or additional terms and conditions in a purchase order shall be deemed an acceptance of such terms and conditions or a waiver of the provisions hereof.

Definitions

- 1.1 'Buyer' - the person, acting in the course of a business, buying Goods from Seller.
- 1.2 'Seller' - Elliot Scientific Ltd.
- 1.3 'Goods' - all goods and materials which are the subject of an Order or which, otherwise are supplied to Buyer by Seller under these Conditions of Sale.
- 1.4 'Contract' - the contract between Seller and Buyer for the sale and purchase Goods incorporating the Conditions of Sale.
- 1.5 'Writing' - includes electronic and non-electronic communication and text communicated through the Website.
- 1.6 'Website' - www.elliotscientific.com and any updated version thereof.
- 1.7 'Conditions of Sale' - these terms and conditions of sale and (unless the context otherwise requires) any, specification of Goods and any special terms agreed in Writing between Buyer and Seller.
- 1.8 "Order" – an offer from Buyer, communicated in Writing (or confirmed in Writing), to Seller in which Buyer offers to buy Goods. Each Order must have a valid order number issued by Buyer.

Formation of Contract

- 2.1 Each Order shall be an offer to create a Contract to purchase Goods subject to these Conditions of Sale. A Contract forms in respect of an Order only when Seller accepts it. Orders through the Website shall be treated the same as Orders made in other ways.
- 2.2 All verbal Orders must be confirmed in Writing by Buyer within the seven (7) days after the date of the verbal Order.
- 2.3 The Conditions of Sale constitute the entire Contract and, unless expressly agreed in Writing by Seller's Managing Director, no other terms or conditions shall form part of the Contract.
- 2.4 Buyer has not relied on any statement, promise, representation, warranty, condition or term, Written or oral, express or implied, other than those contained in the Conditions of Sale.
- 2.5 Buyer shall ensure the terms of its Order are complete and accurate.
- 2.6 Seller shall try to perform each Contract within any time specifically agreed or, if no such time is agreed, within a reasonable time. However, time shall not be of the essence of any Contract unless expressly agreed.

Prices

- 3.1 Unless otherwise expressly agreed, Goods shall be sold and invoiced at Seller's prices in effect at the time of shipment.
- 3.2 Website prices for Goods are indicative only and may not represent the prevailing prices on any particular day.

3.3 Notwithstanding the foregoing, prices shall be subject to increase in the event of an increase in Seller's costs or other circumstances beyond Seller's reasonable control unless a fixed contract price is tendered or agreed in writing by Seller prior to acceptance of order.

3.3.1 VAT and any other sales or delivery taxes shall be added to the price of the Goods and shall be paid by Buyer.

3.3.2 All costs and charges in relation to packaging, loading, unloading, carriage and insurance shall be added to the price of the Goods and shall be paid by Buyer, unless otherwise stated in a formal quotation and offer agreed in writing.

Payments:

4.1 Payment shall be made in the currency shown on our invoice on the dates specified in the Contract and, in any event, within the thirty (30) days after the date of Seller's invoice.(30 days Nett). Payment terms are subject to a credit check and review. Where appropriate a Proforma payment on account may be requested by the seller and prior to placing an order on to the ordering system. Special payment terms may be required for non-stock or custom and built to order items.

4.2 If Buyer purchases Goods from the Website, payment may be made by credit card or debit card via a secure site, in the currency agreed between Buyer and Seller. In such cases, an invoice for the Order will be provided and supplied.

4.3 Without prejudice to Seller's other rights, including the right in any event to sue for the price immediately payment becomes due, whether or not property in Goods has passed, Seller reserves the right to charge interest on delayed payments at the annual rate of three per cent (3%) above the base rate of the Royal Bank of Scotland PLC from time to time in force to be pro-rated on a day-to-day basis until the receipt of payment in full whether before or after any judgement.

4.4 Buyer shall not withhold payment of any amount due under a Contract in respect of any disputed claim for damage to Goods or in respect of any other alleged breach of Contract by Seller. Buyer cannot set-off any monies due from Seller against any amount due or payable by Buyer under a Contract, or otherwise.

4.5 Seller may cancel a Contract if Buyer suffers any distress or execution to be levied on its goods; or if it makes any arrangement with its creditors; or goes into liquidation, whether compulsory or voluntary; or has a receiver appointed of any of its property or assets; or if Buyer, being an individual, shall commit an act of bankruptcy or have a receiving order made against it.

4.6 If any payment is not made when due, Seller may suspend further deliveries under this, or any other, Contract with Buyer and may cancel this Contract in whole or in part without prejudice to Seller's other rights, and without incurring any liability to Buyer. Buyer shall remain liable to pay for any Products already shipped and all Non-Standard Products ordered by Buyer. If Buyer fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event Seller shall be entitled to reimbursement for costs of collection and reasonable legal fees.

Delivery

5.1 Unless otherwise stated in Seller's quotation or acceptance of Order, Seller shall arrange delivery of Goods to Buyer's premises or other delivery point indicated in the Contract and shall insure Goods to the point of delivery.

5.2 Seller shall not be liable to Buyer for any loss or damage, whether direct, indirect or consequential, if delivery of Goods is delayed or prevented or if Seller is delayed or prevented in performing its obligations under the Contract because of act of God, natural disasters, fire, flood, explosion or earthquake, accidents, prohibition or limitation of exports or imports, any act of Government, war (declared or not), insurrections, riots, acts of terrorism, strikes or labour disturbances (whether at Seller's works or elsewhere), shortages of materials or any other cause or event whatsoever beyond the reasonable control of Seller ("Force Majeure").

5.3 If Force Majeure occurs, Seller may, at its option, suspend performance or cancel the Contract (or so much of it as remains unperformed) without liability for any loss or damage suffered or incurred by Buyer as a result; and, without prejudice to Seller's rights to receive payment of the price for all Goods previously delivered, or Services already provided (including design work).

5.4 Seller may make delivery by installments. Failure by Buyer to accept or pay for any installment allows Seller to repudiation of the Contract.

5.5 Buyer will be responsible for, and at his own expense provide, all the necessary labour and machinery to off-load Goods on arrival at the delivery address unless otherwise stated in writing.

5.6 No claim for short delivery or damage to Goods may be made unless notified to Seller, by registered letter within the five (5) working days after delivery.

5.7 Claims for non-delivery must be made within the 28 days after the dispatch date of Goods.

Acceptance of Products , Return and Cancellation

6.1 Inspection and acceptance of the Products shall be Buyer's responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by Seller within five (5) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter.

6.1.2 Buyer accepts that Seller is not responsible for damage due to Seller's non compliance with special handling or inspection warnings on packages containing optical components, electrostatic sensitive products or products requiring specialist inspection techniques or environments.

6.1.3 In the event Buyer receives damaged packages, Buyer may reject the package back to the Carrier or if accepting the package must advise the Carrier in writing no later than 3 days after receipt that the package was damaged upon receipt and the contents were unexamined at the time of receipt. Buyer should retain all packing materials and containers for examination by Seller's insurers and provide a damage assessment report in writing to Seller within 5 days. Seller will not be liable to compensate Buyer for transit damaged goods or otherwise where Carrier can produce evidence that the goods were received in good condition.

6.1.4 No return of Products will be accepted by Seller without a Return Material Authorization ("RMA") Number, which may be issued by Seller in its sole

discretion. Returned Products must be in original manufacturer's shipping cartons complete with all packing materials. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to Buyer, freight collect. Goods may require a Health and Safety declaration to be completed prior to return to ensure that goods are not contaminated.

6.2.1 An Order cannot be cancelled after a Contract has formed unless Seller expressly agrees to that in Writing.

6.2.2 Any notice of cancellation must be sent by post (in signed hard copy form) to Seller's registered office.

6.3 Upon Seller's receipt of a valid notice to cancel, Seller shall repay all sums already paid by Buyer, less any charges due under Clause 6.4, within 30 days after the valid notice of cancellation is received.

6.4 Seller may make a charge to Buyer if Buyer cancels a Contract but does not comply with the cancellation provisions, or returns the Goods at Seller's expense.

6.5 Where an Order is cancelled and Buyer is already in possession of Goods, Buyer must retain possession of such Goods and take reasonable care of them, until such Goods are returned to Seller.

6.6 On cancellation, Buyer shall return Goods to Seller at Buyer's expense.

6.7 **Installation services** where provided are required to be confirmed no later than 14 days before the installation date. Cancellation of a pre-booked installation may incur a cancellation fee if 14 days notice of the cancellation is not provided. The level of the cancellation fee may be charged in part or in full depending upon the level of notice provided and if external contractors are required. The cancellation fee is payable upon the date of the cancelled installation.

Risk

7.1 Unless otherwise agreed by Seller in Writing, risk passes on delivery.

Reservation of title

8.1 Unless otherwise agreed in Writing by Seller, until all payments due under a Contract have been paid in full, together with all interest and all other sums due from Buyer ("Payment"), Goods shall remain the property of Seller, and Buyer shall store Goods in such a way that they are or can be identified as the property of Seller and Seller shall not dispose of them without Seller's prior consent in Writing.

8.2 If Buyer sells or otherwise disposes, or makes any insurance claim in respect, of Goods before Payment has been made in full, Buyer shall not give any warranties or incur any liability on behalf of Seller; and, proceeds of any such sale or other disposition (or claim thereto) and any such insurance proceeds (or claim thereto) shall belong to Seller and be held by Buyer as trust funds to the extent of all sums due from Buyer to Seller.

8.3 If Goods are used as a component in the production of other goods or as a part of a mixture of other goods then such other goods shall belong to Seller and shall be stored so as to be identified as such and the proceeds of sale or other disposal of such goods shall

belong to Seller to the extent of all sums due from Buyer to Seller.

8.4 Failure on the part of Buyer promptly to pay any interest due under a Contract allows Seller (without prejudice to other remedies) to repossess Goods with or without prior notice and to enter any premises in which Goods may be, for the purpose of repossession.

8.5 Nothing in this Clause 8 gives Buyer the right to return Goods in whole or in part when Payment becomes due under a Contract. Seller may sue Buyer for such Payment, notwithstanding any other provisions of this Clause 8. Demand for the return or recovery of goods shall not discharge the Buyer's liability to pay the whole of the invoice or the right of the Seller to sue for the whole invoiced amount plus legal costs and expenses. Risk of loss passes to Buyer upon delivery of Product to Buyer

Insurance

9.1 From the time at which risk passes under the Contract until full and final payment is made, Buyer shall keep Goods comprehensively insured to their full replacement value (new for old) against all risks including, but not limited to, damage in shipment, naming Seller as an additional insured.

Warranties

10.1 Seller warrants that, on delivery, Goods will be free from defects in design, materials and workmanship ("Defects") and shall conform to the applicable manufacturer's specifications for such products.

10.2 Defects that were not discovered (or deemed so) during the inspection under Clause 6.1 are "Latent Defects". Latent Defects shall be reported to Seller within the three (3) months after Goods are first put into use or within the six (6) months after their delivery date, whichever first occurs.

10.3 Provided Buyer has complied with Clauses 6.1 and 10.2 (for Defects) and 10.2 (for Latent Defects), Seller shall, at its sole option, repair or replace Goods (or parts thereof) which contain Defects or Latent Defects (as the case may be).

10.4 Goods containing Defects or Latent Defects shall be returned to Seller's designated factory, carriage prepaid. Seller shall have no liability under this warranty for any costs other than those of repair or replacement as specified in this Clause 10, nor shall Seller be liable for any labour charges involved in removal or replacement of the defective Goods or parts thereof.

10.5 There are no warranties, express or implied, of merchantability or of fitness for a particular purpose, or of any other kind, except those made in Clause 10.1. In particular, and to the extent permissible by law, all conditions and warranties which would otherwise be implied by statute or under the common law are excluded.

10.6 In no event shall Seller's liability to Buyer in connection with Defects and Latent Defects exceed the price paid for Goods which suffer the Defects or Latent Defects.

10.7 UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, BUSINESS INTERRUPTION, REPROCUREMENT COSTS, LOSS OF USE OR LOSS OF BARGAIN, LOSS OF DATA,

MANUFACTURING EXPENSES OVERHEAD INJURY TO REPUTATION, SUFFERED OR INCURRED BY BUYER OR ANY THIRD PARTY IN CONNECTION, DIRECTLY OR INDIRECTLY, WITH GOODS OR ANY CONTRACT OR FROM ANY OTHER CAUSE WHATSOEVER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF POTENTIAL LOSS.

10.8 Seller does not warrant that its' Website, its servers, or e-mails are free of viruses or other harmful components. Seller will not be liable for any damages of any kind arising from the use of its Website, including, but not limited to direct, indirect, incidental, punitive, and consequential damages.

10.9 UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SELLER'S LIABILITY IN CONNECTION, DIRECTLY OR INDIRECTLY, WITH ANY CONTRACT EXCEED THE TOTAL AMOUNT PAID BY BUYER TO SELLER FOR THE GOODS WHICH ARE THE SUBJECT OF THE CONTRACT IN CONNECTION WITH WHICH THE LIABILITY ARISES.

Non Disclosure of Personal Data & Communications

11.1 Seller shall only use the information that Buyer provides when using Website to process Buyer's Orders and, except for that purpose, Seller shall not show such information to any third party. Any email address that is given to Seller by Buyer shall not be used otherwise than in connection with Orders.

11.2 Buyer consents to receive communications from Seller electronically.

Patents & Copyright AND SPECIAL USE

12.1 Any design or instruction given by Buyer shall not be such as will cause Seller to infringe any letters patent, copyright, registered design, trademark or other third party intellectual property rights ("IP Rights") in the execution of the Contract. Buyer will indemnify Seller against all damages, penalties, costs and expenses for which Seller becomes liable in connection with IP Rights.

12.2 All plans, documents, drawings and specifications supplied by Seller are protected by copyright and may not be disclosed to third parties, other than the ultimate user of Goods; or, be reproduced, without Seller's consent in Writing.

12.3 The Website, its contents and software are the property of Seller or its suppliers and protected by English and international copyright laws. The compilation of all content on the Website is the exclusive property of Seller and protected by English copyright laws.

12.4 USE OF PRODUCTS IN LIFE SUPPORT, NUCLEAR AND CERTAIN OTHER APPLICATIONS.

Products sold by Seller are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that Seller and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold Seller and the manufacturer of the Products harmless from and

