

ELMAC TECHNOLOGIES LTD
TERMS AND CONDITIONS OF PURCHASE

1. INTERPRETATION

- 1.1 **Definitions:** In these Terms the following definitions apply:
- Business Day** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- Buyer** Elmac Technologies Ltd (registered in England and Wales with company number 06290530).
- Contract** the contract for the sale and purchase of the Goods and the supply and acquisition of the Services.
- Delivery Address** the address for delivery of the Goods or performance of the Services as set out in the Order.
- Goods** the goods (including any instalment of the goods or any part of them) described in the Order.
- Order** the Buyer's purchase order to which these Terms are annexed.
- Price** the price of the Goods and/or the charge for the Services.
- Seller** the person or firm set out in the Order from whom the Buyer purchases the Goods and/or Services.
- Services** the services (if any) described in the Order.
- Specification** any specification for the Goods and/or Services, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller.
- Terms** the terms and conditions set out in this document as amended from time to time in accordance with clause 15.8.

1.2 Construction:

- (a) a reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;
- (b) the headings in these Terms are for convenience only and shall not affect their interpretation;
- (c) words in the singular include the plural and in the plural include the singular;
- (d) a reference to one gender includes a reference to the other gender.
- (e) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (f) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Terms.
- 2.2 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.
- 2.3 Acknowledgement of the Order must be made by signing the duplicate Order, attached with it, and the duplicate must be received within 5 Business Days of the date of the Order. Any act buy the Seller consistent with fulfilling the Order shall be deemed an acknowledgement falling within this paragraph.
- 2.4 No variation to the Order or these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3. GOODS AND SERVICES

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification and/or in samples previously supplied by the Buyer to the Seller or agreed in writing by the Buyer.
- 3.2 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.3 The Seller shall not unreasonably refuse any request by the Buyer and/or their Buyer representatives to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer and/or their Buyer representatives with all facilities reasonably required for inspection and testing.
- 3.4 If as a result of inspection or testing the Buyer and/or their Buyer representative is not satisfied that the Goods will comply in all respects with the Contract, so as to conform with the Order and or Specification and/or samples previously supplied, and the Buyer so informs the Seller within 5 Business Days of inspection or testing, the Seller shall immediately take such steps as are necessary to ensure compliance and in addition the Buyer and/or their Buyer representatives shall have the right to require and witness further testing and inspection.
- 3.5 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 3.6 If the Buyer so requests, the Seller shall provide a copy of the insurance policies held by the Seller covering all liabilities which the Buyer is indemnified against by the Seller.

4. PRICE AND PAYMENT

- The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated in writing, shall be:
- (a) exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice); and
- (b) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.
- 4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.
- 4.4 The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 4.5 Unless otherwise agreed in the Order or agreed in writing between the Buyer and the Seller, the Buyer shall pay the Price of the Goods and the Services within 60 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.
- 4.6 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.
- 4.7 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over the National Westminster Bank Plc base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods or provision of the Services as a result of any sums being outstanding.

5. DELIVERY

- 5.1 The Seller shall ensure:
- (a) the Goods are properly packaged and secured in such manner as to enable them to reach their destination in good condition, and that the Goods are delivered carriage paid to the Delivery Address, and
- (b) that the Services are performed at, the Delivery Address on the date or within the period stated in the Order, or as is agreed by the Buyer in writing prior to the delivery of the goods or performance of the Services.
- 5.2 The delivery of the Goods or the performance of the Services must be during the Buyer's usual business hours, unless otherwise stipulated by the Buyer in the Order or in writing.
- 5.3 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services in writing.
- 5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, the Order number, date of Order, number of packages and contents and any information requested in writing by the Buyer.
- 5.5 The Seller shall off-load the Goods at its own risk as directed by the Buyer.
- 5.6 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date, or if no such date is specified, then delivery shall take place within 21 Business Days of the Order.
- 5.7 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 5.8 If the Goods are delivered to the Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.
- 5.9 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable. Nevertheless, failure by the Seller to deliver any one instalment or perform a Service shall entitle the Buyer at its option to treat the whole Contract as repudiated.
- 5.10 The Seller acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and accordingly the Buyer may reject any Goods delivered which are not in accordance with the Contract however slight the breach may be, and shall not be deemed to have accepted any Goods until the Buyer has had 5 Business Days to inspect them following delivery. The Buyer will also have the right to reject the Goods as though they had not been accepted for 5 Business Days after any latent defect in the Goods has become apparent.
- 5.11 If the Seller requires the Buyer to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material will only be returned to the Seller at the cost of the Seller.
- 5.12 Any delivery of hazardous Goods must have prominent and suitable warnings on all containers, packaging and documents, and such markings shall comply with any current statutory requirements.

6. REMEDIES

- 6.1 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:
- (a) terminate the Contract;
- (b) reject the Goods (in whole or in part) and return them to the Seller at the Seller's own risk and expense;
- (c) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- (d) recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods in substitution from another Seller; and
- (e) claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on the due date.
- 6.2 If the Goods are not delivered or the Services are not performed on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay 0.5% of the Price for every week's delay, up to a maximum of 10%, or at such alternative rate as may be agreed between the Buyer and the Seller in writing.

7. RISK AND PROPERTY

- 7.1 The Goods shall remain at the risk of the Seller until delivery to the Buyer is complete (including off-loading and stacking and all documentation required under the Order or in writing has been supplied to the Buyer) when ownership of the Goods shall pass to the Buyer.
- 7.2 In the event that payment for Goods is made prior to delivery, ownership but not risk shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8. GUARANTEE

The Seller shall offer a guarantee of 12 months from the date of delivery, or such period as may be agreed between the Buyer and Seller in writing, such guarantee shall cover design, materials and workmanship. Replacement parts supplied as part of the guarantee will be guaranteed for a further period of 12 months, or the agreed guarantee period. Where requested by the Buyer, the Seller shall provide a performance guarantee in accordance with the details in the Buyer's Order or as otherwise requested in writing.

9. QUALITY

- 9.1 The Seller warrants to the Buyer that the Goods:
- (a) will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
 - (b) will be free from defects in design, material and workmanship;
 - (c) will correspond with any relevant Specification or sample; and
 - (d) will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 9.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 9.3 Without limiting any other remedy which the Buyer may have, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
- (a) to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days at the Seller's expense; or
 - (b) at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid and claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

10. INDEMNITY

- 10.1 The Seller shall keep the Buyer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with:
- (a) any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors;
 - (b) any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Seller, its employees, agents or subcontractors; and
 - (c) any claim made against the Buyer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller, its employees, agents or subcontractors.
- 10.2 This clause 10 shall survive termination of the Contract.

11. TERMINATION

- 11.1 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by giving written notice to the Seller if:
- (a) the Seller commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - (b) the Seller takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the Seller takes any step or action in connection with the Seller being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business;
 - (d) the Seller suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- (e) the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 11.3 The termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

12. BUYERS MATERIALS

- 12.1 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price.
- 12.2 In addition, any materials (including "free issue"), equipment, tools, dies, moulds, or any other forms of property supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing. The cost of any loss, damage, wastage or misuse of property supplied shall be recovered from the Seller.

13. CONFIDENTIALITY

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

14. FORCE MAJEURE

The Buyer reserves the right to defer the date of delivery of the Goods or the provision of the Services or payment or to cancel the Contract or reduce the volume of the Goods ordered or amount of Services to be provided if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

15. GENERAL

- 15.1 **Entire Agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 **Assignment and other dealings.**
- (a) The Buyer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - (b) The Seller may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.
- 15.3 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.3(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 15.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.5 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor

constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 15.7 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Buyer.
- 15.9 **ADR.** Subject as may be provided elsewhere in these Terms, all disputes, differences or questions arising in relation to these Terms shall be referred to in the first instance to an appropriate representative of the Buyer and Seller who shall attempt to settle the dispute themselves (acting in good faith) within one calendar month. If the appropriate representatives of the Buyer and Seller fail to resolve the matter within one calendar month, then either party may refer the dispute to court or tribunal or may (in its discretion) opt for mediation (in which case such an election shall bind the other party until a conclusion is made or the mediation rejects the case).
- 15.10 **Governing law and Jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).