

**ELMAC TECHNOLOGIES LTD
TERMS AND CONDITIONS OF SALE**

1. INTERPRETATION

- 1.1 **Definitions:** In these Terms the following words shall have the following meanings:
- Business Day** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- Buyer** the person or firm set out in the Order who purchases the Goods from the Seller.
- Contract** the contract between Buyer and the Seller for the supply of Goods in accordance with these Terms.
- Force Majeure Event** has the meaning given in clause 11.
- Goods** the goods (including any instalment of the goods or any parts for them) as set out in the Order.
- Incoterms** the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.
- Order** the Seller's written quotation or the Buyer's written order for the supply of Goods.
- Seller** Elmac Technologies Ltd (registered in England and Wales with company number 06290530).
- Specification** any specification for the Goods, 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 12.7.

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 These Terms apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Terms. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, recommendation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. GOODS

- 3.1 The quantity, quality and description of the Goods and any Specification for them shall be as set out in the Order.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

4. PRICE AND PAYMENT

- 4.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply where applicable. All prices quoted are valid for 20 Business Days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

- 4.2 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

- 4.3 Except as otherwise stated in the Seller's Written quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for packaging, loading, unloading, transport and insurance.

- 4.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

- 4.5 The Seller may invoice the Buyer for the Goods on or at any time after the completion of delivery.

- 4.6 The cost of pallets and returnable containers may be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

- 4.7 Subject to this term being agreed in writing between the Buyer and the Seller and provided no previous invoice is overdue, the Buyer may be entitled to a prompt payment discount if offered by the Seller (excluding any charge for transport, packaging or insurance) for payment within 7 days of the date of the Seller's invoice.

- 4.8 Any performance bond required under the Contract will be procured through an independent broker who offers a range of surety and guarantee providers of a non-investment and investment nature. The Buyer acknowledges and accepts that the bond and guarantees may be sourced from offshore providers outside of the United Kingdom who are not regulated.

- 4.9 The Buyer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.

- 4.10 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

- 4.11 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

5. DELIVERY

- 5.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller on the sales quotation or in writing, by the Seller delivering the Goods to that place. Where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Seller shall be under no obligation under Section 32(2) of the Sale of Goods Act 1979.

- 5.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 5.3 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 5.4 If the Buyer fails to take delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 a.m. on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
- (b) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

- 5.5 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

- 5.6 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered.

- 5.7 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately in full without deduction or set off. Each instalment shall

constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

6. RISK AND PROPERTY

- 6.1 The risk in the Goods shall pass to the Buyer:
- in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 6.2 Title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Seller immediately if it becomes subject to any of the events listed in clause 9.2; and
 - give the Seller such information relating to the Goods as the Seller may require from time to time.
- 6.4 Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- it does so as principal and not as the Seller's agent; and
 - title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy the Seller may have:
- the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - the Seller may at any time require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7. QUALITY

- 7.1 The Seller warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- conform in all material respects with their description and any applicable Specification;
 - be free from material defects in design, material and workmanship; and
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - be fit for any purpose held out by the Seller.
- 7.2 Subject to clause 7.3, if:
- the Buyer gives notice in writing to the Seller during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1;
 - the Seller is given a reasonable opportunity of examining such Goods; and
 - the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost,
- the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.3 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:
- the Buyer makes any further use of such Goods after giving notice in accordance with clause 7.2;
 - the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
 - the Buyer alters or repairs such Goods without the written consent of the Seller;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - the Goods differ from their description any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4 Except as provided in this clause 7, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 These Terms shall apply to any repaired or replacement Goods supplied by the Seller.

8. EXPORT TERMS

- 8.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the

same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, these Terms shall prevail.

- 8.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 8 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.
- 8.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination unless otherwise agreed in writing between the Buyer and the Seller and for the payment of any duties on them.
- 8.4 The Goods shall be delivered in accordance with the relevant Incoterms as specified in writing by the Seller, and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 8.5 Unless otherwise required by the Seller which will be stated in writing, payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the UK acceptable to the Seller or, if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of HSBC Bank Plc. as may be specified in the bill of exchange.
- 8.6 The Buyer shall not, unless otherwise agreed in writing by the Seller, offer the Goods for resale in any country other than the country of original delivery notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

9. TERMINATION

- 9.1 If the Buyer becomes subject to any of the events listed in clause 9.2 may terminate the Contract with immediate effect by giving written notice to the Buyer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or any steps taken in connection with the winding up of the Buyer, the appointment of an administrator over the Buyer, or the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver, or a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
 - any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(b) (inclusive);
 - (being an individual) the Buyer is the subject of a bankruptcy petition or order or dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
 - a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business or the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 9.4 Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2 (f), or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 9.5 On termination of the Contract for any reason:
- the Buyer shall immediately pay to the Seller all of its outstanding unpaid invoices and interest and, in respect of any Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - clauses which expressly or by implication have effect after termination shall continue in full force and effect.

10. LIABILITY

- 10.1 Nothing in these Terms shall limit or exclude the Seller's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - defective products under the Consumer Protection Act 1987; or

- (e) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- (a) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
11. **FORCE MAJEURE**
For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Sellers or subcontractors.
12. **GENERAL**
- 12.1 **Assignment and other dealings.**
- (a) the Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
 - (b) The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.2 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with this 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 prepaid first-class post or other next working day delivery service, or by 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 12.2(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
- 12.3 **Severance.** If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. Failing that 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.
- 12.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.
- 12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.7 **Variation.** Except as set out in these Terms, 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 Seller.
- 12.8 **Governing law.** This agreement 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.
- 12.9 **Jurisdiction** 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 Contract or its subject matter or formation (including non-contractual disputes or claims).