

# TERMS AND CONDITIONS OF SALE AND LIMITED WARRANTY

## 1. ACCEPTANCE OF PURCHASE ORDER

- a. Acceptance: Acceptance of purchase orders by ELMA (herein called "the Seller") does not constitute acceptance of any terms and conditions contrary to those contained herein, unless such acceptance is acknowledged in writing by the Seller. In the event of any conflict between the terms and conditions contained herein, and any terms and conditions contained in any other document relative to this order, the terms and conditions contained herein shall apply and shall supersede the terms and conditions, if any, on the purchase order(s). All purchase orders at minimum should specify a purchase order number, bill to and ship to addresses, method of shipment, a contact name, and phone number.
- b. Acceptance of Buyer Furnished Documents and Hardware: All specifications, drawings, artwork, etc., delivered to the Seller pursuant to this order shall be complete and of sufficient detail and quality to allow design and/or production. The Seller shall not be held responsible for Buyer supplied specifications, drawings, artwork, etc., which do not meet design and/or performance specifications. The Seller reserves the right to inspect all such documents and determine whether or not they comply with this provision.
- c. Change Order Instructions: Prices quoted are based on the assumption that the Seller is free to design and/or manufacture the order in the most efficient and economical manner possible. Order instructions, such as engineering changes, hold orders, and changes in delivery schedule, which increase the Seller's cost, may require price increases and/or additional charges. Any special conditions require written acceptance by the Seller. Seller will notify Buyer, in writing, of any such price increases and/or additional charges.

## 2. SHIPMENTS

- a. Shipments: Shipments, deliveries, payment terms, and performance of work shall at all times be subject to the approval of the Seller. The Seller may, at any time, decline to make a shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to the Seller. Delivery dates are best estimates only. Delivery delay or default on any installment shall not relieve Buyer of its obligation to pay for remaining deliveries. Claims for shortages must be made within 30 days after arrival. The Buyer grants Seller a security interest in the products delivered and proceeds therefrom as a security for payment of purchase price.
- b. Method of Shipping and Shipping Costs: Unless otherwise specified by the Buyer, the Seller reserves the right to determine the method of shipment. All shipping costs shall be the responsibility of the Buyer. All shipments shall be FOB Seller's manufacturing plant in Fremont, CA and shall be made at Buyer's risk. Insurance, if requested by the Buyer, shall be provided at the Buyer's cost.
- c. Time frame of shipping: Buyer must schedule shipment of all items within twelve months of the initial order date for delivery within 15 months from original contract date unless another schedule is established and agreed to in writing by Seller, which shall take precedence over the former. Unless otherwise agreed upon and confirmed in writing, items scheduled for shipment are not subject to revision, reschedule or termination within 30 days prior to shipment. Custom products are not subject to reschedule or termination within 75 days prior to shipment.

## 3. PRICES

- a. Prices: All prices quoted by the Seller are net prices. Prices do not include applicable taxes. Buyer shall pay taxes on items sold. List prices are subject to change without notice. Seller's terms are net thirty (30) days from date of invoice. Pursuant to California law, a charge of one and one-half percent (1.5%) per month is made on the past due balance of any account in order to reimburse the Seller for administrative and other costs associated with delinquent accounts. The Buyer agrees that such a charge is not an agreement, expressed or implied, to give further time for payment. In no event shall Seller be liable for increased manufacturing costs, loss of profits, or Goodwill, or other incidental or consequential damages.

## 4. SPECIAL ORDERS

- a. Special Orders: Non-standard or custom items are not cancelable and non-returnable.

## 5. RETURNS

- a. Returns: All goods shall be inspected by the Buyer when received and every claim on account of defective material, workmanship, or shortages, or for any other cause, shall be deemed waived by the Buyer, unless made in writing and received by the Seller within thirty (30) days from the date of receipt of such goods to which such claim relates. Seller will not accept returned merchandise without a Return Material Authorization (RMA) issued by our customer service department. All returns must be properly packaged and properly boxed to prevent damage. Freight damage, signs of usage, missing parts, etc., will be adjusted on the amount of credit to be issued. Returns are subject to a minimum of 25% restocking charge and the Buyer is liable for all freight charges. Buyer agrees to pay to Seller, within thirty days thereof, the restocking charge. All merchandise must be returned within thirty (30) days of the date of the RMA to receive credit.

## 6. RESCHEDULE/CANCELLATION

- a. All orders placed with seller are subject to cancellation charges. No cancellation for default shall be effective unless seller shall have failed to correct such alleged default within 45 days after receipt of written notice from the Buyer.
- b. See Attachment 1

## 7. LIMITED WARRANTY

- a. Warranty: Begins from the date of shipment. Seller will replace, or at its option, repair without charge any product found by Buyer to be defective in materials or workmanship within Seller's standard published warranty. This warranty does not apply if the goods have been damaged by accident, abuse, misuse, modification, or misapplication; by damage during shipment; or by improper service. NO OTHER WARRANTY, WHETHER EXPRESSED, IMPLIED OR PARTICULAR PURPOSE

OR DESIGN SHALL EXIST IN CONNECTION WITH ANY OF THE GOODS SUPPLIED HEREUNDER AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED. This warranty excludes all costs of shipping, customs clearance, and related charges outside the contiguous 48 United States.

- b. System Software and Operating Software are sold as-is, without warranty. All board level products, whether sold stand-alone or resident in a system, are warranted for a period of one (1) year from the date of shipment. It is recognized that, in the course of this transaction between Buyer and Seller, computer programs (Licensed Programs) may be delivered to Buyer in printed form or in any of several machine-readable forms including, but not limited to, magnetic tape or disk, or a read only memory (ROM) device. The Buyer must become a licensee with respect to such software products and execute or agree to the terms of the license agreement originated by the software manufacturer.
  - i. Disclaimer of Warranty: Seller shall not be liable for incidental or consequential damages arising from use of the licensed program(s). This disclaimer of warranty extends to buyer, to buyer's transferees and to buyer's customers or users of products and is in lieu of all warranties whether expressed, implied, or statutory, including implied warranties of merchantability or fitness for particular purpose.

## 8. OTHER TERMS

- a. Venue: This contract shall be governed and construed in accordance with the laws of the State of California.
- b. Rights: In the event either party shall on any occasion fail to perform any term of this Contract and the other party refrains from or fails to enforce that term, the failure to enforce on that occasion shall not prevent or waive the right to enforcement on any other occasion.
- c. Change in Schedule: Engineering, change orders or other special requirements, additional terms may apply.
- d. Litigation: In the event of any litigation, including appellate proceedings, arising out of any breach of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs, as well as interest at the rate of 1.5% per month on any of the unpaid balance.
- e. Assign ability: This contract may not be assigned without the expressed written consent of the party affected and shall be binding on the heirs, successors and, where applicable, the assigns. Seller reserves the right to assign, upon written notice to Buyer, all or any part of its rights and/or obligations hereunder to any Elma subsidiary or an authorized distributor without Buyer's prior consent.
- f. Acts of Nature: Notwithstanding any other provisions of this Contract Seller shall not be liable for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by fire, flood, war, embargo, strike, hurricane, tornado, earthquake, riot, labor disputes, shortage of materials or supplies, transportation delay, intervention of any governmental authority or any other unforeseen circumstance.
- g. Indemnification: Buyer agrees to indemnify, defend, and hold Seller harmless from liability of damage resulting from any claim of patent infringement brought against Seller based on artwork and/or schematic(s) supplied by Buyer or based on PCBs requested by or supplied Buyer. Buyer shall defend such action as its expense and will pay all costs and damages awarded in any such action.
- h. Entire Agreement: This writing is intended by the parties to be final written expression of their agreement with respect to the terms included herein, and no oral or extrinsic evidence may be admitted to modify or change same except in writing, sign by both parties herein. This agreement supersedes all prior proposals or offers, oral or written, and all other communications between the parties relating to the subject matter of this Contract.
- i. Use Restrictions: Elma's products are not authorized for use in life support devices or systems or other applications posing a significant risk of personal injury. Buyer hereby represents and warrants that any and all Elma products purchased hereunder will not be used in such unauthorized applications.
- j. Confidential Information: All drawings, diagrams, specifications and other materials furnished by Elma and identified as confidential relating to the use and service of articles furnished hereunder and the information therein, are proprietary to Elma. Buyer may not reproduce or distribute such materials except to Buyer's employees, who may use the articles as part of their duties. All such materials relating to the articles supplied directly by Elma, except information that may be established as public domain or disclosed pursuant to judicial or government action, shall be received in confidence, and Buyer shall exercise reasonable care to hold such information in confidence.
- k. Government Contract Conditions: If Buyer's purchase order contains a U.S. Government contract number and orders products to be used in the performance of said contract, those clauses of applicable U.S. Government procurement regulations, mandated by Federal Statute to be included in U.S. Government subcontracts, shall be incorporated herein by this reference.
- l. Limitation of Liability: No action shall be brought for any breach of this order or contract more than one year after the accrual of such cause of action.