

# ELEKTROSIGN LLC

## Terms and Conditions of Sale

### 07/20/2007

PLEASE READ THIS DOCUMENT CAREFULLY! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

#### 1. SCOPE

1.1 All products and/or services (together referred to as "Products") are sold strictly pursuant to these general terms and conditions of sale (the "Terms"). References by BUYER to its conditions of purchase shall be null and void and are hereby expressly rejected. Any modification to these Terms requires the express written approval of Elektrosign LLC. ("SELLER"). These Terms are subject to change at any time without prior notice.

1.2 Acceptance by BUYER of Product(s) or services or payment for same shall constitute unequivocal acceptance of the terms and conditions found herein. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein, unless Seller and Buyer signed a separate agreement, in which case the separate agreement will govern.

#### 2. OFFER AND ACCEPTANCE

2.1 Offers to sell Products and/or services by SELLER are non-binding with respect to price, quantity, delivery time and possibility.

2.2 Purchase orders from BUYER shall only become binding for SELLER through a written confirmation from SELLER to BUYER and may take the form of an invoice or a delivery note.

#### 3. SAMPLES AND CATALOGUES

Any figures, measurements, statements, descriptions, illustrations, photographs, drawings, or any other matters contained in the SELLER's brochures, catalogs, price lists, or advertising literature, or listed on SELLER's website, or any samples provided to BUYER by SELLER are not guaranteed to be accurate and are intended merely to represent a general description or depiction of the Products and shall not form part of any contract or agreement between the SELLER and the BUYER, unless expressly specified and incorporated into any contract or agreement between the Parties in writing

#### 4. PRICES

4.1 SELLER'S prices valid at the time of the written confirmation shall be the invoiced price. The invoiced price of the Products does not include duty, tariffs, taxes, freight costs or similar charges, which shall be borne by BUYER, unless otherwise agreed in writing.

4.2 If applicable, the final determination of weight in connection with the calculation of the purchase price shall be performed by the SELLER.

#### 5. PAYMENT

SELLER'S invoices are due immediately and prior to shipment of any Products without any deductions or offset, and payments shall be made in U.S. dollars unless otherwise agreed in writing between the parties. All prices shown are exclusive of any applicable tax and any tax that SELLER is required to collect in connection with a sale shall be in addition to the quoted price and solely for BUYER'S account. Payment shall be considered complete when SELLER receives from BUYER the full invoice amount in readily available funds.

#### 6. DELIVERY

6.1 The quoted price for all products is F.O.B. SELLER's principal place of business or the location of shipment, whichever is applicable, unless otherwise agreed upon in writing. Notwithstanding the foregoing, title to software will remain with the applicable licensor(s) and BUYER's rights therein are contained in a license agreement between such licensor(s) and BUYER.

6.2 Unless otherwise specified in writing, packing shall be SELLER'S standard packing.

6.3 SELLER shall endeavor to punctually deliver the Products, provided, however, all specified delivery dates refer to the completion of manufacture and availability for shipment and merely represent SELLER'S best estimates. SELLER reserves the right to modify the delivery dates with notice to BUYER and BUYER acknowledges that fixed delivery deadlines do not exist. BUYER also acknowledges that SELLER'S performance herein is subject to correct and punctual supply of SELLER by its suppliers.

6.4 BUYER warrants that it will not divert, use, export or re-export any Products contrary to United States law. BUYER expressly acknowledges and agrees that it will not export, re-export, or provide Products to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time but currently include Cuba, Iran, Iraq, North Korea, Sudan, and Syria. BUYER warrants it will comply with all applicable laws, restrictions and regulations of the U.S. and other governments, including without limitation, the Export Administration Regulations, as amended, the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the Office of Foreign Asset Control Regulations. BUYER also expressly acknowledges and agrees that it will not export, re-export, or provide Products to entities and persons that are ineligible under United States law to receive such Products, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, manufacturers' warranties for exported products may vary or may be null and void for Products exported outside the United States.

**7. SHIPPING AND ACCEPTANCE**

- 7.1 SELLER reserves the right to choose the shipping route and the mode of transport. Additional costs resulting from special shipping requests by BUYER shall be for BUYER'S account. In addition, BUYER shall be responsible for the payment of increases in freight rates, possible additional costs for diversion, storage costs etc. which occur after the sales invoice has been issued, insofar as freight-paid delivery has not previously been agreed upon by the parties.
- 7.2 Title shall pass to BUYER upon delivery to carrier.
- 7.3 BUYER shall assert claims arising from damages in transit directly against the carrier and shall have no recourse against SELLER for such damages. The choice of carrier and insurances shall be at BUYER'S discretion. Unless otherwise agreed in writing, BUYER shall be responsible for the observation of legal and official regulations relating to the import, transportation, storage and use of the Products.
- 7.4 If the Products are not shipped within \_\_\_ ( ) days after notification to the BUYER that they are ready for shipping, for any reason beyond SELLER's reasonable control, including the BUYER's failure to give shipping instructions, SELLER may store the Products at the BUYER's sole risk in a warehouse or storage facility or upon SELLER's premises and the BUYER shall pay all handling, transportation and storage costs upon submission of invoices therefore.
- 7.5 Any shipping dates provided by ELEKTROSIGN and any purported deadlines contained in any other document are estimates only.
- 7.6 If BUYER receives damaged Products, BUYER should refuse the Products upon original delivery attempt. If damaged Products are accepted from the carrier, such damage should be noted on the carrier delivery record. BUYER should save the Product and the original box and packaging and notify SELLER immediately to arrange for a carrier inspection and a pick up of damaged Products. BUYER is to notify SELLER of damaged Products WITHIN THE FIRST THREE (3) DAYS of receipt or BUYER is deemed to have accepted the Product.

**8. RETURN POLICY**

- 8.1 Return of a Product is subject to the Product's manufacturer's policies in effect from time to time. SELLER, in its sole discretion, may decline return requests from BUYER based on the manufacturer's policies.
- 8.2 Subject to prior return authorization and the issuance of a Return Merchandise Authorization ("RMA") number by SELLER, a Product may be accepted for return within thirty (30) days of the date of the invoice. All authorized returns must include the original packaging, UPC label, the undamaged, unaltered and resellable Product, all cable(s), cases, and paperwork/manuals/blank warranty cards sent with the Product and any other accessories that originally arrived with the Product. The Product must be in its original condition, in good working order and may not be damaged or altered. SELLER, in its sole discretion, determines whether the condition of the Product is acceptable for return of the Product.
- 8.3 An RMA number must accompany any returned Product. SELLER does not accept returns without an RMA. BUYER must be prepared to provide the following information: Name and/or Customer number of BUYER; invoice number, Product serial number, reason for return, condition of product and whether the original box has been opened or is sealed by the manufacturer. BUYER is not to write on or damage the manufacturer's box.
- 8.4 BUYER is responsible for shipping charges to SELLER's distribution center for all Products being shipped back to SELLER. Products exchanged or replaced will be shipped by SELLER to BUYER, at SELLER's expense, using the same or a comparable shipping method as was used by BUYER to ship the original Products back to SELLER.
- 8.5 BUYER is solely responsible for all risk of loss and damage to Products being shipped back to SELLER. BUYER is advised to fully insure return shipments in case of loss or damage and to use a carrier that is able to provide BUYER with proof of delivery.
- 8.6 Failure to return a Product in accordance with these Terms and within the applicable return period is deemed to be an acceptance of the Product.

**9. FORCE MAJEURE**

- 9.1 Neither party shall be held responsible for any loss, damage, delay or lack of delivery arising from fire; strikes, lockouts, injunction or other labor troubles, governmental intervention including, but not limited to, prohibition or extraordinary taxation upon import or export; war; riots; acts of terrorism; explosion; weather; flood; acts of God or nature; inability to obtain on terms acceptable to SELLER or shortage of, fuel, power, raw materials, labor, containers or transportation; accident; breakage of machinery or other apparatus; disruption of normal supplier channels of distribution; or any other act or force beyond the affected party's reasonable control.
- 9.2 If, as a result of any of the disruptions listed in Section 7.1 above, the delivery or acceptance of the Product is delayed by more than thirty (30), then either party may upon notice cancel the applicable sales contract and terminate any further obligation to the other party.
- 9.3 SELLER reserves the right to allocate and fairly apportion Product(s) among its internal and external customers during force majeure events in any manner SELLER, in its sole discretion, deems appropriate.
- 9.4 SELLER shall have no obligation to acquire by purchase or otherwise any Product(s) that SELLER is unable to supply to BUYER due to force majeure events.

**10. LIMITED WARRANTIES**

- 10.1 BUYER understands that SELLER is not the manufacturer of the Products purchased by BUYER hereunder and the only warranties offered are those of the manufacturer of the Products, not SELLER. In purchasing the products, BUYER is relying on the manufacturer's specifications only and is not relying on any statements, specifications, photographs or other illustrations representing the products that may be provided by SELLER. SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS

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FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE WHICH ARE EXPRESSLY DISCLAIMED, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF THE MANUFACTURER'S WARRANTY, IF ANY. BUYER expressly waives any claim that it may have against SELLER based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any product and also waives any right to indemnification from SELLER against any such Claim made against BUYER by a third party. BUYER acknowledges that no employee of SELLER is authorized to make any representation or warranty on behalf of SELLER that is not part of these Terms.

10.2 BUYER assumes all risk for misuse of the Products.

11. **LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL SELLER OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST BUYER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH BUYER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY SELLER BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE PRODUCTS; OR (D) ANY UNAVAILABILITY OF THE PRODUCT FOR USE OR ANY LOST, DAMAGED OR CORRUPTED DATA OR SOFTWARE. IN THE EVENT OF ANY LIABILITY INCURRED BY SELLER THE ENTIRE LIABILITY OF SELLER FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY BUYER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM; OR (B) FIVE THOUSAND U.S. DOLLARS (\$5,000.00).

12. **PROPRIETARY INFORMATION / CONFIDENTIALITY**

BUYER hereby undertakes for itself and its officers, employees, or agents that it will not, at any time disclose, permit to be disclosed or divulged or copy any confidential information, documents or communications with respect to SELLER's business, Products, services or financial affairs to third parties. Confidential Information („Confidential Information“) shall mean all data and information of a confidential nature relating to the Products and/or the business or affairs of SELLER, including but not limited to manufacturing processes, customers, pricing and technical data. In the event that any such Confidential Information is copied or disclosed to BUYER's officer's, employees, agents, subsidiaries, associated companies, Sales Representatives, or Sub-Distributors, for purposes of carrying out these Terms, prior to any disclosure BUYER shall procure in writing that the recipient of such Confidential Information shall agree to be bound by this confidentiality provision. This section shall survive the termination of these Terms.

13. **SUSPENSION AND CANCELLATION**

If BUYER shall omit delivery instructions or shall fail to accept Delivery, as required by Contract, or shall fail to make any payment when it becomes due or shall commit any other breach of contract, or if BUYER shall enter into any composition or arrangement with its creditors or if any distress or execution is levied upon any goods or property of BUYER, or if BUYER shall commit any act of bankruptcy or, if a corporation, a receiver shall be appointed of the whole or any part of its undertaking or assets or if BUYER shall pass a resolution for winding up or if a Court shall make an order to that effect or if BUYER shall have a receiving order made against it, then at SELLER's sole option SELLER may defer or cancel any further deliveries or services and treat the contract or any other contract between SELLER and BUYER as terminated, but such termination shall be without prejudice to SELLER's right to any unpaid price for Products delivered or cost of work done under these Terms and to damages for loss suffered in consequence of such termination.

14. **GOVERNING LAW; ARBITRATION**

14.1 THESE TERMS AND ALL CLAIMS ARISING OUT OF THESE TERMS SHALL BE CONSTRUED, INTERPRETED AND CONTROLLED BY THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS.

14.2 All disputes arising under these Terms shall be settled by final and binding arbitration in Bonita Springs, Florida in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but in the event that they cannot agree, each party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. The award by the arbitrator(s) shall be final and judgment upon the rendered award may be entered in any court having jurisdiction thereof.

15. **EQUITABLE RELIEF**

BUYER understands and agrees that SELLER will not have adequate remedy at law for the material breach or threatened breach by BUYER, or its, agents, employees, representatives or subcontractors, of any one or more of the covenants set forth in Section 10 of these Terms and Conditions. BUYER agrees that in the event of any such material breach or threatened breach, SELLER may, in addition to (but not in substitution for) the other remedies which may be available to it either at law or in equity, file suit in equity to enjoin the BUYER from the breach of or threatened breach of said covenants.

16. **ADDITIONAL TERMS**

16.1 BUYER represents and warrants that (a) it understands the nature and characteristics of the Product(s) and any hazards associated with its use, (b) it will adequately instruct and warn all persons, including all third parties, who may come in contact with, or be in the vicinity of, the

Product(s) in the proper safe use and handling of the Product(s), (c) it is not relying upon any representation, statement or other assertion made by SELLER or its representatives or agents, with respect to the suitability of the Product(s) for any purpose and that BUYER has made its own independent inquiry and testing and has formed an independent opinion concerning the suitability of the Product(s) for the end use, conversion or application intended, and (d) it will not assert any claim against SELLER or hold SELLER liable, with respect to any information, testing or design furnished, or failure to be furnished, by SELLER, including, without limitation, technical advice or recommendations. SELLER assumes no obligation or liability for the use by BUYER of any technical assistance rendered incident to these Terms. Appropriate literature has been assembled which provides information concerning the health and safety precautions that must be observed when handling the Products. Before working with the Products, BUYER agrees to read and become familiar with the available information on the Product hazards, proper use, and handling. Additional information is available from SELLER upon request.

- 16.2** SELLER may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products or assign the right to receive payments, without BUYER's consent. BUYER may not assign these Terms, or any of its rights or obligations herein without the prior written consent of SELLER. Subject to the restrictions in assignment contained herein, these Terms will be binding on and inure to the benefit of the parties hereto and their successors and assigns.
- 16.3** No provision of these Terms will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties.
- 16.4** Notices provided under these Terms will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by regular mail or airmail to the address stated below, or one (1) day after such notice is sent by courier or facsimile transmission.
- 16.5** Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights.
- 16.6** No type of contractual obligation between BUYER and its customer(s) shall be applicable to, or create any liability with respect to SELLER, whether via "pass-through", "flow-down" or otherwise, and BUYER shall not otherwise represent to its customer(s) such purported SELLER liability.
- 16.7** The rights and obligations under Articles 10, 11, 12, 14, 15 and 16.6 herein shall survive the cancellation, termination or expiration of these Terms.
- 16.8** Should any part of these Terms be deemed invalid by a court of law or arbitrator, it shall not constitute an invalidation of any other part of these Terms, which shall otherwise remain in effect.
- 16.9** Except as otherwise expressly provided, these Terms supercede all prior agreements, understandings or otherwise, whether oral or written, between BUYER and SELLER concerning the subject matter of these Terms.
- 16.10** SELLER'S acceptance of (a) payment, or (b) specially endorsed checks shall not waive or limit any right or remedy of SELLER.
- 16.11** Nothing contained herein is intended nor shall be construed as creating a partnership, joint venture, agency, distributorship or any other relationship except buyer and seller.
- 16.12** All headings herein are for reference only.

Revised 07/19/2007