

# ELEMENTUM



May 2020

SCOPE OF ACCEPTANCE: THE TERMS AND CONDITIONS HEREIN ARE THOSE OF Elementum 3D (THE SELLER), AND MAY IN SOME INSTANCES BE IN CONFLICT WITH OR IN ADDITION TO SOME OF THE TERMS AND CONDITIONS SPECIFIED BY THE BUYER. THEREFORE, ACCEPTANCE OF BUYER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. THE BUYER'S ACCEPTANCE OF PRODUCTS DELIVERED HEREUNDER SHALL BE DEEMED TO BE AN UNQUALIFIED ASSENT TO THE PROVISIONS OF THESE TERMS AND CONDITIONS. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATIONS FROM THE BUYER SHALL NOT CONSTITUTE A WAIVER OF THE PROVISIONS OF THE TERMS AND CONDITIONS HEREIN.

1. **AGREEMENT:** The conditions of the signed sales proposal shall supersede any conflicting terms in these conditions. If Buyer and Seller have not entered into a written and signed sales proposal, these conditions shall constitute the sales agreement. No other conditions shall be applicable to the agreement or otherwise accepted by Seller. Seller's acceptance of Buyer's purchase order is expressly made conditional on Buyer's assent to Seller's terms and conditions as set forth herein and the rejection of any other terms.

2. **DELIVERY AND RISK OF LOSS:** Unless otherwise specified herein by Seller, shipment will be made FCA Erie, Colorado. Title and risk of loss shall pass to the Buyer upon delivery to the Carrier. Delivery schedules tendered represent Seller's best estimate of when shipment can be made but are not binding on Seller. In no event shall Seller be liable for any loss or damage resulting from delays beyond its reasonable control including, but not limited to, delays caused by fire, strikes or labor disturbances, acts of God, acts of the Buyer, acts of civil or military authority, insurrection or riot, inclement weather, embargoes, inability to obtain transportation facilities, wrecks or delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities due to such causes or failure of equipment, a supplier or a subcontractor.

3. **WARRANTY:** Seller warrants all goods or services manufactured or furnished by it to be free from defects in material and workmanship at the time of delivery, provided, however, that Seller's liability under such warranty shall be limited to, at Seller's option, replacing or giving credit for any goods or services which Seller's inspection shall disclose to have been defective in the form in which they were shipped by Seller before their use in further manufacture or assembly. Seller is liable under such warranty only if written notice of the defect is given to Seller within thirty (30) days after Buyer's receipt of the goods or services, and only if the adjustment procedure set forth below is followed. This warranty shall not apply to any goods or services which have been subjected to abuse or mishandling. The above represents Buyer's sole remedy under this Agreement. Any and all other warranties, including those of merchantability and of fitness for a particular purpose, are expressly disclaimed. In no event shall seller be liable for any special, indirect, incidental, consequential, or punitive damages resulting from any cause whatsoever.

4. **ADJUSTMENT:** To ensure that adjustments may be effected as promptly as possible, the following procedure will apply:

- (a) Prior to the return of goods for adjustment, it is necessary that the Buyer requests a formal Return Material Authorization (RMA) from Seller. The following information shall be included in the RMA request:
  - (1) Buyer's order number on which the goods were received.
  - (2) Quantity of goods received, sampled, rejected, and sampling plan used.
  - (3) Description of goods rejected.
  - (4) Reason for rejection.

If goods are to be returned for inspection, a RMA with instructions for shipping will be sent to Buyer. Goods returned without a RMA will be considered for adjustment only if circumstances permit and may be subjected to delay in handling or returned to Buyer at Buyer's expense. Seller will not be responsible for goods returned unless accompanied by a RMA number.

- (b) All items returned for examination and adjustment should be packed as carefully as when originally received using a package having at least the equivalent of the original packing material.

5. **PATENT AND TRADEMARK INDEMNITY:** If Seller is notified promptly by the Buyer in writing and is given authority, information, and assistance for the defense (at Seller's expense) of any suit or proceeding brought against the Buyer, insofar as it is based upon an infringement of patents and trademarks by goods furnished under this order when used or sold for the purposes for which such goods are intended, Seller will defend such suit or proceeding and will satisfy a final monetary award for such infringement against the Buyer in any action insofar as the award is based on the selling price of such goods, but Seller assumes no liability consequential or otherwise, for, and Buyer agrees to hold Seller harmless against, infringement of patent claims, covering completed equipment or any assembly, circuit, combination, method or process in which any such goods may be used, or from any trademark infringements involving any marking or branding not applied by Seller or involving any marking or branding applied at the request of Buyer. In addition, Seller assumes no liability, consequential, indirect, special, incidental, or otherwise, for, and Buyer agrees to indemnify and hold Seller harmless against, any claims resulting from the production of goods to Buyer's specifications, or from the production of goods designed by Seller to meet Buyer's requirements, or arising out of the use of any equipment, materials, parts, or machinery furnished by Buyer in producing goods to Buyer's specifications. No costs or expenses under this paragraph shall in any event be incurred for the account of Seller without Seller's prior written consent.

6. **NO LICENSE BY IMPLICATION:** Seller's goods are offered for sale and are sold subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent claim with respect to which Seller can grant licenses covering completed equipment, or any assembly, circuit, combination, method, or process in which any such goods are used as components (notwithstanding the fact that such goods may have been designed for use in, or may only be useful in, such patented equipment, assembly, circuit, combination, method, or process, and that such products may have been purchased and sold for such use). Seller expressly reserves all its rights under such patent claims unless otherwise indicated in the sales contract.

7. **TERMINATIONS:** Buyer's purchase order(s) may be terminated or suspended only upon the condition that Buyer assumes immediate liability for and makes payment to Seller for all expenses already incurred, commitments made by Seller, profit on the entire order(s), and selling price in effect at time of termination or suspension for all goods completed and ready for shipment. If an order is terminated or suspended before the Seller's standard minimum quantity has been shipped, Buyer shall be invoiced and pay for setup charges.

8. **PRICES:** Prices are subject to change without notice. All billings will be at prices in effect at the time of shipment. Shipment of part of an order will not bind Seller to ship the remainder of that order at the same prices. Current prices are available from Seller. The price is based on the quantity ordered on a single order.

9. **TAXES:** Unless otherwise specified herein by Seller, all prices are quoted, all orders accepted, and all billings rendered exclusive of all federal, state and local excise sales and similar taxes, customs duties, fees and similar charges. Such taxes, when applicable, will appear as separate additional items on the invoice, unless Seller receives a properly executed exemption certificate from Buyer prior to shipment.

10. **CREDIT TERMS:** If, in the sole judgment of Seller, Buyer's financial condition becomes impaired or deteriorates or its past due balances become excessive, Seller may refuse to deliver except on COD terms, may demand immediate payment in full for all goods theretofore delivered, may revise the stated credit terms and/or may take whatever other measures it deems advisable to protect its interests.

11. **TERMS OF PAYMENT:** The Customer shall pay the invoice within 30 days of the date of invoice. Payments shall be made in U.S. dollars. Export sales require cash in advance payment, preferably wire transfer or credit card. Receipts for payment will be issued only upon request. If the Customer fails to make any payment on the due date then Seller shall be entitled to:

- (a) Cancel the Contract or suspend any further deliveries to the Buyer; and

- (b) Charge the Buyer interest on the amount unpaid, at the rate of 3% per cent per month, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

12. **MOLDS, TOOLS, DIES, AND SUPPLIES:** If Buyer pays Seller separately for molds, tools, dies, or any material supplies including powdered materials (hereinafter called supplies), engineered, designed and/or specified for the production of the goods included in the order, then:

- (a) Such supplies shall be limited in use to the Buyer's requirements, except with the Buyer's permission.
- (b) Such supplies that are under Seller's control shall be kept in a reasonably good state of preservation for the useful life of such supplies (in Seller's role view), or for a period of one (1) year from the date that the tools were last used in production for the Buyer, whichever period shall first expire. Upon thirty (30) days written notice to Buyer, such supplies may be disposed of by Seller in any manner, unless some other disposition is mutually agreed upon in writing within thirty (30) days after the expiration of such period.
- (c) Payment by Buyer of charges for such supplies vests no rights, title, or interest in Buyer other than as set forth in this Section 10(a) and (b).
- (d) Buyer agrees to hold Seller harmless against any and all claims arising from subsequent use or sale of such supplies.

13. **APPLICABLE LAW:** This order shall be construed under and governed by the laws of the State of Colorado. The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and are inapplicable to this order.

14. **EXPORT:** Buyer warrants there will be no diversion of any shipment that is (a) contrary to any applicable law, (b) for resale and/or transfer to any party not a party to the AGREEMENT unless approved in writing by Seller, or (c) for shipment or use outside of the U.S., unless approved by SELLER in writing, and if so approved, Buyer warrants it will comply with all applicable laws, restrictions, and regulations of the U.S. and other governments. The items subject to this sale/quotation are subject to certain U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) (22 CFR 120, et seq.), the Export Administration Regulations (EAR) (15 CFR 730-774); and the Foreign Assets Control Regulations (31 CFR 500 et seq.). The export, reexport, retransfer, or resale to a foreign national or country without a valid export authorization is prohibited. It is the responsibility of you (the Buyer) to determine applicable requirements and to obtain all necessary export authorizations.

15. **GENERAL:** Any assignment of rights hereunder by either party without the prior written consent of the other party shall be void. No modifications of these provisions or waiver thereof shall be binding upon Seller unless approved in writing by an authorized representative. No waiver by Seller of any default shall operate as a waiver of any other default or of the same default on a future occasion. If any provision herein shall be held invalid, the remainder shall nevertheless be deemed valid and effective and it is the intention of the parties hereto that each provision hereof is being stipulated separately in the event one or more such provisions should be held invalid.

**LIMITATION OF REMEDY: IN NO EVENT WILL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, UNDER WHATEVER THEORY, RELATING TO GOODS OR SERVICES FURNISHED UNDER THIS ORDER.**