

TERMS AND CONDITIONS OF SALE

1. **CERTAIN DEFINITIONS.** As used in this document (a) "Document" means this document, whether in the form of a quotation, order acknowledgment, invoice or otherwise, together with the reverse side, if any, of this document and any other agreement, instrument or document signed by Seller to which this document is attached or which is attached to this document or in which reference is made to this document; (b) "Seller" means Element International Trade Inc. (Element) or the subsidiary or affiliate of Element identified as the seller of the Goods in this Document; (c) "Buyer" means the buyer identified in this Document; and (d) "Goods" mean the goods, equipment, supplies and services supplied by Seller to Buyer as described in this Document.

2. **TERMS ARE EXCLUSIVE.** These terms and conditions shall govern and control all sales by Seller to Buyer, unless otherwise expressly agreed to in writing signed by Seller. Terms and conditions contained in Buyer's purchase order, or any other writing in which Buyer manifests its intent to purchase, that are different from, in addition to, in conflict with or otherwise vary the terms of this Document are hereby objected to and shall not be binding on Seller. This Document, whether constituting an offer or acceptance, is expressly conditioned on Buyer's assent to the terms and conditions in this Document, including those that may be additional to or different from those contained in any of Buyer's writings. Buyer shall be deemed to have accepted these terms and conditions if Buyer accepts any performance by Seller or if Buyer renders any performance in connection with the Goods.

3. **DELIVERY OF GOODS.** Unless otherwise stated in this Document, the Goods will be delivered to Buyer FOB place of shipment. Unless otherwise stated in this Document, Buyer must bear all of the costs of transporting the goods to the place of destination, whether such transportation is through Seller's carriers, contracted carriers or otherwise. Any specified shipping date or delivery date is approximate only. Title to the Goods will pass to Buyer upon Seller's tender of delivery of the Goods. Unless otherwise stated in this Document, Buyer will accept and pay for partial deliveries at contract prices and terms. When Buyer has declared or manifested an intention not to accept delivery in accordance with this Document, no tender will be necessary, but Seller may, at its option, give notice to Buyer that Seller is ready and willing to deliver and such notice will constitute a valid tender of delivery. If for any reason, Seller believes that Buyer is not financially responsible, Seller may refuse to make further shipments of Goods to Buyer, except against cash or satisfactory security.

4. **AVAILABILITY OF SUPPLIES AND FORCE MAJEURE.** Delivery of the Goods is contingent upon Seller's ability to obtain supplies, raw materials, labor and services through its regular and usual sources. If for any reason beyond Seller's reasonable control (including, without limitation, war, armed conflict, riots, theft, fire, storm, flood, earthquake, strikes, lockouts, authorization of law, accidents, acts of terrorism, transportation delays or embargoes, act of God or other cause beyond the reasonable control of Seller), Seller is not able to perform its obligations under this Document in accordance with the terms of this Document, Seller will not be liable to Buyer or any other person for such failure and may postpone the delivery under this Document for a period of time which is reasonable under the circumstances, and Seller may allocate production and deliveries of Goods among its customers.

5. **INSPECTIONS AND ACCEPTANCE.** Each delivery of Goods will be inspected promptly by Buyer for damage and defects (including claimed shortages). Buyer will notify Seller of all claimed damage or defects within thirty days of Buyer's receipt of the Goods. If Buyer fails to inspect or notify Seller within such period, Buyer will be deemed to have accepted the Goods and to have waived any damage or defect. Goods delivered by Seller to Buyer are subject to a plus or minus deviation of ten per cent (10%) in quantity. Seller shall have the right to make substitutions and modifications in and to the Goods delivered hereunder so long as such substitutions or modifications do not or will not, in Seller's judgment, materially impair the overall performance of the Goods. Seller shall not be obligated to furnish Buyer with such substitutions or modifications for Goods previously sold to Buyer.

6. **PRICES.** Unless otherwise stated in this Document, prices for the Goods will be those set forth on the reverse side of this Document, if any, or otherwise referred to in this Document, and prices are subject to change without notice. Unless otherwise stated in this Document, prices do not include applicable taxes, excises, dues, duties or other governmental impositions that Seller may be required to pay or collect. Unless otherwise stated in this Document, Buyer will pay or otherwise reimburse Seller for, and defend, indemnify and hold Seller harmless against, such applicable taxes, excises, dues, duties or other impositions relating to the Goods, and all claims, liability, costs and expenses, including, without limitation, attorneys' fees and court costs, relating thereto. Unless otherwise stated in this Document, prices do not include charges for molds, dies, plates and other tooling required to manufacture the Goods.

7. **PAYMENT.** If the terms of payment set forth in this Document include any discount for prompt payment, Seller shall strictly enforce such discount terms. Unless otherwise stated in this Document, payment for the Goods shall be due and payable in full in one installment 30 days from the date of the invoice. If Buyer does not pay on time, Seller reserves the right to charge Buyer up to 1 1/2% per month on the unpaid balance until paid (unless such interest rate exceeds the highest rate permitted by applicable law, in which event the rate permitted to be charged by Seller shall be the highest rate permitted by applicable law). Buyer has no right to offset any amounts due Seller under this Document against any payment or other obligation that Seller may owe to Buyer. Seller may accept late payments, partial payments or payments marked paid in full without waiving any of its rights under this Document.

8. **WARRANTY, EXCLUSIONS OF WARRANTIES AND LIMITATIONS OF LIABILITY.** Seller warrants to Buyer (and not to any other person) that, at the time of delivery, the Goods will be free from defects in materials and workmanship and will conform (subject to variations acceptable within the industry) to the specifications, if any, set forth in this Document or that are stamped or otherwise embossed on the Goods. Unless otherwise stated in this Document, this warranty is effective only for the first use of the Goods. The foregoing warranty does not cover and Seller makes no warranties with respect to any Goods that have been subject to abuse, misuse, neglect, alteration, accident or improper storage or handling; to faulty cover assembly or closure; to moisture or corrosive matter; to substantial temperature or pressure variations; or to abnormal use. Buyer (and the end user and/or its agents) must determine the suitability of the Goods for its specific application and Seller has no responsibility for determining whether the Goods are fit for a particular purpose or suitable for Buyer's (or end user's) application, regardless of whether Buyer informs Seller of the intended application, and no employee of Seller is authorized to make such a determination.

If any Goods fail to meet such warranty, Seller, at Seller's option, will either replace such defective Goods or issue a refund or credit against the purchase price of such defective Goods. No unit of Goods will be deemed defective or in breach of the warranty if such unit conforms to previously accepted Goods or otherwise reasonably accommodates Buyer's intended purpose. Buyer may not bring any action under or arising from this Document unless such action is commenced within one year after the cause of action accrues. If requested by Seller, the Goods alleged to be defective shall be returned to Seller, at its direction and expense, for examination. No Goods are to be returned to Seller without its prior written authorization. If Seller discovers that any Goods so returned are not covered by the foregoing warranty, Seller reserves the right to charge Buyer for all transportation costs and expenses incurred by Seller in examining, processing or handling such Goods. EXCEPT AS SET FORTH IN THIS PARAGRAPH 8, SELLER MAKES NO OTHER WARRANTIES CONCERNING THE GOODS WHATSOEVER. SELLER DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER'S OBLIGATIONS DESCRIBED IN THIS PARAGRAPH 8 WILL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER FOR ANY LIABILITY WITH RESPECT TO THE GOODS, WHETHER ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE. IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, NOR SHALL SELLER BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE FOR ANY DEFECTIVE GOODS, WHETHER IN CONTRACT, IN TORT OR OTHERWISE.

9. **DEFAULT AND TERMINATION.** If Seller breaches its obligations under this Document, which breach is not cured within thirty days after notice to Seller of such breach, Buyer may terminate this contract upon notice to Seller. If Buyer fails to pay any invoice or to accept any properly tendered delivery of Goods or otherwise perform or observe any other obligation of Buyer, Seller may, without prejudice to any other remedies, defer further shipments of the Goods until the default is corrected or terminate this contract upon notice to Buyer. Seller shall be entitled to recover any costs, fees or expenses, including attorneys' fees and court costs, incurred by it in collecting any amount owed by Buyer. If the Goods are to be prepared for manufacture according to Buyer's request, Buyer shall defend, indemnify and hold Seller harmless from and Seller against any claims, liability, costs and expenses, including, without limitation, attorneys' fees and court costs, incurred in relation to any claim for patent or trademark infringement. Buyer may not cancel or rescind this contract without the agreement of Seller, and in that instance, Buyer shall pay the contract price for all finished Goods and shall reimburse Seller for all labor, raw material, cancellation costs of Seller's suppliers and other costs and expenses incurred or owed by Seller, as well as a reasonable charge for administrative and overhead costs, including profit.

10. **MISCELLANEOUS.** If any of the provisions of this Document are deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby. Buyer may assign no right or interest in the contract arising from this Document and no delegation of any obligation owed by Buyer may be made without the prior written permission of Seller. The rights and remedies of Seller in this Document will be cumulative and additional to any other or further rights and remedies provided in law or equity. This Document contains the entire agreement of the parties relating to the subject matter hereof and may not be waived, changed, modified, amended or discharged orally, but only by agreement in writing and signed by the party against whom enforcement of such waiver, change, modification, amendment or discharge is sought. This Document will be governed by and construed in accordance with the laws of Quebec, Canada, without reference to its conflicts of laws principles. This Document shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. These terms and conditions shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The parties consent to the jurisdiction and venue of the courts of proper subject matter jurisdiction located in the City of Montreal, Quebec, CANADA for all purposes related to this Document and agree that any action arising under this Document shall take place in a court in that jurisdiction.