

Elscott Terms & Conditions

1. General: The terms and conditions shall be deemed to be exclusive and complete and shall not in any way be modified or waived, except by agreement in writing by a duly authorized representative of Elscott Manufacturing, LLC ("Elscott"). All communications between Elscott and Seller shall be through a manager of Elscott. Elscott's engineering and technical personnel may from time to time render assistance or give technical advice to, or affect an exchange of information with personnel in a liaison effort concerning the contract products to be furnished hereunder. Such exchange of information or advice, however, shall not vest with the authority to change the contract products to be furnished hereunder or the provisions of the contract, nor shall such change in contract products or provisions of the contracts be binding upon Elscott unless incorporated as a change, pursuant to the "changes" clause (para. 6) of the Standard Terms and Conditions directed in writing and signed by Elscott's President or General Manager.

REFERENCE IN THIS ORDER TO ANY OFFER TO SELL, QUOTATION OR PROPOSAL SHALL IN NO WAY CONSTITUTE A MODIFICATION OF ANY OF THE TERMS AND CONDITIONS OF THIS ORDER TO ANY DEGREE WHATSOEVER.

2. Delivery and Performance: Delivery according to schedule is a material condition of this order. Time is of the essence and failure to meet the delivery schedule shall constitute a material breach of this agreement. Seller agrees to exert every reasonable effort, including the application of overtime and premium shipments at the expense of the Seller, to meet promised delivery dates. Seller agrees to notify Elscott immediately if it appears that the delivery schedule cannot be met. Furnishing this notice shall not constitute a waiver of any rights by Elscott.

3. Risk of Loss: Risk of loss or damage shall remain with the Seller until (a) delivery to a common carrier suitably packaged, insured, and freight prepaid, if FOB origin is listed on the face of the order or (b) delivery to the Elscott-designated location if FOB destination is listed, except that risk of loss or damage to supplies that do not conform with the requirements of this order shall remain with the Seller until cured.

4. Specifications: Seller shall comply with all specifications and/or drawings listed on the face of this order and with all applicable United States Government Specifications. If there are no specifications stated, then Seller shall provide Seller's standard commercial product.

5. Warranty: Seller warrants to Elscott and to purchasers of Elscott products that all goods and/or services provided by the Seller: (a) Shall be free from defects in material and workmanship; (b) Shall conform to all applicable specifications; (c) Shall be merchantable and suitable for the purpose intended whether express or implied; (d) Shall be free from all liens and encumbrances.

Seller will repair or replace, at Elscott's option, at Seller's expense, any goods or services found to be defective within one year from the date of acceptance or initial use, whichever is later.

6. Inspection: Seller agrees that its books, records and its plant, or such parts thereof as may be engaged in the performance of this order, shall, at all reasonable times, be subject to inspection and audit by an authorized Elscott representative. Inspection shall not signify acceptance of any work in progress or finished goods, nor relieve Seller of any warranty obligations hereunder.

7. Rejection: Notwithstanding prior inspection, payment for or use of the goods, Elscott shall have the right, exercisable within three (3) months of its receipt of the goods, to reject any goods which do not conform to the requirements of this order. This limitation shall not apply to rejections of goods for latent defects, fraud or such gross mistakes as amount to fraud. All such rejected goods shall be returned to Seller, transportation collect (declared at full value, unless advised otherwise) for credit or refund and shall not be replaced by Seller except upon written instruction from Elscott. Elscott may elect to repair nonconforming goods at Seller's expense. Elscott's rights under this paragraph shall be in addition to and shall not be deemed to diminish its rights under the "Warranty" paragraph.

8. Changes: Elscott may at any time make changes in specification or drawings as to any articles, materials, or services covered by this purchase order or by written amendment signed by Elscott's President. If such changes result in an increase or decrease in the amount due under this purchase order, an equitable adjustment shall be negotiated in the contract price or performance schedule or both. Any claim by Seller for adjustment hereunder shall be deemed waived unless asserted in writing to Elscott within thirty (30) days from the date the Seller received notification of the change. Nothing in this clause shall excuse Seller from proceeding with this order as changed.

9. Use of data: Seller shall not reproduce, use or disclose, without Elscott's written consent, any data, designs or other information developed or owned by Elscott except as necessary in the performance of the order for Elscott. (This clause does not apply to property owned by or developed for the government.)

Any technical information disclosed by Seller to Elscott in connection with the goods or services supplied pursuant to this order is disclosed on a non-confidential basis.

10. Patent or Copyright Protection: Seller shall indemnify and hold harmless Elscott, its successors, assigns, and customers from and against any claims, liability, loss and damage, including without limitation, costs, expenses, and attorneys fees arising out of or relating to any claim of patent, copyright, trademark, or other proprietary right infringement of or in any way related to the goods or parts thereof furnished hereunder or any litigation based thereon.

11. Advertising Announcements and News Releases: Seller shall not, without first obtaining written consent of Elscott, in any manner advertise, publish or issue any news releases or make any public announcements or denial or confirmation of same concerning the fact that Seller has furnished or contracted to furnish Elscott the goods or work herein mentioned.

12. Seller's Financial Status: Elscott shall have the right to immediately cancel this order or any part thereof without liability in the event of the happening of any of the following or any other comparable event: a) solvency of the Seller; b) filing of a voluntary petition in bankruptcy of the Seller; c) filing of any involuntary petition in bankruptcy against the Seller; or d) execution of an assignment for the benefit of creditors by Seller provided that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event.

13. Assignment and Set off: Performance of this order shall not be assigned by Seller without the prior written consent of Elscott. Elscott shall have the right to reduce or set off against amounts owing hereunder any indebtedness or other claim which Elscott may have against the Seller, or any of its affiliated companies, however and whenever arising.

14. Excusable Delays: Each party shall not be liable for delays of reasonable duration due to acts of God, of the public enemy, acts or demands of the government or any government agency, strikes, fires, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other party in writing of the cause of the delay within five (5) days after the beginning thereof. In the event of such delay of Seller, Elscott shall have the right, at its option and without liability to Seller, to cancel by notice in writing to Seller the portion or portions of this order so affected.

15. Relationship of the Parties: Seller and Elscott are independent contracting parties and nothing in this order shall make either party the agent for, or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or create any obligation on behalf of or in the name of the other.

16. Government Compliance: Seller agrees to comply with all federal, state, and local laws, executive orders, rules and regulations and ordinances which may be applicable to Seller's performance of its obligations under this order, including, but not limited to, Fair Labor Standards Act of 1938 as

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amended, and the Equal Employment Opportunity Acts and Occupational Safety and Health Act. Seller shall indemnify and hold Elscott harmless from any costs, fines or damages arising from Seller's failure to comply with this paragraph.

17. Export Licenses: Seller shall be responsible for obtaining all export licenses and permits from cognizant government agencies for shipment to the designated location on the purchase order.

18. Cancellation: Elscott reserves the right to cancel all or any part of this order, without liability to Seller, if Seller (a) repudiates or breaches any of the terms of this order, including Seller's warranties; (b) fails to perform services or deliver goods as specified by Elscott, or (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, and does not correct such failure of breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Elscott specifying such failure or breach.

19. Termination: In addition to any other rights of Elscott to cancel or terminate this order, Elscott may at its option immediately terminate all or any part of this order, at any time and for any reason, by giving written notice to Seller. Upon such termination, Elscott shall pay to Seller the following amounts without duplication: (a) the order price for all goods or services which have been completed in accordance with the order and not previously paid for; and (b) the actual costs of work-in-progress and raw materials incurred by Seller in furnishing the goods or services under this order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this order, less, however, the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Elscott's written consent and the cost of any damaged or destroyed goods or material, Elscott will make no payments for finished goods, work-in-progress, or raw materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Payments made under this paragraph shall not exceed the aggregate price payable by Elscott for finished goods which would be produced by Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this paragraph, Elscott shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for a loss of anticipated profit, unabsorbed overhead, interest on claim, product development and engineering costs, facility or equipment costs, rental costs, unamortized depreciation costs, and general and administrative burden charges. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Elscott with sufficient supporting data to permit Elscott's audit and shall thereafter promptly furnish such supplemental and supporting information as Elscott shall request. Elscott or its agents shall have the right to examine all books, records, facilities, work, material inventories, and other items related to any termination claim.

20. Stop Work Order: Elscott reserves the right to stop work under this order for a reasonable time without liability.

21. Cumulative Remedies: The rights and remedies herein reserved to Elscott shall be cumulative and additional to any other or further rights in law and equity.

22. Governing Law: This order is to be construed according to the laws of the State of Maine. Seller irrevocably consents to the bringing of any action arising in connection with this order or breach thereof in the Courts of the State of Maine or in the Federal Courts located therein regardless of whether, absent such consent, personal jurisdiction could otherwise be obtained.

23. Captions: Captions as used herein are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such caption may refer.

24. Liability Insurance: Seller represents that it carries adequate worker's compensation, public liability and property insurance with responsible insurers to cover any work performed by Seller on Elscott's or its customer's property. On request, Seller will furnish proof of insurance. Seller shall indemnify and hold Elscott harmless from and against any and all loss or injury of any kind or nature (including death) to all persons or property, or for claims therefore, including defense costs and attorneys fees, resulting from, pertaining to, or arising out of Seller's performance of this order regardless of cause or nature of such claims and irrespective of Elscott's negligence. This indemnity shall not, however, apply to losses or claims arising from Elscott's sole negligence.

Seller expressly waives any immunity defense under Workers Compensation laws and will indemnify and hold Elscott harmless from any claim of injury, illness, or death brought by its employees, agents, assigns or subcontractors against Elscott in accordance with the preceding paragraph.

25. Elscott's Property in Seller's Possession: Title to any property furnished by Elscott hereunder shall, at all times, remain in Elscott, but Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto, however caused. Without limiting the foregoing, Seller agrees to procure insurance satisfactory to Elscott, insuring to the full insurable value thereof all Elscott's property in Seller's possession against loss of or damage resulting from fire or theft (including extended coverage, malicious mischief and vandalism). Satisfactory evidence of procurement of such insurance shall be submitted to Elscott promptly. Seller further agrees to pay all taxes assessed against Elscott's property or the use thereof while in Seller's possession and to file all necessary declarations and reports in connection therewith. The Elscott material shall be separately stored, identified, and not co-mingled with other material at Seller's facility.

Elscott shall not be liable for any loss, damage, or expense resulting directly or indirectly from any delay in delivery or non-delivery of such property to be furnished by Elscott within thirty (30) days from receipt thereof of Seller.

26. Marketing and Title: If this order requires the purchase of supplies not of Seller's standard inventory, all materials obtained by Seller for use and performance of this order shall be marked and identified as material for the Elscott order, separately stored and not co-mingled with other material at the Seller's facility.

Title to such supplies shall pass to Elscott upon the earlier of the following: payment by Elscott, marking as Elscott materials, or start of fabrication or assembly.

27. No Implied Waiver: The failure of Elscott in any one or more instances to insist on performance of any of the provisions of this order shall in no way be construed to be a waiver of such provisions in the future.

28. Partial Invalidity: If in any instance, any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with these terms.

29. Entire Agreement: This order, together with attachments, exhibits or supplements specifically referenced herein constitutes the entire agreement and supersedes all prior and contemporaneous oral or written representations and agreements between Elscott and Seller.

30. Type of Agreement: This order constitutes a firm, fixed price agreement unless stated otherwise on the face of the order.

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- Requirements for design, test, inspection, verifications (including production process verifications), use of statistical techniques for product acceptance, and related instructions for acceptance by Elscott, and as applicable special requirements, critical items including key characteristics
- Requirements for test specimens (e.g., production method, number, storage conditions), inspection/verification, investigation or auditing including evaluation of test reports and confirmation of compliance.
- Requirements regarding the need for the supplier (external provider) to
- Notify Elscott of nonconforming product,
- Obtain Elscott's approval for nonconforming product disposition,

- Notify Elscott of changes in product and/or process, changes of suppliers, changes of
- manufacturing facility location and, where required, obtain Elscott's approval, and flow down to the supply chain the applicable requirements including customer requirements

- Purchasing reviews and approves all purchasing data for adequacy and completeness prior to release to suppliers.
- Ensure that externally provided processes remain within the control of the QMS
- Records retention requirements, with Right of access by Elscott, customer, and regulatory authorities to the applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records
- Including requirements for suppliers to make their employees aware of Product Safety and the importance of Ethical Behavior and their contribution to product or service conformity.