

ELIX Systems SA TERMS AND CONDITIONS OF SALE

1. GENERAL INFORMATION

- 1.1 For purposes of these conditions, the word "Seller" shall mean the legal entity **ELIX Systems SA**; the words "Conditions" or "GSC" shall mean these General Sales Conditions; the word "Force Majeure" shall mean any act of government, natural catastrophe, destruction by insurrection war or hostilities, riots, public disturbances, pandemic, strikes or any other event beyond the will of the Parties which delays, hinders, restricts or makes the execution of these Conditions impossible; the word "Product(s)" shall mean any device including packaging, described in the Order Acknowledgment; the word "Purchase Order" shall mean the purchase order sent by Customer to Seller describing the Products or Services purchased by Customer from Seller and delivered by Seller to Customer under these GSC; the word "Order Acknowledgment" shall mean the order acknowledgment sent by Seller to Customer after reception of the Purchase Order; the words "Party" and "Parties" shall mean Seller and Customer individually or collectively; the word "Services" shall mean the services (if any) described in the Order Acknowledgment; the word "Specifications" shall mean the Seller's plans, drawings, directives of design, data and other relative information given by Seller to Customer concerning the order of Products/Services; the word "Customer" shall mean the party which agrees to purchase the Products/Services as specified in Seller's Order Acknowledgment.
- 1.2 The Order Acknowledgment itself and these GSC are indivisible.
- 1.3 In the event Customer does not oppose to the Order Acknowledgment in writing within five (5) calendar days after the reception of the Order Acknowledgment or in the event Customer accepts the Products/Services delivered by Seller before reception of the Order Acknowledgment, all conditions of this GSC are accepted by Customer.
- 1.4 These Conditions apply to all Purchase Orders and Order Acknowledgments. Customer's general conditions shall not be applicable unless there is an express written agreement of Seller to the contrary.
- 1.5 To be valid against Seller, any amendments or supplements to these Conditions and/or the Order Acknowledgments must be made in writing, signed by both Parties.

2. PRICE, INVOICE AND PAYMENT

- 2.1 Invoices shall be issued in the currency cited in the Order Acknowledgment.
- 2.2 The applicable price is the one given in the Order Acknowledgment or the one resulting from the calculation of the price stipulated in the Order Acknowledgment. Unless otherwise agreed in writing, the price does not include any taxes, other possible government levies, transport costs and special packaging, which are to be paid by Customer. Current packaging will be charged at Seller's manufacturing costs.
- 2.3 Unless there is a stipulation to the contrary in the Order Acknowledgment, invoices shall be payable thirty (30) days from the date of issuance of the invoice.
- 2.4 If the Parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment, unless otherwise agreed, refers to the full price, and that the advance payment must be received by Seller's bank in immediately available funds at least thirty (30) days before the agreed date of delivery or the earliest date within the agreed delivery period. If advance payment has been agreed only for a part of the contract price, the payment conditions of the remaining amount will be determined according to the rules set forth in this article 2.
- 2.5 In case Customer fails to pay Seller in the stipulated period, Customer shall have to pay Seller interests of the lower between (i) one and a half percent (1,5%) per late month (pro rata temporis) and (ii) the maximum permitted by law, from the due date of each payment until the date of the full payment. This shall be without prejudice of other rights of Seller according to these Conditions and at law. Failure by Seller to charge or collect interest on payments past due shall not be construed as a waiver of its right to collect amounts due or of its legal rights and remedies.
- 2.6 Customer shall not set off a debt to the Seller against its claims against the Seller.

3. DELIVERY / EXECUTION

- 3.1 A term for delivery agreed upon is a target term. If Customer owes a payment in advance, has to give security or has to supply information and/or materials needed for the execution of the Purchase Order, the term is not effective until payment in advance has been received in full, security has been given or the needed information and/or materials have been supplied.
- 3.2 Agreed time of delivery may be adjusted by Seller if Customer fails to fulfil any points agreed. Any changes to the Order Acknowledgment requested by Customer may change the time of delivery.
- 3.3 Seller is entitled to suspend a delivery on account of unsettled financial obligations by Customer to Seller.
- 3.4 If the Parties have not agreed on a specific date for the delivery/execution, Seller shall place the Products at Customer's disposal within a reasonable period of time.
- 3.5 A Purchase Order cannot be terminated by Customer on account of deliveries not made on time. If Products are not delivered on the agreed time, Buyer is entitled to request that Seller provides a fixed delivery date.
- 3.6 Unless otherwise specified in the Order Acknowledgment, electronic parts will be compliant with IPC 610 class 1.
- 3.7 Early deliveries shall be authorized unless the contrary has been notified in advance in writing to Seller by Customer.
- 3.8 Unless otherwise specified in the Order Acknowledgment, the applicable Incoterm® for delivery shall be FCA (FCA) as per the Incoterms® 2020 at Seller's manufacturing plant.

4. PACKAGING

- 4.1 The Products shall be sealed, packaged, marked, and in general prepared for shipment according to commercial usage.
- 4.2 When the Products are ready for shipment, Seller shall send to Customer a commercial invoice for shipment and customs purposes and a packing list.

5. CANCELLATION

- 5.1 In case of cancellation not due to Seller's fault, the latter is entitled to claim full compensation taking into account the date of cancellation, the work done and the costs and expenses already incurred by Seller for the cancelled Order Acknowledgment, and the possibilities of selling the Product(s) to other customers. In such case, Customer shall also compensate Seller for all manufacturing and procurement costs incurred prior to said cancellation.

6. FORCE MAJEURE

- 6.1 Neither Party shall be liable for any failure to perform any of its obligations under these Conditions (other than performance of any obligation to make any payment) during any period in which such Party cannot perform due to a case of Force Majeure.
- 6.2 In case of Force Majeure, the Party affected shall advise the other Party without delay, and the following stipulations will be applied:
 - 6.2.1 The affected Party will be relieved of its obligations resulting from the relevant Order Acknowledgment for the duration of Force Majeure;
 - 6.2.2 If delivery or receipt is delayed by more than thirty (30) calendar days because of a case of Force Majeure, Seller, excluding all other claims, may, at its option cancel the relevant Purchase Order covering the quantities affected by this delay and/or extend the delivery dates so as to permit partial or complete delivery.

7. TRANSFER OF TITLE, RISKS AND INSURANCE

- 7.1 Seller reserves title to the Products until full payment of the invoice. Customer shall treat the Products with reserved title with due care, and in particular to adequately insure them at its own expense.
- 7.2 Risks shall be transferred to Customer in accordance with the applicable Incoterm® 2020 cited in article 3.7 above or in the Order Acknowledgment.

8. WARRANTY AND LIABILITY

- 8.1 Hardware Warranty: Seller warrants that for a period of twelve (12) months after delivery hardware will conform to the agreed specifications and will be free from defects in material, fabrication and workmanship.

- 8.2 Seller's warranty obligations set forth in this article 8 shall not apply where:
 (a) Product serial number has been defaced or removed and the Product cannot otherwise be identified ; or (b) Product has been damaged ; or (c) Product has been submitted to abnormal conditions (mechanical, electrical, Electrostatic Discharges or thermal) during storage installation or use ; or (d) Product is used in a non-standard environment (non-standard environment is an environment requiring a robustness not documented in the applicable specification such as without limitation, space, military and or nuclear environments) ; or (e) Product supplied at request of Customer which Seller has indicated may not conform (engineering products) to the specification or constitute experimental, developmental or non-qualified products ; or (f) the non-conformance of the Product results from excess usage of the maximum values (temperature limit, maximum voltage) defined by Seller, or from an incorrect choice of application by Customer, or from use other than in accordance with the relevant specification; or (g) the default is not attributable to the Seller ; or (h) the defect cannot be reproduced; or (i) the problems arising from a misuse of the Product or any Force Majeure Event.
- 8.3 Seller guarantees to Customer that upon complete payment it will transfer full and entire ownership of the Products to Customer.
- 8.4 Warranties and liabilities related to intellectual or industrial property rights are subject to articles 9 and 10 hereunder.
- 8.5 Seller shall have no obligation whatsoever to provide any warranty service to end-users.
- 8.6 THE ABOVE WARRANTIES AND REMEDIES ARE EXCLUSIVE AND SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE PRODUCTS/SERVICES, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.

9. LIMITATION OF LIABILITY

- 9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS/SERVICES OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 In no event shall Seller's liability arising out of these Conditions exceed an amount equal to the fifty per cent (50%) of the amount received by Seller from Customer under the Order Acknowledgement giving rise to the claim. In no event shall Seller be liable for the combination of the Products/Services with third party hardware, software or data in a manner that leads to the infringement of a third party's intellectual property rights.
- 9.3 Seller expressly disclaims any liability or damages in excess of the limits provided for above.

10. INTELLECTUAL OR INDUSTRIAL PROPERTY RIGHTS

- 10.1 Nothing in these Conditions is intended to give Customer or any third party any right of ownership with respect to the Intellectual Property Rights in the Products. The License granted herein do not include any licenses to third party Intellectual Property Rights that may be necessary in connection with the use of a user interface. In the case that the utilisation of the Products requires the acquisition of licenses from third parties, then Customer shall be responsible for acquiring such third-party licenses. The Customer shall indemnify, defend and hold the Seller harmless from any and all damages, liabilities, costs, losses and expenses incurred by the Seller, should the Customer does not acquire such third-party licenses.
- 10.2 The Seller shall not be obligated to defend, shall not be liable for costs and damages and shall have no intellectual property indemnification obligation for any infringement or claim which results from: (a) the use of other than unaltered version of Seller's Products, if the infringement is avoided by using the unaltered version ; or (b) Seller's compliance with designs or specifications of Customer ; or (c) a combination with, an addition to, or modification of the Products.
- 10.3 THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER HERETO FOR INFRINGEMENT OR THE LIKE PATENTS, TRADEMARKS AND COPYRIGHTS, AND OTHER PROPRIETARY PROPERTY RIGHTS, WHETHER DIRECT OR CONTRIBUTORY, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY IN REGARD THERETO.

11. CONFIDENTIALITY, DOCUMENTS AND COMMUNICATION

- 11.1 The Parties agree that all confidential information supplied by a Party to the other, pursuant to this Agreement and/or in relation to, shall be subject to the terms and conditions of the Non-Disclosure Agreement in force between the Parties. In case no Non-Disclosure Agreement is in force between the Parties, any information exchanged by the Parties will be deemed confidential information.
- 11.2 At Seller's request, Customer shall immediately return to Seller all confidential or commercially sensitive information which has been communicated to it by Seller.
- 11.3 Customer is not authorized to publicize its commercial relations with Seller without the latter's express, written authorization.
- 11.4 Any written or oral communication and any publication to third parties concerning the Order Acknowledgment or its contents shall be subject to Seller's prior written consent.

12. PROHIBITION TO ASSIGN

- 12.1 All Order Acknowledgments cannot be subcontracted, assigned or transferred to another person or entity without Seller's prior written agreement.

13. EXPORT

- 13.1 Buyer warrants that products, software, commodities, services and technical data provided by Seller under these Conditions, as well as the direct product thereof, shall not be, nor intended to be, shipped, directly or indirectly, to countries or entities prohibited by U.S., European, or other applicable law.

14. TRAVEL AND LIVING EXPENSES

- 14.1 If the Seller's employees or contractor need to travel to a location designated by the Buyer to fulfil the delivery of Products and Services, the related cost of travel and living shall be supported by the Buyer. Unless otherwise agreed, the cost will be invoiced by the Seller to the Buyer on the basis of a fix fee of 128 CHF/person/day for travel within the day, within a distance of 100km from Lausanne and on the basis of real cost in all other cases

15. MISCELLANEOUS

- 15.1 If one clause of these Conditions is found to be or subsequently becomes inoperative, the validity of these Conditions and of the Order Acknowledgment shall not be affected thereby.
- 15.2 The fact that one of the Parties does not exercise, or delays to exercise, one of its rights under the Order Acknowledgment or the GSC shall not be interpreted as a waiver of such right; likewise the sole or partial exercise of a right shall not exclude the exercise of any other rights. To be valid, any waiver must be in the form of a written document signed by the waiving Party.
- 15.3 Each Party shall be considered to be independent. These Conditions in no way create a joint company, a partnership or any other form of association by the Parties and never designate one Party the agent or legal representative of the other Party for any purpose whatsoever. Neither Party is authorized or empowered to assume or create an explicit or implied obligation or responsibility for the account and in the name of the other Party, nor to commit the other Party in any manner or in any area whatsoever.

16. APPLICABLE LAW AND JURISDICTION

- 16.1 These Conditions shall be interpreted, construed and enforced in accordance with the laws of SWITZERLAND without regard to its conflict of law provisions. The Parties specifically disclaim application of the United Nations Convention on Contracts for the International Sale of Goods.
- 16.2 Any dispute, controversy or claim arising out of or in relation to these Conditions, including the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of the arbitration shall be Lausanne, Switzerland. The arbitral proceedings shall be conducted in English or in French. The award shall be final and binding on the Parties and shall include the questions of legal fees, costs of arbitration and all matters related thereto.