

## ELTHERM CANADA INC. GENERAL TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale shall apply to any sale of goods and services by ELTHERM CANADA INC. ("Eltherm", "we", "us" or "our"). All transactions between buyer and Eltherm are subject to these terms and conditions, which shall take precedence over the terms and conditions contained in buyer's order or in any other form issued by buyer, whether or not such form has been acknowledged or accepted by Eltherm. Buyer shall be deemed to have full knowledge of these terms and conditions and they shall be binding upon buyer if either the goods referred to herein are delivered to and accepted by buyer, or if buyer does not within five (5) days from the date hereof deliver to Eltherm written objection to these terms and conditions or any part thereof. No waiver, alteration or modification of these terms and conditions shall be binding upon Eltherm unless made in writing and signed by a duly authorized representative of Eltherm.

### 1. Quotations and Order Confirmation

- (a) Eltherm quotations are submitted without commitment, unless otherwise stated in writing in the quotation. Our quotations shall be null and void unless accepted by buyer within thirty (30) from the date of quotation, unless otherwise stated in the quotation.
- (b) An acceptance and official confirmation of buyer's order (in the form of Eltherm's issued sales order) shall constitute the complete agreement, subject to the terms and conditions of sale set forth herein, and shall supercede all previous quotations, orders or agreements.
- (c) Prices are in Canadian Dollar currency and are exclusive of all duties, costs (including costs of packing and transportation) and taxes of any kind, unless otherwise stated or agreed upon, in writing by Eltherm. Buyer will pay all such duties, costs and taxes and will indemnify and hold Eltherm harmless for any liability that may arise in connection thereto.
- (e) Prices for undelivered goods may be increased without notice to buyer in the event of any increase in our cost, change in market conditions or any other causes beyond our reasonable control.
- (f) Documents forming part of our quotation such as illustrations, drawings, indications of weight and dimensions are approximate unless they are expressly defined as being binding upon us in the order confirmation.

### 2. Prices / Payment

- (a) Unless otherwise agreed in writing, our prices are understood to be on a net basis, ex works our warehouse (EXW - latest Incoterms® rules in effect at the time of delivery). Any and all additional charges, such as, but not limited to, freight charges, special packing requirements, insurance charges, fees for export, transit, import and other permits, shall be borne by Buyer.
- (b) Unless otherwise agreed in writing, our invoices are payable net cash within thirty (30) days of the date of invoice (after approved credit application by Eltherm).
- (c) Payment by bank transfer shall be deemed to have been made on the date upon which the amount paid is credited to our bank account.
- (d) Buyer shall pay all amounts when due, in full, without any deduction or withholding except as required by law, and shall not be entitled to assert any credit, setoff, deduction, or counterclaim against Eltherm in order to justify withholding payment of any such amount in whole or in part. Without limiting any other rights or remedies that may be available to us, we may set off any amount owing to us by buyer against any amount payable by us to buyer.
- (e) Overdue accounts are subject to interest charges at the rate of eighteen per cent (18%) per annum, but in no event shall such rate exceed the maximum rate permitted by law. Buyer is liable for all costs and expenses (including legal fees) that we may incur for collection of overdue accounts and damages suffered with respect thereto. In the event of legal proceedings, all court and other costs may be added to the principal owing, and interest may be compounded until date of judgment at the statutory rate.
- (f) If, in our sole discretion, we believe buyer's ability to meet its payment obligations may become impaired or threatened, or if buyer fails to comply with payment terms, we may require

advance payment, and/or may suspend delivery or cancel any existing order or remaining balance thereof, without prejudice to any of our other rights and recourses. In the event of the cancellation of an order, all outstanding debts of buyer will become due with immediate effect.

- (g) We may apply any payment we receive from buyer against any obligation owing to us by buyer, regardless of any statements appearing thereon or with respect thereto, which will not discharge buyer from any amounts buyer owes.

### 3. Title / Security Interest

- (a) If any part of the purchase price for the goods is to be paid at any future time or is to be paid in instalments, Eltherm shall retain ownership right and title in and over the goods and the buyer hereby grants Eltherm a security interest in the goods, until such time as full payment of the goods has been made by buyer and until buyer has performed all other obligations owing to Eltherm.
- (b) Buyer agrees to do all things and to execute and deliver any and all documents necessary, in Eltherm's sole discretion, for the creation, preservation, enforcement and protection of such security interest over the goods. Buyer hereby appoints the President of Eltherm as its attorney to execute any documents or other instruments necessary to perfect and enforce its security interest.
- (c) In the event of non-payment by buyer of any part of the purchase price or non-payment of any instalment due to Eltherm, Eltherm shall have all rights and remedies under the applicable personal property security legislation, including, without limitation, the right to enter upon the premises of buyer to repossess and remove the goods without notice, wherever they are situated and by whatever means Eltherm may deem appropriate.
- (d) In the event of retention of title or security interest, in and over the goods, and if such goods are assembled with or integrated into parts over which Eltherm has no right or title, Eltherm will acquire joint ownership over the new product in proportion to the value of the goods and its right to retention or rights as secured party will extend to such new product.
- (e) In the event of resale by buyer of the goods or of the new product into which the goods were assembled or integrated into, Eltherm shall retain and buyer hereby assigns and grants to Eltherm a continuing security interest in all debts, proceeds, accounts, and claims which may be owned by buyer or due or owing to buyer by any third party purchaser, and also all documents relating to the goods or their proceeds, up to the amount of buyer's outstanding payments, including interest and expenses. Buyer agrees to do all things and to execute all documents necessary to protect such security interest. Buyer hereby appoints the President of Eltherm as its attorney for the purpose of executing any documents or other instruments necessary to perfect and enforce its continuing security interest.
- (f) Buyer shall duly indicate such assignment in its records, which Eltherm may examine at any time, and buyer shall regularly provide Eltherm with a detailed list of such claims. Buyer shall inform its customers of such assignment. Eltherm reserves the right to inform them directly at any time in its sole discretion.

Buyer's Initials: \_\_\_\_\_

- (g) As long as buyer complies with payment terms, buyer is entitled to collect all amounts owing to it, and use such amounts to fulfill its payment obligations toward Eltherm. All moneys collected or received by buyer in respect of such claims shall be received as trustee for Eltherm, and shall be forthwith paid over to Eltherm in fulfillment of its payment obligations towards Eltherm. Buyer is entitled to collect such amounts until notice to the contrary, subsequent to which Eltherm may collect all amounts due directly. Any expenses, including legal fees, incurred by Eltherm in collecting same may be added to the indebtedness of the buyer.
- (h) Buyer shall inform Eltherm without delay of any seizure, notice, proceeding, action, claim or other occurrence that may adversely affect Eltherm's right, title or ability to enforce its rights or its security interest hereunder.

#### **4. Delivery and Title**

- (a) Delivery will be deemed complete and all risk of loss, destruction and damage to goods will pass to buyer upon delivery of goods to buyer's carrier at Eltherm's warehouse. Buyer is solely and entirely responsible for all transportation and insurance costs and risks associated with the transport of the goods, including loading of goods onto carrier. In the event of any loss, destruction or damage, buyer's claim shall be against carrier only and any such loss, destruction or damage shall not relieve buyer of its obligations under this agreement. Buyer shall reimburse Eltherm for any transportation costs prepaid by Eltherm at buyer's request.
- (b) Eltherm shall package goods according to normal industry standards and does not guarantee that any special care or materials will be used. Such special care or materials may be used if so requested by buyer, which request Eltherm may accept or refuse at its sole discretion, and in which case any additional costs arising therefrom shall be borne by buyer.
- (c) In no event shall Eltherm be deemed to assume any liability in connection with the shipment of goods. In no case shall carrier be deemed as Eltherm's agent, notwithstanding Eltherm's prepayment of transportation costs, and buyer undertakes to fulfill all obligations to carrier, financial or otherwise, in relation to the acceptance and transport of goods. Buyer shall indemnify, defend and hold Eltherm harmless in the event any claim, action, proceeding, charge, damage or expense is brought against Eltherm by any carrier.
- (d) Buyer shall, at its own cost and expense, keep all goods fully insured against loss or damage until all sums owing to Eltherm have been fully paid, with each insurance policy issued naming Eltherm as an insured with loss payable to Eltherm. Buyer will assign and deliver such insurance policy to Eltherm as security.
- (e) Buyer shall take delivery of goods as stated in the applicable purchase order and order acknowledgement. It is acknowledged and understood that if the purchase order and/or the order acknowledgement contain an estimated delivery date, it will be necessary for Buyer and Eltherm to confer and agree on a specific delivery date. Eltherm will be deemed to have met its delivery responsibilities if, on or before the delivery date, Eltherm has sent a notice to Buyer informing it that the goods are ready for shipment.
- (f) Buyer acknowledges that time of delivery is not of the essence, that any delivery dates indicated by Eltherm are estimates only, and that Eltherm is not liable for delays in delivery or for failure to perform due to causes beyond Eltherm's reasonable control. In the event of such delay, Eltherm shall use reasonable efforts to extend the date of delivery for a period equal to the time lost. If delay is due to force majeure, Eltherm may, at its option, extend delivery time or cancel the order in whole or in part. Delay in delivery of one order shall not entitle buyer to cancel another order. In no event shall Eltherm be liable for any incidental, special or consequential damages or any loss of

profit resulting from failure or delay in delivery, even if it has been advised as to the possibility of same.

- (g) In the event that delivery is delayed due to fault of buyer, for any reason, including, without limitation, (i) not providing Eltherm with necessary information or documentation, (ii) not fulfilling payment obligations, or (iii) not accepting Eltherm's delivery, Eltherm may, in its sole discretion, extend the date of delivery or cancel the order, in which case Buyer will not be released of its obligations and will remain liable for all costs incurred due to such delay, including but not limited to storage costs.
- (h) Eltherm reserves the right to make partial shipments and to submit invoices for partial shipments.

#### **5. Inspection and Acceptance**

- (a) Buyer shall perform whatever inspection or tests buyer deems necessary as promptly as possible, but no later than five (5) days following delivery. If buyer has not provided Eltherm with written notice of any defects in the goods delivered with that time period, buyer will be deemed to have irrevocably accepted the goods in their condition received.
- (b) The foregoing shall also apply to all data, information and documentation Eltherm may send to buyer either with the goods, or from time to time, such as, without limitation, any plans, certificates, part lists and bills of quantity.
- (c) Any discrepancy in quantity of goods ordered and delivered must be reported to Eltherm within five (5) days of receipt of the goods.

#### **6. Changes and Cancellation**

Orders accepted by Eltherm are not subject to changes or cancellation by buyer except with Eltherm's prior written consent. In such cases where Eltherm authorizes changes or cancellation, Eltherm may assess and buyer agrees that Eltherm may charge buyer a change order /cancellation fee in the amount of five per cent (5%) of the total purchase price, together with Eltherm's reasonable costs based upon expenses already incurred and commitments made by Eltherm, including, without limitation, material or goods ordered, usual overhead and reasonable profit, and cancellation charges from Eltherm's suppliers.

#### **7. Returned Goods**

No goods may be returned to Eltherm without its prior written permission. Eltherm reserves the right to decline all returns or to accept them subject to a handling/restocking charge of up to ninety per cent (90%) of the total purchase price. Even after Eltherm has authorized the return of goods for credit, Eltherm reserves the right to adjust the amount of any credit given to buyer on return of the goods based on the condition of the goods on arrival in Eltherm's warehouse. Credit for returned goods will be issued to buyer only where such goods are returned by Buyer and not by any subsequent owner of the goods. Goods will be considered for return only if they are in their original condition and packaging.

#### **8. Limited Warranty and Limitation of Liability**

- (a) The warranty period applicable to goods manufactured by Eltherm ("**Warranty Period**") shall end 12 months from date of installation or 18 months from date of shipment, whichever occurs first.
- (b) During the Warranty Period, Eltherm warrants that goods subjected to normal use and service will be free from defects in materials and workmanship and will substantially conform to any quality or performance specifications that have been acknowledged and agreed to in writing by Eltherm.
- (c) In the event of any breach of the warranty set out above, Eltherm shall, at its sole option and subject to the terms of this

warranty, either repair or replace the defective goods. In addition, instead of repairing or replacing the goods, Eltherm may, at its option, take back the defective goods and refund in full settlement the purchase price paid by buyer for the goods.

- (d) Eltherm's obligation under this warranty does not include the cost of furnishing any labour in connection with the removal of defective goods or the installation of repaired or replaced goods or parts thereof; nor does it include the responsibility for or cost of transportation.
- (e) The warranty set out above does not cover any defect, damage or condition resulting from, caused by, relating to or arising out of, directly or indirectly:
  - (i) failure to assemble, install or use the goods other than in strict conformity with instructions provided by Eltherm;
  - (ii) dismantling, re-assembly, modification, alteration, repair or testing of the goods by anyone other than Eltherm or its authorized service providers;
  - (iii) the use of parts, components or accessories that have not been provided by Eltherm;
  - (iv) improper maintenance of or failure to maintain the goods in accordance with Eltherm's instructions;
  - (v) defect, breakdown or malfunction of other devices, parts, components, materials or services used in connection with the goods that are that are manufactured by anyone other than Eltherm;
  - (vi) damage or destruction of the goods by external influences, including, without limitation, accident, vandalism, fire, flooding, explosions, power outages, electromagnetic disturbances, lightning, extreme weather conditions, and force of elements;
  - (vii) incorrect storage or inappropriate transport of the goods by anyone other than Eltherm or its authorized sellers before installation;
  - (viii) normal wear and tear.
- (f) Eltherm shall not be liable under this warranty for statements, claims, warranties or representations made relating to the goods by anyone other than Eltherm as set out in its written product descriptions and specifications.
- (g) Eltherm makes no warranty as to and shall not be liable for the truth or accuracy of product descriptions or specifications issued by suppliers of materials, parts or components used in the manufacture of the goods.
- (h) Authorized repairs to goods during the Warranty Period will not interrupt or prolong the Warranty Period.
- (i) Eltherm's obligation under this warranty is limited to the repair or replacement of the defective goods, at its option, f.o.b. point of shipment, provided that prompt notice of any defect is given by buyer within the Warranty Period and that upon buyer's return of the defective part to Eltherm or, if designated by Eltherm, to its authorized representative, properly packed and with transportation charges prepaid by buyer, an inspection thereof reveals to Eltherm's satisfaction that buyer's claim is valid under the terms of this warranty. Buyer shall assume all responsibility and expense for dismantling, removal, re-installation and freight in connection with the foregoing.
- (j) To the extent permitted by applicable law, this warranty is expressly intended to exclude all other express or implied warranties, including without limitation any warranty of merchantability or fitness for a particular purpose. THE PROVISIONS OF THIS WARRANTY CONSTITUTE BUYER'S SOLE REMEDY WITH RESPECT TO DEFECTIVE GOODS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS WARRANTY, ELTHERM MAKES NO REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, WHETHER BY STATUTE, USAGE, CUSTOM OF TRADE OR OTHERWISE WITH RESPECT TO ANY GOODS, AND DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND CONDITIONS RELATING THERETO, INCLUDING BUT LIMITED TO ANY

WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- (k) ELTHERM AND ITS AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES AND AUTHORIZED REPRESENTATIVES SHALL NOT BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST ANY AND ALL OF THEM, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES WHATSOEVER. ELTHERM AND ITS AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES AND AUTHORIZED REPRESENTATIVES WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST ANY AND ALL OF THEM, FOR ANY LOSS, DAMAGE OR INJURY TO PERSON, INCLUDING DEATH, OR PROPERTY. IN NO EVENT WILL ELTHERM HAVE ANY LIABILITY TO ANY PERSON RELATING TO THE GOODS THAT EXCEEDS THE PURCHASE PRICE OF THE SPECIFIC GOODS AS TO WHICH A CLAIM IS MADE.

#### 9. Compliance

- (a) Buyer will comply with all applicable and current import and export rules and regulations of the countries from which the goods originate, transit and arrive and shall take all steps to keep itself advised of any changes to all such rules and regulations. Eltherm shall not be responsible to notify buyer of any changes to any such rules and regulations which may affect the transport of goods. Buyer shall be responsible to procure and furnish any and all documentation, permits, approvals and/or licenses required for the international transit of the goods.
- (b) Eltherm does not guarantee compliance with any federal, provincial or municipal fire, building, health, or other safety codes. Buyer shall satisfy itself that the goods comply with any regulations as to safety, packaging, marking, etc.

#### 10. Confidentiality

We reserve proprietary rights and intellectual property rights with respect to illustrations, drawings, calculations and other documents prepared by or for us which are declared to be "confidential". Buyer shall keep confidential any information and document that Eltherm has indicated to be of a confidential nature and will not directly or indirectly disclose such to any third party or use it for its own benefit and shall not cause nor permit disclosure thereof in any form without Eltherm's prior written consent. Buyer agrees to use reasonable care and its best efforts to protect such confidential information.

#### 11. Force Majeure

Eltherm shall not be responsible or liable for any delay or failure to perform its obligations arising from causes beyond Eltherm's reasonable control, including, without limitation, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, lock-outs, strikes or labour disputes, or the failure of suppliers to meet their delivery promises. The acceptance of delivery of the goods by buyer shall constitute a waiver of all claims for loss or damage due to any delay whatsoever.

#### 12. Non-Waiver

No failure on Eltherm's part to strictly enforce any of these terms and conditions or any of its rights shall be construed as a waiver of such term, condition or right and Eltherm's acceptance of an order shall not be deemed an acceptance of any terms and conditions that may be contained therein.

### 13. Severability

In the event that any provision of these terms and conditions or any part thereof should be held to be invalid, illegal or unenforceable, the remainder of these terms and conditions shall remain valid and enforceable.

### 14. Applicable law and Jurisdiction

These terms and conditions are governed by the laws of the Province of Ontario and the federal laws applicable therein, save and except to the extent that local provincial laws governing security interests and rights of repossession may apply to goods delivered outside of Ontario. Any dispute with respect thereto shall be submitted to the courts in the judicial district of Toronto, Province of Ontario, and the parties submit to the jurisdiction of the courts in that judicial district as the exclusive venue for the adjudication of any and all disputes hereunder and waive any claim of *forum non conveniens*. If any dispute falls under the jurisdiction of the Federal Court of Canada, then the parties agree to submit the dispute to the exclusive jurisdiction of the Federal Court sitting in the judicial district of Toronto, Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

### 15. Notices

All notices hereunder must be given to Eltherm in writing at its principal place of business for receipt within the time specified herein.

### 16. Language

Buyer hereby agrees that all terms, forms, contract and other kinds of agreements and documents exchanged or entered into between the buyer and Eltherm shall be in the English language only. *Les parties aux présentes conviennent expressément que cette convention ainsi que tous les avis et documents s'y rattachant soient rédigés en anglais.*