

ELEMENT DESIGNS, INC.  
TERMS AND CONDITIONS OF SALE

1. **Acceptance.** Except as otherwise provided on an agreement signed by Buyer and Element Designs, Inc. ("ELEMENT DESIGNS"), this sale by ELEMENT DESIGNS is governed by these terms and conditions of sale only. All purchase orders Buyer submits to ELEMENT DESIGNS to purchase products ("Products") are subject to ELEMENT DESIGNS' acceptance in Charlotte, NC. No purchase order will be of any effect or bind ELEMENT DESIGNS unless and until ELEMENT DESIGNS accepts it in writing. All terms to the contrary and all additional terms and conditions of purchase or sale stated in Buyer's purchase order or any other commercial documents prepared by Buyer have been and are hereby rejected.

2. **Payment.** Prices do not include sales, use, excise, privilege, or any similar tax levied by any government body, and any such taxes shall be paid by Buyer. Invoices not paid within thirty (30) days after their due date will accrue interest at the rate of one-and-one half percent (1½%) per month until paid in full. Buyer shall pay all costs of collection, including reasonable attorney's fees, of any overdue amount owed. Buyer may not hold back, delay, or set-off any amounts owed to ELEMENT DESIGNS in satisfaction of any claims asserted by Buyer against ELEMENT DESIGNS.

3. **Cancellation.** Orders accepted by ELEMENT DESIGNS are not cancelable without the written consent of ELEMENT DESIGNS.

4. **Delivery.** All prices are net of any delivery charges, all of which Buyer shall pay. In the event that ELEMENT DESIGNS pays any such charge, Buyer shall reimburse ELEMENT DESIGNS pursuant to Section 2. Delivery schedules represent estimates only and are subject to timely receipt of all necessary instructions, licenses, letters of credit, deposits, etc. Partial deliveries are permissible. ELEMENT DESIGNS will not be liable for any delay, or for any damages suffered by reason of delay. Delivery is subject to Buyer maintaining credit satisfactory to ELEMENT DESIGNS. ELEMENT DESIGNS may suspend performance or delivery at any time pending receipt of assurances, adequate to ELEMENT DESIGNS in its discretion of Buyer's ability to pay, including full or partial prepayment. Failure to provide such assurances shall entitle ELEMENT DESIGNS to cancel this contract without further liability or obligation to Buyer. Unless otherwise agreed, all deliveries are F.O.B. ELEMENT DESIGNS Warehouse (UCC Terms) and title and all risk of loss will pass to Buyer, upon the earliest to occur of the following: (a) Buyer takes possession of Products; (b) Products leave ELEMENT DESIGNS' facility; or (c) Products are placed in the possession of a common, contract or other carrier; after which ELEMENT DESIGNS will not be responsible for any damage and Buyer's sole recourse for damage is against the carrier.

5. **Claims.** Within five (5) business days after Buyer receives the Products, Buyer must give written notice to ELEMENT DESIGNS of any claim by it based upon the quantity, condition, quality, or grade of the Products sold or of any claimed nonconformity with Buyer's specifications, which notice must indicate the basis of Buyer's claim in detail, including item number, quantity and non-conformity. Buyer must deliver such written notice by certified mail to ELEMENT DESIGNS at 235 Crompton Street, Charlotte NC 28273. It shall be in the sole discretion of ELEMENT DESIGNS to determine whether Products are non-conforming and acceptable to return. The failure of Buyer to comply with this paragraph shall constitute irrevocable acceptance by Buyer of the Products delivered and shall bind Buyer to pay ELEMENT DESIGNS the full price of the Products.

6. **Infringement.** Buyer agrees to indemnify ELEMENT DESIGNS from and against any and all claims, demands, losses, suits or causes of action of any kind whatsoever, and agrees to pay any costs, damages and other amounts, including reasonable attorneys' fees, incurred by and/or awarded against ELEMENT DESIGNS resulting therefrom, arising out of or relating to: (i) ELEMENT DESIGNS' manufacture of the Products in accordance with Buyer's specifications; (ii) ELEMENT DESIGNS' reproduction and/or use of the trademarks, copyrights, trade secrets, know-how or other intellectual property rights supplied or designated by Buyer; or (iii) ELEMENT DESIGNS' manufacture, labeling, packaging, and provision of the Products or Buyer's goods as per the instructions of Buyer.

7. **Limited Warranty.** ELEMENT DESIGNS warrants that the Products sold to Buyer will be free from defects in materials and workmanship for one year after the date of delivery to Buyer, normal wear and tear excepted. In satisfaction of this warranty, for a period of one year following the purchase, ELEMENT DESIGNS will repair or in its sole discretion replace any Product or part thereof found to be defective during such period. If in ELEMENT DESIGNS' sole judgment the Product cannot be repaired or replaced, the Product shall be returned to ELEMENT DESIGNS and ELEMENT DESIGNS shall refund the purchase price (exclusive of installation and financing charges).

Dealers and salesman are not authorized to offer warranties greater than or in addition to those described above. Descriptions, representations, and other information in advertisements or other promotional materials or statements or representations made by sales agents or representatives shall not be binding upon ELEMENT DESIGNS and shall not be part of this limited warranty unless expressly identified in writing as Product Specifications. This limited warranty does not cover normal maintenance or items consumed during normal operation, normal wear and tear, use under circumstances exceeding specifications, abuse, unauthorized repair or alteration, moving of the Product, lack of proper maintenance, or damage caused by natural causes such as fire, storm, or flood.

This limited warranty is Buyer's **EXCLUSIVE REMEDY**. It shall not be deemed to have failed of its essential purpose so long as ELEMENT DESIGNS is willing and able to repair, replace, or accept return and refund of defective Products in the manner specified. This limited warranty terminates if Buyer defaults on making payments for the Product covered.

**THE FOREGOING WARRANTY IS THE ONLY WARRANTY ELEMENT DESIGNS MAKES AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ELEMENT DESIGNS EXCLUDES AND DOES NOT MAKE ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTY WHATSOEVER, WHETHER EXPRESS OR IMPLIED. NO WARRANTIES SHALL ARISE FROM A COURSE OF DEALING OR USAGE OF THE TRADE.**

This provision does not affect any warranties covering the Products that the manufacturer may provide.

8. **Limitation of Liability.** Any action by Buyer under or relating to this Agreement or the Products sold must be commenced within one (1) year after such cause of action has accrued. **IN NO EVENT SHALL ELEMENT DESIGNS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AS A RESULT OF THE SALE OF THE PRODUCT OR OTHERWISE. ELEMENT DESIGNS' LIABILITY SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY THE BUYER FOR THE PRODUCT(S) AT ISSUE.**

9. **Choice of Law.** This Agreement and any dispute or claim relating to it shall in all respects be governed by and construed according to the law of the State of North Carolina.

10. **Choice of Forum, Venue, and Consent to Jurisdiction.** Buyer and the Company agree that the North Carolina General Courts of Justice in Mecklenburg County, North Carolina shall constitute the exclusive forums for the adjudication of any and all disputes or controversies arising out of or relating to this Agreement or the Products sold. Buyer and the Company consent to the exercise of jurisdiction over them by such courts with respect to any such dispute or controversy, and the Buyer and ELEMENT DESIGNS waive any objection to the assertion or exercise by such court of such jurisdiction.

11. **Miscellaneous.** Any failure by ELEMENT DESIGNS to exercise any of its rights, including under these Terms and Conditions, shall not be construed as a waiver of such rights. Buyer will not, and will not allow any third party to modify, copy, reverse engineer or disassemble Products. ELEMENT DESIGNS reserves the right to correct mathematical and clerical errors in any document.

12. **Entire Agreement.** Buyer and ELEMENT DESIGNS acknowledge that these Terms and Conditions of Sale, together with the ELEMENT DESIGNS invoice, constitute the entire agreement between the Buyer and ELEMENT DESIGNS with regard to the sale or transfer of the Products sold and supersede all prior oral or written statements of any kind made by the parties or their representatives. These Terms and Conditions of Sale may not be amended, modified, or supplemented except by written agreement executed by the Buyer and ELEMENT DESIGNS. The provisions of this agreement are hereby deemed by the parties to be severable.