

- 1 General**
- (a) "The Company" shall mean ELE International, a division of Hach Lange Limited.
- (b) "The goods" shall mean the equipment, plant or services which are the subject of this Contract.
- (c) "The Customer" shall mean the person, firm or Company who contracts to purchase in full or in part the goods from the Company.
- (d) Any contract entered into by the Company for the supply of goods is subject to these conditions. Any writing on or attached to any purchase order form, document or correspondence shall not be included or implied unless previously agreed upon in writing and signed by an authorised officer of the Company.
- (e) No order for supply arising from a quotation or otherwise shall be deemed to be accepted or constitute a legally enforceable contract with the Company until accepted in writing by the Company or until delivery of the goods, whichever shall be the earlier.
- (f) No responsibility is accepted by the Company for any inaccuracy or error in orders given by telephone.
- 2 Descriptions and Specifications**
- The descriptions, specifications and illustrations contained in catalogues, price lists and other leaflets or descriptive matter produced by the Company shall not form part of the contract and no report, representation or statement made by any servant or agent of the Company shall be binding on the Company. Names, addresses and trademarks on illustrations indicate ownership of the artwork and must not be taken as necessarily indicating the manufacturers. Any description or sample given of the goods is by way of identification only and does not constitute a sale by description or sample.
- 3 Time**
- Any date or period quoted by the Company for despatch is given in good faith by way of estimate only. While the Company will endeavour to deliver within the period stated, such date or period is not to be of the essence of the contract and the Customer shall be bound to accept the goods when they become available. The Company shall not be liable for any loss or damage or delays in transit or consequential losses or losses including loss of profit resulting in any way in respect of late delivery howsoever caused even in such cases as the Company has expressly agreed in writing a delivery date, nor shall such failure to deliver on the date or within the period named by the Company be deemed to be a breach of contract.
- 4 Price**
- (a) All prices and terms quoted by the Company or shown in any of the Company's price lists, catalogues, etc. may be altered without notice.
- (b) Prices of goods, both quoted and printed, are ex-warehouse and exclusive of VAT, packing, freight, postage, insurance, port rates, off loading and installation and other costs unless expressly specified to the contrary.
- (c) The Company reserves the right at any time prior to delivery of the goods to adjust the price to take account of any increase in the cost of raw materials, labour or services or any currency fluctuations, increases of taxes or duties or any other matters affecting the cost to the Company in complying with the contract.
- (d) The Company reserves the right to impose a handling charge of not less than 15% on returned goods save in circumstances where the goods are returned by reason of defects or shortages which it is the Company's duty under the terms of the Agreement to rectify.
- (e) The Company reserves the right to impose a minimum order charge.
- (f) Installation and commissioning will be quoted only against the specific request of the Customer. In all cases containers, bottles, packages and packing materials are chargeable and not returnable.
- (g) The Company reserves the right to amend any accidental errors and omissions in quotations and invoices.
- 5 Payment**
- (a) Time for payment shall be of the essence.
- (b) The Customer shall have no right of set off, Statutory or otherwise.
- (c) The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.
- (d) All accounts are payable in full on receipt of the goods unless expressly agreed in writing by the Company.
- (e) For all credit accounts approved by the Company in writing for:
- (i) Customers in the UK invoices are to be paid in full by the last day of the month following date of invoice.
- (ii) For all customers outside the UK payment must be made by confirmed irrevocable letter of credit, payable at sight unless other terms have been agreed in writing by the Company.
- (f) Where the goods are delivered in instalments or in the course of two or more separate deliveries any failure to make such payments due on or before the due date will entitle the Company at its option to treat the contract of sale as voided by the Customer and in such event the Company reserves all rights thereon which may be accrued to the Company prior to such termination.
- (g) In the event of non-payment, late payment or other default by the Customer the Company shall be entitled to recover all legal costs thereby incurred together also with interest on the monies outstanding, calculated at 2% per calendar month or part month compounded monthly.
- (h) Payment via major credit and debit cards: by means of a secure payment system (the SSL protocol): for security reasons, credit and debit cards will be charged on the day of order placement.
- 6 Risk and the Passing of Property**
- (a) Risk in the goods shall pass to the Customer when the goods are delivered to or collected by the Customer or its agents, in accordance with Incoterms 2010. Where the terms of sale are Ex Works, risk in the goods shall pass to the customer when the goods leave the Company's premises.
- (b) Title in the goods remains vested in the Company and shall only pass from the Company to the Customer upon full payment being made by the Customer of all sums (due on whatsoever account or grounds) to the Company, and after risk has passed. In the event of the goods being sold by the Customer in such manner as to pass to a third party a valid title to the goods, whilst any such sums are due as aforesaid, the Company's right under this condition shall attach to the proceeds of such sale or to the claim for such proceeds and the Customer shall place such proceeds in a separate account. Nothing herein shall constitute that the Customer is the Agent of the Company for the purposes of any subsale.
- (c) The customer agrees that whilst any such sums are due as aforesaid the Company may at any time enter upon the Customer's premises and remove the Goods therefrom and that prior to such payment the Customer shall keep such Goods separate and identifiable for this purpose.
- 7 Inspection**
- (a) The Customer is under a duty to inspect the goods on delivery or on collection as the case may be.
- (b) Claims for damage in transit or shortage in delivery of the goods will only be considered if the carriers and the Company receive written notification of such damage within three working days of delivery or in the event of loss of goods in transit within fourteen working days of the date of consignment. When goods are accepted from carriers without being checked the delivery book must be signed "Not Examined".
- If access is not available to the location stated in the contract the Company or their carriers reserve the right to deliver to the nearest convenient location and to notify the Customer of their action.
- (c) In all cases where defects or shortages are complained of, the Company shall be under no liability in respect thereof unless an opportunity to inspect the goods is afforded to the Company before any use is made thereof or any alteration or modification is made thereto by the Customer.
- 8 Warranty**
- (a) The Company warrants that it has title to and the unencumbered right to sell the goods. Such warranty specifically includes the Company's ownership of the necessary patent rights and copyright sufficient to enable the Customer to use the Goods for the purpose stated. However nothing in this Contract or otherwise shall be deemed to grant to the Customer the right to manufacture or in any way reproduce the goods or reproduce or use any intellectual property rights of the Company or its agents.
- (b) No representation or warranty is given as to the suitability of the goods for any particular purpose and the Customer shall satisfy himself in this respect and shall be totally responsible therefor.
- (c) Unless otherwise notified by the Company all goods supplied shall have a twelve month warranty commencing from the date of invoice. In circumstances where the Company notifies the Customer of an alternative warranty period, such alternative shall prevail over any other warranty period.
- (d) In the case of any goods not manufactured by the Company but supplied by them or incorporated within the Company's goods the Company is unable to provide any warranty but will where possible assign to or pass on to the Customer the benefit of any such warranty that the Company shall itself have received from its own supplier.
- (e) **All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded.**
- (f) The sole remedy for Products not meeting this Limited Warranty is replacement, credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as ELE International is willing to provide such replacement, credit or refund.
- 9 Insurance**
- Where goods are insured by the Company at its discretion or at the request of the Customer charges will be made on the invoice. The Company's liability under the insurance shall be limited to the amount received by them or the value of the goods, whichever is the less, and the Company shall be under no liability to take proceedings for the recovery of loss or damage but where goods are insured under the Company's Open Cover Cargo Policy the rights in such policy shall be assigned where possible to the consignee/Customer and any claims shall be administered by them in accordance with ICC (A) 1.1.82.
- 10 Packing**
- Unless otherwise expressly stated in writing the contract packing is not included in the contract price and will be the subject of an additional charge by the Company. The Company does not give warranty as to the fitness of any packing for storage purposes or any other purpose other than the transport of the goods to the named contract destination.
- 11 Liability**
- (a) Nothing herein shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting wholly from the negligence of the Company.
- (b) The Company shall not be liable for any consequential or indirect loss suffered by the Customer whether this loss arises from a breach of duty in contract or tort or in any other way, including loss arising from the Company's negligence. Non-exhaustive illustrations of consequential or indirect loss would be:
- (i) Loss of profits.
- (ii) Loss of contracts.
- (iii) Damage to property of the Customer or anybody else.
- (iv) Personal injury to the Customer or anybody else (except so far as such injury is wholly attributable to the Company's negligence).
- (c) The Customer hereby agrees to indemnify the Company against all claims made against the Company by any of the Customer's employees, Customers or any other person for which liability would have been excluded by this clause if the claim had been made against the Company by the Customer.
- (d) The Company shall not be liable in any way for any damages direct or consequential as a result of use of the equipment for any purpose other than that agreed nor for any use not stated and agreed in the Company's specifications nor for any fault or defect arising from the Customer's failure to disclose relevant and pertinent information to the Company. Where the purpose of the goods is misrepresented or omitted the Company shall be under no obligation in any manner and responsibility and liability shall pass to the Customer.
- (e) The Company shall not be liable in any way for any damage direct or consequential arising as a result of the failure by the Customer to comply with the terms of the operating manual supplied with the goods or by reason of a failure by the Customer to comply with the specified requirements for maintenance and calibration of the goods.
- (f) The Customer acknowledges that the proper use of the goods can only be made by appropriately trained operatives. Training in the use of the equipment provided by ELE is available on a chargeable basis. Accordingly, the Company shall not be liable in any way for any damage direct or consequential, arising as a result of the use of the goods by inadequately experienced or inadequately trained operatives.
- (g) **The total liability of the Company Indemnified Parties arising out of the performance or nonperformance hereunder or Company's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to ELE International for Products delivered hereunder.**
- 12 Patent Protection**
- Subject to all limitations of liability provided herein, Company will, with respect to any Products of Company's design or manufacture, indemnify Customer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any European patent (or U.S. patent for Products that ELE International sells to Buyer for end use in the U.S.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Customer hereunder and from reasonable expenses incurred by Customer in defense of such suit if Company does not undertake the defense thereof, provided that Customer promptly notifies Company of such suit and offers Company either (i) full and exclusive control of the defense of such suit when Products of Company only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Company are also involved. Company's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Company's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Company will, at its own expense and at its option, either procure for Customer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Company for patent infringement by the Products. Further, to the same extent as set forth in Company's above obligation to Customer, Customer agrees to defend, indemnify and hold harmless Company for patent infringement related to (x) any goods manufactured to the Customer's design, (y) services provided in accordance with the Customer's instructions, or (z) Company's Products when used in combination with any other devices, parts or software not provided by Company hereunder
- 13 Repairs**
- The Company are not responsible for damage to goods sent to them for repair or examination nor for incidental damage to glass, apparatus and delicate instruments in the course of repair. Time involved in the preliminary examination of an article may be charged in the event of no repair being ordered. Goods returned for repair should be sent carriage paid and be clearly labelled with the senders name and address. At or before the goods are sent advice shall be sent by fax or telex to ELE Shipping Department clearly indicating method of despatch, description of goods and value for customs. At the same time a letter should be sent detailing the work required.
- 14 Drawings and Sketches**
- The Company reserves the right to charge for the preparation of drawings or sketches prepared either for the submission or any execution of orders. All such drawings remain the property of the Company.
- 15 Force Majeure**
- (a) The company shall not be liable for any failure to deliver the goods arising from circumstances outside the Company's control.
- (b) Non-exhaustive illustrations of such circumstances would be Acts of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulations, delay by suppliers, accidents, shortage of materials, labour or manufacturing facilities.
- (c) Should the Company be prevented from delivering in the above circumstances it shall give the Customer written notice of this fact as soon as reasonably practicable after discovering it.
- (d) If the circumstances preventing delivery are still continuing six months after the Customer receives the Company's notice then either party may give written notice to the other cancelling the contract.
- (e) If the contract is cancelled in this way, the Company will refund any payment which the Customer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Customer) but the Company will not be liable to compensate the Customer for any further loss or damage caused by the failure to deliver.
- 16 Export**
- (a) The Customer shall be solely responsible for ensuring that any import or other regulations of any country or district to which the goods are to be exported are complied with and the Company shall be under no liability whatsoever should the goods subsequently fail to fulfil the requirements of such regulations.
- (b) The Customer shall inform the Company of any intended further transhipment of the goods to third parties and their proposed use so that the Company may ensure that the contract is in compliance with any export restrictions or embargoes laid down from time to time by the government of the United Kingdom. In the event that such restrictions prevent the Company from complying with its contractual obligations the contract will be treated as being subject to Force Majeure and dealt with in accordance with clause 14. If a Customer knowingly or not provides misleading information to the Company the Customer shall indemnify the Company against any penalties, fines or other expenses incurred as a result.
- 17 Cancellation**
- (a) If the Customer shall fail to pay the contract price to the Company on the due date or, if an actual person, die or be the subject of an order under the Mental Health Act 1959, or if any distress or execution is levied upon the Customer's property or assets or if the Customer shall offer to make any scheme or arrangement with creditors or commit any act of bankruptcy or, being a Company, has a receiver appointed for any part of its undertaking or assets or if a resolution for winding up shall be passed, then the Company may treat all sums due or to become due on any delivery as immediately payable or suspend or cancel further deliveries or require payment in advance thereof or recover any goods which are unsold wheresoever they are stored or treat the contract as repudiated by the Customer but without prejudice to any other rights of the Company.
- (b) Cancellation of the order by the Customer for whatever reason shall entitle the Company to payment of all costs, expenses and losses of the Company arising therefrom. Such notification of cancellation by the Purchaser shall not be deemed to have been accepted by the Company in the absence of specific agreement by the Company in writing to that effect. In all cases the Company reserves to itself any rights that it may have in law.
- 18 Notices**
- Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, forty-eight hours after posting.
- 19 Assignment**
- Neither the Company nor the Customer shall assign or transfer or purport to assign or transfer the contract or the benefits thereof to any other person without the prior consent of each other.
- 20 Proper Law and Jurisdiction**
- The contract shall be governed by and construed in accordance with English Law and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the English Courts.
- 21 Compliance with Laws**
- Company represents that all Products delivered hereunder will be produced and supplied in compliance with all applicable laws and regulations. Buyer shall comply with all local laws and regulations applicable to the re-sale, installation, use, or import of all Products delivered hereunder. Buyer shall comply with all applicable export control laws and regulations of the United States, the UK, the European Union and any other country having proper jurisdiction and shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer shall not sell, offer to sell, transfer, export or re-export any Company Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Company Products or technology in any facility which engages in activities relating to such weapons. Buyer shall also comply with the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and any other applicable anti-bribery laws.