

## TERMS AND CONDITIONS OF SALE

1. Applicability. These terms and conditions of sale (these "Terms") govern the sale by Elastron USA, Inc. ("Seller") to the customer ("Buyer") named in the accompanying quotation, order form or confirmation ("Quotation") of the goods identified therein (the "Goods"). These Terms, the Quotation, and the product specifications provided separately to Buyer for the Goods, if any, comprise the entire agreement between the parties regarding such sale. Any and all additional or different terms, conditions or provisions provided by Buyer or its agent, before or after the date hereof, are expressly rejected by Seller. By accepting delivery of any Goods or making payment therefor, Buyer is agreeing to be bound by these Terms, and no product shipment or acceptance of payment will constitute Seller's agreement to any contrary terms. These Terms may only be amended or modified by a writing which specifically states that it amends these Terms and is signed by an authorized representative of Seller.
2. Shipment and Delivery. The Goods will be shipped to Buyer at the address stated in the Quotation unless the Quotation indicates pick up is to be made by Buyer or Buyer's agent. Seller will use commercially reasonable efforts to make the stated quantities of Goods available for shipment or pick up on the stated date.
3. Partial Shipment. Seller may, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's order.
4. Title and Risk of Loss. Unless clearly stated otherwise by Seller on the Quotation, all deliveries of Goods (whether shipped to or retrieved by Buyer) are F.O.B. point of origin, and all responsibility and costs of shipping and delivery, including insurance, beyond the F.O.B. point will be borne by Buyer. Title and risk of loss pass to Buyer at the F.O.B. point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a purchase money security interest in all of the Goods, wherever located, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.
5. Price Terms. The Quotation is subject to the availability of Goods and is only applicable through the date shown on the Quotation. Seller does not represent or warrant that the Goods referenced in the Quotation will be available for purchase on any given date. Prices shown do not include any sales, excise, or other governmental tax or charge payable to any federal, state, or local authority. Any taxes now or hereafter imposed upon sales or shipments of Goods (other than income tax charged to Seller) will be added to the purchase price or reimbursed by Buyer unless Buyer provides Seller with an acceptable tax exemption certificate.
6. Payment Terms. Payment shall be due as stated in the Quotation. Buyer shall pay interest on all late payments at the lesser of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Buyer shall not withhold payment of any amount due and payable to Seller hereunder by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
7. Limited Warranty.
  - a. Seller warrants to Buyer that that the Goods will conform in all material respects to the product specifications separately provided to Buyer, within the variances stated therein, and will be free from material defects in material and workmanship. Subject to the other Terms herein, Seller shall, at its cost and option, repair or replace any non-conforming Goods. THE REMEDY SET FORTH IN THIS SECTION IS BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS AGREEMENT.

b. **EXCEPT AS SET FORTH IN SECTION 7.a, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; or (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; IN EACH CASE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

c. Notwithstanding the foregoing, Seller shall not be liable for a breach of the warranty set forth in Section 7.a unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods, and (iii) Buyer, as requested by Seller and at Seller's expense, returns such Goods or makes them available for retrieval by Seller.

8. **Limitation of Liability. TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN ADDITION, THE AGGREGATE LIABILITY OF SELLER ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**
9. **Proprietary Rights.** Seller expressly retains and reserves all intellectual property rights in the Goods. Buyer agrees not to reverse engineer or take other steps to ascertain Seller's formulas or any other trade secrets with respect to the Goods.
10. **Force Majeure.** Seller shall not be liable or responsible to Buyer, or be deemed to have defaulted or breached this Agreement, for any failure or delay in connection with this Agreement if such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God or nature, fire, governmental actions, war (declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, lockouts, strikes or other labor disputes (whether or not relating to Seller's workforce), or any delay or performance failure by a third party.
11. **Assignment; Third Parties.** Buyer shall not assign any of its rights under this Agreement without the prior written consent of Seller. Any purported assignment in violation of this Section is null and void. This Agreement is for the sole benefit of the parties hereto and there are no third party beneficiaries, intended or otherwise.
12. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, nor any employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever, including the making of representations to third parties.
13. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
14. **Governing Law; Venue.** This Agreement shall be governed by and construed under the laws of the State of Georgia without reference to its conflict of laws provisions. All disputes arising under this Agreement will be heard only by a court of competent jurisdiction in the state of Georgia, and the parties hereby submit to the exclusive jurisdiction of such courts for the purpose of litigating such disputes.