
SALES TERMS AND CONDITIONS

These are the conditions governing sales by Elmet Technologies, LLC. Placing an order for the products shall constitute acceptance of these conditions of sale. Elmet's acceptance of the buyer's order is expressly conditioned on the buyer's assent to the terms and conditions stated herein. No addition to, waiver or modification of these terms and conditions shall be binding on Elmet unless expressly agreed to in writing by Elmet, and such writing states that it supersedes these Terms and Conditions in that regard.

1. Payment.

- **Domestic:** Payment terms are net 30 days from the date of shipment with no cash discount or retention allowed. The payment terms set forth herein are subject to buyer maintaining a mutually acceptable credit arrangement with Elmet. Overdue payments will bear interest at the lesser rate of 1½% per month or the rate permitted by applicable law. Elmet reserves the right to withhold any or all shipments to the buyer if any amount owed by buyer to Elmet is more than 10 days past due. In the event of such a default, Elmet shall not be under any obligation to ship until all outstanding invoices are paid regardless of whether some of the outstanding invoices are not yet past due.
- **International:** Payment terms are by an Irrevocable Letter of Credit or cash in advance unless a line of credit has been established.

2. Price. The most current Elmet Price List supersedes all previous price lists. All prices expressed are F.O.B. factory and/or warehouse including standard Elmet packaging of material. Elmet reserves the right to adjust prices for current costs in effect at the time of shipment. Orders placed are subject to a minimum quantity or dollar amount.

3. Order Entry.

- A.** *Written Orders* must be submitted to Elmet by the buyer. Orders shall be directed to the Customer Service Department for processing. Elmet reserves the right to consider an order complete when shipped up to 10% over or under the quantity ordered.
- B.** *Verbal Orders* cannot be accepted.
- C.** *Cancellations:* Orders for standard product may be cancelled by buyer no later than three weeks prior to shipment; however, Elmet may charge a restocking charge on cancelled orders of up to 30% plus any expenses that have been incurred in manufacturing.

Any non-standard product may not be cancelled upon the earliest to occur of: (a) Elmet's ordering of non-standard material, (b) commencement of production, or (c) 3 weeks prior to shipment. Non-standard products not in production, may be cancelled with a minimum 50% restocking charge, or higher charge based on the product.

D. *Order Acknowledgments:* The acknowledgement acts as buyer's confirmation that Elmet is supplying the product ordered by buyer. Any discrepancies from information confirmed in the acknowledgement will be buyer's responsibility. It is the buyer's responsibility to review Elmet's

order acknowledgment and to make certain that it is correct in all particulars, then sign and return it within seven days of the publication date on the acknowledgment form. Unreturned acknowledgments will be considered by Elmet to be acceptable to buyer as printed, including, without limitation, the terms and conditions thereof. In the event of shortage of product, Elmet reserves the right to allocate goods among its customers as it sees fit.

E. *Revisions, Additions, or Deletions to an Order* must be in writing and will be accepted if confirmed by Elmet. An order may be revised by the buyer up to three (3) weeks prior to the acknowledged ship date. Revisions submitted within three (3) weeks of the acknowledged ship date may result in the buyer's order being rescheduled with the current production lead time for the products ordered. All revision requests will be addressed on an individual basis. Revisions will become valid when confirmed in writing by buyer.

- 4. Shipment and Acceptance.** Elmet will confirm an order's ship date in writing prior to manufacturing. Buyer-initiated shipment delays beyond two (2) business days of the acknowledged ship date may result in buyer's order being rescheduled with the current production lead time for the products ordered, buyer's order being shipped by Elmet at buyer's expense, or buyer's order being stored at buyer's expense. Buyer's acceptance shall occur upon delivery, unless buyer advises Elmet in writing within (10) ten days from receipt of the products by buyer that the products do not conform to Elmet's specifications.
- 5. Delivery and Freight.** Delivery to the carrier at point of shipment shall constitute delivery to the buyer and the buyer shall assume all risk for subsequent loss or damage. Shipments will be made "freight collect" or "bill 3rd party", with instructions to the carrier to send freight bills to the buyer at its main office. The carrier will be instructed to notify buyer 24 hours prior to delivery, unless otherwise directed. Elmet cannot guarantee delivery by a common carrier on any specific date. Buyer is responsible for the validation of all freight rates.

On international shipments, Elmet will notify the buyer of shipment from its plant and shall communicate the details of shipment as communicated by the carrier to Elmet.
- 6. Taxes.** Buyer agrees to provide Elmet with its assigned tax exemption number, if applicable, and agrees to pay all applicable sales, use, excise, value added or other similar taxes arising from the sale by Elmet to buyer in addition to the purchase price.
- 7. Delays.** Elmet will use commercially reasonable efforts to ship promptly, but will not be liable in any manner for delays or inability to ship for any reason.
- 8. Returns.** No product returns will be accepted unless first approved in writing by Elmet. All returned products must be shipped freight prepaid because collect shipments will not be accepted. If the returned products are standard products in a first class condition, buyer will be re-credited at the invoice amount less a 30% restocking charge. Non-standard products may not be returned. If the returned products are not in a first class condition, then Elmet reserves the right to refuse to accept the return and to reship the product to buyer at buyer's cost.

- 9. Claims.** All claims regarding lost, damaged or delayed shipments should be reported to the common carrier involved. The settlement of such claims is between the buyer and the common carrier. Claims for short shipments should be reported to Elmet immediately and confirmed in writing.
- 10. Choice of Laws; Forum; Enforcement.** All orders shall be construed and the rights of the parties interpreted in accordance with the laws of the State of Maine without regard to the conflicts of law thereof. The parties agree that any dispute arising under this order shall be brought in such Maine State court or federal court as has subject matter jurisdiction. Elmet shall be entitled to recover from buyer all of its cost and expenses (including reasonable attorneys' fees) in enforcing its rights to payment.
- 11. Termination.** Elmet may cancel an order in whole or in part, by written notice if (a) buyer becomes insolvent or makes a general assignment for the benefit of creditors, (b) a petition is filed or proceedings are commenced against buyer under any bankruptcy or similar laws, or (c) buyer defaults in the performance of any of its obligations under this order or any other order between buyer and Elmet, and Elmet reserves all rights with respect to such.
- 12. Limitation of Actions and Liability.** Any action arising out of or in any way connected with the products or services furnished by Elmet must be brought by buyer within two (2) years from the date of sale or the applicable statute of limitations, whichever is shorter. Under no circumstances will Elmet's liability exceed the purchase price paid by buyer for the Elmet products.
- 13. Limited Warranty.** Except as stated below, Elmet warrants that all products manufactured and supplied by Elmet to buyer will be free from defects in material and workmanship under normal use and service for a period of six (6) months from the date of shipment, except that failure to make a weathering claim within fifteen (15) days from receipt of product shall be deemed a waiver of buyer's right to make such a claim. Elmet warrants components supplied by others and incorporated into the Elmet products only to the extent of the express warranties made by the suppliers of such components.

This limited warranty extends only to the original end user purchaser of Elmet products and does not cover normal wear and tear of parts or damage or loss resulting from misuse, accident, neglect, improper installation or maintenance. In order to qualify for this warranty coverage, buyer must incorporate, use and maintain the Elmet products strictly in accordance with the instructions and recommendations contained in Elmet's literature.

If buyer claims that the Elmet products do not conform to this limited warranty, it must, at Elmet's option, either return the defective part(s) to Elmet with freight or other transportation costs prepaid or allow Elmet's personnel to inspect the Elmet products at the site of their installation or use. If, after inspection, Elmet determines that the Elmet products do not conform to this limited warranty, Elmet in its sole discretion will choose to (a) repair the Elmet products without charge to buyer, (b) replace the Elmet products without charge to buyer, or (c) repay the purchase price to buyer. The warranty period for repaired or replaced components shall be the remainder of the original warranty period.

THE WARRANTY SET FORTH HEREIN IS THE ONLY WARRANTY PROVIDED BY ELMET AND IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES OF QUALITY, AND OF ALL OTHER LIABILITIES AND OBLIGATIONS, ALL OF WHICH ARE HEREBY DISCLAIMED. BUYER HEREBY WAIVES ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE. NOTWITHSTANDING ANY PRIOR STATEMENT, WRITTEN OR ORAL, ELMET MAKES NO OTHER WARRANTIES REGARDING THE QUALITIES OF ITS PRODUCTS OR THE MATERIALS INCORPORATED THEREIN.

- 14. Force Majeure.** Elmet is not liable or responsible for delay or failure to perform any of Elmet's obligations under this order occasioned by any causes beyond Elmet's reasonable control, including, but not limited to, a labor dispute, industry disturbance, fire, unusually severe weather conditions, terrorist act, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, raw materials, delay in transportation, governmental, regulatory or legal action or act of God.
- 15. Export Control.** Buyer agrees to comply with all U.S. export regulations which control the products it purchases from Elmet.
- 16. Limitation of Liability.** Buyer understands and agrees that in no event shall Elmet be liable to buyer or to any third party for any incidental, special, consequential or other similar damages arising, directly or indirectly, out of or occasioned by the purchase, use, installation, repair, replacement of the Elmet products, whether such damages are based on a claim for breach of express or implied warranty, tortious conduct, or any other cause of action, whether or not foreseeable and whether or not Elmet has been advised of the possibility of such damages. Under no circumstances will Elmet's liability exceed the purchase price paid by buyer for the Elmet Products. **BUYER SPECIFICALLY UNDERSTANDS AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, TORTIOUS CONDUCT OR ANY OTHER CAUSE OF ACTION AGAINST ELMET IS THE REMEDY OF REPAIR, REPLACEMENT OR REFUND PROVIDED HEREIN.**
- 17. Buyer's Non-Infringement Warranty.** Buyer represents and warrants to Elmet that any product or method of manufacture based either in whole or in part on a design, specification, or other instruction provided by buyer, do not, and shall not, infringe, misappropriate or violate any patent, copyright, trademark, trade name, trade secret, or other intellectual property right of any third party. This warranty, and buyer's obligation set forth below concerning indemnification shall be controlling over any provision of any other contract or form, including any provision or disclaimer included in buyer's purchase order or the like.

- 18. Indemnification.** Buyer hereby agrees that it shall defend, indemnify, pay and reimburse and hold Elmet and its affiliates, officers, directors, employees and agents harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, damages and/or expenses (including, without limitation, reasonable attorneys' fees and costs) (collectively, "Losses") arising directly or indirectly out of or in connection with (i) the gross negligence and/or willful wrongful acts of buyer and/or any its affiliates and any of their respective officers, employees and agents, (ii) any material breach of buyer's representations, warranties, or covenants made to Elmet or other obligations of buyer hereunder, (iii) the design, manufacture, storage, supply, sale and/or distribution of buyer's products and/or services, including, without limitation, Losses in respect of the injury or death of any person (whether or not caused or alleged to be caused by the negligence of Elmet), or (iv) the actual or alleged infringement, misappropriation or violation of any patent, copyright, trademark, trade name, trade secret, or other intellectual property right of any third party by any product or method of manufacture based either in whole or in part on a design, specification, or other instruction provided by buyer.
- 19. Entire Agreement.** No terms and conditions other than those stated herein, and no agreement or understanding in any way purporting to modify these terms or conditions, shall be binding on Elmet without Elmet's written consent.