ELMET TECHNOLOGIES
Coldwater | Euclid | Lewiston

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ACCREDITED TO AS 9100, ISO 9001

ELMET TECHNOLOGIES CONDITIONS OF SALE

1. AGREEMENT

1.1 The conditions contained in any Acknowledgement or Acceptance of a purchase order shall supersede any conflicting terms in these Conditions of Sale. Terms defined herein are capitalized. Except as otherwise specified in this AGREEMENT, no other conditions shall be applicable to this AGREEMENT or otherwise accepted by SELLER. All other terms and conditions are hereby expressly rejected. SELLER'S acceptance of BUYER'S offer to purchase or BUYER'S purchase order is expressly made conditional on BUYER'S assent to these terms and conditions as set forth herein and Buyers implicit rejection of any other terms.

1.2 Acceptance of delivery by BUYER of PRODUCT(S) or payment for same shall constitute unequivocal acceptance of the terms and conditions contained herein. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein.

1.3 SELLER does not accept verbal Orders. No Verbal Orders shall be valid or enforceable.

2. DELIVERY

2.1 BUYER will provide to SELLER written and detailed shipping instructions within a reasonable time prior to shipment. BUYER will be responsible for any increased costs or delays in delivery resulting from BUYER'S failure to supply such instructions in a timely manner.

2.2 BUYER may not withhold payment in the event of delay caused by BUYER.

2.3 Unless otherwise agreed, SELLER shall not be required to deliver in any month more than the monthly QUANTITY specified, or if no monthly QUANTITY is specified, more than the monthly pro rata amount of the maximum annual QUANTITY specified. BUYER understands and agrees that purchase order requirements are subject to a variation of ten percent (10%) over or under the quantity specified and performance will be considered complete on that basis.

2.4 All shipments of PRODUCT(S) shall be made F.O.B. Origin, Freight Collect, unless otherwise stated in this AGREEMENT.

2.5 All specified delivery dates refer to the completion of manufacture and availability for shipment of PRODUCT(S) and are SELLER'S best estimates. SELLER reserves the right to modify the delivery dates with notice to BUYER.

2.6 Title shall pass to BUYER upon delivery to carrier.

2.7 Any BUYER source inspection and/or final pre-shipment authorization shall be completed by BUYER within fifteen (15) days of SELLER's confirmed shipment date. In the event BUYER is unable to take delivery of any shipment or refuses delivery of a scheduled shipment for any reason not solely attributable to SELLER, SELLER will store the shipment at BUYER'S sole risk and expense and payment for such delayed shipment, together with a delayed shipment fee of ten percent (10%) of the purchase PRICE of the affected PRODUCTS and reimbursement of SELLER's storage cost, shall immediately become due and payable by BUYER. If after a period of ninety (90) days of SELLER's confirmed shipment date BUYER remains unable to take delivery of any shipment or refuses delivery for any reason not solely attributable to SELLER, then in addition to the foregoing, SELLER may dispose of the affected PRODUCTS in its discretion and without liability to BUYER and without prejudice to any other right or remedy SELLER may have at law or in equity.

2.8 BUYER warrants there will be no diversion of any shipment that is a) contrary to any applicable law; b) for resale and/or transfer to any party not a party to this AGREEMENT unless approved in writing by SELLER; or c) for shipment or use outside of the U.S., unless approved by SELLER in writing, and if so approved, BUYER warrants it will comply with all applicable laws, restrictions and regulations of the U.S. and other governments, including without limitation, the U.S. Department of Commerce Export Administration Regulations, the U.S. Department of State International Traffic in Arms Regulations, the U.S. Foreign Corrupt Practices Act of 1977 and the Office of Foreign Asset Control Regulations.

2.9 In instances of bulk carload, tank truck or tank car shipments, shipper's weights, certified to by sworn weigh master, shall govern. Unless otherwise specified, PACKING shall be Seller's standard packing.

3. FORCE MAJEURE

3.1 Neither party shall be held responsible for any loss, damage, delay or lack of delivery arising from fire; strikes, lockouts, injunction or other labor troubles; governmental intervention; war; riots; acts of terrorism or cyber security breaches; explosion; weather; flood; pandemics, epidemics, acts of God or nature; inability to obtain on terms acceptable to SELLER or a shortage of, fuel, power, raw materials, labor, containers or transportation; accident; breakage of machinery or other apparatus; disruption of normal supplier channels of distribution; or any other act or force beyond the affected party's reasonable control.

3.2 BUYER may cancel, without liability, deliveries suspended for at least forty-five (45) days by SELLER for reasons stated in the previous section, but the AGREEMENT shall otherwise remain in effect.

3.3 SELLER reserves the right to allocate and fairly apportion PRODUCT(S) among its internal and external customers during force majeure events in any manner SELLER, in its sole discretion, deems appropriate.

3.4 SELLER shall have no obligation to acquire by purchase or otherwise any PRODUCT(S) that SELLER is unable to supply to BUYER due to force majeure events.

4. LIMITED WARRANTY

4.1 SELLER warrants that upon delivery PRODUCT(S) will conform only to SELLER'S standard specifications for same, unless otherwise agreed to herein. This warranty applies only to the original purchaser of the PRODUCT(S).

4.2 Except as stated below, SELLER warrants that all PRODUCTS manufactured and supplied by SELLER 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. SELLER warrants components supplied by others and incorporated into the SELLER products only to the extent of the express warranties made by the suppliers of such components.

4.3 This limited warranty extends only to the original end user purchaser of SELLER 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 SELLER products strictly in accordance with the instructions and recommendations contained in SELLER's literature.

4.4 If BUYER claims that the SELLER products do not conform to this limited warranty, it must, at SELLER's option, either return the defective part(s) to SELLER with freight or other transportation costs prepaid or allow SELLER's personnel to inspect the SELLER products at the site of their installation or use. If, after inspection, SELLER determines that the SELLER products do not conform to this limited warranty, SELLER in its sole discretion will choose to (a) repair the SELLER products without charge to BUYER, (b) replace the SELLER 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 SELLER 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, SELLER MAKES NO OTHER WARRANTIES REGARDING THE QUALITIES OF ITS PRODUCTS OR THE MATERIALS INCORPORATED THEREIN.

4.5 BUYER shall inspect all PRODUCTS(S) for conformance to this warranty. BUYER shall notify SELLER of any non-conformance no later than the earlier of a) thirty (30) days from date of shipment by SELLER; or b) the date of use of the PRODUCT(S) by BUYER.

4.6 SELLER assumes no liability for any errors that are caused by the inaccuracy or incompleteness of BUYER-supplied data.

4.7 BUYER assumes all risk for misuse of the PRODUCT(S).

5. TERMINATION FOR DEFAULT

In the event BUYER commits a material breach of this AGREEMENT, including failure to timely pay amounts due hereunder, SELLER may terminate this AGREEMENT upon thirty (30) days written notice; provided that during such notice period, BUYER shall have the opportunity to cure its default. If BUYER is in default, then in addition to remedies provided under this AGREEMENT, in law or equity, SELLER may suspend shipments during such cure period without liability.

6. LIMITATION OF LIABILITY

6.1 NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT OR ELSEWHERE TO THE CONTRARY: A) SELLER'S MAXIMUM LIABILITY HEREUNDER AT ANY TIME FOR ANY CAUSE WHATSOEVER SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCT(S) AT ISSUE; AND B) SELLER SHALL NOT BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, INCLUDING LOSS OF REVENUE OR PROFIT.

6.2 These limitations of liability shall apply notwithstanding any finding that any remedy fails its essential purpose.

7. LAWS

This AGREEMENT shall be construed, interpreted and controlled by the laws of the state of Maine, and all claims arising out of or related to the parties' relationship created by this AGREEMENT, whether in contract, tort or otherwise, shall be governed and decided pursuant to the laws of the state of Maine, including Maine's statutes of limitations but not including its choice of laws rules. BUYER agrees to subject itself to the courts of Maine and that such venue shall be exclusive regarding disputes arising out of this AGREEMENT.

8. PRICES; PAYMENT TERMS

8.1 BUYER shall pay invoices and all invoice amounts net thirty (30) days after invoice date and: (i) all transit insurance, transportation and handling costs; (ii) all taxes, assessments and charges on the PRODUCT(S); (iii) proportionate payments on any partial shipments; and
(iv) a late charge of 1.5% per month on any overdue amounts, but not in excess of the rate amount by law and together with collection costs, including reasonable attorneys' fees. BUYER grants SELLER a purchase money security interest in the PRODUCT(S) sold hereunder until all payments have been received in full and, if requested in writing to do so, BUYER agrees to perform all acts necessary to perfect and maintain such security interest.

8.2 If BUYER fails to pay any of the amounts due to SELLER within sixty (60) days from the date of invoice, SELLER shall issue written notice to BUYER and at any time thereafter SELLER may suspend all PRODUCT deliveries without termination of this AGREEMENT until all past due amounts and accrued interest have been paid to SELLER, following receipt of which SELLER shall use reasonable efforts to reinstate all PRODUCT deliveries. SELLER may in its sole discretion and without waiver of its rights hereunder allow BUYER additional time to make past due payments in lieu of suspension of PRODUCT deliveries. Without prejudice to the foregoing and notwithstanding same, if BUYER fails to pay any amount due SELLER within ninety (90) days from the date of invoice, SELLER may immediately terminate this AGREEMENT and all deliveries of PRODUCT upon written notice to BUYER.

8.3 SELLER may revise the PRICE, PAYMENT TERMS or SHIPPING TERMS by written notice dispatched not less than thirty (30) days prior to the effective date of such change. Failure of BUYER to provide written objection to such change within fifteen (15) days of receipt of notice from SELLER shall be considered acceptance of such change.

8.4 If in the sole judgment of SELLER, BUYER'S financial ability to perform hereunder is impaired or altered, SELLER reserves the right, among any other right or remedy, to change PAYMENT TERMS, require full or partial advance payment or to cancel any outstanding order, without liability.

8.5 Any discount or rebate provided for in this AGREEMENT shall be accounted for exclusively on the basis of sales made to BUYER.

8.6 Notwithstanding any other provision in this AGREEMENT or elsewhere to the contrary, SELLER shall have the unilateral right to pass on to BUYER all fuel, freight, energy and/or similar surcharges.

8.7 All PRICES in this AGREEMENT are exclusively for PRODUCTS sold directly to BUYER or BUYER'S agent by SELLER.

8.8 SELLER shall retain a purchase money security interest in the PRODUCT(S) sold hereunder until all payments (including deferred payments, whether evidenced by notes or otherwise) shall have been received in full by SELLER and, if requested in writing to do so, BUYER agrees to do all acts necessary to perfect and maintain such security interest in SELLER.

8.9 SELLER reserves the right to adjust prices for the sale of PRODUCT(S) outside of the United States based on currency exchange rates.

9. CANCELLATION

9.1 Standard Products. Buyer may not cancel Orders for standard products except as follows: Cancellation may be within 14 days of the Order date without penalty. Orders may be cancelled up to four weeks prior to shipment but shall result in a restocking charge of 30% plus any additional expenses. Orders cancelled thereafter shall incur a penalty of 100% of the Order amount.

9.2 Special Order Products. Special Order Products mean any Order for which Buyer has supplied specifications, drawings, tolerances or other characteristics which differ from SELLER's standard materials, specifications and tolerances. BUYER may only cancel Special Order Products as follows: Cancellation may be within 14 days of the Order date without penalty. After 14 days Special Order Products may be cancelled upon payment of a 50% restocking and engineering fee if the cancellation is received at least two months prior to the estimated shipment date. Any cancellation received within 2 months prior to the estimated shipping date shall not be cancelled and the BUYER is liable for the entire Order value. The prior sentences notwithstanding, no Special Order Products Orders may be cancelled at any time if Seller has commenced production and BUYER shall be liable for the entire Order amount.

10. PROPRIETARY INFORMATION

10.1 Any information disclosed by SELLER to BUYER incident to the performance of this AGREEMENT, including but not limited to information related to pricing, volumes or the financial terms of this AGREEMENT and the existence of the AGREEMENT itself is disclosed in confidence for the sole and exclusive use of BUYER. BUYER shall not publish or otherwise disclose such information to others without the express written consent of SELLER.

10.2 Nothing herein shall limit the BUYER'S right to disclose any information provided by the SELLER hereunder which a) was furnished by the SELLER prior to this AGREEMENT without restriction; b) legitimately becomes knowledge available within the public domain; or c) is received by BUYER from a third party without restriction and without breach of this or any other AGREEMENT.

10.3 In the absence of a signed agreement to the contrary, no information disclosed by BUYER to SELLER shall be considered confidential.

10.4 BUYER agrees not to reverse engineer, analyze or have a third party analyze any PRODUCT(S) for chemical composition or content.

11. SELLER ANALYTICAL LAB TERMS AND CONDITIONS TESTING SERVICES

11.1 SELLER Analytical Lab (herein named "Lab") is in the business of providing product and testing services in different fields to its customers based on their needs and wants.

Testing Request as a Service

11.2 Elmet has one or more Labs that maintain an ISO/IEC 17025-accredited quality system. Please review our website for which Elmet labs have this accreditation.

11.3 The Lab will not perform testing until the test samples and its procedure is available. The Lab is committed to keep its objective commitment on "on-time delivery" and will make every effort to comply with it.

11.4 Any required testing beyond the scope of the Lab may be subcontracted to accredited, SELLER-approved outside labs, however, this may affect price and schedule. SELLER will acknowledge in advance when subcontracted testing is needed.

Decision Rule regarding Uncertainty Calculations.

11.5 The Lab does not apply calculated measurement uncertainties to the decision rule to determine the "PASS/FAIL" criteria of each test point unless requested by the customer.

11.6 Calculations of uncertainties are available upon request. Quality Assurance. The Lab is an accredited testing Lab per ISO/IEC 17025. Our testing certificate and test data meet the requirements of this standard, within the scope of approved test methods.

Measurement Traceability

11.7 The Lab's reported data is traceable to SI units, unless otherwise specified.

12. ADDITIONAL TERMS

12.1 This AGREEMENT may not be assigned by either party to any other party without the prior written consent of the other party hereto; provided, however, that (a) SELLER may assign its rights and obligations hereunder to any AFFILIATE of SELLER by written notice to BUYER; and (b) SELLER may assign its rights and obligations hereunder, by written notice to BUYER, to a third party successor or transferee (whether by merger, consolidation, purchase or otherwise) of either (1) all or substantially all of the assets of SELLER or (2) all or substantially all of the assets of the particular division of SELLER identified on page one of this AGREEMENT. "AFFILIATE" shall mean, with respect to a party, any individual, corporation or other business entity that, either directly or indirectly, controls such party, is controlled by such party, or is under common control with such party. "Control" means possession of the power to direct, or cause the direction of the management and policies of a corporation or other entity whether through the ownership of voting securities, by contract or otherwise.

12.2 Return of PRODUCT for any reason whatsoever shall require prior written approval of SELLER, unless otherwise agreed to herein by SELLER.

12.3 BUYER warrants that no PRODUCT or part of any PRODUCT shall be utilized in any type of a) nuclear use whatsoever; b) weapons systems or other similar military use; or c) medical, food processing or FDA regulated use; unless otherwise agreed to herein by SELLER. SELLER and BUYER shall comply with all applicable laws and regulations of the United States of America, including without limitation Department of Commerce Export Administration Regulations and/or the Department of State International Traffic in Arms Regulations. Each party shall be responsible for obtaining any export licenses or other governmental authorizations required in connection with this Agreement.

12.4 BUYER represents and warrants that a) it understands the nature and characteristics of the PRODUCT(S) and any hazards associated with its use; b) it will adequately instruct and warn all persons, including all third parties, who may come in contact with, or be in the vicinity of, the PRODUCT(S) in the proper safe use and handling of the PRODUCT(S); c) it is not relying upon any representation, statement or other assertion made by SELLER or its representatives or agents, with respect to the suitability of the PRODUCT(S) for any purpose and that BUYER has made its own independent inquiry and testing and has formed an independent opinion concerning the suitability of the PRODUCT(S) for the end use, conversion or application intended; and d) it will not assert any claim against SELLER or hold SELLER liable, with respect to any information, testing or design furnished, or failure to be furnished, by SELLER, including, without limitation, technical advice or recommendations. SELLER assumes no obligation or liability for any technical assistance rendered incident to this AGREEMENT. Appropriate literature has been assembled which provides information concerning the health and safety precautions that must be observed when handling PRODUCTS. Before working with PRODUCTS, BUYER must read and become familiar with the available information on PRODUCT hazards, proper use, and handling. This cannot be overemphasized. Information is available in several forms. Consult SELLER representative for additional information.

12.5 BUYER acknowledges that PRODUCT(S) may not meet applicable government procurement requirements and that SELLER may not be able to provide information required by government procurement regulations; and SELLER shall have no liability whatsoever with respect to any requirements relating to, or arising from, any government procurement regulations, unless first agreed to in writing, signed by an authorized representative of SELLER.

12.6 No type of contractual obligation between BUYER and its customer(s) shall be applicable to, or create any liability with respect to, SELLER, whether via "pass-through," flow-down" or otherwise, and BUYER shall not otherwise represent to its customer(s) such purported SELLER liability.

12.7 The rights and obligations under Articles 4, 6, 7, 9, 10 and 11 herein shall survive the cancellation, termination or expiration of this AGREEMENT.

12.8 Should any part of this AGREEMENT be deemed invalid by a court of law, it shall not constitute an invalidation of any other part of this AGREEMENT, which shall otherwise remain in effect.

12.9 Failure of SELLER to effect, or any delay by SELLER to effect, any available right or remedy shall not be construed to operate as a waiver of same. SELLER reserves the right to correct any clerical or mathematical error.

12.10 Except as otherwise expressly provided, this AGREEMENT supersedes all prior agreements, understandings or otherwise, whether oral or written, between BUYER and SELLER concerning the subject matter of this AGREEMENT.

12.11 BUYER and SELLER expressly agree and acknowledge that the United Nations Convention for the International Sale of Goods shall not apply to this AGREEMENT.

12.12 SELLER'S acceptance of a) payment; or b) specially endorsed checks shall not waive or limit any right or remedy of SELLER.

12.13 Nothing contained herein is intended nor shall be construed as creating a partnership, joint venture, agency, distributorship or any other relationship except buyer and seller.

12.14 All headings herein are for reference only.

12.15 This AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.