

GENERAL TERMS AND CONDITIONS OF SALE

These general terms and conditions (“Terms and Conditions”) shall govern and apply to the purchase and sale of all products, devices, components and/or goods manufactured and/or sold by Elcam Medical ACAL (“Elcam”) (collectively: “Products”) and shall be deemed to be incorporated by reference and form an integral part of all quotations and offers, acceptances, acknowledgements and confirmations with respect to any Products sold and/or offered by Elcam, unless and to the extent Elcam explicitly agrees otherwise in writing. Purchasers of Products from Elcam shall hereinafter be referred to as “Customer/s”)

1. GENERAL

- 1.1. No changes to, waiver of, or addition to any of these Terms and Conditions shall be effective unless agreed to in writing and signed by Elcam.
- 1.2. Notwithstanding anything herein, Customers acknowledges and agrees that these Terms and Conditions supersede the terms and conditions of any purchase order or other documentation used and/or issued by Customer.
- 1.3. Notwithstanding the foregoing, Elcam reserves the right at any time to amend these Terms and Conditions, and Customer shall be deemed to accept such amended terms and conditions by ordering products herein offered after the date of such amendment.
- 1.4. Customers are responsible for periodically reviewing these Terms and Conditions and familiarizing themselves with any amendments and/or revisions. The valid and applicable version of these Terms and Conditions shall appear on the relevant Elcam documentation (i.e. "Terms and Conditions Jan. 2013")
- 1.5. Additional terms and conditions may be applicable with respect to certain specific products.

2. DELIVERY

- 2.1. All Products shall be delivered Ex-Works Baram Israel (INCOTERMS latest version), unless Elcam agrees otherwise. Delivery dates communicated or acknowledged by Elcam are approximate only, and Elcam shall not be liable for, nor shall Elcam be in breach of its obligations to Customer, for any delivery made

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within a reasonable time before or after the communicated delivery date. Elcam agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Customer provides all necessary order and delivery information sufficiently prior to the such delivery date.

- 2.2. Customer will give Elcam written notice of failure to deliver and fifteen (15) days within which to cure. If Elcam does not deliver within such fifteen (15) day period, Customer's sole and exclusive remedy is to cancel the affected and undelivered portions of the order placed and accepted by Elcam.
- 2.3. Title to the Products shall pass to Customer upon payment in full of the purchase price in respect thereof. Risk of loss in the Products shall pass to Customer upon Elcam's delivery in accordance with the applicable INCOTERMS.

3. **PURCHASE ORDERS, PRICING AND PAYMENT**

- 3.1. Price quotes for the Products are Ex-Works Baram Israel (INCOTERMS latest version) unless otherwise indicated by Elcam.
- 3.2. All pricing quotes must be documented in writing and signed by Elcam to be valid. All prices are firm for 30 days from the date quoted.
- 3.3. Payment for Products is due prior to delivery, unless otherwise agreed to in writing by Elcam. All payments shall be made Elcam's designated bank account according to information provided by Elcam.
- 3.4. In addition to any other rights and remedies Elcam may have under applicable law, interest will accrue on all late payments at the rate of 6 Months Euro Libor+3%, from the due date until payment in full.
- 3.5. In the event of any default by Customer in the payment of any fees or charges due, or any other default by Customer, Elcam shall have the right to refuse performance and/or delivery of any Products until payments are brought current and Elcam may suspend, delay or cancel any credit, delivery or any other performance by Elcam. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

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- 3.6. Customer's obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Any discounts, rebates, administrative fees, credits, or other fees due or owed to Customer will be applied against delinquent balances before payment or reimbursement is made.
- 3.7. Any disputed amounts should be reported immediately and remitted with the undisputed amount by the payment due date. If Elcam agrees with the billing dispute, Elcam will credit Customer the amount of the agreed-upon billing dispute. All billing disputes must be made within 45 days of the applicable invoice date, or will be deemed to be waived.
- 3.8. Elcam reserves the right in its sole discretion to require prepayment from any Customer at any time and may refuse to sell and/or withhold further shipment until all overdue balances are made current. Customer shall be liable for, and shall reimburse Elcam for all costs and expenses it may incur in connection with collection of any amounts owed to Elcam or enforcement of its rights, including without limitation, reasonable attorneys' fees and expenses, court costs, and costs of collection agencies.

4. **TAX INFORMATION**

Prices do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. Elcam will add taxes, duties and similar levies to the sales price where Elcam is required by law to pay or collect them and these will be paid by Customer together with the applicable payment.

5. **RETURNED GOODS POLICY**

Product returns are subject to the following conditions:

- 5.1. All returns are subject to the prior authorization of Elcam, in its discretion. Customer must notify Customer Support at Elcam's QA Department and complete a Return Request Form. The Return Request Form requires lot numbers, quantities and catalog numbers along with a specific reason for return. Customer Support

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will either authorize or deny the request for return. Only items appearing on an approved Return document are acceptable for return. Product returns will only be accepted from the original purchaser. Product returns will not be accepted from third party return companies. Unauthorized returns will be destroyed and no credit issued. All authorized returned goods must be shipped freight prepaid to the Elcam location indicated on the Return document, except Elcam will pay freight costs for Product shipped-in-error.

- 5.2. Certain Products are not eligible for return. These are:
 - 5.2.1. Products that have deteriorated because of improper storage, handling, abuse or other factors.
 - 5.2.2. Products that have been opened, partly used or which the labels or seals have been removed or tampered.
 - 5.2.3. Broken, damaged or opened cases. Resealed cartons are not eligible for return.
 - 5.2.4. Special products made to Customer's specification.
- 5.3. Products that are to be returned for repair (e.g., medical device equipment) must be accompanied by an approved Repair Notification.

6. **WARRANTY**

- 6.1. Elcam warrants to the original Customer that, at time of delivery, each Product shall meet its applicable specifications, in all material respects.
- 6.2. Elcam's warranty hereunder shall not apply if: (i) a Product is not used in accordance with its instructions or if it is used for a purpose not indicated on the labeling; (ii) any repairs, alterations or other work has been performed by Customer or others on such Product, other than work performed with Elcam's authorization and according to its approved procedures; or (iii) the alleged defect is a result of abuse, misuse, improper maintenance, accident or the negligence of any party other than Elcam. The warranty set forth herein is conditioned upon proper storage, installation, use and maintenance in accordance with applicable written recommendations of Elcam. The warranty furnished hereunder does not

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extend to damage to Products resulting in whole or in part from the use of Products in conjunction with components, accessories, parts or supplies not furnished by Elcam.

- 6.3. Elcam's sole obligation under its above warranty shall be to repair or replace, at Elcam's option, any non-conforming Product and pay transportation expenses for such replacement and/or repair. In the event no breach of warranty is discovered by Elcam upon receipt of any returned Product, the Product will be returned to Customer at Customer's expense and Customer will reimburse Elcam for the transportation charges, labor and associated charges incurred in testing the allegedly defective item.
- 6.4. Except as expressly provided herein, Elcam makes no representation or warranty of any kind, expressed or implied with respect to any Product provided by Elcam including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Products distributed, but not manufactured, by Elcam are not warranted by Elcam and Customer must instead rely on the representations and warranties, if any, provided directly to Customer by the manufacturer of such product. The sole and exclusive remedy for breach of any warranty is limited to the remedies provided in the paragraph above.
- 6.5. WITHOUT DEROGATING FROM THE ABOVE AND ANY SECTION TO THE CONTRARY NOTWITHSTANDING, ELCAM SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE OF ANY PRODUCTS OR SERVICES BY ELCAM OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF ELCAM HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES. ELCAM'S TOTAL LIABILITY FOR ANY CLAIM OR ACTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OUT OF WHICH SUCH CLAIM OR

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ACTION AROSE AND PROVIDED THAT PAYMENT WITH RESPECT TO SUCH PRODUCT WAS RECEIVED BY ELCAM IN FULL.

7. **FORCE MAJEURE**

Elcam shall not be liable for any failure or delay in performance if and/or delivery of Products if such failure or delay results from interruptions in the Product's manufacturing process and/or any circumstances or occurrences beyond Elcam's reasonable control.

8. **CONFIDENTIALITY**

Customer acknowledges that all technical, commercial and financial data disclosed to Customer by Elcam and/or its affiliates is the confidential information of Elcam and/or its affiliates. Customer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

9. **MISCELLANEOUS**

- 9.1. Any required notices shall be given in writing, in the case of Elcam, at the address set forth below, and in the case of Customer, at the address designated on Customer's purchase order or to such other address as either party may substitute by written notice to the other and shall be deemed given upon personal delivery, overnight delivery or three days following deposit in the mail.
- 9.2. Except as expressly provided herein, no changes or modifications to, or waiver of, any of these terms and conditions shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. Elcam's failure or delay to exercise or enforce any of its rights hereunder shall not constitute or be deemed to be a waiver of such rights or forfeiture of such rights, and Elcam may, at its option, from time to time, exercise any of its rights or remedies.
- 9.3. These Terms and Conditions shall bind Customer and its successors and permitted assigns.
- 9.4. Customer may not change, adulterate, obscure, remove or deface trademarks, trade-names or labels appearing on any Product of Elcam.

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- 9.5. In all cases, all intellectual property rights in and to, and all technology relating to, the Products, their design and all improvements thereto or thereof, shall be and remain the exclusive property of Elcam.
- 9.6. Any knowledge or information that Customer may disclose to Elcam shall not be deemed to be confidential or proprietary information, and shall be acquired by Elcam free from any restriction.
- 9.7. Customer shall maintain adequate tracking for the products to enable Elcam to meet the applicable lawful requirements applicable to the tracking of medical devices.
- 9.8. Customer shall purchase the products for its own use only, and shall not resell the products to any other party. Customer represents that it has examined the products and that they are acceptable and clinically suitable for its intended purposes.

10. ASSIGNMENT AND SETOFF

- 10.1. Customer shall not assign any rights or obligations under the Agreement without the prior written consent of Elcam.
- 10.2. Customer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products purchased from Elcam and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Customer or on its behalf.

11. GOVERNING LAW AND FORUM

All disputes arising out of or in connection with any offer, confirmation, acceptance and/or Products purchased from and/or supplied by Elcam shall be governed by and construed in accordance with the laws of the State of Israel, excluding its rules on the conflict of laws. The UN convention on contracts for the international sale of goods (CISG) is hereby explicitly excluded. All disputes between the Customer and Elcam which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the competent courts of Tel Aviv- Jaffa, Israel which shall have sole and exclusive jurisdiction over all such matters.