TERMS AND CONDITIONS OF SALE

1.GENERAL

(a) The expressions "the company" and "the customer" herein shall mean respectively Elmo Motion Control Ltd., Petach-Tikva, Israel / Elmo Motion Control Inc., Nashua NH (whichever of them accepted the order) and the person, firm or company from whom the former accepted the order. References to "Elmo" mean the company.
(b) All orders are accepted and the contract forming the subject matter thereof is made subject to the terms and conditions as herein set out (these "Terms"). If such conditions shall be at variance or inconsistent with any provision or condition (whether special or general) contained or referred to in the customer's order, purchase order, or other documents, then the foregoing conditions shall prevail and be effective, and any additional or different terms proposed by the customer are hereby rejected and shall not be binding on the company unless expressly accepted by the company in a writing signed by its authorized representative. Purchase orders from customers shall be processed as non-cancellable/non-returnable when delivery confirmation from the manufacturer has been sent to the customer.
(c) **Order of precedence.** In the event of any conflict, the following order of precedence shall apply: (i) any written agreement signed by authorized representatives of both parties that expressly amends these Terms; (ii) the commercial details (product description, part number, quantity, price and estimated delivery date) set out in the company's written order acknowledgement; (iii) these Terms; and (iv) the company's quotation. No delivery date or other statement in an order acknowledgement shall be construed as overriding Sections 6 or 9 of these Terms or as creating any liability excluded or limited by Sections 4 and 5.
(d) **Entire agreement.** These Terms, together with the company's quotation and order acknowledgement, constitute the entire agreement between the parties with respect to the subject matter of each order and supersede all prior or contemporaneous proposals, negotiations, representations and understandings, whether oral or written. No modification of these Terms shall be binding unless made in writing and signed by an authorized representative of the company.

2.QUOTATIONS AND ORDER ACKNOWLEDGEMENTS

(a) Quotations given by the company shall not be deemed to constitute an offer by the company to supply goods or to carry out work referred to therein and no order placed in relation to any quotation shall be binding unless and until it be formally accepted by the company in writing.
(b) Each order acknowledgement issued by the company is issued subject to, and expressly incorporates by reference, these Terms. Any delivery date stated in a quotation, order acknowledgement, delivery confirmation or other communication of the company is an estimated date only, provided in good faith based on information available to the company (including its suppliers' lead times) at the time it is given, and is subject to Sections 6 and 9 of these Terms.

3.PRICES

(a) All prices at which an order is accepted are based on the costs of manufacturing the goods and executing the order as known at the date of acceptance. If, prior to delivery of an order, any of such costs shall be increased (whether by reason of an increase in the cost of materials or components, including as a result of component shortages or supply chain disruptions, or by reason of any change in the method or technique of manufacturing the said goods, or any other reason whatsoever), the company shall be at liberty, upon giving one month's written notice thereof to the customer, to adjust the prices of the undelivered goods accordingly. This section is intended to apply, *inter alia*, to orders accepted for extended delivery periods.
(b) Unless otherwise stated in the order acknowledgement, prices are exclusive of value added tax, sales, use, excise and other taxes, customs duties, levies, packaging, freight and insurance, all of which shall be borne by the customer (other than taxes on the company's net income).

4.WARRANTIES AND GUARANTEES

(a) The company guarantees all goods of its own manufacture against defective materials or faulty workmanship but the company's obligations and liabilities under such guarantee shall be limited to free replacement, or at its sole discretion, to repair at its works any part which within 360 days of delivery shall be returned to it carriage paid, in accordance with the RMA procedure in Section 8, and which shall be proved to have been defective during the guarantee period. If the company determines that repair or replacement is not commercially practicable, it may instead refund the price paid for the defective goods. This guarantee is contingent upon proper use and proper application of the goods for which the goods were intended. The guarantee does not cover goods which were modified without the company's approval or which were subjected to unusual physical or electrical stress, misuse, accident, improper installation, storage or handling, or repair by anyone other than the company. Repaired or replaced goods are warranted only for the remainder of the original guarantee period. No claim will be allowed under this warranty unless the customer notifies the company of such claim promptly after the customer learns of acts giving rise to such claim.
(b) EXCEPT AS EXPRESSLY SET OUT IN SECTION 4(a), THE COMPANY MAKES NO OTHER WARRANTIES, AND NO TERM, CONDITION, REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED BY STATUTE, CUSTOM, CASE LAW OR OTHERWISE, SHALL APPLY IN RESPECT OF ANY GOODS THE SUBJECT OF THIS ORDER, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, OR COMPLIANCE WITH ANY DESCRIPTION, STANDARD, SPECIFICATION OR QUANTITY, unless such term, condition, representation or warranty expressly appears in an order acknowledgement of the company. No further information, statistics or specification relating to dimensions, outputs, capacities, strengths, weights, performance, and/or similar data and no photograph, illustration, drawing or plan, whether issued by the company or not, shall be deemed to relate to the subject of this order, unless they appear in the company's official drawing and/or design data sheets and/or service manuals or any of them issued by or on behalf of the company in connection with the said goods.
(c) The company assumes no liability for any special, direct, indirect, consequential, or other damages of any type (including but not limited to loss and/or damages related to lost sales and profits, excessive or increased costs and expenses, downtime costs and claims of the customer for such damages) resulting from the nonconforming or defective condition of any goods sold by the company to the customer hereunder, and the customer assumes all liability for all consequences arising out of its use of such goods. The remedy set out in Section 4(a) is the customer's sole and exclusive remedy, and this limitation of liability provision shall apply to any and all claims or suits brought against the company by the customer, or any third party, including claims or suits based upon negligence, breach of contract, breach of warranty, strict liability or any other legal theory upon which liability may be asserted against the company by the customer or any third party.

5.LIMITATION OF LIABILITY

(a) IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUE, SALES, BUSINESS, PRODUCTION, USE OR GOODWILL, DOWNTIME COSTS, COSTS OF COVER OR SUBSTITUTE GOODS, OR INCREASED COSTS AND EXPENSES, HOWEVER CAUSED (INCLUDING BY DELAY IN DELIVERY), WHETHER OR NOT FORESEEABLE AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.
(b) WITHOUT DEROGATING FROM SECTIONS 4(c), 5(a) AND 6(a), AND IN ANY CASE IN WHICH ANY EXCLUSION OF LIABILITY SET OUT IN THESE TERMS IS HELD TO BE UNENFORCEABLE OR INAPPLICABLE, THE COMPANY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY ORDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, STRICT LIABILITY, INDEMNITY OR OTHERWISE, SHALL NOT EXCEED THE PRICE ACTUALLY PAID BY THE CUSTOMER TO THE COMPANY UNDER THE APPLICABLE ORDER FOR THE SPECIFIC GOODS GIVING RISE TO THE CLAIM.
(c) Nothing in these Terms shall limit or exclude liability which cannot be limited or excluded under applicable law, including liability for fraud or for death or personal injury caused by the company's negligence. The parties acknowledge that the limitations in this Section 5 and in Section 4 reflect an allocation of risk on which the prices are based and form an essential basis of the bargain.

6.DELIVERY AND SHIPPING

(a) Whilst the company will do its best to implement any estimated delivery date, delivery shall not be deemed to be of the essence of the contract nor shall delay be a ground for a claim to damages or (except as hereinafter appears) for cancellation. Without prejudice to the aforesaid conditions, should a delivery be delayed in excess of 3 months from the estimated date thereof, except where such delay in delivery is attributable to a Force Majeure Event (as defined in Section 9), the customer shall thenceforth on giving notice in writing to the company be at liberty to cancel such part of an order as at the time remains undelivered, and such cancellation (together with refund of any amount prepaid for the cancelled undelivered goods) shall be the customer's sole and exclusive remedy for such delay.
(b) Unless otherwise stated in the order acknowledgement, goods are delivered FCA (Incoterms® 2020) the company's facility. The company may select the carrier and method of shipment where none is specified by the customer, may make partial deliveries and invoice each delivery separately, and each instalment shall be deemed a separate contract. Delay or defect in one instalment shall not entitle the customer to cancel any other instalment.
(c) Risk of loss of or damage to the goods sold pursuant to this contract passes to the customer upon delivery by the company to a carrier or to the customer, whichever occurs first.
(d) Title to the goods shall pass to the customer only upon receipt by the company of full payment for such goods. Until title passes, the customer shall hold the goods as bailee for the company, keep them insured and identifiable, and the company may recover the goods if payment is overdue. Where the company is Elmo Motion Control Inc., the customer grants the company a purchase-money security interest in the goods until paid in full and authorizes the company to file any financing statement necessary to perfect such interest.
(e) If the customer fails to take delivery or provide shipping instructions, the company may store the goods at the customer's risk and expense, and the goods shall be deemed delivered and may be invoiced.

7.INSPECTION, ACCEPTANCE AND REJECTION

(a) The customer shall inspect the goods promptly upon receipt and in any event within 10 days of delivery (the "Inspection Period"). Shortages, visible damage or nonconformity with the order acknowledgement must be notified to the company in writing within the Inspection Period, with reasonable detail and supporting documentation. Damage in transit shall also be noted on the carrier's delivery receipt.
(b) Goods shall be deemed accepted by the customer upon the earlier of (i) expiry of the Inspection Period without written notice of rejection, or (ii) the customer's use, incorporation into other products, or resale of the goods. Acceptance is without prejudice to the guarantee in Section 4(a) for latent defects.
(c) If the customer validly rejects goods, the company shall, at its option, repair or replace the nonconforming goods or credit the price thereof, which shall be the customer's sole and exclusive remedy. Goods may not be returned for rejection except in accordance with Section 8.

8.RETURNS, EXCHANGES AND RMA PROCEDURE

(a) No goods may be returned for any reason (including under warranty or rejection) without a Return Merchandise Authorization ("RMA") number issued in writing by the company. The customer shall request an RMA by providing the part number, serial number, invoice number and a description of the alleged defect. Goods returned without an RMA number may be refused and returned at the customer's expense.
(b) Returned goods must be shipped carriage and insurance paid, in their original or equivalent protective (including ESD-safe) packaging, with the RMA number clearly marked. If the company determines that returned goods are not defective or that the defect is excluded under Section 4(a), the customer shall pay the company's standard inspection and handling charges and return freight.
(c) Subject to Section 1(b), non-defective standard goods may be returned for exchange or credit only with the company's prior written consent, within 30 days of delivery, unused and in their original unopened packaging, and subject to a restocking fee as determined by the company. Custom, modified, non-cancellable/non-returnable and end-of-life goods are not returnable.

9.FORCE MAJEURE

(a) The company shall not be liable for any failure or delay in performance caused by circumstances beyond its reasonable control (a "Force Majeure Event"), including fire, flood, earthquake, epidemic or pandemic, strikes, lock-outs, labor disputes, war, hostilities, terrorism, civil unrest, acts or orders of any governmental authority (including sanctions, embargoes and export or import restrictions), accidents, failure of utilities or transportation, and shortages, allocations, unavailability, extended lead times or price escalations of components, raw materials or semiconductors, and other supply chain disruptions, including delays or failures of the company's suppliers or subcontractors, whether or not such circumstances were foreseeable at the date of the order.
(b) During a Force Majeure Event, the time for performance shall be extended for the duration of the event and its effects, and the company may allocate available goods among its customers in such manner as it reasonably determines. If a Force Majeure Event continues for more than 180 days, either party may cancel the undelivered portion of the affected order upon written notice, without liability other than refund of any amount prepaid for the cancelled undelivered goods.

10. MODIFICATION

Elmo, whilst accepting no liability whatsoever so to do, reserves the right in its unfettered discretion to incorporate into goods the order for which has been accepted, any design modification introduced by the company subsequent to the date of such acceptance, provided that such modification does not materially adversely affect the form, fit or function of the goods.

11. PAYMENT

(a) Unless otherwise specified in the acknowledgement, payment shall be made within 30 days of the date of execution of the invoice, in the currency stated in the invoice, without set-off, deduction or counterclaim.
(b) Overdue amounts shall bear interest at the rate of 1.5% per month (or the maximum rate permitted by applicable law, if lower) from the due date until paid in full, and the customer shall reimburse the company for all reasonable costs of collection, including attorneys' fees.
(c) If any payment is overdue, or if the company reasonably doubts the customer's creditworthiness, the company may, without liability and without prejudice to its other rights, suspend or cancel further shipments, require payment in advance or other security, and declare all outstanding amounts immediately due.

12. INTELLECTUAL PROPERTY AND COPYRIGHTED MATERIALS

(a) All intellectual property rights in and to the goods, including patents, copyrights, trade secrets, know-how, designs, trademarks and the firmware and software embedded in or supplied with the goods, and any improvements thereto, are and shall remain the exclusive property of the company or its licensors. No sale of goods conveys any title to or ownership of such rights, and no license is granted except as expressly set out in Section 12(c).
(b) The company remains the copyright owner of all drawings, calculations, illustrations, printed matter, etc. Such documents shall neither be copied nor made available to third persons without the company's written permission. The technology used in the design and manufacturing of the products remains the property of the company. The customer is not allowed to manufacture the products.
(c) Subject to the customer's compliance with these Terms and payment in full, the company grants the customer a non-exclusive, non-transferable (except together with the goods in which it is embedded), royalty-free, limited license to use the firmware and software embedded in or supplied with the goods, in object code form only, solely for operation of the goods with which it is supplied. Software supplied separately may be subject to a separate license agreement, which shall prevail in respect of such software.
(d) The customer shall not, and shall not permit any third party to, reverse engineer, disassemble, decompile, de-encapsulate or otherwise attempt to derive the source code, circuit design, structure or composition of the goods or any firmware or software, nor modify, copy or create derivative works of the same, except to the extent such restriction is expressly prohibited by applicable law. The customer shall not remove or alter any proprietary notices or markings on the goods.

13. CONFIDENTIALITY

(a) Each party shall keep confidential all non-public technical, commercial and financial information disclosed by the other party in connection with an order (including pricing, drawings, specifications, firmware and these Terms as negotiated) ("Confidential Information"), shall use it solely for the purpose of performing or receiving performance of the order, and shall not disclose it except to its employees and advisors who need to know it and are bound by obligations of confidentiality no less protective than these.
(b) These obligations shall not apply to information that is or becomes publicly available through no fault of the receiving party, was lawfully known to or independently developed by the receiving party without use of Confidential Information, or is required to be disclosed by law or court order (subject to prompt notice to the disclosing party where lawful). These obligations shall survive for 5 years after the last delivery under the order, and indefinitely with respect to trade secrets.

14. INDEMNIFICATION

(a) The customer shall defend, indemnify and hold harmless the company, its affiliates and their respective officers, directors and employees from and against all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or relating to (i) the customer's products, systems or applications into which the goods are incorporated, (ii) the use, installation, integration or resale of the goods by or for the customer, (iii) designs, specifications or instructions furnished by the customer, (iv) any modification of the goods not made by the company, or (v) the customer's breach of these Terms or of applicable law, including Section 15.
(b) The company shall defend the customer against any third-party claim that goods of the company's own manufacture, as delivered, directly infringe a patent, copyright or trademark in the country of delivery, and shall pay damages finally awarded in respect of such claim, provided that the customer promptly notifies the company in writing, grants the company sole control of the defense and settlement, and provides reasonable assistance. The company shall have no obligation for claims arising from items described in Section 14(a)(i) to (iv) or from the combination of the goods with other products. If goods become or are likely to become subject of such claim, the company may, at its option, procure the right for the customer to continue using them, modify or replace them so they are non-infringing, or accept their return and refund the price paid. This Section 14(b) states the company's entire liability for infringement and is subject to Section 5.

15. EXPORT CONTROLS AND TRADE COMPLIANCE

(a) The goods, firmware, software and technical data may be subject to the export control and sanctions laws of the State of Israel, the United States (including the Export Administration Regulations and regulations administered by the Office of Foreign Assets Control), the European Union and other jurisdictions. The customer shall comply with all such laws and shall not export, re-export, transfer or release the goods or technology, directly or indirectly, to any destination, end user or end use prohibited thereunder, including any military, nuclear, chemical or biological weapons, or missile end use, without all required licenses and authorizations.
(b) The customer represents that it is not, and is not owned or controlled by, a person listed on any applicable sanctions or restricted party list. The customer shall provide end-user and end-use certificates upon request. The company may suspend or cancel any order without liability where it reasonably believes performance would breach applicable trade control laws or where a required license is not granted or is revoked.

16. TERMINATION

(a) The company may, without liability and without prejudice to its other rights, terminate or suspend any order, in whole or in part, by written notice to the customer if (i) the customer breaches these Terms (including failure to pay when due) and fails to remedy such breach within 15 days of written notice; or (ii) the customer becomes insolvent, makes an assignment for the benefit of creditors, has a receiver, liquidator or trustee appointed, or becomes subject to any bankruptcy, insolvency or reorganization proceedings.
(b) Except as expressly provided in Sections 6(a) and 9(b), orders accepted by the company may not be cancelled or rescheduled by the customer without the company's prior written consent, and subject to the customer paying cancellation charges covering work performed, components and materials procured or committed, and the company's reasonable profit, in addition to the non-cancellable/non-returnable restrictions in Section 1(b).
(c) Upon termination, all amounts owed to the company shall become immediately due. Sections 4, 5, 6(d), 11, 12, 13, 14, 15, 17 and 18 and any other provisions which by their nature are intended to survive shall survive termination or completion of any order.

17. GOVERNING LAW AND JURISDICTION

(a) Where the company is Elmo Motion Control Ltd., this order agreement is to be construed and the respective rights of the parties are to be determined according to the laws of the State of Israel, without regard to its conflict of laws rules, and the competent courts of Tel Aviv-Jaffa, Israel shall have sole and exclusive jurisdiction over any dispute arising out of or in connection with this order agreement, and the parties irrevocably submit to such jurisdiction.
(b) Where the company is Elmo Motion Control Inc., this order agreement is to be construed and the respective rights of the parties are to be determined according to the laws of the State of Connecticut, United States of America, without regard to its conflict of laws rules, and the state courts of the State of Connecticut sitting in Hartford, Connecticut, or the United States District Court for the District of Connecticut sitting in Hartford, Connecticut, as applicable, shall have sole and exclusive jurisdiction over any dispute arising out of or in connection with this order agreement, and the parties irrevocably submit to such jurisdiction.
(c) The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), and any law implementing it (including the Israeli Sale (International Sale of Goods) Law, 5760-1999), shall not apply to these Terms or to any order.
(d) Notwithstanding the foregoing, the company may seek injunctive or other equitable relief, or bring an action to collect amounts due, in any court of competent jurisdiction.

18. MISCELLANEOUS

(a) The customer may not assign or transfer any order or any rights or obligations hereunder without the company's prior written consent. The company may assign or subcontract its rights and obligations to any of its affiliates.
(b) If any provision of these Terms is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible (and, in the case of any limitation or exclusion of liability, Section 5(b) shall apply), and the remaining provisions shall remain in full force and effect. No failure or delay by the company in exercising any right shall operate as a waiver thereof.
(c) Notices shall be in writing and delivered by hand, courier or e-mail to the addresses set out in the order acknowledgement. The parties are independent contractors, and nothing herein creates any partnership, agency or joint venture.