



TERMS AND CONDITIONS FOR THE SALE OF GOODS

These terms and conditions (these "**Terms**") apply to the purchase and sale of products from Elotek Systems, Inc. (referred to as "**us**", "**we**", or "**our**" as the context may require). These Terms apply to any repaired or replacement goods provided by us hereunder.

1. Order Acceptance and Cancellation. You agree that your order (the "**Order**") is an offer to buy, under these Terms, all products listed in your order. All orders are subject to our acceptance. We may choose not to accept orders at our sole discretion.
2. Payment Terms. Invoices are due and all properly invoiced amounts are payable within 30 days from your receipt of such invoice, except for any amounts disputed by you in good faith. We may charge a late payment penalty of 5% per month on undisputed amounts, or the maximum rate permitted by law, whichever is less. Without waiving any of our other rights or remedies, we may refuse additional orders until all overdue amounts are paid in full.
3. Shipments; Delivery; Title and Risk of Loss. We will arrange for shipment of the products to you. You will pay all shipping and handling charges unless otherwise specified in the order confirmation. Upon request shipping and handling charges will be included in quotations. Unless specified otherwise in the Order, shipment terms are DPU (incoterms® 2020). Shipping and delivery dates are estimates only and cannot be guaranteed. We are not liable for any delays in shipment.
4. Returns and Refunds. Microchip Frequency and Time Products are NCNR (Non-Cancelable and non- returnable).
5. Manufacturer's Warranty and Disclaimers.

(a) We do not manufacture or control any of the products offered by us. The availability of products offered by us does not indicate an affiliation with or endorsement of any product, service, or manufacturer. Accordingly, we do not provide any warranties with respect to the products offered by us. Notwithstanding the foregoing, the products offered by us are covered by the manufacturer's warranty as included with the product. To obtain warranty service for defective products, please follow the instructions included in the manufacturer's warranty.

(b) ALL PRODUCTS OFFERED BY US ARE PROVIDED "AS IS" AND WE MAKE NO WARRANTIES WHATSOEVER WITH RESPECT TO THE PRODUCTS OFFERED, INCLUDING, WITHOUT LIMITATION, ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(c) YOU AFFIRM THAT WE SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY BREACH OF WARRANTY CLAIMS OR FOR ANY DAMAGES ARISING OUT OF THE MANUFACTURER'S FAILURE TO HONOR ITS WARRANTY OBLIGATIONS TO YOU.

6. Delivery Location and Date. We will deliver all goods to the address and on the date specified in the Order during your normal business hours or as otherwise instructed by you (the "**Delivery Date**"). We will advise you if early delivery is planned and ask permission for early delivery prior to shipment. If no Delivery Date is specified, we will deliver the goods as early as possible. We will always inform you of the planned ship date prior to shipment. Timely delivery of the goods is of the essence. We will provide all documents necessary to effectuate delivery a minimum of ten (10) business days prior to the Delivery Date.

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7. Quantity and Quality. Goods inconsistent with the Order may be rejected by you at our expense. Goods shall be unopened, new, and authentic, unless otherwise agreed to by you.

8. Packaging. All goods will be packed for shipment according to your instructions, but in no event less than in a manner sufficient to ensure that the goods are delivered in undamaged condition. Unless the Order states otherwise packaging material will not be returned.

9. Amendment and Modification. No amendment to the Terms are binding upon the parties unless mutually agreed in writing, signed by an authorized representative.

10. Inspection and Rejection of Nonconforming Goods. You have the right to inspect the goods on or after the Delivery Date. You, at your sole option, may inspect all or a sample of the goods, and may reject the items that are determined to be nonconforming or defective. Upon approval, rejected goods may be return for repair or replacement.

11. Confidentiality. "**Confidential Information**" means any trade secrets or other information disclosed or otherwise made available whether prior to, on, or after the date of the Order, by one party to the other party (or such party's affiliates) in each case, that is (a) not generally available to the public, and (b) is either identified in writing as confidential or proprietary by the disclosing party or should be reasonably understood by the receiving party to be confidential or proprietary to the disclosing party. For clarity, Confidential Information includes information of a technical, business, or other nature (including, without limitation, the relationship of the parties, information relating to a party's (and/or its affiliates') technology, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects, or other affairs). Without limiting the foregoing, all non-public information regarding office locations, personnel (e.g., identity of employees and contractors), clients and client matters, in each case, you and your affiliates, will be deemed your Confidential Information without the need for further designation. Confidential Information is solely to be used to perform the Order and may not be disclosed or copied unless authorized by the disclosing party in writing. Upon the disclosing party's request, the receiving party will promptly return all documents and other materials received from the disclosing party.

12. Limitation of Liability.

(a) IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THESE TERMS, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) OUR SOLE AND MAXIMUM LIABILITY FOR ANY REASON, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY YOU FOR THE PRODUCTS YOU HAVE ORDERED FROM US.

13. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any of your obligations to make payments to us hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") control, including, without limitation, the following force majeure events (each a "**Force Majeure Event**"): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within 5 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects

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of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 15 days following written notice given by it under this Section, either party may thereafter terminate this Agreement upon 10 days' written notice.

14. Governing Law and Jurisdiction. All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. The parties exclude the application of the Uniform Computer Information Transactions Act ("UCITA"), and/or the United Nations Convention on the International Sale of Goods ("CISG") to the Order. Each party hereby irrevocably consents to the jurisdiction and venue of any federal or state court located in California.

15. Assignment. You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation in violation of this **Error! Bookmark not defined**.is null and void. No assignment or delegation relieves you of any of your obligations under these Terms.

16. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Terms will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

17. No Waivers. The failure by us to enforce any right or provision of these Terms does not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision is effective only if in writing and signed by a duly authorized representative of Elotek Systems, Inc.

18. No Third-Party Beneficiaries. These Terms do not and are not intended to confer any rights or remedies upon any person or entity other than you.

19. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the order or to such other address that may be designated by the receiving party in writing. Notice to you shall be accompanied by a mandatory copy via email sent to legal@kraken.com All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

20. Severability. If any provision of these Terms is invalid, illegal, void, or unenforceable, then that provision is deemed severed from these Terms and does not affect the validity or enforceability of the remaining provisions of these Terms.

21. Entire Agreement. These Terms, together with the applicable purchase order, are deemed the final and integrated agreement between you and us on the matters contained in these Terms.