

## 1 GENERAL PROVISIONS

### 1.1 Order of Precedence

The terms and conditions hereof take precedence over the Buyer's additional or different terms and conditions, to which notice of objection is hereby given. Acceptance by the Buyer is limited to these Terms and Conditions. Neither Eclipse's commencement of performance nor delivery shall be deemed nor construed as acceptance of the Buyer's additional or different terms and conditions. The Terms and Conditions hereto constitute the general understanding between Eclipse Scientific Products Inc. ("Eclipse", "Seller") and Buyer ("the entity to which Eclipse is providing Products") in regard to the Contract ("the document/purchase order that comprises the agreement between Buyer and Eclipse for the sale of Products") execution and supersede any previous communications, representations or agreements by either party unless in writing and signed by an authorized representative of the party to be bound.

### 1.2 Assignment

No assignment of rights or transfer of obligations under the Contract shall be made by Eclipse or the Buyer without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Eclipse may, without the consent of the Buyer, assign its rights and transfer its obligations to any corporation which is a parent, subsidiary, or affiliate of Eclipse.

### 1.3 Inadmissibility of Provision

In the event that any provision of these Terms and Conditions is deemed by a Court of competent jurisdiction to be void, illegal, unenforceable or inadmissible for any reason whatsoever, all other provisions, terms, and covenants shall remain binding and effective upon the Parties hereto and shall be construed as if these Terms and Conditions had been executed without such void provision.

### 1.4 Insolvency

Except as may be prohibited by Canadian bankruptcy laws, in the event that the Buyer becomes insolvent or unable to pay its debts as they become due, or in the event of voluntary or involuntary bankruptcy proceedings by or against the Buyer, or appointment of a receiver, trustee or assignee of the Buyer for the benefit of creditors, Eclipse may elect to cancel any unfulfilled obligations hereunder and shall have no further obligation to the Buyer, its trustee or its receiver as the case may be.

## 2 PURCHASE ORDER

### 2.1 Proposals

Prices, specifications and dates for Products ("all equipment, parts, subassemblies, materials, supplies, and other goods") delivery referenced in Eclipse proposals are for information purposes only and shall not be binding on Eclipse until all technical requirements have been agreed upon and Eclipse has accepted the Buyer's purchase order.

Proposals terminate if no purchase order is issued by Buyer within the validity date specified on the proposal or 60 days, whichever is earlier.

### 2.2 Purchase of 3<sup>rd</sup> Party Parts & Products

Unless otherwise agreed in writing, Buyer shall be responsible, at Eclipse's sole discretion and upon notification to Buyer, for advance payment for all third party components, parts or products specified for inclusion in any product ordered by Buyer. Such components, part, or products include, but are not limited to, Engineering products, and software products. Buyer may also elect to purchase such items directly from the third-party source and provide them to Eclipse.

In no event shall Eclipse be liable for any technical support, damages, warranty claims, product failures, system failures or deficiencies related to or caused by any such third-party components, parts or products.

Buyer shall be responsible for all excess and non-cancellable and non-returnable material procured specifically for and according to the Buyers order(s) if the Buyer decides to change or cancel the order(s).

### 2.3 Change in Orders

Buyer may request a change in the purchase order by submitting to Eclipse a written change request signed by Buyer, detailing the scope of such change request. Eclipse shall evaluate the change request, and shall provide Buyer with an impact assessment, addressing relevant factors including, without limitation, the necessity for a change in quoted prices, delivery schedules or in any other of these Terms and Conditions or in any Statement of Work ("a set of requirements supported with specifications, drawings, and designs supplied in a written format as an aid for the execution of a purchase order or Contract"). All changes must be mutually accepted in writing by Eclipse and Buyer. Any further work by Eclipse on such order may be suspended and will not proceed until such written agreement becomes available. Work on any product that is stopped or delayed by Buyer for any reason may be subject to a restart fee determined by Eclipse.

### 2.4 Cancellation of Orders

Buyers desiring to cancel, in whole or in part, a purchase order must notify Eclipse of such request, in writing, any time prior to shipment. Buyer must receive written acceptance from Eclipse before any order cancellation is considered approved. Upon written acceptance by Eclipse of any such cancellation request, Buyer shall be liable for all costs, expenses, hours spent and other charges incurred by Eclipse related to such order, as determined by Eclipse.

## 3 DELIVERY OF PRODUCTS

### 3.1 Delivery Conditions

Unless otherwise agreed, Eclipse reserves the possibility of full or partial delivery. Eclipse may deliver any or all Products in advance of the delivery schedule if agreed to by Buyer.

Buyer shall pay all shipping and delivery costs including Duty, Brokerage, Customs, Importation, VAT and other charges imposed by any local, provincial, state or federal government unless expressly agreed otherwise in the Eclipse proposal.

### 3.2 Delivery Time

Unless otherwise agreed, the delivery time is understood as the time necessary for Eclipse to make the ordered Products available. The delivery time begins after the following conditions have been met:



**Head Office, Training, Product Development & Special Services**  
440 Phillip St., Suite 100  
Waterloo, ON, N2L 5R9  
Canada  
Tel 519-886-6717  
Fax 519-886-1102

**Software Engineering & Accounting**  
1260 2nd Avenue East, Unit 4  
Owen Sound, ON, N4K 2J3  
Canada  
Tel 519-372-1831  
Fax 519-372-2039

- All the information necessary for the order to be carried out has been provided by the Buyer;
- The Advance payment, if required under the terms of the order, has been made.

Eclipse will make every reasonable effort to keep its delivery commitment; however, circumstances beyond the control of Eclipse could delay production or delivery of Products. Delivery times are calculated and given as accurately as possible but are subject to variations in supply and transport. Consequently, the time given is an indication only and Eclipse may not be held liable by the Buyer for any failure to meet such dates. Delivery delays cannot give rise to any claims, nor to withholding or cancellation of current orders. In the event of such delay, the Buyer will be informed and the delivery date provided in the Contract will be extended by the period of time lost by the delay.

### 3.3 Delayed Shipments Due to Buyer

If Buyer's confirmation is required prior to shipping Eclipse's ready product(s), the Buyer undertakes to confirm shipping address and all relevant information within seven (7) days of notification of its availability for shipping. After this period, Eclipse may consider to store the product till the time the Buyer confirms its readiness to receive the available product. Eclipse may notify Buyer and then ship Products to a storage facility, including a facility within the place of manufacture; the following conditions will then apply:

- All risks of loss or damage will immediately pass to Buyer, if they had not already passed;
- Any amounts otherwise payable to Eclipse upon delivery or shipment shall be payable upon presentation of Eclipse's invoices and according to payment terms in Eclipse's proposal;
- All expenses and charges incurred by Eclipse, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal and any taxes, shall be payable by Buyer upon submission of Eclipse's invoices;
- When conditions permit and upon payment of all amounts due hereunder, Eclipse will resume delivery of Products to the originally agreed point of delivery.
- If the Buyer does not confirm its readiness to receive the available product after 30 days of the storage of the available product, Eclipse shall cancel the order and consider the sale unilaterally terminated by the Buyer. In such case, restocking amounts for the product and additional costs incurred by Eclipse shall be payable immediately by the Buyer or will be deducted from any amounts owed to the Buyer.

## 4 TRANSFER OF RISKS

For sales within Canada, the risks of damage, theft or loss of the ordered product during transit are always assigned to the Party paying for shipping. For international sales, the transfer of risks during transit is directly linked to the choice of the Incoterm agreed by both Eclipse and the Buyer. Eclipse's responsibility ceases upon delivery of the Products to the carrier in good order at the point of shipment.

## 5 OWNERSHIP RETENTION

Independently of the transfer of risks, Eclipse expressly retains ownership of the delivered Products until payment of the full agreed price, principal and interest. Therefore, if the Buyer is put into receivership or compulsory liquidation, Eclipse reserves the right, in the context of a collective procedure, to claim the unpaid goods sold. The Buyer will refrain from pledging or transferring ownership until the agreed price, principal and interest is paid in full to Eclipse.

If Eclipse still retains the Products' ownership, the Buyer may resell the Products in the normal course of his business provided that the Buyer

undertakes to inform subsequent purchasers that the Products are encumbered by an ownership retention clause and to inform Eclipse of such a transfer so that the latter can protect their rights and, if need be, claim the resale price from the subsequent purchasers. Consequently, the Buyer transfers to Eclipse all the rights and claims he holds against the subsequent purchaser for this resale.

## 6 ACCEPTANCE & RETURNS

### 6.1 Claims for Damage in Transit

The Buyer is urged to examine all deliveries carefully immediately upon delivery and before signing receipt. If the delivered Products are visibly damaged, the Buyer must have a written confirmation of the damage noted on the freight bill or other receipt by the agent of the carrier. Signing a receipt without notation of damage to the delivered Products shall constitute conclusive evidence of receipt of Products in a satisfactory condition. Any claim of damage in transit should be promptly made by consignee against the transportation company.

### 6.2 Acceptance & Rejection

Any claims concerning the quality, the quantities and the references of the delivered Products, as well as their compliance with the order must be expressed in writing and received by Eclipse within ten days after delivery to the Buyer, if installation by Eclipse is not included in the purchase price, or before a commissioning completion certificate is issued indicating that the Products are installed and meet Eclipse's specifications, if installation is included in the purchase price. Claims are acceptable to Eclipse only if the delivered Products have not been utilized by the Buyer in any useful work.

If no claims were submitted to Eclipse within the above mentioned timeframe, all delivered Products covered by the Contract shall be deemed finally inspected and accepted by the Buyer. Acceptance shall constitute acknowledgement of full performance by Eclipse of all obligations under the Contract.

### 6.3 Returns

Eclipse may accept standard Products back for repair or exchange within 30 days of ship date, provided that Buyer returns the Products in the condition in which Eclipse delivered them and in their original packaging with a copy of the original packing slip. Damaged, modified or custom Products will not be accepted for refund or exchange. A Return Material Authorization (RMA) number must be obtained from Eclipse before any delivered product can be returned.

If the Buyer returns a product with an obvious defect or non-compliance, the Buyer must prove the existence of the defects or abnormalities found, provide Eclipse with every opportunity to observe these defects and remedy them, and refrain from intervening or having a third party intervene for this purpose. Defective Products will be repaired or exchanged; under no circumstances can a return give rise to a unilateral cancellation of the purchase order by Buyer.

The costs and risks of the return are at the Buyer's expense unless previously expressly agreed by Eclipse or when the product has a manufacture/functional defect.

## 7 PAYMENT

### 7.1 Security Interest

The Buyer hereby grants and Eclipse reserves the right to maintain a security interest in each product purchased hereunder, and in any proceeds thereof, for the full amount of the Contract price. The Buyer will execute, upon Eclipse request, such financial statements,



continuations, terminations and other documents necessary to affect the intent of this clause. Payment in full of the purchase price of any product purchased hereunder shall release the security interest on that product and the Buyer shall thereupon be entitled to a release of any such security interest.

**7.2 Terms of Payment**

Eclipse reserves the right to request a credit check for the Buyer, and may request an upfront payment accordingly prior to confirming the Buyer’s order. At Eclipse’s option, all orders involving deliveries outside Canada must be prepaid in full, in collected funds, prior to shipment.

Should Eclipse require payment from Buyer under letter of credit, Buyer shall establish an irrevocable letter of credit confirmed by a Canadian bank that is acceptable to Eclipse. Buyer shall pay all banking charges unless otherwise expressly agreed in the Eclipse Proposal.

Unless otherwise agreed by Eclipse, payment is due a maximum of thirty (30) days net from the invoice date made by bank transfer or any other means of payment agreed to by the parties. Payment must be made to Eclipse, be net, without reduction and in accordance with the specified terms of payment in the Contract. In all events, the simple forwarding of the payment does not constitute settlement; payment is only concluded by the actual collection of the amount.

**7.3 Late or Non-payment**

Under no circumstances can payments be deferred by the Buyer nor be subject to any offset without Eclipse’s prior written agreement. In the event of late payment, Eclipse may elect to suspend all current orders, without prejudice to any other course of action. Any amount not paid in full or in part by the due date appearing on the invoice leads to the application of late penalties.

Buyer shall pay a monthly late payment charge computed at the rate of two percent (2%), or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each calendar month (or fraction thereof) that the payment is overdue and all costs of Eclipse’s collection efforts including reasonable attorney’s fees.

In the event of non-payment of due payment, forty-eight (48) hours after an unanswered formal reminder has been made, the sale will be automatically cancelled, if so desired by Eclipse. Eclipse will be able to request, by summary proceedings (or any equivalent jurisdiction) if need be, the return of the Products without prejudice to any other damages. The cancellation of the sale may concern not only the current order but also all other current orders, whether or not their payment is due. In any event, the amounts owing for other deliveries or for any other reason will become immediately payable, if Eclipse does not choose to cancel the corresponding orders.

**8 GOVERNING LAWS & THEIR COMPLIANCE**

This agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario. All transactions hereunder shall at all times be subject to compliance with all applicable export control laws and regulations of the provincial and Federal Government of Canada and any amendments thereto. Buyer hereby agrees that it shall not re-export, divert or direct Products, other than in and to the ultimate country of destination specified on Buyer’s order and/or declared as the country of ultimate destination on Eclipse’s invoice, except as permitted by Canadian laws and regulations.

**9 WARRANTY AND LIABILITY**

Eclipse warrants to Buyers that all new Products manufactured by Eclipse shall be free from defects in workmanship, under normal and

proper use. Unless otherwise expressly agreed in writing, Eclipse shall, at its option, repair or replace the defective Products which are returned carriage paid to the place of shipment or dispatch within three (3) months (“The Warranty Period”) after the date of shipment by Eclipse. On expiration of the Warranty Period, any liability of Eclipse shall terminate. Eclipse accepts no responsibility for Products which have been modified without consulting Eclipse. The obligation of Eclipse under this warranty shall not be applicable should the Products be subject to any accident, abuse, misapplication, misuse, negligence, or has not been properly installed, maintained, operated, stored, or packed for transport while in Buyer’s possession. If inspection by Eclipse does not disclose a defect within the terms of this warranty, Eclipse’s normal charges for repair shall apply. In the event of Eclipse supplying Products not manufactured by Eclipse, such warranty as is provided by the actual manufacturer shall apply and Eclipse shall have no further liability.

The total liability of Eclipse, on all claims of any kind, whether in Contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of the performance or breach of the Contract or use of any Product shall not exceed the price of the specific Product giving rise to the claim.

Other than specifically set forth in this document, in no event, whether as a result of breach of Contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise, shall Eclipse be liable for loss of profit or revenues, loss of use of Products, or any associated equipment, interruption of business, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime costs, claims of Buyer’s customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages and Buyer shall indemnify Eclipse against such claims of Buyer’s customers.

Buyer shall indemnify, defend and hold Eclipse harmless from and against any and all claims made by any subsequent purchasers of Products against Eclipse for loss or damage arising out of the performance or non-performance of Products provided under the Contract.

If Eclipse furnishes Buyer with advice or assistance that is not required under the Contract, the furnishing of such advice or assistance will not subject Eclipse to any liability, whether in Contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

**10 FORCE MAJEURE**

Eclipse shall not be held liable nor in breach or default of its obligations under the Contract for any delay in performance or for any non-performance directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, war (declared or undeclared), fire, flood, acts of God, acts of third parties, epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer’s suppliers or agents, any act (or omission) by any governmental authority, strikes, labour disputes, acts of Governmental authority or any agency or commission thereof, accident, breakdown of equipment, those interfering with production, supply or transportation of Products, raw materials or components or its ability to obtain, on terms it deems reasonable, material, labour, equipment or transportation, differences with employees or similar or dissimilar causes.

<i>Company Name (“Buyer”)</i>		<i>Date</i>
<i>Representative Full Name</i>	<i>Title</i>	<i>Signature</i>