



Terms and Conditions for Sale of SkyBitz Equipment

THESE TERMS AND CONDITIONS APPLY TO THE PURCHASE, LICENSE AND/OR USE OF ELM TECHNOLOGIES LTD. ("ELM") &/OR SKYBITZ, INC. ("SKYBITZ") MATERIAL, SUPPLIES, EQUIPMENT, GOODS AND OTHER ARTICLES AND ANY EMBEDDED FIRMWARE ("SOFTWARE") OR ACCOMPANYING DOCUMENTATION (COLLECTIVELY, "EQUIPMENT") BY THE PURCHASER ("CUSTOMER") UNDER ANY ATTACHED PURCHASE ORDER ("ORDER FORM"). ANY TERMS IN ANY CUSTOMER PURCHASE ORDER, ACKNOWLEDGMENT OR OTHER DOCUMENTS THAT ARE IN ADDITION TO OR INCONSISTENT WITH THESE TERMS AND CONDITIONS ARE REJECTED BY ELM & SKYBITZ AND WILL BE OF NO EFFECT. IF THESE TERMS AND CONDITIONS AND ORDER FORM ARE PROVIDED IN RESPONSE TO A CUSTOMER PURCHASE ORDER, SUCH PURCHASE ORDER IS DEEMED A REQUEST FOR QUOTATION ONLY, AND THESE TERMS AND CONDITIONS ARE AN OFFER TO SELL THE EQUIPMENT. CUSTOMERS MAY ASSENT TO AND ACCEPT THESE TERMS AND CONDITIONS BY WRITTEN ACKNOWLEDGMENT, BY CONDUCT OR COURSE OF DEALING, AND/OR BY ACCEPTANCE OF OR PAYMENT FOR THE EQUIPMENT ORDERED. ELM &/OR SKYBITZ'S FAILURE TO OBJECT TO ANY TERM OR CONDITION CONTAINED IN ANY COMMUNICATION FROM CUSTOMER SHALL NOT BE DEEMED A WAIVER OF THESE TERMS AND CONDITIONS NOR SHALL SUCH FAILURE BE DEEMED AN ACCEPTANCE OF ANY TERM OR CONDITION CONTAINED IN SUCH COMMUNICATION. THESE TERMS AND CONDITIONS MAY BE AMENDED, MODIFIED OR SUPERSEDED ONLY IN A WRITTEN AGREEMENT EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY.

1. **Quantity; Price; Payment; Late Fees; Taxes.** Customer agrees to purchase the quantity of the Equipment specified in the Order Form at the prices specified therein, or if not specified, ELM's then-current list price. All prices are in Canadian dollars. Unless otherwise stated in the Order Form as accepted by ELM, payment becomes due as follows: Customer payment terms are 30 days from date of invoice, which ELM shall provide upon shipment. Customer must notify ELM in writing of any dispute with invoiced charges prior to the date when payment for such invoice is due. Absent such notice, Customer shall be deemed to have agreed to the charges as invoiced. All past due amounts will accrue a late fee of 1.5% percent per month or the highest rate allowed by law, whichever is less. In the event of delinquency on any account, Customer agrees to pay for all collection costs, attorneys fees, and court costs incurred in the collection of such account, regardless of whether litigation is pursued. All prices are exclusive of, and Customer shall pay, all taxes, assessments, surcharges, levies, or similar items assessed by a governmental body.

2. **Shipment and Delivery Terms.** ELM will ship the Equipment as close as reasonably practicable to Customer's requested date, subject to ELM's available inventory and then-current lead time requirements. ELM is permitted to allocate its then-current inventory and other resources in its discretion. ELM &/or SkyBitz shall not be liable for any damage or penalty arising

from delay in delivery or from failure to give notice of any delay. All deliveries will be F.O.B. ELM (Mississauga, ON). Risk of loss or damage to any Equipment shall pass to Customer at time of shipment and Equipment will be deemed accepted upon delivery.

3. **Installation.** Customer is solely responsible for installing the Equipment. Customer shall strictly abide by any ELM &/or SkyBitz installation procedures provided with the Equipment or otherwise provided to Customer by ELM &/or SkyBitz. ELM &/or SkyBitz may update such procedures from time to time. Customer assumes all liability arising from installation, including liability arising from injury to any person, even if Customer follows ELM &/or SkyBitz's installation procedures.

4. **Additional Terms.** Customer shall not, and shall not permit any third party to, modify or adjust the Equipment or use the Equipment with any device not provided by ELM &/or SkyBitz, without ELM &/or SkyBitz's prior written approval. ELM &/or SkyBitz reserves the right to ship Equipment consisting of remanufactured, refurbished or retested components that in each case are warranted as new. Customer agrees to abide by ELM &/or SkyBitz's then-current Equipment return policy, as specified to Customer by ELM. ELM may amend its price lists at any time in its discretion, provided that Order Forms accepted by ELM prior to the implementation of a price amendment are not affected.

5. **Intellectual Property.** Customer acknowledges that SkyBitz and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights in the Equipment (including Software) and the proprietary technology embodied therein. No title to Software or any intellectual property rights shall pass to Customer. Customer shall not engage in any act or omission that would impair SkyBitz's or its licensors' intellectual property rights in any Equipment. Customer shall not copy, modify, or disassemble, or permit others to copy, modify, or disassemble, the Software, nor may Customer modify, adapt, translate, reverse assemble, decompile, or otherwise attempt to derive source code from the Software.

6. **Confidential Information.** Customer acknowledges that it may receive or may have received information regarding ELM &/or SkyBitz's business, including technical, marketing, financial and other confidential or proprietary information ("**Confidential Information**"). Customer shall not use the Confidential Information for any purpose, except solely as required for purchase, installation, operation and maintenance of the Equipment, and will disclose the Confidential Information only to its employees who have a need to know such information and who are under confidentiality obligations at least as restrictive as those of Customer hereunder. Customer will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Customer protects its own confidential or proprietary information of a similar nature. Customer will promptly return or destroy all Confidential Information in its possession or control, and certify the same, upon ELM &/or SkyBitz's request.

7. **Warranty.** SkyBitz warrants that the Equipment provided to Customer shall be free from defects in materials and workmanship for one year from the date ELM submits its invoice for such Equipment (the "Warranty Period"). This warranty is conditioned on proper installation (in accordance with Section 3) and normal use by Customer. Customer's sole remedy, and SkyBitz's sole obligation, under the foregoing warranty is the repair or replacement of the defective Equipment at the sole discretion of SkyBitz. In order to make a warranty claim, Customer shall (i) promptly notify ELM in writing of any defect in units of Equipment delivered; (ii) obtain a Return Material Authorization from ELM; and (iii) ship the defective goods to ELM's designated location at Customer's expense. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IMMEDIATELY ABOVE, THE EQUIPMENT AND ANY OTHER MATERIALS OR SERVICES PROVIDED BY SKYBITZ HEREUNDER ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND ELM & SKYBITZ EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE,

WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF OPERABILITY, CONDITION, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

8. Indemnification by SkyBitz. SkyBitz shall defend, indemnify, and hold Customer harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any claim by a third party that the Equipment, as provided by SkyBitz and used in accordance with these Terms and Conditions, infringes or misappropriates any U.S. patent issued prior to the date of purchase or any trade secrets under U.S. law, provided that Customer gives SkyBitz (i) prompt written notice of such claim; (ii) control over the defense and settlement of such claim; and (iii) proper and full information and assistance to settle and/or defend such claim. Notwithstanding the foregoing, SkyBitz shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Equipment with products not furnished by SkyBitz; (2) alterations to the Equipment, which alterations are not made by SkyBitz; or (3) use of the Equipment in a manner for which it was not designed. In the event of an infringement action relating to the Equipment, or in the event that SkyBitz believes that such an action is likely, SkyBitz may, at its option and expense, (a) procure for Customer the right to continue using the Equipment; (b) replace or modify the Equipment so that it becomes non-infringing; or (c) give Customer a refund or credit for the purchase price paid by Customer to SkyBitz for the Equipment, less depreciation on a straight-line basis over a period of five years. THE FOREGOING SETS FORTH SKYBITZ'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY AND ALL INFRINGEMENT CLAIMS AND ACTIONS.

9. Indemnification by Customer. Customer shall defend, indemnify, and hold ELM & SkyBitz harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any claim by a third party or one of Customer's employees, agents, or contractors for damages relating to personal injury, death, and/or property damage arising from the use or installation of the Equipment, provided that ELM &/or SkyBitz gives Customer (i) prompt written notice of such claim; (ii) control over the defense and settlement of such claim; and (iii) proper and full information and assistance to settle and/or defend such claim. Notwithstanding the foregoing, Customer shall not settle any third-party claim against ELM & SkyBitz unless such settlement completely and forever releases ELM & SkyBitz with respect thereto or unless ELM & SkyBitz provide its prior written consent to such settlement. In any action for which Customer provides defense on behalf of ELM &/or SkyBitz, ELM &/or SkyBitz may participate in such defense at its own expense using counsel of its choice.

10. Limitation of Liability. ELM & SKYBITZ ARE NOT THE MANUFACTURERS OF THE EQUIPMENT. NEITHER PARTY SHALL HAVE ANY LIABILITY OR OBLIGATION TO THE OTHER EXCEPT AS PROVIDED IN THESE TERMS AND CONDITIONS. IN NO EVENT SHALL ELM &/OR SKYBITZ BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF THE SAME, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, WHETHER TORT, CONTRACT, OR STRICT LIABILITY. IN NO EVENT SHALL ELM &/OR SKYBITZ BE LIABLE FOR DAMAGES RELATING TO PERSONAL INJURY CAUSED BY INSTALLATION OF THE EQUIPMENT. ELM &/OR SKYBITZ'S LIABILITY FOR ANY OTHER DAMAGES ASSERTED BY CUSTOMER SHALL BE LIMITED TO CUSTOMER'S ACTUAL DAMAGES AND SHALL IN NO EVENT EXCEED THE

GREATER OF FIFTY THOUSAND DOLLARS (\$50,000.00) OR THE AMOUNTS PAID TO ELM BY CUSTOMER UNDER THIS ORDER FORM. TO THE EXTENT THAT ANY EQUIPMENT IS PROVIDED HEREUNDER BY THIRD PARTIES PURSUANT TO AN ARRANGEMENT WITH ELM &/OR SKYBITZ, THE DISCLAIMERS AND LIMITATIONS OF ELM &/OR SKYBITZ'S LIABILITY, AS STATED IN THESE TERMS AND CONDITIONS, SHALL EXTEND FULLY TO SUCH THIRD PARTIES. THE DISCLAIMERS AND EXCLUSIONS CONTAINED HEREIN ARE INDEPENDENT OF ANY EXCLUSIVE REMEDY AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF SUCH EXCLUSIVE REMEDY. SOME STATES DO NOT ALLOW THE DISCLAIMER OR LIMITATION OF DAMAGES RELATING TO PERSONAL INJURY, SO THE ABOVE DISCLAIMER OF, AND LIMITATION OF LIABILITY WITH RESPECT TO, PERSONAL INJURY MAY NOT APPLY. The disclaimers, exclusions and limitations of liability set forth in these Terms and Conditions form an essential basis of the bargain between ELM &/or SkyBitz and Customer, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of these Terms and Conditions, including the economic terms, would be substantially different.

11. **Miscellaneous.** These Terms and Conditions shall be governed by the laws of the Commonwealth of Virginia. Proper legal jurisdiction and venue resides in Loudoun County, Virginia for all matters arising under these Terms and Conditions. ELM &/or SkyBitz shall be excused from performance of its obligations under these Terms and Conditions and the Order Form if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot, shortage or unavailability of supplies of raw materials or components or other causes beyond the reasonable control of ELM &/or SkyBitz. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances. The waiver by either party of a breach of any provision of these Terms and Conditions shall not operate or be construed as a waiver of the same or any other breach by that party, whether prior or subsequent. If any term or provision of these Terms and Conditions is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remainder of these Terms and Conditions shall not thereby be affected, and these Terms and Conditions shall be deemed amended to the extent necessary to delete such provision. No action arising from or related to these Terms and Conditions may be brought by the parties more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought within two (2) years after the date such amount was due. Section headings are for convenience only, and not for interpretation. "Including" means "including without limitation." These Terms and Conditions represent the entire agreement between the parties hereto with respect to the subject matter addressed in these Terms and Conditions and Order Form, and is in lieu of and supersedes all prior agreements or understandings of the parties with respect to such subject matter.

12. **Language.** The Parties hereto have requested that this Agreement and all correspondence and all documentation relating to this Agreement, be written in the English language. Les parties aux présentes ont exigées que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en la langue anglaise.

END OF TERMS AND CONDITIONS