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EA Consumables Terms & Conditions of Sale

These terms and conditions (together with the documents referred to in them) tell you the terms and conditions on which we supply any of the products (Products) listed on our website <http://www.eaconsumables.com> (our site) or in the Elemental Microanalysis Ltd. brochures (our brochures) to you. Please read these terms and conditions carefully before ordering any Products from our site or our brochures. You should understand that by ordering any of our Products, you agree to be bound by these terms and conditions and all transactions with us are and will be governed by these terms and conditions, to the exclusion of all other terms and conditions you may purport to apply.

If you are viewing these terms and conditions online, you should print a copy of these terms and conditions for future reference.

You have been asked to confirm you have read and accepted these terms and conditions in order to open your online ordering account and your credit account with us. Please understand that if you refuse to accept these terms and conditions, you will not be able to open an online ordering account or a credit account, or order any Products from our site or our brochures.

1 Information About Us

<http://www.eaconsumables.com> is a site operated by EA Consumables, Inc. (we). We are a New Jersey corporation. Our main trading address is . 5090 Central Highway, STE 3A, Pennsauken, NJ 08109 .

2 Service Availability

We can accept orders for Products from people resident or companies with trading addresses in all countries except for ,Canada, Finland, Spain, Portugal, Belgium, Netherlands, Luxembourg, China, Israel, Turkey and South Africa (Excluded Country/Countries). If you are resident or your company trades in an Excluded Country, please contact the Elemental Microanalysis exclusive [distributors](#) for those countries. We do not accept orders direct from individuals or companies for Products to be supplied to them if they are located in the Excluded Countries.

3 Your Status

By placing an order with us, you warrant that:

- 3.1.1 You are legally capable of entering into binding contracts;
- 3.1.2 You are at least 18 years old;
- 3.1.3 You are not resident or your company is not trading in one of the Excluded Countries;
- 3.1.4 You are not accessing our site from an Excluded Country; and
- 3.1.5 You are authorized to place orders on behalf of your company.

4 How the Contract Is Formed Between You and Us

- 4.1 After placing an order, you will receive an e-mail from us acknowledging that we have received your order. Please note that this does not mean that your order has been accepted. Your order constitutes an offer to us to buy a Product or Products. All orders are subject to acceptance by us, and we will confirm such acceptance to you by sending you an e-mail that confirms that the Product has been shipped (the Shipping Confirmation). The contract between us (Contract) will only be formed when we send you the Shipping Confirmation.
- 4.2 The Contract will relate only to those Products whose shipping we have confirmed in the Shipping Confirmation. We will not be obliged to supply any other Products which may have been part of your order until the shipping of such Products has been confirmed in a separate Shipping Confirmation.

5 Availability and Delivery

- 5.1 Subject to stock availability, your order will be fulfilled by the delivery date set out in the Shipping Confirmation or, if no delivery date is specified, then within a reasonable time of the date of the Shipping Confirmation, unless there are exceptional circumstances.
- 5.2 Delivery of the Products shall be made to the address set out in the Dispatch Confirmation. Time shall not be of the essence for delivery.
- 5.3 If for any reason you fail to accept delivery of any of the Products when they are ready for delivery, or we are unable to deliver the Products on time because you have not provided appropriate instructions, documents, licenses or authorizations:
 - 5.3.1 risk in the Products shall pass to you (including for loss or damage caused by our negligence);
 - 5.3.2 the Products shall be deemed to have been delivered; and
 - 5.3.3 we may store the Products until delivery, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.4 You shall provide at the point of delivery and at your expense adequate and appropriate equipment and manual labor for receiving the

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Products.

5.5 We may deliver the Products by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of these terms and conditions.

6 Acknowledgment of examination

You acknowledge and agree that within 2 working days of delivery of the Products:

6.1 We have given you a reasonable opportunity to inspect the Products;

6.2 You have inspected the Products; and

6.3 You have satisfied yourself as to the condition of the Products.

6.4 You must inform us within 2 working days of delivery in the event you discover damage to the Products, if any of them are missing or if the contents of the delivery are incorrect.

6.5 In the case of damaged/incorrect Products, we will arrange for collection of the Products and delivery of replacement Products.

6.6 Subject to clause 5.5, in the case of missing Products, we will arrange delivery of them or a credit for the pro-rata amount against the relevant invoice.

7 Non-Delivery

7.1 The quantity of any consignment of Products as recorded by us on dispatch from our place of business shall be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary.

7.2 We shall not be liable for any non-delivery of Products (even if caused by our negligence) unless you give us written notice of the non-delivery within 2 working days of the date when the Products would in the ordinary course of events have been received.

7.3 Any liability of ours for non-delivery of the Products shall be limited to replacing the Products within a reasonable period of time or issuing a credit note at the pro-rata rate set out in the Shipping Confirmation against any invoice raised for such Products.

8 Risk/Title

8.1 The Products are at your risk from the time of delivery.

8.2 Ownership of the Products shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of:

8.2.1 the Products; and

8.2.2 all other sums which are or which become due to us from you on any account.

8.3 Until ownership of the Products has passed to you, you shall:

8.3.1 hold the Products on a fiduciary basis as our bailee;

8.3.2 not destroy, deface or obscure any identifying mark of packaging on or relating to the Products; and

8.3.3 maintain the Products in satisfactory condition and keep them insured on our behalf for their full price against all risk to our reasonable satisfaction. On request you shall produce the policy of insurance to us.

9 Intellectual Property Rights

9.1 In this clause, Intellectual Property Rights means, all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions or such rights, and all similar or equivalent rights or forms of protection in any part of the world.

9.2 As between you and us, all Intellectual Property Rights in the Products are owned by and shall continue to be owned by us. Subject to clause 9.3 we license the Intellectual Property Rights in the Products to you free of charge and on a non-exclusive, worldwide basis but only to such extent as is necessary to enable you to make reasonable use of the Products.

9.3 You acknowledge that, where we do not own any or part of the Intellectual Property Rights in the Products then the license in clause 9.2 shall be conditional on us obtaining a written license (or sub-license) from the relevant owner or licensor on such terms as will entitle us to license such rights to you.

10 Price and Payment

10.1 The price of any Products will be as quoted on our site and in our brochures from time to time, except in cases of obvious error.

10.2 These prices exclude VAT, packing and handlings costs, delivery costs, insurance (where relevant) and any applicable taxes or levy (where relevant), which will be added to the total amount due. Our current delivery charges at the time of order are available from our sales staff.

10.3 Prices are liable to change at any time, but changes will not affect orders in respect of which we have already sent you a Shipping Confirmation provided the date of delivery is not more than 4 weeks after the date of the Shipping Confirmation.

10.4 Our site contains a large number of Products and it is always possible that, despite our best efforts, some of the Products listed on our

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site may be incorrectly priced. We will normally verify prices as part of our dispatch procedures so that, where a Product's correct price is less than our stated price, we will charge the lower amount when dispatching the Product to you. If a Product's correct price is higher than the price stated on our site, we will normally, at our discretion, either contact you for instructions before dispatching the Product, or reject your order and notify you of such rejection.

10.5 We are under no obligation to provide the Product to you at the incorrect (lower) price.

10.6 We will issue an invoice once we dispatch your order. Our credit account terms are 30 days from the date of our invoice and all payments must be made in cleared funds in the currency shown on our invoice, without deduction or set-off, unless otherwise agreed in writing.

10.7 Time shall be of the essence for payment.

10.8 If you do not yet have a credit account with us, we will require payment for the Products including all delivery charges prior to the dispatch of your first order. We can accept payment by credit card (Visa, Mastercard and American Express) in US Dollar.

11 Our Cancellation Policy

11.1 You may cancel or amend any order at any time provided the order is for our standard catalogue Products* and the order has not already been dispatched. In the case of an amended order, we will issue a revised Shipping Confirmation, prior to dispatching the amended order.

11.2 You may not cancel any orders for Products which are to be made to your specification if the manufacture of them has already commenced.

11.3 Subject to clause 11.2 you may cancel orders for Products to be made to your specification by giving us 3 weeks notice in writing subject to you indemnifying us against any costs we incur as a result of your cancellation including any costs we have already incurred up to the date of cancellation.

11.4 We will accept a return of standard catalogue Products* you have erroneously ordered provided you return them in good order in original packaging and labeling (at your cost) to us within 3 months of the date of the Dispatch Confirmation.

11.5 If you return any Products to us under clause 11.4 and you have already paid for them, we will credit the price of the Products (before the cost of delivery) to your credit account with us.

11.6 We reserve the right to charge an administration charge of the greater amount of \$50 or 15% of the amount stated on the invoice for those Products returned under clause 11.4.

* Product with a "Q" SKU number are NOT standard products and may not covered under our Cancellation Policy.

12 Our Liability

12.1 We warrant to you that any Product purchased from us through our site or our brochures is of satisfactory quality and reasonably fit for all the purposes for which products of the kind are commonly supplied.

12.2 Our liability for losses you suffer as a result of us breaking this agreement is strictly limited to the purchase price of the Product you purchased.

12.3 This does not include or limit in any way our liability:

12.3.1 For death or personal injury caused by our negligence;

12.3.2 For fraud or fraudulent misrepresentation; or

12.3.3 For any matter for which it would be illegal for us to exclude, or attempt to exclude, our liability.

12.4 We are not responsible for indirect losses which happen as a side effect of the main loss or damage (such as loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, loss of data, waste of management or office time) however arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable.

13 Import Duty

13.1 If you order Products from our site or our brochures for delivery outside the US, they may be subject to import duties and taxes which are levied when the delivery reaches the specified destination. You will be responsible for payment of any such import duties and taxes. Please note that we have no control over these charges and cannot predict their amount. Please contact your local customs office for further information before placing your order.

13.2 Please also note that you must comply with all applicable laws and regulations of the country for which the products are destined. This may include obtaining at your cost such import licenses and consents in relation to the Products as are required from time to time. We will not be liable for any breach by you of any such laws.

13.3 Unless otherwise agreed in writing, the Products shipped outside the US shall be delivered CIF the named port of export or dispatch pursuant to Incoterms 2000 and we shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

14 Written Communications

Applicable laws require that some of the information or communications we send to you should be in writing. When using our site or placing orders for Products over the telephone or by facsimile, you accept that communication with us will be mainly electronic. We will contact you

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by e-mail or provide you with information by posting notices on our website. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

15 Notices

All notices given by you to us must be given to EA Consumables, Inc. 5090 Central Highway, STE 3A, Pennsauken, NJ 08109 or at info@eaconsumables.com. We may give notice to you at either the e-mail or postal address you provide to us when placing an order, or in any of the ways specified in clause 14 above. Notice will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

16 Transfer of Rights and Obligations

16.1 The contract between you and us is binding on you and us and on our respective successors and assigns.

16.2 You may not transfer, assign, charge or otherwise dispose of a Contract, or any of your rights or obligations arising under it, without our prior written consent.

16.3 We may transfer, assign, charge, sub-contract or otherwise dispose of a Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

17 Events Outside Our Control

17.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by events outside our reasonable control (Force Majeure Event).

17.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

17.2.1 Strikes, lock-outs or other industrial action.

17.2.2 Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.

17.2.3 Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.

17.2.4 Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

17.2.5 Impossibility of the use of public or private telecommunications networks.

17.2.6 The acts, decrees, legislation, regulations or restrictions of any government.

17.3 Our performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavors to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

18 Waiver

18.1 If we fail, at any time during the term of a Contract, to insist upon strict performance of any of your obligations under the Contract or any of these terms and conditions, or if we fail to exercise any of the rights or remedies to which we are entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

18.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.

18.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with clause 15 above.

19 Severability

If any of these terms and conditions or any provisions of a Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

20 Entire Agreement

20.1 These terms and conditions and any document expressly referred to in them represent the entire agreement between us in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

20.2 We each acknowledge that, in entering into a Contract, neither of us has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between us prior to such Contract except as expressly stated in these terms and conditions.

20.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date

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of any Contract (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

21 Our Right to Vary These Terms and Conditions

21.1 We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.

21.2 You will be subject to the policies and terms and conditions in force at the time that you order Products from us, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by you), or if we notify you of the change to those policies or these terms and conditions before we send you the Dispatch Confirmation (in which case we have the right to assume that you have accepted the change to the terms and conditions, unless you notify us to the contrary within seven working days of receipt by you of the Dispatch Confirmation).

22 Law and Jurisdiction

Contracts for the purchase of Products through our site or our brochures will be governed by Ste of New Jersey law and you submit to the exclusive jurisdiction of the courts of the State of New Jersey.

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