

Standard Terms and Conditions of Sale

- (1) **NOTICE:** These standard terms and conditions of sale ("**Terms**") govern all sales of all base materials ("**Materials**") and/or products into which such Materials are incorporated ("**Products**") by Elektrisola Incorporated ("**Seller**") to Buyer regardless of whether Buyer purchases Materials and/or Products through the medium of written purchase orders, electronic orders, verbal or written quotations, purchase order acknowledgements, or any other writings or communications from Seller and/or Buyer relating to the Materials and/or Products (collectively, the "**Purchase Orders**"). Sale of any Materials and/or Products is expressly conditioned on Buyer's agreement to the terms and conditions contained or referred to in these Terms and all additional terms and conditions presented on or accompanying any Purchase Order prepared by Seller (collectively, the "**Terms and Conditions**"). Buyer agrees that the Terms and Conditions shall constitute the entire agreement between Buyer and Seller with respect to any Purchase Order and the Materials and/or Products provided thereunder (the "**Agreement**"). Any additional or different terms or conditions proposed by Buyer are expressly objected to and rejected by Seller as material alterations and disclaimed by Buyer and will not be binding upon Seller unless specifically agreed to in writing by Seller's authorized representative. Only an officer of Seller of the level of Vice President or higher shall be an authorized representative. Any Purchase Order for, or any statement of intent to purchase Materials and/or Products, or any direction to perform work or any assent to Seller's performance of work shall constitute Buyer's agreement to these Terms and Conditions (including those made over the internet). Buyer agrees that Seller's acknowledgement of the receipt of any Purchase Order, including by signing and returning to Buyer an acknowledgement on Buyer's form, shall not constitute acceptance by Seller of any additional or different terms and conditions, nor shall Seller's commencement of effort, in itself, be construed as acceptance of a Purchase Order containing additional or different terms and conditions. The Terms are subject to change without prior notice, except that the Terms posted on Seller's web site at the time Buyer places a Purchase Order that is accepted by Seller will govern that specific Purchase Order unless otherwise agreed in a writing signed by Buyer and by Seller's authorized representative. Unless otherwise specified in a writing signed by Seller's authorized representative, any quotation by Seller shall expire 30 days from its date and may be modified or withdrawn by Seller prior to receipt of Buyer's acceptance.
- (2) **ORDER NON-CANCELLABLE:** Buyer agrees that all Purchase Orders accepted by Seller shall automatically become non-cancellable 90 days prior to the ship date specified by Seller, and may not thereafter be cancelled except by means of a written agreement signed by an authorized representative of Seller. The termination or cancellation of any Purchase Order or any relationship created thereunder between the parties or the delivery of Materials and/or Products under any Purchase Order shall not affect each party's obligations and rights under these Terms and Conditions, which by their nature, survive, notwithstanding such termination, cancellation, delivery or performance. Items will be shipped within +/- 10% of order item quantity.
- (3) **SALES PRICE:** Prices for Materials and Products are subject to change without notice to Buyer. Buyer agrees that it is not entitled to cancel any order as a result of such price changes. Materials and Products will be invoiced at Seller's prices in effect on the date of delivery. Seller reserves the right to change or terminate without notice any price advances, discounts, extras or other pricing terms that it may offer Buyer from time to time.
- (4) **TAXES:** Prices for Materials and Products are exclusive of all local, state and federal taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes, import duties and tariffs. Buyer agrees to pay such taxes directly or to reimburse Seller for all such taxes. Where applicable, such tax or taxes shall be added to the invoice as a separate charge or invoiced separately.
- (5) **PAYMENT:** Terms are net cash within 30 days of invoice, except where satisfactory open account credit is established, in which case, terms will be specified on Seller's invoice. Seller reserves the right to revoke any credit extended to Buyer, at Seller's sole discretion. Invoices will be issued on shipment and Buyer agrees to pay such invoices when due. Invoices not paid by the due date will have a 1.5% per month late payment charge assessed against any unpaid balance from the due date of the invoice until the date of payment. Seller reserves the right to disallow any pricing discounts or hold any shipment during any period when outstanding invoices become or remain past due.
- (6) **SECURITY INTEREST:** Buyer grants to Seller a purchase money security interest in all of Buyer's right, title and interest in and to Materials and Products sold hereunder to secure the payment when due by Buyer of the purchase price and the performance by Buyer of its other obligations hereunder. Buyer authorizes Seller to prepare and file financing statements that have not been reviewed or signed by Buyer, which describe the Materials sold hereunder, and include any other information required by law for each such statement to be accepted for filing at the governmental office where Seller wishes to file such financing statement.
- (7) **DELIVERY & RISK OF LOSS:** Delivery shall be made EX Works Seller's facility ("EXW"; as defined and governed by ICC Incoterms 2010). Transportation from EX Works delivery point, handling and all other expenses associated with handling, care and custody of the Materials and/or Goods delivered to Buyer are solely at the cost of Buyer. Method and route of shipment are at Seller's discretion, unless Buyer supplies explicit instructions that are accepted by Seller in writing by Seller's authorized representative. Buyer agrees to inspect the Materials and Products upon receipt and any claims for shortages or other errors must be noted at the time of delivery on all Seller documents and supported by signed documentation. Claims for shortages or other errors must be made in writing to Seller within thirty (30) days after Seller's delivery of the products to the EX Works delivery point. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. No products may be returned to Seller for any reason without Seller first having issued a written authorization signed by Seller's authorized representative. Partial shipments shall be permitted. If Seller is prepared to make delivery, and Buyer delays delivery, terms of payment shall apply as though delivery had been affected as of the date that Seller was prepared to make delivery. If Buyer refuses to accept delivery of any of the Products, such Products will be held by Seller awaiting Buyer's instruction for twenty (20) days, after which Seller may deem the Products abandoned and dispose of them as it sees fit, without crediting Buyer's account. In the event of delay in delivery requested by Buyer or caused by Buyer, Seller will store Materials and Products at Buyer's risk and expense. Buyer is responsible for and assumes all risk of loss or damage to Materials and Products from any cause, upon and after delivery by Seller EX Works Seller's facility. In no event shall Seller be held liable for any damages or expenses caused by delays in delivery. The parties recognize that delivery dates are approximate. The acceptance of the Goods by Buyer shall constitute a waiver of all claims for delay. Buyer and Seller agree that "TIME IS NOT OF THE ESSENCE" in Seller's performance of any Purchase Orders unless otherwise agreed in writing by Seller's authorized representative. Buyer acknowledges and agrees the following events may cause Seller's failure to perform any of Seller's obligations under any Purchase Order (collectively, the events are "**Delaying Events**" and each event is a "**Delaying Event**"): (a) any cause beyond Seller's reasonable control, including, but not limited to, a labor dispute, industry disturbance, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, act of God; or (b) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under this Agreement. Any date of delivery may be extended for a period equal to the time lost by reason of any Delaying Event. Seller reserves the right to cancel without liability any Purchase Order, the shipment of which is or may be delayed for more than thirty (30) days by reason of any Delaying Event. Seller reserves the right to allocate in its sole discretion among customers or potential customers, or defer or delay the shipment of, any of the Materials and/or Products, which are in short supply. Risk of loss shall not be altered by conduct of either party than may constitute a default or breach hereunder.
- (8) **LIMITED WARRANTY:** Seller warrants to original Buyer for a period of 7 days from the date of delivery that Materials and Products purchased will be free from defects in material and workmanship and shall conform to the specifications stated on Purchase Order prepared by Seller for said Materials and Products. Warranty claims must be made by Buyer in writing and accompanied by the return of the Materials and Products claimed to be defective (with freight and insurance prepaid by Buyer). Seller's sole and exclusive obligation (and buyer's sole and exclusive remedy) under this warranty shall be, upon prompt written notice received by seller during the warranty period of any breach, to either, at seller's option, repair, correct or replace without charge, ex works seller's facility, any defective materials and/or product expressly warranted herein by seller against defects in material and workmanship and found by seller in its sole discretion to be defective and covered by this warranty, or credit buyer for the purchase price paid for such materials and/or product. Seller disclaims and excludes all other express or implied warranties. Any oral or written description of the materials and/or products is for the sole purpose of identifying the materials and/or products and shall not be construed as a warranty. Seller shall not be liable to buyer, or to anyone claiming under buyer, for any other obligations or liabilities, including, but not limited to, obligations or liabilities arising out of breach of contract or warranty, negligence or tort or any theory of strict liability, with respect to the materials and/or products or seller's acts or omissions or otherwise. This warranty covers only replacement, correction, buyer credit for purchase price or repair of defective materials and/or products and does not include the cost of inspection, removal, installation, delivery or field service travel and living. There is no warranty in cases of damage in transit, buyer's negligence, abuse, abnormal usage, misuse, accidents, alteration of products, failure to follow seller's instructions or improper storage. Except as stated ABOVE, Seller makes no warranties with respect to the Materials or products. Seller expressly disclaims any warranty, express or implied, including the warranty of merchantability or any warranty that the Materials and Products can be used or are fit for any particular purpose. In addition,

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seller expressly disclaims any warranty, express or implied, that its materials or products are suitable for use in any aviation, aerospace or marine applications; and buyer acknowledges and agrees that seller has informed buyer that the Materials and products are not suitable for use in any aviation, aerospace or marine applications. Buyer purchases and accepts the Materials and Products solely on the basis of the limited warranty expressly stated above.

- (9) **LIMITED LIABILITY:** If Seller fails to deliver any Materials or Products, Buyer's sole and exclusive remedy shall be the right to recover damages equal to the difference between the contract price and the market price of such Materials and Products at the time of such failure. Buyer shall have no right to "cover" by procuring substitute Materials or Products at the cost or expense of Seller. Prior to using materials and/or products, buyer shall determine the suitability of the materials and/or products for the intended use and buyer shall assume all risk and liability whatsoever in connection therewith. In no event will Seller be liable for lost profits or production, costs of "cover", costs of litigation, or any indirect, special, exemplary, consequential or incidental damages of any nature, whether based on breach of contract or warranty, tort (including negligence), product liability or otherwise, even if advised of the possibility of such damages. The remedy described in this paragraph is buyer's exclusive remedy and is in lieu of any other remedy otherwise available at law, equity or by contract.
- (10) **WAIVER AND RELEASE:** Buyer waives and forever releases Seller and its directors, officers, employees, agents, parents, subsidiaries and other affiliates (collectively, "Protected Parties") from any and all liability whatsoever for Buyer's use, distribution or resale of Materials and Products purchased hereunder. In particular, but without limiting the foregoing, Buyer hereby waives and forever releases Seller and the Protected Parties from liability for indirect, special, exemplary, consequential or incidental damages, whether based on breach of contract or warranty, tort (including negligence), product liability or otherwise; and in furtherance of the foregoing, and not by way of limitation, buyer also expressly waives and forever releases seller and the protected parties from any and all liability resulting from the use of any materials or products for any aviation, aerospace or marine applications.
- (11) **INDEMNIFICATION:** Buyer agrees, at its own expense and using counsel of Seller's choice, to indemnify, defend and hold harmless Seller and the other Protected Parties from any and all actions, suits, claims, damages (actual and consequential), judgments, levies, executions, liabilities, losses, expenses, and other costs, known or unknown, including, without limitation, reasonable attorneys' fees, incurred in connection with any proceedings arising from or related in any way to Buyer's use, distribution or re-sale of any of the Materials and Products, or the use, distribution or re-sale of the Materials and Products by any other person, including without limitation, for any aviation, aerospace or marine applications.
- (12) **DEFAULT; REMEDIES:** If Buyer becomes insolvent or if Buyer is in default for any reason under the terms of this or any other agreement between Buyer and Seller, Seller shall be entitled, at Seller's option, to discontinue further performance of all or part of the order, to withhold shipments, in whole or in part, and/or to recall Goods in transit, retake same, and repossess all Goods which may be stored with Seller for Buyer's account, without the necessity of taking any other proceedings. Buyer consents that all Goods so withheld, recalled, retaken or repossessed shall become Seller's absolute property, provided that Buyer is given full credit. The foregoing shall not be construed as limiting, in any manner, any rights or remedies available to Seller under contract, at law or equity. Upon Buyer's failure to pay any portion of the purchase price for the Materials and Products when due, or upon Buyer's petitioning for reorganization under any bankruptcy or insolvency laws, or filing for or being adjudged bankrupt or insolvent, having a receiver appointed for its business, or removing the Materials or Products from the facility to which they were delivered without Seller's consent (each a "Default"), then upon the occurrence of any Default, Seller shall be entitled (but not obligated), without notice, to declare the entire amount of the unpaid purchase price immediately due and payable, and Seller shall have the unlimited right (but no obligation), without liability, to take possession of the Materials and Products with or without notice, and to have all of the remedies of a secured party under the Uniform Commercial Code of New Hampshire, as well as all other remedies available at law or equity. Buyer agrees to pay all Seller's costs of collection incurred after default, including without limitation, reasonable attorneys' fees.
- (13) **FORCE MAJEURE:** Notwithstanding that Seller has accepted and scheduled an order, no breach shall occur hereunder if Seller's performance hereunder has been made impracticable due to causes beyond Seller's control and not occasioned by its fault or negligence, including without limitation, Seller's inability to obtain necessary raw materials, supplies, materials, fuel, power or labor, or as a result of applicable domestic or foreign governmental regulations or requirements, acts of God or belligerent powers, or other emergencies.
- (14) **CHOICE OF LAW & JURISDICTION; GOVERNING LANGUAGE; LIMITATION ON ACTION:** Seller and Buyer agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement and that all of the terms of this Agreement must be construed in accordance with the Uniform Commercial Code as enacted in the State of New Hampshire. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of New Hampshire without regard to conflict of law principles and without regard to the United Nations Convention on Contracts for the International Sale of Goods which is specifically disclaimed and excluded. All actions and proceedings arising or relating to this Agreement shall be heard and determined in any New Hampshire state or federal court sitting in the City of Concord, New Hampshire. Buyer irrevocably submits and agrees to the jurisdiction of the state courts of the State of New Hampshire and the Federal courts within the State of New Hampshire, in any action, suit or proceeding related to or in connection with this Agreement. To the extent permitted by applicable law, Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim: (a) that Buyer is not personally subject to the jurisdiction of the state courts of the State of New Hampshire and/or the Federal courts within the State of New Hampshire; (b) that the venue of the action, suit or proceeding is improper; (c) that the action, suit or proceeding is brought in an inconvenient forum; or (d) that the subject matter of this Agreement may not be enforced in or by the State and or Federal courts of the State of New Hampshire. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings by personal or prepaid mailing (air mail if international) in registered or certified form a copy of the process documents to the Buyer. Buyer and Seller agree that all agreements and all written documents between them shall be prepared in the English language only and that the English language shall be the governing language of their agreements. All proceedings pertaining to the agreement between the parties must be conducted in the English language and all submissions must be made in English or with an English translation. No action, regardless of form, arising out of this Agreement may be brought by Buyer more than one year after the cause of action arose.
- (15) **RETURNS:** Materials and Products should not be returned for any reason without authorization and shipping instructions from Seller. All spools and packaging systems used for shipping Materials and Products are Seller's property and must be returned. A deposit for certain spools and packaging systems may be invoiced by Seller and credited to Buyer upon their return to Seller's designated location in good condition. Seller reserves the right to charge for spools and packaging systems not returned or damaged due to improper handling and storage. Contact your customer representative for current shipping instructions for return of empty spools (800) 325-2022.
- (16) **CONSTRUCTION:** The headings of the paragraphs in these Terms and Conditions are provided for convenience only and may not be considered in the interpretation of this Agreement. The parties agree that the provisions of their agreement may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the agreement.