

EG Controls, Inc. Terms and Conditions of Sale

Unless otherwise agreed in writing, EG Controls' ("Seller") acceptance of Buyer's purchase order is conditioned upon Buyer accepting these terms and conditions. Seller sells its equipment in accordance with the following provisions:

- (1) **Quotations:** Written quotations are valid for 90 days from the date written on the quotation unless otherwise stated in the quotation or terminated sooner by notice. Quotations thereafter are subject to modification.
- (2) **Pricing:** Prices quoted as firm are firm provided the following conditions are met: (1) the order is released with complete engineering details. (2) Drawings for approval, when required, are returned by Buyer within 60 calendar days from the date they are sent out by Seller. The returned drawings must be marked "Resubmit" or "Approved for Production" or "Approved for production as Noted." All published list prices are subject to change without notice.
- (3) **Payment terms:** All credit terms are offered subject to Buyer's credit worthiness as determined by Seller. Full payment is due per the terms specified on the sales order. Buyer shall pay the full amount invoiced by Seller (less any retainage mutually agreed upon when the purchase order is issued) regardless of any payment schedule between Buyer and end user or others. Past due accounts will be subject to a service charge of 1.5% per month. Payment and due dates for payment are not subject to formal or informal acceptance of equipment and are not contingent in any way upon any acceptance or approval by Buyer, except as explicitly agreed by Seller in writing.
- (4) **Taxes:** The quoted price does not include taxes. Buyer is responsible for the payment of all applicable taxes arising from the transaction, the property, its sale, value, use, or related services regardless of the person or entity actually taxed.
- (5) **Items included:** Each sale includes only the equipment described in the order. Responsibility for proper operation of equipment if not installed or operated in accordance with Seller's instructions rests entirely with Buyer. Seller expressly declines responsibility for the integration of its equipment with other equipment unless Seller has formally agreed in writing to coordinate this integration, has been provided with complete and accurate information regarding interface requirements, and has agreed in writing to responsibility or liability for integration or interface with other equipment.
- (6) **Unauthorized repairs:** Seller will not be responsible for any costs associated with any repair work which Seller does not expressly and specifically authorize in writing.
- (7) **Shipment routing and weight:** Unless otherwise expressly agreed, Seller shall select the method of transportation and routing of the shipment. Quoted weights and dimensions are calculated estimates only.
- (8) **Shipment and delivery:** Seller shall use reasonable efforts to meet shipment or delivery dates, but any such dates are estimates only and are not guaranteed. Seller shall not be liable for failure to ship or shipment delays beyond Seller's reasonable control including, without limitation fire, strike, act of Buyer, acts of war, acts of God, transportation failures or inability to obtain labor, materials or manufacturing facility. Seller expressly disclaims liability for delay caused by the unavailability of a specified item for which there is no acceptable equal or for which Buyer has rejected an acceptable equal. Seller shall have no liability to Buyer for damages or penalties, direct or indirect, consequential or otherwise, for any delay in shipment or delivery, whether such delay is minor or substantial.
- (9) **Damage in shipment:** Unless otherwise agreed, all shipments are F.O.B. Seller's factory and all claims for damage, delay, or shortage arising from any shipment shall be made directly against the carrier by the Buyer. The Sales Order provided by EG Controls will specify whether the shipment is F.O.B. Factory or F.O.B. Destination. Regardless of the F.O.B. basis of the shipment, Buyer shall thoroughly inspect the goods immediately upon arrival at Buyer's location and shall immediately notify EG Controls, in writing and within 72 hours, of any claimed freight damage. Buyer waives any claim of damage not identified upon such arrival whether due to delay or failure to perform the inspection, or other reason.
- (10) **Concealed damage:** Except in the event of F.O.B. Destination shipments, Seller will not participate in any settlement of claims for concealed damage. When shipment has been made on an F.O.B. Destination basis, the Buyer must unpack immediately and, if damage is discovered must:
 - (1) Not move the Product from the point of examination.
 - (2) Retain shipping container and packing material.
 - (3) Notify the carrier in writing of any apparent damage.
 - (4) Notify Seller representative in writing within 72 hours of delivery.
 - (5) Send Seller a copy of the carrier's inspection report.
- (11) **Warranty:** Seller warrants equipment of its manufacture against defects in workmanship and materials only in accordance with its current applicable EG Controls Limited Warranty, which warranty is incorporated by reference and made a part hereof.
- (12) **Bonding:** EG Controls is a manufacturer and does not provide performance bonds to Buyers.
- (13) **Cancellation, suspension or delay:** If Buyer requests or causes a cancellation, suspension or delay of Seller's work, Buyer shall pay Seller all appropriate charges incurred up to date of such cancellation, suspension or delay, plus Seller's overhead and reasonable profit. Additionally, all charges related to and risks incident to storage, disposition, and/or resumption of work shall be borne solely by Buyer.
- (14) **Limitation of liability:** Seller shall not be liable to Buyer for any consequential or incidental damages for any reason whatsoever, whether such damages are based in contract or in tort, including strict liability or negligence. The remedies stated in Seller's warranty attached hereto constitute the sole and exclusive remedy of Buyer for any defect in material and workmanship or performance failure of Seller's equipment.
- (15) **Changes and back charges:** Seller shall not be obligated to make changes in or additions to the equipment or scope of the work unless Seller agrees thereto in writing and an equitable adjustment is made to price and/or delivery. Seller will not approve or accept back charges for labor, materials or other costs incurred in modification, adjustment, service or repair of equipment unless previously approved in writing by an authorized employee of Seller.
- (16) **Changes in design:** Seller reserves the right to modify the design and construction of equipment in order to incorporate improvements or to substitute material equal or superior to that originally specified. No charge shall be made to Buyer for modifications made at Seller's option.
- (17) **Returned Materials:** Under no circumstances shall material be returned to Seller without a written Return Material Authorization (RMA). An RMA number will be evidence of such approval. Seller will not be responsible for material returned without authorization. Products modified, installed improperly, operated improperly, maintained improperly, or subjected to abuse at any time after original factory shipment may not be returned under any circumstances. Consideration for warranty replacement shall be contingent upon (1) material returned within 30 days of authorization, and (2) complete factory material review. Request for return of spare or unused parts must be made within 30 days of sale subject to Seller's authorization and material must be returned in saleable condition, in the original packaging within 15 days of authorization. Non-warranty returns will be subject to a restocking charge of 20% of the net billing. Products must be packed to protect against damage and must be shipped prepaid. Transportation charges are the responsibility of the Buyer on all returned goods.
- (18) **Proprietary information:** All information furnished by Seller is solely for Buyer's use in connection with the equipment purchased herein, and shall not be disclosed to any third party without Seller's written consent.