

## CONDITIONS OF SALE

Unless otherwise stated in writing by an authorized representative of Earth Contact Products, LLC (hereafter "ECP"), all transactions between the Buyer and ECP are expressly subject to these terms and conditions. ECP will not be bound by any terms proposed by Buyer, whether in purchase orders or otherwise, which are additional to or different from the terms and conditions set forth herein. Terms and conditions are subject to change without notice and become immediately effective.

## PRICES

Prices are subject to change without notice. In the event of a price increase, quoted material not covered by a firm purchase order entered on ECP's computer system by ECP may be subject to adjustment to those in effect at time of shipment. Possession ECP's published price sheets does not obligate ECP to sell to the Buyer possessing the price sheets.

## QUOTATIONS

Valid quotations are those issued by ECP's Marketing department and, unless otherwise specified, are subject to Buyer's written acceptance within 30 days of issuance to be valid. ECP can modify quotations prior to their expiration date if the Buyer has not yet accepted them. ECP's quoted prices apply for the quantity stated on Buyer's RFP. ECP reserves the right to make price adjustments on items where quantities exceed the original

quoted quantity or where costs exhibit extreme volatility or to rescind prices on items with no order activity within 120 days of the quote date. All clerical errors are subject to correction.

## TAXES

Published or quoted prices do not include sales, excise, or similar taxes that are the responsibility of the Buyer. Where ECP is required to collect such taxes, they will be invoiced as a separate item to Buyer unless an appropriate tax exemption certificate is filed with ECP. Taxes not billed or quoted by the ECP are the responsibility of the Buyer.

## CREDIT



Acceptance of orders shall be subject to Buyer providing ECP with an acceptable Credit Application. If in the judgment of ECP, the financial condition of the Buyer, at any time, does not prove worthy of extending credit, ECP may require full or partial payment in advance of production or shipment.

#### **PAYMENT TERMS**

Unless modified in writing by ECP's quotation, terms of payment are net 30 days from date of invoice payable in US funds. Accounts that become overdue will be subject to a 1.5% monthly service charge until paid and Buyer will be liable for reimbursing ECP's expenses and legal fees in collecting such accounts. ECP may also suspend shipments of open orders to Buyer until Buyer's account is current.

#### **ORDERS**

Minimum charge on any individual order is \$100 net. Orders not meeting the above minimum will be automatically raised to and billed at the minimum billing level. All orders, including order deferrals, are subject to final acceptance by ECP's Marketing Department at its Olathe, Ks headquarters. Order deferrals may be subject to a price adjustment. Individual line items on Buyer's order may be subject to either a \$ or quantity minimum. If a price discrepancy exists on an order, the item in question will not be entered into ECP's order system until the price issue is resolved and the order is amended in writing. Emergency orders requiring expedited delivery may carry additional charges.

#### **ORDER ADD-ON POLICY**

Items can be added to Buyer's order at the original order terms within 7 calendar days of original order entry as long as the original order has not shipped complete. Minimum value of added items must be \$100 and original order terms apply.

#### **PACKING**

ECP's prices are based on standard packaging suitable for domestic shipments in the 48 contiguous United States. If special packaging is required by Buyer additional charges will be invoiced to the Buyer.




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#### **SHIPMENT ESTIMATES**

Delivery dates as set forth on order acknowledgments are approximate. Although ECP will use all reasonable efforts to meet delivery dates,

ECP will not be responsible for failure to meet said dates. In no event will ECP be liable for any loss or damage or for any special, incidental or consequential damages to Buyer resulting from failure to deliver within the times specified. Unless otherwise amended and approved in writing, ECP reserves the right to ship up to 30 days in advance of the acknowledged shipping date. ECP reserves the right to make delivery in installments which shall be separately invoiced and paid when due without regard to subsequent deliveries.

#### **TRANSPORTATION POLICY**

All shipments will be made freight collect from the factory with transportation by the most economical means, prepaid and added.

For orders between 20,000# and 40,000# net, ECP will ship prepaid with one half freight cost added to the invoice up to \$1,500. ECP will ship prepaid with no freight added on single orders greater than 40,000# up to \$2,500. If these orders are not paid within terms ECP will charge the full amount of the freight for applicable orders on a separate invoice.

Shipments to Alaska and Hawaii, meeting the above requirements, will be shipped to the nearest west coast port chosen by ECP, unless quoted otherwise, with freight collect beyond. For shipments outside the U.S. contact the ECP's Marketing Department for freight terms.

ECP reserves the right to select shipping point, method and route of shipment. When Buyer selects method (including flatbed trailers or expedited items) and/or route or timing of shipment, any resultant additional expenses will be invoiced to the Buyer. No credit for any shipping or freight cost will be allowed to Buyer if Buyer accepts shipment or product at ECP's factory or warehouse or otherwise supplies it's own transportation. ECP shall not be liable for any cartage or storage charges at destination. Title and risk of loss shall pass to the Buyer upon delivery of the products by the ECP to the carrier.

#### **BROKEN PACKAGE POLICY**

Orders must be placed for standard package quantities. ECP has the right to raise order quantities per line item to multiples of standard package or charge for additional costs or repackaging. ECP may waive this policy for project related orders. The Buyer is responsible for seeking this waiver, in writing, before order entry.

#### **NON-STANDARD OR SPECIAL ITEMS**

Products built to forecast or for stock are considered standard items. Items built for specific Buyer's requirements, even though

outlined in ECP's literature, are considered non-standard. Orders for these items will be accepted on a non-cancelable, non-returnable basis. The quantity manufactured, shipped, and invoiced may vary by 10% above or below the ordered quantity, and the order will be considered as shipped complete without further consequence.

#### **ADJUSTMENTS**

Unauthorized deductions by Buyer from its remittance to ECP will not be permitted unless ECP issues written authorization and credit memoranda. Deductions exceeding those authorized by ECP will be invoiced by ECP and will become payable upon receipt. Failure to settle Buyer's account may lead to suspension of future shipments to Buyer.

#### **TESTING**

Unless otherwise stated in writing, product prices include only ECP's standard test data. Any special testing required by the Buyer shall be invoiced accordingly unless included in ECP's quotation.

#### **MODIFICATIONS**

Unless otherwise provided, ECP reserves the right to modify the specifications, materials, or manufacturing methods of products ordered by the Buyer if the modification will not materially affect the quality or performance of the product.



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## RETURNED GOODS

No material can be returned without first obtaining a written, return goods authorization from ECP's marketing department in Olathe, KS. A copy of this authorization must be included with the material being returned.

Products accepted for return must be in their original, unopened cartons, in standard package quantities, purchased within the last 12 months, of current design and manufacture, and in resaleable condition. Products designed and produced to Buyer's specifications or products not cataloged, or listed as special priced products, or obsolete products cannot be returned for credit.

Material authorized for return must be shipped prepaid to the ECP's destination within 30 days of authorization. No products will be accepted for return in the month of December.


Buyer is responsible for providing original invoice information to ECP on items requested for return. No return authorization shall be issued for less than \$100 per line item. All such returns will be subject to a \$50 minimum restocking and handling charge or 20% of the original net value of the products at the time of purchase, whichever is higher, plus original freight charges, in addition to any additional costs to restore the material to a resaleable condition. Material which fails ECP's incoming inspection will be rejected and no credit will be issued.

## CANCELLATION

Cancellation of part or all of an order is subject to acceptance by ECP's marketing department in Olathe, KS. Requests for cancellation must be received a minimum of 5 calendar days before the scheduled ship date. Cancellation of standard products will be allowed only when Buyer pays cancellation charges based on the accumulated expense and commitments made by ECP to supply the material in accordance with the Buyer's original purchase request. The minimum cancellation charge will be \$50 or 20% of the unshipped value. Special ordered items or items non-cataloged, or listed as special priced, are noncancelable.


## WARRANTY


ECP warrants that the products it manufactures and sells shall be free from defect in material and workmanship for a period of 18 months from date of shipment to Buyer, or 12 months from

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date of product installation, whichever is shorter. The warranty covers normal use only and does not apply to any products that are misused (used for a purpose other than originally intended), modified, repaired or otherwise abused by Buyers or others. ECP's sole obligation for breach of warranty shall be to repair or replace (F.O.B. original delivery point) any goods within 30 days of Buyer reporting defect to ECP. All installation and transportation expenses, and all other incidental expenses and damages shall be borne by Buyer.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

#### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE.

Such damages shall include, but not limited to, loss of profit or revenues, loss of use of the equipment or associated equipment, costs of substitute equipment, facilities, down time costs, increased construction costs, change out costs, or claims for damages. ECP shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omissions of Buyer, whether negligent or otherwise.

#### **PRODUCT USAGE**

Buyer agrees that by accepting ECP's products, it agrees to use each product solely as ECP intended such product to be used and in accordance with ECP's instructions. Buyer further agrees that improper operation, storage, or maintenance of ECP's products could result in injury or death to a person, or damage to other property or equipment and

it will hold ECP and its affiliates harmless for any such injury or damage.

BUYER AGREES TO INDEMNIFY AND HOLD ECP, ITS AFFILIATES AND THEIR OFFICERS AND DIRECTORS HARMLESS AGAINST ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND (INCLUDING ATTORNEY'S FEES) ARISING OUT OF OR RELATED TO THE USE OF ANY OF ECP'S PRODUCTS.

#### **PATENT INDEMNITY**

ECP shall defend any suit or proceeding brought against Buyer based on a claim that any goods of ECP's design furnished to Buyer constitute an infringement of any U.S. patent. Buyer must notify ECP promptly, in writing, of such claim. ECP will not be liable if alleged infringement is the result of the application or use to which such goods are put by Buyer or others if different than ECP's application data.

Buyer agrees to protect ECP and save it harmless from all expense and damages that result from claims or demands that goods manufactured by ECP according to Buyer's design or specification infringe the right, title or interest of any third party because of being so produced. Buyer shall defend ECP in such claims and pay all expenses and damages based on claimed infringement.


The foregoing states the entire liability of either party to the other with respect to infringement.

#### **ACCEPTANCE**

Buyer shall notify ECP of any error, defect, or shortage of any items received by Buyer, in writing, within 15 calendar days of delivery. Failure to provide ECP with written notice within the prescribed timeframe obligates Buyer to have waived such errors, defects or shortages and to have accepted Buyer's items as delivered.


#### **GOVERNING LAW**

The laws of the State of Illinois shall govern all matters relating to the interpretation and effect of these terms and any authorized changes.

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#### **WAIVER OF JURY TRIAL**

Both Buyer and ECP, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action, legal proceeding or counterclaim arising out of or in connection with any purchase order or other transaction between Buyer and ECP.

This waiver applies to any and all actions and legal proceedings, whether sounding in contract, tort or otherwise.




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