

TERMS AND CONDITIONS OF SALE

1. Acceptance and Pricing: Orders accepted by Electro Plastics are based on prices in effect at time of shipment or as quoted, whichever is greater. All prices are subject to change without prior notice. Quoted prices are valid for sixty (60) days after date of quotation. The nature of our business is such that we handle a large number of orders and requests for quotes, many of which specify terms and conditions which would add to or differ from, those set forth herein. To negotiate individually with respect to these terms and conditions, which vary from customer to customer, would seriously interfere with our service to all of our customers. Consequently, notwithstanding any terms or conditions which may appear on the buyer's request for quotation, order, or acknowledgment, the terms and conditions of this document shall govern irrespective of whether the buyer accepts these conditions by a written acknowledgment, by implication or acceptance and payment of goods hereunder. Seller's failure to object to provisions contained in any communications from buyer shall not be deemed a waiver to the provisions of this document.

2. Sales Tax: Prices and orders do not include federal, state or local taxes. Sales tax will be added to quoted price, unless Buyer provides a proper tax exemption certificate to Electro Plastics.

3. Payment and Credit Terms: New accounts are required to complete an Electro Plastics credit application. Initial shipments will be held pending credit approval, unless paid by credit card, payment in advance or C.O.D. Each shipment shall be a separate transaction and payment shall be made accordingly. If, in the exclusive judgment of Electro Plastics, Buyer is in default of its obligations hereunder or the financial condition of Buyer at any time does not justify the commencement or continuance of production or shipment on the terms specified herein, Electro Plastics may, in addition to all other remedies it may have at law or in equity, (a) make a written demand for full or partial payment in advance, or payment for material shipped, (b) suspend its performance until payment is made and (c) cancel Buyer's order if such payment is not received by Electro Plastics within thirty (30) days after delivery in person or mailing of said demand by Buyer. After the expiration of 30 days from the date on invoice, Buyer agrees to a finance charge on the amount of any unpaid balance hereunder at the rate of 2% per month. Buyer shall pay all penalties, service charges and court costs incurred in the collection of past due account(s).

4. Returned Check: If payment is made by check and is returned for any reason by the bank or other institution, Buyer will be responsible for payment of any service charges and shall pay any and all other charges imposed upon Electro Plastics by any check verification company or collection agency.

5. Shipment and Deliveries: Delivery of material shall be f.o.b. Electro Plastics' shipping point. Title and risk of loss or damage to goods shall pass from Electro Plastics to Buyer upon delivery by Electro Plastics to the possession of the carrier. Any claims for loss or damage after risk of loss has passed as herein provided shall be filed with the carrier. Items held or stored for Buyer shall be at the risk and expense of Buyer. If, at the request of Buyer, shipments are postponed more than thirty (30) days, the amount due thereon shall become due thirty (30) days after notice that the items are ready for shipment. If a specific shipping date (excluding an estimated date) is not designated on the fact hereof or in a subsequent writing signed by Electro Plastics, Electro Plastics shall not be responsible for any delays in filling this order nor liable for any loss or damages resulting from such delays. If a specific shipping date is designated either on the face hereof or subsequently by Electro Plastics, Electro Plastics shall not be liable for any delays in filling this order caused by (a) accidents to machinery, differences with workman, strikes, labor shortages, fires, floods, priorities required or requested by the federal or state government or any subdivision or agency thereof granted for the benefit, directly or indirectly, of any of them, delays in transportation or lack of transportation facilities, restrictions imposed by federal or state or local legislation or rules or regulations thereunder, or (b) any cause beyond the reasonable control of Electro Plastics.

6. Damaged or Lost Items; Risk of Loss: Buyer shall inspect merchandise upon delivery and if packaging is damaged, note the damage on carrier's freight bill or receipt. Buyer shall obtain a copy and keep the original packaging. Buyer shall report, within 10 calendar days after delivery, any damaged shipment, or as soon as it is determined that a shipment is lost, but in no event more than 30 days after shipment, to carrier or to Electro Plastics Customer Service Department at 1-877-783-7832. Buyer shall be deemed to have accepted goods delivered in accordance with this Purchase Order, unless Electro Plastics is notified, in writing, of rejection within ten (10) days after

delivery of the product. In addition, after thirty (30) days, storage charges will be charged to Buyer at a minimum of one percent (1%) of the invoiced amount per month.

7. Returns to Electro Plastics: Merchandise returned for exchange or refund shall be received within thirty (30) days from date of shipment and need to be pre-approved by Electro Plastics. Merchandise shall be returned in new and resalable condition, in original packing, with all accessories, warranties and instructions and must be accompanied by a completed Return Form. Returns must be freight prepaid. A restocking charge will be assessed on all returns. Special orders and cut-to-length elements are not refundable. Refunds for credit card or commercial account purchases will be credited to the original credit account number used at the time of purchase. Refunds for purchases made by personal or business check or money order will be made by check. Crimp tools shall be returned within ninety (90) days after invoice date in order to be refunded.

8. Cancellations: Orders for special products may not be cancelled without Electro Plastics' authorization, and only upon terms that will indemnify Electro Plastics against loss. Cancellation, reduction or change of any order is subject to Electro Plastics' approval. Buyer agrees that, in the event it cancels all or a part of any order, that it shall pay a twenty percent (20%) cancellation fee computed on the amount of the order cancelled, and the price paid for the portion of the order accepted by Buyer shall be adjusted upward to offset any quantity discounts which were previously given based upon the size of the original order.

9. Substitutions and Modifications: Electro Plastics retains the right to make substitutions and modifications of the specification Products sold by Electro Plastics, provided that such substitutions or modifications will not materially adversely affect overall Product performance.

10. Limited Warranty:

Electro Plastics' limited warranty is valid from date of original purchase, as follows (not included in this warranty are OEM and specialty products):

- 20 years for the STEP Elements.
- 10 years for the STEP Transformers.
- 1 year for the STEP Controls.

Electro Plastics sole obligation under its warranty shall be, at its option, to either issue a credit for the purchase price, or repair or replace any article or part thereof, which is proved to be other than as warranted.

For this warranty to be valid, a copy of the STEP Labels shall be delivered to ELECTRO PLASTICS, INC., with a diagram indicating to which branch circuit the system is connected, the location of the element strips, the routing of the wires and their different measurements, voltage, amperage, elements and wire length.

Electro Plastics warrants the products to be free from defects in material or manufacturing and to perform under normal use. For the warranty to be valid, qualified personnel who are familiar with the construction and operation of the system must install the equipment and a certified electrician has to verify and measure the STEP elements BEFORE they are covered.

Electro Plastics shall not be responsible for any loss or damage that may arise due to:

- Non-compliance with installation and/or usage of the STEP elements and accessories as recommended. It shall be Buyer's and End User's duty to read and follow carefully the STEP Installation Manual. Technical assistance services, e.g. design and layout are to be used as GUIDELINES ONLY, as each application is specific to local conditions and construction
- Dissatisfaction due to improper Installation of the floor covering. All floor covering shall be installed in conformance with the manufacturer's instructions and shall conform to all applicable trade practices, local codes and manufacturer's specifications.
- Usage of inadequate or non-specified materials with the STEP heating system or products.
- Any and all defects, deficiencies or failures resulting from improper handling of the product; e.g., cuts made to the STEP elements, or the wires, etc.
- Tampering with the STEP heating system or products; e.g., removing, altering or overloading the circuit breakers, overcurrent protectors, etc.
- Installation of merchandise with obvious visible defects.

In order to obtain warranty service, Buyer shall return the unit to the dealer from whom the unit was originally purchased, with a dated sales receipt. The dealer will forward the unit to Electro Plastics. Upon receipt of the defective unit, paperwork and explanation of application, Electro Plastics will inspect and test the unit in order to determine the reason for the alleged failure. If it is determined that the unit was properly installed and failed during normal use, as

a result of a manufacturing defect, Electro Plastic will repair or replace the unit, or issue a credit or refund of the purchase price, at its sole discretion. The warranty period for any replacement unit will fulfill the warranty of the original unit and will not be extended.

Under no circumstances will Electro Plastics be liable for labor or other charges related to the installation and use of the STEP heating system or products. This warranty does not cover labor or removal or reinstallation of the product and is void on any product installed improperly, or in an improper environment, overloaded, misused, abused or altered in any manner. THE WARRANTIES STATED HEREIN ARE EXCLUSIVE OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONE OF WHICH SHALL APPLY TO THE SALE OF THE COMPANY'S PRODUCTS HEREUNDER. THIS WARRANTY ALSO EXCLUDES INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY WARRANTY ON THE PRODUCTS. Products which are replaced by Electro Plastics in accordance with the foregoing shall become the property of Electro Plastics and shall be returned to it by the purchaser f.o.b. point of shipment. The maximum liability of this warranty is limited to the replacement or repair or purchase price of the defective unit. If a unit is returned and found that no defect exists, or that the user misused the unit, Electro Plastics will inform the user. If the user chooses to have the unit repaired (if possible), labor and shipping charges will apply.

11. Limitation of Liability:

ELECTRO PLASTICS 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 OR THIRD PARTIES, WHETHER NEGLIGENT OR OTHERWISE, IN NO EVENT SHALL ELECTRO PLASTICS' LIABILITY FOR ANY CAUSE OF ACTION WHATSOEVER EXCEED THE COST OF THE PRODUCT GIVING RISE TO THE CLAIM, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. IN NO EVENT SHALL ELECTRO PLASTICS BE LIABLE OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER SUCH INDIRECT DAMAGES (INCLUDING, WITH-OUT LIMITATION, LOSS OF REVENUES, PROFITS OR OPPORTUNITIES), WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

12. Force Majeure:

Electro Plastics shall not be liable for any delay or failure to perform to the extent caused by (including, but not limited to) fire; flood; explosion; war, riot; embargo; labor disputes; compliance with any laws, regulations, orders, acts or requirements from the government, civil or military authorities; acts of God or the public enemy, or any act or event of any nature reasonably beyond Electro Plastic's reasonable control.

13. Indemnity:

Buyer shall release, hold harmless, indemnify and defend Electro Plastics from and against any loss, liability, claims, suits and cost caused by, arising out of, or relating to the design or construction of goods supplied hereunder or the design or construction of the packages or containers in which they are shipped, if such goods, packages or containers are made in compliance with Buyer's design or specifications.

14. General Provisions:

(a) **Entire Agreement.** These Terms of Sale, and the exhibits attached hereto, represent the entire agreement between the parties in connection with the transactions contemplated hereby and the subject matter hereof and this Terms of Sale supersedes and replaces any and all prior and/or contemporaneous agreements, understandings and communications between the parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations or inducements of any kind existing between the parties relating to this transaction which are not expressly set forth herein. These Terms of Sale may not be modified except by a written agreement signed by Electro Plastics and Buyer, and each of them.

(b) **Amendment of Terms of Sale.** These Terms of Sale may be amended or modified at any time with respect to any provision only by a written instrument signed by Electro Plastics and Buyer.

(c) **Attorneys' Fees.** If Electro Plastics brings any legal action arising out of any provision of these Terms of Sale, Electro Plastics shall be entitled to recover reasonable attorneys' fees from the other party, in addition to any other relief that may be granted to Electro Plastics.

(d) **Notices.** Any notice required or permitted to be given under these Terms of Sale shall be written, and may be given by personal delivery, by facsimile transmission or by registered or certified mail, first-class postage prepaid, return receipt requested. Notice shall be deemed given upon actual receipt in the case of personal delivery, or upon mailing. Mailed notices shall be addressed to Electro Plastics and Buyer at the address set forth on the face of these Terms of Sale, but each party may change its address by written notice in accordance with this paragraph Electro Plastics.

(e) **Venue:** Any dispute will be resolved by Arbitration governed by Laws of the State of Missouri.

(f) **Construction.** Electro Plastics and Buyer acknowledge that these Terms of Sale, as executed, is a product of negotiation between the parties and that it shall be construed fairly, and in accordance with its terms, and shall not be construed for or against either party. No inferences as to the intention of the parties shall arise from the deletion of any language or provision of these Terms of Sale.

(g) **Severability.** In case any one or more of the provisions contained in these Terms of Sale shall for any reason be held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision of these Terms of Sale and these Terms of Sale shall be construed as if the invalid, illegal or unenforceable provision had never been part of the Terms of Sale.

(h) **Rights and Remedies.** Duties and obligations imposed by these Terms of Sale and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

(i) **Waiver.** No waiver by any party, at any time, of any breach of any provision of these Terms of Sale shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

(j) **Captions and Headings.** The captions and the paragraph numbers appearing in these Terms of Sale are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of these Terms of Sale.

(k) **Time of Essence.** Time is of the essence with respect to all matters contained in these Terms of Sale.

(l) **No Third-Party Beneficiary Rights.** These Terms of Sale is entered into for the full benefit of Electro Plastics and Buyer and no other parties are intended to be direct or incidental beneficiaries of these Terms of Sale and no third party shall have any right in, under or to these Terms of Sale.

(m) **Incorporation of Exhibits.** Each and all the exhibits attached to these Terms of Sale are incorporated herein by reference as if set forth in full in these Terms of Sale.

(n) **Binding Effect.** These Terms of Sale shall be binding upon and enure to the benefit of the parties hereto, their respective heirs, legal representatives, administrators, successors-in-interest and assigns and all End Users of the products sold hereunder.

(o) **Assignment.** No party to these Terms of Sale shall assign any right or interest arising under these Terms of Sale without the prior written consent of the other parties to these Terms of Sale.

(p) **Read and Understood.** Each party acknowledges that it has read, and that it understands, these Terms of Sale and agrees to be bound by its terms.

(r) **Terms.** The term "Buyer" shall refer to all purchasers of the products, whether as a distributor, agent, contractor or sub-contractor, installer, or end user of the products.

2007 Electro Plastic, Inc. All rights reserved. Electro Plastics, Inc. cannot be liable for pictorial or typographical inaccuracies. All product specifications, which include dimensions, are subject to change without notice.