

Standard Terms and Conditions of Sale – E/G Electro-Graph, Inc.

1. **General Terms**
The agreement between E/G Electro-Graph, Inc. ("Seller") and the purchaser ("Buyer") for this order is limited to the terms and conditions of these Standard Terms and Conditions of Sale in combination with the quotation supplied by Seller and shall become the exclusive and binding agreement ("Agreement") between Seller and Buyer with respect to the order of any Seller products (the "Products"). ANY ADDITIONAL OR DIFFERENT TERMS IN BUYER'S DOCUMENTS ARE HEREBY DEEMED TO BE ALTERATIONS AND NOTICE OF OBJECTION TO AND REJECTION OF SUCH CHANGES IS HEREBY GIVEN. MODIFICATION OF SELLER'S TERMS AND CONDITIONS WILL BE BINDING ON SELLER ONLY IF EXPRESSLY AGREED TO IN WRITING BY SELLER.
2. **Acceptance**
Seller's acceptance of a Buyer order for Products shall occur upon the earlier of Seller's commencement of performance under such order or by Seller's transmission to Buyer of an order confirmation for such order.
3. **Cancellations/Change Requests>Returns**
Buyer may not cancel, postpone shipment or change Products in an order without Seller's written consent. In the event that Buyer requests changes or cancellation of a stock item order, Seller may, in its sole discretion, accept a return of the stock Product subject to the terms hereof and grant a credit thereon (to the extent that payment has been already made by Buyer), subject to a reasonable handling charge, physical return to Seller, and actual condition of material.
4. **Returns**
For repair or authorized return, the Product must be returned to Seller's facility. Authorization to return Products must be obtained prior to return, in accordance with Seller's then in effect policies and procedures. For repairs, Buyer shall pay all shipping charges to Seller and Seller shall pay shipping charges to return the Product to Buyer. For authorized returns, Buyer shall pay all shipping charges to Seller.
5. **Warranty**
Seller warrants to Buyer that the Products shall be free from any material defects in materials or workmanship from the date of shipment from Seller. Seller's liability and Buyer's remedy under this warranty shall be limited solely and exclusively to the replacement of any Product determined by Seller to be defective with a comparable Product of equal value. Buyer must allow Seller the opportunity to inspect any disputed products in unaltered condition to evaluate the claims in accordance with procedures customary to the industry. This warranty is void if the Product: (i) is altered or modified in any way; (ii) is otherwise improperly installed; or (iii) has been subjected to improper operation, misuse, abuse, accident or neglect. Seller assumes no liability for defective products or damage caused by defective products, not manufactured or by Seller, even though such products may be used in conjunction with the Products. Seller shall not be responsible for any removal and/or installation of any Product, including any removal for purposes of inspection or determination of whether any defects exist, for any costs incurred for labor or services in connection with the inspection or removal of any Product, and/or for installation of a replacement Product. **OTHER THAN AS SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INTELLECTUAL PROPERTY INFRINGEMENT OR OTHERWISE.**
6. **Limitation of Liability and Remedies**
To the maximum extent permitted by law, Seller's sole responsibility is as stated herein. Seller will not be liable for special, direct, indirect, incidental, consequential, exemplary or punitive damages, or for any amount in excess of the price for the Products, under any part of this Agreement. Any legal action against Seller for breach of this Agreement, including any warranty matters, must be initiated no later than one year from delivery date or the time that such right of action had accrued, whichever is earlier.
7. **Shipment Delays**
Seller may alter any delivery date(s) set forth in Buyer's order upon the occurrence of any event which, in Seller's sole discretion, makes such delivery impracticable or unreasonable, and Buyer agrees to hold Seller harmless from any claims resulting from such alteration.
8. **Title Transfer/Risk of Loss**
Title and risk of loss or damage pass to Buyer upon delivery of goods to any carrier (except a motor vehicle operated by Seller). Seller reserves all rights to decide shipment venues and routings unless agreed otherwise in an order. Seller may reasonably assist Buyer in filing claims against carriers, but, will not, as a result of providing such assistance, incur liability.
9. **Transportation Costs/Taxes**
When Seller's price includes transportation costs from point of shipment, such quote of shipping costs is a good faith estimate only. Thus, an increase in such costs occurring after a price is quoted or set by Seller including any specifically related costs charged by the carrier will be borne by Buyer. Any incremental costs of substitute delivery method(s) and/or routing(s) directed by Buyer will also be borne by Buyer. Unless expressly agreed otherwise and to the extent permitted by law, any present or future taxes or similar charges which Seller may be required to pay or collect concerning the sale, purchase, transportation, delivery, use or storage of the Products shall be for the account of Buyer.
10. **Payments/Late Payment Charge/Collections**
Unless different payment terms are set forth on Seller's invoice, all amounts due and payable shall be paid in full by Buyer within thirty (30) calendar days after Seller's shipment of Products. If payment is not timely made, this Agreement and all other agreements between Seller and Buyer shall be deemed breached. Buyer agrees to pay Seller a late payment charge of 1.00% per month on the unpaid balance of past due amounts until paid. Late payment or the occurrence of another event that raises doubts about Buyer's financial condition may, in Seller's discretion, result in Buyer's account being placed on Credit Hold or COD only status. Buyer also agrees to pay reasonable attorneys' fees and other costs incurred should collection become necessary.
11. **Seller's Security Interest**
Buyer hereby grants to Seller a security interest in all Products now or hereafter sold by Seller to Buyer and all proceeds thereof (collectively, the "Collateral") to secure the payment of the purchase price of the Collateral and all amounts now or hereafter owing from Buyer to Seller. Buyer authorizes Seller to file one or more financing statements in all states, counties and other jurisdictions as Seller may elect, without Buyer's signature, if permitted by law. Buyer agrees to cooperate fully with Seller in executing any additional documents, instruments, financing statements or amendments thereto as Seller may request to perfect or continue the security interest granted herein. Upon a breach by Buyer of any of its obligations to Seller, Seller shall have all rights and remedies of a secured party under the California Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive. Buyer agrees to pay Seller's reasonable costs and expenses (including but not limited to attorneys' fees and costs and any fees and costs incurred in connection with a bankruptcy proceeding of or involving Buyer or Collateral) incurred to collect any amount unpaid or to enforce Seller's other rights and remedies, whether or not suit is commenced.
12. **Final Acceptance**
Buyer shall inspect and count all shipments of Product upon receipt. Buyer shall notify Seller in writing of particular deficiencies in the Products during the inspection period, which shall be five (5) business days immediately following the receipt of the shipment of such Products. Failure to give notice of or specify in writing the deficiencies within the five (5) business days inspection period shall constitute Buyer's acceptance of the shipment. Should Buyer's inspection during the inspection period reveal missing or damaged parts, Buyer shall contact Seller immediately and any damaged parts shall be returned to Seller for repair or replacement as set forth herein.

13. **Intellectual Property; Use of Information.**

No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Products hereunder. Seller's drawings, designs, technical information, intellectual property and know-how shall be the exclusive property of Seller, and Buyer shall have no right, title or interest therein. Buyer shall maintain in confidence, and shall not disclose to any third party, or use for any purpose other than that for which it was supplied, any information or property of Seller which is designated by Seller as confidential, secret or proprietary information of Seller. Seller shall be entitled to rely upon any information, specifications, designs, formulas or other information supplied to Seller by Buyer or Buyer's representatives, and Seller shall not be responsible for any damages or loss arising out of the use or incorporation by Seller of the same. Buyer warrants to Seller that neither any design, specification, drawing or pattern provided to Seller by Buyer or Buyer's representatives, nor any use contemplated by Buyer of the Products, infringes any patent, copyright, trade secret or other intellectual property rights.
14. **Compliance with Laws; Import and Export Controls**
 - 14.1 Buyer agrees to comply with all laws and regulations that concern this order or the Product provided hereunder and further agrees to adhere to and act in a manner consistent with the principles set forth in Seller's Code of Conduct, available by request or at <http://www.plansee.com/code-of-conduct/EN.pdf>, in particular those concerning the fight against corruption, antitrust and fair competition, environmental, health & safety, and fair labor standards.
 - 14.2 The Buyer agrees further to comply with all applicable import and export control laws, including re-export and transfer restrictions, embargoes and sanctions regulations. The Buyer is responsible for obtaining any and all necessary licenses or other approvals that are required for the import, use or export of the Product according to the laws and regulations as are applicable to Buyer.
 - 14.3 In the event that a government agency requests documents from the Seller that requires the cooperation of Buyer (e.g., End-Use Declaration, Import Certificates), the Buyer shall, in a timely and diligent manner, produce such documents or perform such actions as may be requested by the Seller to satisfy the request of the government agency. Should delays in shipment arise as a result of Buyer's failure to cooperate in a timely and diligent manner or due to the government agency approval process, then the time for Seller's performance shall be extended accordingly.
 - 14.4 In the event that the delivery of Product or Seller's performance hereunder becomes impaired, whether temporarily or permanently, due to (i) the applicable national or international laws and regulations, in particular export controls, embargoes or other restrictions, or (ii) the denial or revocation of necessary approvals for reasons not attributable to Seller, the Seller shall be under no further obligation to deliver or to perform hereunder. The Buyer waives any claims against Seller and agrees not to seek any damages or exercise any rights against Seller in such a case.
 - 14.5 The Buyer agrees to indemnify and hold Seller harmless against any costs or damages incurred by Seller, including any third party claims against Seller, that arise from Buyer's failure to comply with the requirements of this Section 13.
15. **Applicable law**

This Agreement, shall be interpreted and enforced according to the laws of the State of California, without application of its conflicts of law principles and excluding the U.N. Convention on Contracts for the International Sale of Goods. This Agreement shall be deemed to be performed in San Diego County, California.
16. **Disputes**

In the event of any dispute arising from or relating to this Agreement, the dispute shall be resolved solely by means of binding arbitration in San Diego, California, before a single arbitrator, under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") under the administration of the San Diego, CA office of the AAA.
17. **Assigns and Successors**

This Agreement may not be assigned by Buyer without Seller's prior approval, which approval will not be unreasonably withheld. This Agreement is binding on the permitted assigns and successors of the parties.
18. **Survival**

Each term and condition under this Agreement will remain effective for so long as may be necessary to give effect to its purpose as set forth herein.
19. **Severability**

If any provision of this Agreement shall be found to be unenforceable or unlawful, that provision shall be deleted from this Agreement and the remaining provisions shall, insofar as possible, be given full force and effect.
20. **Entire Agreement**

BUYER'S ACCEPTANCE OF ANY PRODUCTS COVERED HEREBY SHALL BE DEEMED ACCEPTANCE OF ALL THE TERMS AND CONDITIONS STATED HEREIN. SELLER'S FAILURE TO OBJECT TO ANY PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS CONTAINED HEREIN. This Agreement represents the entire agreement between the parties and shall supersede all prior written or oral understandings and/or other terms in any purchase order or other document, now or hereafter delivered, except that this Agreement shall not supersede other written agreements between the parties that expressly reference this Agreement.