



TERMS AND CONDITIONS

TERMS AND ACCEPTANCE. The products ("Products") detailed on Electrical Distributors Co. ("EDC") invoices are sold on the terms and conditions set forth on the front of the invoice and on the terms and conditions set forth herein, which terms and conditions are incorporated by reference into the invoice as though an original part thereof, and, as so incorporated, constitute the entire agreement ("Agreement") between EDC and the customer identified on the front of the subject invoice ("Customer"). The within terms and conditions take precedence over any Customer terms and conditions. Neither EDC's commencement of performance or delivery of the Products constitutes an acceptance of Customer's terms or conditions. Any additional or conflicting terms on Customer's Purchase Order or acknowledgment are hereby rejected.

PAYMENT. Payment terms are net 30 days from invoice date. Extension of trade credit is subject to EDC's approval, which is in EDC's sole and absolute discretion, and may be revoked at any time in EDC's sole discretion. Orders from a Customer with accounts that are 30 days overdue will be accepted only on a C.O.D. basis or other suitable payment at time of order until credit is reestablished to EDC's satisfaction. EDC may cancel or delay future deliveries of Product in the event that Customer fails to make prompt payment or if, in EDC's sole determination, the financial condition of Customer or other grounds for insecurity warrant such action. Customer grants to EDC a purchase money security interest in all of the Products detailed on the front of the invoice delivered to Customer, and the proceeds thereof. In the event of a default, EDC has all rights of a secured party under the California Commercial Code. EDC may execute and file a financing statement and other security instruments to perfect its security interest. All published prices are subject to change without notice.

FINANCE CHARGES AND CHECK FEES. In the event that Customer fails to make timely payment, or delivers payment by check that is ultimately returned unpaid, EDC will incur additional costs, arising from servicing the account and loss of use of the amounts due, that are difficult or impossible to determine. Therefore, invoices not paid within 30 days will be subject to a monthly finance charge calculated at the periodic rate of 2% of the unpaid balance from time to time outstanding, which rate is subject to change on 30 days notice. All returned checks are subject to a \$20.00 per check service fee.

SHIPMENT. Shipping/freight is F.O.B. at an EDC warehouse in California, unless otherwise indicated, plus charges for any special packaging or handling required by Customer. Risk of loss passes to Customer upon delivery to the carrier. In the absence of specific instructions, EDC may select the carrier; provided, however, the carrier is not an agent of EDC. EDC reserves the right to make partial shipments.

PERFORMANCE. EDC will diligently proceed to fill Customer orders for Products in a timely manner, except for delays occasioned by factors that are beyond EDC's control, not reasonably foreseeable, or initiated by Customer. Items not shipped are placed on back order, and will be shipped as soon as available subject to the price in effect at time of shipment. Customer must report all discrepancies in Product deliveries, shortages, or erroneous charges to EDC within 10 days of receipt, otherwise the Products and amounts charged are deemed accepted. Use of the Products constitutes acceptance.

RETURNS. Items may be returned for credit only with EDC's prior written approval. All returns are subject to a cancellation and restocking charge of 10% if the Product cost plus payment of all freight charges. Special order items may not be returned.

DISCLAIMER OF WARRANTY. EDC is a distributor/reseller of the Products of others; therefore, all Products are sold subject solely to the warranties provided by their respective manufacturers. EDC MAKES NO WARRANTY AS TO THE PRODUCTS, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EDC EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EDC does not guarantee or warrant the suitability of the Products for specific applications. Customer is solely responsible for determining whether the Products are appropriate for Customer's specific requirements. If any model or sample was shown to Customer, the model or sample was used merely to illustrate the general type and quality of goods and not to represent that the goods necessarily conform to the model or sample.

LIMITATION OF LIABILITY. IN NO EVENT WILL EDC, OR ITS EMPLOYEES, AGENTS, OR OWNERS, BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT OR RESULTING FROM ANY BREACH OF WARRANTY, OR UNDER ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOST PROFITS, SAVINGS OR DATA, DOWNTIME, LOSS OF GOODWILL, OR DAMAGE TO OR REPLACEMENT OF EQUIPMENT OR PROPERTY. EDC IS NOT RESPONSIBLE FOR CLAIMS BY THIRD PARTIES. IN NO EVENT WILL EDC'S LIABILITY FOR DAMAGES, IF ANY, EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE PRODUCTS.

DEFECTIVE PRODUCTS. In the event that any of the Products are defective in workmanship or material, EDC will, at its election and in its sole discretion, attempt to obtain from the manufacturer thereof, in accordance with the customary practices of the manufacturer, the repair or replacement of the subject Product. However, Customer is ultimately responsible for pursuing any remedy that Customer may have with respect to the breach of any manufacturer warranty.

INDEMNITY. Customer assumes full and complete responsibility for all uses and/or applications of the Products, and agrees to indemnify, defend, and hold EDC, its employees, agents, and owners harmless from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorneys' fees, and expenses, resulting from death or injury to any person, damage to any property, or any other alleged damages resulting from aforementioned uses and/or application of the Products.

MISCELLANEOUS. This Agreement is governed by, and will be interpreted and enforced under, the internal laws of the State of California (irrespective of its choice of law principles). Any suit to enforce this Agreement may be brought only in the federal and state courts located in the County of Santa Clara, California, and such courts have exclusive *in personam* jurisdiction and venue with respect to such party. In any action to enforce or interpret this Agreement, the prevailing party is entitled to recover, as an element of the costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the court (including, without limitation, costs, expenses and fees on any appeal). If any provision of this Agreement is held to be invalid or unenforceable, it shall be enforced to the extent permissible and the remainder of the Agreement shall remain in effect. EDC's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.