

**EM PLASTIC & ELECTRIC PRODUCTS LIMITED**  
"Seller"  
**TERMS AND CONDITIONS OF SALE**  
(INCLUDING LIMITATION OF WARRANTIES AND A LIMITATION OF REMEDIES)

**1. FORMATION OF CONTRACT**

- Products and services furnished by Seller are sold only on the terms and conditions herein unless otherwise expressly agreed in writing between the parties.
- Notwithstanding any terms and conditions on Purchaser's order, Seller's performance of any contract is expressly made conditional on Purchaser's agreement to Seller's Terms and Conditions of Sale unless otherwise specifically agreed to in writing by Seller.
- All contracts for the sale of Products shall be construed under and governed by the law of the location of Seller's head office at Brampton, Ontario, Canada.

**2. PRICES AND TERMS**

- 2% 15 net thirty days. 1 1/2% interest per month, 19.56% annually will be charged on overdue accounts.
- All quotations are subject to the terms and conditions stated herein as well as any additional terms and conditions that may appear on the face hereof.
- In the case of a conflict between the terms and conditions stated hereon and those appearing on the face hereof, the latter shall govern.
- All published prices are subject to change without notice.
- Unless otherwise specified in writing, all quotations expire thirty (30) days after date thereof, may be terminated earlier by notice, and constitute only solicitations for offers to purchase.
- Budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any obligation or liability upon Seller.
- Unless otherwise stated in writing by Seller, all process quoted shall be exclusive of transportation insurance, taxes (including, without limitation, any sales, use, or similar tax, and any tax levied on or assessed to Seller after Product shipment by reason of Seller's retention of a security interest as provided herein), license fees, customs fees, duties and other charges related thereto and Purchaser shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto, and shall hold Seller harmless therefrom, provided that, if Seller, in its sole discretion, chooses to make any such payment, Purchaser shall reimburse Seller in full upon demand. Stenographic, typographical and clerical errors are subject to correction.
- Prices quoted are for Products only and do not include technical data, proprietary rights of any kind, patent rights, copyrights, computer software, or packaging, unless expressly to in writing by Seller.

**3. DELIVERY, RISK OF LOSS AND TITLE**

- Seller shall send the Products to Purchaser by any commercially reasonable means at the address noted on the face hereof, but this requirement does not impose upon Seller the duty to make delivery at that point. Seller has the option of selecting the particular route and carrier for shipment of the Products to Purchaser. Delivery of the Products by Seller to a carrier shall constitute delivery to Purchaser.
- The risk of loss with respect to the Products shall pass to Purchaser upon their delivery by Seller to a carrier for transportation to Purchaser. No loss, injury or destruction of the Products subsequent to their delivery to a carrier for transportation to Purchaser shall release Purchaser from any obligations with respect to the Products, including without limitation, the obligation to pay the price reflected on the face hereof.
- Seller shall not be liable for failure to ship the products by the specified date unless Seller has given an express undertaking in writing to deliver the Products by a specified date with an agreed penalty for failure to deliver by the specified date and, in such a case, Seller's liability shall be limited to the actual proven damages suffered by Purchaser as a result of the failure to meet the specified delivery date and shall in no case exceed the agreed upon penalty in any case. Seller shall not be liable for delays due to circumstances beyond Seller's control.
- Title to the Products shall remain in or with the Seller regardless of mode of attachment to royalty or other property until full payment in cash has been made.
- Delivery dates quoted by Seller should be interpreted as estimated and in no event shall be construed as falling within the meaning of "time is of the essence."

**4. FORCE MAJEURE**

- If any performance of Seller hereunder is prevented, hindered, delayed or otherwise made impracticable by reason of any cause beyond Seller's reasonable control including, without limitation, acts of God, riots, fires, weather, termination of Seller's sources or supplies, of Purchaser, delays due to shipping or transportation or changes or addition to the contract labor disputes involving Seller or its subcontractors or supplier, Seller shall be excused from performance to the extent that it is necessarily presented, hindered, delayed or otherwise made impracticable, such excuse from performance to extend for so long as the cause continues to prevent Seller's performance.

**5. INSPECTION**

- Purchaser shall inspect the Products immediately upon their arrival at Purchaser's address as reflected on the face hereof and shall within seven (7) days of their arrival give notice to Seller of any matter or thing which Purchaser claims makes the products non-conforming and is the basis of Purchaser's rejection of the Products. Failure of Purchaser to give such written notice within the specified time shall constitute irrevocable acceptance of the Products.
- Expenses of inspection must be borne by Purchaser in any event.

**6. ASSIGNMENTS, TERMINATIONS AND CANCELLATIONS**

- Any assignment by Purchaser of any contract hereunder without the express written consent of Seller is void.
- No order may be terminated by Purchaser except by mutual agreement in writing.
- Terminations by mutual agreement are subject to the following conditions. Purchaser will pay, at applicable contract prices, for all Products which are completely manufactured and allocable to Purchaser at the time of Seller's receipt of notice of termination. Purchaser will pay all costs, direct and indirect, which have been incurred by Seller with regard to Products which have not been completely manufactured at the time of Seller's receipt of notice of termination, plus a pro rata portion of normal profit on the contract. Purchaser will pay a termination charge on all other Products affected by the termination. Seller's normal accounting practices shall be used to determine costs and other charges.
- Seller shall not be obliged to accept any return of Products provided however all returned Products shall be subjected to a twenty (20) percent restocking charge.
- No notice of cancellation or termination not any other similar notice shall operate to relieve Purchaser from any obligations hereunder including, without limitation, the obligation to accept tenders of conforming Products and pay for them at the price stated herein, without the prior written consent of Seller.

**7. NO SET-OFF**

- Neither purchaser nor any affiliated company shall have the right to claim compensation or to set off against any amount which may become payable to Seller under this contract or otherwise.

**8. LIMITED WARRANTY AND LIMITATION OF LIABILITY (INCLUDING LIMITATION OF CONSEQUENTIAL DAMAGES)**

- Seller warrants that at the date of delivery the Products shall be free from defects in Seller's materials and workmanship and that at the date of delivery the Products shall meet the express written statements of quality, is any, made by Seller in connection with the sale of the Products. This limited express warranty set forth in the immediately preceding sentence (the "Limited Express Warranty") shall apply only in favour of the Purchaser and shall be subjected to the following provisions:

The Limited Express Warranty shall not apply

- (1) to Products which have been repaired or altered by any person other than Seller in any way so as in Seller's judgment to affect their stability, reliability, or performance, or
  - (2) to Products which have been subjected to unreasonable use, negligence or accident or which have been misused, or,
  - (3) to Products which have been damaged because of their use or the use of any other materials or equipment after Purchaser (or any other person using the Products of acting by, through, or under Purchaser) has or reasonably should have had, knowledge of any defect, or
  - (4) to Products not manufactured by the Seller (however, Seller shall assign to Purchaser, to the extent same is assignable, whatever warranty Seller has received from the manufacturer of such Products), or,
  - (5) to Products which have been rebuilt (whether by Seller or any other entity), or
  - (6) to Seller's advisory services and recommendations with respect to the use and operation of the Products.
- The Limited Express Warranty set forth in the two immediately preceding paragraphs is in lieu of all other representations and warranties, express, implied, or statutory, with respect to quality, merchantability, or fitness for a particular purpose. Other than express written statements of quality, if any, made by Seller in connection with the sale of the Products, all express warranties that might arise from engineering drawings, samples, models or actions of the Seller, are expressly disclaimed and negated.
  - All implied warranties existing under the law are hereby expressly disclaimed and negated; particularly, Seller hereby negates and disclaims the implied warranty of merchantability and the implied warranty of fitness for a particular purpose.
  - In addition, all other liability, either in Contract or in Tort, including without limitation, strict liability imposed either by statute or at common law, are expressly disclaimed and negated.
  - Purchaser shall have no remedy against Seller unless the written claim therefore is made within thirty (30) days after Purchaser knows or should have known that the Products allegedly do not conform with the Limited Express Warranty and, in any event, within one year from the date the Products were delivered by Seller to Purchaser.
  - The extent of Seller's liability for any breach of the Limited Express Warranty or any breach of any obligation arising out of the sale of the Products to Purchaser, shall be limited, at Seller's option either to
    1. repairing or replacing at Seller's plant the Products so that they comply with the Limited Express Warranty, or,
    2. paying Purchaser an amount equal to the cost (to Purchaser at the original time of sale) of the part of the Products which does not comply with the Limited Express Warranty. In no event shall Seller be required to repair, replace or reimburse Purchaser for more than the part of the Products that is found to be defective. In the event Purchaser chooses to commence an action for breach of warranty or breach of contract or any action based in tort arising out of the sale of the Products hereunder, Purchaser must commence such action within one year after the cause of action arises.
  - The remedy provided herein shall be the sole and exclusive remedy of Purchaser for Seller's breach of this warranty or for any contractual or legal duty or obligations arising out of the sale of the Products by Seller to Purchaser. Except for the remedy specifically provided above, Seller shall not be liable to Purchaser or to any user or to any other third party for any economic loss, physical harm, incidental, consequential, or special damages resulting from any defect of the Products or any failure of the Products to conform with the warranty made herein or any failure of the Seller to meet any obligation or duty existing and applicable under the law with respect to the sale of the Products to Purchaser, whether the Products or the use of the Products results in damage or harm only to itself or to other property.
  - Purchaser represents to Seller that the Products are being purchased for commercial uses and are not intended to be ordinarily used for personal, family or household purposes. Purchaser agrees not to assign or transfer the warranty obtained herein to any user or other party.
  - No employee or representative of Seller or any of its affiliates is authorized to change the warranty in any way or to grant any other warranty. Only a corporate officer shall have the authority to change the terms of the warranty and any such change shall be executed in writing and signed by a corporate officer of Seller.

**9. WAIVER**

- The rights and remedies herein reserved to Seller shall be cumulative and in addition to any other rights and remedies provided by law.
- The failure of Seller to insist upon strict performance hereof shall not constitute a waiver of, or estoppel against asserting the right to require such performance in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise.

**10. INDEMNITY FROM THIRD PARTY CLAIMS**

- Purchaser shall protect, indemnify and hold Seller free and harmless from and against any and all liability and any and all losses, costs (including, without limitation, legal fees), claims and causes of action in favour of any and all persons (which term shall include, without limitation, individuals, corporations, partnerships, organizations and other legal entities), whatsoever on account of injury to or death of any such persons and or damage to or loss of the property of such persons caused by or arising out of the use of operation of the Products or any device, material or thing of which the Products are made a part or to which the Products are attached or within which the Products are enclosed while in Purchaser's possession or subsequent to any transfer of possession to any third party, regardless of whether Seller and/or others may be worthy, partially or solely negligent or otherwise at fault.

**11. NOTICE**

- Any notice provided hereunder must be given in writing. Notices shall be served and documents shall be submitted by depositing same in the mail, addresses to the appropriate party at the address reflected on the face hereof, postage paid and registered or certified with return receipt requested, or by delivering same in person to such other party or by prepaid telegram, telex, fax or cable.