General Sales and Delivery Terms
Eldon Electric Limited (Version 01-10-2017)

1. Interpretation

1.1 Definitions

Business Day / A day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions / The terms and conditions set out in this document as amended from time to time in accordance with clause 11.5.
Contract / The contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer / The person or firm who purchases the Goods from the Supplier.
Force Majeure Event / An event or circumstance beyond a party’s reasonable control even if such event could have been foreseen at the time of concluding the Contract and/or the event takes place in any location in the world.
Goods / The Goods (or any part of them) set out in the Order.
Order / The Customer’s order for the Goods, as set out in the Customer’s purchase order form or the Supplier’s documentation relating to the Contract.
Specification / Any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.
Supplier / Eldon Electric Limited (registered in England and Wales with company number 00924071).

1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
(b) any reference to a person includes, in particular, any new or different person who succeeds to the rights or obligations of the person referred to by operation of law or otherwise.
(c) a reference to writing or written includes fax and electronic mail.

2. Basis of contract

2.1 These Conditions apply to the Contract (and any future Contract unless expressly stated in writing) to the exclusion of any other terms that the Customer may insist or impose, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.

2.3 The Supplier shall be bound by any accepted “Specification” of the Goods.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue and shall remain the exclusive property of the Supplier.

2.7 The Supplier reserves the right at all times to refuse Orders or stipulate additional Conditions (such Conditions are to be treated as forming a term of the Contract).

2.8 The Goods are described in the Supplier’s catalogue or promotional material as modified by any applicable Specification.

2.9 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (whether or not in excess of the amount allowed for by statute or provision as amended or re-enacted) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the Supplier’s use of the Specification. This clause 2.9 shall survive termination of the Contract.

2.10 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

3. Goods

3.1 The Goods are described in the Supplier’s catalogue or promotional material as modified by any applicable Specification.

3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (whether or not in excess of the amount allowed for by statute or provision as amended or re-enacted) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the Supplier’s use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Any samples, drawings, descriptive matter or advertising produced by the Supplier shall not constitute a quotation or offer for sale and purchase of the Goods in accordance with these Conditions.

3.4 Any samples, drawings, descriptive matter or advertising produced by the Supplier shall not constitute a quotation or offer for sale and purchase of the Goods in accordance with these Conditions.

4. Delivery

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any).

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location).

4.3 Delivery is completed on the completion of unloading the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery of goods is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer’s failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods within 3 months of the contractually agreed date, the Customer may cancel the Contract and receive a full refund of all monies paid by the Customer and the Supplier shall immediately pay the Customer compensation (being 3% of the price of the Goods for each Business Day up to a maximum of 30 Business Days) for the Supplier’s failure to deliver the Goods and all claims and costs (including but not limited to the costs of storage and transit) which the Customer shall reasonably and properly incur in connection with the Customer’s claim.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready for delivery the Customer has not been resold, or irrevocably incorporated into another product; and

4.7 If the Customer fails to do so promptly, any premises of the Customer or of any third party where the Goods are stored in order to recover them.

5. Price and payment

5.1 The price of the Goods shall be the price set out in the Order, or, if the Goods are supplied in accordance with any Quotation, the price set out in the Quotation.

5.2 and will be limited to one year from delivery of the Goods (the Warranty Period), Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some of all of the Goods do not comply with the warranty given;

(b) the Supplier is given a reasonable opportunity of examining such Goods, and

(c) the Customer (if it is to be done by it) returns Goods to the Supplier’s place of business at the Customer’s cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund (wholly or partially) the price of the defective Goods.

5.3 The Customer shall pay the price of the Goods upon delivery of the Goods, or in accordance with any Specification submitted by the Customer.

5.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier’s agent; and

(b) the title to the Goods shall pass from the Supplier to the Customer immediately at the time at which resale by the Customer occurs.

6. Risk and ownership

6.1 The risk of the Goods shall pass to the Customer on completion of delivery.

6.2 The title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other amounts due from the Customer to the Supplier. The Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all sums due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier’s property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause a.1.1; and

(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time; and

(f) not to wholly or partially hire or let the Goods to third parties nor allow third parties to use the Goods without express written permission from the Supplier.

6.4 Subject to clause 6.5, the Supplier may repossess or resell the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier’s agent; and

(b) the title to the Goods shall pass from the Supplier to the Customer immediately at the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause a.1.1, then, without limiting any other right or remedy the Supplier may have:

(a) the Customer’s right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price in the Supplier’s published price list in force at the date of delivery.

7.2 The Supplier may, by giving notice to the Customer at any time up to three Business Days before delivery, increase the price of the Goods. The increase shall not exceed the percentage increase of the Goods that is due to:

(a) any factor beyond the Supplier’s control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
7.3 The price of the Goods:
(a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
(b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The Supplier may invoice the Customer for the Goods at dispatch or at any time after the completion of delivery. The Customer must notify the Supplier of any errors in the Supplier invoice within 7 days of the invoice date. Any invoice not notified will be deemed to be correct. For the avoidance of doubt nothing in this clause 7.4 shall prevent the Supplier amending an incorrect invoice at any time after delivery.

7.5 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

7.6 If the Customer fails to make any payment due under the Contract, then the Customer shall immediately pay to the Supplier interest on the overdue amount at the rate of 1.5% per month above the Bank of England’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 In addition to the remedy in clause 7.6 all sums due and payable to the Supplier by the Customer shall become immediately payable and the Supplier shall in absolute discretion suspend its further fulfilment of any Contract when the Customer is in default until payment is made in full.

7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable to the Customer by the Supplier.

7.9 The Customer will indemnify the Supplier against all costs, losses and expenses incurred in recovering any sums due to the Supplier including (but not limited to) legal costs, court fees and enforcement fees (including Bailiffs and High Court Officers).

8. Termination and Suspension
8.1 Without limiting its other rights or remedies, the Supplier may suspend and/or terminate this Contract in immediate effect by giving written notice to the Customer if:
(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten days of that party being notified in writing to do so;
(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether or not voluntary or by order of court), being dissolved (whether in whole or in part), being dissolved or having ceased to be a body corporate or having entered into a scheme of arrangement with creditors of any kind or (whether formal or informal) taking the necessary steps for the appointment of an administrator in respect of it or of any assets of its business (whether in or out of contemplation or in anticipation of any voluntary or compulsory liquidation, moratorium or any other action for the avoidance of its debts or in equity or any similar or connected proceeding in formal or informal liquidation, administration or for any composition whether voluntary or compulsory or any other similar or connected proceeding)
(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or any part of its business; or
(d) the Customer’s financial position deteriorates to such an extent that in the Supplier’s opinion the Customer’s capability to adequately fulfill its obligations under the Contract has been placed in jeopardy.

8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract if the Customer shall fail or at any time after the date of delivery the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Supplier reasonably believes that there is any likelihood of the same happening to or at the Customer, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier’s outstanding unpaid invoices for all Goods supplied under the Contract.

8.5 Termination of the Contract shall not affect any of the parties’ rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force or on after termination shall remain in full effect and force.

8.7 If on termination of this Contract the Supplier has any monies outstanding and due and payable to it by the Customer, the Customer shall indemnify and keep indemnified the Supplier for any and all losses, liabilities, costs, penalties and charges incurred arising out of the Supplier recovering the monies owed including any and all reasonable legal and judicial fees.

9. Limitation of liability
9.1 Nothing in these Conditions shall limit or exclude the Supplier’s liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
(b) fraud or fraudulent misrepresentation;
(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

9.2 Subject to clause 9.1:
(a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
(b) the Supplier’s total liability to the Customer in respect of all other losses arising under or in connection with the Contract, (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods or in the case that the Supplier has insurance in place that covers this type of losses suffered, the limit shall be the limit of the insurance policy.

9.3 The Supplier excludes liability arising from:
(a) incomplete or incorrect information provided by or on behalf of the Customer; and
(b) damage caused by errors or defects in the design, illustrations, drawings, sketches, calculations, samples, specimens, examples, shapes, machinery, tools, ancillary materials etc that have been submitted to the Supplier by the third party; and
(c) incorrect or improper use of the Goods by the Customer.

10. Force majeure
Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay is caused by an event beyond its control, including but not limited to war, strike, lock-out, labour dispute, fire, explosion, accident, riot, civil commotion, act of God, legal restriction, or any other event which could not reasonably be anticipated by the party in question and which by its nature prevents the party from fulfilling its obligations.

11. General
11.1 Intellectual Property
(a) All information contained in offers, quotations, designs, illustrations, programs, software, drawings etc. and the related rights of industrial and intellectual property or equivalent rights (including but not limited to copyright, trademarks, design rights etc.) and knowhow will become and remain the property of the Supplier, even if the Customer has been charged the costs of production for the same. The Customer is not allowed to copy the same either in whole or in part, to provide it to any third party or to communicate the contents of the same to third parties, unless the Supplier has granted prior written consent.
(b) The Supplier provides no guarantee or warranty whatsoever that the Goods delivered do not infringe any registered or unregistered intellectual property rights of any third parties.

11.2 Assignment and other dealings
(a) The Supplier may at any time assign, sub-contract, mortgage, charge, subcontract or deal in any other manner with any of its rights or obligations under the Contract.
(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of all its rights or obligations under the Contract without the written consent of the Supplier.

11.3 Confidentiality
(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.3(b). For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

(b) Each party may disclose the other party’s confidential information:
(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party’s rights under the Contract or any obligations under or in connection with the Contract;
(ii) if required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party’s confidential information for any purpose other than to exercise its rights and perform its obligations under the Contract and in accordance with this agreement.

11.4 Entire agreement
(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, written or oral, relating to its subject matter.
(b) Each party agrees that it shall have no claims for innocent or negligent misrepresentation based on any statement (whether written or oral), information, advice, opinions or assurances, warranties, representations or understandings between them, whether written or oral, relating to its subject matter.
(c) Each party agrees that it shall have no remedies in respect of any statements, statements, undertakings and/or lack of knowledge of a material party.

11.5 Variation
No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 Waiver
No failure or delay by a party to exercise any right or remedy provided under the Goods or any agreement or part of this agreement, whether other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

Eldon: Enclosure solutions for you.