

# **ELECTROIMPACT GENERAL TERMS AND CONDITIONS OF PURCHASE**

## **1. DEFINITIONS**

In these conditions and under any resulting Contract, "Buyer" means an employee of Electroimpact, Inc. that places the Order. "Seller" means the person or entity with whom this Order is placed. "Order" means these General Terms and Conditions of Purchase, the purchase order or purchase contract and any additional Buyer generated documents submitted as part of the Order or referenced therein. "Goods" means all deliverable goods, items, products, tools, materials, software or services or other deliverables described in this Order. "Acceptance" as a term title shall be used in these terms when reflecting the acceptance and/or rejection of Goods. Buyer and Seller may also be referred to herein as a "Party" or collectively as the "Parties."

## **2. ORDER AUTHORIZATION AND CONDITIONS**

This Order, which incorporates by reference these General Terms and Conditions of Purchase and all other terms, conditions, or provisions set forth on the face of the Order, constitutes Buyer's offer to purchase the Goods as specified in this Order. Acceptance of this offer is strictly limited to the terms and conditions in this Order. Unless specifically agreed to in writing by Buyer, Seller's acknowledgement, acceptance of payment, or commencement of performance, shall conclusively evidence Acceptance of this Order as written. Buyer hereby objects to any additional or different terms contained in Seller's acceptance. No work outside the terms of the Order shall be performed without the prior written authorization of Buyer. Any work performed without prior written authorization of Buyer will not be paid.

## **3. ASSIGNMENT AND SUBCONTRACTING**

Neither this Order nor any interest under it shall be assignable nor any duties delegable by Seller, voluntarily or involuntarily, without Buyer's prior written consent. Any attempt to assign such interest or delegate such duties without Buyer's written consent shall be void. Any such consent given shall not be deemed to waive or prejudice Buyer's right to recoupment and/or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to assignees. Seller shall not subcontract the furnishing of any of the complete or substantially complete articles required by this Order without prior written approval of Buyer.

## **4. QUALITY SYSTEM**

Seller shall establish and maintain a quality control system acceptable to Buyer in accordance with the Quality terms as specified in this Order. Seller shall permit Buyer and Buyer's customer access to Seller's facility (including those facilities of Seller's subcontractors) to permit Buyer's review of all procedures, practices, processes and related documents to determine such acceptability.

When this Order is for manufactured parts, the quality system shall include process controls that will provide for inspection and verification of all critical parameters or operations on a regular or continuing basis throughout the manufacturing process. Seller agrees to maintain a minimum of ten (10) years of quality records such as material specifications, heat treat lot numbers, and final acceptance records.

When this Order includes software, the software must come with a certification from the originator of the software that the software has been tested and is safe for use, or be identified in writing with any limitations in application.

## 5. QUALITY

Seller warrants that the Goods will conform to all applicable descriptions and specifications and will be free from all defects in design, material and workmanship (other than Buyer's design). No variation from the requirements of the Order shall be permitted without the Buyer's prior written authorization. Buyer shall have the right to inspect and test any Goods before Acceptance if such inspection and test are made within a reasonable time or as provided in the specifications. Buyer may reject any and all Goods which are not conforming to the specifications, drawings, samples or descriptions. Seller shall pay the cost of inspecting and testing of all Goods rejected and all return transportation charges. Any rejected Goods, held by Buyer pending Seller's disposition, will be at the Seller's risk. Upon request of Buyer, Seller, (at its sole expense), shall repair, or replace all or any part of any Goods covered by this Order which proves, within one (1) year from the date it is placed in operation but no later than eighteen (18) months from date of shipment, to be defective in design, material, or workmanship.

## 6. WARRANTY

Seller warrants that all Goods and Services furnished under this Order will (i) be new and unused; (ii) be of satisfactory and merchantable quality; (iii) be fit for their purpose; (iv) be free from defects in material and workmanship; (v) conform to applicable specifications, samples, drawings and descriptions or other requirements, and if of Seller's design, will be free from design defects; and (vi) be free from any materials that are or may be hazardous or harmful to any user or require special handling or treatment, except as specifically agreed to by Buyer. Services will be of high quality utilizing good workmanship and performed on time and to recognized local, national or international standards that will be outlined on the purchase documents. Buyer may reject Goods or Services which do not conform to these warranties. Buyer may at its option continue to hold the rejected Goods at Seller's risk and expense or return them to Seller's facility at Seller's expense. Buyer may reject Services as substandard and request that they be brought up to the agreed standard. If the Seller is not able to do this in a reasonable timeframe or to the specified standard then the Buyer reserves the right to bring in another service supplier to do the job at the Seller's expense. The failure of Buyer in any one or more instances to insist on performance of any of the provisions of this Order shall in no way be construed to be a waiver of such provisions in the future. The Seller shall, at its own cost immediately and without prejudice to any other right of Buyer, at Buyer's discretion,

replace or repair any defective Goods or Services for a period of 12 months from date of Acceptance or as mutually agreed between the parties and documented writing. If action to remedy such defect or damage is not taken by Seller quickly and the defect or damage is not remedied within a reasonable time, Buyer may proceed to replace or repair the Goods or Services at Seller's risk and expense. The Seller warrants that the title to the Goods conveyed to Buyer shall be good and that such title shall be conveyed to Buyer free and clear of all security interests, liens, or other encumbrances. All warranties shall apply to Buyer and Buyer's customers.

## 7. INSTALLATION AND WORK

To the extent that any of the Goods require the services of a supervisor, expert or other person connected with or employed by Seller ("Expert"), in connection with the installation, adjustment, repair, replacement or other-services to be performed on the Goods, Seller agrees to furnish the Expert without charge unless otherwise indicated. The Expert in performing the services shall not be deemed to be the agent or employee of Buyer. Seller assumes sole responsibility for the Expert's acts and omissions as well as liability for any taxes or contributions imposed by federal, state or local law including but not limited to payroll, Social Security, unemployment and other taxes. The buyer may request that the supplier remove any employee whose performance or behavior is deemed unacceptable.

## 8. TRANSPORTATION CHARGES

Except as otherwise mutually agreed to in writing, (a) where transportation charges are separately charged to Buyer by Seller, such charges shall in no event exceed the lowest legal freight charges via the carrier or routing specified as of the date of shipment and (b) where transportation charges are allowed to Buyer by Seller, such allowance shall not be less than the actual freight charges paid by Buyer or, where Buyer performs the transportation, such allowance shall be in an amount equal to the freight charges which would have been assessed for a like movement via common carrier.

Deliveries shall be consolidated into the fewest reasonable lots that meet all schedule requirements. Quotes for shipping shall reflect this requirement. The added costs for partial shipments, express deliveries and all other delivery methods not agreed to in the Order, must either be absorbed by the Seller or specifically authorized in writing by the Buyer. Buyer will not authorize payment for express shipments or partial shipments when the need for these is due to late delivery by the Seller or his supply chain.

## 9. PACKING AND SHIPPING INSTRUCTIONS

Unless otherwise specified, each item or package shall be numbered and labeled with Buyer's Order number, stock number, contents, and weight, and shall contain an itemized packing slip, material and test certifications, quality certifications including a Certificate of Conformity, specifications and other applicable documents as required by the terms of the Order all of which must be clearly traceable to Buyer's Order. No charges will be allowed for packing, crating, freight express or cartage unless specified in this Order.

Seller shall maintain controls to assure accomplishment of preservation, packaging and shipping requirements of this Order. The price includes all charges for such packing and packaging and transportation to the Delivered at place (DAP). Packaging of Hazardous Substances must conform to all applicable laws and regulations.

## 10. DELIVERY

Except as hereinafter specified, delivery shall be strictly in accordance with the delivery schedule, the applicable specifications, quantities and schedules set forth in this Order. Buyer reserves the right to return over shipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of over shipments and early shipment. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be borne by Seller. Time is of the essence. If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to (a) terminate this Order for default; and/or (b) fill such Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer; and/or (c) accept late delivery and recover from Seller any reasonable costs Buyer incurs caused solely by the Sellers late delivery capped at Item/Service cost; and/or (d) recover liquidated damages from Seller in the amount of one percent (1%) of the Order value for each week or partial week period that the Seller fails to deliver the Goods up to ten percent (10%) of the total value of the Order. This condition shall not limit buyer's rights under the default clause contained herein and the payment of liquidated damages shall not affect any other claims for damages. Seller acknowledges and agrees that this amount is a reasonable estimate of Buyer's anticipated losses and damages and is paid and received as liquidated damages and not as a penalty. All Parties expressly agree that time is and shall remain a material element of this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

## 11. CHANGES BY BUYER

Seller agrees to incorporate into this Order any revised clause or additional clause as Buyer may reasonably deem necessary to enable Buyer to comply with the provisions of the higher-tier contract and any modifications thereto. Additionally, Buyer shall have the right at any time to make changes in the drawings, designs, specifications, quantities, delivery schedules, methods of shipment or packaging and place of inspection, acceptance and/or point of delivery of any item in this Order, and Seller agrees to be bound thereby. No change shall be effective unless authorized in writing by Buyer. If such changes result in delay or an increase or decrease in cost to Seller, Seller shall notify Buyer immediately and negotiate an equitable adjustment, provided, however, that Seller shall, in all events, proceed diligently to perform the work or services or supply the items contracted for under this Order as so changed. No claim by Seller for such equitable

adjustment shall be valid unless submitted to Buyer in writing within ten (10) days from the date of such Change Notice, accompanied by an estimate of charges resulting from such change. Buyer's engineering and technical personnel may, from time to time, render assistance or give technical advice to or effect an exchange of information with Seller's personnel in a liaison effort concerning the Goods to be furnished hereunder. However, such exchange of information or advice shall not vest Seller with the authority to change the Goods hereunder or the provisions of the contract, nor shall such change in the Goods or provisions of the contract be binding upon Buyer unless incorporated as a change directed in writing by Buyer.

## 12. CHANGES BY SELLER

Included in any quotation or proposal, Buyer will be advised of any actual or proposed change in raw material formulation or process from that previously supplied to Buyer by Seller. Where no formal quotation or proposal was generated by Seller, Seller shall advise Buyer of such changes prior to any acceptance or acknowledgement of Buyer's Order. Upon receipt of such advice, Buyer shall have the right to terminate such Order without liability.

## 13. PROCUREMENT CONTROL

Seller shall review their sub tier suppliers to ensure that (a) all quality requirements of Buyer's Order are flowed down and met; (b) only Buyer-designated special process sources are used when required by contract and (c) quality assurance documentation including test data and manufacturer's material certification is made available to Buyer. The use of Buyer-designated sources does not relieve Seller of the commitment to meet all product requirements. Unless otherwise requested by Buyer, invoices shall (a) conform to the terms outlined in this Order; (b) be rendered separately for each delivery; (c) cover no more than one Order; and (d) indicate Buyer's Order number.

## 14. PRICE

The price payable for the Goods will be the price set out in the Order. Unless otherwise expressly agreed, the contract price will be a fixed price and will include the cost and risk of delivery to the Buyer's premises or other designated and agreed location as specified in the Order.

## 15. PAYMENT TERMS AND INVOICES

Unless otherwise agreed in writing between the Parties, payment terms are Net 60 days from date of receiving invoice at Buyer's corporate office. Buyer may withhold by way of set-off, credit, or counterclaim any amount which is due to Buyer by way of warranty claim, Seller's failure to deliver Goods in accordance with the Order, or where Buyer rejects the Goods invoiced by Seller. Unless otherwise requested by Buyer, invoices shall (a) conform to the terms outlined in this Order; (b) be rendered separately for each delivery; (c) cover no more than one Order; and (d) indicate Buyer's Order number.

In no instance will payments be made prior to the payment milestones agreed to on the face of the Order.

## 16. INTELLECTUAL PROPERTY INFRINGEMENT

Seller warrants and represents that the Goods sold and services provided by Seller do not and shall not infringe any third party Intellectual Property Right(s) which may include but are not limited to rights in patent, copyright, trademark, trade dress or trade secret. In the event that Buyer is notified of a claim of infringement or is otherwise prevented or enjoined from using any of the Goods delivered, for any reason, Seller shall indemnify, defend (at Buyer's option), and hold harmless Buyer and Buyer's customer(s) against all damages, costs, losses, changes or expenses, and attorneys' fees incurred as a result of such infringement or alleged infringement and the Seller shall conduct any legal proceedings which may be necessary to protect the Buyer at the Seller's risk and expense and Seller shall, at its option, shall promptly either (a) secure termination of the injunction and procure for Buyer the right to use such Goods without any obligation or liability; (b) replace said Goods with non-infringing Goods or modify same to become non-infringing, all at Seller's expense and to Buyer's satisfaction; or (c) remove said Goods at Seller's expense and refund to Buyer the amount paid to Seller.

## 17. PROPRIETARY INFORMATION

Unless otherwise expressly provided in this Order, all drawings, blueprints, dies, patterns, tools, printing plates, and other items used in connection with the manufacture of the Goods, which are prepared or constructed by Seller in fulfilling this Order, or which are provided by Buyer or the Buyer's customer for the specific use by Seller against this Order, shall be the property of the Buyer or the Buyer's customer, and shall be held in confidence by Seller. All such property shall be identified and marked appropriately as Buyer's or the Buyer's customer's proprietary property, shall only be used by Seller for this Order, and shall be insured by Seller in Buyer's or the Buyer's customer name in the amount of its full replacement value as determined by Buyer or the Buyer's customer. Seller shall not reproduce, use or disclose any of Buyer's or the Buyer's customer's proprietary property except as necessary in the performance of this Order or as otherwise agreed in writing by Buyer. Buyer shall be considered the person for whom the work was prepared for the purpose of authorship in any copy-rightable work created by Seller pursuant to this Order. Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the Goods shall be deemed to have been disclosed by Seller as part of the consideration paid by Buyer against this Order, and Seller shall not assert any claim against Buyer by reason of Buyer's use or disclosure thereof.

Upon completion of the order, all drawings, blueprints, dies, patterns, tools, printing plates, and other items used in connection with the manufacture of the Goods, which are prepared or constructed by Seller in fulfilling this Order, or which are provided by Buyer or the Buyer's customer for the specific use by Seller against this Order, shall be returned to the Buyer, unless otherwise agreed in writing with the Buyer.

Seller shall have adequate network security systems in compliance with NIST Cybersecurity Framework requirements in place to ensure the security of the Buyer's and

the Buyer's customer's IP data. In the event of a network security breach at the Seller's facility, the Seller shall be responsible for a.) notifying buyer of the breach within 24 hours of the incident, b.) establishing the severity and extent of the breach and notifying the Buyer within 72 hours and c.) making the Buyer and the Buyer's customer whole for any damage done to the reputations or proprietary information rights of the Buyer and the Buyer's customer.

Upon any creation of proprietary information Rights, the Supplier shall promptly notify the Buyer. If the Buyer elects to file any patent and more generally register any IP Rights worldwide or in whatever specific jurisdiction in respect of any part or element of the IP Rights, the Supplier shall, at no additional cost to the Buyer, assist the Buyer in such registration including without limitation, the communication of all relevant data, execution of documents, authorizations and any other instruments necessary to enforce and give full effect to the provisions of Article 17.

In no case may the Seller use the Buyer's name, image, proprietary information or any association to the Buyer be used in any advertising or promotions without express written consent from the Buyer's senior management. This restriction extends in full to the Buyer's customer's name, image, or proprietary information.

## 18. SOFTWARE

As from the Effective Date of the relevant purchase order, the Supplier shall grant to the Buyer a non-exclusive, transferable worldwide right to use each Software for the duration of the legal protection of Background IP Rights and for the purpose of the full and proper performance of the relevant system.

This software license includes the right:

- a) To reproduce and make a reasonable number of back-up copies of the Software and its related documentation on any media (CD, DVD, flash memory, hard disk or other electronic means) for archival purposes use in binary code;
- b) To install the back-up of the Software and its related documentation on any computer system for the purpose of exercising the Software on said back-up copies in the event of malfunction that renders the original copy of the software inoperable;
- c) To use the Software (i.e. no additional license fee) for operation, training, maintenance and test purposes of the Product ("Permitted Use");
- d) To install the Software on any hardware to allow the Permitted Use of the Software by the Buyer;
- e) to perform any work or service in order to obtain an interface, which enables the interoperability of the Software, if any, with other software products;
- f) To sublicense the right to use the Software to third parties, as necessary for the purpose of the Buyer's customer's program for which this software was purchased.

To the extent necessary, the Buyer hereby grants the Supplier a free, revocable, non-exclusive license, in the countries where the Work is performed, for the duration of the project for the relevant systems, as applicable

- (i) to use the Buyer's Background IP Rights, and
- (ii) to sublicense the right to use Buyer's Background IP Rights, upon its prior written approval, to any of sub-contractors accepted by Buyer as set forth in Article 3 Sub-contracting.

Should the performance of this purchase agreement result in the creation and development by the Supplier of certain IP Rights, the Buyer shall be the sole owner of, and shall have full title to such IP Rights upon their creation. However, if by operation of Law, the Supplier is the deemed owner of any IP Rights, the Supplier hereby grants the Buyer, and will cause its employees, agents and contractors to grant the Buyer, as soon as created and in consideration of the price set forth in the purchase agreement, an exclusive, irrevocable and worldwide license for the duration of the relevant IP Rights, including, without limitation:

- a) the right to reproduce, including the right to digitize, reproduce the whole or part of the IP Rights in any form and format (whether known at present or to be discovered in the future), on any analogical or digital media, by any process whether known at present or to be discovered in the future, in any language, and to make or have made any original or copies;
- b) the right to use the IP Rights, in whole or in part, in any language and in any country, by any process inherent in said rights of use including without limitation for operation, training, maintenance and test purposes;
- c) the right to distribute in whole or in part of the IP Rights, which shall include the right to sell, loan, license, rent, distribute, download in any language and by any means whether known at present or to be discovered in the future;
- d) the right to modify, adapt, improve, correct, translate in any form and presentation all or part of the IP Rights, in any language, including the right to upgrade by adding or removing;
- e) to sublicense the right to use the IP Rights to third parties and or to reproduce Spare Parts as necessary for the use and the maintenance of the Product;
- f) to install the software, its back-up and its related documentation on any computer system;
- g) the right to perform any work or service in order to obtain an interface, which enables the interoperability of any software, if any, with other software products.

Upon any creation of IP Rights, the Supplier shall promptly notify the Buyer. If the Buyer elects to file any patent and more generally register any IP Rights worldwide or in whatever specific jurisdiction in respect of any part or element of the IP Rights, the Supplier shall, at no additional cost to the Buyer, assist the Buyer in such registration including without limitation, the communication of all relevant data, execution of documents, authorizations and any other instruments necessary to enforce and give full effect to the provisions of Article 17 and 18 above.

## 19. INSURANCE



Upon acceptance of an Order, Buyer may require Seller to procure and maintain, at Seller's expense, General liability insurance covering Seller's indemnity obligations in such amounts as are approved by Buyer. In addition, prior to commencing *any* work on property owned or controlled by Buyer or *any* party on whose property the Goods are installed, Seller shall, at Seller's expense, procure and maintain Worker's Compensation insurance and Employer's Liability insurance in such amounts as are approved by Buyer. As to all coverages, Seller shall furnish to Buyer written certificates establishing (a) the required insurance is being maintained with a carrier rated not less than B+, Best & Co. and (b) that written notice of cancellation shall be given to Buyer at least fifteen (15) days prior to the effective date of such cancellation. Upon Buyer's request Seller shall name Buyer as an additional loss payee in any applicable policy.

## 20. LIMITATION OF LIABILITY

In no event will Buyer be liable to Seller in Tort or in contract for any incidental, special, indirect or consequential damages. Incidental, special, indirect or consequential damages are defined as any claim, expense, damages or loss incurred or suffered, any loss of production, loss of profit (direct or indirect), loss of revenue, loss of contract, loss of anticipated savings, loss or destruction of data, punitive, special or incidental damage or loss of goodwill. Without prejudice to the above, Buyer's maximum total liability to Seller, whether in respect of one claim or a series of related claims and whether arising in contract, tort (including but not limited to negligence), breach of statutory duty or otherwise, shall not exceed an amount equal to the Price to be paid by Buyer against the Order.

## 21. INDEMNITY

Seller shall protect, defend (at Buyer's election), hold harmless, and indemnify Buyer, Buyer's customer(s), and any party on whose property the Buyer's Goods are installed, from and against all claims, actions, liabilities, losses, royalties, damages or expenses (including attorney fees): (a) arising out of any actual or alleged infringement of any Intellectual Property Right by any Goods or services sold or provided to Buyer, (b) arising out of any death of or injury, sickness or disease inflicted upon any person, or damage to any property, or any other damage or loss by whomever suffered, regardless of whether the injury or loss is alleged to have resulted from the fault or negligence of Buyer, allegedly resulting or claimed to result in whole or in part from (i.) any actual or alleged defect in the Goods (latent or patent), or (ii.) services rendered in connection with the Goods, or (iii.) actual or alleged improper or negligent manufacture, construction, installation or design of the Goods, or (iv.) the failure of the Goods or services to comply with specifications or any express or implied warranties of Seller; (c) arising out of any actual or alleged breach of the terms, warranties and representations made by Seller in this Order or otherwise in the sale of the Goods; (d) arising out of any actual or alleged violation, in the manufacture, possession, use or sale of the Goods, of any law, statute, regulation, administrative order or rule excepting only such claims based solely and directly on alteration or modification of the Goods by Buyer, (e) arising from the loss or destruction of, or damage to, all tools, equipment and other personal property of Seller,

and subcontractor of Seller, or any of their employees or agents, whether or not such loss, destruction or damage was in any way connected with the negligence of Buyer. Seller agrees to submit to the jurisdiction and venue of any state or federal court in which a lawsuit is filed against Buyer. In addition to the rights set out above Buyer shall have the right to recover from Seller its expenses, including attorney fees incurred (a) in collecting any amount owed to Buyer by Seller, (b) as a result of a dispute between Seller and Buyer over the terms of this Order, or (c) in responding to any request for information for any reason including lawsuits, regulatory proceedings or any other legal matter.

## 22. TERMINATION FOR CONVENIENCE

Buyer may terminate this Order, in whole or in part, at any time for its convenience by providing notice to Seller in writing. On receipt of such notice, Seller shall immediately stop all work and shall immediately cause all of its suppliers and subcontractors to stop work and take any action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest. Seller shall continue all work not terminated. Within thirty (30) days of receipt by Seller of such notice, Seller may submit to Buyer a claim reflecting the work performed prior to the effective date of termination. Based on the validity of the termination claim, and subject to Buyer's right to audit in accordance with Article 23, herein, Buyer may pay Seller for (i) the amounts due for work done and Goods completed, delivered and accepted or services completed under this Order, and not theretofore paid for prior to the effective date of termination and any sums which, consistent with applicable lead times, have necessarily and reasonably been paid by the Seller to its suppliers or subcontractors in support of the Order requirements, excluding any and all costs of Goods which either can be diverted to other Orders of Seller or retained by Seller for his own use for future Orders. The total settlement shall not exceed the Order price and if it appears the Seller would have sustained a loss on the entire contract, had it been completed, an appropriate adjustment shall be made reducing the amount of the claim to reflect the indicated percentage of loss. Seller shall promptly reimburse Buyer for any overpayment by Buyer to Seller as the result of a termination. SELLER AGREES THAT ITS FAILURE TO SUBMIT A CLAIM WITHIN THE TIME PERIOD SET FORTH HEREIN SHALL CONSTITUTE A WAIVER THEREOF UNLESS BUYER GRANTS SELLER AN EXTENSION THEREOF IN WRITING.

## 23. TERMINATION FOR DEFAULT

Buyer may forthwith terminate this purchase Order in whole or in part for default if the Seller fails to perform any condition or requirement of this Order and, if capable of remedy, fails to remedy such breach within ten (10) days of written notice by Buyer; or in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors, any mergers with another party or acquisition of the Seller by another party, or bad publicity that may bring disrepute upon the good name of the Buyer. Upon such termination, Buyer shall pay the Order price for any completed Goods that have been accepted by Buyer. Seller shall transfer title and deliver to Buyer any completed Goods, partially completed Goods and materials, parts, tools, dies, jigs,

fixtures, plans, drawings, information and contract rights (collectively “Manufacturing Materials”) that Seller has specifically produced or acquired for the cancelled portion of the Order. Seller shall also protect property in its possession in which Buyer may have an interest. Buyer shall have the right to use, without charge, any technical information and intellectual property rights of Seller or its subcontractors necessary for Buyer to continue the provisioning of the Goods. The Seller shall reimburse Buyer for any claims and excess procurement costs incurred by Buyer as a result of the Seller’s default, and the Buyer shall be entitled to set off any such claims and costs against amounts owed to the Seller. The Seller shall provide to Buyer, or Buyer’s nominee, without charge, any assistance as the Buyer may require to ensure the successful transfer or provisioning of the Goods to another provider.

#### 24. BUYER AUDIT RIGHTS

Seller agrees to maintain its books, records, documents, computerized records, projections and other supporting data in accordance with generally accepted accounting principles and practices which properly reflect all direct and indirect elements of cost of whatever nature whether incurred or anticipated to be incurred for the performance of any work hereunder or anticipated work hereunder for same or similar Goods (“Documents”). Seller agrees to make such Documents available for inspection, audit, reproduction and retention by any authorized representative of Buyer or, at Buyer’s option, the Government department or agency having jurisdiction. Records should be kept for a minimum of 6 years for audit.

Buyer shall have the right to perform cyber security audits on the Seller’s network to ensure compliance with applicable US NIST Cybersecurity Framework requirements or UK Information Security standards, as applicable.

#### 25. FORCE MAJEURE

Neither party shall be liable to the other for default or delay in performing obligations hereunder if caused by fires, floods, strike, riot, war, acts of God, and acts of the government in either its sovereign or contractual capacity, global pandemics, or earthquakes. The party whose performance is prevented by any such occurrence shall notify the other party in writing as soon as is reasonably possible after the commencement of such occurrence, setting forth the full details of the occurrence and expected delay, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other party of the cessation of such occurrence. Buyer shall make no payment to Seller for any expenses incurred by Seller by reason of such default or delay. Seller shall use all reasonable efforts to avoid or minimize all such failures or delays, including exercising work-around plans or obtaining Goods from other sources. If Seller cannot remedy the delay within a reasonable time, as determined by Buyer, the Buyer may terminate the Order, in whole or in part, without liability, by providing written notice to Seller.

## 26. COMPLIANCE WITH LAWS

Seller shall comply with, and hereby warrants that its Goods are produced in compliance with and shall otherwise comply with all laws, ordinances, and government rules, regulations and orders applicable to this Order, including, but not limited to, the FAIR LABOR STANDARDS ACT, applicable Federal Acquisition Regulation Clauses related to SELLER'S CERTIFICATION OF NON-SEGREGATED FACILITIES (FAR 52.222-21), EQUAL Opportunity (FAR 52.222-26), AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (FAR 52.222-35), AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (FAR 52.222-36), Utilization OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FAR 52.219-8,-9), and THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, which to the extent applicable are hereby incorporated into this Order. The provisions of Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), 3B USC 4212 (Vietnam Veterans' Readjustment Assistance Act of 1974), Section 503 of the Rehabilitation Act of 1973 (handicapped Regulations) and the implementing regulations found at 41 CFR 60-1 & 2. 41 CFR 60-250, and 41 CFR 60-741, respectively, are hereby incorporated by reference. Seller agrees to certify its compliance upon request of Buyer.

## 27. NON-WAIVER

No waiver by either party of any breach of any of the terms of this Order to be performed by the other party shall be construed as a waiver of any subsequent breach whether of the same or of any other term of this Order.

## 28. REMEDIES

The rights and remedies of Buyer set forth in this Order are not exclusive and are in addition to all other rights and remedies of Buyer.

## 29. SEVERABILITY

If any provision of this Agreement or the application of any provision hereof to any circumstances is held invalid, unenforceable, or otherwise illegal, the remainder of the Agreement and the application of such provision to other circumstances shall not be affected, and the provisions so held to be invalid, unenforceable, or otherwise illegal shall be reformed to the extent necessary to make it enforceable, valid and legal. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties, as expressed in the terms hereof, as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

### 30. GOVERNING LAW AND DISPUTES

The validity, interpretation, and performance of this Order shall be governed by the law of the State of Washington (without reference to the conflict of law principles thereof that would result in the application of the internal laws of any other jurisdiction), excluding the United Nations Convention on Contracts for the International Sale of Goods. Seller agrees to submit to the jurisdiction and venue of *any* state or federal court in which Buyer issues this Order. Any dispute arising under this Order which is not settled by agreement of the Parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Order, Seller shall proceed diligently with the performance of this Order in accordance with the decision of Buyer.

### 31. EMPLOYEE AWARENESS

Electroimpact, Inc. requires its suppliers to promote a culture of employee awareness of their contribution to product and service quality, their contribution to product safety, and the importance of ethical behavior.

### 32. ANTI-CORRUPTION

The Seller warrants that it has not (a) offered, given or agreed to give or receive, and/or requested or accepted any financial or other advantage of any kind as an inducement or reward for doing or not doing any improper act or for the improper performance of any function associated with the Order or the Goods; or (b) acted in any way which would constitute an offence by the Seller or would cause the Buyer to commit an offence under any anti-bribery legislation; or (c) utilized child labor.

### 33. COUNTERFEIT GOODS

Seller shall not furnish Counterfeit Goods to Buyer. All Goods provided by the Seller, including any Goods or components thereof, provided by the Seller's subcontractors, must be original and genuine, and in full compliance with all of the Buyer's contract requirements, specifications, certifications, and any supporting data representing contract performance. The Seller warrants that it has purchased components or materials to be incorporated into the Goods and delivered to Buyer that are purchased directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain and that such components and materials have not been acquired from independent distributors or brokers unless approved in advance in writing by Buyer. Seller shall require suppliers and subcontractors to provide all data necessary to comply with this obligation and the Seller shall validate all such data, making it available to Buyer upon request. The Seller will ensure that none of the Goods are counterfeit, inaccurately marked, or in any manner misrepresented. The Seller shall have in place an operable counterfeit control process for the Goods consistent with these provisions and reasonable commercial terms, to include AS5553A, and the Buyer shall have the right to audit, inspect and/or approve the process at any time before

or after delivery of the Goods. If any of the Goods delivered or to be delivered under this Order are discovered to be or suspected to be a counterfeit Goods, the Buyer shall have the right to impound the Goods for further investigation. Such investigation may include the participation of third parties or governmental investigative agencies as required by law or regulations or by the Buyer's customer, or by the Buyer, in its sole discretion. The Seller shall cooperate in good faith with any investigation conducted by the Buyer, including, but not limited to, cooperation by the Seller with respect to the disclosure of all design, development, manufacturing and traceability records in respect of the Good. Upon the Buyer's request, the Seller shall provide the Buyer certificates of conformance as required hereunder for the Goods. The Buyer shall not be liable for payment to the Seller for any suspected counterfeit Goods under investigation.

#### 34. CONFLICT MINERALS DISCLOSURE

The Seller agrees to support the Buyer regarding compliance with sourcing obligations to certain customers including the requirements to report sourcing of tin, tantalum, tungsten and gold ("Conflict Minerals") from certain countries in the African subcontinent. The Seller shall have due diligence processes in place to make reasonable inquiries, including with its supply chain, into the country of origin of Conflict Minerals included in the Goods sold to Buyer. Seller shall include in any quotation or proposal, notice of any actual or proposed sourcing of Conflict Minerals to be included in the Goods. Where no formal quotation or proposal was generated by Seller, upon receipt of any Buyer Order and prior to Seller's acceptance of such Order, Seller shall disclose to Buyer the existence of Goods containing Conflict Minerals. Seller shall report such data as may be required by Buyer to fulfil Buyer's obligations to its customers on sourcing of Conflict Minerals. For more information on the Conflict Minerals legislation, go to: <http://www.sec.gov/rules/final/2012/34-67716.pdf>. For information on the OECD Conflict Minerals Due Diligence International Framework, go to: <http://www.oecd.org/corporate/mne/DDguidanceTTTpiilotJan2013.pdf> and <http://www.oecd.org/daf/inv/mne/mining.htm>. The latest revision of CMRT is available at <http://www.conflictreesourcing.org/conflict-minerals-reporting-template>.

Conflict Free Sourcing Initiative (CFSI) website (<http://www.conflictreesourcing.org>) provides information and training on conflict minerals. Resources and training materials are available at <http://www.conflictreesourcing.org/resources-and-training/training/>.

#### 35. SAFETY AND ENVIRONMENTAL REGULATION

Seller agrees that any work performed and all Goods provided under this Order shall comply in all respects with applicable environmental, health and safety laws and regulations. Accordingly, Seller shall indemnify and hold harmless the Buyer from and against all damages costs, losses, charges, expenses or liabilities whatsoever, caused by, or arising out of, any breach by the Seller of such laws or regulations.

## 36. HAZARDOUS MATERIALS

Seller shall include in any quotation or proposal, notice of any hazardous or harmful materials, which are contained in the Goods, which require special handling or treatment. Where no formal quotation or proposal was generated by Seller, upon receipt of Buyer's Order and prior to Seller's acceptance of such Order, Seller shall disclose to Buyer the existence of any hazardous or harmful materials which require special handling or treatment. Seller agrees to comply with all U.S. and international environmental, health, and safety laws, regulations and directives relating to the supply of Goods and hazardous materials. Seller shall be responsible for all costs and liabilities relating to the recycling of Goods as required by the applicable U.S. and international laws, regulations and directives.

## 37. EXPORT REGULATION AND TRADE COMPLIANCE

- The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the anti-boycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").
- Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller's sub-tier suppliers or Seller's non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.
- Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology, including software.
- Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Laws shall be made available to Buyer upon request.
- Seller hereby represents that neither Seller nor any parent, subsidiary or affiliate of Seller is included on any of the restricted party lists maintained by the U.S. Government and shall promptly notify Buyer if Seller becomes listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental entity.
- Seller shall inform Buyer in a timely manner of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency

concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.

- Seller shall incorporate into any contracts with its sub-tier supplier's obligations no less restrictive than those set forth in this Article requiring compliance with all applicable Trade Control Laws.
- Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with all applicable "Trade Control Laws". Any failure of Seller to comply with the provisions of this Export Regulation and Trade Compliance clause shall be a material breach of the Order.
- This Order may include information subject to the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations ("EAR"). Export-controlled information can be disseminated only to U.S. citizens or immigrant aliens (Green Card holders) unless proper authorizations are obtained from the U.S Government. Buyer will notify Seller of any export restricted data in writing.

### 38. FLOW-DOWN REQUIREMENTS

Buyer's customers may require that Buyer accept specific terms which must also be flowed down to Buyer's supply base. Seller agrees to accept the application of such flow down terms applicable to this Order. Where such flow down terms are applicable and not already included in these terms, Buyer will include such required flow down terms in an amended document to which Supplier will be required to comply.

Supplier shall flow down the terms of this agreement to its sub-contractors to ensure the terms of this agreement are met in full. In no event shall the failure of a sub-contractor of the Seller to perform be the responsibility of the Buyer.

### 39. GOVERNMENT CONTRACTS

Where this Order bears a U.S. Government contract number or the designation "Government", this Order shall be subject to all applicable provisions of, and will contain all clauses and agreements required by, the terms of any U.S. Government contract under which or for which this Order is used, including all federal laws and regulations. Failure by the Seller to comply will render the Goods or Services as non-conforming.

### 40. ENTIRE AGREEMENT

This Order, including all change orders, attachments, exhibits, supplements, specifications, schedules, and including incorporation of referenced customer flow down and U.S. Government contractual requirements, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and there are no oral understandings, representations or warranties affecting it. This Order supersedes any and all prior agreements, understandings, and communications between the Buyer and



Seller related to the subject matter of this Order. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain or supplement any of the terms of this Order. This Order shall not be amended except in writing signed by the parties.