

# Terms and Conditions of Sale

## Pertaining to Electrical, Insulation, Motors and Parts Products and Services

### 1. GENERAL

These Terms and Conditions of Sale (the "Terms") govern Buyer's purchase of any electrical, insulation, motors and parts products and related equipment (the "Products") or fabrication and manufacturing services (the "Services") from Essex Group, Inc. through its business units Active Industries or Essex Brownell (collectively, "Seller"). Buyer's purchase of the Products and/or Services is limited to the terms and conditions contained herein. If there is an executed written sales agreement in effect between the parties (a "Sales Agreement"), these Terms form a part thereof. Any additional or different terms in any of Buyer's forms are hereby deemed to be material alterations and Seller hereby provides notice of objection and rejection of any such terms. Waiver by Seller of any breach, remedy or provision of these Terms shall not be construed to be a waiver of any succeeding breach or any other provision or legal remedy of Seller. These Terms and all accepted orders shall be construed in accordance with the laws of the State of Indiana, United States of America without regard to its conflict of law principles. The section headings of these Terms are for ease of reference only and shall not be admissible in any action to alter, modify or interpret the contents of any section hereof. The International Convention on the Sale of Goods shall have no application to any sales of Products or Services hereunder.

### 2. PRICE AND PAYMENT

Orders are not binding upon Seller until accepted by Seller in its sole discretion. No order submitted by Buyer shall be deemed accepted by Seller unless and until either confirmed in writing by Seller or by delivery of the Product specified in the order. Seller may modify Buyer's order where necessary as follows: (a) substituting the latest or correct part number or part description for the part number or part description set forth on the order; (b) substituting Seller's prices in effect as applicable to the order; (c) substituting an estimated delivery schedule which is reasonable (considering Seller's stock availability and lead time); and (d) correcting any stenographical or typographical error.

Unless otherwise agreed to in writing by both parties, all accepted orders of the Products and Services will be invoiced at Seller's prices in effect on the date of shipment, which prices are subject to change from time to time. Credit is extended at the sole discretion of Seller. If credit has been extended, the amount of credit may be changed or credit withdrawn by Seller at any time, in its sole discretion. If a cash discount is stipulated, it is subject to Buyer's entire account being current. Any discounts given to Buyer by Seller in relation to the price of the Products are conditional upon payment for the Products being made strictly in accordance with the Sales Agreement and these Terms and to Buyer's entire account for all products purchased from Seller being current. Unless otherwise agreed to by Seller in writing, Buyer agrees to pay all amounts due to Seller within thirty (30) days from the date of invoice. Buyer shall pay interest and service charges on overdue invoices from the due date until paid at a rate of 1.5% (.015) per month or the maximum legal rate, whichever is less, and any collection costs of Seller. **NON-PAYMENT VOIDS ANY WARRANTY.**

The parties acknowledge that the prices for the Products and Services are subject to adjustment in the event there are cost increases created by circumstances such as, but not limited to, changes in government energy policies, fuel and energy increases, metal premium or metal processing charges, chemical or material price increases, material and supply shortages, transportation and shipping costs, and price increases enacted by the manufacturer or supplier of the Products. Any accepted order requiring special manufacturing processes, inspection, specified weight, packaging, test results, certification, etc., is subject to additional charges.

### 3. DELIVERY, TITLE, RISK OF LOSS, AND SHIPPING OF PRODUCTS

Title to and risk of loss of the Products shall pass to Buyer upon tender of such Products to Buyer at Seller's facility or a common carrier. Any shipping date provided by Seller is the Seller's best estimate and will not operate to bind Seller to ship or make deliveries on such date. All shipments will be at the Seller's option. Buyer will furnish destination instructions for all Products as promptly as possible. In the absence of destination instructions, Seller will not be required to ship Buyer any Products. Wherever transportation rates and carrier's liability for damage depend upon the value of the shipment as declared by shipper, Seller will declare such value as will entitle Buyer to have the Products shipped at the lowest permissible rates unless otherwise instructed in writing by Buyer. Seller shall not be liable for loss or damage attributed to negligence either in selection of the carrier or the warehouse, or in agreeing with either of them to contract terms on Buyer's behalf.

The pallets, reels and spools Seller uses to ship Products to Buyer shall always remain the property of Seller and are not a component of Buyer's purchase. A \$250.00 minimum order is required for all export shipments.

### 4. FREIGHT POLICY

Freight charges and terms are specified in the current Essex Brownell / Active Industries Freight Policies based on whether Buyer qualifies as a Motor Repair Shop or OEM customer. Essex Brownell / Active Industries Freight Policies, as amended from time to time, are incorporated herein by reference. Seller will attempt to ship +/- 10% of the quantity ordered. All orders shipped within +/- 10% of the quantity ordered shall be considered complete.

### 5. LIMITED WARRANTIES AND DISCLAIMERS

a. Seller warrants that at the time of delivery all products manufactured by Seller ("Essex Products") will be free from material defects in workmanship and materials under normal use and will conform substantially to Seller's applicable specifications. As Buyer's sole and exclusive remedy and Seller's entire liability for any breach of the foregoing warranty, Seller at its sole option and expense will either refund the purchase price paid, or repair or replace the Essex Product which fails to meet this warranty; provided, Buyer notifies Seller of noncompliance in writing within sixty (60) days of delivery of such Essex Product.

b. Seller makes no warranty with respect to products that are not manufactured by Seller ("Third Party Products"). Seller will provide Buyer the express limited warranty provided by each manufacturer, if any, on the Third Party Products. Buyer must notify Seller of noncompliance in writing of any warranty claim within fifteen (15) days of delivery of such Third Party Product. Buyer agrees to cooperate with Seller in processing all warranty claims for Third Party Products with the manufacturer. **THE WARRANTIES AND REMEDIES PROVIDED BY MANUFACTURERS FOR THIRD PARTY PRODUCTS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER. THE THIRD PARTY PRODUCTS SOLD BY SELLER ARE OTHERWISE SOLD AS IS.**

c. **EXCEPT FOR THE SPECIFIC WARRANTIES SET FORTH IN THIS SECTION 5, SELLER MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS, SERVICES OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Without limitation, under no circumstances shall Seller be liable for any costs associated with reworking, re-manufacturing or scrapping goods in which defective Product supplied by Seller was incorporated, for any costs associated with production stoppages, machinery breakdown or recall campaigns, or for any trouble shooting, administrative or engineering charges.

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**6. INDEMNITY.** Seller shall conduct, at its own expense, the entire defense of any claim, suit, action or other proceedings ("Claim") brought against Buyer by a third party alleging that any Essex Product infringes upon any United States patent of any third party; provided, however: (i) Seller receives prompt written notice of the Claim; (ii) Seller has full control of the defense and all related settlement negotiations; (iii) the Essex Products are made according to a specification or design furnished by Seller, or if a process patent is involved, the process performed by the Essex Products are recommended in writing by Seller; and (iv) Buyer provides Seller with all necessary assistance, information and authority to perform the defense and negotiate settlement thereof. Provided all four of the foregoing conditions are met, Seller shall, at its own expense, either settle said Claim or shall pay all damages (excluding consequential damages) and costs awarded by the court therein. If the use or resale of such Essex Products is finally enjoined, Seller shall, at Seller's option, procure for Buyer the right to use or resell the Essex Products, replace them with equivalent non-infringing Essex Products, modify them so they become non-infringing but equivalent, or remove them and refund the purchase price (less a reasonable allowance for use, damage or obsolescence). Buyer shall indemnify and hold Seller harmless from all Claims based upon (i) the use of a Essex Product customized for Buyer based on Buyer's ideas, specifications or designs, (ii) the performance of a process performed by the Essex Products not recommended in writing by Seller, or (iii) the use or sale of the Essex Products delivered hereunder in combination with other products not delivered to Buyer by Seller. Seller is not the manufacturer of any of the Third Party Products purchased under this Agreement and, as a result, Seller has no intellectual property rights with respect to the Third Party Products and makes no warranty with respect to patents, trademarks or copyrights.

#### **7. EXCUSABLE PERFORMANCE**

Seller is excused from performing any of its obligations under these Terms, any order or Sales Agreement if its performance is prevented, hindered or delayed by its suppliers, acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order (whether or not it proves to be invalid), fires, riots, inability to supply or obtain labor, products, materials, raw materials, supplies, fuel or utilities, labor disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures or any other events or circumstances beyond Seller's reasonable control (an "Event"). To the extent an Event delays Seller's performance, such performance shall be extended for as many days beyond the due date until the delay concludes; provided, however, if Seller is unable to perform any of its obligations under any order due to an Event for more than thirty (30) days, it may in its sole option terminate, without liability or penalty, any Sales Agreement, order or obligation in whole or in part. If there is an interference, limitation or cessation of any material or product from Seller's source of supply for any reason, Buyer agrees to relieve the Seller temporarily, proportionately, or permanently of liability under these Terms or any Sales Agreement or order, depending upon whether the interruption of the source of supply is a temporary interruption, a reduced delivery of materials or products or a permanent cessation of supply. In the event there is a Product shortage pursuant to this section, Seller may ration and distribute such Products as it deems appropriate.

#### **8. TAXES AND EXPORTS**

Any and all taxes (not including any U.S. income or excess profit taxes attributable to Seller) which may be imposed by any taxing authority, arising from the sale, delivery or use of the Products or Services and for which Seller may be held responsible for collection or payment, either on its own behalf or that of Buyer, shall be paid by Buyer to Seller upon Seller's demand. Export orders are subject to applicable export regulations and requirements. Buyer disclaims in favor of Seller any right or interest in, the drawback of duty, taxes or surcharges paid on imported material contained in the Products.

#### **9. FINANCIAL RESPONSIBILITY OF BUYER**

Buyer's solvency is a condition of Seller's performance and Seller may, at any time, in its sole discretion for credit reasons (including a good faith belief that a current or future payment is or may be impaired) or because of Buyer's breach of this or any other agreement with Seller, suspend or change credit terms, fix a limit on credit, require progress payments, demand payment in full of any outstanding balance, withhold shipments, demand COD or request other assurances of payment, cancel or terminate any order or agreement, or repossess all Products previously delivered, which Products shall become the absolute property of Seller subject to credit therefore. Seller retains a security interest in Products delivered hereunder until paid in full. Notwithstanding any other provision of these Terms, Seller reserves the right in its absolute discretion from time to time to require payment in full of the price of the Products or Services before delivery of all or any of the Products or performance of Services.

Seller may terminate any order or Sales Agreement by written notice to Buyer if (i) a receiver or trustee is appointed for any of Buyer's property; (ii) Buyer is adjudicated or voluntarily becomes bankrupt under any bankruptcy, dissolution or reorganization laws or similar legislation; (iii) Buyer becomes insolvent or makes an assignment for the benefit of creditors; (iv) an execution is issued pursuant to a judgment rendered against Buyer; or (v) Buyer is unable or refuses to make payment to Seller. If any order or Sales Agreement is terminated by Seller pursuant to this section, Seller shall be relieved of any further obligation to Buyer and Buyer shall reimburse Seller for its termination costs and expenses and a reasonable allowance for profit.

In addition to any right of set off or recoupment provided by law, Buyer agrees that all its accounts with Seller will be administered on a net settlement basis and that Seller may set off debits and credits, including Seller's attorney fees and costs of enforcement, against any of Buyer's accounts regardless of the basis for such debits and credits and without advance notice. In this section, "Seller" includes Seller's parent, subsidiaries and affiliates, and "Buyer" includes Buyer's parent, subsidiaries and affiliates.

#### **10. CANCELLATIONS AND RETURNS**

All orders accepted by Seller are non-cancelable. Return of any Product must be authorized by Seller. Seller will issue a formal RETURN MATERIAL AUTHORIZATION (RMA) tag to support all authorized returns. Unless otherwise approved by Seller in writing, all material must be returned to Seller freight prepared, undamaged and in the original packaging.

#### **11. LIMITATION OF LIABILITY**

IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, DELAY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DIRECT OR INDIRECT PROFITS, REVENUE, OR USE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF BUYER OR ANY OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY TO BUYER EXCEED ALL AMOUNTS ACTUALLY PAID BY BUYER TO SELLER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SET FORTH IN SECTION 5.

#### **12. CONFIDENTIALITY**

Buyer will not disclose to third persons any proprietary or confidential information of Seller concerning its business and operations, including without limitation, pricing information, for a period of five (5) years from the date such confidential information was learned or for confidential information meeting the definition of "trade secret" under applicable law, until such information is no longer a "trade secret." Confidential Information does not include any data or information that is publicly known or in the public domain through means that do not involve a breach by Buyer of its obligations set forth herein.

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#### **13. ADDITIONAL TERMS**

The provisions of these Terms, the Freight Policies and the Sales Agreement, if any, constitute the entire agreement between Buyer and Seller with respect to the matter contained herein and supersedes any prior oral or written communications, understanding, representations, proposals or agreements. Seller may revise these Terms from time to time. These Terms may not be amended or modified by the Buyer except upon the execution of a written agreement signed by both parties indicating an intent to modify these Terms. Neither Buyer nor Seller may assign any of its rights or obligations hereunder or under any order; provided, however, that Seller shall be permitted to assign any of its rights or obligations under these Terms, Sales Agreement or any order in connection with the sale or transfer of all or substantially all of its assets or capital stock, whether by merger, reorganization, consolidation or other similar transaction. If any provision of these Terms is held invalid, unenforceable or in conflict with any law by a court of competent jurisdiction or arbitration tribunal, such provision shall be deemed severed from these Terms and the validity of the remainder of these Terms shall not be affected thereby. The provisions of these Terms that by their nature are reasonably intended by the parties to survive the expiration or termination of the Terms or any accepted order, including without limitation sections 4, 5, 11, 12 and this section 13, shall survive the expiration or termination of the Terms or any accepted order.