

TERMS AND CONDITIONS OF SALE

All sales of goods by E-T-A Circuit Breakers (“Seller”) are made subject to the terms and conditions appearing below (“Terms and Conditions”).

- 1. CONSTRUCTION AND LEGAL EFFECT** - Seller’s sale to Buyer is expressly conditioned upon Buyer’s acceptance of the terms and conditions set forth in these Terms and Conditions. They supersede and reject any conflicting terms and conditions of Buyer, any statement therein to the contrary notwithstanding. Exceptions to or modifications of any of these Terms and Conditions, at any time, must be contained in a written or typed (not printed) agreement between Buyer and Seller. Seller shall not be deemed to have waived any of the Terms and Conditions or to have assented to any exception to or modification of such Terms and Conditions unless such waiver or assent is in writing and signed by Seller’s authorized officer. No representation of any kind is made by Seller except as set forth herein. The Agreement formed upon these Terms and Conditions conclusively supersedes all prior writings and negotiations with respect to the goods or services to be furnished hereunder and Seller shall furnish only quantities and goods or services specifically listed on the face hereof or the pages attached hereto; Seller assumes no responsibility for furnishing other equipment or material shown in any plans or specifications for a project to which the goods or services ordered herein pertain. Seller’s published or quoted prices, Terms and Conditions are subject to change without notice.
- 2. PRICES** - Prices quoted are firm for 30 days from the date of quotation, and are thereafter subject to adjustment as stated in the Seller’s quotation. In the event of any changes in specifications after receipt of the Buyer’s order, the Seller may adjust the selling price to cover costs associated with such changes.
- 3. CREDIT AND TERMS OF PAYMENT** - Buyer’s orders are accepted by the Seller subject to credit investigation and approval. Unless other terms are specified on the quotation of Seller, or accepted by Seller in writing, payment shall become due 30 days from date of invoice. If shipment is delayed by the Buyer, the date of readiness for shipment shall be deemed to be the date of invoice for payment purposes. If manufacture is delayed by the Buyer, a payment shall be made within 30 days from date of commencement of such delay, in an amount determined by the purchase price and percentage of completion of the order, the balance shall be payable within 30 days from the date of invoice, or readiness for shipment, as the case may be. If, in the Seller’s judgment, the Buyer’s financial condition at anytime does not justify the terms specified, the Seller may require full or partial payment as a condition to commencing or continuing manufacture, or in advance of shipment, or, if shipment has been made, recover equipment from the carrier. A service charge of 1.5% per month (18% per annum), or the maximum allowed by law, whichever is less, shall be added to past due balances. Buyer warrants that he is not insolvent, and that he does not intend to and will not pledge or encumber the goods which are the subject of this agreement.
- 4. TAXES** - Unless specifically provided herein, the amount of any present or future sale, use, gross income, revenue, excise or any other tax applicable to the products covered by this agreement or the manufacture or sale thereof, shall be added to the purchase price and shall be paid by the Buyer; or in lieu thereof, the Buyer shall provide Seller with the tax exemptions certificate acceptable to the appropriate taxing authorities.
- 5. CANCELLATION** - All orders accepted by Seller are considered to be firm commitments on the part of Buyer. If necessary for Buyer to cancel or modify all or part of undelivered balance or order, Buyer may do so only upon written notice to and acceptance by Seller and upon payment to Seller of all costs of labor, material and supplies applied to the production of such items, plus overhead expenses, and plus 15% of such costs and expenses, provided that such amount shall in no event exceed the selling price of the goods.
- 6. FREIGHT** - Unless otherwise stated on Seller’s quotation form, prices are Ex-Works original shipping point, without freight allowance. Delivery to the initial carrier shall constitute delivery to the Buyer. The Seller’s responsibility ceases upon delivery in good order to such carrier, and all goods are shipped at Buyer’s risk. A claim for loss or damage in transit must be entered with the carrier and prosecuted by the Buyer. For all goods exported by Seller from the U.S., however, legal title to the goods shall pass at the first port of entry in the country of ultimate destination but all risk of loss and damage to products and liability for shipment shall nevertheless transfer F.O.B. Seller’s shipping point.
- 7. TITLE, DELIVERY AND DELAY** - Unless otherwise specifically provided in writing, each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Shipping dates are approximate and are based on prompt receipt of all necessary information from the Buyer as well as availability of raw materials and/or components purchased by Seller for Buyer’s order. The Seller has no obligation to deliver goods against any order unless and until it has accepted the order by issuance of its written acknowledgment of order. Seller shall not be liable for any delay or failure in the delivery of shipment of goods against an accepted order, or for any damages suffered by reason thereof, when such delay or failure is, or such damages are, directly or indirectly, due to accident (in manufacture or otherwise), fire, flood, riot, war, embargo, labor stoppages, inadequate transportation facilities, shortage of materials or supplies, delay or default on the part of its vendors, regulation by any governmental authority or any like or dissimilar cause or causes beyond its control, which affects Seller or any of its subcontractors or suppliers. Seller shall have no liability for any liquidated damages or penalty whatsoever unless specifically agreed to in writing by Seller. If delivery is delayed beyond originally scheduled dates due to delays by the Buyer in furnishing the Seller with technical information or approvals, or manufacturing releases, and additional costs are incurred by the Seller due to such delays, then Buyer shall reimburse Seller for such added costs plus reasonable profit thereon. If shipment is delayed by the Buyer, payment shall become due from the time Seller is prepared to make shipment. In the event of voluntary or involuntary bankruptcy proceedings being filed against Buyer, or insolvency of the Buyer, or in the event any proceeding is filed by or against the Buyer under the Federal bankruptcy law or the insolvency laws of any state. Seller may cancel any order then outstanding and shall receive immediate reimbursement for costs in connection with such cancellation.

8. STORAGE - Products which manufacture or delivery is delayed may be placed in storage by Seller, for the Buyer's account and risk, and regular charges therefor and expenses in connection therewith shall be paid by Buyer; but if, in Seller's opinion, it is unable to obtain or continue such storage, the Buyer will, on request, provide or arrange for suitable storage facilities and assume all costs and risks in connection therewith.

9. TESTS - If tests are requested by the Buyer and quoted by Seller to determine the performance of equipment, the test procedure to be used must be acceptable to the Seller, and Buyer agrees to abide by Seller's terms concerning, without limitation, items to be supplied by Buyer, items to be supplied by Seller, and Seller's charges for such tests which shall be paid by Buyer.

10. WARRANTY - E-T-A warrants to the original purchaser that products manufactured or sold by it and all parts conform to E-T-A specifications or drawings and are free from defects of workmanship under normal use and service. E-T-A's sole and exclusive obligation under this warranty shall be limited to repairing or replacing Ex-Works, Mount Prospect, Illinois, any part which E-T-A's examination shall disclose to its satisfaction is defective within one year from date of original shipment from Mount Prospect, Illinois. Seller shall not be liable for any cost or expense, including, without limitation, labor expense, in connection with the removal or replacement of alleged defective products nor for incidental or consequential damages of any kind, nor under any circumstances for any damage beyond the price of the goods sold. The Seller neither assumes nor does it authorize any other person on its behalf to assume, any other liability in connection with the sale of its products. Goods of other manufacturers sold by the Seller are not warranted except by express warranties which may be issued in writing from time to time by the manufacturer with respect to a particular product or a particular sale, but Seller will endeavor to secure for its direct Buyers the benefit of warranties extended by manufacturers of such goods sold but not manufactured by the Seller. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF E-T-A. Buyer agrees that if goods sold hereunder are resold by Buyer, Buyer will include in its contract for resale provisions which limit recoveries against Seller in accordance with this contract. In case of Buyer's failure to include in any such contract for resale terms providing for such limitations, Buyer agrees to indemnify and hold Seller harmless against any liability, loss, cost, damage, or expense (including reasonable attorneys fees) arising out of or resulting from such failure. No employee or agent of Seller is authorized to make any warranty other than that which is specifically set forth herein. The provisions in any specification or chart issued by Seller or attached hereto are descriptive only and are not warranties. Claims for defective merchandising must be made within 14 days after receipt of shipment. All claims for warranty must be made in writing to E-T-A Circuit Breakers, 1551 Bishop Court, Mount Prospect, Illinois. Goods may not be returned to Seller without prior written authority. Defective material, unless opened or altered by Buyer, will be replaced, but Seller shall have no further liability for damage or injuries caused by the use of material supplied under this agreement; and Seller makes no warranties or representations in connection with this sale.

11. LIMITATION OF LIABILITY: Seller shall in no event be liable for any direct, indirect, special or consequential damages whatsoever, whether grounded in tort (including negligence), strict liability or contract, and under no circumstances will Seller's liability exceed the contract price for goods and services upon which liability is claimed. Any action must be commenced within one year after the cause of action has accrued.

12. INTELLECTUAL PROPERTY - If Buyer receives a claim that any product or part thereof manufactured by Seller infringes an intellectual property right, Buyer shall promptly notify Seller in writing and give Seller information, assistance and exclusive authority to evaluate, defend, and settle such claim. Seller shall then at its own expense and option (1) settle such claim; (2) procure for Buyer the right to use such Product; (3) replace or modify it to avoid infringement; (4) remove it and refund the purchase price less accrued depreciation or (5) defend against such claim. Provided such timely notice, information, assistance and authority has been given by Buyer to Seller, should any court of competent jurisdiction hold such product to constitute an infringement, Seller shall pay any costs and damages finally awarded on account of such infringement and, if the use of such product is enjoined, Seller shall take at its option one or more of the actions under (2), (3) or (4) above. With respect to any product not manufactured by Seller, the patent indemnity, if any, given by the manufacturer thereof shall apply in place of the foregoing indemnity. The foregoing indemnity shall not apply to any claim that arises out of Seller's compliance with the specification or design of Buyer and it shall not apply to any claim of infringement resulting from the use of Product in combination with other equipment and materials not furnished by Seller. Buyer shall hold Seller harmless and indemnified against all claims described in this paragraph. The sale of any goods hereunder does not carry with it any license to use such goods in combination with other goods not purchased from Seller and which combination is the subject of any patent owned or controlled by Seller.

13. SUBSTITUTES, CHANGES AND IMPROVEMENTS - Factors beyond Seller's control and the need for continuing improvement of products may require changes in products from time to time. The Seller reserves the right to make reasonable changes in products of any kind without notice, and to deliver designs or types of products against any order, unless the right is specifically waived by it in writing. The Seller shall have no responsibility whatever with respect to changes made by the manufacturer of products sold but not manufactured by Seller.

14. APPLICABLE LAW - All rights and duties of the parties shall be governed by the laws of the State of Illinois, without reference to principles of conflicts of law and excluding any application of the United Nations Convention on Contracts for the International Sale of Goods.