

Terms and Conditions of Sale

Agreement. These Terms and Conditions of Sale, all drawings, specifications, descriptions and other documents attached hereto constitute the entire agreement between Electromate Inc. ("Electromate") and the Buyer named herein, and supersede all prior quotations, purchase orders, correspondence and other communications, whether written or oral between Electromate and the Buyer. No provision of these Terms and Conditions of Sale shall be subject to change except by written authorization of a properly authorized representative of Electromate at its main office in Vaughan, Ontario. The failure of Electromate to object to any other contractual provision, whether contained on the Buyer's purchase order or otherwise, shall not be construed as a waiver of these Terms and Conditions of Sale nor as an acceptance of such other contractual provision.

Credit Terms. Credit is offered to approved credit applicants only. Credit approval is subject to the discretion of Electromate. All first-time purchases by the Buyer are subject to a COD or prepayment first order shipment policy.

Quotations. Quotations are valid for 30 days from date of issuance. Typographical and clerical errors in quotations are subject to correction. Quotations may be subject to change at the discretion of Electromate to reflect changes in customs duty rulings, tax status, exchange rate fluctuations, and other external factors not mentioned herein.

Orders. All orders are subject to acceptance by Electromate. Typographical and clerical errors in purchase orders and acknowledgements are subject to correction.

Prices. Prices are FOB point of shipment unless otherwise stated by Electromate. Prices are subject to change without notice. Prices in effect at the time of shipment will apply. Electromate reserves the right to adjust the pricing of any open order should the originally scheduled release date or release quantity be changed by the customer, or should the fulfillment of payment obligations not be met by the customer.

Taxes. The Buyer agrees to pay all applicable Goods and Services Tax and any other sales, excise, use or similar taxes or duties applicable in the jurisdiction of delivery upon the equipment herein described of upon any feature of this transaction.

Payment Terms. Standard terms are net 30 days after date of shipment by Electromate. Amounts past due are subject to a service charge of 2% per month, compounded monthly (equivalent to 26.82% per annum), on the overdue balance. A 2% discount is offered if payment is made within 10 days of invoice date. If Electromate, in its sole discretion, at any time deems that, by reason of the financial condition of the Buyer or otherwise, the continuance of shipment on the terms specified herein is not justified, Electromate may require full or partial payment in advance. Certain orders may, in Electromate's discretion, require progress payments because of their nature or the delivery involved. Pro rata payments shall become due as shipments are made. Electromate's failure to exercise any right accruing from any default of the Buyer shall not impair any rights in case of subsequent default by the Buyer. Electromate shall be entitled to recover from the Buyer the cost of any proceeding or legal action to enforce payment, including attorney's fees and judicial court costs.

Title. Title to equipment purchased by the Buyer shall remain vested in Electromate and shall not pass to the Buyer until Electromate receives payment in full for such equipment.

Shipping and Delivery. Shipment shall be made by such mode of transport as determined by Electromate, unless special arrangements are made with the Buyer. Shipping charges will be, at the Buyer's option, either invoiced by Electromate to the Buyer or paid directly by the Buyer. Electromate is not responsible for any loss, damage or delay that may occur after the purchased equipment has been accepted for shipment by the carrier. Claims for damage or lost shipments must be taken up directly with the carrier. Shipping dates given by Electromate are approximate and are based on prompt receipt of all necessary information regarding the order. Electromate will use its best efforts to meet the scheduled date shown on the face hereof, but does not guarantee to do so. Failure to make shipments as scheduled does not constitute a cause for cancellation and/or for damages of any nature. If a delay is requested by the Buyer or any delay is caused by lack of shipping instructions, Electromate will store all items ordered at the Buyer's risk and expense, and will invoice the Buyer for the full purchase price of the applicable equipment on or after the date on which the same is ready for delivery.

Relief From Obligations. Failure or delay in performance by Electromate shall be excused to the extent that such failure or delay is caused by an event beyond Electromate's reasonable control. In such event Electromate will notify the Buyer promptly of the commencement and nature of such a cause.

Cancellation. All undelivered parts of any order may be cancelled by the Buyer at any time but only with the written approval of Electromate. If the Buyer fails to make payments to Electromate in accordance with the terms hereof, Electromate may at its option cancel all undelivered parts of any order by written notice to the Buyer. In the event of any cancellation of any order by either party, the Buyer shall pay to Electromate the reasonable costs and expenses (including transportation costs and all commitments to its suppliers and subcontractors) incurred by Electromate in connection with filling such order plus an amount equal to Electromate's usual rate of profit for similar work.

Returns. No equipment is to be returned without written authorization by Electromate. If Electromate agrees to accept the return, the Buyer will pay a restocking charge equal to a minimum of 30% of the order price or higher, in Electromate's discretion, plus all transportation costs incurred by Electromate as a result of the return. Non-stock Items, Made to Order Items, Customs or Special Items cannot be cancelled before shipment without prior authorization by Electromate. Where authorization is provided, cancellation fees up to their full value may apply. Electromate will attempt to minimize these fees where possible.

Engineering Data. All engineering data, design information, engineering and shop drawings used in the completion of this order are the property of Electromate.

Patents. The Buyer acknowledges that the fulfillment of its order by Electromate may require use by Electromate of the Buyer's patents or the patents of a third party, and the Buyer agrees to indemnify and save Electromate harmless from and against all damages, costs and expenses incurred by Electromate in connection with any claim, demand or action against it and relating to such patents.

Warranty and Limitation of Liability. Equipment sold by Electromate is warranted by Electromate to be free from defects of material and workmanship but **Electromate shall not be liable for special, indirect or consequential damages of any kind under this agreement or otherwise, even if Electromate has been advised of the possibility of such damages or such damages are reasonably foreseeable. Electromate's liability shall be limited exclusively to replacing or repairing without charge, at its factory or elsewhere at its discretion, any material or workmanship defects which become apparent within one year from the date on which the equipment was shipped, or sooner where the manufacturer gives a lesser warranty.** Electromate shall have no liability for damages of any kind arising from the installation and/or use of the equipment. By acceptance of the equipment, the Buyer agrees to assume all liability for any damages which may result from its use of misuse by the Buyer, his or its employees, or by others.

Electromate's warranties do not cover and Electromate makes no warranty with respect to any defect, failure, deficiency or error which is (a) not reported to Electromate within the applicable warranty period, (b) due to misapplication, modification, disassembly, abuse, improper installation by others, abnormal conditions of temperature, dirt or corrosive matter, or (c) due to operation, either intentional or otherwise, above rated capacities or in an otherwise improper manner. There are no other warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

General. This agreement shall be governed by and construed according to the laws of the Province of Ontario. Should any term or provision contained herein contravene or be invalid under applicable law, this agreement shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared herein.