

# Engineered Mechanical Innovations

## Terms and Conditions of Sale:

Engineered Mechanical Innovations [and its operating divisions (EMI™ and others)] (“EMI”) accepts orders and does business only on the terms and conditions on this form.

1. ENTIRE AGREEMENT. This document contains all of the terms and conditions of the agreement between EMI and the buyer (“Buyer”) of the goods (“Goods”) to be sold to Buyer, to the exclusion of any other statements and agreements, and to the exclusion of any terms and conditions incorporated in Buyer’s order or other documents of Buyer. EMI’s acceptance of Buyer’s order is expressly conditioned on Buyer’s acceptance of the terms and conditions contained herein, and Buyer, upon placing an order, is presumed to have accepted all the terms and conditions without modification. No alteration, waiver, modification of or addition to the terms and conditions herein shall be binding on EMI unless set forth in writing and specifically agreed to in writing by an officer of EMI. No course of dealing, usage of trade or course of performance will be relevant to supplement or explain any terms used in this agreement. EMI’s signing of Buyer’s order acknowledgement is intended only to confirm physical receipt of the order, and in no way binds EMI to any other or additional terms or conditions of Buyer, notwithstanding any language to the contrary contained in Buyer’s quotation or order documentation.

2. SHIPMENT. Shipment is F.O.B. EMI’s plant or other place of manufacture, unless otherwise specified by EMI. The risk of loss of the Goods (including damage or destruction thereto) passes to Buyer upon shipment. Unless shipping arrangements are specified by Buyer, EMI will make reasonable arrangements for shipment.

3. DELIVERY. EMI will use commercially reasonable efforts to fill orders within the time stated, but the stated delivery date is approximate only, and EMI reserves the right to re-adjust delivery dates. Under no circumstances will EMI be responsible for or incur any liability for damages, costs or expenses of any nature (whether general, consequential, as a penalty or as liquidated damages or otherwise) due to any delays in delivery or failure to make delivery at an agreed or specified time. Acceptance by Buyer of the Goods when received waives any claim for loss or damage resulting from a delay, regardless of the cause of the delay. If shipment is delayed or suspended by Buyer, Buyer shall pay the invoice price for the Goods as per payment terms, together with EMI’s handling and storage charges in effect and demurrage charges if loaded on rail cars.

4. TERMS AND PRICES. Price quotations are valid for thirty (30) days from quotation date, unless otherwise specified at the time of quotation. Unless otherwise specified by EMI, payment terms are net thirty (30) days from invoice date, with a twelve percent (12%) per annum finance charge on overdue amounts. In addition to the purchase price, Buyer shall pay any federal, state and local sales, excise, privilege, use or other taxes arising from the sale or delivery of the Goods or the use thereof. Prepaid freight, packaging, and/or handling charges, if applicable, will be added to the purchase price and invoiced separately as a lump sum. If the price includes transportation or other shipping charges, any increase in transportation rates or other shipping charges from date of quotation or purchase order shall be paid by Buyer. This includes the addition of a freight fuel surcharge based upon the prevailing surcharge rate of commercial carriers. If Buyer requests changes in the Goods or delays progress of the manufacture or shipment of the Goods, the contract price shall be adjusted to reflect increases in the selling price caused thereby. All price quotations are based upon the cost of materials as of

the date of the quotation. EMI reserves the right to adjust pricing at anytime based upon unanticipated increases in material prices as-of the date of shipment, even for orders already received and confirmed.

5. **RETENTION OF TITLE.** Title to the Goods sold hereunder shall remain in EMI until the purchase price has been fully paid in cash, and the Goods shall remain personal property, whatever may be the mode of attachment to realty or other property. EMI reserves a purchase money security interest in all Goods and any proceeds thereof until any payments and charges due EMI are paid in full, and Buyer shall perform all acts necessary to perfect EMI's security interest. In case of failure by Buyer to make any payment when due, EMI shall have the option to take exclusive possession of the Goods wherever found, in addition to any and all other rights and remedies provided by law.

6. **WARRANTY.** EMI warrants to the original Buyer of Goods that the Goods manufactured by EMI will be free from defects in materials and workmanship for the applicable warranty period. Unless otherwise stated in writing by EMI, the applicable warranty period is

(a) For sheet-metal components of catalog standard and non-customized enclosures manufactured by EMI and sold under the EMI™ brand names, the applicable warranty period equals twelve (12) months commencing on the date the Goods are shipped from EMI; or

(b) For any mechanical and moving component, part, product, Good, or portion of Goods, including but not limited to latches, handles, hinges, clips, drawer slides, shelf slides, locks, wheels, or casters the applicable warranty period equals twelve (12) months commencing on the date the Goods are shipped from EMI; or

(c) For Goods or portions of Goods not manufactured by EMI, including all electrical products and components, the applicable warranty period shall be established by the original manufacturer, whose warranty shall be passed to the Buyer to the extent permitted; or

(d) For all other Goods manufactured by EMI, including Goods manufactured to customer drawings or specifications or for catalog standard Goods customized in any manner by EMI, the applicable warranty period equals twelve (12) months commencing on the date the Goods are shipped from EMI.

EMI's sole obligation to the Buyer under this warranty is to repair or replace, at EMI's sole discretion, any equipment or parts thereof which are defective in materials or workmanship. Such repair or replacement shall be done according to methods and at a location of EMI's choosing. No such repair or replacement will extend the applicable warranty period. No claims under this warranty shall be valid unless the Buyer notifies EMI or its authorized distributor in writing of the defect within a reasonable time following its discovery, but in no event later than the expiration of the applicable warranty period. When a warranty claim arises, Buyer must contact EMI to arrange for repair. If EMI chooses to perform the repair or replacement at EMI's factory, then return shipment to EMI shall be arranged by Buyer, with freight prepaid by Buyer. The risk of loss or damage to any products returned to EMI will be with Buyer.

This warranty does not cover ordinary wear and tear, vandalism, abuse, misuse, overloading, altered equipment, equipment or parts which have not been properly installed, operated or

maintained or which have been improperly adjusted, or damages caused by failure to follow the maintenance or installation procedures outlined in the applicable owner's manual or in technical information issued by EMI.

The remedy of repair or replacement provided for herein is the Buyer's exclusive remedy for breach of the above limited warranty. If such remedy fails its essential purpose, EMI's liability shall be limited to a refund of the purchase price paid for such defective Goods.

THE ABOVE LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. LIMITATION OF LIABILITY. EMI WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR LABOR COSTS, ARISING FROM THE SALE, USE OR INSTALLATION OF THE GOODS, FROM THE GOODS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER GOODS, FROM ANY BREACH OF THIS AGREEMENT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, OR ON TORT OR OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY EMI CONCERNING THE SALE, USE OR INSTALLATION OF THE GOODS. IN ADDITION, IN NO EVENT SHALL EMI BE LIABLE IN CONNECTION WITH THIS AGREEMENT IN AN AMOUNT THAT EXCEEDS THE PAYMENTS EMI HAS RECEIVED FOR THE GOODS SOLD TO BUYER PURSUANT TO THIS AGREEMENT

8. SPECIFICATIONS. EMI may, at its option, make changes in the design, construction, arrangement or components of the Goods if, in EMI's judgment, such changes will be beneficial to the operation or cost of the Goods. Buyer may not make any changes in the specifications for the Goods unless EMI approves of such changes in writing, in which event EMI may make additional charges for such changes.

9. NOTIFICATION OF CLAIMS; DELIVERY IN INSTALLMENTS. Buyer must notify EMI and the carrier within seven (7) days of the receipt of Goods of any damage to, or partial loss of, the Goods during transit. Failure to give such notification waives all claims which Buyer may otherwise have against EMI for loss or damage in transit. If delivery is made in installments, claims which Buyer may have as to any one installment do not relieve Buyer of the obligation to accept delivery of the remaining installments, or permit Buyer to cancel or rescind the remaining installments.

10. CONFIDENTIALITY. All documentation supplied by EMI to Buyer is for internal use between Buyer and EMI. Written consent must be obtained from EMI for any parts of the documentation to be released to the public or used for any other purpose.

11. INFRINGEMENT. EMI, at its own expense, will defend and hold Buyer harmless from and against all damages, costs and expenses arising from any claim of infringement of any patent, trademark registered design or other intellectual property rights caused by the Goods originally manufactured by EMI, provided Buyer (i) has not modified such Goods, (ii) gives EMI immediate notice in writing of any claim or institution or threat of suit, and (iii) permits EMI to

defend or settle the same, and gives all immediate information, assistance and authority to enable EMI to do so.

In the event any such originally manufactured Goods are held to infringe any United States patent and if Buyer's use thereof is enjoined, EMI will, at its expense and option: (i) obtain for Buyer the right to continue using the Goods, (ii) supply non-infringing Goods, (iii) modify the Goods so that they become non-infringing, or (iv) refund the then market value of such Goods. In no event shall EMI's liability exceed the sales price of the infringing Goods. The FOREGOING REPRESENTS EMI'S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CHARGE OF INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT AND IS IN LIEU OF ANY STATUTORY WARRANTY RELATING TO INFRINGEMENT. EMI will have no responsibility insofar as any Goods or parts thereof are made by another, are modified by Buyer or are made or modified by EMI in accordance with Buyer's order.

Buyer will defend and hold EMI harmless from and against all damages, costs and expenses whatsoever arising from any claim for infringement of intellectual property rights relating to Goods incorporating a design or modification made or requested by Buyer.

12. NAMEPLATES. Any nameplates or other form of identification which EMI has affixed to or marked upon any of the Goods may not be removed by Buyer or by anyone on Buyer's behalf without EMI's written consent.

13. CANCELLATION OR MODIFICATION OF ORDERS. Buyer may not cancel or modify orders placed with EMI, except with EMI's written consent and then only if Buyer makes payment to EMI to indemnify it against loss, including but not limited to expenses incurred and commitments made by EMI. Buyer may not change the delivery dates or quantities of goods delivered for orders placed with EMI, except with EMI's written consent, which shall generally not be given within thirty (30) calendar days prior to a scheduled shipment or partial shipment.

14. LOSS, DAMAGES OR DELAY. EMI shall not be liable for loss, damage or delays resulting from causes beyond its reasonable control or caused by strikes or labor difficulties, lockouts, acts or omissions of any governmental authority or of Buyer, insurrection, riot, war, fires, floods, acts of God, breakdown of essential machinery, accidents, embargos, cargo or material shortages, delays in transportation, or inability to obtain labor, materials or parts from usual sources. In the event of any such delay, performance shall be postponed by such length of time as may be reasonably necessary to compensate for the delay. In the event performance by EMI cannot be accomplished by EMI due to any action of governmental agencies, or any laws, rules or regulations or the United States government, EMI may, at its option, cancel this agreement without liability.

15. WORK BY OTHERS; ACCESSORIES AND SAFETY DEVICES. Unless agreed in writing, EMI, being the supplier of the Goods shall have no responsibility for labor or work of any nature relating to installation and operation or use of the Goods, all which shall be performed by Buyers or others. It is the responsibility of Buyer to furnish such accessory and safety devices as may be desired by it and/or required by law (including OSHA standards) relating to Buyer's use of the Goods. Buyer shall be responsible for ascertaining that the Goods are installed and operated in accordance with all applicable laws, regulations, rules and ordinances.

16. TOOLING / NON RECURRING EXPENSES (“NRE”). The partial cost to prepare unique or design-specific tooling, fixtures, punches, dies, templates, gauges, engineering drawings and documentation, or similar equipment, materials, or information (“NRE Materials”) may be quoted by EMI to the Buyer as a separate line item or may be amortized into the expected total quantity of production. EMI normally quotes the NRE Materials at less than full cost, due to efficiencies of shared tooling and fixtures, reused and refurbished tools, fixtures, and materials, and other cost saving methods. Unless specifically agreed to in writing by an officer of EMI, all NRE Materials are owned by and remain the exclusive property of EMI. In the event that Buyer wishes to take ownership and/or possession of NRE Materials, EMI reserves the right to charge an additional fee, in addition to the originally quoted cost for NRE Materials, to reflect the true cost plus mark-up on all the materials, labor, engineering, and know-how provided, including the cost to prepare, package, and deliver the NRE Materials to the customer. In addition, EMI reserves the right to remove from the NRE Materials any components or information that reflects proprietary know-how of EMI. EMI reserves the right to require that Buyer’s payment on account be current, including any advance payments for the cost of NRE Materials, prior to releasing NRE Materials to Buyer. Unless otherwise agreed to in writing by an officer of EMI, EMI reserves the right to discard, destroy, or scrap NRE Materials that are used for Discontinued Goods, as defined below, without prior notice and without liability to the Buyer. For the purpose of this document, “Discontinued Goods” shall mean specific Goods, customer part numbers, configurations or designs for which thirty-six (36) or more months have passed since the most recent purchase order has been received by EMI.

17. GENERAL.

(a) No modification or waiver of this agreement or any of its provisions is valid unless expressly agreed to by an officer of EMI in writing.

(b) The unenforceability or invalidity of one or more of the provisions of this Agreement will not affect the enforceability or validity of any other provision of this agreement.

(c) THE COMPLETE AGREEMENT BETWEEN EMI AND BUYER IS CONTAINED HEREIN AND NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS STATED BY BUYER SHALL BE BINDING UNLESS AGREED TO BY AN OFFICER OF EMI IN WRITING. NO COURSE OF DEALINGS, USAGE OF TRADE OR COURSE OF PERFORMANCE WILL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY TERMS USED IN THIS AGREEMENT.

(d) Buyer may not assign any of its rights, duties or obligations under this agreement without EMI’s prior written consent and any attempted assignment without such consent, even if by operation of law, will be void.

(e) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin. All Actions arising out of or relating to this Agreement shall be heard and determined exclusively in any federal court sitting in Milwaukee, Wisconsin, USA; provided, however, that if such federal court does not have jurisdiction over such Action, such Action shall be heard and determined exclusively in any state court sitting in Milwaukee, Wisconsin. Consistent with the preceding sentence, Buyer hereby (a) submits to the exclusive jurisdiction of any federal or state court sitting in Milwaukee, Wisconsin for the purpose of any Action arising out of or relating to this Agreement brought by any Party and (b) irrevocably waives, and agrees not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its

property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this agreement may not be enforced in or by any of the above-named courts.

(f) BUYER HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. BUYER HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE OF EMI HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT EMI WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER.

(g) No waiver by EMI of any breach by Buyer or any term or condition of this agreement shall be construed as a waiver of any subsequent breach or a subsequent waiver of any other term or condition of this Agreement. The failure of EMI to assert any of their rights hereunder shall not constitute a waiver of any of such rights.

18. PROVISIONS FOR INTERNATIONAL TRANSACTIONS. The following provisions apply to shipments to Buyers located outside the United States notwithstanding the other provisions of these Terms and Conditions:

(a) The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply.

(b) Except as otherwise specified, terms of delivery are Ex-Works (within the meaning of INCOTERMS 2000) and all customs fees, import duties, cargo insurance, taxes and other charges imposed on or relating to the purchase or sale of the Goods shall be paid by Buyer in addition to the stated price.

(c) Except as otherwise specified, payment shall be made by cash in advance; credit card or bank wire transfer in the full amount of the purchase price plus prepaid freight in U.S. dollars. All banking and other charges for such transactions shall be the responsibility of the Buyer.

(d) Prices include EMI's standard commercial packaging. Buyer will bear any additional expenses required to satisfy Buyer's packaging specifications or requirements for land, sea, or air shipment. EMI shall furnish packing lists and such other information as may be necessary to enable Buyer's agent to prepare documents required for export shipment. Buyer shall supply EMI with all necessary information and assistance for the most expeditious clearance of such shipment through customs.

(e) All shipments hereunder are subject to compliance with the U.S. Export Administration Act, as amended, regulations thereunder and all other U.S. laws and regulations concerning exports. Buyer agrees to comply with all such laws and regulations concerning the use, disposition, re-export and sale of the Goods provided hereunder.