



## **Electro Industries/GaugeTech**

1800 Shames Drive • Westbury, New York 11590

### TERMS OF SALE

These terms, conditions and provisions of sale ("Terms of Sale"), dated March 30, 2018 are entered into by and between EI Electronics LLC d/b/a Electro Industries/Gauge Tech ("Electro"), a Delaware Limited Liability Company having its principal place of business at 1800 Shames Drive, Westbury, New York 11590, and you, the customer and buyer ("Customer"), under and by which the Customer purchases from Electro and Electro agreed to sell to the Customer certain Product, Software license and Service as specified and identified within Electro's Quotation. These Terms of Sale are incorporated in their entirety within Electro's Quotation by reference and take precedence over any terms, conditions and provisions that are contained within the Customer's Purchase Order, any other correspondence and any documentation submitted by the Customer to Electro, which are in addition to, different from, dissimilar to, or conflicting in any way (collectively, "Different and Conflicting Terms") with any of the terms, conditions and provisions stated in the Terms of Sale and Quotation. No Different and Conflicting Terms shall be binding upon Electro. The Terms of Sale shall apply and be binding upon Electro and the Customer regardless of any Different and Conflicting Terms, and the Different and Conflicting Terms are rejected by Electro in their entirety.

Electro's commencement of performance or delivery of any Product, Software license or Service shall not be deemed to be or construed to be acceptance of any of the Customer's Different and Conflicting Terms. Customer's Acceptance of Electro's offer for the sale of the Service, Software license and Product is expressly limited to the terms and provisions of Electro's offer, as contained within the Quotation and the Terms of Sale. The sale of Product, license for Software, and Service is conditioned upon Customer's assent to the Terms of Sale in its entirety. Notice of Electro's objection to and rejection of the Customer's Different and Conflicting Terms in their entirety is hereby given to the Customer.

#### **1.0 ADDITIONAL DEFINITIONS**

- 1.1 Affiliate means any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Electro or the Customer.
- 1.2 Acceptance means the Customer's acceptance of Electro's Quotation and offer for the sale of the Service, Software license and Product, as specified and itemized within the Quotation.
- 1.3 Quotation means collectively Electro's sale quote and Electro's offer for the sale of the Service, Software license and Product specified and identified within the Quotation, which is made and offered by Electro solely to the Customer.
- 1.4 [www.electroind.com](http://www.electroind.com) is Electro's suite of on-line information about Electro and certain Product information.
- 1.5 Product means, individually or collectively as appropriate, goods and personal property offered for sale by and sold by Electro.
- 1.6 Purchase Order means an order made and issued by the Customer to Electro for the purchase of Product, Software license and Service in response to the Quotation and as Customer's Acceptance of the terms and provisions stated within the Quotation.
- 1.7 End User means a person or entity that the Customer may direct Product and Service purchased by the Customer to be delivered to by Electro, and which Electro may deliver only as an accommodation to the Customer with the understanding that any benefit to the End User is merely incidental and not intended by Electro or the Customer, and that the End User is not an intended third party beneficiary under the Terms of Sale and Agreement.
- 1.8 Limited Warranty Statement means Electro's limited warranty statement for the Product, Software and Service stated within the Terms of Sale.
- 1.9 Software means, individually or collectively as appropriate, programs and other operating information used by a computer that may be licensed by Customer from Electro or may be embedded within the Product, if any.

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- 1.10 Service means, individually or collectively as appropriate, any work or acts procured by Electro, subcontracted by Electro with a third party to perform and provide, performed by or to be performed or given by Electro, which are offered for sale by Electro, including but not limited to any of the following: installation, maintenance, repairs, adjustments, assistance, programming, training, startup assistance, troubleshooting, programming, startup service, site programming, set up service, field service, Product integration, Software integration, Product configuration, Software configuration, Product technical support, Software technical support, training with respect to the use and function of the Product; training with respect to the use and function of the Software, Software set-up, Product set-up, Software installation, Product Installation, Product removal, Software removal, in person technical assistance at the Customer's place of business or location of the Product or Software, equipment or software systems set-up or integration work, or any other acts, work or other service that Electro may require a separate statement of work to be executed between the parties. Electro reserves the right to subcontract the Service to a third party entity to provide the Service.

### **2.0 SCOPE, EFFECTIVE DATE AND METHODS OF ACCEPTANCE TO FORM AN AGREEMENT**

These Terms of Sale together with the Quotation set forth all the terms and conditions for Electro's Sale and Customer's purchase of the Product, Service and Software license, as itemized within the Quotation. Customer's Acceptance of Electro's offer for the sale of the Service, Software license and Product is expressly limited to the terms and provisions of Electro's offer. The Terms of Sale are effective on the date of the Customer's Acceptance of Electro's offer for the sale of the Service, Software license and Product, as expressed by, designated and itemized within the Quotation. Upon Customer's Acceptance a legal contract (the "Agreement") for the sale and purchase of the Product, Service and Software license, as itemized and specified within the Quotation, is formed between Electro and the Customer. Customer's Acceptance may be made and expressed by any of the following methods communicated to and received by Electro, each an Electro approved and authorized method of Acceptance: Customer's written confirmation of acceptance; Customer's definite and reasonable expression of acceptance; the Quotation is signed by the Customer; the Quotation is electronically accepted by the Customer; the Customer uses an electronic signature to express its acceptance; the Quotation is signed by the Customer with a digital or electronic signature; the Customer makes and issues a Purchase Order to Electro in response to Electro's Quotation; or in the absence of any of the foregoing, the Customer otherwise expresses to Electro in a writing Customer's Acceptance of the Quotation. Additionally, the Terms of Sale shall have been and deemed accepted by the Customer upon Customer placing an order on Electro's website, [www.electroind.com](http://www.electroind.com) for the purchase of Product, Service and Software license offered for sale by Electro to the Customer on Electro's website.

### **3.0 PRICES**

The purchase prices for Product, Software license and Service shall be the price stated and specified in Electro's Quotation, which will also appear in Electro's invoice (the "Invoice") for the Product, Software license and Service, unless a different and higher price for the same Product, Software license or Service is stated within Electro's official and applicable "country of sale price list" ("Country Of Sale Price List"), or in the alternative, within an applicable prior written agreement ("Existing Agreement") executed by Electro's officer(s) and made between Electro and the Customer, which specifies the price for the same Product, Software license or Service. (Collectively, the Country Of Sale Price List and Existing Agreement, the "Price Statements"). If in comparison to the prices for the Product, Software license and Service stated within Electro's Invoice or Quotation, a different and higher price for the Product, Software license or Service is stated within Electro's Country Of Sale Price List or stated within an Existing Agreement, then the highest price stated and specified within any of the Price Statements shall be the purchase price for the particular Product, Software license and Service purchased by the Customer.

Electro's Quotation, unless Acceptance has been made, shall automatically expire ninety (90) calendar days from the date it was issued by Electro and may be cancelled or amended within that same period upon notice to Customer issued by Electro provided such cancellation or amendment is made prior to the Customer's Acceptance. Pricing for undelivered Product, Software license and Service may be increased in the event of any increase in Electro's cost, change in market conditions or any other causes which are beyond Electro's reasonable control, but in no case shall the price increase be more than ten percent (10%) of Electro's initial higher price stated in the applicable Price Statements or Quotation.

All Product prices are exclusive and do not include of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the Product's sale price, charge or upon these Terms of Sale or the Agreement.

All Service and Software license prices are exclusive and do not include of any taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the sale prices of the applicable Service and Software license, charges or upon these Terms of Sale or the Agreement.

The Customer shall pay all taxes, including without limitation value added, sales and withholding taxes, which are levied or based upon the prices of and related to Product, Software license and Service sold to the Customer subject to the Agreement and these Terms of Sale (except for taxes based on Electro's revenue income) or if the Customer claim it is tax exempt, then the Customer shall present to Electro an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the Invoice. Customer shall pay all freight, handling and shipping insurance charges, fees

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and duties or other similar amounts related to Product, Software license and Service sold to the Customer subject to the Agreement and these Terms of Sale.

### **4.0 ORDERS**

Subject to the Terms of Sale, the Customer may purchase Product, Software license and Service by issuing a Purchase Order in response to and as Acceptance of Electro's Quotation, or by other methods of communication indicating Customer's Acceptance, signed by the Customer if requested by Electro, or (in the case of electronic transmission) sent by Customer's authorized representative, indicating Acceptance of Electro's Quotation and the specific Product, Software license and Service the Customer is agreeing to purchase, and indicating Electro's Product numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference and identity of the End User, if any, for each Product, Software license and Service. Even if some of the aforementioned information above is missing or incomplete, Electro's acknowledgement of the Customer's Acceptance is not a waiver, modification or limitation of any provision of the Terms of Sale, Quotation or Agreement. All Different and Conflicting Terms are rejected by Electro in their entirety, and shall not be binding upon Electro or made a part of the Agreement between the parties, as Customer's acceptance is expressly limited to the terms and provisions stated within Electro's offer, as expressed by the Quotation. No other terms, provisions or conditions, and no other agreement or understanding in any way modifying the terms, provisions and conditions stated herein shall be binding upon the seller, Electro, or upon the purchaser, the Customer, unless mutually agreed to in a writing signed by Electro and the Customer. Acceptance of the offer of sale stated within the Quotation is expressly limited to the terms, provisions and conditions stated within Electro's sale offer. Purchase Orders may only be issued by a Customer in response to Electro's Quotation. Upon Electro's receipt of any Purchase Order, Electro's customer service will review all Purchase Orders for Electro and no other person or entity is authorized by Electro to accept delivery of or acknowledge the Purchase Orders on Electro's behalf.

The Customer may request to defer the date for the provision of the Service, Software license and the Product's shipment for up to thirty (30) days from the original shipping date scheduled by Electro, provided written or electronic notice (issued, in either case, by Customer's authorized representative) is received by Electro at least ten (10) days before the originally scheduled shipping date. Rescheduled shipments or Product configuration changes requested by Customer less than ten (10) days before the original scheduled shipping date shall be subject to and require (a) Electro's written consent, and (b) a charge of fifteen percent (15%) of the total price for the affected Product to be paid to Electro by the Customer. Notwithstanding the foregoing and in all cases, the provision of the Service, and the Product's shipment date may not be unilaterally rescheduled by the Customer without Electro's prior written approval. Electro reserves the right to reschedule shipment in cases of configuration changes requested by Customer within ten (10) days of scheduled shipment.

All Purchase Orders are non-cancelable. No cancellation of any Purchase Order shall be allowed, including but not limited to those instances where Product covered by the Purchase Order required Electro's Product implementation service(s), including but not limited to any of the following: custom or special tooling and or dies made or procured by Electro in preparation for the production of the Product, custom or special Product design, Product customization, custom or special Product installation service(s).

### **5.0 SHIPPING AND DELIVERY**

Scheduled shipping dates will be assigned by Electro as close as practicable to Customer's requested date based on Electro's then-current production or lead times for the Product. Electro will communicate scheduled shipping dates in Electro's Quotation or in Electro's order acknowledgement or other form of communication, if the Customer has requested a different shipping date. Unless given written instruction by Customer, Electro shall select the shipping carrier for the Product's delivery. All Product deliveries to the Customer and End Users, if any, will be made "EXW" Electro's Facility ("EXW" also known as "EX Works", named place of delivery)<sup>1</sup> or FAS Electro's place of origin ("FAS" also known as Free Alongside ship", named port of shipment)<sup>2</sup> (EXW and FAS, each a "Shipping Option"), as defined in Incoterms 2010.

Subject to Electro's right of stoppage in transit, delivery of the Product to the shipping carrier shall constitute delivery to the Customer, and title and risk of loss shall thereupon pass to the Customer. Selection of the shipping carrier and delivery route shall be made by Electro unless specified by Customer. Customer acknowledges that delivery dates provided by Electro are estimates only and Electro shall not be liable for delays in delivery or for failure to perform for any reason, including but not limited to those causes beyond Electro's control. The shipping carrier is not Electro's agent, nor shall the shipping carrier be deemed to be Electro's agent. Delivery of a quantity of Product, which varies from the quantity specified, shall not relieve Customer of the obligation to accept delivery and pay for the Product delivered. Delay in delivery of any Product installment, in any amount or number, shall not entitle the Customer to cancel any other Product installments.

The Customer's requested Shipping Option shall be indicated on the Purchase Order. The Customer shall pay the shipping and handling charges for the shipping and delivery of the Product, in addition to the purchase price for the Product, which will be

<sup>1</sup> EXW- EXWorks- the sellers only responsibility it to make the goods available at the seller's premises. The buyer bears full cost and risks of moving the goods from there to the destination.

<sup>2</sup> FAS- Free Alongside Ship - the seller delivers the goods to the origin port. From that point the buyer bears all costs and risks of loss or damage.

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included in Customer's remittance to Electro. In addition, the Customer shall be responsible for and pay all freight, handling and insurance charges subsequent to the Product's delivery.

Customer assumes all responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance for the Product. This assumption also applies in cases where Customer requests in its Purchase Order delivery of Product to Customer's forwarding agent or another representative in the country of shipment. Customer agrees not to use, for any purposes, any export licenses that may be owned by Electro or any of Electro's Affiliates. Customer accepts any additional delays caused by the export licensing process as well as delays to comply with conditions of the individual export license.

**ELECTRO SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. ELECTRO SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH SHIPMENT, NOR SHALL THE CARRIER BE DEEMED TO BE AN AGENT OF ELECTRO.**

### **6.0 PAYMENT**

Full payment is due promptly upon placing an order on Electro's website, [www.electroind.com](http://www.electroind.com). For all other sales and purchases, upon and subject to Electro's credit approval, payment terms for the purchase of the Product, Software license and Service are stated in the Invoice, and shall commence from the Product's shipping date, and shall commence for the Service from the date the customer signs a service agreement and issues Electro a PO, and shall commence for the Software license from the date the Software license is provided to the Customer. Full payment for the purchase of Product, Software license and Service is due promptly in accordance with the Invoice's stated payment terms. All payments for the purchase of the Product, Software license and Service shall be paid to Electro in the currency of the United States of America (USA). Each Product shipment, Software license and each provision of Service may be invoiced by Electro separately. Customer agrees to pay each Invoice pursuant to its payment terms stated within the Invoice, without any setoff, deduction or abatement for any reason whatsoever.

If at any time Customer is delinquent in the payment of any Invoice, or is otherwise in breach of these Terms of Sale, Electro may, in Electro's sole discretion and in addition to and without prejudice to Electro's other rights and remedies, may: withhold shipment (including partial shipments) of any Product; require Customer to prepay for Product shipments; terminate or cancel any Software license Electro sold to the Customer; withhold the provision of Service; withhold the, delivery of Product, Service and Software license until complete payment has been received by Electro in non-defeasible funds. Any sum not paid by Customer to Electro when due shall bear interest from the due date until paid at the lesser of (i) a rate of ten per cent per annum or (ii) the maximum rate permitted by applicable law, and the Customer shall pay and be liable for Electro's costs of collection, including but not limited to all reasonable attorneys' fees and court costs, in any action to collect past due amounts owing by the Customer to Electro. Customer's failure to pay any and all amounts due under any Invoice in full when due shall constitute a default and Electro may exercise all rights and remedies, hereunder and under applicable law.

Transportation and freight charges shall be paid by the Customer to Electro, in addition to the purchase price of the Product, unless otherwise agreed to in writing by Electro. Electro will select the carrier in the absence of specific instructions by the Customer.

If Electro believes in good faith that the Customer's ability to make payments may be impaired or if the Customer shall fail to pay any Invoice when due or any remaining balance thereof, Electro may terminate or cancel the Software license, suspend delivery of any Product and Service, until such payment is made in full in non-defeasible funds, or Electro may cancel any order or any delivery of any remaining balance thereof, and Customer shall remain liable to pay for any Product already shipped and Service already provided.

Any payment received from Customer may be applied by Electro against any obligation owing by the Customer to Electro, regardless of any statement appearing on or referring to such payment, without discharging Customer's liability for any additional amounts owing from Customer to Electro, and the acceptance by Electro of such payment shall not constitute a discharge or waiver of Electro's right to pursue the collection and payment of any remaining balance owing to Electro.

### **7.0 ACCEPTANCE / RETURNS**

Product will be deemed to have been accepted by the Customer upon the Product's delivery to the Customer or the End User, if any, unless the Product is rejected by the Customer upon its delivery. Within five (5) consecutive business days immediately following the date of the Product's delivery, which the Customer understands, represents and warrants to Electro is a reasonable time period for the Customer to perform its inspections and tests of the Product, the Customer shall promptly perform whatever inspections and tests of the Product the Customer deems necessary. If after five (5) business days immediately following the Product's delivery date the Product was either not accepted or was not rejected by the Customer, the Customer will be deemed to have been irrevocably accepted the Product and the Product's delivery for all purposes and thereafter waives any right of rejection or revocation of Customer's Product acceptance Customer may have had. Any discrepancy in shipment quantity must be reported within five (5) days of delivery date of the Product.

Service will be deemed to have been accepted by the Customer upon the provision of the Service.

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Licensed Software will be deemed to have been accepted by the Customer upon the licensed Software's delivery unless the licensed Software is rejected upon its receipt at which point the license for the Software will be deemed cancelled and Customer shall immediately return the licensed Software to Electro in its original packaging, with cost of its shipping paid by the Customer. Upon the licensed Software's delivery, Customer shall promptly use the licensed Software and perform whatever inspection or tests of the licensed Software that the Customer deems necessary but in no event later than five (5) business days immediately after the licensed Software's delivery, after which time Customer will be deemed to have irrevocably accepted the licensed Software for all purposes and waives any right of rejection or revocation of Customer's acceptance Customer may have had.

All sales and purchases are final. Electro does not accept Product returns unless Electro shipped goods other than the Product specified in the Quotation, and the Product is returned to Electro, and packed and shipped to Electro in its original packaging, and the cost of its shipping and insurance against loss is paid by the Customer. Product not eligible for return shall be returned to the Customer freight collect. Any returned Product returned pursuant to and in accordance with the foregoing provisions of this Section shall be returned for a credit equal to the returned Product's price to be used by the Customer for the purchase of different and other Product from Electro.

### **8.0 LIMITED WARRANTY**

This limited warranty extends to and covers only the Customer, as the purchaser of the Product, Software and Service; the Customer represents and warrants to Electro that the Customer is subject to and bound by the limited warranty and disclaimer of warranty contained within Section 8.0:

#### PRODUCT LIMITED WARRANTY

Electro warrants that commencing from the Product's date of delivery and continuing immediately following thereafter for a period of four (4) consecutive years, that the Product will be free from defects in material and workmanship, and except for the foregoing, the Product is sold AS IS with all faults. This warranty does not apply to defects resulting from unauthorized modification, misuse, or use of the Product for any use other than electrical power monitoring, which is the intended and normal use of the Product. The Customer's sole and exclusive remedy and the entire liability of Electro under this limited warranty will be, at Electro's option, as follows: (i) the Product's repair; or (ii) shipment of a replacement Product within the above stated warranty period. To exercise this limited warranty, the Customer must give notice (See Section 16.8) to Electro's customer-support department and give additional notice to Electro's customer-support department by facsimile or by telephone for Electro's instructions for the Product's return or repair. If the Product is repaired, Electro will ship the repaired Product to the Customer. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY ELECTRO IN CONNECTION WITH THE PRODUCT, AND ELECTRO DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.** The Customer must notify Electro promptly, but in no event more than four (4) year after the Product's date of delivery of any claimed breach of this warranty, or such claim shall be time barred.

#### PRODUCT LIMITED WARRANTY RESTRICTIONS

**THE LIMITED WARRANTY CONTAINED WITHIN SECTION 8.0 WILL NOT BE GIVEN OR APPLY, AND NO EXPRESS OR IMPLIED WARRANTY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS SHALL BE DEEMED APPLICABLE, GIVEN OR PROVIDED BY ELECTRO WITH RESPECT TO OR CONCERNING THE PRODUCT, IF:** (a) the Product has been altered, except by Electro or Electro's authorized representative; (b) the Product has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Electro; (c) the Product has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (d) the Product is used in ultrahazardous activities; or (e) the Customer failed to pay Electro the Product's purchase price pursuant to Section 3.0 and Section 6.0 of these Terms of Sale.

#### SERVICE LIMITED WARRANTY

Electro warrants that Service provided hereunder shall be performed in a workmanlike manner consistent with industry standards. The Customer must notify Electro promptly by written notice (see Section 16.8), but in no event more than one (1) year after completion of the Service of any claimed breach of this warranty, or such claim shall be time barred. The Customer's sole and exclusive remedy for breach of any of these foregoing service warranty shall be, at Electro's option, re-performance of the Service, or termination of the applicable Service and the return of the Service fees/amounts paid to Electro by Customer for such non-conforming Service. The provision of Service subject to Terms of Sale shall not extend the warranties provided with any Product purchased or Software licensed by Customer. **THE FOREGOING SERVICE WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY ELECTRO IN CONNECTION WITH THE SERVICE, AND ELECTRO DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY OTHER EXPRESSED OR IMPLIED WARRANTIES CONCERNING THE SERVICE.**

#### SERVICE LIMITED WARRANTY RESTRICTIONS

**THE LIMITED WARRANTY CONTAINED WITHIN SECTION 8.0 WILL NOT BE GIVEN OR APPLY, AND NO WARRANTY SHALL BE DEEMED APPLICABLE, GIVEN OR PROVIDED BY ELECTRO WITH RESPECT TO OR CONCERNING THE SERVICE, IF THE CUSTOMER FAILED TO PAY ELECTRO THE SERVICE'S PURCHASE PRICE PURSUANT TO SECTION 3.0 AND SECTION 6.0 OF THESE TERMS OF SALE.**

#### SOFTWARE LIMITED WARRANTY

Electro warrants that for a period of one (1) year immediately after and from the date of Software's delivery from Electro: (i) the media, if any, on which the Software is furnished will be free of defects in materials and workmanship under normal use; and

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(ii) the Software substantially conforms to its published specifications, if any. Except for the foregoing Software limited warranty, the Software is provided AS IS with all faults. This limited warranty extends only to Customer, as the original Software licensee. The Customer must notify Electro promptly by written notice (see Section 16.8), but in no event more than one (1) year after Software's delivery date of any claimed breach of this warranty or the warranty claim shall be time barred. Customer's sole and exclusive remedy and the entire liability of Electro and its suppliers under this limited warranty will be, at Electro's option, repair, replacement, or refund to the Customer the amounts paid to Electro by Customer for such non-conforming Software if reported and requested in writing (or, upon request, returned) to Electro. In no event does Electro warrant that the Software is error free or that any party will be able to operate the Software without problems or interruptions.

### SOFTWARE LIMITED WARRANTY RESTRICTIONS

THE SOFTWARE LIMITED WARRANTY CONTAINED WITHIN SECTION 8.0 WILL NOT BE GIVEN OR APPLY, AND NO WARRANTY SHALL BE DEEMED APPLICABLE, GIVEN OR PROVIDED BY ELECTRO WITH RESPECT TO OR CONCERNING THE SOFTWARE, IF: (a) the Software has been altered, except by Electro or Electro's authorized representative; (b) the Software has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Electro; (c) the Software has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (d) is used in ultrahazardous activities; or (e) the Customer fails to pay Electro the Software's purchase price pursuant to Section 3.0 and Section 6.0 of these Terms of Sale.

### DISCLAIMER OF WARRANTY AND LIMITATIONS OF LIABILITY

EXCEPT AS EXPRESSLY GIVEN IN THIS WARRANTY SECTION, SECTION 8.0, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED IN THEIR ENTIRETY TO THE FULL EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY ELECTRO, AND ARE WAIVED BY THE CUSTOMER. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD STATED IN THIS SECTION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS LIMITED WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, ELECTRO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND ELECTRO SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO AND WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS, EVEN IF ELECTRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ELECTRO'S LIABILITY TO THE CUSTOMER, AND CUSTOMER'S RECOVERY FROM ELECTRO FOR ANY CLAIM, INCLUDING BUT NOT LIMITED TO A WARRANTY CLAIM, SHALL NOT EXCEED CUSTOMER'S PURCHASE PRICE FOR THE PRODUCT, SERVICE AND SOFTWARE LICENSE PAID BY THE CUSTOMER FOR THE PRODUCT, SERVICE AND SOFTWARE WHICH GAVE RISE TO SUCH CLAIM IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE. ELECTRO SHALL NOT BE LIABLE FOR, AND THE CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD ELECTRO HARMLESS FROM THE FOLLOWING: ANY CLAIMS BASED ON ELECTRO'S COMPLIANCE WITH END USER'S OR CUSTOMER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS; MODIFICATION OF ANY PRODUCT BY A PARTY OTHER THAN ELECTRO; MODIFICATION OF ANY SOFTWARE MADE BY A PARTY OTHER THAN ELECTRO; THE USE OF THE PRODUCT OR SOFTWARE FOR ANY USE OTHER THAN ELECTRICAL POWER MONITORING; AUTHORIZED OR UNAUTHORIZED USE OF THE PRODUCT OR SOFTWARE; MISUSE OF THE PRODUCT OR SOFTWARE; THE SOFTWARE'S OR PRODUCT'S USE IN COMBINATION WITH OTHER EQUIPMENT, GOODS, SOFTWARE OR PRODUCT. IF, FOR ANY REASON, THE FOREGOING LIMITATIONS ARE FOUND BY AN ARBITRATION PANEL OR COURT OF COMPETENT JURISDICTION TO BE INVALID OR INAPPLICABLE UNDER ANY APPLICABLE LAW, CUSTOMER AGREES THAT ELECTRO'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION OF ANY KIND OR NATURE SHALL BE LIMITED TO CUSTOMER'S PURCHASE PRICE FOR THE PRODUCT, SERVICE AND SOFTWARE LICENSED BY THE CUSTOMER FROM ELECTRO, WHICH GAVE RISE TO SUCH CLAIM, WITHOUT REGARD TO ANY ACTUAL DAMAGES; INDIRECT, SPECIAL, DIRECT OR CONSEQUENTIAL DAMAGES; PUNITIVE OR EXEMPLARY DAMAGES PROVIDED FOR BY ANY SUCH APPLICABLE LAW.

### **9.0 CONFIDENTIAL INFORMATION**

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“Confidential Information” is any information that may be disclosed by Electro to the Customer, (a “Receiving Party”) regarding Electro’s Product, Software and Service, technical, financial, marketing data, and information relating to future product and service development. Confidential Information may be given by Electro to a Customer only as Electro’s accommodation within Electro’s sole discretion. As a condition precedent for receiving any Confidential Information, the Customer represents and warrants to Electro that the Customer is and will be at all times in full compliance with the terms contained within this Section 9.0.

The Receiving Party may use the Confidential Information solely for the purpose of furtherance of the business relationship between the parties, as provided in these Terms of Sale and shall not disclose the Confidential Information to any third party, other than to employees of the Receiving Party who have a need to have access to and knowledge of the Confidential Information, solely for the purpose authorized above. The Receiving Party shall take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. Information (other than that on Electro’s website) disclosed by Electro (the “Disclosing Party”) in written or other tangible form will be considered Confidential Information only if such information is conspicuously designated as “Confidential”, “Proprietary” or bears a similar legend. Information disclosed orally shall be considered Confidential Information only if: (i) identified as confidential, proprietary or the like at the time of disclosure, or (ii) confirmed as confidential, proprietary or the like in writing within thirty (30) days of disclosure. Confidential Information disclosed to the Receiving Party by any Affiliate or agent of the Disclosing Party is subject to these Terms of Sale.

The Receiving Party shall have no obligation with respect to information that (i) was rightfully in possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of these Terms of Sale; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; or (v) is disclosed by the Receiving Party pursuant to and in accordance with a valid order issued by a court or government agency, provided that the Receiving Party provides (a) prior written notice to the Disclosing Party of such order and (b) the Disclosing Party prior opportunity to oppose or restrict such disclosure. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

Electro shall retain all right, title and interest to its Confidential Information. No license to any intellectual property (or application for intellectual property protection) is either granted or implied by the conveying of Confidential Information. The Customer shall not reverse-engineer, decompile, or disassemble any Product or any Software, and the Receiving Party shall not remove, overprint or deface any notice of copyright or confidentiality, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party or from any copies the Disclosing Party is authorized to make.

The Receiving Party shall not disclose, advertise, or publish either the existence, the subject matter, any discussions relating to, or any of the terms and conditions, of these Terms of Sale (or any summary of any of the forgoing), the Product, the Software and Service, to any third party without Electro’s prior written consent. Any press release, publication, advertisement or public disclosure regarding the Product, the Software, and Service, and these Terms of Sale may not be made without Electro’s prior review and prior written approval.

### **10.0 PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION**

Claims. If the Customer is aware of any alleged claim that the Product sold to the Customer or Software infringes a third party’s patent or copyright (“Infringement Claim”):

- (i) The Customer shall promptly notify Electro in writing of the Infringement Claim, and all known particulars regarding the Infringement Claim, including but not limited to the identity of the Infringement Claim claimant; and
- (ii) Electro may decide to defend against the Infringement Claim or any part of the Infringement Claim, and Electro’s election to defend or not defend such Infringement Claim or any part of the Infringement Claim, shall be within Electro’s sole discretion. However, If Electro elects to defend against the Infringement Claim or any part of the Infringement Claim, then the Customer shall cooperate fully with Electro with respect to and in such defense, and grants Electro full and exclusive control of such defense and settlement of the Infringement Claim or any part of the Infringement Claim made, and any subsequent appeal.

Additional Remedies. If an Infringement Claim is made or appears likely, Customer agrees to permit Electro to procure for Customer the right to continue using the Product, Software, or to replace or modify the subject Software and the Product with one that is at least functionally equivalent. If Electro determines that none of those alternatives is reasonably available, then at Electro’s election Customer will discontinue using the applicable Software and Product and shall accept Electro’s refund for the cost paid by the Customer for the purchase of the Software’s License, if any, and the Customer will return the subject Product to Electro and Electro will refund and the Customer will accept the Customer’s remaining net book value of the returned Product calculated according to generally accepted accounting principles.

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Exclusions. Electro has no obligation for any Infringement Claim based on:

- (i) Compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- (ii) Modification of a Product or Software by Customer or a third party;
- (iii) The amount or duration of use which Customer makes of the Product, revenue earned by Customer from services it provides that use the Product, or services offered by Customer to external or internal customers; or
- (iv) Combination, operation or use of a Product or Software with non-Electro product(s), software or business processes.

Sole and Exclusive Remedy, and Indemnity. This Section 10.0 (Patent and Copyright Infringement Indemnification) states Electro's entire obligation for and the Customer's exclusive remedy regarding each Infringement Claim and claims for intellectual property infringement.

For all intellectual property claims that are not related to, do not arise out of or are not based upon any claimed Product manufacturing, claimed Product design, any claimed violation of third party's patent by the Product, the Software's writing, or any claimed violation of a third party's copyright by the Software, than the Customer shall indemnify, defend and hold Electro harmless from all such intellectual property claims.

### **11.0 EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS**

With respect to the Product, Software and Service, Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of products, software, technology and services and will obtain all required U.S. and local authorizations, permits and licenses. The Customer represents and warrants to Electro that any transfer or delivery to Customer complies with such laws and regulations governing use, export, re-export, and transfer of products, software, technology and services and that all required U.S. and local authorizations, permits and licenses have been obtained by the Customer, and the Customer shall also comply with the foregoing and all applicable laws and regulations. Customer represents, warrants and certifies to Electro that the Customer and the End User, if any, are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists, on the U.S. Department of Treasury's Specially Designated Nationals List or on any U.S. Government export exclusion lists. Customer represents, warrants and certifies to Electro that the Customer as the recipient of the Product, Software and Service and complies with all applicable laws and regulations, or in the alternative, in the event the Customer is not the recipient of Product, Software or Service then the Customer represents, warrants and certifies to Electro that the End User will be the recipient of Product, Software or Service, and the End User complies with all applicable laws and regulations. Customer acknowledges that the Product and Software are subject to the export and import control laws and regulations of various countries including the Export Administration Laws and Regulations of the United States, and local export control laws and regulations. With respect to the Product, Software and Service, Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of products, technology and services and will obtain all required U.S. and local authorizations, permits or licenses. Customer agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required and acknowledges that Customer and the End User, if any, shall not directly or indirectly export any Product or Software to any country, entity or person to which such export or transmission is restricted or prohibited by any applicable law or regulation. The Product sold by Electro cannot be transferred, sold or re-exported to any party on the Entity List or Restricted Person List of the U.S. Department of Commerce, Bureau of Industry and Security (BIS), any party designated by the U.S. Treasury Department's Office of Foreign Assets Control, and any party debarred or sanctioned for proliferation or terrorism reasons by the U.S. State Department. Customer acknowledges the foregoing and will advise the End User, if any, of the foregoing.

### **12. TECHNICAL ASSISTANCE OR ADVICE**

Electro may provide technical assistance or advice over the telephone ("Telephone Technical Assistance") to the Customer and the End User during Electro's normal business hours with regard to the use of any Product and Software as an accommodation to the Customer, and not as a right to the End User or the Customer.

Telephone Technical Assistance may be given free of charge as an accommodation to the Customer and the End User, and not as any right to any party under the Agreement, and is given or made AS IS and with all faults, without any representation and warranty, including but not limited to any express or implied warranty or representation of any kind or nature. Electro shall have no obligation to provide any technical assistance or advice to Customer and the End User and if any such assistance or advice is provided, such fact will not obligate Electro to provide any further or additional assistance or advice. Electro shall not be held liable by Customer or the End User for the Telephone Technical Assistance's content or for the use of such Telephone Technical Assistance or advice nor shall any statements made by any of Electro's representatives or agents in connection with the Product, Software and Service constitute any representation or warranty, express or implied. Customer and the End User waives any and all any claim(s) based upon or related to any Telephone Technical Assistance. Electro may charge and the Customer shall pay for any technical assistance that is provided by Electro at the Customer's place of business or at the location of the Product and Software purchased by the Customer.

### **13. NO THIRD PARTY BENEFICIARY**

The Customer represents and warrants to Electro that the Customer is not acting as an agent for any principal, including any disclosed

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or any non-disclosed principal, for the purchase of any Product, Software License or Service, and there are no third party beneficiaries to, for or under the Agreement and Terms of Sale for the purchase of any Product, Software license or Service, and any benefit received by any person or entity other than Electro and the Customer, including any End User, if any, is merely incidental and not intended by the Customer and Electro. The terms and provisions of the Agreement are intended solely for the benefit of the Customer and Electro, their respective successors and permitted assigns, and it is not the intention of the parties, Electro and the Customer, to confer upon any other person or entity, including any End User, any rights or third-party beneficiary rights, of any nature whatsoever, or against any of the parties hereto, or to confer any benefit or interest arising out of the Agreement, or to confer any right, power, or privilege in respect of any such other person or entity.

#### 14. COMPLIANCE WITH LAWS AND PUBLISHED POLICIES

Electro expects and requires that all parties with whom Electro does business with to act at all times in a professional and ethical manner in carrying out their contractual obligations to Electro. To that end, Customer shall:

- (i) Comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures, including, but not limited to, anti- corruption laws, such as the U.S. Foreign Corrupt Practices Act (collectively, "Applicable Laws");
- (ii) Take no actions which may render Electro liable for a violation of Applicable Laws ;
- (iii) Not permit the taking of any actions by a supplier or third party which may render Electro liable for a violation of Applicable Laws;
- (iv) Read and agrees to act consistently with Electro's Ethics Policy, which is located on Electro's web site, [www.electroind.com/pdf/E300723\\_Ethics\\_Policy.PDF](http://www.electroind.com/pdf/E300723_Ethics_Policy.PDF) . If a hard paper copy of Electro's Ethics Policy is needed by any party, Electro will provide a copy upon written request;
- (v) Use its best efforts to regularly inform Electro of any requirements under any Applicable Laws that directly or indirectly affect these Terms of Sale; the sale, use and distribution of Product, Software and Service; or Electro's trade name, trademarks or other commercial, industrial or intellectual property interests, including, but not limited to, certification or type approval of the Product from the proper authorities in the Territory; and
- (vi) Comply with all applicable Electro published policies, as amended from time to time. Customers shall promptly notify Electro of any failure to comply with any of the foregoing policies that comes to Customer's attention.

#### 15. LIMITATION AND EXCLUSION OF LIABILITY

15.1 NOTHING IN THESE TERMS OF SALE EXCLUDES THE LIABILITY OF:

(A) EITHER PARTY TO THE OTHER FOR:

- (I) BODILY INJURY OR DEATH RESULTING DIRECTLY FROM THE NEGLIGENCE OF THE OTHER PARTY;
- (II) A BREACH OF SECTION 9.0 (CONFIDENTIAL INFORMATION); OR
- (III) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

(B) CUSTOMER TO ELECTRO ARISING OUT OF:

- (I) ANY AMOUNTS DUE OR OWING TO ELECTRO UNDER THE AGREEMENT AND THESE TERMS OF SALE.

15.2 SUBJECT TO SECTION 15.1 ABOVE AND SECTION 16.3 BELOW, EACH PARTY'S TOTAL AGGREGATE LIABILITY IS FOR ANY CLAIM, EXCEPT FOR THOSE CLAIMS BASED UPON A BREACH OF SECTION 9.0 (CONFIDENTIAL INFORMATION), IS LIMITED AND SHALL NOT EXCEED CUSTOMER'S PURCHASE PRICE FOR THE PRODUCT, SOFTWARE LICENSE AND SERVICE THAT GAVE RISE TO OR IS RELATED TO SUCH CLAIM.

15.3 SUBJECT TO SECTION 15.1 ABOVE, AND NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS OF SALE TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE FOR ANY:

- (i) SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES;

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(ii) LOSS OF ANY OF THE FOLLOWING: PROFITS, REVENUE,

BUSINESS, ANTICIPATED SAVINGS, USE OF ANY PRODUCT OR SERVICE, OPPORTUNITY, GOODWILL OR REPUTATION;

- 15.4 REFERENCES IN SECTION 15 TO (A) A “PARTY” INCLUDES ELECTRO, THE CUSTOMER, AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, SUCCESSORS IN INTEREST AND PERMITTED ASSIGNEES (B) “LIABILITY” INCLUDES LIABILITY ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY INDEMNITY, STRICT LIABILITY OR OTHERWISE, IN EACH CASE EVEN IF A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF THAT LIABILITY. IN SECTION 15.3, REFERENCES TO “LOSS” REFERS TO ANY AND ALL KINDS OF LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION, ANY DAMAGES, FINES, COSTS, CHARGES, FEES OR OTHER LIABILITY.

### **16. GENERAL**

16.1 Choice of Law and Jurisdiction. The validity, interpretation, performance of these Terms of Sale, Quotation and Acceptance thereof, and any resulting Agreement, the sale and purchase of Product, Service and Software license shall be controlled by and construed under the laws of the State of New York, United States of America, as if performed wholly within New York State and without giving effect to New York State’s principles of conflicts of law. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods, which shall not apply in all respects to the validity, interpretation, and performance of these Terms of Sale. ELECTRO AND THE CUSTOMER HEREBY AGREES TO THE JURISDICTION AND VENUE OF ANY STATE AND FEDERAL COURT SITTING IN NEW YORK STATE, UNITED STATES OF AMERICA FOR ALL CLAIMS, CAUSES OF ACTION, COUNTERCLAIMS, AND CROSS-CLAIMS ARISING OUT OF OR RELATED TO THE SALE AND PURCHASE OF THE PRODUCT, SOFTWARE LICENSE AND SERVICE; EXCEPT THAT ANY ACTION OR PROCEEDING (HOWEVER STYLED) TO OBTAIN POSSESSION OF ANY SOFTWARE AND PRODUCT MAY BE BROUGHT IN ANY COURT SITTING IN THE JURISDICTION WHERE THE SUBJECT OF SUCH ACTION OR PROCEEDING MAY BE SITUATED; THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY OF ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, CROSS-CLAIM, DEFENSE, OR OFFSET. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party’s intellectual property or proprietary rights, including but not limited to its rights and interest to Confidential Information hereunder.

16.2 Force Majeure. Except for the obligation to pay monies due and owing for the purchase of Product, Service and Software license, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party’s reasonable control, including, without limitation, acts of God, earthquakes, labor disputes, industry-wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for the full time period of that such event prevented and delayed such party’s performance.

16.3 No Waiver. No course of dealing or failure of either party to strictly enforce any term, provision, right or condition of these Terms of Sale shall be construed as a waiver of that term, provision, right or condition. The waiver by either party of any right provided under these Terms of Sale shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms of Sale.

16.4 Assignment. Neither these Terms of Sale nor any rights or obligations under these Terms of Sale and Agreement shall be assigned by the Customer without Electro’s prior written consent, which will may be withheld by Electro within Electro’s sole discretion. Any attempted assignment without Electro’s prior written consent shall be null, void and of no effect. Electro may assign these Terms of Sale and Agreement, and any rights or obligations under the Terms of Sale and Agreement without the Customer’s approval to any Affiliate. Notwithstanding any assignment by Customer, Customer shall remain liable to Electro for the payment of all amounts due under these Terms of Sale and the Agreement. The provisions of the Terms of Sale shall be binding upon and inure to the benefit of Electro and the Customer, and their respective agents, employees, successors and permitted assigns, including any trustee or other court appointed fiduciary.

16.5 Severability. In the event that part of or one or more terms of these Terms of Sale become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from these Terms of Sale and Agreement, and all remaining terms of these Terms of Sale and the Agreement shall remain in full force and effect.

16.6 No Agency. These Terms of Sale do not create any agency, partnership, joint venture or franchise relationship. Neither Party shall have any power to bind the other party to any obligation nor shall the Agreement and Terms of Sale create any relationship of agency, partnership or joint venture between the Customer and Electro. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of these Terms of Sale. Each party hereto is an independent contractor and that nothing in the Terms of Sale shall be construed as authorization for either party to act as agent for the other. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

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16.7 Entire Agreement. These Terms of Sale together with the Agreement constitute the entire agreement between the parties concerning the subject matter of these Terms of Sale and Agreement, and replace any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. These Terms of Sale and Agreement may be modified only by a written document executed by the Customer and Electro.

16.8 Notices. All notices required or permitted under these Terms of Sale will be in writing and will be deemed given one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the first page of these Terms of Sale, (and notices to Electro shall be further addressed to Attn: Customer Service; Contract Notice) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from Customer, to the address to which the last Invoice under these Terms of Sale was sent before notice is served.

16.9 Survival. The Limited Warranty Statement and the following sections shall survive the expiration or termination of these Terms of Sale: Sections [2.0](#) (Scope), [6.0](#) (Payment); [7.0](#) (Acceptance>Returns); [8.0](#) (Limited Warranty); [9.0](#) (Confidential Information); [10.0](#) (Patent and Copyright Infringement Indemnification); [11.0](#) (Export, Re-Export, Transfer and Use Controls); [12.0](#) (Technical Assistance or Advice); [13.0](#) (No Third Party Beneficiaries); [14.0](#) (Compliance with Laws and Published Policies); [15.0](#) (Limitation and Exclusion of Liability); [16.0](#) (General); and [17.0](#) (Services).

16.10 Headings. Headings of sections have been added solely for convenience of reference and shall not be deemed part of these Terms of Sale.

### **17.0 SERVICES**

Electro reserves the right to subcontract Service(s) to a third party entity to provide the Service(s) to the Customer and the End User.

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