



## **Electro Industries/GaugeTech**

1800 Shames Drive • Westbury, New York 11590

### **STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS**

#### **1. TERMS OF AGREEMENT**

The purchase order, together with these terms and conditions and any attachments, exhibits, specifications, drawings, notes, instructions, Statement of Work and other information, either physically attached or incorporated herein by reference (Collectively, the "Purchase Order"), constitutes the entire and exclusive agreement between EI Electronics LLC d/b/a Electro Industries/Gauge Tech's ("Electro"), the buyer, and the supplier (the "Supplier") identified in the Purchase Order. Electro's submission of the Purchase Order is condition on Supplier's agreement that any terms different from or in addition (collectively and individually, the "Different or Additional Terms") to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, quote, invoice, acknowledgment, release, acceptance or other written correspondence irrespective of the timing, shall not form a part of the agreement between Supplier and Electro, or Purchase Order, even if Supplier purports to condition Supplier's acceptance of the Purchase Order on Electro's agreement to such different or additional terms. Electro objects to and rejects any Different or Additional Terms that are in addition to or different from the terms and provisions contained within the Purchase Order. The Different or Additional Terms shall not be binding upon Electro or made a part of the Purchase Order or any agreement between Electro and the Supplier, unless the Additional or Different Terms are specifically accepted by Electro in writing signed by Electro's authorized representative. Supplier's acceptance of Electro's purchase offer is expressly limited to the Electro's purchase offer, as expressed by and with the Purchase Order.

By accepting Electro's purchase offer, as expressed by the Purchase Order, Supplier, the Seller, unqualifiedly and unconditionally agrees to the terms, provisions and conditions of this Purchase Order, and the resulting agreement ("Agreement") represents the complete and exclusive statement of the terms, conditions, provisions and agreement between Electro and the Supplier for the sale and purchase of the Work, as defined within Paragraph 2 hereafter, and shall supersede all previous oral or written requests, quotations, agreements or communications concerning the Work's sale or purchase. The Purchase Order and the Agreement may not be varied, supplemented or amended by any conduct, prior representation, course of dealing or usage of trade. Except for Change Order as provided herein, no revision, modification or amendment to the Agreement shall be valid or binding unless in writing (electronic or print form) and signed electronically or in writing by an authorized representative of the Electro. Notwithstanding the foregoing, if a prior and effective master agreement ("Master\_Purchase

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Agreement”) covering the procurement of the Goods described in the Purchase Order exists between and signed by the Supplier and the buyer, Electro, then the terms of the Master Purchase Agreement shall prevail over any inconsistent or conflicting terms and provisions stated within the Purchase Order.

### **2. DEFINITIONS**

- 2.1 “Deliverables” means the deliverables specified in the Purchase Order, and any Statement of Work, to be delivered on or before the Delivery Date.
- 2.2 “Delivery Date” means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Work.
- 2.3 “Harmful Code” means any software intentionally designed to (i) disrupt, disable, harm, or impede operation, (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.
- 2.4 “Intellectual Property Rights” means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secrets rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereof; (v) all other intellectual and industrial property rights of every kind and nature throughout the world and however designated, whether arising by operation of law, contract, license, or otherwise ; and (vi) all registrations, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force, including any rights in any of the foregoing.
- 2.5 “Preexisting Materials” means any Intellectual Property Rights or tangible personal property of the Supplier or Electro created before the date of this Purchase Order or outside the scope of this Purchase Order.
- 2.6 “Products” means tangible goods specified in the Purchase Order to be delivered on or before the Delivery Date.
- 2.7 “Price” means the price for sale and purchase for the Work specified in the Purchase Order.
- 2.8 “Services” means the services that Supplier is to perform for buyer, Electro, specified in the Purchase Order.
- 2.9 “Statement of Work” or “SOW” means the document specifying, without limitation, the scope, objective, and time frame of the work that Supplier will perform for the buyer, Electro.
- 2.10 “Subcontractor” means a third party performing Work under an agreement (a “Subcontract”) with Supplier.

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- 2.11** “Supplier Personnel” means Supplier’s employees, consultants, agents, independent contractors and Subcontractors.
- 2.12** “Third Party Intellectual Property” means the Intellectual Property Rights of a third party which Supplier uses or incorporates into the Work.
- 2.13** “Work” means the Deliverables, Products and Services specified in the Purchase Order, including any Statement of Work.

### **3. DELIVERY AND PERFORMANCE:**

- 3.1** Time is of the essence in Supplier’s performance of Supplier’s obligations. Supplier will immediately notify Electro if Supplier’s timely performance under the Purchase Order is delayed or is likely to be delayed.
- 3.2** If Supplier delivers Work After the Delivery Date, Electro may reject such Work. Without prejudice, limitation and in addition to Electro’s rights, claims and remedies under the Purchase Order or applicable law for or related to Supplier’s failure to perform as required under the Purchase Order in any manner, if Supplier fails to deliver the Deliverable or Goods on or before the Delivery Date, then Electro may procure alternative and replacements for the undelivered Deliverables or Goods from a different third party supplier and the Supplier shall bare, pay and reimburse Electro for all costs, damages and expenses Electro may incur in procuring such alternative and replacement goods or deliverables, including but not limited to redesign costs and expenses.
- 3.3** Electro will hold any Work rejected under the Purchase Order at Supplier’s risk and expense, including storage charges, while awaiting Supplier’s return shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges Electro may incur on Supplier’s behalf. Electro may, in Electro’s sole discretion, destroy or sell at public or private sale any rejected Work for which Electro does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward storage charges.
- 3.4** Supplier will preserve, pack, package and handle the Deliverables and Products so as to protect the Deliverables and Products from loss or damage and in accordance with best commercial practices in the absence of any specifications Electro may provide.
- 3.5** Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, Electro’s part number for each Product (if applicable), a description and the quantity of each of the Products, and the date of shipment.
- 3.6** Unless Electro expressly instructs otherwise, Supplier will deliver all Work to Electro at Electro’s plant at the address set forth in the Purchase Order. Supplier assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss for Deliverables and Products

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does not pass to Electro until acceptance in accordance with Section 6 of this Purchase Order.

### **4. PRICE, PAYMENT AND INVOICE:**

- 4.1** Unless otherwise specified in the Purchase Order, the Price is firm and not subject to escalation without Electro's prior written consent. The Price includes all insurance costs, taxes, and other charges, including but not limited to cost of boxing, packaging and crating, and all shipping and delivery charges, duties, customs, fuel surcharges, cartage, tariffs, imposts, government-imposed surcharges, and all import taxes and duties, including, but not limited to, regular, special, countervailing and antidumping duties imposed at any time on the Product purchased, whether denominated duties, tariffs, surcharges, imposts or tolls. Supplier shall indemnify and hold harmless Electro from and against any liability arising out of the imposition of any import taxes, duties and tariffs. Supplier will at Electro's request, break-out from the Price all taxes and other charges, in Supplier's Invoices. Supplier will use its best efforts to assist Electro in all legal efforts to minimize the taxes resulting from the performance of this Purchase Order. Supplier shall indemnify and hold harmless Electro from and against any liability arising out of the imposition of import taxes and duties. In the event that a notice of the initiation of an antidumping or countervailing duty investigation or proceeding is published in the Federal Register relating to the kind of Deliverables or Products, and their country of origin, Electro shall have the right at any time thereafter to cancel the purchase by written notice, without incurring any liability whatsoever. The exercise or non-exercise of this right of cancellation shall not affect any right hereunder to be indemnified and held harmless. The Price includes use rights to Supplier's documents and any software embedded in the Goods, including third party intellectual property, if any. The Price also includes use rights for any software identified in the Purchase Order, unless otherwise expressly provided on the face of the Purchase Order. If there are any issues regarding any additional costs for or related to the Work, Electro must be notified in writing of such additional costs prior to shipment of the Products, Deliverables and the delivery of the Services, and if acceptable to the Electro will then issue a change order to the Supplier prior to the Delivery Date.
- 4.2** Electro will pay the Supplier the Price in accordance with the payment terms set forth in the Purchase Order following the later of: (i) the Delivery Date; (ii) the date of Electro's acceptance of all of the Work; or (iii) Electro's receipt of Supplier's Properly Prepared Invoice, delivered to Electro's accounts payable department. To be a Properly Prepared Invoice, Supplier's invoice must include the Purchase Order's number and, if required in the Purchase order, Supplier's certification of conformance of the Work to the requirements stated within Purchase Order and shall be in such detail and with

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such supporting documentation as required by the Agreement or as may reasonably be required by Electro for tax and regulatory purposes. If the Purchase Order provides for Service to be rendered on an hourly rate basis, then Supplier's invoice to be properly prepared must include the number of hours worked and the hourly rate for each person performing Services as well as the total amount invoiced and shall be accompanied by signed time sheets and any other data or supporting documentation reasonably required by Electro. Electro's payment of the Price will be made in currency of the United States of America, when due. Electro may, at any time, set-off any amounts Supplier owes Electro against any amounts Electro owes to Supplier. If Electro's shipping instructions are not followed, Electro may deduct any excess shipping costs incurred by Electro from the Price due to the Supplier. Supplier's acceptance of payment of the Price, except for any express written reservation of rights, shall be and shall operate as Supplier's release of Electro from all claims of and all liability for all things done or furnished in connection with the Agreement and for Electro's every act and neglect and others for whom Electro may be responsible for, relating to or arising out of the Agreement. However, no payment Price, final or otherwise, shall operate to release Supplier from any obligations due under the Agreement, and claims or interest Electro may have concerning the same. No invoice submitted to Electro shall relate to more than one Purchase Order.

### **5. OWNERSHIP AND LICENSE**

- 5.1** Ownership and title to, and risk of loss for any Work acquired hereunder shall vest in and be acquired by Electro upon delivery of the Work to Electro at the location specified in the Purchase Order and upon Electro's inspection and acceptance of the Work (i.e. when the Work has met Electro's acceptance criteria) as being ready for use.
- 5.2** Upon Electro's inspection and acceptance of the Work (i.e. when the Work has met Electro's acceptance criteria) as being ready for use, Supplier hereby grants Electro a perpetual, irrevocable, worldwide, transferable, royalty free, nonexclusive license, with the right to sublicense and authorize the granting of sublicenses, to use and reproduce the Supplier's Preexisting Material in the Deliverables and Products, if any, to the extent necessary for Electro's exercise and exploitation of its rights in the Deliverables and Products.
- 5.3** Supplier will obtain and assign to Electro a non-exclusive, royalty free, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all third-party Intellectual Property Rights incorporated into, required to use, or delivered with the

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Work. Supplier will deliver copies of the above licenses to Electro upon Electro's request.

### **6. INSPECTION AND ACCEPTANCE**

Electro may reject any or all Work which does not conform to Electro's applicable requirements. At Electro's option, Electro may (i) return the non-conforming Work to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Work; or (iii) repair the non-conforming Work so that it meets Electro's applicable requirements. At Electro's option and as an alternative to (i) through (iii), Electro may accept the non-conforming Work conditioned on Supplier providing a refund or credit in an amount Electro reasonably determines to represent the diminished value of the non-conforming Work. Electro's payment for the Work prior to Electro's rejection of such Work as non-conforming will not be deemed as Electro's acceptance.

#### **CHANGES:**

- 6.1** As used in this section, "Change" means a change Electro directs or causes within the general scope of the Purchase Order, the applicable Statement of Work or both. Electro at any time has the right to and may make Change(s), in accordance to this Section 6, including but not limited to and without limitation to the quantities, specifications, method of shipment, packing, place of delivery, and delivery schedule, by written order ("Change Order") issued by the Electro and delivered to the Supplier.
- 6.2** If Supplier asserts that Electro has directed or caused a Change or caused a Change to the cost of or time for performance for which Electro has not issued a Change Order, Supplier will promptly notify Electro in writing of the Change, providing Electro with (i) a description of the action or inaction asserted to have caused the Change; (ii) an estimate of the equitable adjustment that would be required for Supplier to perform the Change ; and (iii) a date no less than 30 days from the date of notice by which Electro must respond to the Supplier's notice so that the Supplier may proceed with the Work unchanged. Electro will evaluate Supplier's notice of Change in good faith, and if Electro agrees that Electro has made a constructive change, Electro will issue a Change Order to the Supplier.
- 6.3** Supplier shall, as promptly as practicable, after giving the notice of Change, or within 10 days of receiving a Change Order, submit a request for equitable adjustment specifying the adjustment in price or time for performance resulting from the Change.
- 6.4** The parties shall negotiate an amendment to the applicable Statement of Work and Purchase Order to incorporate a Change Order providing for an agreed to equitable adjustment to the price, time for performance, or both.

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- 6.5** Supplier will proceed with the Change to the Work as directed by Electro in a Change Order, notwithstanding that the parties have not negotiated the amendment to this Purchase Order or the applicable Statement of Work to incorporate any equitable adjustment.
- 6.6** All Changes must be acknowledged in writing, signed and issued by Electro. No Change shall be binding on Electro unless expressly accepted in writing in the form of a Change Order signed by and issued by the Electro.

### **7. REPRESENTATIONS AND WARRANTIES:**

- 7.1** Supplier represents and warrants that:
- (i) The Supplier has full power to enter into the Purchase Order and to perform Supplier's obligations under the Purchase Order;
  - (ii) The Supplier has the right and unrestricted ability to assign the Work to Electro including without limitation, the right to assign any Work performed by Supplier's Personnel and Subcontractors;
  - (iii) The Work and Electro's use of the Work, do not and will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;
  - (iv) Supplier will not disclose to Electro, bring onto Electro's premises, or induce Electro to use any confidential or proprietary information that belongs to anyone other than Electro or the Supplier which is not covered by a non-disclosure agreement between Electro and Supplier;
  - (v) Software supplied by the Supplier does not contain Harmful Code;
  - (vi) Supplier's Work conforms to Electro's specifications, Supplier's quotation and proposal, if any, and Supplier's brochures and catalogs, if any, and Such Work is suitable for its intended use;
  - (vii) The Products sold to Electro pursuant to this Purchase Order, whether provided by Supplier, Supplier's Personnel or a Subcontractor, is sold to Electro free of any claims and security interests of any nature, including without limitation title claims, and Supplier will cause any lien or encumbrance asserted to be discharged, at Supplier's sole cost and expense, within thirty (30) days of its assertion, except for any lien that may arise out of Electro's failure to pay amounts due under the Purchase Order and not in dispute under this Purchase Order, or any act or omission of Electro;
  - (viii) The Products sold to Electro are new and of merchantable quality, and not used goods, rebuilt or made of refurbished material unless approved in a prior writing by Electro;

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- (ix) The Product furnished hereunder will be new and free from defects in title, design, material, fabrication and workmanship, will conform strictly to applicable specifications, drawings, and other descriptions incorporated herein, will meet all tests, will comply strictly with all of Electro's performance requirements as provided by Electro to the Supplier, will be suitable for its intended purpose and of merchantable quality, and will comply with and be usable in compliance with all applicable laws and regulations;
  - (x) The Products sold to Electro are free from all defects in design, workmanship and material;
  - (xi) The Products sold to Electro are fit for the particular purpose for which they are intended;
  - (xii) The Work sold to Electro under the Purchase Order is provided in strict accordance with all specifications, samples, drawings, designs, descriptions or other requirements which were approved, provided or adopted by Electro, or which were provided to Electro by the Supplier, Supplier's Subcontractor or Supplier Personnel; and
  - (xiii) All Services sold under the Purchase Order will be performed timely and in workmanlike manner in a competent and professional manner in accordance with the highest standards and best practices of Supplier's industry that includes service providers similar to the Supplier giving services that are similar to the service sold under the Purchase Order, using generally acceptable standards in Supplier's commercial community and region, and will provide a standard of care equal to, or superior to, care used by service providers similar to the Supplier providing similar services. Supplier further warrants that any services furnished hereunder shall be rendered competently by qualified personnel and be in compliance with all applicable laws and regulations.
- 7.2** Should any failure to meet any of the warranties stated herein appear within forty-eight (48) consecutive months after Electro's acceptance of the Work, Supplier shall, upon notice from Electro, repair or replace the Product and the Deliverables and reperform the Services not conforming to the foregoing warranties, promptly and without expense to Electro and pay Electro all resulting costs and expenses Electro may have as a result said failure to satisfy all of the Purchase Order's warranties. In the event of a failure of Supplier to promptly remedy any breach of warranty, Electro may correct the deficiencies and charge Supplier for the cost thereof. The aforesaid warranties shall survive acceptance of, and, payment for Product, Deliverables and Services furnished hereunder. After any Product, Deliverables and Services have been repaired, replaced or redone pursuant to the foregoing warranties, they shall be subject anew to the original warranties.

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- 7.3** Supplier's warranties made or obtained hereunder are made to and for the benefit of Electro and Supplier's warranties shall also extend to and benefit Electro's customer and may be enforced by or on behalf of either or both Electro and Electro's customer.
- 7.4** ANY ATTEMPT BY SUPPLIER TO LIMIT, DISCLAIM, OR RESTRICT ANY SUCH WARRANTIES OR ANY REMEDIES OF BUYER, BY ACKNOWLEDGMENT, QUOTE OR OTHERWISE, IN ACCEPTING OR PERFORMING THIS PURCHASE ORDER, SHALL BE NULL, VOID, AND INEFFECTIVE WITHOUT ELECTRO'S WRITTEN CONSENT. SUPPLIER'S WARRANTIES SHALL RUN TO ELECTRO, ELECTRO'S SUCCESSORS, ASSIGNS, CUSTOMERS, ULTIMATE USERS, AND JOINT USERS
- 7.5** Electro warrants and represents to Supplier that Electro has full power to enter into the Purchase Order and perform Electro's obligations under the Purchase Order.

### **8. NO PARTNERSHIP OR EMPLOYEE RELATIONSHIP:**

- 8.1** Independent Contractors. Nothing in this Purchase Order is intended, or shall be construed to create partnership, joint venture, agency or employer-employee relationship between the parties. Supplier shall be an independent contractor in connection with Supplier's performance hereunder. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners, or joint venture between the parties, or joint employers of Supplier's employees. Supplier has no authority to act on behalf of or enter into any contract, incur any liability, or make any representation on Electro's behalf.
- 8.2** Performance of Services. Supplier will secure all licenses and permits, and supply all tools and equipment, necessary to perform the Services.
- 8.3** No Employee Relationship. Supplier will not be entitled to any of the Benefits that Electro may make available to Electro's employees, including, but not limited to, group health or life insurance, stock options, profit sharing, or retirement benefits.
- 8.4** Supplier's Obligations flowing from payments it makes. Supplier is solely responsible for all taxes and withholdings, severance and redundancy pay, benefits (including, without limitation, vacation, sick leave, holidays, pension, profit sharing contributions, stock options, etc.,) and other similar obligations, whether statutory or otherwise, with respect to payments made by Supplier relating to the performance of all of its Work and its receipt of fees under this Purchase Order.
- 8.5** Indemnification. In addition to any other indemnity obligations, Supplier will defend, indemnify, and hold Electro harmless from all claims made by any person or entity on account of an alleged failure to satisfy any obligations specified in Sections 9.3 and 9.4.

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- 8.6** Removal of Supplier Employees. At Electro's direction and for good cause, Supplier will remove any Supplier personnel and Subcontractor from performance of Services.
- 8.7** Work on Premises. Supplier shall ensure that Supplier's personnel and Subcontractors comply with Electro's environmental and safety requirements for any work performed on Electro's premises. Supplier shall defend, hold harmless and indemnify Electro from any claim, including claims by Electro's employees which may result in any way from any act or omission by Supplier, Supplier's representatives and personnel, and Subcontractors while performing work on Electro's premises, except to the extent that such claim is due solely and directly due to the gross negligence of Electro.

### **9. ASSIGNMENT and SUBCONTRACTING:**

- 9.1** Supplier may not assign this Purchase Order or any of its rights or delegate any of its obligations under the Purchase Order, and any assignment by Supplier shall be void without Supplier's prior written consent, which will not be unreasonably withheld.
- 9.2** Supplier may not subcontract any of its rights or obligations under the Purchase Order without Electro without Electro's prior written consent. If Electro consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify Electro for all damages and costs of any kind, subject to the limitations in Section 13 (Indemnification), incurred by Electro or any third party and caused by the acts or omissions of the Supplier's Subcontractor and (iii) make all payments to Supplier's Subcontractors. If the Supplier fails to timely pay a Subcontractor for work performed, Electro will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to the Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify and hold Electro harmless for all damages and costs of any kind, without limitations, incurred by Electro and caused by Supplier's failure to pay a Subcontractor.
- 9.3** except as expressly stated and provided for within the Purchase Order, and to the extent allowable by applicable law, no person who is not a party to the Purchase Order shall be entitled to enforce or take any benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

### **10. TERM, TERMINATION AND SUSPENSION:**

- 10.1** The Purchase Order will remain in effect until either the Purchase Order's term has expired, Electro has terminated the Purchase Order or the Work is completed and Electro has accepted the Work.
- 10.2** Electro shall always be entitled, even though Supplier is not in breach of any obligation, to suspend the Purchase Order, or to terminate the same in whole or in part

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for any reason or no reason, and for Electro's convenience, by giving fifteen (15) days prior written notice to Supplier. Supplier shall be obligated to mitigate Supplier's costs related to any such termination. In the event of such a termination, as Supplier's sole and exclusive recourse, Supplier may charge Electro's reasonable costs, not to exceed ten percent of the Price as liquidated damages as Supplier's sole remedy, incurred up to the time of termination relating to the Purchase Order; provided, that Electro shall be entitled in Electro's sole discretion to take delivery of anything for which Electro is being charged by Supplier for hereunder. In the event of such a termination, in no event shall Supplier be entitled to recover special, incidental or consequential damages or loss of profits. For suspension of the Purchase Order hereunder by Electro for greater than one (1) year, Supplier may, as Supplier's sole and exclusive recourse for such suspension, charge a reasonable fee for storage of any Products in progress, commencing only after the first year of the suspension. Electro expressly rejects that any parts are noncancelable or nonreturnable. All such parts are deemed cancelable or returnable.

- 10.3** Either party may terminate the Purchase Order immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceeding are not dismissed within 60 days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.
- 10.4** Electro may immediately terminate the Purchase order upon written notice to the Supplier if there is a change in ownership representing 51 percent or more of the equity ownership of the Supplier.
- 10.5** In the event Supplier fails to make progress in producing or assembling the Work so as to endanger the timely performance of this Purchase Order in accordance with its terms or the Supplier fails to comply with any material term or condition of this Purchase Order, Electro shall be entitled, by written notice to Supplier and without prejudice to any other remedy available under this contract, at law or in equity, to terminate the Purchase Order in whole or in part without any further liability or obligation, and will be entitled to recover from Supplier all moneys paid by the Electro to Supplier in respect thereof, obtain cover work through an alternative supplier and recover from Supplier the difference between the cost of cover and the Price, plus any incidental costs and any reasonable costs incurred by Electro to remove any defective Work and install or implement replacement Work.
- 10.6** HOLD FOR RELEASE: If this is a "hold for release" order or "for drawings only" order, as expressly stated on Electro's Purchase Order, then Electro shall not incur any liability to Supplier for the Work under the Purchase Order or otherwise, unless and until Electro

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instructs Supplier in a separate writing to proceed with the Work's production and further performance.

### **11. CONFIDENTIAL INFORMATION AND PUBLICITY**

- 11.1** In this Purchase order, "Confidential Information" means the terms and conditions of this Purchase Order and any relevant Statement of Work, the existence of discussions between the parties to the Purchase Order, any and all documents, software, reports, data, records, forms and other materials obtained by one party (the "Receiving Party") from the other party (the "Disclosing Party"), or at the request of or direction of the Disclosing Party in the course of performing the Services: (i) that has been marked as confidential; (ii) whose confidential nature has been made known by the Disclosing Party to the Receiving Party; or (iii) that due to their character and nature, a reasonable person under the circumstances would treat as confidential.
- 11.2** The Receiving Party may use the Confidential Information solely for the purpose of performing the obligations due under the Purchase Order and the furtherance of the business relationship between the parties to the Purchase Order, and shall not be disclose the Confidential Information to any third party, other than to affiliates and 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.
- 11.3** The Receiving Party shall have no obligation with respect to information which (i) was rightfully in possession of or known to the Receiving Party without any objection of confidentiality prior to receiving in from the Disclosing Party; (ii) is, or becomes legally and publicly available without breach of this Purchase Order; (iii) is rightly 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; (v) becomes available to the Receiving Party by wholly lawful inspection or analysis of products offered for sale; (vi) is transmitted by a party after receiving written notification from the other party that it does not desire or want to receive any further Confidential Information; (vii) is disclosed by the Receiving Party pursuant to a valid order issued by a court or government agency, provided that the Receiving Party provide (a) prior written notice to the Disclosing Party of such obligation and (b) the opportunity to oppose such disclosure. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using Confidential Information; (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) day 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.

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**11.4** Each party shall retain all right, title and interest to such Party's Confidential Information.

No License under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such party is either granted or implied by the conveying of the Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed to it, and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any original or copies of Confidential Information it obtains from the Disclosing Party. Without prejudice to the express warranties provided elsewhere in this Purchase Order, Confidential Information is provided "as-is" with all faults. In no event, shall the Disclosing Party be liable for the accuracy or completeness of the Confidential Information. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other party with respect to the infringement or trademarks, patents, copyrights, any rights of privacy, or any rights of third persons or parties.

**11.5** Supplier shall obtain Electro's prior written consent to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to Electro.

### **12. INDEMNIFICATION:**

**12.1** As used in this Section 12, a "Claim" is any claim, demand, loss, damage, liability, cost or expense, including but not limited to litigation cost, expenses, professional fees, attorney fees, for which one party (the "Indemnifying Party") may be obligated to defend, indemnify and hold the other party (the "Indemnified Party") harmless.

**12.2** Supplier agrees to hold harmless, defend and indemnify Electro, at Supplier's expense, from and against any and all Claims made against Electro, arising out of or in connection with any and all: (i) act or omission of Supplier (including Supplier's Subcontractors) in the performance of the Work; (ii) breach by Supplier of any of the provisions of this Purchase Order, including but not limited to late performance by Supplier (except excusable delays) and defective Work or performance; (iv) negligent or willful acts or omissions of the Supplier (including Supplier's Subcontractors) which results in personal injury (including death) or property damage; (v) any infringement of any Third Party Intellectual Property Rights or any other rights, including any and all patent litigation wherein goods or services are in whole or in part the subject of the patent infringement; (vi) any breach of any of Supplier's representations or warranties stated within the Purchase Order.

**12.3** Electro shall indemnify and hold Supplier harmless from and against any and all Claims as incurred, arising out of or in connection with any: (Supplier's use of Electro's

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- products in connection with the Work; (ii) Supplier's use of information or materials provided to Supplier by Electro; or (iii) infringement of a Third Party's Intellectual Property Rights or resulting from Supplier's adherence to Electro's prior written instructions.
- 12.4** The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ and retain counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnified Party's behalf without the prior written consent of the Indemnifying Party.
- 12.5** If a third party enjoins or interferes with Electro's use of any of the Work, then in addition to Supplier's overall obligations under Section 12, Supplier will use its best efforts to (i) obtain any license necessary to permit Electro to continue to use the Work; (ii) replace or modify the Work as necessary to permit Electro to continue to use the Work; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to Electro the amount paid for any of the work for which a third party enjoins or interferes with Electro's use of the Work.
- 12.6** Nothing in this section, Section 12, shall limit any other remedies of the parties may have.

### **13. LIABILITY:**

- 13.2** NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER, IN NO EVENT OR OTHERWISE, ELECTRO WILL NOT BE LIABLE TO THE SUPPLIER AND ANY SUPPLIER PERSONEL WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY OR CLAIM FOR ANY AMOUNT IN EXCESS OF THE AMOUNT ELECTRO PAID TO THE SUPPLIER IN THE CONSECUTIVE SIX MONTHS IMMEDIATELY PRECEEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.
- 13.2** NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER, IN NO EVENT OR OTHERWISE, WILL ELECTRO BE LIABLE TO SUPPLIER OR SUPPLIER PERSONEL FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH THE PURCHASE ORDER OR ANY OBLIGATIONS UNDER THE PURCHASE ORDER, WHETHER OR NOT ELECTRO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.3** THE LIMITATIONS STATED WITHIN THE PURCHASE ORDER WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH OR PHYSICAL DAMAGES TO

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PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### **14: INSURANCE**

- 14.1** Supplier will secure and maintain insurance coverage, at its own expense, for liabilities to third parties for bodily injury (personal injury) and damages to property in amounts sufficient to cover and protect Electro against such claims of personal injury and property damage claims, in coverage amounts referenced in Section 16.1 below, and will be in compliance with any and all laws, regulations and orders addressing or concerning the liabilities of an employer to its employees for such injuries and medical conditions suffered in connection with employment. Supplier will also maintain such additional types of insurance and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.
- 14.2** Supplier shall maintain insurance coverage for the Work and term of this Purchase Order, at its own expense, the following insurance in amounts reasonably acceptable to Electro (including as set forth in any separate written agreement between the parties), but in no event less than the amounts set forth herein: (i) Workers' Compensation insurance as required by law, employer's liability insurance of at least \$1,000,000 per occurrence, \$2,000,000 aggregate; (ii) general liability insurance of at least \$2,000,000 per occurrence and \$2,000,000 aggregate; (iii), automobile insurance with combined single limits of \$1,000,000; and (iv) umbrella coverage of at least \$5,000,000 per occurrence, \$5,000,000 aggregate. Upon request, Supplier shall provide Electro with a certificate of insurance evidencing that the required minimum coverage is in effect and that Supplier, its directors, officers, employees, agents and representatives are named as additional insureds. Such insurance shall also cover the actions of a Subcontractor that Supplier may utilize under this Purchase Order. If the Supplier is a Manufacturer of Products, then Supplier agrees to maintain product liability insurance, in accordance with the requirements above, with insurers and minimum amounts reasonably acceptable to Electro covering its interests as a buyer of Supplier's Products; it being understood that the maintenance of such product liability insurance coverage shall not be a satisfaction of Supplier's liability hereunder or in any way modify Supplier's indemnification obligations due under the Purchase Order.

### **15: COMPLIANCE WITH LAWS**

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Supplier represents and warrants that Supplier will comply and is in compliance with all applicable local and national laws and regulations pertaining to Supplier's performance of its obligations under this Purchase Order. Supplier shall not act in any fashion or take any action that will render Electro liable for a violation of any applicable anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act, which prohibits the offering, giving or promising to offer or give, or receive, directly or indirectly, money or anything of value to any third party to assist it, them or Electro in retaining or obtaining business or In performing the Work.

### **16: GOVERNING LAW, JURISDICTION AND WAIVER OF RIGHT TO JURY TRIAL**

In all matters, the Purchase Order, including but not limited to its validity and enforceability, is governed by and construed with the laws of the State of New York, without regard to New York State's conflicts of law(s), statute(s) and rule(s). The Purchase Order is not governed by the United Nations Convention for the International Sale of Goods, and the parties specifically waive the application of United Nations Convention for the International Sale of Goods to the Purchase Order in all respects. Supplier hereby agrees and consents to the jurisdiction of the state and federal courts sitting in the State of New York for all matters, claims, causes of action, counterclaims, and cross-claims arising out of or related to the Purchase Order, and waives any claim or right to object to or transfer the venue of any such action or proceeding it may have, including but not limited to the any claim it may have that any proceedings or action brought in such courts have been brought in an inconvenient forum. **The Parties hereby waive any and all rights to a trial by jury of any action, proceeding, claim, counterclaim, cross-claim, defense, offset, credit or any matter arising from or related to the Purchase Order.**

### **17: GENERAL**

- 17.1** Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase order. Notices will be deemed given and effective (i) if personally delivered, upon delivery; (ii) if sent by overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation or receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail within five days of deposit in the mail.
- 17.2** If there is a conflict between or among the Purchase order and any document ("Exhibit") attached to the Purchase Order and incorporated within the Purchase Order by reference, the conflict will be resolved as follows:

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- 17.2.1** A conflict between the terms of the Purchase order and those set forth in an Exhibit will be resolved in favor of the Purchase Order.
- 17.2.2** A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favor of the SOW.
- 17.3** If any court of competent jurisdiction holds that any portion of the Purchase Order is illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order shall remain in full force and effect.
- 17.4:** A party's election not to insist on strict performance of any provision, term or requirement of the Purchase Order will not operate or be construed as a waiver of the provision, term or requirement of the Purchase Order, or to waive any future omission or breach of the same. A waiver or renunciation can discharge no claim or right arising out of a breach of this Order in whole or in part, unless supported by consideration and made in writing signed by the aggrieved party. Either party's failure to enforce any provision hereof shall not be construed a waiver of a party's right thereafter to enforce each and every such provision.
- 17.5** Unless the context of the Purchase Order clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder" and other similar terms in this Purchase Order refer to this Purchase Order as a whole and not exclusively to any particular provision of this Purchase Order. All of the exhibits or schedules attached to this Purchase Order shall be deemed incorporated herein by reference. Neither any uncertainty or ambiguity herein shall be construed or resolved against Electro or the Supplier, whether under any rule of construction or otherwise. On the contrary, this Purchase Order has been reviewed by the parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto.

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### **18: QUALITY ASSURANCE:**

In the event that a quality defect or non-conformance attributable to the Supplier is detected, Supplier shall be responsible for all costs including, but not limited to, replacement, rework, or material cost; laboratory testing, sorting, or inspection fees; and any transportation costs (including premium air freight) necessary to meet Electro's required Delivery Date on the Purchase Order. Supplier warrants that all Products and Deliverables delivered to Electro are new, and otherwise free of recycled scrap, suspect, or counterfeit material. Supplier further warrants that labels, trademarks, logos, certifications, affirmations, information, or any other documentation provided to Electro are authentic. Supplier shall save, defend, indemnify and hold Electro harmless against any and all losses and damages and Electro reserves the right to withhold payment for any deliveries of non-conforming, suspect, or counterfeit Deliverables, Products, or related information or documentation.

### **19: BUYER'S PROPERTY:**

All tangible and intangible property, including but not limited to tools, tool drawings, materials, sample parts, processes, procedures, process parameters, drawings, computer software, documents, information or data of every description furnished to Supplier by Electro, or by Electro's affiliates, subsidiaries or contractors, or paid for in whole or in part by Electro, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Electro, and, unless otherwise agreed to in writing by Electro shall be used by Supplier solely to provide the Work to Electro. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Supplier as being the property of Electro, and shall be safely stored separate and apart from Supplier's property. Supplier shall not substitute any property for Electro's property and shall not use such property except in filling Electro's Purchase Orders. Such property while in Supplier's custody or control shall be held at Supplier's risk and shall be insured by Supplier for replacement cost with loss payable to Electro. Such property shall be subject to prompt removal or return at Electro's written request, in which event Supplier shall prepare such property for shipment and shall deliver it as directed by Electro in the same condition as originally received by Supplier, reasonable wear and tear excepted, all at Supplier's expense. Electro shall have the right to audit all pertinent books and records of Supplier, and to make reasonable inspections of Supplier's facilities to verify compliance with this paragraph.

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### **20: COMPLETE CONTRACT:**

This Purchase Order contains the complete and exclusive statement of the agreement between Electro and Supplier relating to this order. The Purchase Order supersedes all previous oral or written requests, quotations, agreements or communications between the parties. This Purchase Order may not be varied, supplemented or amended by any document, conduct, prior representation, course of dealing or usage of trade, unless made in writing and signed by an authorized representative of Supplier and Electro.

### **21: TECHNICAL DOCUMENTATION - OPERATING AND MAINTENANCE MANUALS:**

Supplier shall deliver to Electro, at such times as may be agreed but at the latest upon delivery of the Products or Deliverables, all technical documentation relating to the Products and Deliverables, such as operating and maintenance manuals, training manuals, drawings, technical data sheets, product safety sheets, mill inspection certificates, certificates of conformity and any other supporting documentation ("Supplier's Documents"). If not otherwise specified in the Purchase Order, the delivery of software, Products or Deliverables including software will include, for maintenance and/or adaptability reasons, all source and object codes relating to it. Such technical documentation remain the property of Electro and shall be considered as integral part of Product or Deliverables. Subject to Supplier's applicable patent rights, if any, Electro may use and make copies of any Supplier's Documents delivered to it under this Purchase Order as necessary or reasonably convenient for the purpose of operating, maintaining, repairing, servicing, rebuilding, replacing parts, or modifying any Products or Deliverables delivered to Electro under this Purchase Order or contracting with others to perform any of those services. Confidentiality markings on any Supplier's Documents shall not restrict Electro's rights hereunder this paragraph, notwithstanding Paragraph 12.

### **22: LICENSE:**

With each license of the Deliverables, including but not limited to software, ordered hereunder this Purchase Order, Supplier shall provide Electro with documentation which is provided by Supplier to any of Supplier's other customers for the Deliverables, and, at a minimum, as is reasonably necessary to enable Electro to adequately to use such Deliverables. Documentation shall comply with commonly accepted industry standards with respect to content, size and legibility. Electro shall have the right to reproduce all documentation including all machine-readable documentation for the Deliverables, provided that such reproduction is made solely for Electro's use. Any such reproductions shall include any copyright or similar proprietary notices

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contained on the items being reproduced. New Releases: If Supplier develops new versions of any Deliverables to be provided as a generic release common to all users of such product, Supplier shall supply the new version at the same charge as charged to other users (including any applicable discounts). Supplier shall continue to support the replaced version for a minimum period of two (2) years after issuance of the new version. Source Code and Documentation: In the event Supplier becomes insolvent, ceases to carry on business on a regular basis or fails to perform its maintenance obligations herein, Supplier shall immediately furnish to Electro the latest version of the product's source code, operating and design documentation, training material and any other necessary information to enable Electro to maintain and enhance such product or to contract with others for such work. Relocation of product (applicable only to a site software license): Electro may redesignate the location at which the software product will be used and shall notify Electro of the new location and the effective date of the relocation. Concurrent operation of the product at a second location for a period not to exceed ninety (90) days to achieve uninterrupted operation and orderly cut over shall not require an additional license.

### **23: SURVIVAL OF PROVISIONS:**

In order that the parties hereto may fully exercise their rights and perform their obligations under this Purchase Order, any provisions of this Purchase Order concerning any obligations or duties which by their nature extend beyond the expiration or termination of the Purchase Order as may be required to ensure such exercise or performance shall survive the termination of this Purchase Order and the expiration of the Purchase Order's term, including but not limited to the following sections: Section 1 (Terms of Agreement); Section 2 (Definitions); Section 7 (representations and Warranties); Section 8 (no Partnership or Employee Relationship); Section 10 (termination and suspension); Section 11 (confidential Information and publicity) ; Section 12 (Indemnification); Section 13 (Liability) ; Section 16 (Governing law, Jurisdiction and Waiver of Right to Jury Trial) Section 178 (General), Section 18 (Quality Assurance); Section 19 (Buyer's Property); Section 20 (Complete Contract); Section 21(Technical Documentation, etc.); Section 22 (License) and Section 23 (Survival of Provisions).

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