

## **IEC SUPPLY LLC**

### **Terms & Conditions of Purchase and Sale**

By submitting a Purchase Order for the purchase of products, Customer acknowledges and agrees to the following terms and conditions:

#### **Orders**

Customer will initiate offers to purchase products by the submission of a Purchase Order to IEC Supply LLC. Purchase Orders will identify the products, unit quantities, part numbers, descriptions, applicable prices and requested delivery dates. All Purchase Orders are subject to IEC Supply's acceptance, in its sole discretion, according to product availability and these governing Terms and Conditions.

#### **Prices**

All prices are set forth in US dollars. All quoted prices are subject to change without notice. Prices charged are those in effect at the time of shipment and Customer agrees to pay such prices, subject to any Customer specific pricing and transaction related charges. Prices may increase before shipment in the event IEC Supply's costs increase. If delivery is delayed at Buyer's request beyond the originally scheduled delivery date, prices are subject to revision.

Products invoiced and held by IEC Supply at Customer's request will be held at Customer's sole risk and expense above and beyond the purchase price, including but not limited to storage and handling charges.

#### **Taxes**

Any applicable sales, excise, use or other taxes, duties or fees which IEC Supply may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any products covered hereby, shall be for the account of the Customer, and Customer agrees to pay such amount to IEC Supply upon request in addition to the quoted purchase price.

#### **Terms of Payment**

Subject to the approval of Customer's credit by IEC Supply, standard term of payment is NET thirty (30) days from the date of invoice, and payment shall be made as follows:

- a. For Customers having an established place of business in the United States (excluding protected territories and possessions) and requesting delivery of product in the United States (excluding protected territories and possessions), Customers may pay by personal/business check, money order, major credit card (MasterCard, Visa, and American Express), Cash on Delivery (C.O.D).
- b. For Customers requesting delivery of product to locations outside of the United States, Customers must pay by wire transfer of funds only. A \$200 minimum order is required for international orders. All international orders will be charged a \$30 wire transfer fee. If the minimum requirement is not met, a minimum order fee will be charged the order difference. Normal terms will apply to US companies exporting to foreign countries.
- c. For Customers paying by credit card and ordering NCNR (non cancelable, nonreturnable) or non stock items, the credit card will be charged in advanced.

d. For Customers paying by personal/business check, a \$25 fee will be charged for returned checks.

Customer will pay the total amount of each invoice from IEC Supply pursuant to the terms of such invoice without offset or deduction. Invoices not paid when due will bear interest to date of payment at the annual rate of eighteen (18%) percent or such lower rate as may be the maximum permitted by law. If Customer fails to make payment when due, IEC Supply may pursue any legal or equitable remedies, in which event IEC Supply will be entitled to reimbursement for costs of collection and reasonable attorneys' fees.

All Customer Purchase Orders are subject to ongoing credit approval by IEC Supply. Customer will submit such financial information as IEC Supply may reasonably require for determination of credit terms. IEC Supply may, at any time or times, suspend performance of any order or require payment in cash, security or other adequate assurance satisfactory to IEC Supply when, in IEC Supply's opinion, the financial condition of Customer or other grounds warrant such action. IEC Supply may, in its sole discretion, change these terms of payment without notice, at any time or times, for all future transactions and require advance payment, security, payment by official bank draft or other approved payment means, as IEC Supply deems appropriate in its sole discretion.

If Customer is in default of any payment, IEC Supply may, in its sole discretion, suspend or cancel delivery of product under any and all Purchase Orders or cancel any and all Purchase Orders, in whole or in part, and Customer shall be liable to pay IEC Supply for products already shipped.

As may be authorized hereunder, payments by check are subject to collection and the date of collection will be deemed the date of payment.

### **Delivery & Title**

All orders are shipped FOB point of shipment. Products will be shipped via UPS (or other like carrier when necessary), unless requested otherwise by Customer. For priority or overnight deliveries, please so indicate when ordering. IEC Supply will make reasonable effort to deliver products in accordance with Customer's requested delivery date(s). Customer acknowledges that delivery dates provided by IEC Supply are estimates only - not a warranty or guarantee -- and that IEC Supply will not be liable for failure to deliver product on such dates. Customer requests to reschedule delivery dates are subject to acceptance by IEC Supply.

Subject to IEC Supply's right of stoppage in transit, delivery to a carrier will constitute delivery to Customer, and all risk of loss will thereupon pass to Customer; however, title in and to all products shall remain in IEC Supply until payment is made in full by Customer and received by IEC Supply.

Any claims for shortages and/or damage to delivered products must be made to the carrier in accordance with the carrier's claims policy, but not more than ten (10) days after delivery of the product to the carrier.

### **Inspection and Acceptance**

All products delivered shall be examined by Customer promptly upon receipt. Customer shall be deemed to have accepted the products unless a valid written notice of rejection, due to defect in the goods or non-conformance to the order, is received by IEC Supply within 30 days of Customer's receipt of goods. No such claims made after such period need be considered

by IEC Supply. Products purchased on the basis of weight are subject to customary quantity variations recognized by trade practice.

### **Return Policy**

Customer must obtain a return material authorization number ("RMA") from IEC Supply before returning any product eligible for return. No return of eligible products will be accepted by IEC Supply without a return material authorization number (RMA), which will be issued at IEC Supply's sole discretion. Special order products may not be returned for any reason if non-defective. All authorized returned products must be unused and re-saleable, in original shipping cartons and must be complete with all accessories, CD's, manuals and packing materials. Returned product must arrive at IEC Supply within 30 days of the RMA being issued. If returned products are claimed to be defective, Customer must notify a Customer Service Representative of the nature of the defect prior to returning the product. If product is tested and no problem is found, customer will be subject to a \$50 fee. All items not eligible for return will be returned to customer, transportation costs collect. Product returned to IEC Supply by Customer for no fault of IEC Supply may be subject to a restocking/handling fee.

### **Cancellation of Orders**

Orders may not be canceled (or rescheduled) after delivery of the products to the carrier.

a. Regularly Stocked Products. Customer may, without charge, cancel a Purchase Order, in whole or in part, for regularly stocked products by written notice of cancellation to IEC Supply not less than sixty (60) days before IEC Supply's scheduled shipment date. Any written notice of cancellation of a Purchase Order, in whole or in part, received by IEC Supply less than sixty (60) days before the scheduled shipment date may be refused or accepted by IEC Supply in its sole discretion, and if accepted, all cancelled products may be subject to a restocking/handling fee.

b. Special Order Products. Customer may not cancel special order or custom products, which include but are not limited to products not regularly stocked by IEC Supply, products that are subject to minimum order requirement and products that have special handling charges. All sales of special order products are sold on a final, non-cancelable, non-returnable, non-refundable basis.

### Products IEC Supply Will Not Accept for Return

- Products that have been used
- Original box is missing, damaged or defaced with writing or markings.
- Product is missing packaging, manuals or other components.
- Product was not purchased from IEC.
- RMA issued over 30 days prior to receipt.
- RMA number not referenced with the return.
- Special Order, custom configured, discontinued or obsolete product.

**Specific Manufacturer's additional return rule(s):**

Banner: Must be less than 2 years old.

Oriental Motor: No returns after 90 days, 10%-20% restock 0-90 days (if returnable)

Phoenix Contact: No returns after 12 mo. or Software, must be in std package, unopened

Rittal: L1 items, min. \$100 restock fee, L2 items, min \$300 restock, L3-not returnable

Turck: Must be new/unmarked, current design, original pkg, less than 2 years old, < 25 pcs

**Limited Warranty & Limitations of Liability**

IEC Supply warrants to Customer that the products delivered will conform substantially to the description set forth in the Purchase Order. WITH THE EXCEPTION OF THE FOREGOING WARRANTY, IEC SUPPLY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED WITH REGARD TO THE PURCHASE OF PRODUCTS, AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE PURCHASE OF PRODUCT UNDER THIS CONTRACT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

IN NO EVENT SHALL IEC SUPPLY BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (REGARDLESS OF HOW STATED) ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE USE OF ELECTRONIC MEANS TO CARRY OUT A PURCHASE TRANSACTION, OR THE PURCHASE OF ANY PRODUCT HEREUNDER, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF PROMOTIONAL OR MANUFACTURING EXPENSE, OVERHEAD, INJURY TO REPUTATION, LOSS OF GOODWILL, LOSS OF CUSTOMERS, INJURY TO COMPUTERS, NETWORKS OR TELECOMMUNICATIONS EQUIPMENT, WHETHER OR NOT IEC SUPPLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL CUSTOMER'S RECOVERY FROM IEC SUPPLY FOR ANY CLAIM EXCEED CUSTOMER'S PURCHASE PRICE FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE.

With respect to products that do not meet applicable manufacturer's specifications, Customer's sole remedy and IEC Supply's total liability is limited to a refund of Customer's purchase price for such products or replacement of such products; provided, however, that such products are returned, transportation charges prepaid, to IEC Supply along with acceptable evidence of purchase of such products from IEC Supply, within twenty (20) days from the date of delivery to Customer.

**Force Majeure**

IEC Supply will not be liable for delays in delivery or for failure to perform its obligations due to causes beyond its reasonable control, including, but not limited to, product allocations, material shortages, labor disputes, transportation delays, unforeseen circumstances, acts of God, acts or omissions of other parties, acts or omissions of civil or military authorities, government priorities, fire, strikes, floods, epidemics, quarantine restrictions, riots, terrorists acts, or war. IEC Supply's time for delivery or performance will be automatically extended by

the period of such delay or IEC Supply may, at its option, cancel any order, in whole in part, without liability by giving notice to Customer.

### **Software**

All purchases of computer software are subject to the terms and conditions of the license agreement accompanying the software.

### **Export Controls**

Customer acknowledges that the products ordered and delivered may be subject to the export control laws and regulations of the United States of America and the country in which Customer is located. Customer shall be solely responsible for the determination of and adherence to the export control laws and regulations applicable to the products ordered by Customer. Customer agrees not to export or re-export products in violation of such laws and regulations. Moreover, Customer agrees not to export products or any documentation or information related thereto (i) to any country in which the United States has embargoed or restricted the export of goods and services (including but not limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria) or to any national of any such country or other person or entity, wherever located, who intends to transmit, transport or deliver products to such a country; (ii) to any end-user who Customer knows or has reason to know will utilize the products in the design, development or production of weapons of mass destruction, including but not limited to nuclear, chemical and biological weapons; or (iii) to any end user who has been prohibited from participating in export transactions by a governmental agency, including but not limited to any federal agency of the United States government. These restrictions may change from time to time. If Customer has any questions regarding its obligations under the export laws and regulations of the United States of America, Customer should contact the Bureau of Industry and Security, U.S. Department of Commerce. For current information and contact addresses and telephone numbers, see <http://www.bxa.doc.gov/>.

### **Indemnification**

Customer agrees to indemnify and hold harmless IEC Supply from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and litigation expenses) arising from or related to (i) the purchase, use and/or distribution of products supplied by IEC Supply in violation of the terms and conditions of this Agreement, (ii) the negligence or lack of due care by Customer, Customer's customers, agents, employees or invitees, in whole or in part, and (iii) infringements of third party intellectual property or other proprietary rights arising from the use or distribution of supplied products by Customer, Customer's customers, agents, employees.

### **Governing Law**

This Agreement shall be construed and controlled by the laws of the State of Arizona, without application of its conflict of laws provisions, and the applicable laws of the United States of America. Customer consents to jurisdiction and venue in the state and federal courts sitting in the State of Arizona. The United Nations Convention on the International Sale of Goods shall not apply and its application is hereby expressly excluded.

### **Relationship of Parties**

The parties to this Agreement are independent contractors and neither this Agreement, nor any terms or conditions herein, shall be construed as creating a joint venture, partnership,

agency or franchise relationship.

**Consent to Electronic Agreement, Records & Signatures**

This Agreement or any purchase transaction (or any signature, writing, or record pertaining thereto) shall not be denied legal effect, validity, or enforcement solely because it is in electronic form and/or because an electronic signature or electronic record was used in its formation. Customer expressly consents to IEC Supply's use of electronic documents and records to provide purchase transaction information. Upon reasonable request, Customer may obtain a printed copy of electronic documents and records pertaining to Customer's purchase transaction(s) at IEC Supply's cost of preparation and mailing of such copies.

**Entire Agreement**

This Agreement shall constitute the entire agreement between the parties with respect to the purchase of products and supersedes all prior or contemporaneous communications, either oral or written. Neither this Agreement nor any Purchase Order shall be modified except in writing signed by a duly authorized representative of each party. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same of any other provision hereof, and no waiver shall be effective unless made in writing and signed by a duly authorized representative of the waiving party.

**Severability**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid and/or unenforceable, the remaining provisions shall remain in full force and effect.

**Section Headings**

The section headings used in this Agreement are for convenience only and shall not be deemed to supersede or modify any provision.