

ECM USA Inc. Terms and Conditions of Sale

1. **DEFINITION:** Each order acknowledgment, together with these Terms and Conditions (collectively, the "Agreement"), provided by ECM-USA, Inc. ("Seller") to the party to whom such acknowledgment is addressed, including the party's applicable affiliates and subsidiaries ("Buyer"), is limited to the purchase of materials, products, labor, and services (collectively, "Goods") described therein. The term "Goods" excludes items not expressly mentioned or those typically considered consumables, such as cleaning materials, unless specified otherwise.
2. **ACCEPTANCE:** This Agreement is expressly limited to and made conditional upon the Buyer's acceptance of these Terms and Conditions, along with the quotation previously provided by the Seller. The Buyer's acceptance of the quotation constitutes agreement to these Terms and Conditions, regardless of any additional or conflicting terms proposed by the Buyer. Any terms or conditions included in the Buyer's order that conflict with or add to the terms of this Agreement are deemed null and void unless expressly accepted in writing by the Seller.
3. **COMPLETE AGREEMENT:** This Agreement constitutes the complete and exclusive statement of the Terms and Conditions between the Seller and the Buyer. It supersedes all prior agreements, understandings, discussions, and communications, whether written or oral, unless explicitly confirmed in writing by an authorized representative of the Seller.
4. **MODIFICATION:** No modification of any part of this Agreement shall be binding unless agreed to in writing by an authorized ECM-USA, Inc. representative.
5. **GUARANTEE:** All Goods sold by Seller are guaranteed to be free from defects in material and workmanship under normal use and service, provided they are installed, used, and serviced as directed. This guarantee is valid for a period of six months from the original date of shipment. The guarantee may be extended or reduced only by mutual written agreement.
6. **LIMITED GUARANTEE:** The Seller offers a limited guarantee covering the repair or replacement of eligible Goods that are confirmed to be defective due to a fault in materials or workmanship. This guarantee does not cover the expenses or consequences of equipment downtime. The determination of eligibility and the decision to repair or replace the defective Goods are at the sole discretion of the Seller.
7. **VOID GUARANTEE:** *Including but not limited to:*
 - a. Normal Wear and Tear: The guarantee does not cover defects or damage resulting from normal wear and tear, especially for consumable items such as thermocouples, fuses, gaskets, lubricants, lamps, or heating elements.
 - b. Buyer-Induced Defects: Any defects or damages that arise from actions, misuse, or improper handling by the Buyer or any of the Buyer's affiliates will void the guarantee.
 - c. Unauthorized Interventions: The guarantee is void if unauthorized modifications, repairs, or interventions are performed by the Buyer or any third party without the Seller's prior written authorization.
 - d. Non-Compliance: Failure to adhere to statutory regulations or to follow operating, installation, assembly, or service instructions provided by the Seller will result in the voiding of the guarantee.
 - e. System Alterations: Any accidental changes, removals, or disruptions to installed systems, including but not limited to electricity, water, compressed air, and fluids, that affect the operation of the Goods will void the guarantee.
 - f. Failure to Inspect and Notify: The Buyer must inspect the Goods upon delivery and notify the Seller of any defects within 48 hours of receipt. Failure to do so, or to issue timely claims to the carrier in case of shipping damage, will void the guarantee.
 - g. Force Majeure: The guarantee is void for defects resulting from force majeure events, as defined in this Agreement. Such events include, but are not limited to, natural disasters, acts of government, or other circumstances beyond the Seller's control.
8. **MAINTENANCE:** Buyer agrees to and understands the maintenance schedule set forth to maintain proper working order of all equipment. All instances of equipment lack of performance due to improper maintenance shall be the responsibility of Buyer.
9. **PRICE:** Seller has a minimum purchase order amount of \$100 or Buyer agrees to a \$50 service fee. Unless otherwise stated in Seller's offer, Seller's prices are before tax, EX-WORKS (Incoterms 2020). All incidental expenses, notably packaging, transport, insurance and customs fees, export, import, transit fees and other authorizations and certifications are Buyer's responsibility. In cases where Seller has included packaging, transport, and other incidental expenses in Seller's offer and delivery terms, or if these have been taken into account for a determined amount in Seller's offer or in confirmation of the order, Seller reserves the right, in cases of non-negligible tariff modifications, to modify our prices as a consequence. Seller's prices are established according to the economic terms in use at the time of drafting the offer and may be revised at the discretion of Seller at any time. Buyer will be responsible for remitting any transactional tax to the applicable taxing authority except for those states or jurisdictions where Buyer has provided Seller with an appropriate exemption certificate.
10. **SUPPLEMENTARY SUPPLIES:** Prices and new lead times will be discussed with Buyer and are dealt with separately from the initial order. The supplementary supply terms shall in no case prejudice those of the main order. All modifications requested by Buyer during execution of the order shall entail as of right amendments to the contractual prices and delivery dates.
11. **CREDIT TERMS:** Payment must take place within 30-days from the receipt of order completion unless agreed upon by an authorized ECM-USA, Inc. representative in writing. Payment terms shall not be extended on any grounds whatsoever including case of dispute. In cases of late payment, the amounts due will accrue interest due to Seller at the maximum rate of interest allowed by law. An immediate credit hold may be applied to Buyer's account until full payment of invoices at or exceeding contractual payment terms as well as all accrued interest has been received and processed by Seller. Terms are subject to change at any time at the discretion of Seller in any occurrence of credit hold or other noncompliance to this Agreement. All orders and shipments shall at all times be subject to the approval of the ECM-USA, Inc. Credit Department. Seller reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this Agreement in whole or in part.
12. **DELIVERY SCHEDULE:** Delivery dates are provided for reference only and are not guaranteed. Seller reserves the right to postpone the delivery dates in the case of:
 - a.) If the terms of payment are not met;
 - b.) If the information required for execution of works has not been surrendered to Seller in the required time or if said information is subject to prior modification.
 - c.) If the delay of a third-party supplier inhibits the timeline in any way.
 - d.) In case of force majeure.
 - e.) Any other cause or condition beyond Seller's reasonable control. Late delivery does not give the Buyer the right to cancel the sale or to refuse the property. It shall not lead to withholding payments, penalties, or damages.
13. **TRANSPORT, CUSTOMS & DELIVERY:** In the absence of shipping and packing instructions, Seller shall use their choice of carrier and method of packing. All items are sold EX-WORKS (Incoterms 2020) unless otherwise agreed upon in writing by an authorized ECM-USA, Inc. representative. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense. As soon as the Goods leave the works, all transport, customs, insurance, and handling operations are Buyer's responsibility in terms of finance, fees and risk unless otherwise agreed upon in writing by an authorized ECM-USA, Inc. representative. Buyer is also responsible for verification of the dispatched property upon their arrival and to exercise their right, if required, to make claims against the transport company, even if the dispatch was carried out free of charge. Upon Buyer's receipt of shipment, Buyer shall immediately inspect all contents of the order. Unless Buyer provides Seller with written notice of any claim of shortages or defects 48-hours after receipt of shipment, such Goods shall be deemed finally inspected and accepted by Buyer.
14. **LEGAL RESOLUTION CLAUSE:** This Agreement will be terminated as of right, in case of failure to meet payment terms by the Buyer. The resolution will take effect eight days following an unsuccessful summons to this effect. In this case, Seller shall claim, in addition, compensation corresponding to the total of the outstanding amount from the Buyer in debt including any interest, as a penalty clause.
15. **INTELLECTUAL PROPERTY & CONFIDENTIALITY:** All the intellectual property rights attached to the Goods, including copyrights, patents, trademarks or know-how and, in particular, but not limited to, all studies, plans, drawings, processes, designs, methods, technical specifications or data communicated to Buyer remain the exclusive property of Seller. Buyer undertakes to keep confidential, not to copy, replicate, reverse engineer and/or communicate to third parties, unless with the prior and written authorization of Seller, any information of technical, financial or commercial nature disclosed by Seller and, generally, all documents handed over or sent by the Seller, and not to use it for any purpose whatsoever, except for the performance of the Agreement.
16. **PATENTS, INVENTIONS & TECHNICAL DATA:** Buyer does not and shall not acquire ownership or any rights in ECM-USA Inc.'s patents, inventions and/or technical data under an order, regardless of when such patents, inventions, and/or technical data may be or have been issued, conceived, generated, or produced. All ECM-USA Inc. patents, information and/or technical data are reserved by Seller, and the same shall not be reproduced or used by Buyer for any purpose whatsoever without Seller's written permission.
17. **OWNERSHIP RESERVE:** Unless otherwise agreed upon in writing, Seller maintains full ownership of the sold property until payment of the total price in principal and interest is received by Seller. Failure to pay any one of the installments may give rise to a property claim. These arrangements shall not prevent transfer to Buyer, from the time of delivery, of risks of losses or deterioration of the sold property as well as damages that said risk may entail.
18. **RETURNED PRODUCTS:** Returning delivered Goods to Seller requires prior written approval from an authorized ECM-USA, Inc. representative before such Goods will be accepted. Seller reserves the right to deny returning Goods for any reason. Handling, inspection, restocking and invoicing charges of up to 20% will be applied at Seller's discretion, in addition to any outgoing packing and freight expenditures paid by Seller. All returns must be shipped to Seller prepaid and must be unused in "as-shipped" condition. Goods that are processed to Buyer's specifications are not returnable.
19. **APPLICABLE LAW & SETTLEMENT OF DISPUTES:** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin, regardless of any choice of law principles. Any dispute in relation to this order, even in case of guarantee claims or plurality of defenders, failing amicable agreement, shall be brought before the exclusive jurisdiction of the commercial court in which Seller's registered office is located.
20. **LIABILITY FOR INJURY:** Buyer agrees to be responsible for, and to indemnify and hold harmless Seller and its employees from any and all injury, death, damage, and loss to persons or property arising out of or incident to the work to be performed by Buyer pursuant to this order, whether performed on the premises of Seller or Buyer or elsewhere. Buyer and Seller agree to carry and maintain insurance coverage's satisfactory to cover the above for their own employees, and upon our request to furnish certificates or other appropriate evidence of such insurance within five business days of the request.
21. **CANCELLATION:** Orders may only be cancelled with the written approval of Seller and only in cases of Force Majeure. In the event of cancellation of an order, or any part hereof, incorporating special material, party, components, etc., Buyer shall pay the contract price of all completed or ordered items.
 - a.) That portion of the contract price that is equal to the degree of completion of products in process, effective on the date notice of cancellation is received.
 - b.) The cost of any materials and supplies which Seller shall have purchased to perform.
22. **FORCE MAJEURE:** Seller shall not be liable for any delay in delivery or non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of either Seller or our suppliers, including but not limited to failure or delay in transportation, acts of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, acts of nature, pandemics, wars, supply chain interruptions, shortage of labor, fuel, raw material or machinery or technical failure. If such occurs, Seller may allocate production and deliveries among Seller's customers.
23. **WAIVER:** The failure at any time to require performance of Buyer for any provision of this Agreement will in no way affect the right to require such performance at any time thereafter, nor will the waiver of one specific provision of this contract constitute a waiver of any succeeding breach of the same or any other provision.
24. **SEVERABILITY:** If any term of this Agreement is invalid or unenforceable under applicable law or regulation, such term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such applicable law or regulation, and the remaining provisions of this Agreement will remain in full force and effect.