

ELECTRIC MOTOR SERVICE LIMITED

General Terms and Conditions of Sale

The following terms and conditions of sale ("these Terms and Conditions") are incorporated into and form part of every sale of product and/or service by ELECTRIC MOTOR SERVICE LIMITED or ELECTRIC MOTOR SERVICE (FORT MCMURRAY) LTD. ("EMSL"), to each purchaser ("Purchaser") described in an EMSL sale invoice ("EMSL Invoice"). By ordering and accepting delivery of a product and/or service described in an EMSL Invoice, each Purchaser is deemed to have read, understood & agreed to these Terms and Conditions.

1. These Terms and Conditions Govern

These Terms and Conditions shall govern all sales between EMSL and Purchaser, unless an authorized EMSL representative agrees in writing to change these Terms and Conditions. Any terms and conditions contained in Purchaser's agreements or purchaser orders is of no force or effect.

2. Quotations

An EMSL price quoted for the sale of product and/or service is valid for 30 days from the date of the quotation, unless an authorized EMSL representative extends that time in writing.

3. Prices/Cost of Transportation

EMSL quotes prices based on exchange rates, transportation costs, manufacturing costs, labour costs and other EMSL costs to supply a product and/or service in effect at the time when EMSL quotes a price. EMSL can change quoted prices any time before EMSL accepts Purchaser's order for the product and/or service, with prior notice to Purchaser. EMSL prices are subject to correction for error or omission. Unless otherwise stated, all prices are Ex-works (EXW) EMSL's facility and include domestic packaging, if necessary. EMSL will use its customary transportation methods to deliver Purchaser's product, at Purchaser's expense. EMSL will use Purchaser's special transportation method, at Purchaser's expense, if Purchaser requests it in reasonable time before EMSL ships the product.

The Purchaser may only dispute an EMSL Invoice and claim a re-adjustment by written notice given to EMSL specifying the basis of the dispute within thirty (30) days after the date of delivery of the EMSL Invoice. If no such notice is delivered by the Purchaser within such period, the Purchaser will be deemed to have accepted the EMSL Invoice. If the Purchaser disputes the accuracy of an EMSL Invoice within the applicable period, the Purchaser will nevertheless make payment in accordance with the EMSL Invoice, but the disagreement will be referred by EMSL for prompt decision to an independent third party, who will be deemed to be acting as an expert and not an arbitrator. The independent third party's signed determination will be final and binding on both EMSL and the Purchaser. Any adjustment required to any previous payment made by the Purchaser by reason of any such determination will be made within fourteen (14) days thereof, and the party required to pay such adjustment will bear all costs of the independent third party, except that if the amount to be paid is three percent (3%) or less of the amount in dispute, in which case the Purchaser will pay all such costs.

4. Taxes

EMSL's quoted prices do not include Goods and Service Tax, provincial or municipal sales tax, use, value-added or similar tax, and Purchaser shall pay all applicable taxes in addition to the quoted price.

5. Delivery

EMSL's delivery schedules are approximate and are based on market conditions in effect, first when EMSL quotes its price for a product and second when EMSL accepts Purchaser's order. If EMSL cannot deliver the product when stated at the second of those times, EMSL can cancel its acceptance of Purchaser's order without any liability to Purchaser, except to return Purchaser's deposit or prepayment which is unearned because of that cancellation.

6. Force Majeure

EMSL is not responsible or liable for any loss or damage incurred by Purchaser resulting from causes beyond EMSL's reasonable control including, without limitation, acts of God, acts of any government, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown of equipment, labour disputes, faulty material or the failure of EMSL's suppliers to meet their delivery promises. Purchaser's acceptance of delivery of EMSL's product will constitute a waiver of all Purchaser's claims for loss or damage due to any delay whatsoever.

7. Shipment/Damages or Shortages in Transport/Risk

Except for obligations stated under "Warranty" below, EMSL's responsibility for a product ends on delivery of it to the carrier in the event of loss or damage during shipment. Purchaser's only claim will be against the carrier in that case. Purchaser must notify EMSL within 10 days of delivery of products concerning any shortage of product for that delivery. If EMSL does not receive written notification of such shortage within that 10-day period, Purchaser will be deemed conclusively to have received delivery of all required products, unless an authorized EMSL representative agrees otherwise in writing. EMSL reserves the right to make partial shipments and to submit invoices for partial shipments.

8. Title

Title to EMSL products or part thereof will not pass from EMSL to purchaser until Purchaser has paid EMSL for them in lawful money, except as otherwise expressly stipulated in an EMSL Invoice. EMSL products will remain as personal or moveable property, notwithstanding their mode or attachment to realty or other property. If Purchaser defaults in any payment due to EMSL, EMSL may retain all payments made on account of the purchase price as liquidated damages, and Purchaser authorizes EMSL to enter the premises where EMSL products may be located and remove them as EMSL's property without prejudice to EMSL's right to recover any further expenses or damages EMSL suffers because of Purchaser's nonpayment.

9. Licence to Intellectual Property

Notwithstanding anything to the contrary, if EMSL's sale of a product or service includes a product, process, design or service in which EMSL claims a proprietary right as inventor or owner of intellectual property ("EMSL's Intellectual Property"), no title to or ownership of EMSL's Intellectual Property is or will be transferred to Purchaser on the sale and EMSL's Intellectual Property will remain EMSL's exclusive property. Subject to these Terms and Conditions, EMSL grants Purchaser either a non-exclusive licence or sublicense as the case may be, to use EMSL's Intellectual Property to the extent necessary for Purchaser to use the product or service for the limited purpose intended. Purchaser shall not copy, modify, disassemble, re-engineer or de-compile EMSL's Intellectual Property, in whole or in part, or develop a similar product or service with the intention of or for the purpose of marketing it.

10. Limitation of Liability

Notwithstanding anything to the contrary or any applicable statutory provisions, EMSL is not liable to Purchaser concerning the sale of an EMSL product or service:

- a) For indirect, special, consequential, incidental or punitive damages (including, without limitation, damages for or in relation to loss of use of facilities, lateness in delivery, loss of revenue or profits, downtime costs, the cost of capital or of substitute equipment or services, or the cost of replacement power) arising directly or indirectly from any breach of contract (fundamental or otherwise);

In no event will EMSL's liability concerning the sale of an EMSL product or service exceed the unit price of the defective service, product or part provided for the sale, actually paid by the Purchaser, and all such liability will terminate on the expiry of the warranty period. For clarity, EMSL's total aggregate liability to the Purchaser shall not exceed the amount paid by the Purchaser to EMSL for the defective service, product or part.

The provisions of these Terms and Conditions concerning limitation of or protection against liability of EMSL will survive the termination, cancellation or expiration of the contract for the sale of an EMSL product and/or service, and will also protect, to the full extent permitted by law, EMSL's direct and indirect suppliers and sub-contractors and their respective agents and employees.

If Purchaser resells a product, part or service sold by EMSL, Purchaser shall bind its customer to provisions limiting liability of Purchaser and its suppliers and sub-contractors, which are substantially the same, as corresponding provisions in these Terms and Conditions and Purchaser shall indemnify and save harmless EMSL from any claims, loss or damage arising directly or indirectly from Purchaser's failure to do so.

EMSL is not liable to Purchaser for any damage caused by EMSL to Purchaser's property to the extent that such damaged property is insured by Purchaser.

11. Warranty**General**

This warranty is only effective so long as the Purchaser has paid all amounts owing to EMSL. If the Purchaser is in default of any payment, regardless of amount, then this warranty is of no force and effect for the duration of the default.

EMSL warrants that (a) a product sold or installed by EMSL, including any replacement parts, will conform to the specifications for it specified in an EMSL Invoice and be free of material defects in workmanship and material; (b) EMSL's technical field assistance will comply with applicable professional standards and practices for it; and (c) EMSL's installation, workmanship and materials will be free of material defects and consistent with generally accepted professional standards practiced by a like contractor on a like project at the time such services were rendered and will reflect competent professional judgement.

If Purchaser makes a warranty claim in writing within one (1) year from the earlier of:

- a) delivery;
- b) invoice date; or
- c) performance of the service

then EMSL will promptly investigate Purchaser's claim for warranty under these Terms and Conditions. If EMSL determines, in its discretion, that the claim is valid, then EMSL will remedy the defect in accordance with these Terms and Conditions. EMSL may modify or extend the warranty period in writing for any specific sale.

EMSL's warranty will be void if an EMSL product has been altered or repaired by persons other than those authorized or approved by EMSL to perform such work. EMSL's warranty will be void if Purchaser has materially misrepresented any circumstance or fact on which EMSL relied, in providing the original EMSL product or service.

If remedying a warranted defective product or service requires EMSL employees to work overtime, Purchaser shall pay the overtime portion of their pay.

THESE WARRANTIES ARE EMSL'S ONLY WARRANTIES TO PURCHASER AND NO OTHER WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, WILL BE IMPLIED. ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR THE INTENDED USE AND AGAINST INFRINGEMENT, ARE HEREBY EXPRESSLY EXCLUDED. THE REMEDIES PROVIDED HEREIN ARE PURCHASER'S SOLE REMEDIES FOR ANY DEFECTIVE PRODUCT MANUFACTURED BY EMSL OR SERVICE PERFORMED BY EMSL.

If EMSL remedies a warranty claim in accordance with these Terms and Conditions, that will constitute complete fulfillment of all EMSL's obligations hereunder, whether Purchaser's claim is based in contract (including fundamental breach), in tort (including negligence) or otherwise concerning a valid warranty claim.

Notwithstanding anything to the contrary, EMSL's warranties herein apply only to services performed by EMSL and products manufactured by EMSL for sale. EMSL does not warrant any product supplied by EMSL that is manufactured by another manufacturer and Purchaser's sole remedy concerning a defect in such a product will be limited to a claim under the original manufacturer's warranty for such a product and against that original manufacturer.

The warranty period will not restart as a result of EMSL responding to any warranty claims whether by repair or replacement. The warranty period will not pause during any default by the Purchaser which causes the warranty to become of no force or effect.

The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products or Service only as authorized by Seller in writing. Failure to meet any such condition renders the warranty null and void. Seller is not responsible for normal wear and tear.

Defective products

For a defective product, EMSL's obligation is limited to repairing or replacing the product, at EMSL's option, at EMSL's facility or other location EMSL agrees to in writing. The Purchaser will properly package and return the product by prepaid transportation as directed by EMSL. The Purchaser will pay all transportation costs. EMSL will not be liable for any damage to the product that occurs during transportation. If EMSL determines that the Purchaser's claim is not valid, EMSL will return the product "as is" to the Purchaser.

If EMSL agrees to remedy a defective product at Purchaser's work site, Purchaser, at its expense, must give EMSL access to the defective product, including removal, disassembly, replacement or reinstallation of any equipment, materials or structures necessary to permit EMSL to remedy a warranted defect.

EMSL will not be liable for damage to equipment, components or parts resulting in whole or in part from accident or from improper storage, use, operation or maintenance of an EMSL manufactured product.

Defective service

For a defective service, EMSL's obligation is limited to re-performing the defective service to the standard required for it and to produce the specific result ordered, provided that EMSL determines that the claim is valid and the claim is made within the warranty period.

12. Installation

Unless otherwise agreed in writing, an EMSL product will be installed by and at the risk and expense of Purchaser. If Purchaser asks EMSL to supervise such installations, EMSL's responsibility and liability for it will be limited by paragraph 11 above. Purchaser will, however, remain responsible for all other aspects of the installation, including compliance with all applicable laws and regulations.

13. Returned Products

Purchaser shall not return an EMSL product without EMSL's prior written permission. EMSL reserves the right to decline all returns or to accept them subject to a handling/restocking charge. Even after EMSL has authorized the return of a product for credit, EMSL reserves the right to adjust the amount of any credit given to Purchaser on return of the product, based on the condition of the product upon arrival at EMSL's facility. Credit for a returned product will be issued to Purchaser only where such product is returned by Purchaser and not by any subsequent owner of the product. EMSL will consider a product for return only if it is in its original condition and packaging.

14. Terms of Payment

Unless otherwise stated in an EMSL Invoice, Purchaser shall pay money due for an EMSL sale within thirty (30) days of the date of the EMSL Invoice for it. If Purchaser does not pay that money to EMSL within that thirty (30) day period, Purchaser shall pay to EMSL interest on that money at the rate of 24% per annum, calculated from the 31 day after the date of that EMSL Invoice and thereafter until Purchaser pays that money and all accrued interest thereon to EMSL in full.

EMSL does not offer a discount on EMSL's normal pricing for a product or service for infrequent purchases, small quantity or low price purchases, special orders, C.O.D. purchases or normal sales. If EMSL agrees in writing to give Purchaser a price discount, Purchaser must pay the discounted price in accordance with EMSL's terms and conditions for it before the discounted price will apply.

15. Changes and Cancellation

Purchaser cannot change its order for an EMSL product or service after EMSL has accepted Purchaser's order unless EMSL agrees in writing to Purchaser's change. If EMSL agrees to Purchaser's changes or cancellation, EMSL reserves the right to charge Purchaser for EMSL's reasonable costs for the expenses already incurred and commitments made by EMSL including, without limitation, any labour performed, material purchased, EMSL's usual overhead and reasonable profit, and similar cancellation charges from EMSL's suppliers.

16. The Agreement

The provisions of an EMSL Invoice issued for Purchaser's order (and other EMSL document issued concerning Purchaser's order in addition to that EMSL Invoice) and these Terms and Conditions constitutes the entire agreement between EMSL and Purchaser for the product and/or service purchased and sold and supersedes all previous quotations, orders and agreements between EMSL and Purchaser concerning that purchase and sale. The laws of the Province of Alberta govern the validity, interpretation and enforcement of such purchase and sale agreement (including, without limitation, these Terms and Conditions).

17. Arbitration

If there is any dispute regarding the interpretation, compliance with or breach of these Terms and Conditions, EMSL may, at its discretion, refer the dispute to binding arbitration before a single arbitrator in accordance with the provisions of the *Arbitration Act* (Alberta), with all hearings to take place in Edmonton, Alberta, unless otherwise agreed by the parties. Any judgment, decision or award rendered by such arbitrator will be final and binding and will not be the subject of any further court proceeding except in connection with the enforcement of any such award by a court of competent jurisdiction. The costs of arbitration, including legal fees and disbursements of the parties, will be allocated by the Arbitrator in the manner that the Arbitrator, in his or her discretion, considers appropriate. This arbitration provision does not affect the rights of EMSL to seek injunctive relief when appropriate to enforce its rights hereunder.