

E2V General Terms and Conditions of Sale

1. General

- a. The sale or provision of all goods and any related services ("Products") by an E2V Group company ("E2V") (the specific company will be designated on the Quotation) to the Customer shall be subject to these terms and conditions and the written quotation ("Quotation") (together these terms and conditions and the Quotation form the "Contract") all of which shall prevail over and apply in precedence to any other document, term or condition. Where there is conflict between any provisions of these terms and conditions and a Quotation, the Quotation shall prevail. In the event of conflict between any other language version of these terms and conditions and the original English language version, the original English language version of these terms and conditions will prevail.
- b. Products are only available and prices are only valid where stated in a Quotation. Unless otherwise stated the Quotation is valid for 30 (thirty) days from the date of the Quotation unless it is withdrawn or extended in writing provided that E2V shall, at any time, have the right to increase the price of any Product with respect to which E2V's cost of raw materials and purchased components included in the Product increases by 5% or more. Any such price increase shall become effective upon written notice to the Customer accompanied by a certificate from E2V confirming that such costs have increased by 5% or more.
- c. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- d. No waiver by E2V of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

2. Payment

- a. Payment shall be in the currency specified in the Quotation and unless otherwise agreed shall be due and payable in full within 30 (thirty) days of the date of the invoice. The invoice shall be sent on the date of dispatch of the Products (or, if the Products are services, upon commencement of those services), or, if E2V is unable by reason of instructions or lack of instructions from the Customer to dispatch the Products, E2V shall invoice the Customer upon the intended date of despatch. Upon subsequent despatch of the delayed Products, E2V shall invoice the Customer for storage in accordance with clause 3c.
- b. If E2V at any time determines, in its sole and absolute discretion, that the Customer is not financially sound or responsible or may be unable to pay, in full and in a timely manner, all amounts due to E2V, E2V shall have the right to require payment in full, in cash, before delivery of any Product, without liability to E2V and without prejudice to any other rights E2V may have.
- c. In the event the Customer orders quantities of Products with associated price breaks and fails to take these quantities within the agreed timescales for delivery then E2V reserves the right to amend the prices according to the actual quantity of Products delivered to the Customer.
- d. The Customer is not entitled to withhold, set off or counterclaim any sums due under invoices received from E2V.
- e. The Customer must raise any dispute relating to the invoice within 30 (thirty) days of the date of invoice. If the Customer's dispute is held valid, E2V shall credit the Customer the disputed amount.
- f. If the Customer fails to pay any sum due to E2V by its due date the Customer shall pay to E2V in addition to such sum or sums due, interest thereon at the prevailing Statutory rate for interest on late payment, calculated on a daily basis together with any additional costs and expenses incurred by E2V and E2V may at its sole discretion and without liability postpone delivery or cancel all or part of the Contract or any other contract between the Customer and E2V without prejudice to any other right or remedy which E2V may have against the Customer in respect of such default. Where in accordance with clause 17 below, the Contract is governed by French law, the Statutory interest rate shall be understood as the main refinancing rate of the European Central Bank increased by 10 (ten) percentage points, and interest shall be payable automatically, without request by E2V.
- g. All payments due under the Contract are expressed free of all taxes, duties and charges of whatsoever nature. In the event any such taxes, duties and charges are levied on E2V the price of the Products shall be increased by an amount equivalent to such taxes, duties and charges.
- h. Time of payment shall be of the essence of any Contract.

3. Delivery

- a. The times, places and terms of delivery are as specified in the Quotation. Delivery shall be EXWORKS E2V site Incoterms 2000, unless otherwise specified. Quoted delivery times shall be regarded as estimates and time is not of the essence in relation to them. E2V may ship and deliver the Products in instalments and no partial shipment or delivery shall constitute a breach by E2V. Risk against loss or damage to all or any of the Products shall transfer from E2V to the Customer upon delivery in accordance with the specified Incoterm.
- b. Delivery will be subject to receipt by E2V of any necessary export licences, documentation or requirements. In the event these cannot be obtained by E2V, E2V will be entitled to terminate the order with immediate effect without any liability.
- c. If the Customer fails to take delivery of the Products or any part thereof on the due date or fails to provide instructions or documents required to enable the Products to be delivered on the due date, E2V may on giving written notice to the Customer store or arrange for the storage of the Products, and on the service of such notice: (1) risk in the Products shall pass to the Customer; (2) the delivery of the Products shall be deemed to have taken place; and (3) the Customer shall pay to E2V all costs and expenses including storage and insurance charges arising from its failure.

4. Inspection and Acceptance

- a. The Customer shall inspect the Products upon delivery and may reject any Products that do not conform to the Contract, provided written notification of such rejection is submitted to E2V. Products not notified as rejected within 30 (thirty) days of delivery will be deemed to be accepted.

5. Transfer of Title

- a. Title in Products will transfer from E2V to the Customer only upon receipt by E2V of payment in full for the Products.
- b. Until such time as the title in the Products passes to the Customer E2V may, without prejudice to any other rights or remedies available to it, repossess any or all of the Products. For the purpose of so taking possession, the Customer gives E2V irrevocable authority without notice to enter the Customer's premises for the purpose of collecting and removing the Products.

6. Warranty

- a. E2V warrants the Products in accordance with the conditions of E2V Standard Warranty Leaflet (ref no. 11555A). ALL OTHER WARRANTIES ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW.
- b. The Customer warrants that it will be responsible for (and will finance the costs of) the collection, treatment, recovery and environmentally sound disposal of all product waste at its end-of-life for any product supplied by E2V, in accordance with all applicable legislation.

7. Limitation of Liability

- a. Subject to Clause 7(c), E2V SHALL NOT BE LIABLE TO THE CUSTOMER BY REASON OF ANY BREACH OF THE CONTRACT OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) FOR ANY LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF USE, LOSS OF PRODUCTION OR OPPORTUNITY, LOSS OF CONTRACTS OR FOR ANY FINANCIAL OR ECONOMIC LOSS OR FOR ANY INDIRECT LOSS HOWSOEVER ARISING THAT MAY BE SUFFERED BY THE CUSTOMER OR BY ANY THIRD PARTY.
- b. SUBJECT TO CLAUSE 7(C), E2V'S LIABILITY FOR BREACH OF CONTRACT OR NEGLIGENCE IS LIMITED TO 15% OF THE CONTRACT VALUE, IN FULL AND FINAL SETTLEMENT AND THE CUSTOMER AND E2V EXPRESSLY AGREE THAT THIS LIMITATION IS AN ADEQUATE REMEDY IN ANY SUCH CASE.
- c. No provision of the Contract shall limit or exclude the liability of E2V for death or personal injury caused by negligence or for its fraudulent misrepresentation.

8. Modifications

- a. E2V reserves the right, without notice to or consent by the Customer, to make minor modifications to Product specifications, design or materials as E2V deems necessary. No alteration or modification to a Product which affects the price to be paid or time of delivery shall be made without the prior agreement of the Customer, which shall not be unreasonably withheld.

9. Assignment

- a. The Customer shall not without E2V's prior written consent assign any of its rights or obligations under the Contract to any other person or company and any attempted assignment in violation of this provision shall be void. E2V may assign any of its rights and obligations under the Contract.

10. Force Majeure and Extension of Time

- a. E2V shall not be liable for any failure to perform its obligations that are due to any circumstances beyond its reasonable control ("Force Majeure Event") including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or any inability to obtain any necessary import or export licences or other consents of any government. If any Force Majeure Event occurs E2V shall automatically be entitled to an extension of time for such period as is necessary to perform its obligations under the Contract and the Customer shall have no claims whatever against E2V in respect of such delay in performance.

11. Confidential Information

- a. The Customer agrees that it has not provided E2V with any confidential information and that E2V has no confidentiality obligation to the Customer. No obligations of confidentiality will be accepted by E2V other than in pursuance of a formal written agreement.
- b. The Customer shall keep confidential all confidential information provided to the Customer by E2V.

12. Intellectual Property

- a. All intellectual property rights (including patent and design rights) relating to Products or parts thereof supplied by E2V shall remain E2V's absolute property. The Customer shall not reproduce or disclose E2V's designs, drawings, specifications or information to any third party or copy or reverse engineer (or cause or enable any third party to copy or reverse engineer) any of the Products.

13. Indemnity

- a. E2V will indemnify the Customer against any claim by third parties that the ordinary use or sale of the Products or part thereof supplied by E2V to the Customer infringes the intellectual property rights of the third party, and against all reasonable costs and damages which the Customer incurs in any resultant action, provided always that this indemnity shall not apply to any infringement:
 - (i) which is due to E2V having followed a design or instruction furnished or given by the Customer, or to the use of the Products or part thereof in a manner or for a purpose or in a country not specified or disclosed to E2V, or
 - (ii) which is due to the use of the Products or parts thereof together with or in combination with any other article, material or apparatus, or
 - (iii) where E2V procures for the Customer the right to continue to use the Products or parts thereof or E2V has modified or replaced the Products or parts thereof.
- b. The indemnity in Clause 13a. is conditional on:
 - (i) the Customer giving to E2V the earliest possible notice in writing of any claim being made or action being threatened or brought against the Customer;
 - (ii) the Customer permitting E2V at its own expense to conduct any litigation that may ensue and/or all negotiations for a settlement of a claim; and
 - (iii) the Customer not making any admission which is or may be prejudicial to E2V.
- c. THE INDEMNITY IN CLAUSE 13A. IS GIVEN IN LIEU OF ANY OR ALL LIABILITIES WHICH E2V MIGHT OTHERWISE HAVE IN RELATION TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT OR OTHER RIGHT.
- d. The Customer shall indemnify E2V regarding the use of designs or instructions furnished by the Customer to the same extent as E2V's indemnity in Clause 13a. above.

14. Termination

- a. For cause: (i) If the Customer commits any breach of its obligations, makes any arrangement with its creditors or commits any act of bankruptcy or becomes insolvent then in E2V's sole discretion it may, without any liability, terminate, cancel or suspend its performance of the Contract or any other contract between the Customer and E2V, or postpone delivery of all or any part of the Products or all or any part of any other order placed by the Customer with E2V. (ii) E2V also may terminate the Contract, upon written notice to Customer, if E2V suffers any Force Majeure Event.
- b. For E2V's Convenience: E2V may terminate any Contract on giving three months' notice to the Customer.
- c. For Customer's Convenience: The Customer may cancel or terminate the Contract only with the prior written consent of E2V and only upon such terms as E2V, in its sole and absolute discretion, may agree. In the event of termination within one month prior to the acknowledged delivery date the Customer will be liable to E2V for the full Contract value terminated. In the event of termination outside one month but within two months prior to the acknowledged delivery date the Customer's liability will be the higher of the costs incurred by E2V as a result of the termination or fifty percent of the Contract value terminated. In the event of termination outside two months prior to the acknowledged delivery date the Customer will be liable for the costs incurred by E2V as a result of the termination.
- d. For E2V default: E2V shall be liable for the Customer's reasonable and demonstrable excess procurement costs up to the maximum liability detailed in clause 7b for the terminated portion of the Contract, in full and final settlement. ALL OTHER REMEDIES BY LAW ARE HEREBY EXPRESSLY EXCLUDED.
- e. E2V may exercise any of the rights herein without any liability and without prejudice to any other right or remedy to which E2V may be entitled by operation of law or otherwise, including without limitation the right to recover E2V's costs with respect to work in progress and incidental costs. In addition, if any Force Majeure Event occurs and E2V terminates the Contract, E2V shall be entitled to retain any deposit or other amount paid by the Customer as of the date on which notice of such termination is provided, it being the express intent of E2V and the Customer that the Customer shall bear the risk of loss of its deposit or other amounts paid to E2V prior to delivery as a result of any Force Majeure Event.

15. Amendments

- a. All changes, modifications and amendments to the Contract must be agreed by the parties in writing.

16. Interpretation

- a. In the event of a conflict between the English version of these terms and conditions and any other language version, the English version shall prevail.

17. Law and Jurisdiction;

The Contract shall in all respects be governed and construed in accordance with the following laws:

- a. When concluded with E2V group companies in California - the laws of that state, excluding its conflicts of laws provisions. Any unresolved disputes shall be finally settled under the international arbitration rules of the American Arbitration Association. The seat of arbitration shall be Santa Clara, California, USA.
- b. When concluded with E2V group companies in all other states of the USA and Canada - the laws of the State of New York, USA, excluding its conflicts of laws provisions. Any unresolved disputes shall be finally settled under the international arbitration rules of the American Arbitration Association. The seat of arbitration shall be New York, New York, USA.
- c. When concluded with E2V group companies in France - the Laws of France and subject to the exclusive jurisdiction of the French courts unless it is otherwise agreed between the parties that any unresolved disputes between them shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce. The seat of arbitration shall be Paris, France.
- d. When concluded with all other E2V group companies - the laws of England and Wales and subject to the exclusive jurisdiction of the English courts unless it is otherwise agreed between the parties that any unresolved disputes between them shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce. The seat of arbitration shall be London, England.