

HYDRO ELECTRONIC DEVICES, INC.
Terms and Conditions of Purchase

1. Controlling Provisions

Generally: The terms and conditions of this document, including the provisions on the face hereof (the "Contract") govern the parties' duties, obligations and relationship with respect to the sale by the vendor described herein ("Seller") and the purchase, acceptance and use by HYDRO ELECTRONIC DEVICES, INC. ("Buyer") of the goods and/or services described herein (the "Products"). This Contract constitutes an offer by Buyer to buy the Products from Seller in accordance with the terms herein. If this document is deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained herein. Seller's acceptance of this offer is limited to the terms, covenants and conditions herein. Buyer hereby objects to and rejects any additional, different or varying terms proposed by Seller, except additional warranties by Seller, regardless of whether such terms would materially alter these terms and conditions. Seller's proposal of additional or different terms shall not operate as a rejection of Buyer's terms unless such variances are in the description, quantity, price, or place or date of delivery of Products, and Buyer's terms shall be deemed accepted without said additional or different terms. **THIS CONTRACT CONSTITUTES THE FINAL WRITTEN EXPRESSION OF THE TERMS BETWEEN BUYER AND SELLER REGARDING THE PRODUCTS AND IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS BETWEEN THE PARTIES WHICH ARE NOT CONTAINED HEREIN SHALL HAVE NO FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY BUYER, EXPRESSLY STATING BUYER'S INTENT TO MODIFY THESE TERMS AND CONDITIONS.**

Acceptance: Seller shall be deemed to have made an unqualified acceptance of this Contract on the earliest of the following to occur: (a) Buyer's receipt of a copy of this Contract, signed by Seller; (b) Seller's acknowledgment of these terms and conditions or any purchase order submitted by Buyer from time to time; (c) Seller's commencement of manufacture or delivery of the Products; (d) Seller's acceptance of any payment from Buyer; (e) Seller's failure to object to these terms and conditions within ten days of receipt; or (f) any other event constituting acceptance under applicable law.

Governing Law: This Contract shall be governed by and construed according to the internal laws of the State of Wisconsin, including, without limitation, the Uniform Commercial Code as adopted in Wisconsin. This Contract and purchases hereunder shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court.

Severability; Waiver: The invalidity or unenforceability of any term or condition of this Contract shall not affect the validity or enforceability of the remainder of this Contract. Buyer reserves the right to correct clerical or similar errors relating to any terms of this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of such term, covenant or condition.

2. Termination, Suspension or Modifications of Purchase Order

Termination and Suspension: Buyer may suspend or terminate this Contract, at any time, for its convenience and in whole or in part, by any reasonable manner. If Buyer terminates this Contract for its convenience, Seller's sole claim shall be for the costs it reasonably incurred in the performance of this Contract prior to such termination, with due allowance for the salvage value of all Products after Buyer has had full opportunity to recommend disposition and audit Seller's costs. If Buyer suspends this Contract, Seller shall promptly suspend further performance of the Contract to the extent specified and during the period of such suspension shall properly care for and protect all work in progress and materials Seller has on hand for performance of the Contract. Buyer may at any time withdraw the suspension of performance and Seller shall resume diligent performance of the work. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Contract price, Seller shall promptly submit to Buyer a written claim for such modification. Seller's claim shall substantiate Seller's increased costs with invoices and other documents satisfactory to Buyer. Upon Buyer's verification and approval of such additional costs, Buyer and Seller shall agree upon an adjustment in the Contract price based upon such costs as full settlement to Seller for the suspension and withdrawal of suspension. **IN NO EVENT SHALL**

SELLER BE ENTITLED TO ANY PROSPECTIVE PROFITS OR ANY DAMAGES DUE TO TERMINATION, SUSPENSION OR WITHDRAWALS OF SUSPENSION.

Termination for Cause: If Seller is adjudged bankrupt, is insolvent, or makes a general assignment for the benefit of its creditors, or if Seller does not correct any failure of Seller to comply with this Contract within ten days after Buyer notifies Seller in writing of such failure, Buyer may terminate this Contract by written notice to Seller. In the event of such termination, Buyer may complete the performance of this Contract by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Any amounts due Seller for Products delivered by Seller in full compliance with the terms of this Contract prior to such termination shall be subject to setoff by Buyer for Buyer's additional costs of completing the Contract and other damages incurred by Buyer as the result of Seller's default.

Modification: Notwithstanding section one above, Buyer may by written supplement to this Contract change the specifications for Products. If such change would affect the price or delivery date for such Products, Buyer and Seller shall agree in writing upon an equitable adjustment to reflect the effect of such change. Seller shall not suspend performance of this Contract while Buyer and Seller are in the process of making of such changes and related adjustments. No substitutions shall be made in this Contract without Buyer's prior written authorization. Any claim by Seller for an adjustment pursuant to this section shall be deemed to have been waived unless made in writing within 30 days from the date Buyer notifies Seller of the suspension, withdrawal of suspension or modification.

3. Delivery

Generally: Unless otherwise specified on the face of this Contract, Seller shall deliver the Products F.O.B. the facility named by Buyer (the "Facility"). For purchases from Sellers outside the United States, or for shipments from outside the United States, Seller shall deliver the Products DDP the Facility. "DDP" shall defined in accordance with INCOTERMS 2000 and the International Chamber of Commerce, as amended from time to time. Seller shall pack, mark and ship Products in accordance with Buyer's specifications from time to time including, without limitation, any temperature specifications. Seller shall package Products so as to prevent damage or deterioration and shall comply with all applicable packaging laws. Seller shall include with each shipment such documents as Buyer may require from time to time including, without limitation, a packing slip

showing Buyer's purchase order number, item numbers, and sufficient other particulars to identify the Products, certificates of compliance, a Bill of Lading showing quantities delivered by lot number and, where appropriate, a Material Safety Data Sheet (collectively, the "Delivery Documents"). Buyer's count shall be accepted as final on all shipments not accompanied by packing lists. Buyer will not pay any charges for any containers, packaging, boxing, crating, marking, delivery, transportation, storage or other charges unless otherwise specified herein. Buyer shall have the right at any time to specify the carrier and/or the method of transportation to be employed in conveying the Products, upon proper adjustment being made to cover any difference in transportation cost agreed upon herein. Deliveries are to be made only in complete lot sizes in quantities and at times specified in schedules furnished by Buyer. Buyer may from time to time change delivery schedules. Any forecasts provided by Buyer are estimates only and are nonbinding. Seller agrees to supply Buyer's requirements for Products. Nothing herein shall be deemed to restrict Buyer from procuring Products from alternate sources. Time is of the essence with respect to delivery of Products. Seller shall immediately notify Buyer of any actual or potential delivery delays. Title to and risk of loss of Products shall remain with Seller until delivery to the Facility. Buyer may from time to time change delivery schedules.

Release Authorizations: Where deliveries are to be made in accordance with Buyer's written releases, notwithstanding any quantities specified on the face hereof, Seller shall not produce any Products covered by this order, or procure materials required therefor, or ship any Products to Buyer, except to the extent authorized by such written releases. Neither acceptance of Products nor payment therefor shall constitute a waiver of this provision.

4. Prices; Payment

Prices: If a price is not stated on the face of this order, the Products shall be billed at the price last quoted, or the prevailing market price, whichever is lower. This order must not be filled at a higher price than last quoted or charged without Buyer's prior written authorization. Prices shall not increase without Buyer's prior written consent, which Buyer may withhold in its sole discretion. Prices include all applicable taxes and costs unless separately stated and agreed to by Buyer.

Payment: Buyer's account with Seller shall be paid within 45 days after receipt of invoice or shipment, whichever is received later, except where cash discounts apply or other terms are specified and specifically agreed to

in writing by Buyer. Buyer's obligation to pay within such 45-day period is subject to Buyer's receipt of the Delivery Documents. Buyer reserves the right of setoff of any amounts due Seller on this Contract against any amount due Buyer from Seller on any transaction. Buyer's acceptance of or payment for the Products or any other action or inaction shall neither (a) relieve Seller from any of its obligations and warranties hereunder nor (b) constitute a waiver of Buyer's rights and claims hereunder.

5. Rejection

All Products are subject to Buyer's inspection during manufacture and/or after delivery. Buyer shall have the right to reject Products if any of such Products do not meet the quality standards furnished or adopted by Buyer. If Buyer rejects any Products, Seller shall, within 20 working days from the date of rejection, at Buyer's option, replace such Products or provide Buyer with full credit therefor. Alternatively, Buyer may replace the Products and invoice Seller for the additional costs Buyer incurs. Any Products rejected by Buyer shall be held at Seller's risk and subject to Seller's instructions or, at Buyer's option, returned at Seller's expense. Seller shall bear all shipping costs, the risk of in-transit loss and damage for replacement Products.

6. Seller's Warranties

Seller expressly warrants to Buyer, Buyer's customer and to the ultimate user that (a) the Products (including Products sold to Buyer but manufactured by others) and all material, packaging and work covered by this Contract will (i) conform to the drawings, specifications, samples or other descriptions furnished or adopted by Buyer, (ii) conform to all representations of and specifications provided by Seller, (iii) meet or exceed the quality standards furnished or adopted by Buyer, (iv) be merchantable, of good material and workmanship and fit and sufficient for the purposes intended, (v) be new, free from defects in material and workmanship; (b) the use and/or sale, alone or in combination, of the Products will not infringe or violate any United States or foreign letters patent, or any right in or to any patented invention or idea, or a trademark or copyright, (c) the Products and their production, storage, pricing, delivery and sale hereunder are in compliance with foreign, federal, state and local laws applicable thereto including, without limitation, all packaging and labeling laws and (d) Seller is conveying good title to the Products, free and clear of any liens or encumbrances. Seller acknowledges that it has knowledge of Buyer's intended use and warrants that all Products that have been manufactured by Seller based on Buyer's use will be fit and sufficient for the particular purposes intended by Buyer. Any Products not

in accordance with the foregoing warranties or any special warranty shall be deemed to be defective and may be rejected by Buyer. Buyer's approval of Seller's specifications shall not relieve Seller of any of its warranty obligations. Seller will maintain a quality assurance system which is adequate in Buyer's judgment to detect and prevent shipment of nonconforming Products. In the event of any recall affecting the Products, Seller shall indemnify Buyer and the Buyer Parties in accordance with sections 7 and 9. Buyer shall have the right to control the recall process and Seller shall fully cooperate with Buyer in connection with the recall.

7. Breach of Warranty

If Seller breaches any of its warranties, Seller shall be liable for and indemnify Buyer and the Buyer Parties from and against all Damages incurred by them, including, without limitation, the purchase price of the Products, delivery costs, replacement and cover costs, lost profits, consequential and incidental damages. Seller acknowledges that, if the Seller's breach causes Buyer to deliver products to its customers either late or below Buyer's standards, Buyer will incur lost profits and other damages for which Seller is liable. Without limiting the foregoing, Seller shall promptly and at its sole cost replace any Products failing to conform with the warranties set forth in this Contract. Replacement Products shall be subject to the same warranty as provided above. If Product is held to constitute an infringement of a third party right, Seller shall, at its expense, either procure for Buyer the right to use said Product or replace same with a substantially equal but not infringing Product, or modify it so that it becomes substantially equal but not infringing.

8. Buyer's Information and Intellectual Property

Buyer's Information: If any products supplied under this Contract are made according to Buyer's manufacturing information, such information shall be used only to manufacture products to Buyer's orders. Seller agrees that Buyer shall at all times retain title to such manufacturing information and Seller agrees to maintain it in confidence. Upon Buyer's request, Seller shall return to Buyer all such manufacturing information without retaining any copies or embodiments thereof.

Intellectual Property: Whenever requested by Buyer to do so, Seller will place on the Products, in the manner specified by Buyer, such trademarks or other identifying marks as Buyer may specify. Seller warrants and agrees that Buyer's identifying marks shall be used only on products supplied to Buyer and in the manner and subject to the restrictions imposed

by Buyer. All of Buyer's Intellectual Property Rights are and shall remain Buyer's sole property and Seller agrees not to take or permit any action contradicting Buyer's rights thereto. "Intellectual Property Rights" include, without limitation, any copyright, patent, registered or unregistered design, logo, trademark, trade dress, trade name or other designation, translation of trade name into another language, and any similar rights or applications for rights in any of the foregoing in any part of the world owned or used by Buyer or any of its affiliates, and any goodwill relating thereto. Buyer's rights shall be enforceable by injunctive relief and/or a decree of specific performance. Seller does not acquire any rights, title or interest in any of the trademarks or trade names of Buyer by virtue of this Contract, and Seller shall not use or in any way refer to Buyer's trademarks or trade names without Buyer's prior written permission. Nothing herein shall limit the statutory or common law of torts or trade secrets where it provides Buyer with broader rights.

9. Indemnification and Insurance

Indemnification: Seller hereby releases and agrees to promptly defend, indemnify and hold Buyer and its affiliated persons and entities, employees, customers, successors and assigns (collectively "Buyer Parties") harmless from and against all liabilities, losses, claims, court costs, incidental and consequential damages, actual attorneys' fees and other expenses arising from any loss, damage or injury (including death) to any person or property ("Damages") in any way relating to the Products or (a) any alleged defects in the Products, (b) any inadequate disclosures, labels, packaging, warnings or instructions, (c) the alleged violation of any statute, ordinance or other law, order, rule or regulation, (d) any alleged unfair competition resulting from similarity of design, trademark, use or appearance of the Products, (e) bodily injuries, deaths or property damage caused by negligent or wrongful act or omission of Seller, or any employee or agent of Seller, (f) any breach of warranty set forth herein or any special warranty and (g) any recalls involving Products. The provisions of this section 9 shall be effective whether or not such loss, damage or injury was proximately caused by the sole or partial negligent acts or omissions of Buyer or any Buyer Parties. Buyer and the Buyer Parties, at their option, may be represented by and actively participate through their own counsel in any such suit or proceeding, and Seller shall pay the costs of such representation and participation. **IN NO EVENT SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES ARISING IN RELATION TO THESE TERMS AND CONDITIONS OR THE PARTIES' RELATIONSHIP,**

AND SELLER AGREES TO INDEMNIFY AND HOLD BUYER HARMLESS THEREFROM.

Insurance: Seller shall, at its own expense, maintain in effect insurance with respect to its performance hereunder and the Products with such coverages and in such amounts as Buyer may require in writing from time to time and, at a minimum, as may be commercially reasonable. All insurance policies shall be issued by insurance companies reasonably acceptable to Buyer. At Buyer's request, Seller shall cause the issuer of each insurance policy to issue a certificate of insurance naming Buyer as an additional named insured, and containing an agreement by the insured that the policy shall not be terminated or modified without at least 30 days' prior written notice to Buyer, and Seller shall deliver each such certificate to Buyer. Seller's compliance with these insurance requirements shall not relieve Seller from liability under these indemnification provisions. Seller shall indemnify Buyer and the Buyer Parties for any loss suffered due to Seller's failure to obtain or maintain the insurance required hereunder.

10. Assignment

Neither party shall assign or transfer this Contract or any interest or duty of performance herein without the prior written consent of the other party; provided, however, that Buyer may assign, without Seller's consent, this Contract and its interest herein to any affiliate or to any entity succeeding to Buyer's business. Subject to the foregoing, these terms and conditions shall be binding on and inure to the benefit of the parties and their successors and assigns.

11. Independent Contractor

Seller is and shall remain an independent contractor and neither Seller nor any of its employees or agents shall be or be considered an employee of Buyer. Neither Seller nor any of its employees or agents are authorized to incur any obligations or make any promises or representations on Buyer's behalf.

12. Force Majeure

Buyer shall not be responsible for default hereunder where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, labor disturbance, operation of statutes, laws, rules or rulings of any court or government, or any other cause beyond Buyer's control.

13. Survival

The provisions of sections 1, 6, 7, 9, 13 and 14, and any other provision the performance of effectiveness of which naturally survives, shall survive expiration or termination of this Contract for any reason.

14. Buyer's Remedies Cumulative

Buyer's remedies specified herein are cumulative and not exclusive of any other remedies available to Buyer.