

## TERMS AND CONDITIONS

### 1. DEFINITIONS:

- "Seller" is defined as Elite Controls, Incorporated, its parent, subsidiaries, and each of its affiliates and their respective transferees, successors and assigns, along with their respective directors, officers, agents, and employees.
- "Purchaser" is defined as the purchaser of the Products or Services offered by Seller, along with their respective directors, officers, agents, and employees but expressly excludes any subsequent purchaser or possessor.
- "Seller's Office" is defined as Seller's address located at 16330 Central Green Blvd., Suite 100, Houston, TX 77032. If the location of the office changes, upon reasonable notice to Purchaser, "Seller's Office" will be deemed amended to reflect the address of the new location.
- "Agreement" is defined as the standard Terms and Conditions contained herein.
- "Products" are defined as any item(s) sold by Seller.
- "Services" are defined as any system design, drawings, technical advice, maintenance, repair, or instructions provided by Seller in connection with the sale, maintenance, repair, or installation of Products, excluding engineering services.
- "Work" is defined as the Products and/or Services provided by Seller to Purchaser.

### 2. ACCEPTANCE:

Seller's acceptance of any offer or order made by Purchaser is materially conditioned upon Purchaser's acceptance to be bound by this Agreement and Seller's Control Development Terms and Conditions. If Purchaser objects to this Agreement, such objection must be made in writing and received by Seller's Office within ten (10) days after this Agreement is transmitted to Purchaser. Failure to do so object shall be deemed to be Purchaser's acceptance of this Agreement. Seller's failure to object to any terms or conditions in any oral or written communication from Purchaser, at whatever time delivered to Seller, shall not constitute acceptance by Seller thereof or be considered a waiver of this Agreement. Any terms and conditions inconsistent with, or additional to, those in this Agreement are expressly rejected, however any change, modification, extension, renewal, ratification, waiver or rescission of this Agreement, or any of the provisions hereof, shall be binding on Seller and Purchaser if it is clearly described in writing and signed by both Seller and Purchaser. All previous negotiations, conversations, and understandings between Seller and Purchaser are merged herein.

### 3. PRICE:

In the event of an increase or reduction in price on materials, parts, labor, or freight rates of the Work, the new price will become effective immediately and shall be applied to the unshipped portion of the Products in Purchaser's order. Any reduction in price on parts, material, labor, or freight rates of the Works shall not have a retroactive effect upon shipments of any of the Products completed prior to the date of the price reduction.

### 4. PAYMENT:

Payment shall be made in net U.S. Dollars, within 30 days from the date of the earliest shipment(s) of the Products, unless otherwise agreed in writing by Seller and Purchaser. For international transactions, all payments shall be made as agreed to by Seller and Purchaser. All sums payable by Purchaser to Seller are payable to the Seller's Office. Shipment(s) of the Products are subject to Purchaser establishing and maintaining satisfactory credit with Seller, which is determined by Seller. Seller may require full or partial payment for shipment(s) of the Products in advance. Pro rata payment may, at the election of Seller, become due as any shipment(s) of the Products are made. If completion of any shipment of the Products is delayed by Purchaser, or Purchaser's efforts could have kept such shipment from being delayed, the Seller may require payment of the contract price based upon the percentage of completion of the shipment(s) of the Products. Seller may defer or cancel shipment(s) of the Products and/or delay or cancel Services if Purchaser fails to make any payment to Seller. In addition to the requirements of this paragraph, if this Agreement is regarding an international transaction, payment shall be made via wire transfer, unless Seller agrees otherwise in writing.

### 5. DELIVERY:

Seller shall not be liable for any loss or damage resulting from delay on shipment(s) of the Products or for services caused by fire, flood, strikes, labor disputes, riots, thefts, accidents, delays in transportation, acts of god, or any other cause reasonably beyond the control of the Seller. Seller shall not be liable in any event, for loss of anticipated profits, loss by reason of plant shut down, non-operation or increased expense of operation of other equipment or other direct, indirect or consequential damages of any nature caused by delay in delivery. Delivery dates quoted are approximate and delivery will be ExWorks (EXW Incoterms 2010) unless otherwise agreed to in writing by Seller. Purchaser shall be solely responsible for the arrangement of shipment and all of the associated costs. In case of delays in shipment(s) caused by the fault of the Purchaser, or which could have been avoided through the efforts of Purchaser, Purchaser agrees to promptly reimburse Seller any extra charges for Seller's additional expense and/or loss of time.

### 6. INSPECTION AND ACCEPTANCE:

All Products must be inspected and accepted by Purchaser within ten (10) days of the date of the delivery of the Products.

### 7. LICENSES AND TAXES:

This Agreement does not include federal, state or local sales, use, privilege, occupation or excise taxes or any other taxes applicable to the shipment(s) of the Products, the Products, or for any Services of Seller (including, without limitation, any and all non-U.S. taxes, duties, levies or assessments). Purchaser is responsible for and shall pay all taxes levied for the shipment(s) of the Products. Purchaser is responsible for and shall provide and pay for all permits, licenses and certificates necessary for the installation and operation of the Products or for any Services provided by Seller.

### 8. SECURITY INTEREST:

If applicable, Purchaser shall grant Seller a security interest in any Products purchased by Purchaser. Seller shall have all the rights and remedies of a secured party under the Texas Uniform Commercial Code. Purchaser agrees to sign any documents Seller deems necessary to perfect its security interest in the Products. Purchaser agrees that the collateral for Seller's security interest in the Products shipped to Seller is and shall remain personal property. Seller may require Purchaser to assemble any such collateral at a location Seller deems convenient. Purchaser shall reimburse Seller for any expenses incurred by Seller in protecting or enforcing its rights under this Agreement, including without limitation, reasonable attorney's fees and legal expenses, and all expenses in taking possession, holding, preparing for disposition and disposing of the collateral for Seller's security interest in the Products shipped to Seller. Seller may waive any default without waiving any other subsequent or prior default by Purchaser, however to be valid such waiver must be in writing and signed by Seller.

### 9. PATENT INFRINGEMENT:

Seller shall have no responsibility or liability for patent infringements, the design of any of the Products, or the performance of equipment manufactured according to specifications of Purchaser or Purchaser's agents. Seller shall have no responsibility or liability for patent infringement on equipment or components manufactured by third parties.

### 10. ASSIGNMENT:

Purchaser agrees that Seller may assign or sublet this Agreement, in whole or in part, without Purchaser's notice and consent, not to be unreasonably withheld.

### 11. RETURNS:

Products shall not be returned to Seller without Purchaser first obtaining Seller's signed written consent and shipping instructions. Purchaser agrees to promptly pay all costs associated with returned Products. In the event any Products are returned to Seller, Purchaser agrees to promptly pay Seller the restocking charge, which will be a reasonable amount determined by Seller.

### 12. CANCELLATION, TERMINATION OR CHANGE OF ORDER:

Once Seller accepts an order by Purchaser, Purchaser waives its right to cancel the order. In the event of termination of an accepted order, Purchaser shall pay all costs, expenses, loss of profits, and damages sustained by Seller in connection with such termination. **Terminated orders may be subject to the full invoice price, less any salvage value.** No order may be changed without Seller's written consent and then Purchaser shall bear all costs involved in completing any such changes.

### 13. NOTICE, APPLICABLE LAW AND FORUM:

Seller shall not be liable for any claims (direct or indirect) which are not presented to Seller, at Seller's Office, in writing, within 181 days of the earlier of either the date of loss or the date of the incident giving rise to the claim. **To the extent that maritime law does not apply, Seller and Purchaser agree that the law of the State of Texas shall govern this Agreement and all lawsuits related to this Agreement and or Seller's Products or services shall be filed**

**only in Harris County, Texas and Seller and Purchaser hereby submit to the personal jurisdiction of the Texas.**

Purchaser and Seller hereby disclaim the applicability of any international convention, law, or treaty, including without limitation, the United Nations Convention for the International Sale of Goods, to this Agreement. During the pendency of any dispute, the parties shall continue to perform the obligations imposed upon them by this Agreement to the fullest extent possible, consistent with the positions with respect to the dispute. Purchaser shall observe and obey any and all applicable international, national, state and local laws, rules, regulations, and any other applicable rules and standards including, but not limited to those issued for the protection of the environment, proper import/export laws, or anti-corruption laws in relation to this Agreement or the Work. Purchaser shall not perform any deceptive, misleading, illegal or unethical business practice in relation to this Agreement or the Work.

### 14. DEFENSE, INDEMNITY AND INSURANCE:

**PURCHASER AGREES TO DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, DEMANDS, CLAIMS (INCLUDING PERSONAL INJURY AND WRONGFUL DEATH), LITIGATION, DEFENSES, SUITS, PROCEEDINGS, OBLIGATIONS, ACTIONS, JUDGMENTS, CAUSES OF ACTION, AND EXPENSES (INCLUDING WITHOUT LIMITATION, THE REASONABLE FEES OF LEGAL COUNSEL, INVESTIGATORS AND ACCOUNTANTS), BASED ON CLAIMS OF PERSONAL INJURY OR DEATH BY ANYONE OR FOR DAMAGE TO PROPERTY ARISING OUT OF OR RELATED IN ANY WAY TO THE PRODUCTS OR SERVICES OF THIS AGREEMENT, WHETHER BY THE ACTS OR OMISSIONS OF PURCHASER OR OF SELLER, INCLUDING BUT NOT LIMITED TO SELLER'S: NEGLIGENCE AND/OR GROSS NEGLIGENCE, ACTIVE OR PASSIVE AND PARTIAL OR SOLE, ACTS OF MALICE, STRICT LIABILITY, CONTRACTUAL LIABILITY, ALLEGATIONS OF BREACH OF ANY IMPLIED WARRANTY INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER LEGAL FAULT. SUCH DEFENSE AND INDEMNITY AND HOLD HARMLESS AGREEMENT SHALL INCLUDE, WITHOUT LIMITATION, ANY LIABILITY TO OR ACTION UNDERTAKEN BY ANY GOVERNMENTAL AUTHORITY OR AGENCY (INCLUDING, WITHOUT LIMITATION, THE UNITED STATES GOVERNMENT, STATE GOVERNMENT OR OTHER THIRD PARTIES) UNDER ANY APPLICABLE INTERNATIONAL, FEDERAL OR STATE LAWS OR GOVERNMENTAL ORDERS, RULES, AND REGULATIONS, INCLUDING THOSE RELATING TO POLLUTION. NOTWITHSTANDING, ANYTHING CONTAINED ABOVE, IN THE EVENT THAT AN INJURY OR ACCIDENT CAUSING A CLAIM, DAMAGE, LOSS OR LIABILITY OCCURS WHICH IS SUBJECT TO THE LAWS OF ANY JURISDICTION THAT PROHIBITS OR LIMITS PURCHASER'S ABILITY TO INDEMNIFY SELLER, THEN, IF SUCH LAW MUST BE APPLIED, PURCHASER'S LIABILITY SHALL EXIST TO THE FULL EXTENT ALLOWED BY THE LAW OF SUCH JURISDICTION, AND PURCHASER AGREES TO CARRY THE MAXIMUM AMOUNT OF INSURANCE WHICH MAY BE ALLOWED OR REQUIRED BY THE LAW OF SUCH JURISDICTION FOR THE PROTECTION OF SELLER AGAINST SUCH LOSS OR LIABILITY. PURCHASER SHALL USE INSURANCE PROVIDERS SATISFACTORY TO SELLER AND WHO ARE AUTHORIZED TO DO BUSINESS IN THE STATE OR STATES OR OFFSHORE AREAS IN WHICH THE PRODUCTS AND SERVICES OF THIS AGREEMENT MAY INVOLVE. PURCHASER AGREES THAT PURCHASER'S INSURANCE COVERAGE SHALL SUPPORT PURCHASER'S DEFENSE AND INDEMNITY OBLIGATIONS DESCRIBED IN THIS AGREEMENT. THE INSURANCE COVERAGE OF PURCHASER WILL INCLUDE COMPREHENSIVE GENERAL LIABILITY INSURANCE WITH LIMITS OF LIABILITY FOR BODILY INJURY AND FOR PROPERTY DAMAGE OF NOT LESS THAN \$1,000,000 ANY ONE OCCURRENCE. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT INSURANCE COVERAGE REQUIRED OF PURCHASER OUTSIDE THIS AGREEMENT REPRESENTS PURCHASER'S MINIMUM REQUIREMENTS AND IS NOT TO BE CONSTRUED TO LIMIT ANY DEFENSE AND INDEMNITY OBLIGATIONS OF PURCHASER UNDER THIS AGREEMENT. PURCHASER'S INSURANCE POLICY SHALL BE PRIMARY TO AND SHALL RECEIVE NO CONTRIBUTION FROM ANY INSURANCE POLICIES MAINTAINED BY SELLER. THE INSURANCE POLICY OF PURCHASER SHALL EXPRESSLY WAIVE SUBROGATION AS TO SELLER, AND NAME SELLER AS ADDITIONAL INSURED. THE OBLIGATION TO NAME SELLER AS ADDITIONAL INSURED IS INDEPENDENT OF AND A SEPARATE AND DISTINCT OBLIGATION FROM THE DEFENSE AND INDEMNITY OBLIGATIONS DESCRIBED IN THIS AGREEMENT. TO THE EXTENT THAT THIS AGREEMENT MAY BE CONSTRUED BY ANY COURT OR AUTHORITATIVE BODY WITH RESPECT TO THE LOUISIANA OILFIELD INDEMNITY ACT, LA. REV. STAT. ANN. § 9:2780(B), THE PURCHASER SHALL SUBMIT AN INVOICE TO SELLER REPRESENTING THE PREMIUM FOR SUCH INSURANCE COVERAGE.**

### 15. LIMITED WARRANTY AND DISCLAIMERS:

Seller will provide Purchaser with any applicable warranties provided by the manufacturer of the Products. Seller warrants that all Work manufactured and sold by Seller will not have defective workmanship and materials, if under normal and proper use, for a period of one (1) year from the date of delivery. Seller shall repair or replace, F.O.B. at Seller's Office or such other place as indicated by Seller, any such Products manufactured and sold by Seller which are defective within the terms of the foregoing warranty. Seller shall have no obligation to repair or replace such Products unless Seller receives such Products at Seller's Office or such place which Seller agrees to in writing. Seller warrants that Services will be undertaken in accordance with the standards of care and diligence normally practiced by recognized firms in performing services of a similar nature. If, during one year from the completion of Services, it is shown that the foregoing standards have not been met, Seller shall, at its cost, re-perform the Services as may be necessary to remedy the deficiency. SELLER HEREBY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. THE FOREGOING OBLIGATION TO REPAIR OR REPLACE SUCH WORK, AND/OR RE-PERFORM THE SERVICES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE PURCHASER OR USERS OF THE WORK, INCLUDING THE OWNER, IRRESPECTIVE OF SELLER'S STRICT LIABILITY, FAULT OR NEGLIGENCE. In the event Seller is requested to provide remedial services at any location other than as set forth in this paragraph, Purchaser shall bear all resulting transportation, lodging, per diem and labor costs incurred by Seller in fulfilling Purchaser's request. Seller's limited warranty herein does not apply to (i) sales of equipment, or products, accessories or attachments manufactured by third parties, (ii) work over or repair work by others, (iii) products or parts requiring replacement because of natural wear and tear, erosion, corrosion or due to improper use, operation, installation or maintenance by Purchaser or others, (iv) any used item(s) with all such sale(s) sold by Seller "AS IS/ WHERE IS," or (v) there is modification of the Work by others.

### 16. LIMITATION OF DAMAGES:

**Anything in this Agreement to the contrary notwithstanding, the maximum aggregate liability, if any, of Seller (whether arising in contract, tort, negligence, strict liability, breach of warranty, breach of contract or otherwise) under or in connection with this Agreement or the Work rendered hereunder shall be limited to an amount equivalent to ten percent (10%) of the total payments received hereunder, and Purchaser hereby releases Seller from any and all further liability, loss, cost and expense in excess of such amount. SELLER SHALL IN NO EVENT BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF OR DAMAGE TO OR LOSS OF USE OF FACILITIES, EQUIPMENT, OR OTHER PROPERTY, WHETHER OF PURCHASER OR THIRD PARTIES, LOSS OF REVENUE, LOSS OF ANTICIPATED PROFITS, OR OTHER INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY CUSTOMERS OF PURCHASER OR OTHER CLAIMANTS RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE CAUSE OF THE SAME, IRRESPECTIVE OF SELLER'S STRICT LIABILITY, FAULT OR NEGLIGENCE.**

### 17. MISCELLANEOUS:

If any provision of this Agreement is held to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make this Agreement enforceable. In the event any provision is unenforceable, the remaining provisions remain in full force and effect. It is the express intent, understanding and agreement of the parties that waivers, limitations and releases of liability set forth in this Agreement are: (i) to be enforceable to the fullest extent allowed by law, notwithstanding the negligence (whether sole, joint or concurrent), strict liability or other fault of a party hereto; and (ii) independent and severable from the indemnities contained in this Agreement, so that in the event any indemnity is found to be void or unenforceable, such finding shall not affect in any way the enforceability of any related waiver, limitation or release of liability. The headings of the paragraphs in this Agreement are for convenience only and are not a part of the Agreement. Seller may waive any default without waiving any other subsequent or prior default by Buyer, however to be valid such waiver must be in writing and signed by Seller.