

CONDITIONS OF SALE

Acceptance of your order is subject to the following terms and conditions as well as the condition of sale stated in the Price Book, which may not be superseded or modified in any manner by the terms of your purchase order unless specifically agreed to in writing by Sterling Electric, Inc. ("the Company");

1. **WARRANTY** – The Company warrants that all of its own manufactured products will be of the kind and quality described in the specifications established at time of purchase, and no other warranty, except of title, is herein expressed and none shall be implied. The conditions of any test of the products shall be mutually agreed upon, and the Company shall be notified of and may be represented at all tests that may be made. If any failure to comply with the specifications appears within one year from the date of shipment the Purchaser shall notify the Company thereof immediately. Failure to notify the Company within such period shall relieve said Company from any and all obligations. The liability of the Company (except as to title) arising out of the supplying of said products or their use, whether on warranties or otherwise, shall not in any case exceed the least of the cost or correcting defects in the products, by repair or by supplying a replacement, f.o.b. factory, of the defective part or parts. Upon expiration of (1) year from the date of shipment all such liability shall terminate.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PRODUCT. INCLUDING ANY IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. NEITHER COMPANY NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITOL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INCIDENTAL, INDIRECT, SPECIAL OR SONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS BY PURCHASER FOR DAMAGES OR PURCHASER'S CUSTOMERS.

The Company is not responsible for damage to products or injury to persons or property due to abuse, improper installation or storage, alteration or modification, use other than for which originally sold, or through operations above rated load, either intentionally or otherwise, of any product or part. Further the Company shall not under any circumstances, be liable for the fault, negligence, or wrongful acts of purchaser or Purchaser's employees, or Purchaser's other contractors or suppliers. If any Purchaser fails to comply with the stipulated conditions of operation, or fails to permit the Company to inspect defects before repairing, or alters the product in any way, or fails to maintain the equipment in as-is shipped condition in storage, the Company's responsibility shall terminate.

2. **CHANGE OF PRICES/ORDERS** – A minimum charge of \$50.00 shall be charged on any order. Any order changes requested by Purchaser after order has been entered shall incur a minimum charge of \$50.00. In addition, charges will be made to cover the cost of re-engineering, drafting, parts scrapped because of the change and Price Book modifications caused by the change.

In the event of a price change, prices on the unshipped portions of all orders are subject to the price in effect at the time of shipment. Exceptions to these terms are stated in the Price Book Conditions of Sale.

3. **SHIPPING AND STORAGE** – Products shall be shipped f.o.b. point of shipment, no freight allowed. Shipping methods or carriers are at the discretion of the Company. Date of shipment shall be the date shown on bill of lading for receipt of shipment by initial carrier. The Company is not responsible for any damage incurred during delivery by common carrier. Purchaser shall file claim against the carrier. All storage claims must be filled within (10) days of the receipt of shipment.

Special storage preparation is recommended for products that will not be put in service within ninety days of shipment. Charges for this service are specified in the catalog Conditions of Sale. Failure to request such storage preparation will void the warranty on products stored over ninety days.

4. **TERMS OF PAYMENT** – Unless otherwise arranged, terms of payment are cash in full within thirty days of invoice date. Payment will be in U.S. Dollars. On late payments, in the contract price shall, without prejudice to the Company's right to immediate payment, be increased 1½% per month on the unpaid balance, but not to exceed the maximum permitted by law.

If at anytime in the Company's judgment the Purchaser may be or may become unable or unwilling to meet the terms specified, the Company may require satisfactory assurances, full or partial payment, as a condition to commencing or continuing manufacture of making shipment, and may, if shipment has been made, recover the product(s) from the carrier, pending receipt of such assurances.

5. **CANCELLATION** – Cancellation of this order may be made by written notice to Company provided that payment of cost incurred by the Company, to the time such notice is received, is made by Purchaser.

6. **PATENTS** – The Company shall defend any suit or proceeding brought against the Purchaser so far as based on a claim that any product, or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States. If notified promptly in writing and given authority, information and assistance (at the Company's expense) for the defense of same, and the Company shall pay all damages and cost awarded therein against the Purchaser. In case said product, or any part thereof, is in such suit held to constitute infringement and the use of said product or part is enjoined, the Company shall, at its own expense, either procure for the Purchaser the right to continue using said product or part; or replace same with non-infringing product; or modify it so that it becomes non-infringing or remove said product and refund the purchase price and the transportation and installation costs thereof. The forgoing states the entire liability of the company for patent infringement by said product or any part thereof.

7. **DELIVERY/DELAY** – Shipping dates are estimates and are based upon prompt receipt of all necessary information. The Company shall not be liable for delay due to causes beyond its reasonable control, including but not limited to acts of God, acts of failure to act of government, acts or regulations of the federal or state governments, acts or omissions of the Purchaser, acts of civil or military authorities, priorities, fires, strikes, blizzards, earthquakes, tornadoes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, car, shortages, and inability, due to reasons beyond its reasonable control, to obtain necessary labor, material, or manufacturing facilities. In the event of any such delay, the date of the delivery shall be extended for a period equal to the time lost by reason of the delay and its consequences. Delay caused by Purchaser's request or amendment or addition to order shall cause the Company to apply those prices and price policy clauses in effect as of the date said order is finally released.

8. **TAXES** – The Company's prices do not include sales, use, excise, license or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, license or other similar tax applicable to the sale of the equipment, parts or accessories hereunder shall be paid by the Purchase, or in lieu thereof the Purchaser shall provide the Company with a tax exemption certificate acceptable to the taxing authorities.

9. **TITLE** – The title and right of possession of the equipment, parts or accessories sold hereunder shall remain with the Company and such equipment shall remain personal property until all payments hereunder (including deferred payments, whether evidenced by notes or otherwise) shall have been made in full in cash and the Purchaser agrees to do all acts necessary to protect and maintain such right and title in the Company.

10. **WAIVER/INDEMNITY** – No waiver or modification of any of these terms and conditions of sale shall be valid unless it is made in writing and signed by both Company and Purchaser. Failure by the Company to enforce any right possessed under the foregoing terms and conditions shall not constitute a waiver thereof or establish a custom. Purchaser shall protect, defend, indemnify and hold harmless the Company for all loss, cost or expense arising out of any breach of these Conditions of Sale or negligent act of the Purchaser.

11. **LAWS/LIMITATIONS** – The Company will comply with all applicable Federal, State and local laws, and hereby represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. The laws of the State of California shall govern the validity, interpretation and enforcement of this contract. No action, regardless of form, arising out of the sale of use of the products which are the subject of this contract may be brought by either party more than one year after the cause of action has accrued, except on action for nonpayment of the purchase price brought within one year after the last payment due date.