

TERMS AND CONDITIONS

- 1) Definitions:** "Products" means all materials, goods, or work to be provided to Buyer by Seller, regardless of type (including chambers and shielding). "Seller" means ETS-LINDGREN INC., an Illinois corporation, or its affiliated entity by or through which the Products are sold to Buyer. "Buyer" means the person or company purchasing Seller's Products. "Contract" means the document or documents together constituting the contract between Seller and Buyer for the sale, purchase and installation of the Products, and includes these Terms and Conditions.
- 2) Applicability:** These Terms and Conditions apply to all sales of Products by Seller. Buyer's order shall be deemed to incorporate, without exception, all the terms and conditions hereof notwithstanding any order form of Buyer containing additional or contrary terms or conditions. Although Buyer may submit purchase orders or other documents on Buyer's forms, Buyer expressly agrees that Seller's acceptance of such forms is solely for Buyer's convenience and that any different or additional terms or conditions set forth on any purchase order or other document submitted by Buyer shall not apply and shall be void and of no effect. No acknowledgment by Seller of, or reference by Seller to, or performance by Seller under, any purchase order or other document of Buyer shall be deemed an acceptance by Seller of any term or condition which is additional to or different from these Terms and Conditions unless such additional or differing term or condition is set forth in a document generated by Seller or expressly agreed to by Seller in writing. In no event will Seller accept or be deemed to accept any conditions or requirements that are in violation of the U.S. restrictive trade practices or antiboycott laws or regulations.
- 3) Taxes:** The prices stated herein are in U.S. Dollars and do not include any federal, state, or local sales, use, excise, gross receipts, import, export, transport, value-added or other taxes unless so stated specifically in writing. Any applicable exemptions to the above taxes must be made available to Seller prior to invoicing or such taxes will be charged for the state of destination. Any exemption certificates must correlate with the state of destination. Such taxes will be added to invoice prices in those instances in which Seller is required to collect them from Buyer; provided, however, that if Seller does not collect any such taxes and is later asked by or required to pay such to any taxing authority, Buyer will make such payment to Seller or, if requested by Seller, directly to such taxing authority.
- 4) Price Adjustments:** At Seller's option, prices may be adjusted to reflect any increase in Seller's costs resulting from state, federal or local legislation, or any change in the rate charge or classification of any carrier. Notwithstanding the prices agreed upon, if prior to delivery, Seller's costs for copper, aluminum, ferrites, and/or steel (the "Primary Material Components") increase more than 10% as compared to the prices of such Primary Material Components as of the Contract date, Seller may pass on any such cost increases in excess of 10% to Buyer, provided that Seller notifies Buyer in advance of such price increases. Buyer acknowledges that the Primary Material Components represent approximately 20% of the price of the Products. In the event Buyer delays or causes the delay of shipment of any Products, the price for such Products shall be subject to increase to reflect the Seller's prices in effect for such Products at the time of the delayed delivery and to reflect Seller's increased costs resulting from such delay.
- 5) Payment Terms:** Unless otherwise specified by Seller in the Contract, Products shall be invoiced as of the date of shipment, and payment shall be due net 30 days. Seller may, in addition to any other remedy available under applicable law, charge Buyer interest on any amounts not paid when due at a rate equal to the lesser of one and one-half percent (1½%) per month or the maximum interest rate allowable under applicable law, and Buyer shall be responsible and liable for all expenses incurred by Seller in collection, including reasonable attorneys' fees.
- 6) Buyer's Financial Responsibility; Rights of Seller:** Notwithstanding stated payment terms, if Seller shall at any time doubt Buyer's financial responsibility, Seller may demand adequate assurance of due performance or decline to make any further shipments except upon receipt of cash payment in advance or security. If Seller demands adequate assurance of due performance and the same is not forthcoming within 10 days after the date of Seller's demand, Seller may, at its option, (i) continue to defer further shipments under this order and/or any other order from Buyer which has been accepted by Seller until adequate assurance is received, or (ii) cancel this order and/or any other orders from Buyer which have been accepted by Seller and recover damages. If Buyer fails in any way to fulfill these Terms and Conditions or any other provision of the Contract, Seller may defer further shipments until such default is corrected or cancel the order and recover damages.
- 7) Security Interest:** Buyer hereby grants Seller a security interest in the Products, and all proceeds thereof and accessions thereto, to secure payment of the purchase price for the Products and all other charges and costs for which Buyer is responsible hereunder. At Seller's direction, Buyer shall, from time to time, do all acts necessary or reasonable to protect Seller's security interest herein created and Buyer shall execute and deliver to Seller all Uniform Commercial Code Financing Statements which Seller may deem necessary to protect its rights and interests as set forth herein. Buyer hereby irrevocably constitutes and appoints Seller as its true and lawful attorney-in-fact, in its name, place and stead, to execute, deliver, acknowledge, file or record any and all such Uniform Commercial Code Financing and Continuation Statements. The grant of the foregoing power of attorney is coupled with an interest and shall not be revocable by Buyer until all payments due hereunder (including deferred payments whether evidenced by notes or otherwise) shall have been made in cash. Seller shall have the remedies of a secured party under the Uniform Commercial Code in force in the State of Texas.
- 8) Delivery Dates; Shipment Terms:** All delivery dates are approximate, and Seller shall not be responsible for any damages of any kind resulting from any delay. If shipment terms are specified with reference to Incoterms 2010 (or any earlier version) the parties' responsibilities shall be determined in accordance with such Incoterms except to the extent the parties may otherwise agree. Otherwise, except to the extent the parties may otherwise agree, (a) Seller may choose the carrier and means of delivery and arrange for transportation and insurance; (b) all transportation and insurance costs will be paid by Buyer; (c) title to the Products and risk of loss or damage thereto shall pass to Buyer upon tender to the carrier at Seller's factory or warehouse, provided that if delivery is made by Seller's vehicles title and risk of loss or damage shall pass to Buyer upon delivery to Buyer's premises; (d) Buyer may choose the freight forwarder and customs broker, subject to Seller's disapproval; and (e) Buyer shall be responsible for filing all claims with the carrier. No deferment of shipment at Buyer's request will be made except on terms that indemnify Seller against all loss and additional expense, including but not limited to handling, storage and insurance charges.
- 9) Export:** If the Products are to be exported, this order is subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Buyer will be responsible for all export and import charges and consular and customs declarations and will be responsible for penalties resulting from errors or omissions thereon. Buyer agrees that it shall not re-export the Products or any goods or items which incorporate the Products if the re-export would violate United States export laws or the laws of any other country from which they are re-exported.
- 10) Warranty:** Seller warrants the Products as set forth in its Limited Product Warranty applicable to such Products in effect at the time of sale, which is incorporated into these Terms and Conditions and which, if not attached to the Contract documents, is available separately upon request. Buyer agrees that Seller may revise its form of warranty from time to time after the Contract date by providing a copy of the revised warranty to Buyer or by posting it on Seller's website.
- 11) Claims:** Buyer shall promptly inspect all Products upon delivery. No claims for shortages will be allowed unless shortages are reported to Seller, in writing, within 10 days after delivery. No other claims against Seller will be allowed unless asserted in writing within 30 days after delivery (or assembly if the Products are to be assembled by Seller) or, in the case of an alleged breach of warranty, within the warranty period as defined in the applicable Limited Product Warranty.
- 12) LIMITATION OF LIABILITY: IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, ASSEMBLY, USE, LOSS OF USE OR FAILURE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S PRIOR WRITTEN CONSENT, EVEN IF SELLER MAY HAVE BEEN NEGLIGENT. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.**
- 13) Excuse of Performance:** Seller shall not be liable for any default or delay in performance caused, directly or indirectly, by acts of God; war, terrorism, sabotage, riot, insurrection or civil commotion; force of arms; fire, flood, severe weather, or natural disaster; strikes, labor disputes, picketing or other labor controversies; explosion; accidents; any governmental action, prohibition or regulation; delay or unavailability of transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material or equipment used in the manufacture of the Products; failure of any party to perform any contract with Seller relative to the production of the

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Products; or from any other cause which is beyond Seller's control, whether or not such cause be similar or dissimilar to those enumerated. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

14) Loss to Buyer's Property; Patent, Trademark, or Copyright Infringement: Seller shall not be liable for, and shall have no duty to provide insurance against, any damage or loss to any goods or materials of Buyer which are used by Seller in connection with this order. Where any Product is manufactured from patterns, plans, drawings, or specifications furnished by Buyer, Buyer shall defend, indemnify Seller against, and save Seller harmless from, all loss, damage, and expense arising out of any suit or claim against Seller for infringement of any patent, trademark, or copyright because of Seller's manufacture of such Product or because of the use or sale of such Product by any person. Upon Seller's request, Buyer shall, at Buyer's sole cost and expense, retain counsel reasonably acceptable to Seller to appear on Seller's behalf and assume the defense of any litigation arising out of any such claim.

15) Seller's Specifications, Technical Data: Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of Seller furnished to Buyer shall be deemed to be incorporated herein by reference the same as if fully set forth. Seller shall at all times retain title to all such documents, and Buyer agrees to keep such information and documents in confidence and not to disclose such to any party other than Seller or a party duly authorized by Seller.

16) Site Conditions: Buyer shall be responsible for the structural integrity and the clean, asbestos-free and safe status of the work area and structure in which Seller will perform any services and deliver or install any Products. Some installation may involve welding or the use of materials, in which case Buyer shall provide adequate ventilation and assure that the project area is free and clear of debris, dirt and obstruction. Buyer shall provide at its expense, temporary lighting and power for the operation of hand tools and welding equipment, if necessary, and an accessible dumpster for the disposal of debris. Seller shall clean up any materials, debris or obstructions created by Seller. Installation of the Products by Seller is based upon Seller's access close to the site and the perimeter of the project site, together with an adequate amount of weather-tight storage space on the project site. If Buyer is not ready to accept delivery of the Products on the date the Products are to be ready, Buyer shall give Seller sufficient notice of a local point where delivery will be accepted, or the material may be stored, within or without the Seller's factory at Buyer's risk and expense. Buyer shall reimburse Seller for all costs incurred due to extra handling and storage. Any such delay in acceptance shall not delay any agreed-to invoicing or payment schedule.

17) Cancellations: After acceptance by Seller, orders shall not be subject to cancellation by Buyer, and Products may not be returned by Buyer, except with Seller's written consent (and at Seller's sole and absolute discretion) and upon terms that will indemnify Seller against all direct, incidental and consequential loss or damage including but not limited to: direct costs; overhead and other costs which are allocable or apportionable under reasonable accounting practices to the order; storage fees; handling and transportation costs; material or personnel expenses of Seller; and lost profits.

18) Limitation on Assignment: Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other except that Seller shall have the right without Buyer's consent to (a) subcontract any portion of its obligations to any party, or (b) assign all its rights and obligations to any entity with which it is affiliated, into which it shall be merged, with which it shall be consolidated, or by which it, or all or substantially all of its assets, shall be acquired.

19) Product Notices and Instructions: Buyer shall provide all users of the Products (including its employees) with all Seller supplied product notices, warnings, instructions, recommendations, and similar materials, and shall indemnify Seller against any loss or damages (including attorneys' fees) incurred or suffered by Seller as a result of such failure.

20) Equal Opportunity Clause: This Section applies only in the event that the Products are to be used in whole or in part for the performance of government contracts and where the dollar value of said Products exceeds, or may in any one year exceed, \$10,000: a) In connection with the performance of work under this Contract, Seller agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The provisions of the Equal Opportunity Clause, as promulgated by Executive Order 11246 dated September 24, 1965, as amended, are incorporated herein by reference. b) The following provisions regarding equal opportunity, and all applicable laws, rules, regulations, and executive orders specifically related thereto, including applicable provisions from the Federal Acquisition Regulations, and supplements thereto, are applicable hereto, to the extent that the minimum monetary amounts under such regulations have been satisfied: 41 CFR 60-1.4, Equal opportunity clause; 41 CFR 60-1.7, Reports and other required information; 41 CFR 60-1.8, Segregated facilities; 41 CFR 60-250.4, Affirmative action clause (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era); 41 CFR 60-741.4, Affirmative action clause (Affirmative Action for Handicapped Workers).

21) Other Rights or Remedies: Except as otherwise provided herein, any rights or remedies granted hereunder to either party shall be in addition to, and not in lieu of, any other rights or remedies of such party at law or in equity.

22) Severability: In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.

23) Electronic Signatures: The Contract documents and any amendment, waiver or notice related thereto may be executed in counterparts and may be executed and delivered solely by electronic means, including but not limited to facsimile or electronic mail (e.g. in PDF format), and when so executed and delivered shall be valid whether or not followed by the delivery of manually signed originals.

24) Governing Law; Arbitration; Venue: The rights and remedies of the parties under these Terms and Conditions or otherwise with respect to the Contract or the Products shall be governed by and construed in accordance with the laws of the State of Texas (without regard to principles of conflicts of laws). Any dispute arising under these Terms and Conditions or otherwise with respect to the Contract or the Products shall be settled in Travis County, Texas by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the Arbitrator may be entered in either the District Courts for Travis County, Texas or the Federal District Court for the Western District of Texas. The parties hereby agree that the sole proper jurisdiction and venue for any disputes not subject to arbitration hereunder shall be either the District Courts for Travis County, Texas or the Federal District Court for the Western District of Texas. Buyer hereby consents to such venue and to the personal jurisdiction of such courts and hereby waives the right to demand a jury trial in any such action. For such purpose, Buyer, if not located in the State of Texas, irrevocably appoints the Secretary of State of Texas as its agent for receipt of service of process or notices. Any arbitration or other action based upon breach of the Contract or upon any other claim arising out of this sale (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within one year from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within the period of time specified in the applicable Limited Product Warranty.

25) Legal Fees: In the event of any litigation or other proceeding arising herefrom, Seller shall be entitled to recover from Buyer all reasonable attorneys' fees, costs and expenses incurred by Seller in enforcing any of Seller's other rights hereunder.

26) Waiver: Waiver by Seller of any default or breach of these Terms and Conditions or the other Contract documents shall not be construed as a waiver of any other or continuing breach; and failure to exercise any right arising from any default or breach shall not be deemed a waiver of such right, which may be exercised at any subsequent time.