

TERMS AND CONDITIONS

1. Scope: The terms and conditions of sale contained herein apply to all quotations made, and purchase orders accepted, by Evans Components Inc. (ECI). No terms and conditions appearing in Buyer's order, or in its oral or written communication thereof, which are inconsistent with additional to, or different from, any of the terms and conditions herein, nor any alteration hereof, shall be binding upon the seller unless specifically agreed to by seller in writing signed by the seller's general manager. Insofar as any terms and conditions of the Buyer's order conflict with the Seller's terms and conditions contained herein. The latter shall govern, irrespective of whether the Buyer accepts the Seller's terms and conditions by a written acknowledgment, by implication, or acceptance and payment of goods ordered hereunder, it is an express condition of sale and Buyer agrees that unless Seller specifically so agrees in writing in acknowledging any purchase order, and terms and conditions proposed by Buyer which are inconsistent with those herein stated are waived by Buyer. Receipt by the Buyer of the acknowledgment of order without prompt objection to the terms and conditions therein and herein set forth, constitutes acceptance by the Buyer of such terms and conditions.
2. Delays and Deliveries: ECI shall under no circumstances be responsible or liable for failure to fill any order or orders when due to: fire, floods, riots, strikes, mill shortages, freight embargoes or transportation delays, shortages of labor, fuel or power, inability to secure materials or supplies at current prices or on account of shortages thereof, acts of God or of the public enemy, any existing or future laws or acts of the federal or of any state of government affecting the conduct of business or due to any other cause beyond ECI reasonable control, whether or not affecting the procurement, production or transportation of the particular order.
3. F.O.B. Point: All sales are made F.O.B. point of shipment. ECI's title passes to Applicant and ECI's liability as to delivery ceases upon making delivery of material purchased hereunder to carrier at shipping point, in good condition; the carrier acting as a Buyer's agent. All claims for damages must be filed with the carrier. All shipments will normally be made by U.P.S. unless specific instructions from Buyer specify which of the foregoing methods of shipment is to be used ECI will exercise their own discretion.
4. TERMS OF PAYMENT: All invoices are subject to net 30 days. All balances past due will be subject to a service charge of 1 1/2% per month, 18% annual percentage rate. If it should become necessary to turn this account over for collection, Buyer agrees to pay all collection cost plus reasonable attorney's fees. All accounts over 90 days will revert to C.O.D.
5. ASSIGNMENT: The buyer shall not assign his order or any interest therein or any rights hereunder without the prior written consent of ECI.
6. TAXES: Unless otherwise specifically provided herein, the amount of any present or future sales, revenue, excise or other tax applicable to the products covered by this order of the manufacture or sale thereof, shall be added to the purchase price and shall be paid by the Buyer, or in lieu thereof the buyer shall provide ECI with a tax exemption certificate to the taxing authorities.
7. PATENTS: The Buyer shall hold ECI harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications or instructions. Except as otherwise provided in the preceding sentence. ECI shall defend any suit or proceeding brought against the Buyer so far as based on a claim that any product, or 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 ECI's expense) for the defense of same, and ECI shall pay all damages and consist awarded therein against the Buyer. 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, ECI shall at it's own expense, either procure for the Buyer the right to continue using said product or part; or replace same noninfringing product, or modify it so it becomes noninfringing; or remove said product and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of ECI for patent infringement by the said products or any part thereof. The sale of products by ECI shall be entitled to cancel any order then outstanding and shall receive reimbursement for it's cancellation charges.
8. PAYMENTS: If, in the judgment of ECI, the financial condition of the Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, ECI may require full or partial payment originally specified, ECI may require full or partial payment in advance, and in the event of the bankruptcy or insolvency of the Buyer or in the event of any proceeding brought by or against the Buyer under the bankruptcy or insolvency laws. ECI shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges. Each shipment shall be considered a separate and independent transaction, and payment thereof shall be made accordingly. If the Buyer delays the work covered by the purchase order, payments shall be made based on the purchase price and the percentage of completion. Products held for the Buyer shall be at the risk and expense of the buyer. ECI reserves the right to ship its order and make collection by sight draft with bill of lading attached.
9. CANCELLATION: Cancellations will be accepted only with the specific approval of ECI and shall be subject to cancellation charges which will include all expenditures made and committed for this order with a reasonable allowance for prorated expenses and profit.
10. RIGHT OF OFFSET: ECI reserves the right of offset: All approved credits issued for returned product can only be applied to open invoices or future purchases, and cannot be redeemed for cash
11. DELIVERY: Shipping dates are approximate and are based upon prompt receipt from Buyer of all necessary information. In no event will ECI be liable for any reprocurment, nor for delay or non-delivery, due to causes beyond its reasonable control, including but not limited to acts of God, acts of civil or military authority, priorities, fire, strikes, lock-outs, shut-downs, factory or labor conditions, errors in manufacture and inability due to causes beyond ECI's reasonable control to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay the date of delivery shall, at the request of ECI, be deferred for a period equal to the time lost by reason of the delay.
12. LIMITED WARRANTY: ECI warrants only to the original Buyer that the material and goods shipped under any order conform to the description on the face thereof, subject to tolerances and variations consistent with usual and customary trade practices, and warrants title. Except for title, there are no warranties which extended beyond the description in respect to the materials, AND THE ABOVE WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, AND NO EXPRESS OR IMPLIED WARRANTIES OF ABOVE STATED SHALL APPLY TO GOODS OR MATERIALS SOLD BY EVANS COMPONENTS INC. UNLESS EXPRESSLY MADE IN WRITING AND SIGNED BY AN EXECUTIVE OFFICER OF ECI. Should any items supplied by ECI fail to conform to the description, ECI LIABILITY SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE ITEMS OR REFUND OF THE PURCHASE PRICE, AT ECI option, and then only if:
 1. Applicant gives ECI written notice specifying in detail the nonconformity or detail the nonconformity or defect within (10) days from the date of delivery.
 2. ECI inspectors at ECI's warehouse, determine that the items in fact are nonconforming or defective.
 3. Buyer within ten (10) days after request returns the items to ECI's warehouse.
 4. Terms of payment have been fully met.THE FORGOING SHALL BE THE BUYERS SOLE AND EXCLUSIVE REMEDY, WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND ECI SHALL NOT IN ANY EVENT BE LIABLE FOR LOST PROFITS, LOSS OR DAMAGE ARISING OUT OF THE USE OF OR THE INABILITY TO USE ANY GOODS PROVIDED BY ECI OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPES OF NATURE.
13. NO WAIVER: None of the foregoing terms and conditions shall be deemed to have been waived unless such waiver shall be set forth in writing signed by an Executive Officer of ECI. The foregoing terms and conditions shall not be subject to modification or waiver by course of performance, course of dealing, or usage of trade.
14. All shipments international in nature shall require a "Letter of Credit".