

ELECTRO-STEAM GENERATOR CORPORATION TERMS AND CONDITIONS OF SALE

EXCLUSIVE AND ENTIRE: The following Standard Terms and Conditions are intended by the parties to govern all the purchases of equipment, parts or service from Seller, and together with the specifications provided or embodied herewith, represent the entire understanding of the parties without exception. All other terms and conditions are specifically rejected, and by proceeding with the transaction in any manner, both Seller and Buyer agree that these Standard Terms and Conditions shall control. The price charged by Seller is based on these Standard Terms and Conditions.

DOMESTIC TERMS

TERMS: Net 30 days. A "late payment" in the form of interest at the rate of 2% per month or a service charge of like amount will be levied on all late payments (the type of charge being consistent with the applicable local law). Invoices will be submitted when the equipment, part, service is supplied. Attention to these terms will eliminate delays in starting up any equipment or providing further service or parts. NOTE: Terms pending credit approval.

INTERNATIONAL TERMS

TERMS: Advanced payment (wire transfer, credit card, or cash in advance) or confirmed letter of credit.

TAXES: No taxes of any kind are included. All prices herein and/or contracts shall be subject to increase without notice by the amount of present or future sales or excise tax levied or charged, either by Federal, State or any other assessing agency.

CHANGES: Changes made after fabrication has begun shall be submitted in writing, signed by Buyer. Buyer agrees to pay the cost of any changes. The specifications and prices are subject to change without notice.

CLAIMS: Title passes to the Buyer upon delivery to the carrier, unless otherwise indicated. Safe delivery is the responsibility of the carrier. Damaged merchandise, if accepted, should be noted on the delivery receipt and on the freight bill before acceptance of shipment. Make claim promptly.

LOCAL CODES: All LB, LG, SV, SW, VB, and Eagle Series steam generators are built by an ASME Certificate holder in accordance with the ASME Boiler and Pressure Vessel Code Section I – Rules for Construction of Power Boilers ("ASME BPVC Section I"). They also comply with the requirements outlined in The National Board Synopsis of Boiler and Pressure Vessel Laws, Rules and Regulations (NB-370) RULES FOR CONSTRUCTION AND STAMPING section, which for many jurisdictions include but are not limited to ASME BPVC Section I, ASME CSD-1, ASME B31.1, and REGISTRATION WITH THE NATIONAL BOARD. NOTE: It is the responsibility of the installer to conform to any state or local codes. If further inspection following modifications by the installer is required under state and local codes, it is the responsibility of the local installer.

SEVERABLE AND INDEPENDENT PROVISION: WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED ITS ESSENTIAL PURPOSE, ALL OTHER LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT. ALL SUCH PROVISIONS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS OF THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

WARRANTY: Seller warrants that the equipment, service, software, repair or parts supplied shall conform to the description. In the event that any part or parts, excepting expendable items such as, but not limited to, coil liners, thermocouples, refractories and other similar consumable items, that fail due to defects in material or workmanship within the first twelve (12) months of startup of equipment or eighteen (18) months after shipment, whichever occurs first, or in the case of service, repairs, or parts, within twelve (12) months of supplying such service, repair or part, Seller shall at its option, repair or replace EXW (Ex works), such defective part or parts. If the equipment, service, repair or part included software, Seller warrants, for a period of twelve (12) months of startup or eighteen (18) months after shipment, whichever occurs first, that the software supplied or serviced will meet its published functional specifications. Should software fail to meet the specifications, or be otherwise defective, Seller shall promptly correct errors or non-conformities. If correction is not possible, Seller shall replace defective software, or, at Seller's option, refund the purchase price paid for such software. The warranty obligations of Seller with respect to equipment not manufactured by Seller shall conform to and be limited to the warranty actually extended to Seller by its suppliers. Notice of a claim for alleged defective equipment must be given within fifteen (15) days after Buyer learns of the defect. The defective part or parts shall be returned to Seller, freight prepaid, unless otherwise directed by Seller. This warranty shall be exclusive and in lieu of any other warranties and Seller makes no warranty of merchantability or warranties of any other kind express or implied, including any implied warranty of fitness for a particular purpose which extend beyond the warranty as set forth above. Seller's liability for any and all losses and damages to Buyer resulting from defective parts of equipment shall in no event exceed the cost of repair or replacement, EXW of defective parts or equipment. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER.

PATENT INDEMNITY: Seller agrees to indemnify Buyer against any proven claim and assessed liability for infringement of any United States patent arising from the manufacture or sale of any apparatus furnished by Seller to Purchaser. THE FOREGOING STATES SELLER'S ENTIRE LIABILITY FOR CLAIMS OR PATENT INFRINGEMENT. Seller shall have no liability whatsoever if the claim of infringement arises out of Seller's compliance with Purchaser's specifications. Seller shall have no liability whatsoever if a claim of infringement is based upon the Purchaser's use of the equipment as part of a patented combination where the other elements of the combination are not supplied by Seller, or in the practice of a patented process. Where the specifications, process, design are supplied by Purchaser, then Buyer agrees to indemnify Seller in like manner.

PROPRIETARY RIGHTS: Unless otherwise stated herein all design, manufacturing processes, manufacturing information, vendor sources, know-how, equipment, tooling or other hardware, software, or information (collectively referred to as "resources") acquired or utilized by the Seller to produce the finished goods, and any intellectual property rights, including but not limited to patents, copyrights and trade secrets related in any way to the resources, are and shall hereinafter remain the exclusive property of the Seller, regardless of whether such resources are created solely by the Seller, or by Buyer's collaboration with the Seller, for example, where Seller utilizes Buyer's specifications to create resources, and the Buyer shall acquire or receive no rights or title therein or thereto as a result of this purchase whether or not the order provides for Seller's delivery of technical data, drawings or other information to the Buyer in addition to the finished goods. Unless Seller's prior written consent is given, in no event shall the Buyer permit such data, drawings or information to be: (1) disclosed to any third party other than the Buyer's customer; (2) used by the Buyer or the Buyer's customer for manufacture of like or similar goods; (3) used for purposes of duplicating or reverse-engineering Seller's proprietary designs or processes; or (4) used by a party other than the Buyer or the Buyer's customer for any purpose.

LIMITATION OF LIABILITY: SELLER'S TOTAL AGGREGATE LIABILITY (ARISING OUT OF OR IN CONNECTION WITH BUT NOT LIMITED TO ANY BREACH OF CONTRACT, NEGLIGENCE, TORT, LIQUIDATED DAMAGES, SPECIFIC PERFORMANCE, TERMINATION, CANCELLATION INCLUDING THE REPAYING OF THE CONTRACT PRICE OR PARTS THEREOF, FUNDAMENTAL BREACH, BREACH OF WARRANTIES, MISREPRESENTATION, NONPERFORMANCE, NONPAYMENT, OR ANY OTHER) WHETHER BASED IN CONTRACT, IN TORT, IN EQUITY, ON STATUTE, AT LAW OR ON ANY OTHER THEORY OF LAW, SHALL NOT EXCEED THE PAID CONTRACT PRICE. THE BUYER ACKNOWLEDGES THAT THE REMEDIES PROVIDED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AVAILABLE TO THE BUYER AT LAW, IN CONTRACT, IN TORT, IN STATUTE OR IN EQUITY OR IN ANY OTHER THEORY OF LAWS.

INSURANCE: Buyer represents that they have a program of Insurance which adequately protects their interest, and that of their employees and agents, including damage to plant, property and equipment, personal injury of any kind, directly or indirectly related in any way to the equipment, service, repair or parts supplied by Seller. Accordingly, Buyer waives any claim against Seller for the foregoing, and on behalf of its Insurance Company, any right of subrogation in connection therewith.

U.S. EXPORT CONTROLS: All items furnished by Seller to Buyer in connection herewith shall at all times be subject to the export control laws and regulations of the U.S. including, but not limited to, 10 CFR Part 810 and U.S. Export Administration Regulations. Buyer agrees and give assurance that no items, equipment, materials, service, technical data, technology, software or other technical information or assistance furnished by Seller, or any good or product resulting therefrom, shall be exported or re-exported by Buyer or its authorized transferees, if any, directly or indirectly, unless in accordance with applicable U.S. export laws and regulations. The aforesaid obligations shall survive any satisfaction, expiration, termination or discharge of any other contract obligations.

FREIGHT TERMS: F.O.B. Factory. Unloading and transportation to job site are at the Buyer's expense.

INSTALLATION: No installation or job supervision charges are included.

RETURN OF MATERIAL: No goods will be accepted for return without a return authorization number from the factory. A 25% restocking fee is charged on returns, freight prepaid.

FORCE MAJEURE: If the performance of any part of this contract by Seller is rendered commercially impracticable by reason of any strike, fire, flood, accident, or any other contingency, the non-occurrence of which was a basic assumption of this contract including war, embargo, government regulation, or any unforeseen shutdown of major supply sources or other like causes beyond the control of Seller such as cannot be circumvented by reasonable diligence and without unusual expense, Seller shall be excused from such performance in whole or in part to the extent that it is prevented and for as long a period of time as these conditions render Seller's performance commercially impractical.

LAW: This Agreement shall be governed by the internal laws of the State of New Jersey, USA, and any claims arising hereunder shall be prosecuted in the US District Court having jurisdiction of causes arising in the District in which Seller is located. CISG (the Convention for the International Sale of Goods) is expressly rejected.