

# Electronic Drives and Controls, Inc.

## TERMS AND CONDITIONS OF SALE

**1. Terms and Conditions.** These terms and conditions of sale ["Agreement"] are applicable to (i) all orders placed with Electronic Drives and Controls, Inc. ["EDC"], and (ii) all goods and services provided by EDC. This Agreement may be updated, amended, or substituted by EDC from time to time without notice to buyer, with such updated, amended, or substituted agreement terms to be effective upon their being posted at [www.ElectronicDrives.com/terms\\_and\\_conditions](http://www.ElectronicDrives.com/terms_and_conditions). As a result, we recommend that you review the Agreement terms and conditions posted at such webpage from time to time to ensure you are aware of the latest Agreement terms and conditions. EDC is not bound by any terms and conditions in buyer's acceptance or acknowledgment forms or similar documents which may be or are contrary to the terms and conditions included herein. EDC's failure to object to provisions contained in the aforementioned forms of buyer shall not be deemed a waiver of the provisions of the terms and conditions contained herein.

**2. Prices.** EDC sells service on a time, expense and material basis. Time charges include hourly service fees and travel time. Buyer must also pay for all material and expenses. Prices for material noted on the face of the order and/or quotation are firm. If, however, before completion / shipment of this order, EDC receives increases from its suppliers or manufacturers, EDC reserves the right, without notice, to adjust its prices to those in effect at such time. Rates do not include applicable sales, use, excise or similar taxes. The amount of such taxes shall be added to each invoice unless EDC is timely supplied with an acceptable tax exempt certificate.

<b>(A) Hourly Rates per Man (including Travel and On-Site): BASE RATE \$205/Hr*</b>	
<b>WEEKDAYS</b>	
First 8 Hours,** or until 4:00 PM, whichever comes first	1.0 x Base Rate
Next 8 Hours, or until 12:00 Midnight, whichever comes first	1.5 x Base Rate
Remaining Uninterrupted Hours until completion of call	2.0 x Base Rate
<b>SATURDAYS</b>	
First 8 Hours,** or until 4:00 PM, whichever comes first	1.5 x Base Rate
Next 8 Hours, or until 12:00 Midnight, whichever comes first	2.0 x Base Rate
Remaining Uninterrupted Hours until completion of call	2.5 x Base Rate
<b>SUNDAYS, VACATION DAYS, HOLIDAYS***</b>	
First 8 Hours,** or until 4:00 PM, whichever comes first	2.0 x Base Rate
Next 8 Hours, or until 12:00 Midnight, whichever comes first	2.5 x Base Rate
Remaining Uninterrupted Hours until completion of call	3.0 x Base Rate
* <b>BASE RATE: \$205/Hr</b> to buyers that have been extended net 30 day terms, <b>\$210/Hr</b> to buyers paying with credit cards or approved for net 31-90 day terms.	
**When an uninterrupted period of work extends into a period of a lower rate, the higher rate is in effect.	
*** <b>VACATION/HOLIDAY:</b> Employee vacation days, company-observed holidays, and weekends before a Monday holiday or after a Friday holiday.	
<b>Early Starting Times:</b> "First 8 Hours" cannot begin before 4:00 AM and, at EDC's option the "Next 8 Hour" rate may be charged from 4:00 AM until 8:00 AM at which time, the "First 8 Hour" rate would take effect.	

**(B) Travel:** EDC charges sixty-five (**\$65**) cents per mile, plus travel time at the aforementioned hourly rates. Said charges include all travel necessitated by the service call, including but not limited to travel to/from EDC's Parsippany, NJ facility to the jobsite, travel to/from the EDC serviceperson's home to the jobsite, and travel to locate replacement parts.

**(C) Expenses:** The buyer shall pay for all expenses incurred by EDC on behalf of the buyer at cost plus ten (10%) percent. Said expenses shall include but not be limited to tolls, parking, hotels, rental cars, airfare, limousine/taxi to and from airport, material shipping and handling. Buyer shall also pay a **per diem meal charge of fifty (\$50.00) Dollars** for any service call requiring an overnight hotel stay.

**(D) Disposal Fees:** Buyer shall pay for disposal of electrical and electronic waste.

**(E) Compliance Fees:** Buyer shall pay for all expenses incurred by EDC on behalf of buyer for custom insurance, custom accounting software, custom health/safety/environmental requirements or any other compliance fees required to perform the services.

**(F) Project Management Fees:** At EDC's discretion, buyer shall pay for technical research, engineering, sourcing, acquisition, logistical coordination, material preparation, carrying costs and other costs.

**(G) After-Hours Inventory Access Charge:** Buyer shall pay 50% of the Base Rate at the aforementioned hourly rates for actual portal-to-portal hours plus mileage fee for EDC personnel to access inventory outside normal business hours.

**(H) Minimum Charges:** Buyer shall be charged for four (4) hours at the aforementioned hourly rates for any service call in which the combined total travel / work time is four (4) hours or less and shall be charged eight (8) hours for calls between four (4) and eight (8) hours. Partial hours are rounded up to whole hours. In the event of an overnight out-of-town standby call, the minimum billing shall be eight (8) hours at the aforementioned hourly rates, including Saturday-Sunday waiting (at weekend rates) for Monday continuation. Minimum phone support charge is one hour at the aforementioned hourly rates. Minimum in-house evaluation charge is **\$205**.

**3. Payment Terms and Credit.** Invoices submitted by EDC under this Agreement are net cash thirty (30) days from date of invoice. Shipments, deliveries, and performance of work shall be at all times subject to the prior approval of EDC's credit department. Whenever grounds for insecurity should arise with respect to timely payment by the buyer, EDC may require full or partial payment in advance or at the conclusion of each day of a multiple day call, suspend shipment / work, demand different terms of payment from those specified on the face of this order or quote, and/or demand satisfactory security for the performance of buyer's obligation. Service charge at the lesser of one and one-half (1.5%) percent per month, or the maximum rate permitted by law, will be charged on all accounts not paid on the due date. EDC may, at its option, and buyer hereby authorizes EDC, to accept payments due from buyer by charging the credit card(s) identified by buyer to EDC. Such charges, at EDC's option, may be made in whole or in part prior to, during, or after EDC's performance in connection with this Agreement. In the event buyer at any time desires that EDC cease charging buyer's credit card(s), buyer shall, in writing, deliver to EDC a written request advising EDC accordingly.

**4. Taxes.** All taxes of any sort now or hereafter imposed by federal, state, municipal or other governmental agencies that may be levied against this transaction or EDC at any time, now or in the future, shall be at buyer's expense and shall not be charged to EDC under any circumstances. In the event that buyer has submitted an invalid or incomplete tax exempt certificate to EDC, buyer shall pay, in addition to the tax, any and all expenses, interest and penalties incurred by EDC to satisfy such taxes and government requirements, including reasonable attorneys' fees.

**5. Delays.** EDC shall not be responsible for any failure or delay in delivery of goods or services due to acts of God, fires, floods, labor troubles, whether or not due to fault of EDC, breakdown or delay of carriers, total or partial failure for any reason of the usual sources of supplier transportation, requirements or requests of any government or sub-division thereof, or any similar or dissimilar cause beyond EDC's control. Buyer is fully aware of possible delays in shipping and transportation and agrees not to hold EDC liable for delays resulting from same, whether or not such delays are foreseeable.

**6. Claims.** Any course of dealings between the parties notwithstanding, at EDC's election, any claim shall be deemed waived by buyer unless presented in writing to EDC within ten (10) days after the conclusion of the service call or delivery of material. No action by EDC, including but not limited to an inspection or investigation of said claim, even though occurring after the period specified, shall be deemed a waiver of this provision.

**7. Waivers.** No waivers by EDC of any breach of any provisions herein shall constitute a waiver of any other breach of such provision. EDC's failure to object to provisions contained in any communication from buyer shall not be deemed an acceptance of such provision or as a waiver of the provisions of this Agreement.

**8. Governing Law.** This Agreement shall be interpreted, governed and controlled by the laws of the State of New Jersey without reference to principals of conflict of laws. Buyer consents to the exclusive personal jurisdiction of the New Jersey State Courts situate in Morris County and the U.S. District Court for the District of New Jersey. Buyer waives objection to venue in any such courts.

**9. Attorney's Fees and Costs.** Should EDC need to utilize an attorney for any collection efforts or the courts for collection or enforcement of any of the aforementioned provisions, buyer hereby expressly agrees to pay and reimburse EDC for all reasonable attorneys' fees, court, mediation and arbitration costs, litigation fees and all other third-party costs of collection or enforcement.

**10. Integration.** This Agreement constitutes a final written expression of all the terms of buyer's order and is a complete and exclusive statement of those terms. No modification of this Agreement, whether arising from any usage of trade, course of dealing, course of performance, evidence of additional terms or otherwise, shall be binding upon either party, unless reduced to writing and signed by both parties. Any and all written or oral representations, promises, warranties, or statements by EDC or EDC's agents that differ in any way from the terms of this written Agreement shall be given no effect.

**11. Warranties and Discounts by Third Parties.** In the event buyer's service work is covered under a warranty or pre-paid service program offered by a third party (such as a drive manufacturer, distributor or re-seller), buyer acknowledges that EDC is not responsible for promises made by such third parties. Buyer agrees to the following procedure in such situations:

(A) EDC will calculate full charges for service work as if there is no third party involved; (B) EDC will then deduct payments made by third parties from the full calculated charges; and (C) Buyer shall promptly pay EDC the difference, i.e., the unpaid charges. Buyer agrees not to involve EDC in any dispute that may arise between buyer and such third party. If, after buyer pays the full charges, the third party pays some or all of the fees to EDC, EDC will reimburse buyer accordingly. Buyer shall not delay payment to EDC while waiting for payment from the third party. In said event, buyer shall pay any and all finance charges, as provided herein, for said balance until payment is received by EDC.

**12. Background Intellectual Property.** Background IP shall mean all Intellectual Property that EDC owned, developed or acquired prior to the date of service and/or from EDC's performance of the services for the buyer. EDC shall retain exclusive ownership of its Background IP and all intellectual property rights associated therewith.

**13. DISCLAIMER OF WARRANTY. ALL GOODS AND MATERIALS ARE PROVIDED "AS-IS, WHERE-IS". EDC PROVIDES NO WARRANTY THAT THE SERVICE AND MATERIALS WILL BE SUPPLIED ERROR-FREE, ACCURATE OR COMPLETE. EDC PROVIDES NO PERFORMANCE GUARANTEES OF ANY KIND. EDC DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR STATUTORY WITH RESPECT TO THE SERVICE, INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO CASE SHALL EDC BE LIABLE TO ANY PARTY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. THE AGGREGATE AMOUNT OF ALL CLAIMS THAT MAY BE SUBJECT TO INDEMNIFICATION BY EDC SHALL NOT EXTEND BEYOND THE INSURANCE PROCEEDS RECEIVED UNDER EDC'S THEN EXISTING LIABILITY INSURANCE POLICY.**