

ECS Terms and Conditions of Sale

(Last updated: July 2, 2020)

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE PLACING AN ORDER, AS THEY CREATE LEGAL OBLIGATIONS. BY PLACING AN ORDER, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT PLACE AN ORDER.

- Binding Terms.** The sale of all products (“**Products**”) by ECS Electrical Cable Supply Ltd. (“**ECS**”) to any customer (“**Customer**”) through ECS’s website (“**Website**”) is subject to and governed by these terms and conditions (“**Terms**”). By purchasing Products on the Website, or by clicking that Customer accepts or agrees to these Terms when prompted on the Website, Customer acknowledges and confirms that it agrees to all of these Terms and that it is entering into a legally binding agreement with ECS. These Terms will apply regardless of any additional or conflicting terms or conditions that may be included on any purchase order or other form or document issued by Customer. None of these Terms may be amended, modified, waived or superseded by Customer except with the express written consent of an authorized officer of ECS.
- Authority.** Any individual who places an order for Products on the Website on behalf of a company or other entity represents and warrants that he or she is an authorized representative of such company or entity, and that he or she has the right and authority to legally bind such company or entity to these Terms. In such a case, “**Customer**” in these Terms refers to the company or other entity on whose behalf the individual is placing the order.
- Updates.** These Terms may be updated or changed at any time, and from time to time, by ECS in its sole discretion, by posting the updated Terms on the Website. Any new purchase of Products by Customer following the posting of updated Terms will be subject to and governed by such updated Terms.
- Website Terms of Use.** Customer’s use of ECS’s website generally will be governed by [ECS’s Website Terms of Use](#), in addition to these Terms.
- Collection of Personal Data.** Customer consents to ECS’s collection, use and disclosure of personal information pursuant to [ECS’s Privacy Policy](#) (“**Privacy Policy**”).
- Products.** Product images, descriptions, specifications, quantities and other information on the Website (including colour) are for information and illustrative purposes only. While ECS makes commercially reasonable efforts to be as accurate as possible, ECS does not warrant that such information on the Website is accurate, error-free, complete or current. ECS reserves the right to update such information and correct any publishing errors on the Website at any time, and from time to time. The inclusion of any Product on the Website does not imply or warrant that such Product will be available at the time of order. ECS reserves the right to discontinue any Product at any time.
- Prices and Taxes.** Prices listed on the Website for Products are in Canadian Dollars. Prices are subject to verification, correction or change at any time by ECS without prior notice including, without limitation, correction of pricing errors on the Website. Products will be charged at the prices in effect on the date of shipment. Prices listed on the Website do not include reel costs (if applicable), which will be the responsibility of Customer. Reel costs will be estimated at the time an order is placed, and charged to customer at the time of shipment. Prices listed on the Website also do not include taxes, shipping, duties, or similar charges levied by any governmental authority in connection with an order of Products, which will be the responsibility of Customer. Taxes will be calculated at the time an order is placed, and charged to Customer at the time of shipment. Payment of taxes will be the responsibility of Customer unless Customer furnishes ECS with tax exemption certificates in a form acceptable to the relevant taxing authorities in lieu of payment of such taxes. If, after being advised by Customer that an order is tax exempt, the relevant taxing authority denies the tax exemption status, Customer agrees to pay to ECS immediately all applicable taxes and penalties incurred by ECS.

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8. **Accounts and Orders.** In order to place an order for Products, Customer will be required to have an account on the Website, and to log in to that account with a username and password. Customer is solely responsible for safeguarding the confidentiality of its account password, and for all orders placed through its account. When placing orders, Customer will be required to provide certain information relevant to its order including, without limitation, contact name, company or business name (if applicable), email address, telephone number, billing address, shipping address, credit card number and expiration date. Customer represents and warrants to ECS that: (i) all information supplied by Customer to ECS in connection with Customer's order is true, correct and complete, and (ii) Customer has the legal right to use any credit card or other payment method provided in connection with its order. By submitting such information, Customer grants ECS the right to disclose such information to third parties for the purpose of facilitating the processing, completion and delivery of the order. ECS and its third party service providers may contact Customer in connection with its order, including by email.
9. **Cancellation.** ECS reserves the right to reject or cancel an order at any time and for any reason including, without limitation, as a result of Product unavailability or pricing errors, or issues with Customer's form of payment. Where appropriate, ECS will contact Customer to discuss other options, including availability of similar items. Customer may cancel an order at any time prior to receiving shipment confirmation, by contacting ECS at ecs.support@ecswire.com. Notwithstanding the foregoing sentence, Customer will not be entitled to cancel special orders requiring cutting or other customization, or orders for non-stock items.
10. **Shipping.** Customer will have the option of either: (a) having ECS ship and deliver ordered Products to Customer, using ECS's third party logistics company and third party carriers ("**Prepaid Shipping**"); or (b) using Customer's own choice of carrier and related shipping account to ship and deliver ordered Products to Customer ("**Collect Shipping**"). Payment of all shipping and related charges, whether Prepaid Shipping or Collect Shipping, will be the responsibility of Customer unless otherwise expressly agreed to by ECS in writing.

Prepaid Shipping. For Prepaid Shipping, ECS ships Products to Canadian and US addresses only, and cannot ship to PO Boxes. (If you are located outside of Canada or the US and wish to place an order, please contact ECS at ecs.support@ecswire.com to discuss your options.) Customer will be directed to a third party's website to calculate shipping charges and delivery time estimates. Shipping charges will be estimated at the time of order based on the shipping option selected, and the actual shipping costs will be charged to Customer at the time of shipment. Any shipping or delivery dates provided are estimates only and are not guaranteed, although ECS will use commercially reasonable efforts to ship Products by the estimated date. ECS will have no liability to Customer as a result of any delay in shipment or delivery. ECS reserves the right to make partial shipments.

Collect Shipping. For Collect Shipping, Customer will be responsible for arranging and paying for all aspects of pickup and delivery of the ordered Products, and ECS will have no responsibility or liability whatsoever in connection with the shipment or delivery of the Products.

11. **Payment.** Customer agrees to pay the purchase price for the Products, plus taxes, shipping, duties or similar charges. ECS uses a third party to preauthorize and process payments for orders, and Customers will be directed to this third party's website to complete an order. The default currency for orders is Canadian Dollars, but Customer will have the option to pay in United States Dollars when completing its order.

Credit Card. For Customers without existing credit approval by ECS, payment may be made by either Visa or MasterCard. ECS will process a pre-authorization on Customer's credit card at the time of order, based on the purchase price for the Products and the estimated taxes and Prepaid Shipping costs. Once the Products are shipped and the actual taxes and shipping costs are calculated, Customer's credit card will be charged. ECS does not store Customers' credit card numbers.

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Credit Approval. For Customers with existing credit approval by ECS, payment of all amounts owing will be due thirty (30) days from the date of invoice unless otherwise expressly agreed to by ECS in writing. Notwithstanding the foregoing, ECS may in its sole discretion require full payment to be received before delivery of the Products. Overdue payments will bear interest at a rate of 2% per month (24% per year) on the portion that is overdue, or the highest interest rate permitted by applicable law, whichever is lower. Customer will be responsible for reimbursing ECS for all costs of collecting any amounts due from the Customer. ECS reserves the right in its sole discretion to revise any credit limits on Customer's account at any time, or to cancel or place any order on hold in the event that ECS does not have a sufficient credit limit or has a past due balance owing on their credit account.

12. **Title and Risk of Loss.** All Products are sold by ECS to Customer FOB the first point of shipment, unless otherwise expressly agreed by ECS in writing. Title to the Products, and risk of loss, will pass to Customer upon delivery by ECS to the carrier at the FOB point of shipment.
13. **Shortage and Errors.** If, upon receipt its order, Customer believes that there is any shortage, error or discrepancy in the Products received by it, Customer must notify ECS at ecs.support@ecswire.com within 48 hours after receipt of the Products. If Customer does not notify ECS within such 48 hours period, all such claims will be deemed waived by Customer. In the event that ECS is unable to correct the shortage, error or discrepancy, ECS will discuss alternatives with Customer. Customer will not be entitled to charge back any of its labour costs to ECS in connection with any shortages, errors or discrepancy. Quantities will be subject to standard manufacturer allowances. Wire and cable items may be subject to tolerances of up to plus or minus 5%.
14. **Missing Shipments.** If Customer has chosen Prepaid Shipping but does not receive its order, Customer must contact ECS at ecs.support@ecswire.com as soon as possible. ECS will investigate the missing shipment, and if ECS confirms that the shipment is missing rather than simply delayed, ECS will arrange for a new shipment of the order to be shipped to Customer, at ECS's cost. If the Customer has chosen Collect Shipping, Customer's only recourse is to file a claim with the carrier.
15. **Returns and Refunds.**

Damage During Shipment. If the Customer has chosen Prepaid Shipping, in the event of damage to a Product during shipping, Customer must contact ECS at ecs.support@ecswire.com within 48 hours after receiving the Product. If Customer does not notify ECS within such 48 hours period, all such claims will be deemed waived by Customer. Once a Return Merchandise Authorization ("RMA") number has been provided by ECS, Customer must return the damaged Product to the designated ECS address within 30 days of the RMA issuance date, at ECS's cost. Please clearly indicate the RMA number on the outside of the packaging. The returned Product must be new, unopened, unused and in the original packaging, with proof of purchase (i.e., order confirmation or invoice). Once ECS receives and inspects the returned Product and confirms that the return complies with this provision, ECS will either, at ECS's option: (a) provide Customer with a refund of the purchase price and Prepaid Shipping costs paid by Customer for the damaged product; or (b) ship a new Product to Customer, at ECS's cost. ECS reserves the right to deny any Product returns that fail to comply with this provision. If the Customer has chosen Collect Shipping, Customer's only recourse for any damage during shipment is to file a claim with the carrier. Customer will not be entitled to charge back any of its labour costs to ECS in connection with any damaged Products.

Defective Products. If, upon receipt of its order, Customer believes that a Product is defective, Customer must contact ECS at ecs.support@ecswire.com within 48 hours of receiving the Product. If Customer does not notify ECS within such 48 hours period, all such claims will be deemed waived by Customer. Once an RMA number has been provided by ECS, Customer must return the defective Product to the designated ECS address within 30 days of the RMA issuance date, at ECS's cost. Please clearly indicate the RMA number on the outside of the packaging. The returned Product must be new, unused and in the original packaging, with proof of

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purchase (i.e., order confirmation or invoice). Once ECS receives and inspects the returned Product and confirms that the return complies with this provision, ECS will either, at ECS's option: (a) provide Customer with a refund of the purchase price and Prepaid Shipping costs (but not Collect Shipping Costs) paid by Customer for the defective Product; or (b) ship a new Product to Customer, at ECS's cost. ECS reserves the right to deny any Product returns that fail to comply with this provision. Customer will not be entitled to charge back any of its labour costs to ECS in connection with any defective Products.

Other Returns. Returns are not permitted for sale items, items requiring cutting or other customization, or non-stock items. Products may be returned for any other reason by Customer for a refund if the Product is new, unopened, unused, undamaged, in the original packaging, with proof of purchase (i.e., order confirmation or invoice). In order to return a Product for a refund, Customer must contact ECS at ecs.support@ecswire.com within 30 days of receiving the Product. Once an RMA number has been provided by ECS, Customer must return the Product to the designated ECS address within 30 days of the RMA issuance date. Please clearly indicate the RMA number on the outside of the packaging. Once ECS receives and inspects the returned Product and confirms that the return complies with this provision, ECS will issue a refund based on Customer's purchase price for the returned Product, less any restocking charges. Customer is responsible for the cost of shipping the Product back to ECS, and in no event will ECS be responsible for refunding the original cost of shipping, regardless of whether the Product was originally shipping by Prepaid Shipping, Collect Shipping, or ECS had waived the original shipping costs. ECS reserves the right to deny any Product returns that fail to comply with this provision. Customer will not be entitled to charge back any of its labour costs to ECS in connection with any returned Products.

Refunds will be processed to the credit card used for payment of the original order, or for Customers with existing credit approval from ECS, a credit may be applied to the Customer's account.

16. **Reel Returns.** Customer is responsible for all costs associated with shipping any returnable reels back to ECS, in accordance with ECS's instructions. If reels are returned within the specified time period and in good condition, ECS will refund to Customer 93% of the reel costs charged to Customer.
17. **Product Warranty.** Customer acknowledges that ECS is a distributor and not the manufacturer of the Products. ECS represents and warrants to Customer that, on the date of sale to the Customer, ECS has the right to sell the Products to Customer. ECS makes no other representations or warranties with respect to the Products. ECS hereby transfers and assigns to Customer the manufacturer's warranties for the Products (if any, and if assignable). Customer's sole and exclusive remedy for any alleged breach of any warranty related to the Products is limited to those warranties and remedies provided by the manufacturers of the Products.
18. **DISCLAIMER.** TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ECS DISCLAIMS, AND CUSTOMER HEREBY WAIVES, ALL OTHER REPRESENTATIONS, WARRANTIES, GUARANTEES OR CONDITIONS OF ANY KIND REGARDING THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR PERFORMANCE. THE PURCHASE AND USE OF THE PRODUCTS BY CUSTOMER IS AT CUSTOMER'S SOLE RISK, ON AN "AS-IS" AND "AS AVAILABLE" BASIS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, IN WHICH CASE THESE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.
19. **LIMITATIONS OF LIABILITY.** TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL ECS BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND, OR FOR LOSS OF PROFITS OR BUSINESS REVENUE OR INCOME, LOSS OF USE, LOSS OF TIME OR ANY OTHER PECUNIARY LOSSES OR DAMAGES, OR FOR ANY LOSSES OR CLAIMS RELATING TO ANY CLAIM BY ANY THIRD PARTY AGAINST CUSTOMER, WHETHER IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY WHATSOEVER, EVEN IF ECS HAS BEEN INFORMED OF THE POSSIBILITY THEREOF AND EVEN IF ECS COULD HAVE REASONABLY

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FORESSE THEM. UNDER NO CIRCUMSTANCES WILL ECS'S AGGREGATE LIABILITY TO CUSTOMER FOR ANY DIRECT CLAIMS OR LOSSES ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER TO ECS FOR THE RELATED PRODUCTS. NO ACTION ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR ANY RELATED ORDER MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH LIMITATIONS OF LIABILITY MAY NOT APPLY TO CUSTOMER.

20. **Compliance.** Some jurisdictions may have laws, regulations and codes applicable to the purchase, use or installation of the Products for a particular purpose. Certain Products not be available for sale in all jurisdictions. ECS makes no representation or guarantee that the Products are suitable, appropriate for use in any specific jurisdiction, or that the Products comply with any laws, regulations or codes that may be applicable to Customer. Customer is responsible for complying with all applicable laws, regulations and codes in connection with its purchase, use or installation of the Products, and Customer must not purchase, use or install the Products in violation of applicable laws, regulations or codes. Without limiting the foregoing, Customer will comply with all applicable export control laws and regulations and trade sanctions, and Customer will not export or re-export, sell, transfer, assign, use or otherwise dispose of, directly or indirectly, any Products received from ECS to any destination to which such export or re-export is restricted or prohibited by applicable laws or trade sanctions, without obtaining prior written authorization from the competent government authorities as required by those laws. Customer agrees to defend, indemnify and hold ECS harmless from and against any claims, actions, losses, damages, liability, costs or expenses (including reasonable legal fees) incurred by ECS arising from Customer's breach of any provision of these Terms.
21. **Promotional Codes and Discounts.** Certain Customers may be eligible from time to time to receive from ECS promotional codes or discounts to cover shipping or other costs in connection with orders of Products. Any such promotional codes or discounts are provided in ECS's sole discretion. Any decision by ECS to offer promotional codes or discounts to a Customer for a particular order of Products will not create any obligation on ECS to offer promotional codes or discounts to that Customer in the future, or to any other Customer. Promotional codes are not redeemable for cash and are limited to one promotional code per order. All promotional codes are available for a limited time, and cannot be used once expired.
22. **Force Majeure.** ECS will not be liable to Customer for any failure or delay in the performance of its obligations under these Terms resulting directly or indirectly from any cause beyond its reasonable control including, without limitation, fires, floods, earthquakes, Acts of God and other natural disasters, strikes or other labour disputes, explosions, riots, war, terrorism, governmental action, acts of Customer, inability to secure products from suppliers at reasonable prices or in sufficient amounts through usual sources of supply, or acts or omissions of carriers.
23. **Severability.** If any provision of these Terms is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision will be deemed to be modified to the extent necessary in the court's opinion to render such provision enforceable, and the remaining provisions of these Terms will remain in full force and effect.
24. **Waivers.** Failure by ECS to exercise any right or remedy available to it under these Terms or at law will not be deemed a waiver of such right or remedy unless signed in writing by an authorized officer of ECS, nor will acceptance of payment be deemed to be a waiver by ECS. Any waiver by ECS of any right or remedy will not be deemed a waiver any other right or remedy or a waiver of the same right or remedy in the future.
25. **Assignment and Enurement.** Customer may not assign these Terms to any third party without the express written consent of ECS. These Terms will be binding upon and enure to the successors, permitted assigns and legal representatives of the parties. These Terms are for the sole benefit of the parties and their successors,

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permitted assigns and legal representatives, and they will not be construed as conferring any rights to any third party, nor may any provision of these Terms be enforced by a third party.

26. **Survival.** All provisions of these Terms will survive the completion or termination of any order placed by Customer including, without limitation, provisions relating to warranty disclaimers, limitations of liability and compliance.
27. **Governing Law.** These Terms will be governed by, interpreted and construed in accordance with the laws of British Columbia and the federal laws of Canada applicable therein (without reference to their conflict of laws principles), and the courts of British Columbia will have exclusive jurisdiction over any disputes arising out of or in connection with these Terms. ECS and Customer agree that the *Uniform Commercial Code* and the *United Nations Convention on Contracts for the International Sale of Goods* will not apply to these Terms or to any orders of Products.
28. **Entire Agreement.** These Terms (together with [ECS's Website Terms of Use](#) which govern Customer's use of the Website generally, and [ECS's Privacy Policy](#)), constitute the entire agreement between Customer and ECS relating to the subject matter set out herein, and supersede all prior agreements, representations warranties, statements, promises, information, arrangements and understandings whether oral or written, express or implied, with respect to the subject matter of these Terms. ECS will not be bound by any oral or written agreements, representations, warranties, statements promises, information, arrangements or understandings not specifically set forth in these Terms or expressly referred to in these Terms.
29. **Contact Us.** For questions about these Terms, please email to ecs.support@ecswire.com.

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