

Electro-Flow Controls

A DIVISION OF EFC GROUP



Rev 01, Issued on 11th September 2014

EFC GROUP LOCATIONS

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PURCHASE ORDER TERMS & CONDITIONS



1. The Order is issued subject to these Conditions, which govern both the Order and all business dealings between Electro-Flow Controls and the Supplier relating to the Order. The Electro-Flow Controls Order Number must be quoted on all communications in connection with the Order. Failure to do so may result in delayed processing, acceptance and payment.
2. All correspondence relating to the Order except invoices covered by 3 below must be addressed to Electro-Flow Controls at the address set out in the Order.
3. All invoices must:
 - 3.1 bear the Order number plus any additional number allocated;
 - 3.2 quote your VAT registration number; and
 - 3.3 be sent to
Electro-Flow Controls, Hareness Road, Altens, AB12 3LE, Scotland or
EFC Americas Inc., 1424 W.Sam Houston Parkway N, Suite, 140 , Houston, TX 77043, USA

GENERAL CONDITIONS OF PURCHASE

4. DEFINITIONS

In this Contract:

- 4.1 **'Electro-Flow Controls'** shall mean
Electro-Flow Controls of Hareness Road, Altens, AB12 3LE, Scotland
EFC Americas Inc., 1424 W.Sam Houston Parkway N, Suite, 140 , Houston, TX 77043, USA
EFC House, The Enterprise Park, Forres, Moray, IV36 2AB, Scotland
Electro-Flow Controls Ltd, Unit 1A, Station Court, Station Road, Guiseley, Leeds, LS20 8EY, UK
- 4.2 **'Conditions'** means these terms and conditions for the purchase of the Deliverables;
- 4.3 **'Confidential Information'** means any information which has been designated as confidential by you or Electro-Flow Controls in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including the Management Information, information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of you or Electro-Flow Controls and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998
- 4.4 **'Contract'** shall mean the contract concluded by commencement of work under the Order or, if earlier, any acceptance of the Order communicated by you to Electro-Flow Controls (whether in writing, orally or otherwise), whose terms shall comprise these Conditions;
- 4.5 **'Deliverables'** shall mean any services or goods or materials provided pursuant to the Order;
- 4.6 **'Force Majeure'** shall mean any event or occurrence which is outside the reasonable control of either party including (but not limited to) governmental regulations, fire, flood or any disaster.
- 4.7 **'Order'** shall mean the purchase order;
- 4.8 **'IPR'** means all present and future patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

PURCHASE ORDER TERMS & CONDITIONS



4.9 'you' or 'your' shall mean the person or body appearing against the word 'Supplier' on the front of the Order.

The headings used in these Conditions are for convenience and reference only and shall not affect their interpretation.

5. DELIVERY TITLE AND RISK

5.1 You must deliver the Deliverables, together, in the case of goods or materials, with a detailed delivery note quoting an Order number, by the date specified in the Order or, if none, by any reasonable time specified by Electro-Flow Controls. Time shall be of the essence with regard to dates specified by Electro-Flow Controls for the supply of Deliverables.

5.2 Title in the Deliverables shall vest in Electro-Flow Controls upon delivery.

5.3 Risk in Deliverables shall remain with you until the Deliverables are delivered to Electro-Flow Controls and signed for as accepted by an authorised signatory of Electro-Flow Controls provided that if the Deliverables are subsequently rejected by Electro-Flow Controls for any reason whatsoever (whether or not Electro-Flow Controls is entitled to do so in accordance with these Conditions) and Electro-Flow Controls gives you notice of such rejection, then risk in the Deliverables shall pass back to you forthwith.

5.4 If at any time deliveries under this Contract are suspended due to the happening of a Force Majeure event, then, without prejudice to its rights of termination or cancellation under clauses 17 and 18, Electro-Flow Controls may at its discretion postpone delivery of the Deliverables for the period of suspension or such longer period as Electro-Flow Controls may require, in which event Electro-Flow Controls's payment obligations shall be postponed for the equivalent length of time.

6. SPECIFICATION

6.1 Electro-Flow Controls is relying on your skill and judgment to, as appropriate depending on the nature of the Deliverables, select and/or provide it with suitable materials or perform services satisfactorily and in either event in accordance with the Order.

6.2 You shall comply with all applicable regulations or legal requirements (as appropriate depending on the nature of the Deliverables) concerning the production, packaging and delivery of any goods or materials and/or the performance of any services.

6.3 You shall at all times comply with all reasonable instructions and directions of Electro-Flow Controls given in connection with the Order.

6.4 You warrant that the Deliverables will be produced or provided by appropriately qualified and trained personnel, who shall act with due competence, care and diligence and that any services that are part of the Deliverables will be provided to such high standard of quality as it is reasonable of Electro-Flow Controls to expect in the circumstances.

6.5 You warrant that the Deliverables will be of satisfactory quality and fit for the purposes for which they are required by Electro-Flow Controls and all Deliverables will comply in every respect with all specifications, designs or requirements provided or notified by Electro-Flow Controls to you.

6.6 You shall comply with the Joint Code of Practice for Research if the Deliverables are research.

7. RIGHTS

7.1 You warrant that the Deliverables will be original and will not infringe any third party's IPR or be in any other way contrary to law or any relevant regulatory code. In the case of pre-existing works bought

PURCHASE ORDER TERMS & CONDITIONS



in by you and supplied as part of the Deliverables you will procure at your expense that Electro-Flow Controls is granted a worldwide licence to use such works for all purposes for the full terms of the relevant IPR.

8. OWNERSHIP OF IPR IN DELIVERABLES

8.1 Except in the case of pre-existing IPR which may be supplied as part of the Deliverables and where consent to include such IPR has been obtained from Electro-Flow Controls, Electro-Flow Controls shall be the owner of any and all IPR in the Deliverables and you hereby assign, by way of future assignment, such IPR upon delivery or payment of the price of the Deliverables, whichever first occurs, and, unless otherwise specified overleaf, you agree to deliver the same to Electro-Flow Controls and do all such things required by Electro-Flow Controls to effect the assignment when so requested at no further charge.

9. PACKAGING

9.1 All Deliverables must be packed securely so as to be delivered to Electro-Flow Controls in perfect condition and in the event that the Deliverables are not delivered in good condition it shall be deemed that they were not packed in accordance with this provision.

9.2 Packaging material shall be supplied free of charge and shall not be returnable unless Electro-Flow Controls has so agreed in writing prior to the time of delivery provided this does not conflict with any of Electro-Flow Controls's duties under applicable UK or specific region waste regulations.

9.3 Packaging shall be in accordance with any requirements specified from time to time by Electro-Flow Controls and all Deliverables supplied shall carry such information as is specified by Electro-Flow Controls. Packages containing deliverables supplied against drawings, part numbers or catalogues must be marked with the appropriate reference.

10. SAFE CUSTODY

10.1 You shall take good care of all Deliverables and any items entrusted to you by Electro-Flow Controls, identify all such items as Electro-Flow Controls's and return them to Electro-Flow Controls on demand.

11. PRICES AND PAYMENT

11.1 All prices specified in the Order by Electro-Flow Controls are and shall remain fixed and, unless Purchase Order is re-submitted, no variation is permitted. Unless agreed otherwise and stated on the Purchase Order all expenses and disbursements are included within the price stated.

11.2 The benefit of all commissions, discounts, volume and other rebates must be passed on to Electro-Flow Controls

11.3 Unless otherwise stated on the Purchase Order, you may not issue any invoice under the Contract until all Deliverables have been delivered to Electro-Flow Controls under this Contract.

11.4 Undisputed invoices will normally be paid 90 days following the last day of the month of the invoice unless otherwise agreed in writing.

12. INDEMNITY

PURCHASE ORDER TERMS & CONDITIONS



12.1 You undertake to indemnify and hold harmless Electro-Flow Controls, its clients and their respective assigns and licensees, from and against all and any costs (including without limitation legal costs), claims, expenses, actions, proceedings or damages incurred or suffered by them or any of their employees, agents or contractors as a result of any breach or alleged breach of your obligations, warranties, agreements and undertakings in this Contract.

13. CONFIDENTIALITY

13.1 You acknowledge that the Order and its subject matter are confidential to Electro-Flow Controls and shall not be disclosed or publicised to any third party by you for any reason without Electro-Flow Controls's express prior written consent.

13.2 You undertake not to use the name, logo, trademarks or other identity of Electro-Flow Controls (or any client of Electro-Flow Controls for whom the Deliverables are to be supplied) for any advertising or publicity purposes or otherwise without Electro-Flow Controls's express prior written consent.

13.3 You shall not without Electro-Flow Controls's express prior written consent copy, publicise or make available to any third party any information supplied by Electro-Flow Controls for the purposes of the Order.

14. RIGHT TO PUBLISH

14.1 You acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA (Freedom of Information Act 2002), the content of this Contract is not Confidential Information. Electro-Flow Controls shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, you hereby gives your consent for Electro-Flow Controls to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

14.2 Electro-Flow Controls may consult with you to inform its decision regarding any exemptions but Electro-Flow Controls shall have the final decision in its absolute discretion.

14.3 You shall assist and cooperate with Electro-Flow Controls to enable Electro-Flow Controls to publish this Agreement.

15. FREEDOM OF INFORMATION AND ENVIRONMENTAL REGULATIONS

15.1 You acknowledge that Electro-Flow Controls is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2002 ("FOIA"), Data Protection Act 1998 (the "DP Act") and the Environmental Information Regulations 2004 ("EIR") and shall assist and co-operate with Electro-Flow Controls (at your expense) to enable Electro-Flow Controls to comply with these requirements.

16. REJECTION OF DELIVERABLES

16.1 Notwithstanding any deemed acceptance of Deliverables and without prejudice to its statutory or common law rights, Electro-Flow Controls shall be entitled to reject any Deliverables before or after delivery if the same do not conform to sample or are defective in workmanship or otherwise not

PURCHASE ORDER TERMS & CONDITIONS



satisfactory, not fit for the purpose or not in accordance with the Order or any drawings or specifications or packed properly and supplied to Electro-Flow Controls

16.2 Where so rejected:

16.2.1 such Deliverables shall after notice thereof to you be held by Electro-Flow Controls at your sole risk and expense until you shall collect the same;

16.2.2 terminate the Contract forthwith; and

16.2.3 you will repay in full to Electro-Flow Controls whatever has already been paid to you in that regard unless Electro-Flow Controls agrees in writing to allow you to arrange prompt correction, completion or replacement of any Deliverables to Electro-Flow Controls's satisfaction at your own expense (including transportation charges).

17. INSURANCE

17.1 The risk of damage or injury to property or to third parties in the course of performance of the Contract in any part of the world (including the risk of loss or damage in transit to any of the Deliverables in your possession or control, third party risks and employer's liability insurance (or similar) in respect of all employees, agents, representatives and sub-contractors of yours who shall at your request or directions be on Electro-Flow Controls's premises or elsewhere at any time for or in connection with the provision of the Deliverables) shall be yours and you shall take out full indemnity insurance to cover such risks.

18. ASSIGNMENT AND SUB-CONTRACTING

18.1 You may not assign or sub-contract any of your rights or obligations under the Contract without the prior written consent of Electro-Flow Controls

19. TERMINATION

19.1 Without prejudice to its other rights Electro-Flow Controls shall have the right to cancel the Order and to terminate the Contract if:

19.1.1 you commit a breach of this Contract and fail to remedy the breach within 7 days of written notice to do so; or

19.1.2 you become insolvent, bankrupt, enter into liquidation, enter into a voluntary arrangement, appoint a receiver or such similar event save for the purposes of a solvent reconstruction or amalgamation.

20. CANCELLATION OR INTERRUPTION

20.1 The Order may be cancelled by Electro-Flow Controls at any time prior to Electro-Flow Controls's acceptance of all the Deliverables, upon written notice to you. In such event, Electro-Flow Controls will pay you, in lieu of the price specified on the front of the Order, the direct non-cancellable costs incurred up to that point by you and any direct non-cancellable costs committed to the performance of your obligations hereunder prior to such cancellation provided, however, that the total amount of such costs shall not exceed the price specified on the Order. Electro-Flow Controls will not be responsible to you for any cancellation fees or penalties unless provided for on the Order or in a separate written agreement in respect of the Order signed by Electro-Flow Controls and you.

PURCHASE ORDER TERMS & CONDITIONS



20.2 Should Electro-Flow Controls or its clients be effected by a Force Majeure event, Electro-Flow Controls may, without incurring any additional liability to you, serve notice on you identifying the relevant event and anticipated delay and altering the date or dates for delivery of the Deliverables until the event or circumstances causing the stoppage, interruption or restriction have ceased. If delivery or performance has been suspended for any such reason Electro-Flow Controls shall not be liable to make any payment to you until the Deliverables are supplied. If such Force Majeure event continues for a period in excess of 6 months, either party may terminate the Agreement by notice in writing with immediate effect.

21. WARRANTY

21.1 You warrant to Electro-Flow Controls that for a period of twenty four (24) months or as agreed from the delivery date, all Goods, Services or Goods furnished in connection with Services will

21.1.1 be new and free from any defects in workmanship, material and design

21.1.2 conform to allocation specifications

21.1.3 be fit for their intended purpose and operate as intended

21.1.4 be free and clear of all liens, security interest or other encumbrances and

21.1.5 not infringe or misappropriate any third party's intellectual property rights.

22. ANTI-BRIBERY

You warrant that

22.1 you are fully aware of the provisions of the Bribery Act 2010 and that it has not and will not commit any act or omission which would place the Electro-Flow Controls or you in breach of the Bribery Act 2010, whether in connection with the Contract or otherwise; and

22.2 there is no outstanding investigation of it under any bribery legislation and in the last six years it has not been convicted of any offence under any bribery legislation or reached any settlement in relation to any alleged breach of any bribery legislation and has not self-reported any breach or suspected breach of any bribery legislation;

22.3 you will comply with the most recent guidance issued by the Secretary of State pursuant to the Bribery Act 2010; and

22.4 you will procure that each of its suppliers, agents or others performing services on its behalf complies with this clause; and

22.5 you will report to Electro-Flow Controls any suspicion of any breach or alleged breach of any bribery legislation, including any of its sub-contractors or others performing services on its behalf, and co-operate with Electro-Flow Controls and/or any regulator and/or prosecutor in any investigation relating to the same

22.6 You shall be liable for, and indemnifies the Electro-Flow Controls against, any expense, liability, loss, claim or proceedings whatsoever in respect of any breach by you of the provisions of this clause.

23. GOVERNING TERMS, LAW AND JURISDICTION

23.1 The terms included in the Order and these Conditions, and no other terms, shall govern the Contract and shall prevail over any other terms or conditions referred to orally or in correspondence between Electro-Flow Controls and you unless Electro-Flow Controls and you have negotiated other contract terms under the contract reference number printed on the Order in which case these shall prevail.

PURCHASE ORDER TERMS & CONDITIONS



23.2 The terms of this Contract shall be interpreted in all respects in accordance with law of Scotland and the parties submit to the non-exclusive jurisdiction of the Scotland courts in all matters pertaining thereto.

23.3 Upon termination of this contract for whatsoever reason clauses 1, 4, 5, 7, 8, 12, 13, 14, 15, 16, 17, 22 and 23 shall continue to apply between the parties for a period of 6 years from the date of such termination.

24. NOTICES

24.1 All notices, orders and instructions provided to you under the Order shall be regarded as properly served if sent by hand, post, fax or email to you at your address on the front of the Order.