

Electrozad Supply Company Limited, all branches and affiliates thereof, are herein after referred to as "Electrozad."

1. Electrozad's Terms and Conditions Control the Agreement.
  - A. These terms and conditions are part of the agreement, proposal, and / or statement of work ("Agreement") by ElectroZad to sell to the named Customer the goods referenced on our quotes / invoices / statement of work ("Goods") and services (including material management, assembly and kitting services, engineering, design, and consulting services (whether performed by ElectroZad or a subcontractor)) referenced on our quotes / invoices / statement of work ("Services"). These terms and conditions expressly apply to any online or internet-based purchases of Goods or Services from ElectroZad.
  - B. Customer accepts these terms and conditions by signing and returning the Agreement, by sending a purchase order in response to the Agreement, or through Customer's instructions to ElectroZad to begin work, including shipment of Goods or performance of Services, whether such instructions are oral or written, including a letter of intent or notice to proceed.
  - C. In the event of a conflict between the Agreement's terms and conditions and any quote / invoice / statement of work, these terms and conditions will govern unless explicitly superseded in the ElectroZad quote / invoice / statement of work.
  - D. The Agreement is not an acceptance by ElectroZad of any offer or counteroffer of Customer, and ElectroZad rejects any additional, different, or inconsistent terms, conditions or limitations in any forms, purchase orders or other Customer documents that have or may be presented to ElectroZad with respect to the Agreement ("Additional Terms").
  - E. ElectroZad's performance after receiving Additional Terms will not be construed as either acceptance of the Additional Terms or Customer's counteroffer.
  - F. Customer shall execute and deliver such documents as ElectroZad may require, to carry out the intent of this Agreement.
2. Prices; Modification Requests; Acceptance.
  - A. Unless otherwise agreed to by ElectroZad in writing, ElectroZad's prices for the Goods and Services are those stated on ElectroZad's quotes/invoices or ElectroZad's standard prices for the Goods and Services on the Agreement date, ElectroZad may change the price for the Goods and Services in accordance with any change to its standard pricing for such Goods and Services prior to the date of shipment of Goods or performance of Services.
  - B. Service engagements will be provided by ElectroZad under either a fixed fee or on a time and materials basis, plus applicable taxes and travel expenses.
  - C. ElectroZad's prices for Goods and Services are confidential, and Customer shall not disclose the prices to anyone without ElectroZad's written permission. Money damages for breaches of Customer's obligations not to disclose the price of any Goods or Services is both in calculable and insufficient and any such breach would irreparably harm ElectroZad. If Customer discloses the prices of any Goods and Services, without written permission, ElectroZad shall be entitled to a permanent and/or a preliminary injunction to prevent or remedy the disclosure and may enforce this agreement against Customer in addition to any other legal remedies ElectroZad may be entitled to.
  - D. Either party may request a project modification to the Goods and Services provided under the Agreement. The request must be in writing and will be evaluated by the parties for its financial and scheduling impact. The parties retain the right to refuse any such modifications and all approvals must be granted in writing. Any approved modifications are incorporated into the Agreement and are governed by these terms and conditions.
  - E. For fixed fee Services engagements, ElectroZad will provide a project milestone completion form to the Customer upon completion of each milestone. For time and materials Services engagements, ElectroZad will provide timesheets to the Customer. Within 10 days of receiving these documents ("Acceptance Period"), Customer will provide written notice to ElectroZad: (1) confirming acceptance of the Services; or (2) rejecting the Services and identifying each alleged non-conformance. Customer will provide ElectroZad with a reasonable opportunity to correct any alleged non-conformance. If ElectroZad does not receive either the Customer's acceptance or rejection within the Acceptance Period, the Services are deemed accepted and the Customer will have waived any right of rejection.
  - F. For Service engagements, invoices will issue upon Customer's approval of each milestone or timesheet and must be paid within 30 days. Subject to the Agreement, all fees paid by Customer are non-refundable.
3. Specifications. Unless otherwise agreed to by ElectroZad in writing, it is Customer's responsibility to ensure that the Goods and Services are the ones it has requested and that all specifications and quantities are correct. ELECTROZAD EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS THAT THE GOODS AND SERVICES CONFORM TO ANY SPECIFICATION, DRAWINGS, DESIGNS, OR SAMPLES.
4. Shipment of Goods; Performance of Services; Installation.
  - A. Shipment of Goods shall be made F.O.B. point of shipment with freight extra, unless otherwise stipulated.
  - B. Time shall not be of the essence in this Agreement. Any shipping dates for Goods or performance dates for Services given in advance of actual shipment of Goods or performance of Services are ElectroZad's best estimates for informational purposes only, and deliveries of Goods and performance of Services are made subject to prior orders on file with ElectroZad. Unless otherwise agreed to by ElectroZad in writing, ElectroZad may use any commercial carriers for shipment of the Goods. ElectroZad will use reasonable efforts to comply with Customer's requests as to method and route of transportation, but ElectroZad reserves the right to use an alternate method or route, whether at a higher rate. FAILURE TO DELIVER WITHIN THE TIME ESTIMATED SHALL NOT BE A MATERIAL BREACH OF THE AGREEMENT BY ElectroZad.
  - C. If Customer does not receive the Goods and /or Services upon tender, Customer is liable to ElectroZad for any resulting losses, damages, or additional expenses incurred or suffered by ElectroZad.
  - D. Customer will immediately inspect all Goods upon receipt and is deemed to accept the Goods upon receipt. Any claims for shortages or discrepancies are waived by Customer unless made in writing to ElectroZad within three days of receipt.
  - E. ElectroZad may cancel in whole or in part any order for Goods or Services under the Agreement at any time and without notice to Customer.
  - F. Until Customer has paid all amounts owed to ElectroZad for the Goods, Customer shall hold the Goods in trust for ElectroZad, and ElectroZad may repossess them if Customer fails to pay for them in the period identified by the Agreement.
  - G. ElectroZad's performance is contingent on Customer's timely delivery of any Customer materials required to perform the Agreement. Customer agrees that any reasonable scheduling or financial impact caused by Customer's failure to deliver such materials within the specified time will be treated as a project modification.
  - H. Where applicable, Customer shall provide the following, at its own expense and, at all times pertinent to the installation: (a) free, dry, and reasonable access to Customer's premises; and (b) proper foundations, lighting, power, water and storage facilities reasonably required.
5. Payment.
  - A. All payments for Goods and Services must be made in Canadian currency, unless otherwise agreed to by ElectroZad in writing. Payment for Goods and Services will be made by such means as ElectroZad may specify, such as by cheque, electronic banking, cash or wire transfer, provided that ElectroZad may refuse, in its sole discretion, payment by any means, including, without limitation, credit cards.
  - B. Payment for Goods and Services is due in the period identified by the Agreement; provided, however, that ElectroZad reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, delivery or installation.
  - C. ElectroZad may offset all amounts due and owing from ElectroZad to Customer under this agreement, including, without limitation, any charge backs or rebates, against all amounts due and owing to ElectroZad under this Agreement.
  - D. If Customer defaults, it will be liable for all collection costs incurred by ElectroZad including, but not limited to, legal and collection agency fees, and all related disbursements.
  - E. Past due amounts are subject to service charges of two percent (2%) per month or the maximum percentage rate permitted by law, whichever is less. The service charges begin to accrue immediately following expiration of the payment period identified by the Agreement. ElectroZad may suspend performance under the Agreement while any payment is delinquent.
6. Taxes. The purchase price of the Goods and Services does not include transportation taxes and sales, goods and services, use, excise, import or any similar tax or other governmental charge (collectively "Tax") associated with the sale, purchase, processing, delivery, storage, use, consumption, performance or transportation of the Goods and Services. Customer is solely responsible for payment of all Tax.
7. Cancellation. Customer may cancel the Agreement following the Acceptance Period after providing ElectroZad with written notice of the cancellation, but only if ElectroZad agrees to the cancellation in writing and only after Customer pays ElectroZad all expenses incurred, and damage sustained by ElectroZad because of such cancellation, plus a reasonable profit.
8. Warranties and Disclaimer. Warranties on Goods provided under the Agreement are limited to express written warranties provided by Goods' manufacturer, if any. ElectroZad's Services will be provided in a workmanlike manner in accordance with industry standards. Service warranties, if any, vary by project. Any available Service warranty is identified on the Agreement's face. Customer must notify ElectroZad of any alleged breach of any Services warranty within the Acceptance Period. ElectroZad EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT OR OTHERWISE, WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
9. Exclusive Remedy. Customer's EXCLUSIVE remedy for addressing defects or concerns arising from any Goods are limited to the express written warranties, if any. Customer agrees that if Goods are resold, Customer will include in the resale agreement provisions that limit recovery in accordance with these terms and conditions. If Customer fails to include these limitations in the resale agreement, Customer shall indemnify and hold ElectroZad harmless against any liability, loss, cost, damage, or expense (including legal fees) arising or resulting from the failure. Customer's EXCLUSIVE remedy for addressing Services related breaches will be for ElectroZad to, at its sole discretion: (a) use reasonable efforts to correct the breach; or (b) terminate the Agreement and refund that portion of any fees received that corresponds to the breach.
10. Disputes. If any dispute arises between ElectroZad and Customer in connection with the Agreement, the parties shall promptly attempt in good faith to settle the dispute by negotiation. The presence of a dispute shall not relieve Customer from its obligation to pay for the Goods and Services provided by ElectroZad. Customer shall give ElectroZad written notice of its intent to assert its rights under this clause at least 30 days prior to initiating any legal action. ElectroZad shall have the exclusive right to determine whether any dispute shall be submitted to a court of law or arbitrated. The venue for such arbitration shall be Windsor, Ontario. The arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction.
11. Termination. If either party materially breaches the Agreement, the other party may notify the breaching party in writing, setting out the breach, and the breaching party will have 30 days following such notice to remedy the breach. If the breaching party fails to remedy the breach during that period, the other party may by written notice terminate the Agreement.
12. Intellectual Property. Each party reserves for itself all intellectual property rights not expressly granted to the other party by the Agreement. Patents, trademarks, and copyrights owned by third parties are governed by separate agreements with their respective owners, and the parties shall promptly disclose any such intellectual property necessary to the Agreement. Customer grants ElectroZad a non-exclusive and non-transferable right to use Customer property, including technology, solely for Customer's benefit in fulfilling ElectroZad's obligations under the Agreement. ElectroZad will not be limited in developing, using or marketing services, materials or products like those provided to Customer. To the extent software is provided by ElectroZad under the Agreement, Customer agrees that it may only be used in accordance with terms and conditions of the software license agreement that accompanies the software. Customer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software.
13. Confidentiality. Each party shall take reasonable steps to protect confidential information disclosed during ElectroZad's performance under the Agreement and will be used by the parties only in exercising rights and obligations under the Agreement and in connection with the parties' ongoing business relationship. Disclosure of confidential information will be limited to employees and contractors who require this information to fulfill a party's obligations under the Agreement or as otherwise required by law, court order, or to enforce the Agreement. The party disclosing confidential information will provide advanced notice of any such disclosure.
14. Limitation of Liability. NOTWITHSTANDING ANY INCONSISTENT LANGUAGE IN THE AGREEMENT, IN NO EVENT WILL: (a) ElectroZad OR ITS SUPPLIERS OR LICENSORS BE LIABLE TO CUSTOMER FOR ANY CIRCUMSTANTIAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY, INCIDENTAL, INDIRECT, LIQUIDATED, MATERIAL, PUNITIVE, SPECIAL, SPECULATIVE OR OTHER DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, PROPERTY DAMAGE OR LOSS, PERSONAL OR BODILY INJURY (INCLUDING DEATH), CAPITAL COSTS, LOST PROFITS, SALES OR REVENUES, COST OF REPLACEMENT EQUIPMENT OR GOODS, LOST BUSINESS OR BUSINESS INTERRUPTIONS, OR LEGAL FEES OR COURT COSTS (COLLECTIVELY "LOSSES") ARISING FROM OR IN CONNECTION WITH THE AGREEMENT, THE GOODS, OR THE SERVICES; AND (b) ELECTROZAD'S TOTAL LIABILITY FOR DIRECT DAMAGES UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE AGREEMENT'S PURCHASE PRICE. CUSTOMER MAY NOT BRING A CLAIM UNDER THE AGREEMENT MORE THAN 12 MONTHS AFTER THE CAUSE OF ACTION ARISES.
15. Indemnification.
  - A. Subject to Section 12, and upon prompt notice by Customer of any claim of patent, copyright, industrial design or trademark infringement with respect to any Goods or Services, ElectroZad will use its reasonable efforts to secure for Customer such indemnity rights as the manufacturer may customarily give with respect to such Goods or Services. ElectroZad will further defend Customer against any third-party claim under Canadian law that Services and related deliverables from ElectroZad infringe any patent, trademark, copyright, or trade secrets of a third party where Customer: (a) promptly notifies ElectroZad of the claim; (b) allows ElectroZad sole control over defense and settlement negotiations; (c) reasonably cooperates with ElectroZad; (d) allows ElectroZad to replace or modify any infringing Goods or Services or refund fees paid by Customer for the affected Goods and Services; and (e) is not in material breach of the Agreement. ElectroZad will have no obligations whatsoever to Customer where infringement claims involve combining ElectroZad Services and related deliverables with work performed or products supplied by others, that involve modifications to ElectroZad's deliverables, or where the infringement results from Customer's specifications or designs. This Section sets forth Customer's sole and exclusive remedy against ElectroZad regarding the infringement by any Goods or Services of any third party's intellectual property rights.
  - B. Customer will indemnify, defend against all claims, and hold harmless ElectroZad, its shareholders, officers, directors, employees, agents, representatives, and suppliers from and against all losses that may arise pursuant to or in connection with the Agreement, the Goods, or the Services (including, without limitation, losses arising in connection with the performance of Services on Customer's premises by ElectroZad's employees, representatives, agents, or subcontractors), regardless of whether the losses are suffered directly by Customer or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgement or other action (each a "Claim") and regardless of whether or not ElectroZad or any third party is proportionately negligent with respect to such Losses and /or Claim, provided that

Customer need not indemnify Electrozad for Electrozad's obligation, if any, to Customer under Sections 9 and 15A above. For the avoidance of doubt and without limitation, this indemnification obligation requires Customer to pay any judgments against Electrozad or any other indemnified party resulting from any claim, any court cost of Electrozad or any other indemnified party in connection with any claim, any reasonable legal fees and disbursements incurred by Electrozad or any other indemnified party in Electrozad's defense of any Claim. Electrozad will have the sole and exclusive right to conduct Electrozad's defense of any claim at Customer's sole and exclusive cost and expense. Customer's indemnification obligation does not depend on the truth or accuracy of any allegations made against Electrozad, Customer or any third party.

- C. Notwithstanding the requirements above, Customer is not required to indemnify Electrozad or any person seeking indemnity for claims based upon Electrozad's sole alleged negligence or for any liability which may not be excluded by applicable law.
16. Product suitability. Goods sold by Electrozad are designed to meet stated safety standards and regulations. Because local safety standards and regulations may vary significantly, Electrozad cannot guarantee that the Goods meet all applicable requirements in each locality. Customer assumes responsibility for compliance with safety standards and regulations in the localities in which the Goods will be shipped, sold and used. Before purchase and use of any Goods, Customer should review the product application, and local codes and regulations, and verify that the use and installation of the Goods will comply.
17. Export Controls: Availability: Laws. Certain Goods may be subject to export controls under the laws, regulations and /or directives of Canada, the United States and various other countries. Customer must comply with such laws and regulations and not export, re-export, or transfer these Goods to any country to which such export, re-export, or transfer is forbidden or without first obtaining all required authorizations or licenses.
18. Insurance. Electrozad will, for the term of the Agreement, maintain insurance policies for general and professional liability, automobile, and disability, sufficient to cover any loss up to and including Electrozad's limitation of liability under this Agreement. Certificates of insurance shall be made available to Customer upon request.
19. Interpretation of this Agreement. None of Electrozad's or Customer's shareholders, directors, officers, partners, managers, employees, agents or representatives have any authority to orally modify or alter the Agreement's terms and conditions. All modifications must be in writing and must be signed by an authorized representative of Electrozad. Regardless of how many times Customer purchases, or has purchased, Goods and Services from Electrozad, each time Customer accepts the Agreement, Customer and Electrozad enter into a separate Agreement that will be interpreted without reference to any other agreement between Customer and Electrozad, or what Customer may claim to be a course of dealing or course of performance that has arisen between Customer and Electrozad. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or after the making of the Agreement will waive, vary, serve to explain or serve to interpret any of the terms, conditions and limitations of the Agreement. The Agreement is the sole and exclusive agreement with respect to the provision of the Goods and Services and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations of conditions, whether oral or written, whether express or implied, with respect to such matters. Failure by Electrozad to enforce any of the terms, conditions and limitations of the Agreement will not constitute a waiver, and the failure of Electrozad to exercise a right, arising from Customer's default will not constitute a waiver of that right or any other rights.
20. Force Majeure. Electrozad will not be liable for its failure to perform under the Agreement due to circumstances beyond its control, including, without limitation, fire, flood, earthquake, pestilence or similar catastrophe, war, act of terrorism, or strike, lack or failure of transportation facilities, shortage of suitable parts, materials or labour, any existing or future law, rule regulation, decree, treaty, proclamation, or order of any governmental agency, inability to secure fuel, materials, supplies, equipment or power at reasonable prices or in sufficient amounts, act of God or the public enemy, or any other event or cause beyond Electrozad's reasonable control, including, without limitation, any delay caused by Customer (each, a "Force Majeure Event"). If any Force Majeure Event prevents Electrozad's performance of any of its obligations under the Agreement, Electrozad will have the right to: (a) change, terminate or cancel the Agreement, or (b) omit, during the period of the Force Majeure Event, performance of all or any portion of the Services, and/or all or any portion of the quantity of Goods deliverable during that period, and the total quantity deliverable under the Agreement will be reduced by the quantity omitted. If Electrozad is unable to supply the total demands for any Goods to be delivered under the Agreement due to a Force Majeure Event, Electrozad may allocate its available supply among its customers in whatever manner Electrozad deems to be fair and equitable. In no event will Electrozad be obligated to purchase materials outside its regular supply chain to supply Goods to Customer under the Agreement. No change, cancellation or proration by Electrozad under this clause is a breach under any provision, term, condition, or covenant of the Agreement.
21. Governing law. The negotiation, execution, performance, termination, interpretation and construction of the Agreement will be governed by the laws of the Province of Ontario and its Courts will have exclusive jurisdiction, subject to applicable choice of law rules. Any provisions of this Agreement held to be invalid, illegal or unenforceable will be ineffective only to the extent of such invalidity, illegality or unenforceability without affecting the remaining provisions.
22. Notices. Any notices regarding the Agreement or required by law must be made in writing and delivered by certified mail or commercial courier. Notices direct to Customer will be sent to the address set forth in the Agreement. Notices directed to Electrozad will be sent to:
- ELECTROZAD SUPPLY COMPANY LIMITED  
Attention: Legal Department.  
2900 Jefferson Blvd  
Windsor, ON  
N8N 2M4
23. Entire Agreement. The Agreement, expressly including these terms and conditions, and any exhibits, contains the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether oral or written, between the parties regarding the subject matter of the Agreement.
24. Binding Authority. Any director, officer, employee, representative, or agent of Customer signing or otherwise entering into this Agreement hereby represents and warrants that he or she is duly authorized to execute and enter into this Agreement on behalf of Customer. Facsimile scanned or electronic signatures on the Agreement will bind the parties to the same extent as originals. The Agreement may be executed in multiple counterparts and shall constitute a single agreement.