

Egelhof Controls Corp.

**Sales
General Terms and Conditions**

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EGELHOF CONTROLS CORPORATION

GENERAL TERMS AND CONDITIONS

1. The Contract.

1.1 Offer and Acceptance. Each purchase order Buyer issues (“**Purchase Order**”) is Buyer’s offer to purchase the products (“**Products**”) and services (“**Services**”) identified in that Purchase Order. Egelhof Controls Corporation (Egelhof) will be deemed to have accepted a Purchase Order as issued (1) if Egelhof fails to object to it in writing within 10 business days after receipt and has begun or later begins performance under the Purchase Order, or (2) if Egelhof acknowledges in writing its acceptance of the Purchase Order. Upon acceptance, the Purchase Order together with these General Terms and Conditions and any other documents specifically incorporated in the Purchase Order or separately agreed to in writing, such as specifications, drawings, requirements of Buyer’s customer, or quality requirements, will become a binding contract between Buyer and Egelhof (collectively, the “**Contract**”). If Egelhof timely objects to a Purchase Order or proposes alternate or additional terms, the Purchase Order will become a Contract only if and when Buyer and Egelhof mutually agree in writing, even if Egelhof commences or has commenced performance under the Purchase Order. Specific terms and conditions on the Purchase Order and the other documents comprising the Contract will take priority over any inconsistent provision in these General Terms and Conditions.

1.2 Changes. Buyer may from time to time by notice to Egelhof make reasonable changes, within the scope of the Contract, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Contract. At Egelhof’s request with appropriate supporting documentation, the parties will agree upon an equitable adjustment to the Contract prices and times for performance as a result of Buyer’s changes. Contract changes must be in writing signed by Buyer’s authorized representative, and Buyer will not unreasonably withhold or delay consent to a Contract change proposed by Egelhof.

2. Products and Services.

2.1 Quantity. If quantities or delivery schedules are not specified in the Contract, they will be as

reasonably determined by Buyer and stated in Buyer’s firm releases issued to Egelhof from time to time.

2.2 Current-Model Service Requirements. During the term of a Contract, Egelhof will make Products covered by the Contract available to Buyer for Buyer’s current-model service requirements at the then-current production prices under the Contract plus any additional costs for special packaging, shipping and handling, and other related services.

2.3 Past-Model Service Requirements. If a Contract remains in effect at the end of the vehicle production program in which Products covered by the Contract are incorporated, Egelhof will also make those Products available to Buyer for Buyer’s past-model service requirements for a period of 5 years after the end of the vehicle production program. The parties will negotiate in good faith the prices, quantities, and delivery terms for past-model service Products based on the availability and cost of needed materials, supplies, and skilled workers, the additional costs for equipment setup, packaging, shipping and handling, related services, and other relevant factors.

3. Delivery.

3.1 Packing and Shipment. Buyer may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Egelhof will pack and ship Products in accordance with Buyer’s instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Egelhof will pack and ship Products in accordance with sound commercial practices. If Egelhof is required to use Buyer’s returnable packaging, Egelhof will be responsible for returning the returnable packaging. If returnable packaging is not available, Egelhof may use expendable packaging and Buyer will reimburse Egelhof for the reasonable costs of expendable packaging.

3.2 Delivery Schedules. Egelhof will deliver Products and Services in strict accordance with the Contract terms. Unless otherwise stated in the Contract, Products will be delivered F.C.A. Egelhof’s dock and title will transfer upon receipt of the

Products by the freight carrier. If Products are not ready for delivery in time to meet Buyer's delivery schedules, the party causing the delay will be responsible for additional costs of any resulting expedited or other special transportation. Buyer will also be responsible for additional costs of expedited or other special transportation that Buyer may require as a result of changes to its firm releases or delivery schedules or for other reasons not caused by Egelhof.

4. Inspection.

Buyer may, upon reasonable advance notice to Egelhof, inspect production processes and Property and, subject to Egelhof's prior written approval, conduct testing at Egelhof's premises for the sole purpose of verifying Egelhof's performance under the Contract. Egelhof may restrict Buyer's access as necessary to protect proprietary information and may require appropriate indemnification and releases. Buyer is not required to inspect Products delivered or Services performed, and no inspection or failure to inspect will reduce or alter Egelhof's obligations under the Contract.

5. Taxes.

Unless otherwise stated in the Contract, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Egelhof will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Egelhof is required by law to pay or collect from Buyer.

6. Payment.

Payment terms are as set forth in the Contract. Egelhof will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Products and performance of Services, and Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. Egelhof will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Egelhof in the currency specified in the Contract or, if none is specified, in the currency of Egelhof's shipping or service location. Buyer may setoff or deduct from sums owed to Egelhof under the Contract those sums owed by Egelhof to Buyer and agreed to between the parties or upon final determination by dispute

resolution. Unless Egelhof consents in writing, Buyer may not setoff or deduct amounts owed to Buyer by Egelhof's affiliates or others who are not parties to the Contract.

7. Product Warranties.

7.1 Egelhof's Warranties. Egelhof warrants to Buyer that (1) during the warranty period specified in the Contract, the Products will be free from defects in workmanship and materials, and will conform to the specifications, drawings, samples, and performance requirements specifically incorporated in the Contract, and (2) Egelhof will transfer to Buyer ownership and good title to Products delivered and Services provided, free of all liens, encumbrances, and rights of third parties (except those created by Buyer). Unless otherwise specifically stated in the Contract, Egelhof does not warrant the design of the Products or their fitness for any particular purpose. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES AND ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.**

7.2 Non-Conforming Products. Except as otherwise specifically provided in the Contract, Buyer's sole remedy for Products or Services that do not conform to the warranties in **Section 7.1** will be to (1) reject the non-conforming Products or Services, (2) require Egelhof, at Egelhof's option and expense (including applicable shipping costs), to either repair or replace the non-conforming Products or Services, and/or (3) require Egelhof to implement at its expense containment, inspection, sorting, and other quality assurance procedures if Buyer reasonably determines AND Egelhof concurs (through statistical sampling or other quality assessments) that a substantial quantity of incoming Products does not conform to the warranties in **Section 7.1**. To the full extent possible, Buyer will provide Egelhof with access to any available warranty data related to the Products and any available field-returned Products. Buyer will also provide Egelhof with an opportunity to participate in any root cause analysis performed by Buyer concerning the Products.

8. Compliance with Laws.

Egelhof will comply with applicable laws, rules and regulations of the country where the Products are manufactured or the Services are performed. Egelhof will provide Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide Buyer with other information reasonably required in order to comply with applicable laws.

9. Intellectual Property Rights.

9.1 Buyer's Intellectual Property. Buyer does not transfer to Egelhof any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right ("**Intellectual Property Right**") of Buyer in information, documents, or property that Buyer makes available to Egelhof under the Contract, other than the right to use Buyer's Intellectual Property Rights to produce and supply Products and Services to Buyer.

9.2 Egelhof's Intellectual Property. Except as stated in this **Section 10.2**, Egelhof does not transfer to Buyer any Intellectual Property Right of Egelhof related to the Products or Services or incorporated in Buyer's Property, other than the right to incorporate Products purchased from Egelhof in vehicles and component parts and to sell those vehicles and component parts to the public.

10. Term and Termination.

10.1 Generally. Each Contract will remain in effect for the term specified in the Contract (or until terminated if no term is specified) unless earlier terminated by either party (1) by reasonable (but not less than 60 days) notice to the other party, or (2) pursuant to **Section 11** or **14**. Upon termination of a Contract, Egelhof will assist Buyer in locating an alternative source for the Products and Services and in moving production to the alternate source selected by Buyer.

10.2 Long-Term Contracts. If Buyer terminates a Contract issued for a term of more than one year ("**Long-Term Contract**") before the end of its specified term (other than for Egelhof's Default), Buyer will (1) purchase completed Products at the Contract price and work-in-process and raw materials at Egelhof's actual cost, in each case to the extent reasonable and authorized in Buyer's firm releases, and (2) reimburse Egelhof for reasonable costs actually incurred by Egelhof as a result of the early termination, including the cost to store the items to be

purchased and relocate production to an alternate source and the cost of unreimbursed and unamortized research and development costs, engineering costs, capital equipment, Egelhof's Property, and supplies and that are unique to the Products. If Egelhof terminates a Long-Term Contract before the end of its specified term (other than for Buyer's Default), (i) Egelhof will reimburse Buyer for reasonable costs actually incurred by Buyer to relocate production to an alternate source, and (ii) Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Egelhof's actual cost.

10.3 Short-Term Contracts. If Buyer terminates a Contract issued without a definite term or for a term of one year or less ("**Short-Term Contract**") before the end of its specified term (other than for Egelhof's Default), Buyer will purchase completed Products at the Contract price and work-in-process and raw materials at Egelhof's actual cost, in each case to the extent reasonable and authorized in Buyer's firm releases. If Egelhof terminates a Short-Term Contract issued without a definite term or before the end of its specified term (other than for Buyer's Default), Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Egelhof's actual cost.

10.4 Property Orders. If Buyer terminates a Contract for Buyer's Property before it is fully performed (other than for Egelhof's Default), Buyer will (1) purchase the completed Buyer's Property at the Contract price and work-in-process and raw materials related to the uncompleted work at Egelhof's actual cost, and (2) reimburse Egelhof for reasonable costs actually incurred by Egelhof as a result of the early termination, including the cost to store the items to be purchased and to relocate the work to an alternate source.

11. Default.

11.1 Events of Default. Time is of the essence and, subject to **Section 14**, either party will be in "**Default**" under the Contract if it (1) fails to perform any obligation under the Contract and, if the non-performance can be cured, fails to cure the non-performance within 15 business days after notice from the other party specifying the non-performance, (2) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (3) becomes a debtor in a bankruptcy,

insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement, or (4) fails to provide adequate assurance of performance under the Contract within three business days after written demand by the other party.

11.2 Remedies.

(a) Subject to **Section 7** (which provide the exclusive remedies for breach of warranty, and to the limitations in this **Section 11.2**, either party may exercise the remedies provided in this **Section 11.2**, which are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law.

(b) Either party may recover from the other party actual out-of-pocket damages or costs directly caused by the other party's breach of the Contract, regardless of whether the breach subsequently becomes a Default with the passage of time or giving of notice or both. All damages under this **Section 11.2** will be reasonably determined based on the nature, type, price, and profitability of the Products or Services, industry practices, and the overall volume, scope, and profitability of other business relationships between Egelhof and Buyer.

(c) Upon the occurrence of a Default and while that Default is continuing, the non-defaulting party may terminate the Contract by notice to the defaulting party. If Egelhof is in Default, Buyer's damages will include the reasonable costs actually incurred to relocate the work to an alternate source, and Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Egelhof's actual cost. If Buyer is in Default, Egelhof's damages will include (1) the Contract price for completed Products and Services and the actual cost of work-in-process and raw materials (which will become Buyer's property upon payment in full), and (2) the cost of unreimbursed and unamortized research and development, capital equipment, Property, and supplies that are unique to the Products.

(d) **EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE CONTRACT, ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE**

GENERAL TERMS AND CONDITIONS TO THE EXTENT PERMITTED BY APPLICABLE LAW.

12. Confidential Information.

Trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Buyer or Egelhof in connection with the Contract, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure ("**Confidential Information**"), will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without in each case the written consent of the disclosing party. Confidential Information will not include information that (1) is or becomes generally available to the public other than as a result of a violation of this **Section 12** by the receiving party, (2) was obtained by the receiving party on a non-confidential basis from a third party who had the apparent right to disclose it, or (3) is legally required to be disclosed. Buyer and Egelhof will each use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of care). Upon request by the disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received.

13. Assignment and Subcontracting.

Neither party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other party, which will not be unreasonably withheld or delayed. Unless otherwise stated in the consent, any assignment or subcontracting by either party, with or without the required consent, will not relieve that party of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor. If Buyer requires Egelhof to subcontract all or a portion of its duties or obligations under the Contract to a designated subcontractor, Egelhof will not be responsible for a breach of the Contract caused by that subcontractor's

failure to meet its warranty, delivery, or other contractual obligations.

14. Excusable Non-Performance.

A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a Default, only if (1) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, including a labor dispute, and (2) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or will occur. If Egelhof is unable to perform for any reason, Buyer may purchase Products and Services from other sources and reduce its purchases from Egelhof accordingly without liability to Egelhof. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performing party does not provide those assurances, or if the non-performance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.

15. Customs.

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Egelhof will provide Buyer with all information and records relating to the Products necessary for Buyer to (1) receive these benefits, credits, and rights, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, and (4) participate in any duty deferral or free trade zone programs of the country of import.

16. Insurance.

Prior to commencing work on Buyer's premises or utilizing Buyer's property (including Buyer's Property), Egelhof will maintain and upon request furnish to Buyer a certificate evidencing (1) general liability insurance with coverage limits reasonably acceptable to Buyer and naming Buyer as an additional insured, (2) all risk property perils insurance covering the full replacement value of

Buyer's Property while in Egelhof's care, custody, or control and naming Buyer as loss payee, and (3) worker's compensation insurance as required by applicable law.

17. Dispute Resolution.

17.1 Negotiation and Mediation. Buyer and Egelhof will first endeavor to resolve through good faith negotiations any dispute arising under the Contract. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties or, absent that approval, by the National Center for Dispute Resolution.

17.2 Arbitration. If mediation fails to resolve the dispute within 30 days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted, and a single arbitrator will be selected, in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties, and will be governed by the *United States Arbitration Act*, 9 U.S.C. §§1-16, and this **Section 17**. The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if the parties are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. The arbitrator's award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator's award may be entered in any court having jurisdiction. While arbitration proceedings are pending, the parties will continue to perform their obligations under the Contract without setoff for any matters being contested in the arbitration proceedings.

17.3 Litigation. The parties have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation. Either party may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief.

18. Miscellaneous.

18.1 Advertising. During and after the term of the Contract, Egelhof will not advertise or otherwise disclose its relationship with Buyer or Buyer's

customers without Buyer's prior written consent, except as may be required to perform the Contract or as required by law.

18.2 Audit Rights. Egelhof will maintain records as necessary to support amounts charged to Buyer under the Contract in accordance with Egelhof's document retention policies. Buyer and its representatives may audit Egelhof's records of transactions completed within one year prior to the audit date, to the extent needed to verify the quantities shipped and that the prices charged match the Contract prices. Any audit will be conducted at Buyer's expense (but will be reimbursed by Egelhof if the audit uncovers material errors in the amounts charged), at reasonable times, and at Egelhof's usual place of business.

18.3 Electronic Communication. Egelhof will comply with the method of electronic communication specified by Buyer in Buyer's request for quotation and confirmed in the Contract, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication. Egelhof will also make commercially reasonable efforts to comply with any modification to Buyer's specified method of electronic communication after the date of the Contract, subject to **Section 1.2**.

18.4 Relationship of the Parties. Buyer and Egelhof are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

18.5 Waiver. The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

18.6 Entire Agreement. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Buyer's request for quotation and Egelhof's quotation unless specifically incorporated in the Contract. Except as authorized in **Section 1.2**, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

18.7 Severability. A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

18.8 Interpretation. When used in these General Terms and Conditions, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

18.9 Notices. Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

18.10 Governing Law. Unless otherwise agreed in writing, the Contract will be governed by and interpreted according to the internal laws of State Of Ohio. The *United Nations Convention on Contracts for the International Sale of Goods* will not apply to the Contract.