

## PRESTOLITE ELECTRIC TERMS AND CONDITIONS

1. ACCEPTANCE: Prestolite Electric Incorporated (hereinafter referred to as Prestolite), does not accept any terms and conditions other than those contained in any existing written contract between Buyer and Prestolite covering material(s) delivered herein under. If there is no such existing written contract, however, (a) Prestolite does not accept any terms and conditions other than those expressly set forth in this Document, (b) Prestolite's acceptance of Buyer's order is expressly made conditional upon Buyer's assent to the terms and conditions of this Document, and (c) acceptance of material by Buyer shall constitute such assent.

2. WARRANTY: Refer to the text of the applicable Prestolite Warranty Policy previously forwarded to Buyer. Additional copies of the applicable Warranty are available upon request.

THE APPLICABLE PRESTOLITE WARRANTY IS THE ONLY WARRANTY GIVEN BY PRESTOLITE WITH RESPECT TO ITS PRODUCTS. ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

3. CLAIMS: Buyer's receipt of any material delivered herein under shall be an unqualified, final and irrevocable acceptance of, and a waiver by Buyer of any and all claims (other than warranty and patent claims) with respect to such material unless Buyer gives Prestolite notice of claim within Fifteen (15) days after such receipt. Buyer assumes all risk and liability for the results obtained by the use of any material delivered hereunder in manufacturing processes of Buyer or in combination with other substances. Prestolite's obligation in connection with claims of any kind (other than patent claims), whether as to goods delivered or for non-delivery of goods and whether or not based on negligence, shall be limited to (a) the services set forth in paragraph 2 above in the case of warranty claims and (b) in all other cases, to the purchase price of the goods in respect of which such claim is made. In no event shall Prestolite be liable for special, indirect, incidental or consequential damages.

4. DELAYS: Prestolite will not be liable for any delay or failure in the performance hereof, or for any damages suffered by reason of such delay or failure, when such delay or failure is, directly or indirectly, caused by, or in any manner arises from fires, floods, accidents, riots, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, or any other cause or causes beyond Prestolite's control.

5. CANCELLATION: In the event of bankruptcy or insolvency of Buyer or, in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Prestolite shall be entitled to cancel any order then outstanding. In any case of cancellation in whole or in part, including but not limited to cancellation in accordance with paragraph 6C. (1) hereof, all finished goods shall be taken at full contract price, goods in process and raw materials shall be paid for at cost plus pro rata profit, and Prestolite shall be reimbursed by Buyer of labor, services, tools, dies, materials and equipment purchased or on contract for the filing of an order

### 6. GENERAL TERMS:

A. Shipment: Shipping dates are not guaranteed and are based upon the prompt receipt of all necessary information. Unless otherwise specified herein. Delivery of the products hereunder shall be made f.o.b. point of shipment. In all cases, risk of loss or damage to good in transit shall upon Buyer, whose responsibility it shall be to file claims with the carrier.

B. Prices: Due to the uncertainty of today's market conditions, Prestolite reserves the right, in the event of subsequent changes in its price schedules, to apply prices prevailing at time of shipment. Prices include applicable federal excise taxes, but do not include sales, use, occupational, processing or similar taxes. Consequently, in addition to the prices chargeable hereunder, Buyer agrees to pay any taxes applicable to the sale which are not included in the prices of the products or in lieu thereof, Buyer shall provide Prestolite with a tax exemption certificate acceptable to the taxing authorities.

C. Payment: Each shipment shall be considered a separate and independent transaction, and payment thereof shall be made accordingly.

(1) In Advance: If the financial conditions of buyer at any time does not, in the judgment of Prestolite, justify continuance of the work to be performed by Prestolite under the purchase order on the terms of payment herein specified, Prestolite may, as a condition precedent to Prestolite's performance hereof require full or partial payment in advance and shall not be liable to Buyer for such delay in performance and further. Prestolite may, if advance payment is not forthcoming within a reasonable time after its request, cancel the contract in whole and in part.

(2) Upon Delay: If shipments are delayed by Buyer payments shall become due on the date when Prestolite is prepared to make shipment. If work covered by the purchase order is delayed by Buyer, payments shall be made based on the purchase price and the percentage of completion. Products held for Buyer shall be at the risk and expense of Buyer.

D. Term: Unless otherwise specified by Prestolite, terms shall be net 10<sup>th</sup> proximo. A charge of 1.5% per month (annual percentage rate 18% is applicable to any charges or balances not paid in accordance with Prestolite's terms.

E. Clerical Errors: Stenographic and clerical errors are subject to correction.

F. Returns: Unauthorized returns of material will not be accepted by Prestolite and will be returned to the Buyer freight collect.

7. PATENTS: (A) Unless the products furnished hereunder are of Buyer's design Prestolite warrants and represents that said products and their sale or use, alone or in combination, will not infringe any U.S. or foreign patents and agrees to defend, protect and save harmless Buyer, its successors; assigns customers and users of its products against all suits and from all costs, damages, claims and demands resulting from any actual or alleged infringement involving the products furnished hereunder. (B) Where payment is made for experimental, developmental or research work pursuant to this order, Prestolite agrees to disclose promptly all improvements and inventions resulting from said work and upon request to assign said improvements and inventions to Buyer and do everything necessary to enable Buyer to obtain patents for said inventions and any and all countries.

8. TOOLS AND DIES: Unless otherwise agreed to in writing Prestolite, all dies, tools etc., remain the exclusive property of Prestolite, regardless of any changes made to cover labor and expenses involved in making or altering such dies, tools, etc.

9. FAIR LABOR STANDARDS ACT: Prestolite represents that the goods to be furnished hereunder were or will be produced in compliance with all applicable requirements of section 6, 7 and 12 of the Fair Labor Standards Act of 1938 as amended, and all valid and applicable regulations and orders of the administrator of the wage and hour division issued under Section 14 thereof.

10. WAIVER: No waiver, alterations or modification of any of the provisions hereof shall be binding on Prestolite unless made in writing and agreed to by a duly authorized official of Prestolite. Waiver by either part of any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may thereafter occur, nor shall any action or course of conduct of Prestolite inconsistent herewith be deemed a waiver, alteration or modification of any of the provisions hereof.

11. AUTHORITY OF PRESTOLITE'S AGENTS: No agent, employee or representative of Prestolite has any authority to bind Prestolite to any affirmation, representation or warranty concerning the material(s) delivered hereunder, and unless any affirmation, representation or warranty made by an agent, employee or representative is specifically included within this written agreement, it has not formed a part basis or this bargain and shall not in any way be enforceable by Buyer.

12. GOVERNING LAW: This agreement shall be governed by and construed under the laws of the state of Michigan.

13. ENTIRE AGREEMENT: This Agreement, together with the applicable Prestolite Warranty Policy, constitutes the entire agreement amount the parties with respect to the sale of products by Prestolite to Buyer.