

**EVER CLEAR RADIANT SYSTEMS**  
**Standard Terms and Conditions of Sale**

**1. MINIMUM ORDER**

A \$25.00 service charge will be applied to all orders less than \$150.00.

**2. PRICES**

ECRS reserves the right to change prices without notice.

Prices shown on quotations or on acknowledgements of orders are the prices of Ever Clear Radiant Systems, LLC (ECRS) in effect on the date the quotation is made or the order is acknowledged. Shipments will be billed and paid for at ECRS's price in effect on the date the order is placed.

**3. FREIGHT**

Unless notified by Buyer at time of order, all shipments will be Prepaid and Added to the invoice using ECRS specified carriers.

Carrier Selection: All prepaid shipments will be on carriers determined by ECRS, Customer specification of carriers not normally used by ECRS will cause orders to be sent Collect.

F.O.B.: All shipments are FOB ECRS Facility.

Customer Pick-Up Orders: Must be specified at time of order.

Delivery: Delivery and shipment dates indicated on quotations or on acknowledgements of orders are estimates only and are not guaranteed. In the event that there are any delays in the deliveries, ECRS shall not be liable therefore and the Buyer agrees to accept deliveries when made by ECRS. If ECRS's failure to perform arises out of causes beyond the control and without the fault or negligence of ECRS, such causes including, but not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, ECRS may cancel the Buyer's order, in whole or in part, without liability to either party.

Proof of Delivery (POD)

Air Shipments: Requests for POD's must be received by ECRS within thirty (30) days of invoice date for air shipments.

Surface Shipments: POD requests for surface shipments must be received by ECRS no later than thirty (30) days from invoice date.

**4. PAYMENT TERMS:**

1% 15 days, Net 30 days.

Checks must be received within 15 days of the invoice date to receive the discount

The 1% discount is calculated on product cost only. Freight, taxes, and other surcharges are not discountable.

Please direct payment related questions you may have to ECRS's Manager of Financial Reporting and Controls.

Comment [HAC1]: Need a title.

Payment of each invoice whether or not such invoice covers the entire order shall be made in accordance with the terms of the invoice, If the Buyer fails to fulfill the terms of payment of any invoice or if the financial condition of the Buyer shall become impaired or unsatisfactory to ECRS, or if necessitated by any act or requirement of any governmental authority, ECRS, in its sole discretion, reserves the right to change terms of payment and/or defer or discontinue further shipments, without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Buyer's credit standing are received by ECRS, or where such acts or requirements of such governmental authority shall have been complied with. ECRS also reserves the right in the case of any of the foregoing events to cancel the order, in which event the Buyer shall compensate ECRS for any commitments, obligations, expenditures, expenses and costs that ECRS may have incurred in connection with the order. Each shipment by ECRS shall be considered a separate transaction and its payment is not received therefore within the periods specified ECRS may bring a separate suit to recover the contract price of each such shipment.

#### **5. SPECIAL DOCUMENTATION**

Upon request, 'Short form - Certificates of Compliance" (C of C) will be supplied as part of each packing slip, stating that the material meets the applicable specifications listed in the ECRS catalog.

Additional documentation including NAFTA certificates, Certificates of Origin, Certified Test reports or long form C of C's containing date of manufacture and lot number must be requested at time of order. Charges may apply to certain special documentation requests and will be indicated upon request. Contact the Sales Department for additional cost and delivery information,

#### **6. CANCELLATIONS**

Cancellations are permitted on standard catalog items without a service charge providing that the order has not shipped.

Build to specification cables and tools are non-cancelable and non-returnable (NC/NA) ECRS will notify Buyer in writing that a NC/NR item has been ordered.

#### **7. RETURNS**

Customers may return currently active, standard catalog items subject to the following conditions;

Must have been purchased within the past 90 days and supported with a copy of the invoice.

All returns must be accompanied by a numbered Return Authorization valid for 45 days from issue date. Material without a Return Authorization will be refused. Material returned under an expired RMA will be subject to 10% penalty

All returns are subject to a 25% administrative restocking charge, All returns are subject to a 20% respooling/repackaging charge per item if necessary - not to exceed \$50/unit piece. This

charge is in addition to the 25% restocking charge. To avoid these charges, material must meet the following guidelines;

1. Material and packaging must be in saleable condition.
2. Material must be free from any markings or labels not originally applied by ECRS. Outbound and return freight is the customer's responsibility. Additional charges may be necessary to cover premium freight if originally requested. Restocking, respooling, outbound freight and return freight charges will be waived on returns necessitated due to ECRS's error. Material should be returned via UPS whenever possible (150 lb. limit per package). All returns by common carrier must be shipped according to the terms and carrier specified by ECRS, Material not returned via ECRS's approved carriers will result in a reduced credit if freight charges are in excess of ECRS's carriers. All returns must adhere to ECRS's RMA packaging policy. Under no circumstances are products to be returned to ECRS without ECRS's written authorization. ECRS reserves the right to scrap any unauthorized returns on a no credit basis.
3. Non UPS shipments (350 lbs. and over) must shipped on 48" X 40" pallets, tightly wrapped in stretch wrap (or similar material) or banded to the pallet in the case of exceptionally heavy loads.

#### **8. AVAILABILITY OF GOODS**

ECRS will endeavor to make products available as ordered to meet Buyer's requirements, but reserves the right to allot its inventory as it deems best. Buyer agrees that ECRS shall not be liable or responsible to Buyer to any extent upon failure to supply to Buyer any amounts which may be agreed upon from time to time, or making only part shipment against any order of Buyer.

#### **9. SPECIFICATIONS**

Products furnished hereunder shall be within ECRS's specifications effective on the date at shipment, or such other specifications as have been expressly agreed upon between ECRS and the customer in writing.

#### **10. LIMITATIONS OF WARRENTIES**

ECRS warrants that the Products are, at the time of delivery to the Distributor free of material and workmanship defects, provided that no warranty is made with respect to: (a) any Product which has been repaired or altered in such a way, in ECRS's judgment, as to affect the Product adversely; (b) any Product which has, in ECRS's judgment, been subject to misuse, negligence, abuse, accident, or improper storage; or (c) any Product which has not been installed, operated, and maintained in accordance with normal practice and in conformity with recommendations and published specifications of ECRS. At its option, ECRS shall repair, replace, or refund the purchase price

of any non-conforming Products for a period of one (1) year from the date of shipment to the Distributor, and such obligation shall be ECRS's exclusive obligation, and the full extent of its liability, and The Distributor's exclusive remedy. At its option, ECRS shall repair, replace, or refund the purchase price of any non-conforming Tools for a period of ninety (90) days from the date of shipment to the Distributor, and such obligation shall be ECRS's exclusive obligation, and the full extent of its liability, and the Distributor's exclusive remedy. ECRS's liability with respect to any material not of ECRS's manufacture shall be limited to the liability assumed by the vendor(s) of such material.

Upon discovery of a defect with respect to any Products delivered here under, Distributor shall notify ECRS in writing within thirty (30) days of such discovery of any claim whatsoever that Distributor may have with respect to such Products, and failure to give such notice within the specified time shall constitute an unqualified acceptance and waiver of all claims with respect to such Products. Upon receipt of notice from Distributor of non-conforming Products, ECRS may inspect such Products at Distributors location or require that they be returned to ECRS FOB. Company's designated location. Distributor may not return material until it receives from ECRS a written Return Material Authorization. Upon receipt of a Return Material Authorization, Distributor may return the merchandise to ECRS's facility.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

ECRS shall not be responsible for any claim asserted against ECRS because Distributor gave a different or greater warranty than ECRS's. Distributor shall defend and indemnify ECRS for such claims.

#### **11. LIMITATION OF LIABILITY**

IN NO WAY SHALL ECRS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES BY WHOMEVER INCURRED (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, DATA, TIME, REVENUES, OR THE LIKE, NOR, EXCEPT FOR ECRS'S PATENT INDEMNITY OBLIGATIONS UNDER SECTION 5.2 OF SCHEDULE 3, SHALL ECRS'S TOTAL LIABILITY FOR ANY CLAIMS OR DAMAGES (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE) ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT WITH RESPECT TO ANY PARTICULAR ECRS PRODUCT, OR THE MANUFACTURE, SALE, DELIVERY, OR USE OF ANY PARTICULAR ECRS PRODUCT, EXCEED THE PURCHASE PRICE OF SUCH PRODUCTS. THIS CLAUSE SHALL SURVIVE BOTH FAILURE OF AN EXCLUSIVE REMEDY AND TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Comment [HAC2]: What is this?

#### **12. REPLACEMENT OF DEFECTIVE GOODS**

If material is claimed to be defective, a sample of the defective material, or the defective tool, must be forwarded to ECRS's Quality Assurance Department with a written explanation of the specific defect. Upon examination by ECRS's Quality Assurance Department and verification of the defect, ECRS will issue authorization to return the balance of the material freight collect. At ECRS's option, ECRS will repair, replace, or issue credit for said defective material.

ECRS's liability and responsibility for defective products is specifically limited to the defective item or to credit towards the original billing. All replacements by ECRS under the provisions of this clause shall be made free of charge, FOB. delivery point called for in the original order. Product for which replacement has been made under the provisions of this clause shall become the property of ECRS and shall be returned to ECRS by its Distributor, in accordance with ECRS's shipping instructions.

**13. BUYER'S WARRANTIES AGAINST PATENT INFRINGEMENT**

ECRS shall not be liable for infringement of any patent, domestic or foreign, arising out of the use or resale of the products sold hereunder. Further, if such products are supplied by ECRS in accordance with the Buyer's Instructions or specifications, Buyer warrants that such instructions or specifications do not infringe any patent, domestic or foreign and the Buyer will indemnify and hold ECRS harmless from all liability or expense of any nature or kind whatsoever based on or arising out of any claim or infringement of any patent domestic or foreign.

**14. ECRS TRADE NAMES AND TRADEMARKS**

'Trade Names' shall mean the names or trademarks 'ECRS' and the names or marks listed in Schedule 6 or any variation or abbreviation thereof, and all applications and registrations of such names or trademarks and any trademark, trade name, or service mark of which the ECRS provides notice to Distributor. Distributor shall not use the Trade Names as part of its trade name, trademark, company or firm name, nor shall it permit such use by any party. Distributor shall not cause to be published any advertising or initiate any practice which might mislead or deceive the public or might be detrimental to the Trade Names or goodwill of ECRS, Distributor agrees, upon request, to discontinue any advertising or practice deemed by ECRS to have such effect or any use of the Trade Names inconsistent with this Agreement. Distributor shall make no use of the Trade Names in any other business of Distributor and shall not use the Trade Names except as set out in this Agreement.

Comment [HAC3]: Where is this?

**15. TITLE OF PRODUCTION MATERIALS**

Irrespective of who has paid for same, all tools, molds, dies or fixtures referred to in any quotation or order shall become and remain the property of ECRS.

**16. EXCLUSIVE CONTRACT**

No modification of this agreement is valid unless agreed to in writing by ECRS's Vice President of Sales & Marketing, Vice

President Finance and Buyer, which expressly states its intention to override the terms, stated here in. ECRS expressly limits all acceptances by Buyer to be the terms stated herein, and specifically objects to any contrary terms.

**Comment [HAC4]:** What should this title be?

17. **ECRS CANNOT BE HELD ACCOUNTABLE FOR TYPOGRAPHICAL ERRORS WITHIN THIS DOCUMENTATION.**