

# DUKE ELECTRIC (1977) LIMITED

986 Barton Street East, Hamilton Ontario Canada L8L 3C7

[www.dukeelectric.com](http://www.dukeelectric.com)

Telephone (905) 547-9171 Fax Line: (905) 544-1522

## Terms and Conditions of Sales and Service

**Exclusive Conditions of Sale:** All quotations and/ or orders are subject to the terms and conditions contained here-in and supersedes Buyers specifications and/or purchase order. Duke Electric (1977) Ltd. will recognize no modifications or additions to these conditions unless specifically agreed to in writing by Duke Electric (1977) Ltd. Failure to object to provisions contained in Buyers order or any other communication from buyer shall not be construed as a waiver of these conditions or an acceptance of any such provisions. If buyer places an order with Duke Electric (1977) Ltd. based on a Duke Electric (1977) Ltd. Quotation, whether the order is placed in writing or orally then the quotation (including Duke Electric (1977) Ltd. Terms and Conditions) and Duke Electric (1977) Ltd. acceptance of the order will constitute the entire contract between buyer and Duke Electric (1977) Ltd. with respect to the subject matter thereof notwithstanding any terms and conditions inconsistent with these terms and conditions on any of buyers forms or correspondence. All orders, sales contracts and other documentation between buyer and seller shall become effective only when approved and accepted by Duke Electric (1977) Ltd.

**Quotations:** Acceptance of a quotation by Duke Electric (1977) Ltd. to offer goods for sale subject to these Terms and Conditions is expressly limited to thirty (30) days from the date the quotation is issued by Duke Electric (1977) Ltd. Purchase orders submitted by buyers for the goods quoted by Duke Electric (1977) Ltd. shall constitute acceptance of these Terms and Conditions. All purchase orders will be subject to approval by Duke Electric (1977) Ltd.

**Termination or Modification:** The sales contract may be modified or terminated only upon Duke Electric (1977) Ltd. express consent, which consent will at all times be conditioned by buyers agreement to pay Duke Electric (1977) Ltd. modification or termination charge including, but not limited to expenses and costs plus a reasonable profit, except that any goods completed on or before the date Duke Electric (1977) Ltd. has accepted the request for termination shall be accepted and paid in full by buyer.

**International Sales:** Duke Electric (1977) Ltd. acknowledges that the parties hereby expressly exclude the application of the Convention on Contracts for the International Sale of Goods to this Agreement or any purchase order issued in connection with the Agreement.

**Prices and Terms:** Fulfillment of buyers order is contingent upon the availability of materials. The Price of the goods sold pursuant to the sales contract shall be based upon Duke Electric (1977) Ltd. prices in effect at the time of shipment and any acceptance of the order will be on the basis of the freight rates in effect at the time of shipment. In the event of an increase or decrease in the applicable freight charges before the material is shipped such changes in freight charges will be for the account of the buyer. Price advances, discounts, extras and terms or conditions are subject to change without notice. Unless otherwise provided on the front side hereof, price is FOB Duke Electric (1977) Ltd. point of shipment, and terms of payment shall be net thirty (30) days from date of invoice Duke Electric (1977) Ltd. may assess

**Delivery:** Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Duke Electric (1977) Ltd. of all information to be furnished by buyer and the absence of delay, direct or indirect, resulting from or contributed to by circumstances beyond the control of Duke Electric (1977) Ltd. Under no circumstances shall Duke Electric (1977) Ltd. be liable for any incidental, consequential, punitive damages or anticipated profits resulting from any delay in shipment or delivery nor shall the failure to deliver goods within the time specified constitute a default. The responsibility of Duke Electric (1977) Ltd. for delivery ceases upon delivery of the goods to the carrier. Any storage costs incurred by Duke Electric (1977) Ltd. for the storage of goods delayed in shipment at the request of the buyer shall be paid promptly by the buyer when invoiced by Duke Electric (1977) Ltd. In all cases buyer shall bear the risk of loss or damage from the FOB point, and the buyer shall be responsible for the filing of all loss or damage claims with the carrier.

**Shipping / Handling Charges:** Shipments are FOB point of shipment unless otherwise stated. Shipping and handling will be collect or pre-paid and billed as a separated item on the invoice on the basis of Duke Electric (1977) Ltd. current shipping/handling policies.

**Acceptance/Inspection:** Buyer shall inspect the goods immediately upon receipt thereof. All claims by the buyer (including claims for shortages), must be asserted in writing by the buyer within a ten (10) day period or they are waived. If this contract involves partial performances, all such claims must be asserted within a ten (10) day period for each partial performance. Rejection may be only for defects substantially impairing the value of products or work. Buyers remedy for lesser defects shall be those provided for under the Warranty and Liability clauses THERE SHALL BE NO REVOCATION OF ACCEPTANCE. If Buyer wrong-fully rejects, revokes or delays acceptance of items of work tendered under this contract, or fails to make a payment due on or before delivery, or repudiates this contract, Duke Electric (1977) Ltd. shall at its' option have the right to recover as damages, either price as stated herein (upon recovery of the price, the items involved shall become the property of the buyer) or the profit (including reasonable over head) which Duke Electric (1977) Ltd. would make from performance together with incidental damages and reasonable cost.

**Return of Products:** No product shall be returned to Duke Electric (1977) Ltd. without written authorization and shipping instructions first having been obtained from Duke Electric (1977) Ltd. Credits are subject to reasonable handling and re-stocking charges commensurate with the policy of the manufacturer plus all charges incurred by Duke Electric (1977) Ltd. Duke Electric (1977) Ltd. is not responsible for equipment that is returned without complying with the foregoing. Equipment is returned at the expense and risk of the buyer. Returned equipment must be in the original packaging and be unused.

**Title Transfer:** Title to the goods covered by quotations presented to the buyer and the rights to immediate possession thereof shall remain with Duke Electric (1977) Ltd. until the purchase price is paid in full and the buyer hereby grants to Duke Electric (1977) Ltd. a security interest in the equipment (and all proceeds thereof) to secure the buyer's obligation to pay for the equipment.

**CONSTRUCTION AND MAINTENANCE – ELECTRICAL MOTORS – TRANSFORMERS – GENERATORS  
DESIGN AND INSTALLATION OF PROCESS CONTROL EQUIPMENT**

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**Terms of Payment:** The standard terms of payment are net thirty (30) days from the date of invoice, with a service and interest charge of 2% per month (24% per annum) on past due invoices applying. If buyer defaults in any payment when due or refuses to accept delivery or becomes insolvent, Duke Electric (1977) Ltd. at its option without prejudice to other lawful remedies, may defer deliveries or cancel the remainder of that order. Equipment held for the buyer shall be at the risk of expense of the buyer and payment shall become due from the date of which Duke Electric (1977) Ltd. is prepared to make shipment. Quoted prices do not include sales, use or other similar federal or provincial taxes. Any certification for special duty or tax must be supplied at time of order. A service charge will be applied on any credit notes necessitated by the buyer not providing proper certification at the time of order. Exception from taxes extended to the buyer does not prejudice our right to charge the buyer with taxes plus any penalties assessed at any subsequent date should the taxing authorities determine that the equipment is taxable.

**Installation:** Installation of the goods shall be by the buyer unless otherwise specifically stated in the sales contract.

**Technical advice :** Any technical advice furnished or recommended by Duke Electric (1977) Ltd. or any representative of Duke Electric (1977) Ltd. concerning any use or application of any of the goods is believed to be reliable, but DUKE ELECTRIC (1977) LTD. MAKES NO WARRANTY, EXPRESSED OR IMPLIED, ON RESULTS TO BE OBTAINED. BUYER ASSUMES ALL RESPONSIBILITY FOR LOSS OR DAMAGE RESULTING FROM THE HANDLING OR USE OF ANY GOODS.

**Warranty:** Duke Electric (1977) Ltd. warrants to the buyer that the goods and services, when operated under normal conditions and in accordance with name plate characteristic limits shall be free of defects in workmanship and material. **Warranty terms are specific to the manufacturer of individual motors.** Duke Electric (1977) Ltd. will be obligated to supply at their option a replacement motor or repair of defective goods within the limitations of the individual warranties provided by the manufacturer. Duke Electric (1977) Ltd. shall not be liable under any circumstances, for consequential or incidental damages including, but not limited to personal injury or labour costs. This warranty does not cover the cost of removal, installation, or re-testing of the new or repaired goods or parts, or any other direct or incidental expenses incurred in shipping the product to or from Duke Electric (1977) Ltd. Replacement goods or parts are warranted for the remainder of the warranty period applicable to the goods originally supplied by Duke Electric (1977) Ltd. All claims for alleged defective goods must be made within ten (10) days after buyer learns of such alleged defects. All claims not made in writing and received by Duke Electric (1977) Ltd. within such ten (10) day period shall be deemed waived. With proper approval from Duke Electric (1977) Ltd. the buyer shall return a sample of the alleged defective part, freight pre-paid, for Duke Electric (1977) Ltd. inspection, and no other goods shall be returned to Duke Electric (1977) Ltd. offices, warehouses or authorized Service centers without Duke Electric (1977) Ltd. written consent. This warranty shall not extend to goods subject to misused, abuse, neglect, accident or improper installation or maintenance, incorrect lubrication, incorrect electrical connection, improper power supply, or goods which have been altered or repaired by anyone other than Duke Electric (1977) Ltd. or its authorized representative.

**Severability:** The provisions of these Terms and Conditions are severable and, once accepted, if any provisions herein shall be held unenforceable or invalid, such invalidity shall not affect any other provision contained herein.

**Liability:** Notwithstanding anything to the contrary herein contained the liability of Duke Electric (1977) Ltd. under any circumstance whatsoever and without exception shall be limited to the purchase price of the particular item forming part of the goods.

**Law and Limitations:** This contract shall be interpreted in accordance with, and shall be governed by the laws of The Province of Ontario, and the parties agree that any disputes hereunder or with respect to this quotation or the resulting contract between the parties shall be determined exclusively by The Courts in The Province of Ontario, and the parties adhere to the exclusive jurisdiction of The Courts in The Province of Ontario.

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