

## STANDARD CONDITIONS OF SALE

**The Buyer's attention is drawn in particular to the provisions of Condition 10 which limit or exclude ETC's liability.**

### 1. INTERPRETATION

1.1. In these Conditions, save where the context requires otherwise:

"Buyer" means the person with whom ETC is contracting;

"ETC" means Electronic Theatre Controls Limited (a company registered in England and Wales under number 3057796) whose registered office is at Unit 26-28 Victoria Industrial Estate, Victoria Road, London W3 6UU; and

"Products" means the products sold or to be sold by ETC to Buyer.

1.2. headings are for ease of reference only and shall not affect construction; and

1.3. words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing whole shall be treated as including a reference to any part thereof.

### 2. CONDITIONS

2.1. These Conditions shall apply to all quotations given and contracts made or to be made by ETC for the sale of the Products to the exclusion of any other terms.

2.2. Each order or acceptance of a quotation for the Products by Buyer shall be deemed to be an offer by Buyer to buy the Products subject to these Conditions and the giving by Buyer of any delivery instruction or the acceptance by Buyer of delivery of the Products shall constitute unqualified acceptance by Buyer of these Conditions.

2.3. Any terms and conditions submitted, proposed or stipulated by Buyer in whatever form and at whatever time, whether written or oral, whether in any purchase order, confirmation of order, specification or other document, or which are implied by trade, custom, practice or course of dealing, are expressly waived and excluded.

2.4. No change to these Conditions shall be binding unless agreed in writing by ETC.

2.5. No contract to which these Conditions apply shall be a sale by sample.

### 3. QUOTATIONS AND ORDERS

3.1. A quotation for Products given by ETC shall not constitute an offer. ETC's quotations shall remain valid for a period of 30 days from its date, provided that ETC has not previously withdrawn it.

3.2. Orders for the Products shall be given in writing by Buyer to ETC at its above address or at such other address as may from time to time be notified to Buyer by ETC.

3.3. No order or acceptance of a quotation shall be binding on ETC unless and until ETC issues a written acknowledgement of order to Buyer at which time the order shall be deemed accepted by ETC and a contract between ETC and the Buyer will come into existence in accordance with these Conditions.

3.4. Buyer may not cancel the order, either in whole or in part, after ETC has issued a written acknowledgement of the order without ETC's agreement in writing. If ETC accepts the

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cancellation, Buyer shall compensate ETC for all costs and losses incurred by ETC as a result of the cancellation (including preparation, storage, materials and labour) up to an amount of ten percent (10%) of the price agreed upon, plus any currency exchange losses.

### 4. PRICES

- 4.1. The price payable by Buyer for the Products and the currency in which payment is to be made shall be as set out in ETC's written acknowledgment of order to Buyer.
- 4.2. ETC reserves the right by notice given at any time before delivery to vary the price of the Products if, after the date of the contract between Buyer and ETC, there is an increase in the cost of the Products to ETC by reason of any circumstance outside the control of ETC including (without limitation) increases in the cost of materials, labour or transport, exchange rate fluctuations, increases in import levies or other taxes, war, hostilities or warlike operations. If the price of the Products is increased pursuant to this Condition 4.2, Buyer may cancel the undelivered balance of the contract by written notice to the Company served within 5 days of receipt of such notice given to the Company.
- 4.3. Unless otherwise stated in the acknowledgement of order the price of the Products is exclusive of costs of packaging and delivery which must be paid at the same time as payment for the Products.
- 4.4. All prices are exclusive of Value Added Tax (VAT) which Buyer shall pay to ETC at the applicable rate at the same time as payment for the Products.

### 5. PAYMENT

- 5.1. Unless otherwise agreed in writing by ETC and subject to Condition 5.3, Buyer shall make payment for the Products prior to shipment by transmitting cleared funds direct to ETC's bank to be received for value on the due date. Credit of up to 30 days from date of invoice may be granted subject to status.
- 5.2. Payment of the price in accordance with the terms of these Conditions as to time and amount shall be of the essence.
- 5.3. Payment shall become due immediately if Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or Buyer ceases to trade.
- 5.4. If any sums become overdue, ETC may (without prejudice to any other right or remedy available to it) do all or any of the following (at its option):
  - 5.4.1. suspend all further deliveries until payment in full has been made;
  - 5.4.2. cancel the contract as regards any Products which remain to be delivered;
  - 5.4.3. charge interest at the annual rate of eight per cent. above the base rate of the Bank of England from time to time on any sum not paid on the due date. Such interest

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shall run from day to day and accrue after as well as before any judgment and shall from time to time be compounded monthly on the amount overdue until payment.

5.5. Buyer shall pay all amounts due to ETC in full and without any withholding, deduction, set off or counterclaim notwithstanding that Buyer may have a claim against ETC, unless required by law.

5.6. Buyer shall pay the costs of ETC in any action to recover outstanding payments due from Buyer to ETC.

### 6. DELIVERY

6.1. Any date specified by ETC for delivery of the Products is intended to be an estimate and time for delivery shall not be made of the essence by notice. If no date is so specified, delivery shall be within a reasonable time.

6.2. Subject to the other provisions of these Conditions ETC shall not be liable for any direct, indirect or consequential loss (which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by ETC's negligence).

6.3. Where ETC is arranging carriage, ETC shall be deemed to have delivered the Products when the Products are delivered to the place specified by Buyer and sub-sections (1) and (2) of Section 32 of the Sale of Goods Act 1979 shall not apply to any contract to which these Conditions apply. Where ETC is not arranging carriage, ETC shall be deemed to have delivered the Products when the Products are ready for collection at ETC's premises. ETC shall notify Buyer of the despatch of the Products or, as the case may be, that the Products are ready for collection.

6.4. After delivery the Products shall be at Buyer's sole risk in respect of all loss or damage arising from any cause whatsoever.

6.5. ETC may deliver the Products by instalments and may invoice Buyer for each such instalment.

6.6. If delivery is delayed through Buyer's default or if Buyer declines or delays in accepting delivery, then and in either such case ETC may (without prejudice to any other right or remedy available to it) do all or any of the following:

6.6.1. charge as part of the price of the Products a reasonable storage fee and other costs incurred by ETC;

6.6.2. sell the Products for ETC's account;

6.6.3. cancel the contract as regards any Products that remain to be delivered.

6.7. Each delivery shall be considered as a separate contract and the failure of any delivery shall not vitiate the contract as to others.

6.8. Any demurrage charges which may be incurred shall be for the account of Buyer, unless due to the neglect or default of ETC.

6.9. Products returned without ETC's written permission will not be accepted, except as set forth herein. Products returned for credit must be in accordance with ETC's established product return procedures. Products must be unused, in original cartons and in saleable condition, subject to ETC's quality control and test inspection. Restocking charges of £30.00 or 15% of invoice (whichever is greater) plus any repacking or reconditioning costs shall be deducted from the credit. In no case will permission be granted to return specially-modified or custom Product

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manufactured according to the Buyer's agreed order, or any product invoiced more than one full calendar month prior to date of Buyer's return request. Products must be returned to ETC within one full calendar month of the return authorisation. Any Product returned after one full calendar month of the return authorisation will not be accepted. Credits will be offered at ETC's sole discretion and determined by ETC on a case-by-case basis.

### 7. WARRANTY

7.1. ETC warrants to Buyer that all Products shall be free from defects in materials and workmanship under normal use and service for 24 months from the date of delivery with the following exceptions which shall have the following warranty period:

- 7.1.1. Consumable parts (such as lamps and fuses) as at the date of delivery;
- 7.1.2. Ex-Demo and Used Equipment for 90 days from the date of delivery;
- 7.1.3. Smart Products for 1 year from the date of delivery;
- 7.1.4. Sensor3 and ColorSource ThruPower Installation Racks for 3 years from the date of delivery;
- 7.1.5. S4WRD Fixture for 3 years from the date of delivery (LED failure only; does not include lumen maintenance (L70) or color maintenance); All other LED fixtures for 5 years from the date of delivery for the entire fixture and 10 years from the date of delivery for LED Array (LED failure only; does not include lumen maintenance (L70) or color maintenance);
- 7.1.6. High End Systems, Inc. products are covered by High End Systems, Inc.'s Warranty Statement - [https://www.highend.com/pub/support/admin/sales\\_tc.pdf](https://www.highend.com/pub/support/admin/sales_tc.pdf).
- 7.1.7. HID Ballasts for 5 years from the date of delivery;
- 7.1.8. Unison Dimming DRd enclosure for 8 years from the date of delivery (excluding Unison Paradigm/Echo control electronics);
- 7.1.9. Unison Mosaic and Unison Echo Power and Control products for 5 years from the date of delivery.
- 7.1.10. Prodigy, Quicktouch & Foundation Products for 3 years from the date of delivery, subject to an annual check out of the system by an ETC trained rigging installer at the Buyer's expense;

7.2. Where ETC is arranging carriage, ETC shall not be liable for loss of or damage to the Products in transit unless Buyer gives written notice to ETC as soon as possible and in any case within 14 days of the date of despatch of the Products (as notified to Buyer under Condition 6.3) specifying with reasonable detail any matter whereof it is alleged that the Products or parts are defective or that it has not received the Products or parts.

7.3. ETC shall not be liable under the warranty at Condition 7.1 or for Products damaged in transit under Condition 7.2 unless Buyer obtains return authorisation in advance from ETC and ships the lost, damaged or defective Products or parts carriage paid at Buyer's cost and Buyer's risk to ETC's premises or, at ETC's option, to its authorised repair centre (and Section 36 of the Sale of Goods Act 1979 shall not apply).

7.3.1 ETC, at its sole discretion, may arrange for transportation, at its expense, of warranted Products to and from ETC's premises or authorized repair centres. Such determination may be made on a case-by-case basis by ETC.

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- 7.4. ETC's liability under Conditions 7.1 and 7.2 whether based on breach of contract, negligence or any other cause of action shall be limited to repairing or replacing the lost, damaged or defective Products or, at ETC's option, repaying a corresponding proportion of the price paid by Buyer and ETC shall not be under any other liability thereunder whatsoever. If ETC chooses to replace the Product and is not able to do so because it has been discontinued or is not available, ETC may replace it with a comparable product. ETC reserves the right to use new, re-worked, repaired, or refurbished parts in the repair or replacement of any Product covered by this Warranty
- 7.5. No claim will be met by ETC under the warranty at Condition 7.1 if, in the opinion of ETC:
- 7.5.1. the defect is not due solely to defective materials or manufacture;
  - 7.5.2. the Products have been misused or subjected to neglect, carelessness or abnormal conditions or involved in any accident or attempt at repair, replacement or modification or dealt with contrary to any directions issued by ETC; or
  - 7.5.3. the terms of payment set out in Condition 5 have not been complied with.
- 7.6. In relation to Products or parts manufactured by a third party:
- 7.6.1. the warranty at Condition 7.1 shall not apply to such Products or parts;
  - 7.6.2. Buyer shall not return such Products or parts to ETC; and
  - 7.6.3. ETC shall use reasonable endeavours at Buyer's cost to extend to Buyer the benefit of any manufacturer's guarantee, condition or warranty given to ETC in relation to such Products or parts.
- 7.7. The warranty at Condition 7.1 is limited to Buyer or Buyer's retail customer and to Products actually manufactured by ETC.
- 7.8. ETC may, at its sole discretion, perform warranty services on location of the Products. In such event, Buyer shall make the warranted Products readily accessible for ETC including, but not limited to, providing any reasonable and necessary equipment, at Buyer's expense, needed by ETC to access such warranted Products.
- 7.9. ETC gives no warranty and makes no representation that any sale or use by Buyer of the Products will be free from infringement of any patent or other intellectual property right owned or controlled by any third party.

## 8. RETENTION OF TITLE

- 8.1. Notwithstanding delivery the title in the Products will not pass to Buyer until the earlier of:
- 8.1.1. Buyer receiving payment in full of the price for the Products and all other sums due from Buyer to ETC on any account whatsoever (in this Condition referred to as "Payment") in which case title to the Products shall pass at the time of Payment; and
  - 8.1.2. Buyer reselling the Products, in which case title to the Products shall pass to Buyer at the time specified in Condition 8.2
- 8.2. Subject to Condition 8.4, Buyer may resell or use the Products in the ordinary course of its business (but not otherwise) before ETC receives Payment for the Products. However, if Buyer resells the Goods before that time:
- 8.2.1. it does so as principal and not as ETC's agent; and

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- 8.2.2. title to the Products shall pass from ETC to Buyer immediately before the time at which resale by Buyer occurs.
- 8.3. Until title to the Products has passed to Buyer, Buyer shall:
  - 8.3.1. store the Products separately from all other products held by Buyer so that they remain readily identifiable as the property of ETC;
  - 8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - 8.3.3. maintain the Products in satisfactory condition and keep them insured against all risk for their full price from the date of delivery and provide ETC with a copy of such policy of insurance on request;
  - 8.3.4. notify ETC if immediately if Buyer becomes subject to any of the events listed in Condition 5.3; and
  - 8.3.5. give ETC such information relating to the Products as ETC may require from time to time.
- 8.4. If before title to the Products passes to Buyer, Buyer becomes subject to any of the events listed in Condition 5.3, then, without limiting any other right or remedy ETC may have:
  - 8.4.1. Buyer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and
  - 8.4.2. ETC may at any time:
    - 8.4.2.1. require Buyer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
    - 8.4.2.2. if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored in order to recover them.
- 8.5. Buyer shall not attach the Products to buildings, structures or land so as to become a fixture without the prior written consent of ETC.
- 8.6. ETC may maintain an action for the price of the Products, notwithstanding that the title in them has not passed to Buyer.
- 9. **SOFTWARE**
- 9.1. Where the Products are or include software, whether sold separately from other equipment or incorporated in equipment sold ("the Software"), then the provisions of this Condition shall apply in addition to the other Conditions.
- 9.2. Where the Software is or incorporates Software which is licensed to Buyer by a third party, Buyer shall use such Software on and subject to the terms of such third party's Software licence. If in relation to Software licensed by the third party there is any conflict between the terms of the third party's software licence and this Condition 9, then the terms of the third party's software licence shall prevail.
- 9.3. *Software Licence:*
  - 9.3.1. ETC hereby grants, and Buyer accepts, a non-sub-licensable, perpetual, non-exclusive, fully paid, limited licence to use the Software in machine readable form.

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The licence will continue until the Buyer transfers the Products at which point the licence shall be automatically transferred to the new owner, subject to the terms stated.

9.3.2. Buyer shall not use the Software except in connection with the use of the Products or other products supplied or approved by ETC.

9.3.3. All intellectual property rights in and relating to the Software, other than those granted under these Conditions or a software licence supplied by a third party, shall remain the sole and exclusive property of ETC and/or its suppliers as appropriate.

9.3.4. Buyer acknowledges and agrees that subject to any rights Buyer may have under applicable law any reproduction, reverse engineering, electronic transfer, or other use of the Software other than on Buyer's equipment will materially breach these Conditions. ETC may elect to give notice to Buyer that Buyer is deemed to order and accept a licence for each breaching use. Buyer shall then become liable to pay ETC the applicable list price licence and support fees under ETC's terms effective as of the date of such breach.

### 9.4. *Conditions of Use:*

9.4.1. Buyer agrees that subject to any rights Buyer may have under applicable law it shall not attempt to reverse engineer, decompile, or disassemble the Software or any portion thereof, or otherwise derive its source code.

9.4.2. Buyer may make backup and archival copies of the Software solely for its internal use, retaining on all copies ETC's and/or its suppliers' copyright, trademark, or other proprietary notices.

9.4.3. Buyer shall erase the Software from the storage media of any Buyer's equipment prior to disposing of or retiring such equipment from active use.

9.4.4. Buyer agrees not to disclose, provide or otherwise make available the manufacturing processes, internal design and implementation techniques, and source code of the Software ("the Proprietary Information") to any person other than authorized employees without ETC's prior written consent. Buyer agrees to protect the Proprietary Information through instructions to its employees, access limitations, and the like, no less securely than if it were Buyer's own intellectual property. No media containing the Software, or any related documentation shall be transferred, reproduced or used in any way other than as provided by these Conditions.

## 10. **LIABILITY**

10.1. Subject as expressly set out in these Conditions, the following provisions set out the entire financial liability of ETC (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of:

10.1.1. any breach of these Conditions;

10.1.2. any use made or resale by Buyer of any of the Products, or of any product incorporating any of the Products; and

10.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with any contract to which these Conditions apply.

10.2. To the extent permitted by law, all conditions, warranties or obligations whether express or implied by statute, common law or otherwise are excluded and the provisions of these Conditions shall apply in lieu thereof.

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- 10.3. All descriptions, representations, specifications, samples, colours, illustrations and other particulars furnished or made orally by ETC or in catalogues, trade literature, price lists or other documents issued by ETC are given for general information purposes only and Buyer acknowledges that it is not entering into the contract in reliance upon any such description, representation, specification, sample or other particular.
- 10.4. ETC's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of any contract to which these Conditions apply shall be limited to the price of the Products.
- 10.5. ETC shall not in any event be liable to Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for indirect or consequential loss or damage whatsoever (howsoever caused) which arise out of or in connection with any contract to which these Conditions apply.
- 10.6. Nothing in these Conditions excludes or limits the liability of ETC:
- 10.6.1. for death or personal injury caused by ETC's negligence; or
  - 10.6.2. under Section 2(3) Consumer Protection Act 1987; or
  - 10.6.3. for any matter in respect of which it would be illegal for ETC to exclude or attempt to exclude its liability; or
  - 10.6.4. for fraud or fraudulent misrepresentation.

## 11. EXPORT TERMS

- 11.1. In these Conditions "Incoterm" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when any contract to which these Conditions apply is made.
- 11.2. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterm shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterm and these Conditions, the latter shall prevail.
- 11.3. Where the Products are supplied for export from the United Kingdom, the provisions of this Condition shall (subject to any special terms agreed in writing between ETC and Buyer) apply notwithstanding any other provision contained in these Conditions.
- 11.4. Buyer shall be responsible for complying with any legislation or regulation governing the importation of the Products into the country of destination and for the payment of any duties or levies thereon.
- 11.5. Unless otherwise agreed in writing between ETC and Buyer, the Products shall be delivered ex works. If it is agreed that ETC shall arrange shipment, ETC shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.6. Payment for the Products shall be made by confirmed, irrevocable, without recourse, letter of credit providing for payment at sight, allowing partial deliveries and collections and issued by a reputable first class bank acceptable to ETC.
- 11.7. Buyer shall open each letter of credit within 21 days after Buyer's receipt of ETC's acceptance of Buyer's order. Each letter of credit shall remain open for at least 120 days.

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- 11.8. If Buyer fails to provide such letter of credit, ETC may, without prejudice to any other right or remedy available to it, cancel the order without liability to Buyer.
- 11.9. The terms of each letter of credit (such as the documents to be tendered by ETC and the number of copies of each document to be delivered) shall be specified from time to time by ETC.
- 11.10. All duties, taxes, levies or any other charges relating to the importation of the Products shall be borne and paid by Buyer.

### 12. NOTICES

- 12.1. Any notice to be given under these Conditions may be delivered, or be sent by first class pre-paid post addressed to the party to be served at the address for such party last known to the party giving the notice or may be transmitted by email to the email address of the party to be served last known to the party giving notice.
- 12.2. Notices served by post shall be deemed served on the second business day after posting. Notices served by email shall be deemed served on the next business day after transmission.

### 13. FORCE MAJEURE

- 13.1. If ETC shall be prevented or delayed from producing, acquiring or effecting deliveries of the Products or any of them by reason of any of the following causes, namely, Act of God (including but not limited to adverse weather conditions, flood, earthquake, windstorm or other natural disaster), insurrection, riot, war, hostilities, terrorist attack, nuclear, chemical or biological contamination, piracy, arrests, restraints or detentions of any competent authority, strikes or combinations or lock-out of workmen, mechanical breakdown, shortage of or inability to obtain materials, equipment or transportation or any other circumstance (whether of a nature similar to those specified, or not) beyond the control of ETC regardless of whether or not the circumstance in question could have been foreseen at any time, the obligation of ETC to effect deliveries under these Conditions shall be suspended whilst such cause shall continue.
- 13.2. Should any deliveries under the contract be suspended under this Condition 13 Buyer shall nevertheless accept delivery and pay for such of the Products as soon as ETC shall be able to deliver. ETC shall not be liable for any loss or damage of any kind resulting from the causes mentioned above.
- 13.3. If ETC has contracted to provide identical or similar goods to more than one Buyer and is prevented from fully meeting its obligations by reason of any of the causes referred to in Condition 13.1, ETC may determine which contracts it will honour and to what extent at its own discretion.

### 14. MISCELLANEOUS

- 14.1. No failure or delay by ETC in exercising any right under these Conditions shall operate as a waiver thereof or extend to or affect any other or subsequent event or impair any rights or remedies consequent thereon or in any way modify or diminish the rights of ETC under these Conditions.
- 14.2. Buyer shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person.
- 14.3. The parties do not intend that any term of any contract to which these Conditions apply shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

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- 14.4. If any Condition or part of any Condition shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other Condition or part of any Condition all of which shall remain in full force and effect.
- 14.5. UK Bribery Act 2010. Buyer agrees to comply with the UK Bribery Act 2010 and shall not: (a) pay or cause to be paid, accept or receive any unlawful contributions, payments, expenditures, or gifts; or (b) violate or operate in noncompliance with any export restrictions, anti-boycott regulations, embargo regulations or other applicable domestic or foreign laws and regulations. If Buyer is convicted of a violation of any of the aforesaid laws, ETC shall have the right to immediately terminate any quotation or acknowledgement of order.
15. **GOVERNING LAW**
- 15.1. These Conditions shall be governed by and construed in accordance with English law and Buyer irrevocably submits to the non-exclusive jurisdiction of the English Courts.