

Ellison Technologies, Inc.
Terms and Conditions of Sale of Parts and Services

1. **Terms and Conditions.** All sales of Parts and Services by Ellison Technologies, Inc. ("Seller") to any purchaser thereof ("Buyer") will be subject to these Terms and Conditions. For purposes hereof, "Parts" shall mean any and all machine tool parts, components, tooling and related accessories, and other goods and equipment, and "Services" shall mean any and all installation, repair or other services. These Terms and Conditions may be updated by Seller at any time without notice to any party by posting the updated Terms and Conditions on Seller's website at www.ellisontechnologies.com.
2. **General.** These Terms and Conditions, along with any quantity, and pricing terms accepted in writing by Seller, contain the entire agreement between Seller and Buyer with respect to the sale by Seller of Parts or Services, and no course of dealing or usage of trade or actual course of performance will be relevant to explain or supplement any term used in these Terms and Conditions, and all different terms and conditions proposed by Buyer or included in any purchase order are hereby expressly rejected. No additional or other terms will be binding on Seller unless accepted in a writing signed by a duly authorized representative of Seller. Any other oral agreement between the parties with respect to the subject matter hereof will be null and void. Seller's failure to object to specific provisions contained in Buyer's orders or other communications will not be deemed a waiver of the terms and conditions herein. Buyer's order is accepted only at the prices and terms agreed to by Seller, irrespective of any prices or terms quoted by Seller or listed on a purchase order or other writings. All prices are subject to state and local sales tax, if applicable, and to any other tax Seller may be required to collect or pay in connection with the transactions contemplated herein.
3. **Credit Approval.** Shipment, delivery and performance of all work hereunder are subject to the approval of Seller's credit department. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment in advance or upon such other payment terms as are acceptable to Seller's credit department.
4. **Payment.** Except as otherwise agreed to in writing by the Parties, Buyer will pay the full purchase price for any Parts and the full fees and expenses for any Services within 30 days of the invoice date. Outstanding balances not paid when due will be charged a late fee of 1.5% of the outstanding balance during all or any portion of the month (or the maximum amount permitted by state law), payable on the last day of each calendar month. Buyer will pay all of Seller's costs of collection and/or repossession, including reasonable attorneys' fees, in the event Buyer fails to make any payment when due. If shipments are delayed by Buyer, or because Buyer's account is in arrears, payments will become due on the date that Seller notifies Buyer that it is prepared to make shipment. Any Parts held by Seller for Buyer will be at Buyer's sole risk and expense. Buyer shall not offset against any payment any amount not acknowledged in writing by Seller to be then due to Buyer.
5. **Delivery and Installation.** Seller will select the carrier to deliver any Parts sold to Buyer. All delivery charges, including, but not limited to freight and insurance charges, will be at Buyer's sole cost and expense. Delivery dates and shipping schedules are approximate and based on the most recent information available to Seller from the manufacturer and may be adjusted from time to time, and time shall not be of the essence with respect to such delivery. Seller shall have satisfied its obligation to deliver the Parts upon the earlier of the date when (a) the Parts are ready for shipment to Buyer and Buyer is so notified or (b) Seller has placed the Parts in possession of the carrier or shipper for transportation to Buyer. Seller's obligation to deliver goods or services shall be subject to the due performance of all of Buyer's contractual obligations hereunder. Seller will not be responsible for any failure to perform arising from causes beyond its control, including, but not limited to, fire, acts of God, explosions, accident, labor disputes or shortages, failure or delays in transportation, or factory delays, war or threats of war, sanctions, embargo, acts of government or judicial action, default on the part of Seller's suppliers or any cause which renders Seller's performance commercially impractical under Section 2-515(a) of the Illinois Uniform Commercial Code. Any installation, assembly or connection of the Parts will be at Buyer's sole and separate expense unless expressly included as paid Services hereunder.
6. **Risk of Loss/Damage in Transit.** All shipments will be F.O.B. (UCC) Seller's shipping point. Upon delivery by Seller to a carrier for shipment of Parts to Buyer, risk of loss will pass to Buyer and the carrier will be deemed to be acting for and on behalf of Buyer and the terms of payment for the Parts will not be affected by damage to or destruction of the Parts.
7. **Cancellation; Return of Parts.** An agreement to purchase Parts is not cancelable after it has been accepted by Seller. Buyer may return any Parts ordered or delivered at any time within 30 days of the delivery thereof to Buyer, provided such Parts are in "new" condition and subject to payment of any restocking fee charged by the manufacturer of such Part.
8. **Non-Waiver.** In the event of a default by Buyer under these Terms and Conditions or any other agreement between Seller and Buyer, Seller may decline to make further shipments without in any way affecting its rights or obligations under these Terms and Conditions or such other agreement. The failure of Seller to insist in any instance on the performance of any of the terms, covenants or conditions hereunder, or to exercise any right herein, will not be construed as a waiver or relinquishment of (a) any right, term or condition hereunder, (b) the future performance of any term, covenant or condition or (c) any of Seller's legal remedies hereunder.
9. **Security Interest.** Buyer hereby grants to Seller and Seller hereby retains a continuing purchase money security interest in all Parts, whether currently in Buyer's possession or hereafter acquired, together with any and all proceeds of sale or other disposition thereof. Buyer authorizes Seller to execute and file one or more financing statements pursuant to the UCC in force in Buyer's state of formation (or Buyer's state of residence if Buyer is an individual) in a form satisfactory to Seller to evidence Seller's security interests granted hereunder and will take such other steps as requested by Seller to perfect and maintain such security interests. Until Buyer repays all amounts owed hereunder, it (a) will keep the Parts free from any lien, security interest or encumbrance, (b) will fully insure the Parts for any damage due to fire, lightning, explosion and other usual risks and (c) will retain possession of the Parts and not transfer such Parts, or permit the transfer of such Parts outside the United States. Buyer will not store the Parts, or use the Parts, in violation of any law. If Buyer defaults in its payment obligations, Seller may declare all amounts owed immediately due and will have the remedies of a secured party under the Uniform Commercial Code. Buyer agrees to pay Seller's reasonable attorneys' fees and court costs for the collection of any amounts owing to Seller hereunder or incurred in the repossession of the Parts.

10. **Assignment.** These Terms and Conditions will be binding upon and inure to the benefit of the successors and assigns of Seller and Buyer. Buyer may not assign any of its rights hereunder without Seller's written consent.

11. **No Seller Warranty; OEM Parts Warranty.** BUYER ACKNOWLEDGES THAT NO WARRANTY, EXPRESS OR IMPLIED BY LAW OR USAGE, ARE HEREIN MADE BY SELLER WITH RESPECT TO ANY PARTS OR SERVICES, AND BUYER HEREBY WAIVES ALL WARRANTIES – EXPRESS, IMPLIED OR STATUTORY. SELLER MAKES NO WARRANTY OF MERCHANTABILITY, AND THE DESCRIPTION OF THE PARTS AND/OR SERVICES CONTAINED IN ANY DOCUMENT IS FOR THE SOLE PURPOSE OF IDENTIFYING THE PARTS AND/OR SERVICES AND IS NOT A WARRANTY. TO THE EXTENT ANY PARTS PURCHASED BY BUYER HEREUNDER ARE SOLD SUBJECT TO A MANUFACTURER'S WARRANTY THAT SELLER IS ABLE TO PASS THROUGH TO BUYER, SELLER AGREES TO, AND HEREBY DOES, PASS-THROUGH SUCH MANUFACTURER'S WARRANTY TO BUYER AND SELLER FURTHER AGREES TO PROVIDE REASONABLE ASSISTANCE TO BUYER'S EFFORTS TO MAKE A WARRANTY CLAIM AGAINST THE MANUFACTURER OF SUCH PARTS TO THE EXTENT IT ENCOUNTERS ANY ISSUES WITH SUCH PARTS THAT ARE COVERED BY SUCH MANUFACTURER'S WARRANTY.

12. **CLAIMS RELATED TO PARTS AND SERVICES.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER SHALL NOT, BY VIRTUE OF PROVIDING ANY SERVICES TO BUYER, HAVE ANY LIABILITY FOR ANY PRODUCT LIABILITY OR OTHER CLAIMS RELATED TO ANY PARTS OR OTHER GOODS OR EQUIPMENT OF BUYER OR ANY OF ITS AFFILIATES. IN FURTHERANCE OF THE FOREGOING, BUYER SHALL, AND HEREBY DOES, INDEMNIFY AND HOLD HARMLESS SELLER AND EACH OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, PARTNERS, MEMBERS, OWNERS, CONTRACTORS AND AGENTS FROM AND AGAINST ANY LOSSES, DAMAGES, LIABILITIES, FINES, PENALTIES, DUTIES, CHARGES, FEES OR OTHER COSTS SELLER OR SUCH OTHER PARTY MAY INCUR WITH RESPECT TO ANY CLAIM (INCLUDING ANY PRODUCT LIABILITY OR TORT CLAIM) BROUGHT BY A CUSTOMER, EMPLOYEE OR ANY OTHER BUSINESS RELATION OF BUYER OR ANY OF ITS AFFILIATES OR ANY OTHER THIRD PARTY WITH RESPECT TO ANY PARTS, SERVICES OR OTHER GOODS OR EQUIPMENT OF BUYER OR ANY OF ITS AFFILIATES.

13. **LIMITATION ON LIABILITY.** SELLER'S AGGREGATE LIABILITY WITH RESPECT TO ANY PARTS OR SERVICES PROVIDED BY SELLER SHALL NOT EXCEED THE PURCHASE PRICE PAID BY BUYER TO SELLER HEREUNDER FOR THE PARTS OR SERVICES. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND FROM ANY CAUSE ARISING OUT OF OR RELATED TO THE PARTS OR SERVICES OR THEIR INSTALLATION OR THE USE OR INABILITY TO USE ANY OF THE PARTS, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE, GOODWILL OR BUSINESS INTERRUPTION, OR DAMAGES OF ANY KIND BASED UPON A CLAIM FOR BREACH OF WARRANTY OR FOR FAULTY WORKMANSHIP OR MATERIALS.

14. **Manufacturing Variations.** Goods and materials shall be subject to Seller's and its suppliers' standard manufacturing variations. Seller and its suppliers reserve the right to change material specifications at any time and assume no obligation to supply any Parts or other product(s) previously sold.

15. **Export Restrictions.** Buyer agrees and acknowledges that the Parts may be subject to export restrictions imposed by the United States., the Republic of Korea, Japan, Spain and other countries, and that Buyer will not transfer the Parts or permit them to be transferred anywhere outside the United States without the prior written consent of Seller. Buyer shall not use the Parts or their derivatives for the development or manufacturing of "Weapons of Mass Destruction", such as nuclear, biological and chemical weapons or missiles. Buyer shall at all times comply with all United States and foreign laws and regulations regarding exportation of the Parts and shall indemnify and hold harmless Seller for any and all losses, damages, liabilities, fines, penalties, duties, charges, fees or other costs Seller may incur as a result of Buyer's exportation or improper use of the Parts. In the event there is any value added tax assessed, Buyer shall be solely liable for the payment thereof.

16. **Arbitration.** The rights of the Parties hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, exclusive of conflict or choice of law rules. The Parties acknowledge that the purchase and sale of Parts and Services evidences a transaction involving interstate commerce. Notwithstanding the application of substantive Illinois law, any arbitration conducted between the Parties in connection with such Parts or Services shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16) ("FAA").

Any dispute, claim, or controversy arising out of or relating to the Parts or Services or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of these Terms and Conditions, shall be determined exclusively by arbitration in Chicago, Illinois before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction.

In any arbitration arising out of or related to the purchase and sale of such Parts and Services, each Party agrees that it is limited to deposing a maximum of three witnesses. Each party agrees it is limited in calling a maximum of three witnesses at the arbitration proceeding. The arbitrator shall award to the prevailing party the costs, experts' fees and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. The arbitrator may not award either (1) any incidental, punitive, treble, consequential or indirect damages including, but not limited to, lost profits or lost enterprise value; or (2) lost profits of any kind. In the event that there is a conflict between the JAMS Streamlined Arbitration Rules and Procedures and these Terms and Conditions, the rules and procedures for the arbitration set forth in these Terms and Conditions control.