

# ELECTRONIC THEATRE CONTROLS, INC.'S STANDARD TERMS AND CONDITIONS OF SALE AND WARRANTY

## TERMS AND CONDITIONS

1. **Acceptance of Terms.** The following terms and conditions, and those on the face hereof, shall control as to any order for Electronic Theatre Controls, Inc. ("ETC") products ("Products") accepted by ETC ("Order"), notwithstanding any terms and conditions that may be contained in any purchase order or other document of Customer, and ETC's acceptance of any order is expressly made conditional on Customer's assent to the following terms and conditions and those on the face hereof (the "Agreement"). For Customers installing or servicing, or contracting with third parties to install or service, ETC rigging products, additional terms, and conditions (the "Addendum") is also incorporated as part of this Agreement as though fully set forth herein. The Addendum can be found at <https://www.etcconnect.com/Support/Warranty.aspx>. Such terms and conditions will constitute the entire Agreement between the parties as to any order and will supersede any prior understandings, agreements, representations, or warranties. Such terms and conditions will not be modified, added to, superseded, or otherwise altered except by written document signed by the President of ETC, or his/her designee, notwithstanding any terms and conditions contained in the purchase order or other document of Customer. ETC's commencement of performance and/or delivery shall not constitute a waiver of these terms and conditions or any acceptance of any terms and conditions contained in the Customer's order or other documents. Acceptance of any product or service by the Customer will be construed as acceptance of ETC's terms and conditions. Any dispute or questions of construction with respect to any order placed with ETC shall be governed by the laws of the State of Wisconsin.
2. **Conditions Precedent.** The obligations of ETC in this Agreement are subject to the express condition precedent that Customer shall fully perform its obligations under this Agreement, subject to any written waiver by ETC which shall be at its sole discretion.
3. **Payment Terms.** Payment terms are net 30 days after date of invoice unless otherwise stated on the sales acknowledgment or invoice. If ETC in good faith doubts Customer's ability or willingness to pay, ETC may in its discretion complete its performance of this contract upon a cash in advance basis or make deliveries only upon a C.O.D. basis or file a UCC filing or suspend all or part of its performance here under. All payments are applied to the oldest outstanding invoice. Accounts over thirty (30) days are subject to a one and one-half percent (1 1/2%) per month (or the highest rate permitted by law, whichever is less) late payment charge. ETC will have the option of withholding performance under any and all orders from the Customer if an invoice remains unpaid when due.
4. **Delivery and Risk of Loss.** ETC will attempt to ship the Order for delivery on or about the times requested by the Customer, although time shall not be of the essence in this contract in this regard, and subject to availability. Any failure by ETC to make shipment as scheduled or requested shall not constitute cause for cancellation, does not constitute a breach of contract and/or does not entitle Customer to damages of any kind. ETC will attempt to follow Customer's written instructions as to mode and routing of shipments, but ETC shall retain absolute discretion as to mode and routing of shipments, including express or parcel post for small shipments. ETC will prepay and bill freight on shipments unless specifically quoted otherwise or upon written instruction from the Customer. Where the Customer has requested expedited freight, the Customer will be responsible for the incurred additional charges. Orders are shipped at the Customer's risk and ETC's obligation to deliver Orders is discharged upon the Order's delivery in good condition to the carrier. Shipments are FOB ETC's factory or warehouse. Unless specifically prohibited, partial shipments will be made. Federal, state, and local taxes, duties and other charges are the responsibility of the Customer. If for any reason Customer is unable or unwilling to take delivery of the Order, ETC may, at its sole discretion, store the Order and any and all costs associated with such storage, including taxes or insurance, shall be immediately paid by Customer. Unless otherwise specifically noted and where shipping terms dictate that Customer take delivery at ETC's facilities, Customer is solely responsible for determining any export licensing requirements, for obtaining any necessary licenses or official authorizations, and for handling any customs formalities for export of the Order. Claims for shortage or damaged goods must be made within ten (10) days of receipt by the Customer. The Order will be carefully packed and delivered in good condition to the carrier. All claims for loss or damage in transit must be made by the consignee directly to the carrier. ETC will make commercially reasonable efforts to render aid and assistance in the presentation and enforcement of such claims without waiver of our rights to have compliance with the terms of payment of our invoices.
5. **Warranty.** ETC's Standard Warranty and limitation of liability ("Warranty") is the complete and final warranty with regard to Products. ETC's obligations under the Warranty are limited to repairing or replacing any of the Products which shall, within the applicable Warranty period, fail due to fault manufacture, design, or workmanship. Customer acknowledges and agrees that the provisions of the Warranty are the sole and exclusive remedy available to the Customer for any defective Products.
6. **Warranty Disclaimer.** EXCEPT AS SET FORTH IN THE WARRANTY, ETC EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
7. **Change Orders.** Any changes in engineering drawings, specifications, or in other terms of manufacture, assembly, or shipment, requested by Customer, must be in writing and approved by ETC. If any such change by Customer causes an increase in the cost of, or in the time required for performance of, any part of the contract, then ETC shall make a reasonable adjustment to the price of the Order. Products ordered which differ in any way from ETC's standard catalog items will require drawings approved in writing by the Customer. When drawings are approved, they shall take precedence over all other written or verbal instructions.
8. **Quotations and Pricing.** Quotations for standard Products are valid for ninety (90) days from date of issuance while quotes for custom Products are valid for thirty (30) days from issuance. Orders are effective only when accepted and acknowledged by ETC in writing. Minimum order is \$25.00 net, exclusive of freight. All prices are in the applicable currency listed on the invoice. Prices, models, part numbers, and specifications are subject to change without notice. Orders must be in writing. Phone orders will be accepted from established accounts when followed by written confirmation. The acceptance of any Order does not imply conformance with plans and specifications unless the plans and specifications accompany the Order and are accepted as binding by ETC in writing. Price protection will only be given to the following: (i) project Orders that are set to be released within 180 days from the date of order acknowledgement; and (ii) standard product Orders that are set to be released within 90 days from the date of the order acknowledgement. If the Order does not release within those time periods previously stated, ETC may, with notice to the Customer, adjust the pricing for such Order based upon the change in the most recently published Producer Index, Total Manufacturing Industries, as published by the US Dept of Labor, Bureau of Labor Statistics as of the date of the Order release compared to the information published as of the order acknowledgement date.
9. **Structures.** Except to the extent ETC is specifically responsible for any structural element per this Order, Customer represents and warrants that the existing structure, or anticipated structure, if not yet completed, including, without limitation, any existing steel, walls, columns, trusses, footings, hoist attachment points, wiring, power supplies, or any other foundation or existing structural elements (the "Structure") shall be adequate to support the weight, size, load, and all other technical specifications of the Products, and Customer shall hold ETC harmless from any failure of any Structure.
10. **Cancellation.** If Customer cancels all or any portion of the Order prior to shipment, Customer shall be liable to ETC for a cancellation charge equal to ETC's actual costs incurred in connection with that portion of the Order that is cancelled, including, without limitation, labor, and materials.

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11. Security Interest. Customer represents that it is not bankrupt or insolvent. ETC retains a security interest in the Products to secure payment of the purchase price and all other indebtedness now or hereafter owed by the Customer to ETC. At ETC's request, Customer will execute a financing statement or statements evidencing such security interest and will take any other action necessary to perfect the same.
12. Waiver. No failure of ETC to insist upon or compel compliance by the Customer with any provision of this Agreement shall be construed as a waiver by ETC of its right to insist upon compliance with this Agreement. No waiver by ETC of any breach by Customer shall be effective unless in writing signed by the President of ETC, or his/her designee, and no waiver by ETC of any breach by Customer shall be deemed a waiver of any other breach.
13. Non-Warranty Returns. Products returned without ETC's written permission will not be accepted. Products returned for credit must be in accordance with this Agreement. Products must be unused, in original cartons and in saleable condition, subject to ETC's quality control and test inspection. Restocking charges of \$25.00 or 25% of invoice (whichever is greater) plus any repacking or reconditioning costs will be deducted from the credit. Returns for warranty work will be in accordance with ETC's established warranty procedures. In no case will permission be granted to return: (i) specially modified or custom Products; (ii) Factory Clearance Products purchased more than ten (10) days prior to date of Customer's return request; or (iii) merchandise invoiced more than six (6) months prior to date of Customer's return request.
14. Use of Image. Customer agrees and consents to allow ETC to refer to and/or use: (i) the installed ETC Products, (ii) the location of the installed Products, (iii) Customer's respective logo(s), trademark(s), or any other graphical representation of Customer's use of the ETC Products, and/or (iv) photographs of the installed ETC Products in any material of any kind used or produced by or at the direction of ETC, without the prior written consent of Customer; provided, however, that ETC may not, without prior written consent, do any of the foregoing in a manner that implies endorsement by Customer.
15. Force Majeure. ETC shall not be liable for any delay in the delivery of or failure to deliver the Order, or for any delay in the performance of or failure to perform any term of this Agreement, if the delay or failure is caused by, related to, or arising out of a circumstance beyond the reasonable control of ETC, including, without limitation, the following circumstances: (a) acts of God; (b) flood, fire, earthquake, explosion, or other casualty; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) law, order, or other action by any governmental authority; (f) strikes, material shortages, labor stoppages or slowdowns, inability to obtain parts or materials, delays in transit, or other industrial disturbances; (g) shortage of adequate power or transportation facilities; and (h) pandemic, epidemic, or disease, including without limitation COVID-19. If ETC is wholly or partially unable to perform or deliver because of any circumstance beyond its reasonable control, ETC may allocate performance and delivery among its customers or may terminate this Agreement without any further liability to Customer. ETC and Customer agree that this Section 15 does not require the circumstance beyond ETC's reasonable control to be unforeseeable at the time they enter into this Agreement.
16. Confidentiality. To the maximum extent permitted by law, the terms, and conditions of this Agreement, as well as any information provided by ETC, including but not limited to pricing, drawings, specifications, or other materials prepared by ETC, to Customer shall be treated as confidential and shall not be disclosed to any third party or be used for any purpose except to fulfill Customer's obligations created hereunder, without the express prior written consent of ETC. Customer agrees to limit disclosure of the confidential information to its employees, agents, and subcontractors who have a need to know such information, and who have been informed of and agree to be bound by the confidentiality obligations of this Agreement. This confidentiality obligation shall survive the termination or cancellation of this Agreement.
17. Miscellaneous. This Agreement shall be governed by the laws of the state of Wisconsin without regard to its conflict of laws principles. The parties agree that the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. The parties consent to the exclusive jurisdiction and venue of the courts located in Dane County, Wisconsin for any action, suit or proceeding. If suit or action is instituted by ETC to enforce payment or performance by the Customer, the Customer agrees to pay all reasonable costs and attorney's fees incurred by ETC. If any part of this Agreement is held to be invalid, illegal, void or to be in conflict with any law, the validity of the remaining terms or provisions of this Agreement shall not be affected, and such part, term, paragraph, or provision shall be construed and enforced in such a manner to fulfill the intent expressed in this Agreement to the maximum extent permitted by law.

### WARRANTY

Warranty Coverage. ETC WILL ONLY BE OBLIGATED TO HONOR THE WARRANTY SET OUT BELOW UPON RECEIPT OF FULL PAYMENT OF THE ORDER.

Electronic Theatre Controls, Inc. ("ETC") warrants to the original owner or retail customer ("Customer") that during the warranty period defined below, ETC will repair or replace its Products that are defective in materials or workmanship which cause the Product to fail to operate in accordance with ETC's published specifications for the Product in effect as of the date of shipment, subject to the terms of this limited warranty. The warranty period of box Products shall begin on the date of shipment ("Warranty Start Date"), except the Warranty Start Date shall begin on the date of energization for Orders which include energization performed by ETC or an authorized service provider acting on ETC's behalf. If no energization date is recorded, however, the Warranty Start Date shall begin on the date of shipment. The controlling warranty, terms and conditions, and product warranty periods is available at the time of order acknowledgment, either by hard copy or by the PDF document found via the internet link listed on the order acknowledgment as of the date of the order acknowledgment.

If ETC shall fail to repair or replace defective Products within a reasonable time after they are returned to ETC, or if ETC shall wrongfully fail to make delivery or shall wrongfully repudiate this contract, then Customer shall be entitled to recover from ETC such part of the purchase price as has been paid by Customer to ETC. The remedy stated in the preceding sentence shall be Customer's exclusive remedy for any breach, non-delivery, or repudiation by ETC or for any other liability of ETC to Customer. This exclusive remedy shall not be deemed to have failed its essential purpose so long as ETC is willing and able to repair or replace defective Products in the prescribed manner.

Warranty Exclusions. This Warranty does not impose any liability or duty upon ETC for: (i) any Product or part of a Product damaged by or subject to accident, negligence, alteration, abuse or misuse by Customer, or any accessories or parts not supplied by ETC; (ii) any damage caused by the unauthorized adjustment, repair or service of the Products by anyone other than ETC or its authorized repair agents; (iii) any damage, to any Product, or part of a Product caused by or due to an act of God, any catastrophe resulting from earthquake, fire, flood, explosion, inability to obtain materials or utilities, or any other cause beyond the reasonable control of ETC. This warranty also does not cover "consumable" parts such as fuses, lamps, color media or components which may be warranted directly to the Customer by the original manufacturer. This Warranty does not extend to items not manufactured by ETC. Freight terms on warranty repairs are FOB ETC factory or designated repair facility. Collect shipments or freight allowances will not be accepted.

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ETC's sole responsibility under this Warranty shall be to repair or replace at ETC's option such Products or parts of Products as shall be determined to be defective on ETC's inspection. ETC, at its option, may perform on-site warranty repairs. 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. ETC will not assume any responsibility for any labor expended or materials used to repair any Products without ETC's prior written authorization. ETC SHALL NOT BE RESPONSIBLE FOR ANY INCIDENTAL, GENERAL OR CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, TIME, PROFITS OR INCOME, OR ANY OTHER DAMAGES.

The Customer's obligations during the warranty period under this Warranty are to notify ETC within one week of any suspected defect and to return the Products prepaid to ETC at ETC's factory or authorized service center. The one-week notice period does not apply to claims for shortage or damaged Products.

This written Warranty is intended as a complete and exclusive statement of the terms thereof. Prior dealings or trade usage shall not be relevant to modify, explain or vary this Warranty. Acceptance of, or acquiescing in, a course of performance under this Warranty shall not modify the meaning of this Warranty even though either party has knowledge of the performance and a chance to object.

THIS LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE EQUIPMENT AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, EXCEPT AS PROVIDED HEREIN, ETC UNDERTAKES NO RESPONSIBILITY FOR THE QUALITY OF THE PRODUCT OR THAT THE PRODUCT WILL BE FIT FOR ANY PARTICULAR PURPOSE FOR WHICH CUSTOMER MAY BE BUYING THE PRODUCT. ANY IMPLIED WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. NO ORAL OR WRITTEN INFORMATION, OR ADVICE GIVEN BY ETC, IT'S AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS LIMITED WARRANTY.

**For Dealers located in North and South America:** ETC manufactured Products forwarded outside of North and South America will immediately void this Warranty unless the dealer has obtained an additional ETC International Warranty Provision for the specific Product prior to the Product's initial shipment from ETC. ETC is not obligated to provide an ETC International Warranty Provision. Please contact ETC to inquire and purchase an ETC International Warranty Provision.

ETC warrants its Products, commencing on the Warranty Start Date as defined above for 2 years with the following exceptions in duration:

<p><b>90Day Warranty</b> Factory Clearance products, Demo, Loaner, Used Equipment and #lighthack kit</p> <p><b>5 Year Warranty</b> HID Ballasts Unison Foundry ArcSystemDrivers and F-Drive EchoflexProducts Unison Mosaic and Echo</p> <p><b>SplitWarranties</b> <b>3 years Entire Fixture; 10 Years LED Array</b> -ETC Automated Lighting Products (3) <b>5 years Entire Fixture; 10 Years LED Array</b> - LED Fixtures (3), (4)</p>	<p><b>120Day Warranty</b> ETC Product Repairs (2)</p> <p><b>8 Year Warranty</b> Unison Dimming for the DR/DRd enclosure</p>	<p><b>1 Year Warranty</b> SmartProducts</p>	<p><b>3 Year Warranty</b> Prodigy, Vortek Classic, QuickTouch &amp; Foundation (1) Source 4WRD Fixture (3) Power Package Upgrades (with option for additional 2 years)</p>
		<p><b>Other Warranties</b> Software: Per applicable End User License Agreement High End Systems, Inc. products; Per High End Systems, Inc.'s Warranty Statement <a href="https://www.etconnect.com/Support/Warranty.aspx">https://www.etconnect.com/Support/Warranty.aspx</a></p>	

1 Prodigy and Vortek Classic warranty requires an annual check of the system by an ETC trained rigging installer in order for the Warranty to remain valid. Please contact your authorized rigging dealer with questions.

2 Product repairs occurring within in the original warranty period remain under the original Warranty unless that Warranty will expire prior to the 120 day mark. In that case, the warranty period will be extended by 120 days from the date of shipment of the repaired Product or part. Parts repaired after the original warranty period has expired are warranted for 120 days from the date of shipment of the repaired Product or part of Product.

3 Covers LED failure only; does not cover lumen maintenance (L70) or color maintenance

4 Excludes Source 4WRD Fixture

This is the current Terms and Conditions and Warranty statement at the time of publication for Electronic Theatre Controls, Inc. and Electronic Theatre Controls Asia Limited. The Terms and Conditions and Warranty statement are subject to change at any time without notice. The controlling Warranty statement, as well as applicable Terms and Conditions, are available at the time of order acknowledgment. For Terms and Conditions and Warranty statement for ETC's affiliate companies, please visit <https://www.etconnect.com/Support/Warranty.aspx>.

