

# JEFFERSON ELECTRIC, INC. (“SELLER”) TERMS AND CONDITIONS OF SALE

**1. APPLICABILITY:** Any products provided by Jefferson Electric, Inc. (hereinafter referred to as “Seller”) shall be made of supplied upon the terms and conditions set forth herein which together with the quotation of the Seller, if any, shall constitute the complete agreement of the Purchaser and the Seller resulting from the acceptance of the quotation of the Seller or of an order from the Purchaser and shall supersede any other agreement or representation, verbal or in writing, with respect to the subject matter herein. Any purported additional or different terms contained in the Purchaser’s order or response to quotation or any other document shall be deemed objected to by the Seller without need of further notice and shall not be effective or binding unless assented to in writing signed by an authorized employee of Seller. Purchaser’s assent to the terms and conditions of sale set forth herein shall be conclusively presumed from Purchaser’s failure to object thereto in writing as well as any direction from Purchaser to Seller to proceed with the order or Purchaser’s acceptance of all or part of the products ordered.

Any purchase order or other contractual document received from Purchaser that contains a penalty provision for failure to meet a shipment date shall be deemed objected to by Seller without need of further notice and shall not be effective or binding unless specifically approved in writing by an officer of the Seller. Seller’s written quotation, if any, will expire and become void unless accepted by Purchaser within the period specified therein, or if not period is specified, then within thirty (30) days of the date shown thereon.

**2. WARRANTY:** Seller warrants to Purchaser that any products provided by Seller hereunder shall be free from defects in material or workmanship under normal use and operation during the warranty period stated herein. If any catalog products provided hereunder prove to be defective in material and workmanship within a period of ten (10) years from the date of manufacture or any non-catalog products provided hereunder prove to be defective in material and workmanship within a period of one (1) year from the date of manufacture, Seller, if promptly notified thereof in writing, will correct such defect at its own expense by, at its option, repairing or replacing the defective products. Products manufactured by third party are covered by the original manufacturers’ warranty. THE FOREGOING IS THE SOLE AND EXCLUSIVE WARRANTY OF THE SELLER. ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED. INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THESE TERMS OF SALE. Claims for defective products shall be subject to verification by an authorized employee of Seller. No products shall be returned to Seller without its prior written consent. Products which Seller consents to have returned shall be shipped prepaid F.O.B. the seller’s factory or other location designated by the Seller. Seller shall not assume responsibility or accept invoices for unauthorized repairs or alterations its products, even though defective. Any replacement or repaired product furnished under this warranty by Seller shall be warranted for the balance of the warranty period and under the same warranty conditions as applicable to the original product.

The foregoing warranty does not apply to experimental, prototype or developmental products. Seller makes no warranty on products manufactured by others which are resold by Seller. Seller shall use its best efforts to obtain from each such product manufacturer, in accordance with the manufacturer’s warranty or customary practice, the repair or replacement of products which prove defective in material or workmanship.

**3. WARRANTY EXCLUSIONS AND PURCHASER’S ACTS AND INDEMNIFICATION:** Seller’s warranty does not cover, and Seller, its directors, officers, agents or employees, shall not be liable, under any circumstances, for any failure of the products provided by Seller or loss or injury to persons or property (including the equipment in which the products are installed) caused in whole or in part by (1) the negligent acts or omissions of Purchaser, its contractors, agents or employees; (2) failure of the Purchaser, its contractors, agents or employees, to observe any instructions of Seller or Seller’s representative; (3) failure or malfunctioning of any products, tools, equipment, facilities or devices not furnished by Seller; (4) any unauthorized alterations, adjustments or modifications by Purchaser to the products provided by Seller; (5) improper installation by Purchaser or its contractors, agents or employees; (6) improper operation or attempts to operate the products provided by Seller beyond their rated capacity, or otherwise (7) any abuse or misuse of the products provided by the Seller or damage thereto after the date of initial shipment as for example, when the products are subjected to abnormal stresses including but not limited to such causes as incorrect primary voltage or frequency or improper ventilation. Purchaser expressly agrees herein to save Seller its directors, officers, agents and employees harmless from any such liability.

**4. LIMITATION OF LIABILITY:** Seller’s liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from this contract, or the performance or breach thereof or from the design, manufacture, sale, repair or use of any products covered by or provided under this contract, shall in no case exceed that part of the contract price which is allocable to the product, (or part thereof), that gives rise to the claim, except as provided in the Section “5” hereof, entitled “PATENTS”. Seller also disclaims all liability, whether in warranty, contract, tort, (including negligence), strict liability, or otherwise, to any Purchaser other than the original Purchaser. IN NO EVENT, WHETHER THE CLAIM IS BASED UPON WARRANTY, CONTRACT, TORT, (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE SHALL SELLER OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS PROVIDED OR ANY ASSOCIATED PRODUCTS OR EQUIPMENT, DAMAGE TO ASSOCIATED PRODUCTS OR EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS OR EQUIPMENT, FACILITIES, DOWNTIME COSTS, LABOR OR ASSOCIATED EXPENSES, OR CLAIMS OF PURCHASER’S CUSTOMER FOR SUCH COSTS. All causes of action arising against Seller or its suppliers arising out of or relating to these terms and conditions of sale, or the performance or breach hereof shall expire unless brought within one (1) year of the time of accrual thereof.

**5. PATENTS:** Seller shall hold Purchaser harmless against any liability for infringement of any apparatus claim of any United States patent, issued at the date of the contract, and arising out of the sale or use in the form supplied by Seller of products designed and or manufactured by Seller. Seller shall assume no liability with respect to products specified by either Seller or Purchaser, but not designed and/or manufactured by Seller. Purchaser shall hold Seller harmless against any liability for infringement of any apparatus claim of any United States patent, issued at the date of the contract and involving products provided by Seller, in accordance with drawings and/or specifications provided by Purchaser. The party assuming liability, pursuant to the foregoing, shall have the absolute control of the defense thereto, including the right to settle, defend against legal action, or make changes in the products to avoid infringement.

**6. DELIVERY:** Estimates of delivery or completion dates are approximate and are based upon prompt receipt of all necessary information and ready access to Purchaser's equipment or facilities, if required. Unless otherwise stated herein, delivery of goods to a common carrier, licensed trucker or representative of Purchaser shall constitute delivery to purchaser, and all risk of loss or damage thereafter shall then be borne by Purchaser.

**7. FORCE MAJEURE:** Seller shall not be responsible for delays in delivery or failure to deliver due to causes beyond Seller's control including but not limited to acts of God, war, mobilization, civil commotion, riots, embargoes, domestic or foreign government regulations or orders, acts of Purchaser or Seller's suppliers, or their agents or employees, fires, floods, strikes, lockouts and other labor difficulties or shortages of or inability to obtain shipping space or transportation or inability to secure necessary labor, fuel, materials, supplies, or power at current prices or on account of shortages thereof. In the event of such delay, the date of completion shall be extended for a period equal to the time lost by reason of delay. Under no circumstances, shall Seller be liable for special, indirect, incidental, or consequential damages on account of delay due to any cause.

**8. CANCELLATIONS AND RETURNS:** Orders shall not be subject to cancellation or modification either in whole or in part without Seller's written consent and then only upon terms as seller may, from time to time specify, that will reimburse Seller for all applicable costs incurred by virtue of the sale including costs or purchased materials, engineering costs and a reasonable allowance for profit based upon the Seller's anticipated profit on the sale.

In any circumstance, Purchaser shall not return any product sold hereunder without obtaining Seller's prior written consent. Upon such authorization, Seller will issue a return authorization number to Purchaser and designate the location to which the product must be returned. Purchaser shall affix the authorization number to the product and include it in the bill of lading. Any return, neither prepaid nor having a valid authorization number, will be rejected by Seller with instructions to the carrier to return same to Purchaser. If credit for freight is due, appropriate adjustments shall be made following inspection of the returned product.

**9. PAYMENTS:** Unless specified to the contrary in writing by Seller, terms of payment shall be net cash upon receipt of invoice. If Purchaser fails to pay any invoice when due, Seller may defer deliveries under this or any other contract with Purchaser except upon receipt of satisfactory security or cash before shipment. If, in the judgment of Seller, the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified. Seller may require payment in advance or cancel any outstanding order, whereupon Seller shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall become due on the date Seller is prepared to make shipment. Should manufacture be delayed by Purchaser, pro rata payment shall become due if and to the extent required of Seller to fulfill its commitments. All installment deliveries shall be separately invoiced and paid for without regard to subsequent deliveries. Delays in delivery or non-conformities in any installment shall not relieve Purchaser of its obligation to accept and pay for remaining installments. If payments are not made when due, Purchaser shall pay in addition to the payment overdue, a late charge equal to the lesser of one and one-half (1-1/2%) percent, per month, for a total of eighteen (18%) percent, per annum, or the highest applicable rate allowed by law on such overdue payments.

**10. TITLE:** Until full payment of all obligations of Purchaser hereunder, Seller reserves the title (but not the risk of loss) to all products furnished hereunder. If Purchaser defaults in payment or performance or becomes subject to insolvency, receivership or bankruptcy proceedings or makes an assignment for the benefit of creditors, or without the consent of Seller voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the products. Seller may treat all amount then or thereafter owing by Purchaser to be immediately due and payable (subject only to credits required by law) and Seller at its election may repossess said products. In the event of repossession of products under this section or under Section "15" hereof, entitled "Security Interest", Seller may enter the premises where the products are located and may remove the same therein without notice, and without being liable for such repossession.

All scrap, if any, resulting from the manufacture of the products shall remain the property of Seller.

**11. TOOLING:** Charges for dies, tools and/or gauges do not convey ownership or the right to remove same from Seller's premises. Tool charges shown on the invoice constitute only a part of the actual tool cost. Seller assumes the remainder of the original costs and the cost of maintenance. Purchaser, however, may purchase such dies and/or gauges upon request, at the discretion of Seller.

**12. CHANGES IN PRODUCT DESIGN:** Seller reserves the right to change, discontinue or modify the design and/or construction of any of its products and to substitute material equal to or superior to that originally specified.

**13. CONTRACT PRICE:** Prices are stated in U.S. dollars and are exclusive of any federal, state, or local property, license, privilege, sales, service, use, excise, value added, gross receipts or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to this transaction, the property, its purchase, sale, replacement, value or use, or any services performed in connection therewith. Purchaser agrees to pay or reimburse Seller, its subcontractors or suppliers any such taxes which Seller, its subcontractors or suppliers are required to pay or Seller collect, which are required to be withheld by Purchaser. The price quoted by Seller includes import duties on raw materials and components used to manufacture the products, calculated on the basis of rates of duty effective on the date of quotation and based upon the method of valuation then employed for such items by U.S. Customs. If, for any reason, the amount of the import duties assessed is greater than calculated above, the price shall be adjusted accordingly.

**14. COLLECTION COSTS:** In the event payment is not received for the products and/or materials provided hereunder, Purchaser shall be responsible to pay all reasonable collection costs incurred by Seller, including reasonable attorney's fees.

**15. SECURITY INTEREST:** Purchaser grants Seller a security interest in the products and materials ordered as security for the performance by Purchaser of all of its obligations hereunder (including all products and materials acquired hereafter, future advances, accessions, substitutions, replacements, and additions, from Purchaser and any proceeds from the sale or disposition of such products and materials.) Purchaser agrees to execute such documents to evidence and perfect this security interest as Seller may reasonably require.

**16. FREIGHT ALLOWANCE:** All prices quoted are F.O.B., point of shipment. Unless other freight terms are specified in writing by Seller, the Seller will prepay freight charges to any recognized freight destination within the Continental United States and Canada, but only to the first port of destination. Any freight charges resulting for rural or isolated location deliveries are not included unless otherwise specified and will be added to the Seller's invoice for the products delivered. Seller reserves the right to select origin of shipment, method of transportation and routing of shipment when prepaid is allowed. Customer may select their preferred carrier but will be responsible for all freight costs

**17. SPECIAL CHARGES:** Seller's invoice may be subject to additional charges related to minimum billing value, premium transportation, special packaging or handling, collect shipments, pre-packaged quantities and/or other special charges as Seller, may, from time to time, specify.

**18. MINIMUM BILLING:** Minimum billing for any Products sold by Seller shall be such amount as Seller may, from time to time, specify, if not so specified, then \$100.00 net.

**19. GENERAL:** This contract constitutes the entire agreement between the parties, all prior representations and understandings having been merged herein. It may not be modified or terminated except by the written agreement of a duly authorized employee of Seller.

Unless otherwise specified in writing by Seller, the Seller's published prices and specifications, if any, shall be subject to change without notice.

This contract shall be governed by and construed in accordance with the laws of the State of Wisconsin.

Unless otherwise specifically agreed in writing by a duly authorized employee of Seller, any products or materials provided hereunder are not intended for use in connection with any nuclear facility or other hazardous activity including, but not limited to, commercial or military aircraft, missile installation, space exploration or other critical application where failure to one or more components could cause harm to persons or property. If it is so used, Seller disclaims all responsibility of every kind, including negligence, and Purchaser indemnifies and holds Seller harmless for any liability or damage whatsoever arising out of the use of the products or materials in such a manner.

Seller shall have the right to subcontract any or all the work covered by the contract.

Products to be furnished hereunder will be produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended.

Seller makes no promise or representation that its products will conform to any federal, state, or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing between Purchaser and Seller. Prices do not include any required permit or inspection fees.

Waiver by Seller of a breach of any of these items and conditions shall not be construed as a waiver of any other breach.

If any provision of provisions of these Terms and Conditions of Sale shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Stenographic and clerical errors are subject to correction.