

KJ Electric Terms and Conditions of Sale

NOTICE: Updated on 12/31/2011 & posted for public access on Vendor's website: www.kjelectric.com; K.J.D.E. CORP. d/b/a K J Electric is referred to herein as the "Vendor" and the customer, entity or person purchasing the Goods and/or Services from the Vendor is referred to as the "Buyer". Vendor Sale of any Goods or Services to Buyer is expressly conditioned on the Buyer's assent to the within four page "Terms and Conditions of Sale". These Terms and Conditions of Sale, any price list or schedule, quotation, quote, acknowledgement, or Invoice from Vendor relevant to the sale of the Goods & Services and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods &/or Services to Buyer. Vendor's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Vendor's within terms and conditions of sale, including terms and conditions that are different from or additional to the Buyer's purchase order. Any additional or different terms or conditions proposed by Buyer are expressly objected to and will not be binding upon Vendor unless specifically assented to in writing by Vendor. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work or any assent to Vendor's performance of work shall constitute assent to the within Terms and Conditions of Sale. Any Buyer's acceptance of or payment for the Goods &/or Services will serve to additionally manifest Buyer's assent to these Terms and Conditions of Sale.

1. **AGREEMENT:** The Vendor's Quote together with these Terms and Conditions of Sale, any price list or schedule, quotation, Buyers Acknowledgement and Vendor's Invoice constitutes the entire Agreement and transaction ("Order") between Vendor (K.J. Electric, 16-1159405) and Buyer, except as modified in writing signed by both parties! Vendor recognizes that Buyer may, for operating convenience, utilize Buyer's own Purchase Order or other form for acknowledging acceptance of this Order other than by simple acceptance. Therefore, it is agreed that any provision in the Buyer's form of acceptance used which attempts to modify, conflict or contradict any provisions in this Order, shall be deemed to be waived, and that the provisions of this Order, by such acceptance, constitutes the entire Agreement between Vendor and Buyer. Hereafter, all Orders and transactions between Vendor and Buyer shall be exclusively governed by the within KJ Electric Terms and Conditions of Sale.
2. **PRICE:** The price for the "Goods" and/or "Services" sold by Vendor to Buyer shall be the U.S.D. price as shown on Vendor's quote and Invoice; and are delivered Ex -Works (EXW) shipping point, unless specifically stated otherwise in the "Order". All prices are exclusive of taxes, duties, customs, clearance, forwarder's fees, warehousing, export packaging, transportation and insurance, which are to be borne by the Buyer. Vendor shall have the absolute right to revise the price of Goods and the terms of sale and to modify or discontinue the sale of Goods, and such action shall not form the basis of any claim by Buyer against Vendor.
3. **TAXES:** Unless Buyer is exempt there from; all taxes, duties and governmental levies which are levied or assessed on Orders or sale transactions or that Vendor is required by law or regulation to collect from Buyer, shall be added to the price stated herein and paid by Buyer. Buyer shall reimburse, indemnify and hold Vendor harmless for any Taxes and/or related costs or expenses incurred by Vendor due to Buyer's claim of exemption from Tax and or Buyer's failure to pay/remit taxes to Vendor and or the appropriate taxing authority.
4. **TERMS OF PAYMENT:** Buyer will pay Vendor in full in U.S.D. (U.S. Currency) within 30 days from delivery of equipment or performance of service with partial invoicing permitted based upon equipment deliveries or services performed. For quotes including equipment with on-site installation or services the Buyer specifically agrees to pay in full for equipment within 30 days of delivery and thereafter for on-site services when Buyer allows Vendor to perform. Buyer expressly waives any cause or right to apply, deduct or subtract any offset, debit or retainage amount from Quoted or Invoiced price hereunder. Buyer agrees to pay a late charge of 1.5% per month on past due unpaid balances, and if Vendor is compelled to incur any collection costs, including Attorney's fees and/or court costs to collect unpaid Buyer obligations, then same will be paid to Vendor as additional charges.
5. **INVOICES:** Vendor's invoices shall be provided by: mail, email, fax, Electronic Data Interchange, Hand Delivered, Included in the Shipment, etc. to Buyer on or about the day delivery of equipment is made or service is provided.
6. **DELIVERY:** While Vendor will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Vendor, all shipping dates are approximate and not guaranteed. The quoted price is EX WORKS (EXW) SHIPPING POINT, with Title passing to Buyer at Shipping Point. For convenience; Buyer may request Vendor arrange transportation/payment via: Buyer's selected common carrier/freight collect

or best way prepaid and Vendor shall add such cost to invoice price amount. If the shipment/delivery of the goods is postponed or delayed by Buyer for any reason, Buyer agrees to pay Vendor a storage fee of Fifty Dollars (\$50.00) per day as liquidated damage Storage Cost for each day that Buyer leaves Buyer's Goods in the care, custody and safekeeping of Vendor. Risk of loss for damage and responsibility shall pass from Vendor to Buyer upon delivery to and receipt by Common Carrier at Vendor's Shipping Point. Any claims for shortage, damage or loss suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the Common Carrier.

7. **EXCUSABLE DELAY:** Vendor shall not be deemed to be in default on account of delays in the delivery of goods or performance of services or any act required under this Order due to any cause to the extent it is beyond Vendor's control. Vendor shall provide Buyer notice thereof and specify the period of delay which may reasonably be expected. Vendor shall not be liable for delays in performance or for non-performance due to: acts of God, acts of Buyer, war, fire, flood, weather, sabotage, strikes or labor disputes, civil disturbances or riots, governmental requests, restrictions, allocations, laws, regulations, orders or actions, unavailability of or delays in transportation, default of suppliers; or unforeseen circumstances or any events or causes beyond Vendor's reasonable control.
8. **WARRANTY:** Vendor warrants that at the time of delivery the equipment, Goods and Services provided Buyer shall be free from defects in material, workmanship and title. For new equipment or Goods the Original Equipment Manufacturer's (O.E.M.) warranty shall exclusively apply and provide Buyer's sole remedy. The O.E.M.'s warranty for equipment sold hereunder constitutes the entire warranty and is in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose. "K.J. ELECTRIC WARRANTY FOR REPAIR & SERVICE" , being the three (3) page Warranty dated 02/18/2011 that is posted and publicly accessible @ www.kjelectric.com specifically provides all details of Vendor's Warranty for Repair & Service or any Vendor repair or service transaction(s): For equipment mechanically rebuilt/electrically tested (P.M.) – the Vendor provides the O.E.M.'s warranty for 90 days from delivery. For equipment mechanically and electrically rebuilt (Rewind)–the Vendor provides the O.E.M.'s warranty for one year from date of delivery. The foregoing warranties will not apply to failures occurring within the warranty period resulting from misuse, improper installation, improper maintenance, improper application, improper circuit protection, improper assembly, accident, abuse, neglect, normal wear and tear, negligence, unauthorized modification or alteration, or work on or repair of the equipment by others subsequent to delivery by Vendor; or any other cause not the fault of Vendor! BUYER AGREES THAT IN NO EVENT SHALL VENDOR'S LIABILITY TO BUYER AND/OR ITS EMPLOYEES, CUSTOMERS, AGENTS, SUCCESSORS OR ASSIGNS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including for capital, and loss or damage to property or equipment., Vendor will not be liable under any circumstances for any incidental, consequential or special damages, including without limitation any lost profits or labor costs arising from use or installation of the equipment, or from equipment incorporated into or becoming a component of another piece of equipment, or from any breach or cause whatsoever, whether based on warranty (expressed or implied) or otherwise based in contract or on tort or other theory of liability and regardless of any advice or representations that may have been rendered by Vendor regarding the sale, use, application or installation of equipment. THE WARRANTY SET FORTH IN THIS SECTION AND THESE TERMS AND CONDITIONS OF SALE ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY VENDOR WITH RESPECT TO THE NEW EQUIPMENT SOLD AND REPAIRS OR SERVICE PROVIDED TO BUYER AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO VENDOR IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT VENDOR'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR BUYER'S USE OR PURPOSE.

9. **WARRANTY CLAIMS and LIMITATION OF REMEDY AND LIABILITY:** Claimed defective product may only be returned upon Buyer's receipt of Vendor issued Return Goods Authorization (R.G.A.) Form, and shall be returned within 20 days F.O.B. destination/freight prepaid, together with a written description of the problem. Valid in warranty new equipment defects shall be repaired under the O.E.M.'s warranty policy. Warranty claimed equipment found upon evaluation to be not defective or out of warranty shall be returned F.O.B. ship point/freight collect and invoiced an evaluation charge. Valid in warranty defects in Repair or Service shall be repaired/remedied under the "K. J. ELECTRIC WARRANTY FOR REPAIR & SERVICE" which is posted on the publicly accessible K J EL,ECTRIC internet website: www.kjelectric.com. IN NO EVENT, REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL VENDOR'S LIABILITY TO BUYER OR ITS CUSTOMERS, EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC EQUIPMENT, GOODS OR SERVICES PROVIDED BY VENDOR GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.
10. **CANCELLATION:** Buyer may not cancel orders placed with Vendor, except with Vendor's specific written consent and then only if Buyer makes payment to Vendor to indemnify Vendor against loss, including but not limited to expenses incurred and commitments made by Vendor, and a reasonable profit thereon. Modified, non-stock, obsolete, custom or special-manufactured orders are non-cancelable and not allowed for return without a 100% penalty fee. Vendor's determination of such cancellation or termination charges shall be conclusive.
11. **CHANGES:** No change, alteration or modification of this Order shall become effective or prevail unless authorized in writing and signed by both parties.
12. **NEGLIGENCE:** Buyer agrees at all times to defend, hold harmless and indemnify Vendor and its employees, officers and successors from and against any and all claims, suits or actions for loss, damage or personal injury directly or indirectly caused by reason of Buyer or its employees, successors or customers negligence, error, or omission directly or indirectly incident to installation, application, use or maintenance of equipment/Goods supplied or equipment/Goods repaired or serviced by Vendor.
13. **GOVERNING LAW:** The validity, performance and all other matters relating to the interpretation and effect of this agreement, these Terms and Conditions and the Order(s) and all subsequent transactions between Vendor and Buyer shall be construed, enforced and governed by the law of the State of New York, excluding its or any other jurisdictions rules concerning conflict or laws. Vendor and Buyer stipulate and agree that the proper venue for all actions arising in connection herewith shall be only and exclusively in Onondaga County Supreme Court, NY 5th. Judicial District, Onondaga County, New York, and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions between Vendor and Buyer may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this agreement, and the transactions between Vendor and Buyer.
14. **ENUREMENT:** This agreement enures to the benefit of and is binding upon, each of the parties and their respective successors and assigns.
15. **SEVERABILITY:** If any provision hereof is contrary to any law, the parties agree to observe and perform all the provisions of this agreement as if the unlawful provision were not contained herein.
16. Vendor (Federal ID# 16-1159405) is commonly k/a KJ Electric of 5894 East Molloy Road, Syracuse, NY 13211-2124; with New York D.O.L. E.R.#37-306493 and NY Sales Tax Cert. of Authority #161159405C.
17. **NUCLEAR/MEDICAL: GOODS and SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT, AND RELATED APPLICATIONS.** Buyer accepts the Goods & Services with the foregoing restriction and understanding, and Buyer stipulates and agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Vendor and Vendor's suppliers, Officers and employees, successors and assigns from any claims, losses, suits, judgments and damages, including incidental and consequential damages arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Vendor's liability is based on negligence or strict liability.

18. **TITLE:** The Goods and equipment sold to Buyer; unless otherwise agreed; shall remain the property of Vendor until all amounts that Buyer owes to the Vendor for the relevant Goods have been paid in full. Until title to the Goods passes to Buyer, upon Buyer's full payment to Vendor, the Buyer shall hold the Goods as the Vendor's bailee and shall store the Goods so that they can at all times be identified as the Vendor's property. The Vendor shall be entitled at any time before title passes to the Buyer to enter the Buyer's premises to repossess and remove any Goods for which the Buyer has not paid and in so doing shall be entitled to dismantle any Goods from equipment or products to which the Goods have been attached without being liable for any damage caused thereby whereupon the Buyer's right to use or deal in the Goods shall terminate. Buyer stipulates, represents and warrants that until title to the Goods passes to Buyer, any proceeds of the sale of Goods by the Buyer shall be held for the benefit of and in trust for the Seller. The Buyer hereby stipulates and agrees that the Vendor shall be entitled to maintain an action for the price of the Goods notwithstanding that title to the Goods has not passed to the Buyer.
19. **GENERAL PROVISIONS:** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment or waiver of these Terms and Conditions shall be binding upon the Vendor unless made in writing and signed by an Officer of Vendor and by the Buyer. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by an Officer of the Vendor, and no modification or additional terms shall be applicable to the agreement by Vendor's receipt, acknowledgement, or acceptance of Buyer's purchase orders, shipping instructions, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by an Officer of the Vendor and by the Buyer. All typographical or clerical errors made by Vendor in any quotation, Invoice, Quote, acknowledgement or publication are subject to correction.

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3. **TAXES:** Unless Buyer is exempt there from; all taxes, duties and governmental levies which are levied or assessed on Orders or sale transactions or that Vendor is required by law or regulation to collect from Buyer, shall be added to the price stated herein and paid by Buyer. Buyer shall reimburse, indemnify and hold Vendor harmless for any Taxes and/or related costs or expenses incurred by Vendor due to Buyer's claim of exemption from Tax and or Buyer's failure to pay/remit taxes to Vendor and or the appropriate taxing authority.
4. **TERMS OF PAYMENT:** Buyer will pay Vendor in full in U.S.D. (U.S. Currency) within 30 days from delivery of equipment or performance of service with partial invoicing permitted based upon equipment deliveries or services performed. For quotes including equipment with on-site installation or services the Buyer specifically agrees to pay in full for equipment within 30 days of delivery and thereafter for on-site services when Buyer allows Vendor to perform. Buyer expressly waives any cause or right to apply, deduct or subtract any offset, debit or retainage amount from Quoted or Invoiced price hereunder. Buyer agrees to pay a late charge of 1.5% per month on past due unpaid balances, and if Vendor is compelled to incur any collection costs, including Attorney's fees and/or court costs to collect unpaid Buyer obligations, then same will be paid to Vendor as additional charges.
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8. **WARRANTY:** Vendor warrants that at the time of delivery the equipment, Goods and Services provided Buyer shall be free from defects in material, workmanship and title. For new equipment or Goods the Original Equipment Manufacturer's (O.E.M.) warranty shall exclusively apply and provide Buyer's sole remedy. The O.E.M.'s warranty for equipment sold hereunder constitutes the entire warranty and is in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose. "K.J. ELECTRIC WARRANTY FOR REPAIR & SERVICE", being the three (3) page Warranty dated 02/18/2011 that is posted and publicly accessible @ www.kjelectric.com specifically provides all details of Vendor's Warranty for Repair & Service or any Vendor repair or service transaction(s): For equipment mechanically rebuilt/electrically tested (P.M.) – the Vendor provides the O.E.M.'s warranty for 90 days from delivery. For equipment mechanically and electrically rebuilt (Rewind)–the Vendor provides the O.E.M.'s warranty for one year from date of delivery. The foregoing warranties will not apply to failures occurring within the warranty period resulting from misuse, improper installation, improper maintenance, improper application, improper circuit protection, improper assembly, accident, abuse, neglect, normal wear and tear, negligence, unauthorized modification or alteration, or work on or repair of the equipment by others subsequent to delivery by Vendor; or any other cause not the fault of Vendor! BUYER AGREES THAT IN NO EVENT SHALL VENDOR'S LIABILITY TO BUYER AND/OR ITS EMPLOYEES, CUSTOMERS, AGENTS, SUCCESSORS OR ASSIGNS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including for capital, and loss or damage to property or equipment., Vendor will not be liable under any circumstances for any incidental, consequential or special damages, including without limitation any lost profits or labor costs arising from use or installation of the equipment, or from equipment incorporated into or becoming a component of another piece of equipment, or from any breach or cause whatsoever, whether based on warranty (expressed or implied) or otherwise based in contract or on tort or other theory of liability and regardless of any advice or representations that may have been rendered by Vendor regarding the sale, use, application or installation of equipment. THE WARRANTY SET FORTH IN THIS SECTION AND THESE TERMS AND CONDITIONS OF SALE ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY VENDOR WITH RESPECT TO THE NEW EQUIPMENT SOLD AND REPAIRS OR SERVICE PROVIDED TO BUYER AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO VENDOR IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT VENDOR'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR BUYER'S USE OR PURPOSE.
9. **WARRANTY CLAIMS and LIMITATION OF REMEDY AND LIABILITY:** Claimed defective product may only be returned upon Buyer's receipt of Vendor issued Return Goods Authorization (R.G.A.) Form, and shall

- be returned within 20 days F.O.B. destination/freight prepaid, together with a written description of the problem. Valid in warranty new equipment defects shall be repaired under the O.E.M.'s warranty policy. Warranty claimed equipment found upon evaluation to be not defective or out of warranty shall be returned F.O.B. ship point/freight collect and invoiced an evaluation charge. Valid in warranty defects in Repair or Service shall be repaired/remedied under the "K. J. ELECTRIC WARRANTY FOR REPAIR & SERVICE" which is posted on the publicly accessible K J ELECTRIC internet website: www.kjelectric.com. IN NO EVENT, REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL VENDOR'S LIABILITY TO BUYER OR ITS CUSTOMERS, EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC EQUIPMENT, GOODS OR SERVICES PROVIDED BY VENDOR GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.
10. **CANCELLATION:** Buyer may not cancel orders placed with Vendor, except with Vendor's specific written consent and then only if Buyer makes payment to Vendor to indemnify Vendor against loss, including but not limited to expenses incurred and commitments made by Vendor, and a reasonable profit thereon. Modified, non-stock, obsolete, custom or special-manufactured orders are non-cancelable and not allowed for return without a 100% penalty fee. Vendor's determination of such cancellation or termination charges shall be conclusive.
11. **CHANGES:** No change, alteration or modification of this Order shall become effective or prevail unless authorized in writing and signed by both parties.
12. **NEGLIGENCE:** Buyer agrees at all times to defend, hold harmless and indemnify Vendor and its employees, officers and successors from and against any and all claims, suits or actions for loss, damage or personal injury directly or indirectly caused by reason of Buyer or its employees, successors or customers negligence, error, or omission directly or indirectly incident to installation, application, use or maintenance of equipment/Goods supplied or equipment/Goods repaired or serviced by Vendor.
13. **GOVERNING LAW:** The validity, performance and all other matters relating to the interpretation and effect of this agreement, these Terms and Conditions and the Order(s) and all subsequent transactions between Vendor and Buyer shall be construed, enforced and governed by the law of the State of New York, excluding its or any other jurisdictions rules concerning conflict of laws. Vendor and Buyer stipulate and agree that the proper venue for all actions arising in connection herewith shall be only and exclusively in Onondaga County Supreme Court, NY 5th. Judicial District, Onondaga County, New York, and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions between Vendor and Buyer may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this agreement, and the transactions between Vendor and Buyer.
14. **ENUREMENT:** This agreement enures to the benefit of and is binding upon, each of the parties and their respective successors and assigns.
15. **SEVERABILITY:** If any provision hereof is contrary to any law, the parties agree to observe and perform all the provisions of this agreement as if the unlawful provision were not contained herein.
16. Vendor (Federal ID# 16-1159405) is commonly k/a KJ Electric of 5894 East Molloy Road, Syracuse, NY 13211-2124; with New York D.O.L. E.R.#37-306493 and NY Sales Tax Cert. of Authority #161159405C.
17. **NUCLEAR/MEDICAL: GOODS and SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT, AND RELATED APPLICATIONS.** Buyer accepts the Goods & Services with the foregoing restriction and understanding, and Buyer stipulates and agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Vendor and Vendor's suppliers, Officers and employees, successors and assigns from any claims, losses, suits, judgments and damages, including incidental and consequential damages arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Vendor's liability is based on negligence or strict liability.
18. **TITLE:** The Goods and equipment sold to Buyer; unless otherwise agreed; shall remain the property of Vendor until all amounts that Buyer owes to the Vendor for the relevant Goods have been paid in full. Until title to the Goods passes to Buyer, upon Buyer's full payment to Vendor, the Buyer shall hold the Goods as the Vendor's

bailee and shall store the Goods so that they can at all times be identified as the Vendor's property. The Vendor shall be entitled at any time before title passes to the Buyer to enter the Buyer's premises to repossess and remove any Goods for which the Buyer has not paid and in so doing shall be entitled to dismantle any Goods from equipment or products to which the Goods have been attached without being liable for any damage caused thereby whereupon the Buyer's right to use or deal in the Goods shall terminate. Buyer stipulates, represents and warrants that until title to the Goods passes to Buyer, any proceeds of the sale of Goods by the Buyer shall be held for the benefit of and in trust for the Seller. The Buyer hereby stipulates and agrees that the Vendor shall be entitled to maintain an action for the price of the Goods notwithstanding that title to the Goods has not passed to the Buyer.

19. **GENERAL PROVISIONS:** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment or waiver of these Terms and Conditions shall be binding upon the Vendor unless made in writing and signed by an Officer of Vendor and by the Buyer. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by an Officer of the Vendor, and no modification or additional terms shall be applicable to the agreement by Vendor's receipt, acknowledgement, or acceptance of Buyer's purchase orders, shipping instructions, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by an Officer of the Vendor and by the Buyer. All typographical or clerical errors made by Vendor in any quotation, Invoice, Quote, acknowledgement or publication are subject to correction.

SUPERCEDED
ON
12/31/2011

1. **AGREEMENT:** The attached quote together with these Terms and Conditions and Buyers Acknowledgement constitutes the entire Agreement (Order) between Vendor (K.J. Electric) and Buyer, except as modified in writing signed by both parties. Vendor recognizes that Buyer may, for operating convenience, utilize Buyer's own Purchase Order or other form for acknowledging acceptance of this Order other than by simple acceptance. Therefore, it is agreed that any provision in the Buyer's form of acceptance used which modify, conflict or contradict any provisions in this Order, shall be deemed to be waived, and that the provisions of this Order, by such acceptance, constitutes the entire Agreement between Vendor and Buyer. Hereafter, all Orders and transactions between Vendor and Buyer shall be exclusively governed by these Terms and Conditions of Sale. The Buyer shall issue a purchase order with the exact written verbiage as the quote states with the specific quote number of the Vendor.
2. **PRICE:** The price for the goods and/or services shall be the price as shown on the attached quote in U.S.D.
3. **TAXES:** Unless exempt therefrom; all taxes, duties and governmental levies which Vendor is required by law to collect from Buyer shall be added to the price stated herein and paid by Buyer.
4. **TERMS OF PAYMENT:** Buyer will pay Vendor in full within 30 days from delivery of equipment or performance of service with partial invoicing permitted based upon equipment deliveries or services performed. For quotes including equipment with on-site installation or services the Buyer specifically agrees to pay in full for equipment within 30 days of delivery and thereafter for on-site services when Buyer allows Vendor to perform. Buyer expressly waives any cause or right to apply, deduct or subtract any offset, debit or retainage amount from quoted price hereunder. Buyer agrees to pay a late charge of 1.5% per month on past due unpaid balances, and if Vendor is compelled to incur any collection cost, including Attorney's fees and court costs to collect unpaid Buyer obligations, then same will be paid to Vendor as additional charges.
5. **INVOICES:** Vendor's invoices shall be mailed to Buyer on or about the day delivery is made or service is provided.
6. **DELIVERY:** The quoted price is F.O.B. Factory (shipping point)/EX WORKS, with Title passing to Buyer at F.O.B. point. For convenience; Buyer may request Vendor arrange transportation/payment via: Buyer's selected common carrier/freight collect or best way prepaid and Vendor shall add such cost to invoice price amount.
7. **EXCUSABLE DELAY:** Vendor shall not be deemed to be in default on account of delays in the delivery of goods or performance of services or any act required under this Order due to any cause to the extent it is beyond Vendor's control. Vendor shall provide Buyer notice thereof and specify the period of delay which may reasonably be expected.
8. **WARRANTY:** For equipment the Original Equipment Manufacturer's (O.E.M.) warranty shall apply and exclusively prevail. The O.E.M.'s warranty for equipment sold hereunder constitutes the entire warranty and is in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose. For equipment mechanically rebuilt/electrically tested - the Vendor provides the O.E.M.'s warranty for 90 days from delivery. For equipment mechanically and electrically rebuilt-the Vendor provides the O.E.M.'s warranty for one year from date of delivery. The foregoing warranties will not apply to failures occurring within the warranty period resulting from misuse, improper installation, improper maintenance, improper application, improper circuit protection, improper assembly, or repair/rebuild of the equipment by others subsequent to delivery by Vendor. Vendor will not be liable under any circumstances for any incidental, consequential or special damages, including without limitation any lost profits or labor costs arising from use or installation of the equipment, or from equipment incorporated into or becoming a component of another piece of equipment, or from any breach or cause whatsoever, whether based on warranty (expressed or implied) or otherwise based in contract or on tort or other theory of liability and regardless of any advice or representations that may have been rendered by Vendor regarding the sale, use, application or installation of equipment.
9. **WARRANTY CLAIMS:** Claimed defective product may only be returned upon Buyer's receipt of Vendor issued return goods authorization (R.G.A.) form, and shall be returned within 20 days F.O.B. destination/freight prepaid, together with a written description of the problem. Valid in warranty equipment defects shall be repaired under the O.E.M.'s warranty policy. Warranty claimed equipment found upon evaluation to be not defective or out of warranty shall be returned F.O.B. ship point/freight collect and invoiced an evaluation charge.
10. **CANCELLATION:** Buyer may not cancel orders placed with Vendor, except with Vendor's specific written consent and then only if Buyer makes payment to Vendor to indemnify Vendor against loss, including but not limited to expenses incurred and commitments made by Vendor. Modified, non-stock, obsolete, custom or special-manufactured orders are non-cancelable and not allowed for return without a 100% penalty fee.
11. **CHANGES:** No change, alteration or modification of this Order shall become effective or prevail unless authorized in writing and signed by both parties.
12. **NEGLIGENCE:** Buyer agrees at all times to defend, hold harmless and indemnify Vendor and its employees, officers and successors from and against any and all claims, suits or actions for loss, damage or personal injury directly or indirectly caused by reason of Buyer or its employees, successors or customers negligence, error, or omission directly or indirectly incident to installation, application, use or maintenance of equipment supplied or equipment serviced by Vendor.
13. **GOVERNING LAW:** This Order/Agreement and all subsequent transactions between Vendor and Buyer shall be construed and enforced according to the laws of the State of New York, excluding its or any other jurisdictions rules concerning conflict or laws, with venue in Onondaga County, NY.
14. **ENUREMENT:** This agreement enures to the benefit of and is binding upon, each of the parties and their respective successors and assigns.
15. **SEVERABILITY:** If any provision hereof is contrary to any law, the parties agree to observe and perform all the provisions of this agreement as if the unlawful provision were not contained herein.

K.J. ELECTRIC

P.O. Box 160, Syracuse, NY 13206-0160

SUPERCEDED ON 07/28/2011

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