

**SYRACUSE**

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K. J. ELECTRIC WARRANTY FOR PANEL

1. **WARRANTY.** K.J. Electric ("KJ") Warrants to customer that any panels furnished by K J Electric will be free from defects in material and workmanship for one (1) year. The foregoing shall apply only to failures that meet said warranties which appear within one (1) year from date of shipment ("Warranty Period").

The conditions of any tests to verify operation or failure shall be mutually agreed upon by Customer and K.J. Electric, and KJ shall be notified of, and may be represented at all tests that may be made. The warranties and remedies set forth herein are specifically conditioned upon Customer's: (a) proper storage, proper installation, proper use, proper maintenance, proper circuit protection, conformance with any applicable recommendations of K.J. Electric as regards use, application and maintenance of product AND (B) Customer does not exceed the rated load or capacity of the product within a normal usage and operating condition AND (c) customer promptly notifying K.J. Electric, in writing, of any defects/failures and promptly making the product available to K J Electric for KJ's Warranty correction. **DISCLAIMER:** In an instance(s) when Customer does not provide KJ written notice of defect or failure during the Warranty Period OR Customer/Customer's Agents first perform remediation on KJ Warranted product OR Customer does not provide KJ the opportunity to first provide KJ's Warranty correction of the defect or failure, then K J Electric hereby **DISCLAIMS** any and all liability, whatsoever, under KJ's within WARRANTY FOR PANEL.

If any panel fails to meet the foregoing warranties, K.J. Electric shall thereupon correct any such defect or failure either, at KJ's option (i) by repairing said defective or damaged part or parts of the products, at KJ's facility during regular working hours, with transportation prepaid by the Customer or; (ii) by making available FOB K.J. Electric or other point of shipment, any necessary required or replacement parts.

The preceding paragraph sets forth the Customer's exclusive remedies for claims based on defect in, or failure of products or services, whether claim is in contract or tort (including negligence) and however instituted.

Upon the expiration of the warranty period, all such liability shall terminate. The foregoing warranties are exclusive and in lieu of all other warranties whether written, oral, implied or statutory. Any implied warranty of merchantability or warranty that the product or services can be used for any particular purpose, or any other expressed or implied warranty, except as herein provided, is hereby disclaimed and excluded from this warranty. No representative of KJ has any authority to modify the within Warranty in any manner, whatsoever. K.J. Electric does not warrant any product (s) or service (s) of others which customer has designated.

2. **DELIVERY AND RISK OF LOSS.** Delivery dates are approximate and are based upon prompt receipt of all necessary information from customer, and parts/supplies from Manufacturers. Unless

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otherwise specified by K.J. Electric, delivery will be made FOB: EX WORKS @ KJ and risk of loss or damage will be transferred to customer upon shipment.

3. **FORCE MAJEURE.** K.J. Electric shall not be liable for delays in delivery or performance, or for failure to manufacture, deliver or perform, due to (i) a cause beyond its reasonable control or; (ii) an act of God, act of customer, act of civil or military authority, Governmental priority, strike or other labor disturbance, flood, epidemic, war, riot, delay in transportation or car shortage, to obtain necessary materials, components, services or facilities. In the event of any delay, there will be no termination and the date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay.

4. **LIMITATIONS OF PANEL WARRANTY LIABILITIES AND INDEMNITIES.**

- (a) Unless otherwise agreed in writing by a duly authorized representative of K.J. Electric, products sold or repaired hereunder are not intended for use in connection with any nuclear facility or activity. If so used, K.J. Electric disclaims all liability for any nuclear damage, injury or contamination and customer shall indemnify K.J. Electric against any such liability whether as a result of breach of contract, warranty, tort (including negligence) or otherwise.
- (b) The Warranties contained herein will not apply to defects, occurring within the Warranty period occasioned by Customer's errors, omissions or negligence OR resulting from misuse, improper installation, improper application, improper circuit protection, improper maintenance, improper repair or subsequent repair or assembly of the apparatus by Customer or Customer's other Agents or Contractors.
- (c) In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall K.J. Electric or its suppliers be liable to customer or to any other entity or person for any indirect, special, consequential, incidental, punitive or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down-time costs, or claims of Customer for such damages or costs- whatsoever.
- (d) If K. J. Electric furnishes customer with advice or other assistance which concerns any product or service supplied hereunder or any system or equipment in which any such product may be installed and which is not required by KJ's Quotation pursuant to this agreement, the furnishing of such advice or assistance will not subject K.J. Electric to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

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(e) In those instances of a product / service defect, failure or damage caused by Customer or its Agent(s) IMPROPER: installation, use, application, maintenance, circuit protection, operation exceeding product's rated load/capacity OR: errors, omissions or negligence; the Customer specifically waives its rights to claim under the within Warranty and Customer does hereby stipulate that Customer will defend, protect, indemnify and hold harmless K J Electric and its directors, officers, employees, representatives, suppliers and agents from and against any and all Losses, including third party claims arising out of, caused by, relating to, resulting from or in connection with Customer's above IMPROPER actions or Customer or its Agents/Representatives negligence, errors or omissions.

5. The invalidity, in whole or in part, of any of the foregoing language or paragraphs will not affect the validity nor remainder of such paragraph(s) in this Warranty.

6. No action arising out of any claimed failure or breach of the within Warranty and/or K J Electric panel transaction may be brought more than one (1) year after KJ's Invoice date or ship date which ever comes first for the repair or service. The within Warranty and/or KJ panel transaction will be governed in all respects by the laws of the State of New York applicable to contracts made and performed therein and the Onondaga County Supreme Court shall have exclusive jurisdiction for all proceedings arising out of or in connection with the within **K. J. ELECTRIC WARRANTY FOR PANEL** and/or any KJ panel transaction. KJ's maximum liability for any action, whatsoever, arising under the within Warranty and/or due to KJ's performance of panel transaction(s) and weather in tort, contract or otherwise shall be limited to the total panel fee amount Invoiced to the Customer by K J Electric.