

TERMS AND CONDITIONS

1. Acknowledgment of this order is expressly conditioned upon your assent to the terms and conditions contained on the face and reverse side hereof. No addition to or modification of the terms and conditions hereof shall be binding upon the Seller, and no products and/or materials shall be substituted for those specified herein except upon written consent or instructions from a duly authorized representative of the Buyer.
2. Payment Terms. (a) We will pay by the 10th of the month all approved invoices received during the prior month. (b) Invoices subject to discount will be paid in accordance with discount terms indicated.
3. Prices: This order must not be billed at prices higher than those appearing herein or, if no prices appear then at prices no higher than those last quoted, without authority from Buyer.
4. Quantity. The specific quantity ordered must not be changed without permission in writing from the Buyer.
5. Non-Performance. Buyer reserves the right to cancel this order in its entirety or any portion thereof if delivery is not made when and as specified and charge Seller for any loss entailed. Time being of the essence of this order.
6. No charge for packing or drayage will be allowed unless arranged for at the time of purchase.
7. Buyer shall not be liable for failure to accept any part of this order, if such failure is the result of any cause beyond the control of the Buyer. Among such causes but not definitive thereof, are fires, flood, strikes, differences with employees, casualties, delays in transportation, shortages of trucks, inability to obtain necessary materials or machinery or total or partial shutdown of Buyer's operation for any reason.
8. Seller may not, without written consent from an official of this company advertise or publish, in any manner or form, the fact that Seller has contracted to furnish materials or services specified. For failure to observe this provision, Buyer shall have the right to cancel the contract resulting from Seller's acceptance of this order without further liability thereon.
9. This order is placed on the express condition that the goods mentioned herein have NOT been produced, and WILL NOT be produced in violation of any of the provisions of the "Fair Labor Standards Act of 1938" as amended and that your invoices will contain your certification to this effect.
10. The Seller agrees to protect and save harmless the Purchaser (Newkirk Electric Associates, Muskegon, Mich.) from all costs, expenses or damages arising out of any infringement or claim of infringement of patents in the use of articles covered by this order.
 - (1) Seller agrees to reimburse to the Buyer any and all costs incurred in the removal and/or replacement of defective and/or warranted material that has or has not been installed on the job.
 - (2) Seller agrees to reimburse to Buyer any penalties that might be imposed on Buyer by the owner or his representative in any specific construction contract by seller's inability to deliver material on or before promised delivery dates acknowledged to Buyer, causing construction to be delayed.
11. Seller shall indemnify Buyer and hold it harmless against any losses, claims, damages or liabilities in connection with or in any manner growing out of Seller's compliance with and performance of the Purchase Order provisions (including, without limiting the generality of the foregoing, losses or claims and of damages or liabilities to employees or agents of the Seller and of its subcontractors and their employees or agents) joint or several, to which Buyer may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) relate to injury to or death of persons or damage to property that may have been caused, or that may be alleged to have been caused, directly or indirectly,
 - (1) By Seller, its employees or agents, or its subcontractors, their employees or agents, or
 - (2) By Buyer, its employees or agents, if any such losses, claims, damages or liabilities are attributed to negligence of Buyer based upon the condition of the Buyer's premises and/or the condition of premises on which the Buyer may be performing contract work as the prime contractor, provided said premises is designated in writing as the direct responsibilities of the Buyer, or
 - (3) By Buyer's failure to provide a safe place to work, or any breach or alleged breach of any other statutory or common law duty by Buyer not involving active conduct on the part of the Buyer.In the event Buyer's machinery or equipment is used by the Seller for any work that might be required under the Purchase Order, such machinery or equipment shall be considered as being under the sole custody and control of Seller during the period of such use by Seller, and if any person or persons in the employ of Buyer should be used to operate said machinery or equipment during the period of such use, such person or persons shall be deemed during such period of operation to be an employee or employees of the Seller.
12. The Seller shall promptly pay all claims and demands for labor performed and for material, machinery, equipment, or fuel furnished in the performance of the work contemplated by this order, and shall fully protect and indemnify the Buyer against all such claims and against any and all claims or debts on account of which liens might be obtained. Seller shall also indemnify Buyer against court costs and attorney fees incurred or sustained by Buyer by reason of any such claims, debts, or liens.
13. Insurance and Indemnity. Where fulfillment of this purchase order requires seller to perform work for Buyer. Seller shall procure at his own expense and keep in force, the following insurance, satisfactory to Buyer as to form and limits until completion and final acceptance of work hereunder.
 - a) Workmen's Compensation Insurance with statutory limits of liability under the laws of the state in which work is being performed.
 - b) Public Liability and Property Damage Insurance, including Contractors Protective Liability Insurance as required to include liabilities assumed in Para #11. Also Automobile Liability and Property Damage Insurance if automobiles, trucks, tractors, trailers or other vehicles are to be used. Evidence of such insurance in policy or certificate form, shall be deposited with Newkirk Electric Associates, Muskegon, Mich., prior to commencement of the work. Where any part of this order is performed by a subcontractor of the Seller, evidence of such insurance on behalf of such subcontractor shall similarly be provided by the Seller to the Buyer. Each policy shall include, BY ENDORSEMENT, the following cancellation or material change clause:

"This insurance will not be cancelled by this insurance company nor any material changes made in the policy which change, restrict, or reduce the amount of insurance originally provided, or change the name of the insured, without first giving (10) ten days written notice to Newkirk Electric Associates, Muskegon, Mich., as evidenced by return receipt of registered or certified mail."

The MINIMUM acceptable insurance limits under all conditions will be:
 - Bodily Injury limits not less than \$100,000 per person and not less than \$300,000 per occurrence.
 - Property Damage limits at all times not less than \$300,000 per occurrence.
14. Equal Opportunity In Employment. In accepting this order, seller shall be deemed to represent that the goods and/or services to be furnished hereunder were or will be produced in compliance with Presidential Executive Order 11246, and regulations issued thereunder, which are incorporated by reference in this order.
15. Stabilization of Prices, Rents, Wages and Salaries. By Executive Order 11615, dated August 15, 1971, the President stabilized prices, rents, wages and salaries. The contractor and/or Seller warrants that amounts invoiced under this order will not exceed the lower of (1) the contract and/or sale price or (2) the maximum levels established in accordance with the order.