



PURCHASE ORDER TERMS AND CONDITIONS

These Terms and Conditions apply to all purchase orders (POs) issued by Newkirk Electric Associates, Inc. (Buyer) and supplier/service provider (collectively, Vendor) for all goods, materials, and services Vendor supplies or performs.

- 1. Acceptance** Vendor's written acceptance of any PO, order or shipment of any goods, or performance of any work or services shall constitute Vendor's acceptance of the PO. Buyer rejects any different, additional, or conflicting terms (Varying Terms) in any Vendor document. If Vendor conditions its acceptance of a PO on Buyer's acceptance of any Varying Terms, Buyer expressly rejects such conditions. Buyer's acceptance of delivery of any goods or services, or payment shall not constitute acceptance of Varying Terms.
- 2. Vendor's Goods** Vendor shall furnish all supervision, labor, services, tools, equipment, machinery, materials, supplies, apparatus, design, engineering, and all other things necessary or incidental to properly, fully, and timely complete the work identified in the PO and reasonably inferable from the Contract Documents to produce the intended results. The provision of goods and services are interchangeably referred to as "Work" or "Goods." Vendor shall possess all professional licenses, permits, and registrations required to perform the Work. Vendor shall furnish Work in strict compliance with the PO and Contract Documents and in a manner consistent with the knowledge and skill possessed by other vendors in the same profession under similar conditions, consistent with prudent industry practices and the standard of care required by the Contract Documents. Vendor shall not substitute any Goods without Buyer's prior written authorization.
- 3. Compliance** The Work shall be manufactured, delivered, and performed in compliance with any law, ordinance, order, standard, and regulation, including those related to wages, taxes, social security, unemployment compensation, workers compensation, health and safety, environment, design, engineering, construction, and if applicable, Buy American, and Fair Labor Standards, (Applicable Law). Upon request, Vendor shall furnish certification of such compliance. Vendor shall give all notices required by Applicable Law.
- 4. Price** All Vendor pricing is firm, not subject to escalation, and includes all sales and use taxes, import, export, customs duties, charges, levies, and fees imposed for the sale, shipment, and delivery of Goods and other items required for the Goods. If no prices appear in the PO, then Vendor shall not invoice Buyer at a price higher than the last quoted price. Vendor's invoices shall separately itemize all sales and use taxes included in any amounts due from Buyer. Vendor will not collect or remit such taxes (to the extent Vendor is legally able to do so) if Buyer presents Vendor with an exemption or direct payment certificate or other appropriate documentation evidencing that Purchaser will pay taxes directly to appropriate authority(ies) or is exempt from payment of taxes.
- 5. Payment** Unless otherwise stated in a PO, Buyer will pay Supplier the later of net 30 days after Goods are delivered or receipt of an approved invoice. Buyer may reject an invoice or withhold payment as reasonably necessary to offset amounts Vendor owes to Buyer or to protect Buyer from loss or damage caused by Vendor's failure to promptly fulfill Vendor's obligations. If requested by Buyer and as a condition precedent to payment, Vendor shall provide lien waivers, sworn statements, and warranties. Notwithstanding any provision to the contrary, Buyer's receipt of payment from Buyer's Customer (Customer) is an absolute condition precedent to Buyer's obligation to pay Vendor. Vendor warrants that all Work for which Vendor has received payment shall be free and clear of liens, security interests, or other claims. Vendor shall promptly pay Vendor Agents. If Buyer, in its sole discretion, becomes concerned that Vendor may not promptly comply with its payment obligations, Buyer may pay Vendor Agents directly and offset the amount paid against amounts invoiced by Vendor.
- 6. Customer Contract** Vendor shall be bound to Buyer by the terms of Buyer's contract with Buyer's Customer and all documents incorporated in the Customer Contract, including but not limited to specifications, drawings, addenda, project manual, and conditions, (collectively, Customer Contract) but only in so far as applicable to the Work, but excluding payment terms in the Customer Contract. As to the Work, Vendor assumes toward Buyer all the obligations that Buyer assumes toward its Customer under the Customer Contract, including Buyer's warranties, guaranties, and assurances extending through any guaranty and maintenance period but only in so far as applicable to the Work. The Customer Contract, excluding price and payment terms, is incorporated into the PO and is available for inspection. In case of any conflict between the Customer Contract or PO, the provision imposing the higher standard, greater duty, or better quality upon Vendor shall control. The Customer Contract and PO are collectively called the "Contract Documents." Vendor shall ensure that Vendor Agents are bound to the terms of the Contract Documents.
- 7. Warranty** Vendor warrants that the Work shall conform to the specifications, drawings, samples, or other descriptions furnished or specified by Buyer, shall be suitable for the purpose intended, of good quality and workmanship, free from any defect, and strictly conform to the Contract Documents. Vendor further warrants that the Work is consistent with prudent industry standards. For a period of one year from the date of final acceptance of the Work by Customer or for such longer period as specified in the Contract Documents, at Buyer's option and Vendor's expense, Vendor shall correct, repair, or replace defective or nonconforming Work to the satisfaction of Buyer and Customer within ten days and repair or replace any adjacent work disturbed by Vendor's repair or replacement. Vendor's warranty is in addition to any warranties provided by law and does not replace or diminish manufacturer warranties of longer duration for Goods Vendor furnishes. All Vendor and manufacturer warranties shall be freely transferable and assignable to Buyer and by Buyer to others as required under the Contract Documents. Before starting Work, Vendor shall notify Buyer in writing of any third-party warranty that is not transferable or assignable. Vendor shall fully assist and cooperate with Buyer to enforce such third-party warranty for the benefit of Buyer. Vendor's warranty excludes damage caused by failure to follow Vendor's installation or operating instructions, alteration, abuse, misuse, or normal wear and tear.
- 8. Schedule** All dates and time limits are of the utmost importance. Except as otherwise agreed by the Parties in writing, no extension of time will be valid without a change order signed by Buyer. Vendor shall diligently and continuously prosecute and complete the Work with enough skilled workers and sufficient quality and quantity of material and equipment, according to the dates established in the PO unless changed by Buyer's written notice to Vendor. Vendor shall begin Work upon Buyer's reasonable notice. Vendor shall cooperate with and coordinate its activities to avoid conflict or interference with others, so that the project can be completed in an orderly, coordinated manner without disruption. Buyer shall have the right to reasonably amend the schedule and direct the order or sequence of performance as the demands of the project require. Vendor shall notify Buyer in writing within five (5) days of learning of any circumstance that may affect Vendor's ability to deliver or perform as scheduled.
- 9. Delays** If Vendor does not timely perform, without prejudice to any other remedy, Buyer may, at Vendor's cost use reasonable means to expedite the Work, including requesting Vendor work overtime, add personnel, equipment, supplies, and materials, and make express shipments; and/or exercise any remedy permitted in §23 for a Vendor default. Vendor shall remain responsible for all direct costs or damages Buyer incurs to the extent arising from Vendor's untimely performance. If Vendor is materially delayed through no fault of Vendor or by Force Majeure as defined in the Customer Contract, then Vendor may be entitled to equitable adjustment in schedule and/or Vendor price to perform but only to the extent such relief is afforded to Buyer under the Customer Contract, upon the conditions stated in the Customer Contract, and provided Vendor has exercised due diligence in timely procuring all Goods and performing the Work. Vendor shall submit notice of any event of delay within five (5) days of the beginning of the delaying, disrupting, or interfering event. Vendor shall in good faith use such effort as is reasonable under the circumstances to remove or remedy the cause(s) and mitigate the damage from any delay event.
- 10. Testing or Inspection** On reasonable advanced notice, Buyer and its Customer, at their own expense, shall have the right to inspect and test the Work at Vendor's or its Vendor's Agent's premises, or any other place, at any stage of the Work, without additional charge, delay in

shipment, or change in the point of delivery. Any inspection or test of the Work shall not relieve Vendor of any obligation or constitute an acceptance of them. Upon Buyer's written request, Vendor shall provide documentation of the progress of the Work in the form requested by Buyer such as by photograph, video, verification of supply chain order status, or the like. Buyer's payment for Work shall not constitute acceptance and shall not relieve Vendor of responsibility for defects.

11. Nonconforming Work Buyer reserves the right to: (i) reject nonconforming Work (NCW); (ii) revoke acceptance of NCW after discovering the nonconformance; and (iii) revoke acceptance of NCW if Buyer accepted same on the reasonable assumption that Vendor would timely cure the nonconformity and Vendor has not cured the nonconformity. If such a rejection or revocation occurs, Buyer shall have the option to do any or all the following: (a) terminate the PO; (b) require Vendor to furnish replacement Work; (c) return the nonconforming Work to Vendor or require Vendor to remove them at Vendor's risk and expense, including the cost of shipping; (d) re-procure the Work through others; and (e) declare a Vendor Default. Vendor shall be at risk and responsible for all expenses of storing, unpacking, examining, repacking, and reshipping NCW in excess of contract quantities.

12. Shipping At Vendor's expense, Vendor shall suitably pack, mark, ship, and deliver Goods to the location and in quantities Buyer specifies. Title to and the risk of loss of Goods shall not pass to Buyer until Goods are received, inspected, and accepted by Buyer. Vendor shall maintain all appropriate insurance to cover Goods while in transit and shall prepare and file claims against carriers for loss or damage to Goods in transit. Buyer shall not be liable for refusing delivery of Goods due to circumstances beyond Buyer's control.

13. Changes Buyer may increase or decrease the order for Goods, revise the plans or specifications or other instructions, suspend performance, or change delivery only by written instruction. Verbal instructions as to changes are not permitted or authorized. Vendor shall have no claim for additional costs for changes unless Buyer authorizes such changes in a change order signed by Buyer. Vendor must assert any claim for adjustment in price or delivery within seven (7) days of the event giving rise to the change. Timely notice is an absolute condition precedent to any Vendor claim for change in price, time, or performance.

14. Indemnity To the fullest extent permitted by law, Vendor shall defend, indemnify, and hold harmless Buyer, Customer, Owner, and their employees, officers, directors, consultants, and agents (Indemnitees) from any demand, claim, action, expense, liability, damage, injury, or loss, including reasonable attorney fees and defense costs (collectively, Claims) to the extent alleged to arise out of the Work, the negligent acts or omissions or willful misconduct of Vendor, Vendor's agents, subconsultants, subcontractors, suppliers and their agents, or employees (collectively, Vendor Agents), Vendor's use of any Equipment, or Vendor's violation of Applicable Law, whether or not caused in part by the negligence or fault of Indemnitees, except where an Indemnitee is determined to be solely at fault. Vendor's obligations extend to Claims that any act or omission of the Vendor or Vendor Agents infringed on any patent except where Vendor has complied with Indemnitees' designs or specifications. The obligations in this §14 shall survive expiration or earlier termination of the Work or the PO.

15. Insurance Coverages At its expense, Vendor shall maintain insurance that complies with the requirements of the Contract Documents and in no case less than the following with limits of million denoted as "MM": (i) Worker's Compensation meeting statutory limits and Employer's Liability Insurance, \$1MM; (ii) Commercial General Liability (CGL) combined bodily injury and property damage, \$1MM per occurrence, \$2MM general aggregate, with broad form property damage, blanket contractual, products/completed operations, and independent contractors, with coverage for punitive or exemplary damages where insurable under Applicable Law; (iii) Business Auto Liability combined bodily injury and property damage, \$1MM per occurrence for owned, non-owned, and hired vehicles; (iv) for Work involving any design or engineering services, Professional Liability, \$2MM for claims of professional negligence of Vendor and Vendor's Agents, with a deductible not exceeding \$25,000 which shall be maintained for 3 years following substantial completion; Umbrella

Liability Insurance, \$5MM, providing excess follow form coverage for Employer Liability, CGL, and Auto.

16. Insurance Misc Vendor shall include Buyer, Customer, and Owner as additional insureds (except as to Professional Liability and Worker's Compensation policies) using endorsements CG 20 10 10 01 and CG 20 37 10 01. The policies shall include a cross-liability clause acceptable to Buyer. Each policy shall provide that the insurance will not be cancelled, restricted, or reduced without first giving 30 days' written notice by certified mail to Buyer. Vendor shall provide Certificates of Insurance or certified policies for Buyer's approval before beginning Work. All Vendor policies of insurance shall be primary and noncontributory over any other policy of insurance. At least five (5) days before any coverage terminates, lapses, or cancels, Vendor shall obtain a new policy with like coverage; if Vendor does not, Buyer may obtain insurance of like coverage and charge all costs and expenses for the insurance against any money due Vendor. Vendor, for itself and on behalf of its insurers, waives any right of recovery against Buyer, Customer, and the project Owner for any loss covered by insurance, except for any right Vendor may have to insurance proceeds. Vendor shall bear the risk of loss to restore or repair any Work arising from risks not insured, including deductibles, under any policy provided by Buyer, Customer, or Owner to the extent such loss is caused or contributed to by Vendor.

17. Cyber Liability Vendor shall provide Cyber Liability coverage, \$1MM per occurrence or claim and \$1MM aggregate. Coverage shall include: infringement of intellectual property; invasion of privacy; information damage/loss/theft; damage to or destruction of electronic information; unauthorized access/use; ID theft; release of private information; alteration of electronic information; extortion; network security; and data breaches. Coverage shall include breach response costs, regulatory fines and penalties, and credit monitoring expenses, downtime, forensic & notification costs. The retroactive coverage date shall be no later than the effective date of the PO. Vendor shall maintain an extended reporting period providing that claims first made and reported to the insurance company within two (2) years after termination of the PO will be deemed to have been made during the policy period.

18. Safety If Vendor has any employee at a project site, Vendor shall establish a safety program implementing safety measures, policies, and standards conforming to Applicable Law and comply with Buyer's safety program. Vendor agrees that the prevention of accidents to workers and property engaged upon or in the vicinity of the Goods is its responsibility. Vendor shall stop any part of the Work which it deems unsafe until corrective measures have been taken, and Vendor shall not have any claim for damages for such stoppage. If Vendor neglects to take corrective measures, Buyer may do so at Vendor's cost and may deduct such cost from any payment due or to become due to Vendor.

19. Equipment Use If Vendor uses any equipment on a project site, Vendor expressly assumes the risk of injury or harm. Vendor releases and discharges Indemnitees from any liability and Claims that arise from or relate to Vendor's use of equipment. Vendor shall not rely upon any operating instruction of Buyer and Buyer makes no warranty or representation about the characteristics or capacity of any equipment. Vendor assumes full responsibility for any damage to the equipment including, at Buyer's election, cost of repair, actual cash value if the equipment cannot be repaired, loss of use, or diminished value.

20. Protection of Goods Vendor shall take all precautions to properly protect its Work and the work of others, cooperate with others whose work Vendor might affect, and cooperate with Buyer in scheduling deliveries so as not to interfere with other's work.

21. Due Diligence Vendor represents that is has performed a reasonable investigation and satisfied itself as to the nature, extent, and requirements for the Work and all conditions that might affect the Work, including schedule, safety, site access, weather, Applicable Law, quality, quantity, and availability of labor, materials, equipment, customs/import controls, supply chain constraints, and transportation. Vendor has accounted for all such known, disclosed and/or reasonably ascertainable factors in Vendor's price. Any claim for unforeseen or changed conditions is conditioned upon Customer providing Buyer such relief. Vendor shall report any errors or inconsistencies in Contract Documents and shall request in writing any clarifications it deems necessary. If this PO or any documents incorporated in this PO, or any performance required by this PO conflicts with any Applicable Law Vendor shall promptly notify Buyer.

If part of the Work depends upon the work of others, before proceeding with that part of the Work, Vendor shall promptly notify Buyer of apparent discrepancies or defects in the work of others that would render it unsuitable for proper execution and results of the Work. If Vendor performs its Work without such verification, Vendor assumes responsibility for any corrective work related to its work.

22. Submittals Vendor's submittals shall conform to the project requirements. Buyer's approval of a submittal shall not be deemed to authorize deviations from or substitutions in requirements for the Goods. Buyer's approval of any submittal shall not be deemed to authorize deviations, substitutions, or changes in the Project requirements.

23. Default Any of the following shall be deemed a Vendor Default: (a) unsatisfactory progress of the Work, material delays to the project or other trades, or reasonable doubt exists that the Work can be completed for the unpaid balance of the Vendor price or in compliance with the schedule; (b) failure to pay Vendor Agents, unless such payment is reasonably disputed; (c) defective or nonconforming Goods; (d) damage to the project or other work caused by Vendor which Vendor does not promptly repair or replace; (e) violation of Applicable Law; (f) Vendor does not provide a sufficient number of properly skilled workers, sufficient quantity of materials of proper quality, or sufficient quantity or quality of equipment; or (g) work stoppage, strike, lock-out, slow-down, refusal to work, or other concerted activity that impacts the project; (h) Vendor has made an assignment without Buyer's written consent; or (i) any other breach of the PO.

24. Cure If a Vendor Default occurs and Vendor fails to cure such default within three (3) days of Buyer's written notice of Default (cure period), Buyer shall have the right, without prejudice to any other right or remedy, to: (i) seize any Goods, materials, and supplies ordered for the Work, provided that Buyer will bear the risk of loss or damage to the same after Buyer acquires possession until turnover back to Vendor; (ii) reprocur the Work by whatever method Buyer deems expedient and/or supplement the Work with Buyer's own labor or a third-party labor force; (iii) terminate the PO or any portions thereof; (iv) take other steps Buyer deems are in the best interest of the project; and (v) withhold or setoff payment to Vendor for damages Buyer incurs, including reasonable overhead, attorney fees, and court or arbitration fees and costs. Violations of Applicable Laws as to safety shall be grounds for immediate suspension or termination of the Work or PO, in whole or in part, without an opportunity to cure. In Buyer's discretion, if Vendor's Default cannot be cured within the cure period, Buyer may extend the cure period, provided Vendor diligently commences and diligently and satisfactorily pursues such cure to completion.

25. Suspension/Termination On written notice to Vendor, Buyer may suspend the Work and Vendor shall promptly discontinue the Work until Buyer directs Vendor to resume, at which point Vendor shall promptly resume work. Any claim by Vendor for damages arising from suspension shall be made in accordance with the Contract Documents. If the Customer terminates any part of the Customer Contract that includes the Work, Vendor shall immediately stop work, follow Buyer's instructions, and mitigate all costs. Buyer will pay Vendor for all Work completed (including Work in process) as of the date of termination, and reasonable substantiated demobilization costs. Notwithstanding the foregoing, Buyer's liability to Vendor shall be limited to the extent of Buyer's recovery for the Work from Customer. For Buyer's convenience, Buyer may terminate a PO in whole or in part at any time upon notice to Vendor. Vendor shall then immediately stop work, notify its Vendor Agents to stop work, and mitigate all costs. Regardless of the reason for termination, Vendor shall not be entitled to lost profits. A termination for Default, if wrongfully made, shall be treated as a termination for convenience.

26. Ownership of Documents All drawings, specifications, reports, summaries, calculations, and other documents related to the Goods, whether generated by Vendor or Vendor Agents, shall immediately upon their creation become Buyer's property and Buyer will have all common law and statutory rights, including copyright interest. Buyer may transfer ownership of same to others as required by the Contract Documents. Notwithstanding the foregoing, Vendor shall retain title to all pre-existing or independently developed Intellectual Property (VIP). To the extent any VIP is incorporated into the Work, Buyer, Customer, and Owner shall have a non-exclusive license to use VIP to construct, use, maintain, or alter the Project for which the VIP was provided.

27. Claims For any claim by Vendor seeking a change in price or schedule because of any act by Customer or Owner (Upstream Claim), Vendor shall strictly comply with all claim requirements of the Contract Documents. Vendor shall provide written notice to Buyer within no more than five (5) days of the start of the event giving rise to the Upstream Claim. Buyer's receipt of relief from Customer is a strict condition precedent to Buyer's obligation to extend such relief to Vendor, except to the extent that Customer denies Vendor's claim for reasons caused by Buyer. If permitted by the Contract Documents, Vendor may participate in the resolution process of any such claim. For any claim by Vendor against Buyer because of any act or failure to act by Buyer or Buyer's trades, Vendor shall give Buyer written notice no later than three (3) business days from learning of the event giving rise to the claim. For all claims, Vendor shall specifically label the notice a "Notice of Claim" and deliver the Notice via certified mail, fax, email or other electronic correspondence to Buyer's principal office. Vendor's strict compliance with all claim requirements is a condition precedent to any claim. Vendor waives any claim that does not strictly comply with this provision.

28. Confidentiality Vendor may not, without Buyer's written consent, advertise or publish the fact that Vendor has contracted to furnish Work for a project or to Buyer. Vendor shall hold in strict confidence all Confidential or Proprietary Information (collectively, CPI), take all steps reasonably necessary to maintain the secrecy of CPI and not disclose CPI to others without Buyer's prior written consent. In addition to any definition in the Contract Documents, CPI means all information Vendor acquires to fulfill the obligations of this PO, relating to technical or commercial documents, drawings, specifications, resulting outcomes, equipment, procedures, plans, calculations, financial conditions or plans, and the like. CPI excludes data that is in the public domain before disclosure, information publicly known and made generally available after disclosure through no act or omission of Vendor, and information already in Vendor's possession without confidentiality restrictions. Upon termination or completion of a PO, at Buyer's request, Vendor shall return to Buyer all CPI. If Vendor suffers a data breach or release, theft, damage or destruction of any electronic information or CPI, Vendor shall immediately report such cyber/data breach to Buyer. This provision survives termination or completion of the Work or PO.

29. Integration/Interpretation The Parties intend the PO to be a final and complete statement of their agreement. The PO may not be modified or cancelled except by Buyer's written consent. If Vendor cancels the PO, Vendor shall indemnify Buyer against all losses arising from the cancellation. If any term is deemed invalid or unenforceable, such provision may be severed from the PO and the remainder of the PO shall be enforceable to the fullest extent permitted by law. This PO shall be construed neutrally, regardless of the author. "Day" means calendar day, unless expressly stated otherwise.

30. Waiver Any failure of Buyer to enforce any term of the PO shall not be deemed a waiver of the term. Buyer's waiver of any claim or right shall not be effective unless in writing, signed by Buyer. No course of conduct shall create a conflict with or waiver of the terms of this PO.

31. Assignment Vendor shall not assign or delegate any right, interest, or obligation without Buyer's written consent.

32. Electronic Transactions The Parties may execute and exchange records in electronic format.

33. Consequential Damages Waiver Neither party shall be liable for any special, consequential, indirect, incidental or punitive or penal damages such as loss of income or profit, revenues, financing, business and reputation, cost of capital, or down-time costs, except as to damages arising out of gross negligence, fraud, willful misconduct, and Vendor's obligations as to third party claims under §14.

34. Dispute Resolution This PO shall be deemed made in Muskegon, MI and shall be governed by Michigan law. Any dispute or Claim arising out of or related to a PO or Work, at Buyer's option, may be resolved by arbitration under the American Arbitration Association rules, exclusively in Muskegon County, MI. The arbitrator's award shall be final and binding, and judgment may be entered upon it in accordance with Applicable Law in a court having jurisdiction. If Buyer does not elect arbitration, any action arising from this PO shall be brought exclusively in the state or federal court with jurisdiction over Muskegon County, MI. Vendor agrees that such courts shall have personal jurisdiction over Vendor. The Parties waive any right to a trial by jury.