



TERMS AND CONDITIONS

1. Acknowledgment. Vendor (as identified in the Purchase Order) acknowledges and agrees that the Purchase Order is expressly conditioned upon Vendor's assent of to the terms and conditions herein set forth. No addition to or modification of the terms and conditions hereof shall be binding upon Newkirk Electric Associates, Inc. of Muskegon, Michigan or its Subsidiaries ("Buyer") or Vender, and no products, services and/or materials shall be substituted for those specified herein except upon written consent or instructions from an authorized representative of the Buyer.
2. Payment Terms. Payments will be made within thirty (30) days of the later of receipt of an approved invoice and receipt of the services and/or products under the Purchase Order. 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 in the Purchase Order or, if no prices appear in the Purchase Order, then at prices no higher than those last quoted, without authority from Buyer.
4. Quantity. The specific quantity in the Purchase Order shall not be changed without permission in writing from the Buyer.
5. Non-Performance. Buyer reserves the right to cancel this Purchase Order in its entirety or any portion thereof, if delivery is not made when and as specified, and charge Vendor for any loss entailed, time being of the essence for this order.
6. Packaging. No charge for packing or drayage will be allowed unless arranged for at the time of purchase.
7. Force Majeure. Buyer shall not be liable for failure to accept any part of this Purchase 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. Non-Disclosure. Vendor may not, without written consent from an official of Buyer advertise or publish, in any manner or form, the fact that Vendor 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 Vendor's acceptance of this Purchase Order, and Buyer shall have no further liability thereon to Vendor.
9. Infringement. The Vendor agrees to protect and save harmless the Buyer from all losses, claims, damages, costs, expenses or liabilities arising out of any infringement or claim of infringement of patents in the use of articles covered by this order.
 - a) Vendor agrees to reimburse the Buyer for 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.
 - b) Vendor agrees to reimburse the Buyer for any penalties that might be imposed on Buyer by the owner or its representative in any specific construction contract by Vendor's inability to deliver material on or before promised delivery dates acknowledged to Buyer, causing construction to be delayed.
10. Indemnity. Vendor shall indemnify Buyer and hold it harmless against any losses, claims, damages, costs, expenses or liabilities in connection with or in any manner growing out of Vendor'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 Vendor 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.
 - a) By Vendor, its employees or agents, or its subcontractors, their employees or agents, or
 - b) By Buyer, it's 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
 - c) 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 Vendor 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 Vendor during the period of such use by Vendor, 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 Vendor.



11. Liens. The Vendor 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. Vendor shall also indemnify Buyer against court costs and attorney fees incurred or sustained by Buyer by reason of any such claims, debts, or liens.

12. Insurance and Indemnity. Where fulfillment of this Purchase Order requires Vendor to perform work for Buyer. Vendor shall procure at this 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. Such policies of insurance will be in a form and with companies satisfactory to Buyer and the Owner (as applicable), and will be obtained and become effective prior to the time herein specified for the commencement of the Work. Newkirk Electric Associates, Inc. and its Subsidiaries will be included as Additional Insureds, and the policies will be endorsed with a cross-liability clause acceptable to Buyer and the Owner (as applicable). Each policy will provide by endorsement, that the insurance will not be cancelled or changed in any manner to restrict or reduce the coverage provided or the named insureds or additional insureds without first giving thirty (30) days written notice, by certified mail, to Buyer at its principal office. Certificates of insurance, or certified copies of the policies, will be filed with and approved by Buyer prior to commencement of the Work. If any insurance is about to terminate, lapse, or be cancelled, the Vendor will, at least five (5) days before the coverage ceases, obtain a new policy with like coverage, and in default thereof, Buyer may obtain insurance of like coverage and charge the cost of all premiums and expenses for the insurance against any monies due the Subcontractor under this or any other Agreement.
 - a) Worker's Compensation Insurance with statutory limits of liability under the laws of the state in which work is being performed.
 - b) Comprehensive General Liability Insurance with a minimum combined bodily injury and property damage limit of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) general aggregate, including Contractors Protective Liability Insurance as required, to include liabilities assumed in Section 11.
 - c) Comprehensive Automobile Liability Insurance with a minimum combined bodily injury and property damage limit of One Million Dollars (\$1,000,000) per occurrence, providing coverage for owned, non-owned and hired vehicles, if automobiles, trucks, tractors, trailers or other vehicles are to be used in fulfilling this Order.
 - d) If Vendor is performing engineering/design work, Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) covering claims, damages and liability arising out of, or resulting from, Vendor's or its subcontractors' negligent acts, errors, or omissions; which Vendor shall maintain for a period of (3) years following substantial completion of the Project; and, Umbrella Liability Insurance in the amount of Five Million Dollars (\$5,000,000).

14. Standards; Compliance with Laws and Regulations; Safety. Vendor represents that it is a specialist in the production of the type of goods or provision of the type of services to be provided under the Purchase Order. Vendor shall possess and maintain, during the time period that it is performing services herein, at its own cost, all professional licenses, permits and registrations, if any, required for the services performed under this Agreement. Vendor shall exercise the skill and knowledge normally possessed by members of the same profession in the electrical construction industry, working on projects of similar scope to the Project, and the Work shall be performed in conformance with all applicable standards required by the Contract Documents, professional and trade standards governing or applicable to a person performing such work, and all federal, state and local laws, regulations and ordinances and statutes. Vendor will give all notices required by, and comply with, all laws, ordinances, rules, regulations and orders of any public authority, whether federal, state or local, bearing on the performance of the services or delivery of the product under this Purchase Order, including but not limited to, those relating to wages, taxes, social security, unemployment compensation, workmen's compensation, health and safety and the environment. In any case where this Purchase Order or any documents incorporated herein by reference or any performance called for hereunder conflicts with any law, regulation, rule, ordinance or order of any public authority, Vendor will promptly notify Buyer so that necessary changes and adjustments may be made. Without in any way limiting the foregoing, Vendor specifically acknowledges that it will comply with any and all laws, rules, or regulations related to design, engineering, construction or mechanics liens in the jurisdiction in which the services are to be performed or product is to be delivered, as applicable. Vendor agrees that the prevention of accidents to workmen and property engaged upon or in the vicinity of the services or delivery of the product is its responsibility. Vendor agrees to comply with all federal, state, municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Work, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established relating to the services and/or products contemplated by the Purchase Order. Vendor acknowledges and agrees to comply with any and all safety programs of Buyer.