

TERMS AND CONDITIONS

Sales under the following terms and conditions ("Terms") are by Empire Wire & Supply, L.L.C. and/or Energy Electric Assembly (in each case the "Company") to the person or entity named or indicated as the payor, customer or purchaser in the Order Acknowledgment with which these Terms are associated ("Buyer"), and are conditional upon Buyer's assent to these Terms. Buyer hereby acknowledges that the Terms herein contained are the sole terms and conditions under which Buyer offers to purchase the products, materials or goods described on the Order Acknowledgment ("Goods"). For purposes hereof, the term "Order Acknowledgment" means the order acknowledgment provided to the Buyer by the Company, confirming the Buyer's offer to purchase certain Goods from the Company, and the price, quantity, shipping location, and shipping date of such Goods. These Terms, together with the Order Acknowledgment, constitute an "Order."

1. **Pricing.** The prices of the Goods are as stated in the Order. All prices quoted do not include any installation charge or shipping charges. The Order is subject to the Company's ability to procure the materials comprising the Goods, and the Company's ability to manufacture the Goods.
2. **Taxes and Fees.** All prices are exclusive of sales, use, excise and/or any other taxes. Buyer will pay all such taxes or other charges incidental to the sale of products.
3. **Payment.** Unless provided otherwise in writing in the Order, Buyer shall pay the Company net thirty (30) days from the date of shipment of the Goods, and pay any invoice issued by the Company in U.S. Dollars without discount, setoff, or reduction. If Buyer fails to make payment when due, such outstanding amounts shall be subject to a service charge of one and one half percent (1.5%) per month (eighteen percent (18%) per annum) on the unpaid balance, or the maximum amount permitted by law, whichever is less. Further, if Buyer fails to make payment when due or defaults in any other way, the Company may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer's account is current: (i) withdraw credit and suspend or cancel performance under any or all Orders; and/or (ii) reschedule shipment. Each shipment will be separately invoiced and paid for without regard to other shipments.
4. **Shipping.** Unless otherwise specifically stated in the Order, all pricing is quoted and will be invoiced, F.O.B. (as defined in Uniform Commercial Code Section 2-319) shipping point, and does not include freight charges. The Company will not be responsible for risk of loss or damage to the Goods after delivery to its carrier. Except with respect to C.O.D. sales, title to the Goods will pass to Buyer upon delivery to the carrier. Prices include packaging in accordance with the Company's standard practice. Unless otherwise directed in writing by Buyer prior to shipping, the method of shipment will be selected by the Company. For all shipments, insurance will be obtained only at Buyer's written direction and expense.
5. **Delivery.** Any shipping date or delivery date indicated on the Invoice is based on the Company's estimate of when delivery to the carrier can be made under the circumstances that exist on the date of the Order. The Company is not liable for losses or added costs due to delivery delays. Each shipment of Goods is to be considered a separate sale and Buyer will pay the agreed price for each shipment without regard for any failure to deliver any subsequent shipment of such Goods. Buyer's receipt and possession of the Goods constitutes its acknowledgement that it has accepted the Goods, unless Buyer notifies the Company to the contrary, in writing, within thirty (30) days of delivery of the Goods. Claims for shortage in the quantity of the Goods, or for damage to the Goods, shall be deemed waived unless received in writing by the Company within thirty (30) days of delivery. The Company's breach or default in the delivery of any particular shipment will not give Buyer the right to refuse to receive any other shipment. Time is not of the essence and Buyer is not entitled to reject an otherwise conforming tender made within a reasonable time. Any failure by Buyer to pay for any shipment within the time stated for payment is an anticipatory material breach with regard to other shipments. Once the Company commences production of products and/or provision of services and/or determines a shipping or delivery date with regard to the same, the Company will be entitled to provide, ship, and/or deliver such products and/or services and receive payment therefor and Buyer may not revise the timing for receipt of such products and/or services.
6. **Cancellation; Termination.**
 - (a) Once placed with the Company, an Order may be cancelled only with the Company's written consent, and upon terms that will indemnify the Company against all losses, including but not limited to payment for work in process, tooling charges, custom assemblies, and lost profits to the Company, resulting from Goods Buyer indicated or represented in any way it would purchase but did not purchase due to cancellation. Orders for custom Goods may not be cancelled under any circumstances, and Buyer will accept delivery and pay one hundred percent (100%) of the purchase price of such custom Goods. With respect to Goods which have already been shipped by the Company, any returned shipments must be approved by the Company in writing, returned in original packaging as shipped, and sent F.O.B. (as defined in Uniform Commercial Code Section 2-319) to the Company's headquarters located at 2119 Austin Ave, Rochester Hills, Michigan, or such other location as the Company may designate. All approved cancelled orders and/or returned materials will incur a restocking fee of a minimum of twenty percent (20%).
 - (b) If, at any time the Company determines that the financial strength of Buyer is unsatisfactory, the Company may require payment for any shipment in advance or satisfactory security. If Buyer fails to make payments in accordance with these Terms or any Order or fails to comply with any provision of these Terms or any Order, the Company may terminate any Order as to unshipped portions of the products, terminate any applicable raw materials orders placed with its suppliers, and Buyer will remain liable for shipped products. If the Company elects to continue to make shipments after the Buyer has failed to make payment for the shipment in advance or fails to provide satisfactory security, any action by the Company shall not constitute a waiver of any default by the Buyer or in any way affect the Company's legal or equitable remedies for any such default.
7. **Adequate Assurance of Performance.** In any circumstance where the Company has the right to demand adequate assurance of Buyer's performance (such as under Section 2-609 of the Uniform Commercial Code, where applicable), Buyer will provide such assurance within ten (10) days after demand by the Company.
8. **Technical Assistance.** The Company will not be liable in any respect to provide technical advice, facilities or services in connection with any Order or the products supplied.
9. **Assignment.** Any attempted assignment by Buyer of any Order or of any right under these Terms without the written consent of the Company will be void. Any valid assignment made hereunder shall be binding upon and inure to the benefit of successors and assigns of the Buyer and the Company.
10. **Returns.** Buyer may not return any Goods unless the Company approves in writing the return. Upon the Company's request, Buyer will provide to the Company samples of Goods alleged by Buyer to be eligible for return. The Company may refuse returned

shipments not approved by the Company or not properly identified. The request for return approval must include full identification of products to be returned. Proper handling procedures must be used in the packing and shipping of all returns. Goods must be returned in their factory original, unopened packaging, in which they were shipped. Buyer retains title and assumes all risk of loss relating to products returned for repair or replacement until the Company completes repair or identifies products as replacements.

11. Warranty, Disclaimers and Limitation of Liability.

(a) The Company may offer a limited warranty of workmanship for certain Goods manufactured by the Company. Generally, the Company's limited warranty is provided when no specific warranty is available for Goods through Third Party Manufacturers (as defined below). IT IS THE BUYER'S SOLE RESPONSIBILITY TO OBTAIN A COPY OF THE APPLICABLE LIMITED WARRANTY, IF ANY, FOR THE GOODS PURCHASED, AND TO DETERMINE SUFFICIENCY OF THE APPLICABLE LIMITED WARRANTY. The Company reserves the right to modify warranties from time to time. The limited warranty in effect on the date of purchase shall be applicable to the Goods.

(b) When the Goods include materials manufactured by others ("Third Party Materials"), Buyer is required to determine directly from such third party manufacturer's tests, or from its own tests, the suitability of all such Third Party Materials for their application by the Buyer, and shall be guided by the results of such tests. ALL APPLICABLE WARRANTIES ARE PROVIDED BY THE MANUFACTURER OF THE THIRD PARTY MATERIALS AND A COPY OF THE MANUFACTURER'S WARRANTY OF THE THIRD PARTY MATERIALS WILL BE PROVIDED TO THE BUYER UPON THE BUYER'S WRITTEN REQUEST. IT IS THE BUYER'S SOLE RESPONSIBILITY TO DETERMINE SUFFICIENCY OF THE APPLICABLE MANUFACTURER'S PRODUCT WARRANTY FOR SUCH THIRD PARTY MATERIALS. Manufacturer's warranties for the Third Party Materials are conditioned upon Buyer's performance of all manufacturer requirements set forth therein and upon Buyer notifying the Company of any defects within thirty (30) days of delivery. If the Company's vendor is a distributor, the warranty will be based on the warranty that the distributor has through their manufacturer/vendor.

(c) EXCEPT WITH RESPECT TO ANY LIMITED WARRANTY REFERENCED IN SECTION 11(a) ABOVE AND ANY WARRANTY PROVIDED BY A THIRD PARTY MANUFACTURER AS REFERENCED IN SECTION 11(b) ABOVE, THE GOODS DELIVERED UNDER THESE TERMS ARE SUPPLIED "AS IS" AND WITH ALL FAULTS. The Company MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING WARRANTIES AS TO THEIR QUALITY, PERFORMANCE, VISUAL IMPERFECTIONS, COLOR OR TEXTURE ABNORMALITIES, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING IN THESE TERMS OR IN ANY ORDER TO THE CONTRARY, the Company WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OR SALE OF PRODUCT BY BUYER OR ANY CUSTOMER OR SUCCESSOR HOLDER OF ANY PRODUCT; BY THE PERFORMANCE OR FAILURE OF the Company TO PERFORM UNDER THESE TERMS; BY ANY OTHER ACT OR OMISSION OF the Company; OR BY ANY OTHER CAUSE. IN NO EVENT WILL the Company's TOTAL LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE SUM PAID TO the Company BY BUYER FOR THE PRODUCTS SUPPLIED UNDER THE ORDER IN CONNECTION WITH WHICH THE CLAIM ARISES. NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE (1) YEAR AFTER DELIVERY OF THE GOODS THAT GAVE RISE TO SUCH CAUSE OF ACTION. The Company MAKES NO WARRANTIES, COVENANTS, OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY SET FORTH HEREIN. In the event a court of competent jurisdiction should determine that the warranty limitations and disclaimers set forth herein are unenforceable for any reason whatsoever, or in any other event, the Company shall only be liable for any defective or nonconforming Goods if: (i) the Goods are used for their intended purpose and solely under the conditions and in the manner recommended in manufactures' specifications or other instructions; (ii) the Goods have not been misused or abused in any manner; (iii) no repairs have been attempted by anyone other than the Company on the Goods; (iv) prompt written notice of any such defect or nonconformity is forwarded to the Company (which notice must in any event be sent to the Company no later than thirty (30) days after shipment of all Goods to Buyer) and the Goods are returned to the Company promptly, freight prepaid by Buyer, and directions received by Buyer, if any, for properly identifying items returned are carefully followed; and (v) such written notice authorizes the Company to examine returned Goods to the extent the Company deems necessary in order to ascertain the cause of failure.

12. Indemnification. Buyer shall defend, indemnify, and hold harmless the Company and its members, managers, shareholders, officers, directors, employees, agents, affiliates, successors and assigns (collectively, the "Indemnified Parties") from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, legal fees) whatsoever that are incurred by or made against any of the Indemnified Parties and that arise out of or result from (i) the acts, omissions, negligence or willful misconduct of Buyer; (ii) any breach of these Terms by Buyer; or (iii) any claim by Buyer, any of its customers, or any successor holder of any of the Goods, or any other person or entity, related to the Goods sold by the Company, or the purchase, installation, or use of such Goods, or any undertakings, acts or omissions relating to such Goods, to the extent such claim is not based upon a product defect proven to have been caused solely by the Company's negligence.

13. Governing Law; Jurisdiction; Venue; Severability. These Terms and all Orders will be governed by and construed in accordance with the laws of the State of Michigan and the federal laws of the United States without regard for their conflict of law rules. Any action or claim arising out of or related to these Terms or any Order may be brought only in the state courts of Michigan sitting in Oakland County or in the United States District Court for the Eastern District of Michigan and the Company and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts. If any provision of these Terms is held to be illegal or unenforceable, the remaining provisions will continue in full force and effect.

14. Use of Goods. Buyer shall use, and require its employees, contractors, and agents to use, all available safety precautions, in addition to any specifically set forth in any manuals, material safety data sheets, technical data sheets, instruction sheets, if any, furnished by the Company (or available from raw material suppliers) relating to the Company's products. If Buyer does not receive material safety data sheets for any product from the Company, Buyer will request them from the Company, and the Company will provide such safety documents to the extent such documents exist and are available to the Company. If Buyer fails to strictly observe each and every one of the obligations set forth in this Section 14, Buyer will indemnify, defend, and hold harmless the Indemnified Parties from and against any and all claims, demands, damages, actions, and causes of action, as well as any and all liability, loss, or expense of any kind, including reasonable attorney's fees arising from, connected with or in any way pertaining to any such failure by Buyer.

15. Notification. Buyer shall notify the Company promptly, and in any event within thirty (30) days, after any accident or failure involving the Goods of the Company that results in personal injury or damage to property and shall cooperate fully with the Company in investigating and determining causes of such accident or failure. In addition to the indemnity provided for in Section 12, as a separate condition of these Terms, Buyer will indemnify, defend and hold harmless the Company in the same manner as in Section 12 arising from any accident or failure when Buyer has failed to make timely notification as required by this Section 15.

16. Attorney Fees. Buyer will pay the Company's reasonable attorneys' fees and other costs and expenses for any legal or equitable action undertaken by the Company to enforce these Terms or the provisions of any Order.

17. **Errors.** Any and all typographical errors or other clerical errors made by the Company in these Terms, in the Company's quotations or communications, or any Order are subject to correction by the Company.

18. **Force Majeure.** The Company will not be liable for failure to deliver, or for delay in delivery of, the Goods to the extent arising out of or related to causes beyond its reasonable control, including, without limitation, acts of God or of the public enemy, acts of any governmental authority, fires, floods, other casualties, severe weather, epidemics, quarantine restrictions, strikes, labor disputes or shortages of labor (whether involving employees of the Company or employees of others and regardless of responsibility or fault on part of any employer), embargoes, wars, riots, civil commotion, shortage of rail cars or semi-tractors and trailers, delays in transit or inability to secure necessary parts or materials (whether at all or at commercially reasonable prices). In no event will the Company be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery. If the Company is wholly or partially unable to perform because of any cause beyond its reasonable control, the Company may allocate production and deliveries among the Company's customers or may terminate the Order without any further liability to Buyer.

19. **Remedies Cumulative.** All rights and remedies of the Company under these Terms and any Order are cumulative. No pursuit or receipt by the Company of any particular remedy will constitute an exclusive election of remedies and the Company will have the benefit of all remedies available at law or in equity.

20. **Third Parties.** There are no third-party beneficiaries of any obligation of the Company, whether under these Terms or otherwise.

21. **Third-Party Terms.** Under no circumstances will the Company be obliged or liable to Buyer or to any third party with respect to any representation, warranty, covenant, duty, or liability to any third party. Without limiting the foregoing, the Company expressly disclaims and rejects any obligation of any kind to comply with any terms or conditions of Buyer's direct or indirect customer(s), regardless of any obligation to such persons taken on by, and/or imposed upon, Buyer and regardless of whether the Company is aware of any such requirement upon Buyer. The Company will be liable to any third party, if at all, solely according to such separately negotiated, written, and signed agreement, if any, as the Company actually negotiates and executes with such third party.

22. **Entire Agreement.** These Terms, together with any additional terms contained in an Order, embody the entire agreement between the parties with regard to the subject matter hereof and thereof and supersede all other prior agreements between the parties with regard to such subject matter.

23. **Notice.** All notices, statements or other communications which are required or contemplated by this Agreement shall be in writing (unless otherwise expressly provided herein) and shall be either personally served at or mailed to the last known mailing address of the person entitled thereto (including by telefax or other means of electronic communication as provided below). In addition, a copy of each such notice, statement or communication intended for a party shall be furnished to such single additional addressee for that party as may be specified herein or specified in a like notice. All such notices, statements and other communications (or copies thereof) shall be deemed furnished to the person entitled thereto (a) on the date of service, if personally served at the last known mailing address of such person, or (b) on the date on which mailed, if mailed to such person in accordance with the terms of this Section. For purposes hereof, an item shall be considered mailed if the sender can establish that it was sent by means including, but not limited to, the following: (i) by United States Postal Service, postage prepaid; (ii) by air courier service (Federal Express or the like); or (iii) by telefax or other means of electronic communication, provided the sender obtains written confirmation or proof of such communication (such as a telefax transmission report, written acknowledgment from the recipient, or other reliable proof of delivery). For purposes hereof, the last known mailing address of the Company shall be as follows:

If to Empire Wire & Supply, L.L.C. or Energy Electric Assembly:
2119 Austin Ave
Rochester Hills, Michigan 48309
Ph: (248) 853-6363
Fax: (248) 853-6667

Any party may change the address to which such notices, statements and other communications (or copies thereof) are to be delivered or mailed, by furnishing written notice of such change to the other parties, in the manner specified above.

24. **WAIVER OF JURY TRIAL.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THESE TERMS AND ANY ORDER IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THESE TERMS AND ANY ORDER. EACH PARTY TO THESE TERMS AND ANY ORDER CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (II) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THESE TERMS AND ANY ORDER BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THESE TERMS.

25. **Waiver of Consequential Damages.** To the fullest extent permitted by law, the Company shall not be liable to Buyer for any special, indirect, incidental or consequential damages of any kind or nature whatsoever, whether caused by the Company's negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes, including but not limited to, loss of use of equipment or facility, loss of production, and loss of profits or revenue.