



Terms and Conditions of Sale

1. Applicability. These Terms and Conditions of Sale (these "Terms") shall apply to the sale of any goods, materials, services or work product ("Products") by Werner Electric Supply Co. ("Distributor") to the buyer thereof ("Buyer"). Except to the extent otherwise expressly agreed in writing signed by an authorized officer of Distributor, these Terms and the order, quote or proposal in which they are referenced or to which they are attached (together, this "Agreement") constitute the entire agreement between Buyer and Distributor regarding the Products. Buyer shall also be bound by the applicable provisions of any terms and conditions of the original manufacturer or service provider of the Products ("Supplier"). **DISTRIBUTOR HEREBY EXPRESSLY OBJECTS TO, AND IS NOT BOUND BY, ANY OTHER TERMS OR CONDITIONS ON BUYER'S PURCHASE ORDER, CONFIRMATION OR OTHER DOCUMENTS. SHIPMENT OR OTHER PERFORMANCE BY DISTRIBUTOR SHALL NOT CONSTITUTE ASSENT TO ANY SUCH INCONSISTENT TERMS.**

2. Prices. Prices and other information shown in any of Distributor's and Suppliers' catalogs and brochures are subject to change without notice and to confirmation by specific quotation. Prices and discounts quoted by Distributor in writing are firm for the period of time (if any) set forth therein, and are otherwise subject to change without notice. Such prices are subject to increase by Distributor for any change to the Order made by Buyer and approved by Distributor.

3. Taxes and Fees. Prices stated herein do not include any taxes, charges, assessments or duties. The amount of any such taxes, charges, assessments or duties which Distributor is required to pay or collect shall be invoiced to and payable by Buyer. Buyer shall also pay any collection fees and reasonable attorneys' fees incurred by Distributor in collecting payment of the purchase price and any other amounts for which Buyer is liable under this Agreement.

4. Delivery. Unless otherwise expressly set forth on the face of the applicable Order, all delivery terms of sale are Ex Works (Incoterms 2010) Distributor's facility for Products shipped by Distributor. All delivery terms for Products shipped by Supplier directly to Buyer are subject to Supplier's requirements. Except as otherwise set forth in this Section 4, title and risk of loss to the Products transfers to Buyer upon delivery; provided, however, that title to all intellectual property rights associated with the Products remains with the applicable Supplier or licensors. Distributor's acknowledged shipping dates are approximate, and contingent on prompt receipt of all necessary information, cooperation and approvals from Buyer.

5. Services. With respect to the portion of Products comprising the sale of services, Buyer shall: (i) cooperate with

Distributor and Supplier in all matters relating to the services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested for the purposes of performing the services; (ii) respond promptly to any request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary to perform the services; (iii) provide such customer materials or information as reasonably requested to carry out the services in a timely manner and ensure that such customer materials or information are complete and accurate in all respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the services.

6. Acceptance; Returns. Buyer will have five (5) days after delivery of the Products to inspect the Products and to provide written notice to Distributor of any defects. If Buyer does not notify Distributor during this period, the Products shall be deemed accepted by Buyer, and Buyer shall be deemed to have waived all claims based on any defects that were or would have been discovered upon reasonable inspection during such period (except any claim under a Supplier Warranty, as defined in Section 9, shall not be deemed waived). Any claims for damage, non-conformity, shortages or errors must be made in writing promptly following discovery thereof, specifying the non-conformity in reasonably detail. Special orders are non-returnable and non-refundable. Distributor shall not be required to accept any return made without the prior written authorization of Distributor, and no credit will be allowed for Product returned without prior written authorization from Distributor. A restocking fee may be assessed on all returned stock material. Returns will be further subject to Distributor's return policy then in effect.

7. Payment. Unless otherwise expressly set forth on the face of the applicable Order, all amounts payable by Buyer are due no later than thirty (30) days following the date of Distributor's invoice. Outstanding balances not paid when due shall bear interest accruing from the date of Distributor's invoice at the rate of the lower of eighteen percent (18%) per annum or the maximum rate allowed under applicable state law. Failure to timely pay any Distributor Invoice shall cause all subsequent Invoices to become immediately due and payable. Payment shall be made in U.S. Dollars (\$), unless otherwise agreed by Buyer and Distributor.

8. Credit Approval. Shipments, deliveries and performances of work shall at all times be subject to the approval of Distributor's credit department. Distributor may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment in advance or upon such other payment terms as are acceptable to Distributor's credit department.

9. Limited Supplier Warranty. Buyer shall have the benefit of any warranty, guarantee or commitment extended directly by the applicable Supplier to Buyer (each a “Supplier Warranty”). Copies of any applicable Supplier Warranty shall be made available to Buyer upon request. Buyer’s sole remedy for any defective or non-conforming products shall be as set forth in the applicable Supplier Warranty. Buyer acknowledges that the Distributor is an independent contractor, reselling the Supplier’s Products for Distributor’s own account. Distributor is not an agent of any Supplier, and no Supplier is authorized to commit or bind Distributor in any way. Distributor shall not be responsible for any post-sale warranty repair or technical support obligations of Supplier. Distributor may facilitate and assist Buyer and Supplier in processing any warranty claims without assuming such obligations. Notwithstanding the foregoing, to the extent Distributor directly performs services hereunder (and such services are not performed by Supplier or any other third party), Distributor warrants to Buyer that it shall perform such services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with Distributor’s standard practices. Distributor shall not be liable for a breach of the foregoing services warranty unless: (i) Buyer gives written notice of the defective services, reasonably described, to Distributor within five (5) days of the time when Buyer received the services; (ii) Distributor reasonably verifies Buyer’s claim that the services are defective; and (iii) Buyer followed Distributor’s instructions related to such services. Subject to the foregoing, with respect to any services subject to Distributor’s services warranty in this Section, Distributor shall, in its sole discretion, repair or re-perform the applicable services, or credit or refund the price of such services at the pro rata contract rate. **THE SUPPLIER WARRANTY AND DISTRIBUTOR SERVICES WARRANTY ARE THE EXCLUSIVE WARRANTIES APPLICABLE TO THE PRODUCTS, IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT.**

10. Limitation of Liability. **UNDER NO CIRCUMSTANCES SHALL DISTRIBUTOR BE LIABLE TO BUYER OR ANYONE CLAIMING UNDER BUYER FOR ANY AMOUNT IN EXCESS OF THE PRICE ACTUALLY PAID BY BUYER FOR THE PRODUCTS, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES OR EXPENSES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF INCOME, PROFITS OR GOODWILL, WHETHER ARISING IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY.**

11. Proprietary Rights. Buyer acknowledges and agrees that it is not acquiring any right, title or license in or to Distributor’s or the applicable Supplier’s intellectual property or other proprietary rights associated with any of the Products. Any software, firmware, applications, code or data incorporated into

the Products may be subject to Buyer’s acceptance of separate license agreements with Distributor or the applicable Supplier thereof. Buyer shall not use, disclose, modify, transfer, sublicense, disassemble, decompile, reverse engineer such software, firmware, applications or data, except as expressly provided in the applicable license agreement.

12. Indemnification. Buyer agrees to indemnify, defend and hold harmless Distributor, its affiliates, and their respective shareholders, members, directors, managers, employees, agents and representatives (collectively “Representatives”) from any claim, demand, action, cause of action, judgement, damages, cost, expense, liability of loss (including, without limitation, reasonable attorney’s fees) arising out of any: (i) use, ownership, maintenance, transfer, transportation or other disposition of the Products by Buyer; (ii) breach or violation of this Agreement on the part of Buyer; or (iii) negligent act or omission, intentional misconduct or violation of applicable law on the part of Buyer or its Representatives. Distributor’s remedies under these terms and conditions are cumulative and in addition to any other remedies available to Distributor at law, in equity, by contract or otherwise.

13. Cancellation, Modification or Suspension. Distributor shall use reasonable efforts to accommodate any cancellation, modification, suspension, or delay in shipment requested by Buyer; provided, however, that Buyer shall fully reimburse Distributor for all costs, expenses and losses arising therefrom, including, without limitation, recovery of all direct costs incurred, a normal profit and Supplier’s cancellation fees. Price and delivery shall be subject to change upon any modification or suspension of an Order approved by Buyer.

14. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Buyer shall not assign its rights or obligations under this Agreement without Distributor’s prior written consent, which consent shall not be unreasonably withheld. Any attempted assignment in violation of this Section shall be void and have no force and effect. Distributor may subcontract the performance of any of its duties or obligations hereunder to any third party.

15. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of Wisconsin, without giving effect to its conflicts of laws provisions. Any litigation or proceeding arising out of this Agreement shall be brought exclusively in the courts of the State of Wisconsin located in Winnebago County, or the courts of the United States located in the Eastern District of Wisconsin – Green Bay Division. Buyer and Distributor hereby knowingly, voluntarily and irrevocably consent the personal jurisdiction of such courts and waive any objection as to venue or *forum non conveniens*. Each of the parties hereby waives the right to a trial by jury in connection with any such litigation or proceeding.

16. Export Restrictions. Buyer acknowledges that the Products may be subject to export control laws of the United States, including, without limitation, the Export Administration

Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). Buyer shall not export, re-export or divert any Products or component thereof in violation of the EAR, ITAR or any other law of the United States.

17. Force Majeure. Neither party shall be liable to the other party, or deemed to have breach or defaulted under this Agreement, for failure or delay in fulfilling or performing any obligation (except for payment obligations), to the extent such failure or delay results from any cause beyond such party's direct control, including but not limited to acts of God, fire, flood, embargo, governmental acts or regulations, accident, labor dispute, strike, slowdown, war, riot, major equipment failure, delay in transportation, or shortage or inability to obtain necessary labor, materials, equipment, power and/or transportation. In the event of such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of such delay.

18. Miscellaneous. These terms and conditions constitute and represent the complete and entire agreement between

Distributor and Buyer and supersede all previous communications and representations, either written or verbal, with respect to the subject matter of any Order or invoice. No modification of these terms and conditions shall be binding on the parties unless made in writing and signed by an authorized representative of each party. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement or of any future breach of the provision so waived. If any provision, clause or part, or the application thereof is held invalid, the remainder of this Agreement or the application of such provision, clause or part under other circumstances shall not be affected thereby. This Agreement may be made in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement. Counterparts to this Agreement may be signed, transmitted and delivered electronically.

[End.]