



## Terms and Conditions

### Conditions of Sale and Delivery for Jackson Electric Supply

#### 1. Definitions

In these conditions of supply:

- (a) "the Seller" refers to Jackson Lighting and Electrical Supply Company, doing business as "Jackson Electric Supply."
- (b) "the Buyer" refers to the person, firm or company by whom the order is given to the Seller.
- (c) "Goods" refers to the Goods which are the subject of the order.
- (d) "Order" refers to any document evidencing an agreement by Seller to sell Goods to Buyer.
- (d) "Services" refers to the Services that are the subject of the order.
- (e) "Supply" refers to the supply of such Goods and/or Services.

#### 2. Entire Agreement

(a) All contracts for Supply shall be deemed to incorporate these conditions, representing the complete agreement of the Seller and Buyer regarding the Supply, except as otherwise specifically agreed in writing by the Seller ("the Contract for Supply"). These conditions shall override any terms and conditions stipulated, incorporated, or referred to by the Buyer in any order, correspondence, negotiations, verbal conversation, or any other way.

(b) Catalogues, price lists, advertisements, and other published information are only indications of the type of products and services available and shall not form part of the Contract for Supply or any other contract with the Buyer nor be considered a collateral warranty or a representation inducing the same.

(c) This document and the purchase order or other sales document or Order to which these Terms and Conditions are attached contains the complete and exclusive statement of the agreement between Buyer and Seller relating to this Order.

#### 3. Acceptance

(a) The Seller's catalogues, price lists, and quotations do not constitute offers made by the Seller.

(b) No order is binding on the Seller until its acceptance by the Seller which shall be provided by the Seller's transmittal to the Buyer of an Order Acknowledgement Form or Invoice. The preceding notwithstanding if the Seller's quotation specifies that it is a bid in response to an invitation for bids, the order or award shall constitute acceptance of the bid in accordance with the bid terms. BY REQUESTING A QUOTE FROM SELLER OR PRESENTING AN ORDER TO SELLER, BUYER CONFIRMS THAT THESE TERMS & CONDITIONS SHALL GOVERN ALL PURCHASES OF GOODS, MATERIALS AND/OR SERVICES PROVIDED TO BUYER BY SELLER. SELLER OBJECTS TO AND REJECTS ANY CHANGES OR ADDITIONAL OR DIFFERENT TERMS & CONDITIONS (CONTAINED IN A PURCHASE ORDER ACCEPTED BY SELLER, OR OTHERWISE) AND NO SUCH PROPOSED ALTERNATIVE TERMS & CONDITIONS WILL CHANGE THESE TERMS & CONDITIONS UNLESS ACKNOWLEDGED IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NO SELLER EMPLOYEE OR AGENT HAS THE AUTHORITY TO MODIFY THESE TERMS & CONDITIONS VERBALLY. SELLER OBJECTS TO AND REJECTS ANY TERMS BETWEEN BUYER AND ANY OTHER PARTY, AND NO SUCH TERMS, INCLUDING BUT NOT LIMITED TO ANY GOVERNMENT REGULATIONS OR "FLOWDOWN" TERMS, SHALL BE A PART OF OR



INCORPORATED INTO ANY ORDER FROM BUYER TO SELLER, UNLESS AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER AND EXCEPT TO THE EXTENT AS MAY BE REQUIRED BY LAW.

(c) Accepted orders are not subject to cancellation except upon (i) the written approval of the Seller which shall be provided at Seller's reasonable, but sole discretion and (ii) payment to Seller of a fair and equitable charge based upon Seller's actual cost incurred with respect to the orders as of the date the cancellation is approved by Seller.

(d) Acceptance of any order is subject to Buyer's credit having been approved by Seller, acceptance of the order by Seller and, when applicable, Seller's vendor. If Seller, in its sole discretion, determines that Buyer's ability to pay or credit becomes unsatisfactory or has reasonable grounds for insecurity, Seller reserves the right, upon notice to Buyer, to demand adequate assurance of due performance from Buyer and/or to terminate any order or other agreement with Buyer with no liability to Seller.

#### 4. Specifications etc.

(a) Where the Seller sells Goods or performs Services that are not to its standard specification, in preparing and submitting a specification and/or written acceptance of the Buyer's order, the Buyer shall supply all necessary, relevant, and accurate particulars and information, which Seller is entitled to rely on as final and complete. Any errors or omissions contained in such particulars and information supplied at any time resulting in any loss, damage, cost or other expense to the Buyer shall be the Buyer's sole responsibility. Furthermore, should any erroneous particulars and information supplied by the Buyer result in loss, damage cost or other expense to the Seller, the Seller shall be entitled to recover its costs for such loss, damage, cost or other expense.

(b) Any drawings, illustrations, specifications, or other materials submitted by the Seller to the Buyer remain the property of the Seller and shall not be communicated to a third party without the prior written consent of the Seller. A prospective buyer shall not disclose any information contained in any drawing, illustration, specification or other material submitted by the Seller to a third party without the prior written consent of the Seller.

#### 5. Prices

Except as may otherwise be provided herein, the price and terms of payment for the Supply shall be set out in the Seller's Order Acknowledgement Form, provided that the Seller reserves the right by notice given at any time before delivery of the Goods or performance of the Services to vary the price thereof if, after the date of the Order Acknowledgement Form, there is any increase or decrease in the Seller's general price list appertaining to such or similar Goods or Services. Time of payment of the price shall be of the essence of all contracts for Supply.

#### 6. Customs Duties & Taxes

All Customs and Excise duties, import and/or export duties, and all other taxes, tariffs, and surcharges of any nature whatsoever now or hereafter levied or imposed in any country, territory or other municipal or similar local jurisdiction either directly or indirectly in respect of the Supply shall be borne by the Buyer and, except as stated in the Order Acknowledgement Form, shall be applied in addition to the prices therein stated.

#### 7. Payment Terms

(a) Except as otherwise specified in writing by the Seller, payment for the Supply shall be payable in full in U.S. dollars within thirty (30) days of the issue of the Seller's Invoice.

(b) The Seller reserves the right to suspend further deliveries or performance and/or to cancel the allowance of further credit in the event of any payment not being made when due or if the Seller, at its sole discretion, at any time considers the financial circumstances of the Buyer to have ceased to justify the terms allowed. Further, Seller reserves the right to suspend further deliveries and cancel and pending orders should: (1) any petition in bankruptcy or for



reorganization be filed by or against the Buyer; (2) the Buyer become insolvent or be adjudicated as bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under Court Order; or, (3) the Buyer make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency.

(c) The time of payment shall be of the essence. If any sum due under any Contract for Supply is not paid or reimbursed on the date on which it is due, such unpaid sum shall accrue interest at a rate equal to the Prime Rate (as defined below) plus five percent (5%) per annum calculated from the date such payment or reimbursement was due (without regard to any grace or cure periods contained herein) until the date on which the Buyer pays such sum, plus all accrued interest thereon. As used herein, "Prime Rate" shall mean the prime rate of interest as published from time to time in the Wall Street Journal. The Seller reserves the right to postpone fulfillment of its own obligations or suspend work until such overdue payment is made.

## 8. Delivery

Unless otherwise expressly provided in writing in the Order Acknowledgement Form or Invoice, all the Goods to a shipping carrier shall constitute delivery thereof to the Buyer and thereafter such Goods shall be at the Buyer's risk. Any claim for shortage or damage occurring after such delivery or for transportation overcharges should be directed by the Buyer to the carrier and Seller jointly. Any period or date for delivery or for the performance of Services stated in the Contract for Supply or elsewhere is the Seller's best estimate when stated but is not a contractual statement. Seller is a distributor and not a manufacturer and factory shipping dates given in advance of actual shipment are approximate and not guaranteed. The foregoing and notwithstanding anything to the contrary contained herein all Orders and arrangements made Free on Board, Point of Shipment. Title to and risk of loss of the Product shall pass from Seller to Buyer as the Product is delivered to the product courier for transport to Buyer's designated location.

## 9. Invoicing

The Seller may invoice the Buyer at the earlier of the following dates: the date the Goods are shipped or the date the Goods are ready for shipment if they are held at the Seller's facility or facilities by agreement of Buyer and Seller or for lack of shipping instruction from the Buyer. The Seller may invoice the Buyer for the supply of Services at the earlier of the following dates: the date of the commencement of performance thereof or the date indicated in the Order Acknowledgement Form or Invoice if performance is delayed by the instruction of the Buyer or by some other reason beyond the control of the Seller.

## 10. Passing of Property

(a) No property in or title to the Goods shall pass to the Buyer until their full price has been duly paid in cash to the Seller. Failure to pay the purchase price as aforesaid when due shall, without prejudice to any other remedies, entitle the Seller to commence repossession proceedings for the Goods. Should any repossession of the Goods or any part thereof become authorized or otherwise appropriate, the Buyer shall permit the Seller, its employees, or agents to enter upon such premises, and the Buyer shall pay to the Seller the cost of removal and transport of the Goods or any part thereof. Nothing in this condition shall confer any right on the Buyer to return any of the Goods or refuse or delay payment, therefore.

(b) The Buyer shall not sell, purport to sell, or part with possession of the Goods until the property and title therein shall have passed to the Buyer, provided that with the prior written consent of the Seller, the Buyer may contract to re-sell the Goods. In any such re-sale, the Buyer shall, with regard to the sub-purchaser, act as principal but shall hold the proceeds of such re-sale in trust for the Seller in a separate bank account until the Seller has received the full purchase price due to the Seller.

## 11. Warranty



(a) SELLER'S WARRANTIES: Seller warrants that all Goods sold are new unless otherwise designated and, upon payment in full by Buyer of the Goods, free and clear of any security interests or liens. Buyer's exclusive remedy for breach of such warranties shall be replacement of the product as ordered (if applicable) or termination of all or a portion (as applicable) of any existing security interest or lien. e. Seller is a distributor and not a manufacturer and makes no independent warranties other than those set forth herein

(b) VENDOR'S WARRANTIES: Seller shall assign, as it is able, to Buyer any Vendor warranties and/or remedies provided to Seller by its Vendor

(c) INTELLECTUAL PROPERTY INFRINGEMENT: SELLER DISCLAIMS ANY AND ALL WARRANTIES AND/OR INDEMNIFICATIONS AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY NATURE. SELLER SHALL, IF GIVEN PROMPT NOTICE BY BUYER OF ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT WITH RESPECT TO ANY GOODS SOLD HEREUNDER, REQUEST THE MANUFACTURER TO GRANT FOR THE BUYER SUCH WARRANTY OR INDEMNITY RIGHTS AS THE MANUFACTURER MAY CUSTOMARILY GIVE WITH RESPECT TO SUCH GOODS.

(d) LIMITATIONS: THERE ARE NO OTHER WARRANTIES WRITTEN OR ORAL, EXPRESS, OR IMPLIED. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. NO REPAIR OF GOODS OR OTHER COSTS ARE ASSUMED BY SELLER UNLESS AGREED TO, IN ADVANCE, IN WRITING. UNLESS AGREED TO IN ADVANCE IN WRITING, WARRANTIES ARE ONLY VALID IN THE UNITED STATES OF AMERICA AND ITS TERRITORIES. REPAIR OR REPLACEMENT SHALL BE AT THE ORIGINAL PLACE OF DELIVERY.

## 12. Exclusions

(a) The Buyer shall be entitled to the benefit of the aforementioned warranty, which is given in lieu of and replaces, excludes, and extinguishes all or every condition or warranty whatsoever, whether express or implied by statute, common law, trade usage, custom, or otherwise.

(b) It shall be the responsibility of the Buyer to determine the suitability of the Goods and of any Services for their intended purpose and for actual application and their compliance with applicable laws, regulations, codes, and standards, and the Buyer assumes all risks pertaining thereto.

(c) Notwithstanding the exclusion of any warranty as to the fitness for purpose contained in these conditions, as a separate condition, the Buyer agrees that in circumstances where the Seller relies on the skill of the Buyer to judge whether Goods or Services are fit for the purpose for which they are purchased or provided, the Seller shall accept no liability whatsoever with regard to that judgment or any matter arising from that judgment, and the Buyer will indemnify the Seller against any loss, damage, costs, or claims arising therefrom.

## 13. Rights & Remedies of the Buyer

(a) If and so far as the Seller may be held to be legally liable to the Buyer, the sole right of redress of the Buyer against the Seller shall be as expressly provided for in these conditions or any other conditions expressly agreed to in writing by the Seller, and the Buyer shall have no other remedies of any kind whatsoever against the Seller.

(b) For the purposes of the Contract for Supply, the expression "legal liability" shall include the legal liability of the Seller, its employees, agents, or sub-contractors as found by any court of competent authority and, without prejudice to the generality of the foregoing, shall include:

(i) Breach of any contractual obligation by virtue of the express or implied terms of the Contract for Supply and any fundamental breach and/or breach of a fundamental term.

(ii) Negligence arising by virtue of any act or omission which amounts to a failure to take reasonable care or exercise reasonable skill.

(iii) Any misrepresentation or misstatement made by or on behalf of the Seller.

(iv) Any other breach of duty, and the expression "legally liable" shall bear a corresponding meaning.

(c) This clause shall not confer any rights or remedies on the Buyer to which the Buyer would not otherwise be entitled.



#### 14. Limit of Damages for Breach of Warranty

If notwithstanding the Seller's attempts to comply with the warranty the Seller is unable to do so, the Seller shall pay monetary damages to the Buyer not exceeding the amount received by the Seller for the defective goods, or as the case may be, the deficient service.

#### 15. Damage to Physical Property

The Seller shall not be liable in respect to any loss or damage of whatsoever kind or howsoever caused, whether by reason of the negligence of the Seller or otherwise, to premises, plant, or other physical property. In the event of legal liability being established, the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

#### 16. Economic, Other Consequential Loss & Claims by Third Parties

Save as expressly provided for in the Contract for Supply, the Seller shall in no circumstances be liable for the following loss or damage howsoever caused and howsoever arising, whether by reason of the Seller's negligence or otherwise, even if such loss or damage was, or ought reasonably to have been, in the contemplation of the parties at the date of the Contract for Supply as being likely to occur:

(i) Economic loss, which shall include, without limitation, loss of profits, reputation, goodwill, business use, use of interest, Services of employee or agent, anticipated savings, expenses rendered futile by the breach, and expenses caused by the breach.

(ii) Any other consequential or indirect loss or damages.

(iii) Any claim made against the Buyer by any other party.

In the event of legal liability being established, the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

#### 17. Events Beyond the Control of the Seller

(a) The Seller does not accept any liability incurred under the Contract for Supply wherever and to the extent to which the fulfillment of the Seller's obligations is prevented, frustrated, impeded, and/or delayed as a consequence of any force majeure and/or any occurrence whatever beyond the control of the Seller, such to include, without prejudice to the generality of the foregoing:

(i) Act of God, fires, floods, or other casualties.

(ii) War, riots, regional epidemic or pandemic, civil commotion, embargoes, governmental regulations, or inability to obtain necessary materials from the Seller's usual sources of Supply.

(iii) Shortage of transport facilities or delays in transit.

(iv) Existing or future strikes or other labor troubles affecting the performance thereof whether involving the Seller's employees or employees of others and regardless of the responsibility or fault on the part of the employers.

(v) Failure in whole or in part of power supplies.

(b) The Seller undertakes, however, to make every reasonable endeavor within its power to overcome difficulties arising in connection therewith but reserves the right to cancel, suspend, or vary its obligations under the Contract for Supply. In the event of shortages of Goods or of available resources for their production, storage, or delivery, or continued difficulty in rendering Services arising from any of the events or circumstances referred to in paragraph (a) of this clause, the Seller reserves the right to allocate as it may think fit its available Goods and resources and performance of Services between customers with whom it has contractual obligations in respect thereof and shall not be obliged to purchase Goods from third parties or sub-contract Services to make good such shortages or performance.

#### 18. Maximum Limit of Damages

If notwithstanding the provision of clauses 12 to 18 inclusive & clauses 20 and 21, the Seller shall in any circumstances whatsoever be held legally liable to the Buyer, then:

(i) The Buyer's sole rights of redress against the Seller shall be limited to damages.



(ii) The Seller's total liability in respect of any Goods and/or Services notwithstanding the number of incidents for which the Seller is found legally liable shall in no circumstances exceed the amount received by the Seller for the Goods or Services, as the case may be.

#### 19. Insurance

(a) The precise limits of any appropriate insurance cover are primarily within the Buyer's knowledge, thereby enabling the Buyer to affect his own insurance cover at more economic rates than the Seller. The Buyer agrees insofar as the Buyer may require any insurance cover, the Buyer shall affect the same, such to include without prejudice to the generality of the foregoing:

(i) Damage to physical property of any kind.

(ii) Economic and other consequential or indirect loss or damage.

Therefore, the Buyer acknowledges and accepts that it is reasonable for the Seller to limit its legal liability and its liability to pay damages as set out in these Conditions.

(b) The Buyer hereby agrees and acknowledges that it will procure that the Buyer's insurers shall in no circumstances whatsoever have any rights or remedies against the Seller additional to those of the Buyer.

#### 20. Indemnity

The Buyer agrees to indemnify the Seller against any loss, damage, costs, claims, or expenses incurred by the Seller in respect of any liability established against the Seller by a third party arising out of or in connection with the Contract for Supply.

#### 21. Change in Buyer's Financial Circumstances

If the Buyer makes any composition or arrangement with creditors or, being a company, goes into liquidation, whether voluntary or compulsory, or, being an individual or firm, if he or any partner commits any act of bankruptcy, or if a Receiver is appointed in respect of any assets of the Buyer, or if the Buyer fails duly to pay for any Goods or Services or to comply with any other requirements under any contracts for Supply, or if the Seller considers in its absolute discretion that the financial circumstances of the Buyer do not justify any payment or credit terms or arrangement previously agreed, the Seller may, at its option, either require payment in cash before dispatch of Goods remaining to be delivered or performance of Services remaining to be performed or may cancel further deliveries or work without prejudice to any other rights or remedies of the Seller, and the Buyer shall remain liable for completed and partially completed deliveries and work to the same extent as required under Condition 3(c) of these Conditions in the event of cancellation.

#### 22. Health & Safety

(a) The Buyer agrees only to use the Goods and obtain Services for uses specified in the Seller's current sales literature or for other uses which the Seller has specifically notified in writing to the Buyer as being in the Seller's opinion free from risk to health and safety.

(b) The Buyer agrees to pay due regard to any information or advice relating to the use of the Goods or product of the Services which the Seller may at any time furnish to it and agrees that before the Goods are used, it will, if requested by the Seller, furnish the Seller with a written undertaking to take any steps which the Seller may specify with a view to ensuring that the Goods will be safe and without risk to health when used.

(c) Any written undertaking given pursuant to paragraph (b) above shall be deemed to have effect as if it formed part of the Contract for Supply.

#### 23. Delivery by Instalments

Each delivery, or part delivery, of any order shall be deemed to be sold under a separate contract. Neither failure on the Seller's part to make any delivery or part delivery in accordance



with the Contract for Supply nor any claim by the Buyer in respect of such delivery or part delivery shall entitle the Buyer to reject the balance of the order.

#### 24. Quantities

On all orders, the Seller shall have the right to ship and bill for a quantity of Goods greater or less than the exact quantity up to a variation of 10% unless otherwise expressly provided for in the Order Acknowledgement Form.

#### 25. Patent Indemnity

When Goods are made or adapted by the Seller in accordance with the Buyer's specifications, the Buyer shall indemnify the Seller against all costs, claims, and expenses incurred by the Seller in respect of the infringement or alleged infringement by such Goods of any patents, registered designs, trademarks, or other rights belonging to third parties.

#### 26. Engineering Charges

The Seller reserves the right to charge the Buyer for engineering charges and expenses (whether internal or to third parties) incurred by the Seller in relation to the design or manufacture of the Goods, such to include (without limitations) design costs and the cost of tools. Such charges and expenses shall be payable by the Buyer in addition to the purchase price for the Goods. The Seller shall remain the owner of tools and designs and all copyrights and other rights relating thereto, whether or not such charges are paid by the Buyer.

#### 27. Buyer's Property

Any material or property of the Buyer or material or property supplied to the Seller by or on behalf of the Buyer is supplied entirely at the Buyer's risk, and the Seller will not be liable or held responsible for any loss or damage to such material or property, whether or not attributable to the acts, defaults, or negligence of the Seller or any of the Seller's employees or agents.

#### 28. Export Contracts

All export contracts for Supply by the Seller are subject to any necessary licenses and Exchange Control authorizations being obtained.

#### 29. Assignment

The Buyer shall not assign or otherwise transfer any Contract for Supply or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the Seller. Any such attempted assignment or transfer by the Buyer without written consent of the Seller is void.

#### 30. Waiver

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer, and no waiver of any breach shall operate as a waiver of any subsequent breach and shall only apply to the individual Contract for Supply in relation to which it is made.

#### 31. Severability

If any term or condition herein or part thereof is held to be invalid for any reason by any court or competent authority, it is to that extent to be deemed removed from the Contract for Supply without prejudice to the validity or other effectiveness of the remaining terms and conditions thereof.

#### 32. Governing Law and Dispute Resolution

The formation, construction, and performance of all contracts for Supply shall be governed in all respects by the laws of the State of Florida. The Buyer and the Seller hereby agree to submit to the non-exclusive jurisdiction of the Courts located in Duval County Florida or the Federal Middle District of Florida.



In the event a dispute shall arise between the parties to Contract for Supply, it is hereby agreed that the dispute shall be referred to the American Arbitration Association for arbitration in accordance with American Arbitration Association Arbitration Rules. The arbitrator's decision shall be final and binding and judgment may be entered thereon. In the event of litigation or arbitration between the parties, the court or arbitrators shall award attorneys' fees and costs to the prevailing party in the litigation or arbitration. The term "prevailing party" means that party, as plaintiff or defendant (claimant or respondent), who substantially prevails against the other party. Notwithstanding the foregoing, if a written offer of compromise made by either party is not accepted by the other party within thirty (30) days after receipt or the commencement of the trial or hearing, whichever is sooner, and the party not accepting such offer fails to obtain a more favorable judgment (award), the non-accepting party shall not be entitled to recover its costs of the litigation or arbitration and reasonable attorney's fees and costs (even if it is the prevailing party) and shall be obligated to pay the costs of suit or arbitration and reasonable attorney's fees and costs incurred by the offering party.

### 33. Headings

The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.

Jackson Electric Supply