



Standard Terms & Conditions

ALL SALES OF PRODUCTS, EQUIPMENT AND SERVICES MADE BY OR THROUGH MKD ELECTRIC, LLC INCLUDING ITS TRADE NAMES OR AFFILIATED ORGANIZATIONS INCLUDING BUT NOT LIMITED TO WESA AUTOMATION, POWERCOR SERVICES, AND XS TELECOM ("MKD") ARE GOVERNED BY THE TERMS AND CONDITIONS SET FORTH ON THIS DOCUMENT AND ARE ACKNOWLEDGED AND ACCEPTED BY THE CUSTOMER.

1. **General Terms.** All sales of products, equipment, and services provided by MKD Electric, LLC including its trade names or affiliated organizations ("MKD") or any other subcontractor of MKD (collectively, "Work") are made pursuant to this Work Order or Contract and the pricing for said Work in Customer's Purchase Order ("Purchase Order") (collectively, "Terms and Conditions"). The Terms and Conditions referenced herein constitute the entire agreement between the parties with respect to the Work and supersedes all prior negotiations, representations or agreements relating thereto, written or oral, except to the extent that they are expressly incorporated herein. MKD will not be bound by any terms and conditions stated in a Purchase Order or other document(s) to the extent that the terms of such Purchase Order or document(s) attempts to vary or amend these Terms and Conditions. If such Purchase Order or other documents contain terms which are inconsistent with the Terms and Conditions, and such documents preceded the Terms and Conditions, such document(s) shall be deemed by a solicitation. Neither party may revoke or amend the Terms and Conditions or any part thereof except by mutual written agreement signed by both parties. The Terms and Conditions shall inure to the benefit of and be binding upon the successors, assigns and legal representatives of the parties hereto. The paragraph headings in the Terms and Conditions are inserted for the convenience of the parties hereto only and shall not, in any manner, define, limit, or describe the intent or scope of, or in any manner affect the Terms and Conditions. Customer shall be responsible for payment for the Work, as well as all applicable sales, use and excise taxes, duties, and assessments relating to the Work. All Work is subject to delay caused by riot, strikes, lockouts, labor difficulties, shortages of labor, fuel, power, materials or supplies, transportation delays, fires, floods, acts of God, war, pandemics, epidemics, endemics, governmental laws, regulations, or orders as well as any other cause beyond MKD's control. In such event, MKD shall have the option of being excused from further performance or to extend the performance dates for the duration of such conditions, and neither party shall have any liability hereunder except that Customer shall be responsible for payment to the extent that MKD has performed before the condition occurred.

2. **Terms of Payment.** Payments shall be made to MKD's office in Elgin, Illinois, and, if applicable, payment is due within the payment terms separately agreed to and documented, otherwise payment is due within 30 days of receipt of invoice. Invoices may be based on an agreed upon schedule of values; progress-based invoicing; or an amount set forth at time of completion of the Work. If payments are not made in accordance with the Terms and Conditions, or if in the reasonable judgment of MKD, the financial condition of Customer at any time does not justify the continuation of the Work, MKD, at its sole discretion, may require full or partial payment in advance, defer further Work until payment is made, or terminate the Work. In such case, Customer shall be

responsible for payment to the extent that MKD has performed hereunder.

3. **Limited Warranty, Warranty Claims, and Limitations for Actions or Suits.** MKD hereby expressly warrants any Work against defects (i) in workmanship for a period of thirty (30) days after substantial completion of the Work by MKD, and (ii) in products or equipment related to the Work manufactured by MKD for a period of thirty (30) days after substantial completion of the Work. All products or equipment related to the Work which are or were manufactured or supplied by others shall be covered exclusively by the warranty of the manufacturer of such product or equipment. In no event shall MKD be liable for any warranty claim arising from: excessive wear and tear; vandalism; usage in a manner inconsistent with the normal or intended usage of such products or equipment; misuse; neglect; improper maintenance or acts or omissions by Customer or others not under the direct supervision and control of MKD. Written notice of such warranty claim must be received by MKD's Elgin, Illinois office within said periods, or within fourteen (14) days of discovery of the alleged defect, whichever term is shorter. Any action or suit against MKD arising out of or relating to the Terms and Conditions, and/or the Work must be commenced within six (6) months after the cause of action has accrued.

4. **LIMITATION OF LIABILITY AND DISCLAIMER.** NOTWITHSTANDING ANY PROVISION IN THE TERMS AND CONDITIONS TO THE CONTRARY, THE WARRANTIES CONTAINED IN SECTION 3 ARE LIMITED HEREIN AND THE EXPRESS WARRANTY OF GOOD TITLE AS TO PRODUCTS AND EQUIPMENT, ARE THE ONLY WARRANTIES EXTENDED OR OFFERED BY MKD IN CONNECTION WITH THE WORK, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MKD'S OBLIGATIONS UPON BREACH OF WARRANTY OR OTHER PROVISION OF THE TERMS AND CONDITIONS OR AS IMPOSED BY LAW SHALL BE LIMITED TO THE REPAIR AND REPLACEMENT OF THE WORK, AND IN NO EVENT SHALL MKD HAVE ANY LIABILITY WHATSOEVER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR TORT DAMAGES OF ANY KIND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MKD'S TOTAL LIABILITY HEREUNDER SHALL NOT EXCEED THE AMOUNT OF THE PRICE PAID BY CUSTOMER FOR THE WORK.

5. **Breach by Customer.** Upon Customer's breach of this or any other contract with MKD, in addition to all other remedies and at its option, MKD may: (i) terminate the Work in its entirety; and/or (ii) assert any other remedy provided by law or equity, including without limitation, a demand for immediate payment for the full amount of the pricing for the products, equipment and services. Upon Customer's breach by its

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failure to pay as provided by the Terms and Conditions, Customer shall also be liable for any and all consequential damages incurred by MKD, including, but not limited to any loss of profit MKD would have enjoyed in the absence of breach, and specifically including reasonable attorneys' fees, costs and expenses incurred in enforcing and protecting, whether by lien, suit or otherwise. Past due amounts shall bear interest at the rate of one and one-half percent (1½%) per month, but in no event higher than the interest rate permitted by law.

6. Security and Other Interests of MKD. MKD retains a purchase money security interest ("PMSI") in all products and equipment and all proceeds therefrom to secure payment of the purchase price of the products and equipment. The PMSI in each item of products and equipment will terminate when such item has been paid for in full. In addition, Customer hereby grants MKD a blanket security interest in all personal property used by Customer in Customer's business to the extent that the products and equipment are commingled with or incorporated into Customer's said personal property. Customer represents that it is the authorized agent to receive notices or warnings under any applicable mechanic's lien statutes or provisions. Customer acknowledges that MKD possesses lien rights to the extent that Work has been performed by not paid for in full, and that it will assist MKD in any way reasonably necessary to perfect or establish such rights.

7. Safe Operation Indemnity. Customer agrees to comply and require its employees to comply with directions set forth in manuals or instruction sheets provided by MKD or other manufacturers of any products or equipment and shall use and require its employees to use reasonable care, all safety devices and guards in the operation and maintenance of the products and equipment. Customer shall not remove or permit anyone to remove any safety guards, devices, or warning signs. Customer shall immediately give MKD written notice, which notice shall in no event be more than forty-eight (48) hours after, of any personal injury or property damage arising out of the use of the products, equipment, and services, and shall cooperate with MKD in investigating any accident or malfunction causing injury or damage.

8. Severability and Enforceability. If any terms or provision of the Terms and Conditions shall be held invalid or unenforceable, then such provision shall be deemed modified to the extent and in the manner necessary to render it valid and enforceable, or if the provision cannot be so modified, it shall be deemed stricken from the Terms and Conditions and the remaining terms, conditions and provisions of the Terms and Conditions shall not be affected hereby. Each term and provision of the Terms and Conditions shall be valid and be enforced to the fullest extent permitted by law.

9. Governing Law and Executive Venue. This Agreement has been negotiated and executed in the State of Illinois. The Terms and Conditions shall be construed and enforced in accordance with the laws of the State of Illinois, without regard to its choice of law provisions. Any and all legal actions brought by either party shall be commenced in a court located within Kane County, Illinois.

10. Non-Waiver. Any failure or delay on MKD's part to exercise any remedy under the Terms and Conditions shall not operate as a waiver. MKD's failure to require performance of any of the terms, covenants, conditions or provisions of the Terms and Conditions shall not constitute a waiver of any of its rights. No condition or covenant may be waived by MKD without its express written consent.

11. No Strict Construction. Both MKD and Customer have been involved in determining the provisions of the Terms and Conditions, and no ambiguity or interpretation of the Terms and Conditions or any of its provisions shall be resolved or determined in favor of or against a party based, in whole or in part, on whether or not such party has prepared any provision hereof.

12. No Third-Party Beneficiaries. The Terms and Conditions shall not confer any rights or remedies upon any person other than MKD and Customer and their respective successors and assigns.

13. Notices. Any notice or other communication by one party to the other under the Terms and Conditions shall be in writing, and may be given by personal delivery, by a nationally recognized overnight courier or by certified United States Mail, postage prepaid, with return receipt requested, properly addressed as follows: If to MKD Electric, LLC: 2590 Alft Lane, Unit A, Elgin, Illinois 60124 Attn: Chief Financial Officer. If to Customer, the address and contact referenced within the Purchase Order (or such other address as may be designated by MKD or Customer by like notice). Notice shall be deemed given upon receipt. The inability to deliver because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, shall be deemed to be part of the receipt of the notice, as of the date of such inability to deliver, or the rejection or refusal to accept.

14. Employment of MKD employees. While MKD is performing the Work and for a period of one (1) year thereafter, Customer shall not, without MKD's prior written consent, solicit, hire, employ or retain in any capacity, directly or indirectly, for itself or for any third party, the services of any of MKD's employees to which Customer has been introduced or has received information about as a result of this or any other business transaction between MKD and Customer. In the event Customer breaches the foregoing, Customer shall immediately be obligated to pay to MKD for each violation an amount equal to the greater of (a) Fifty Thousand and No/100 Dollars (\$50,000.00) or (b) fifty percent (50%) of the employee's or contractor's annual salary immediately prior to the solicitation, hiring, employment or retention. Recognizing the difficulty or impossibility of determining MKD's damages for Customer's violation of obligation, MKD and Customer covenant and agree that this amount constitutes fair and reasonable liquidated damages for any violation of this obligation, and not a penalty. Notwithstanding anything to the contrary herein, Customer may advertise employment opportunities generally to the public and may hire any unsolicited employee, contractor or other personnel of MKD for such position(s) without penalty provided such employee, contractor or other personnel was otherwise unsolicited by Customer.

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