

## KJ Electric Terms and Conditions of Sale

**NOTICE:** Posted for public access on Vendor's website: [www.kjelectric.com](http://www.kjelectric.com): K.J.D.E. CORP. d/b/a K J Electric is referred to herein as the "Vendor" and the customer, entity or person purchasing the Goods and/or Services from the Vendor is referred to as the "Buyer". Vendor Sale of any Goods or Services to Buyer is expressly conditioned on the Buyer's assent & agreement "Terms and Conditions of Sale". These Terms and Conditions of Sale, any price list or schedule, Quotation, Quote, acknowledgement, or Invoice from Vendor relevant to the sale of the Goods &/or Services and all documents incorporated by specific reference therein, constitute the complete and exclusive statement of the terms of the Agreement governing the sale of Goods &/or Services to Buyer. Vendor's acceptance of Buyer's purchase order is expressly conditional upon Buyer's assent to all of Vendor's within terms and conditions of sale, including terms and conditions that are different from or additional to the Buyer's purchase order. Any additional or different terms or conditions proposed by Buyer are expressly objected to and will not be binding upon Vendor unless specifically assented to in writing by Vendor's President. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work or any assent or acceptance of Vendor's performance of work or delivery of goods shall constitute Buyer's agreement to the within Terms and Conditions of Sale. Any Buyer's acceptance of goods/services from Vendor or payment for the Goods or Services to Vendor shall serve to additionally manifest and confirm Buyer's assent to the within Terms and Conditions of Sale.

- 1. AGREEMENT:** The Vendor's Quote together with these Terms and Conditions of Sale, any list or schedule, quotation, buyers Acknowledgement and Vendor's Invoice constitutes the entire Agreement and transaction ("Order") between Vendor and Buyer, except as modified in writing signed by both parties! Vendor recognizes that Buyer may, for operating convenience, utilize Buyer's own Purchase Order or other form for acknowledging acceptance of this Order other than by simple acceptance. Therefore, it is agreed that any provision in the Buyer's form of acceptance used which attempts to modify, conflict or contradict any provisions in the Order, shall be deemed to be waived, and that the provisions of this Order, by such acceptance, constitutes the entire Agreement between Vendor and Buyer. Hereafter, all Orders and transactions between Vendor and Buyer shall be exclusively governed by the within KJ Electric Terms and Conditions of Sale.
- 2. PRICE:** The price for the "Goods" and/or "Services" sold by Vendor to Buyer shall be the U.S.D. price as shown on Vendor's quote, email correspondence and Invoice; and all Goods are delivered Ex –Works (EXW) shipping point, unless specifically stated otherwise in the "Order". All prices are exclusive of taxes, duties, customs, clearance, forwarder's fees, warehousing, export packaging, transportation and insurance, which are to be borne by the Buyer. Vendor shall have the absolute right to revise the price of Goods and the terms of sale and to modify or discontinue the sale of Goods, and such action shall not form the basis of any claim by Buyer against Vendor.
- 3. TAXES:** Unless Buyer is exempt there from; all taxes, duties, and governmental levies which are levied or accessed on Orders or sale transactions or that Vendor is required by law or regulation to collect from Buyer, shall be added to the price stated in the Order and paid by Buyer. Buyer shall reimburse, indemnify and hold Vendor harmless for any Taxes and/or related costs or expenses incurred by vendor due to Buyer's claim of exemption from Tax and or Buyer's failure to pay/remit taxes to Vendor and or the appropriate Taxing Authority.
- 4. TERMS OF PAYMENT:** Buyer will pay Vendor in full in U.S.D. (U.S. Currency) within 30 days from delivery of Goods or performance of service with invoicing permitted based upon equipment deliveries or services performed. For quotes including equipment with on-site installation or services the Buyer specifically agrees to pay in full for Goods (equipment) within 30 days of delivery and thereafter for on-site services when Buyer allows Vendor to perform. Buyer expressly waives any cause or right to apply, deduct or subtract any offset, debit or retainage amount from Quoted or Invoiced price hereunder. Buyer agrees to pay a late payment charge of 1.5% per month on overdue unpaid balance(s) or the maximum rate permitted by law, and if Vendor is compelled to incur any collection costs, including Attorney's fees and/or court costs to collect unpaid Buyer obligations, then same will be paid to Vendor as additional charges.
- 5. INVOICES:** Vendor's invoices shall be provided by: mail, email, fax, Electronic Data Interchange, Hand Delivered, Included in the Shipment, etc. to Buyer on or about the day delivery of Goods (equipment) is made or service is provided.

- 6. DELIVERY:** While Vendor will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Vendor, all shipping dates are approximate and not guaranteed. The quoted price is EX WORKS (EXW) SHIPPING POINT, with Title passing to Buyer at Shipping Point. For convenience; Buyer may request Vendor arrange transportation/payment via: Buyer's selected common carrier/freight collect or best way prepaid and Vendor shall add such cost to invoice price amount. If the shipment/delivery of the goods is postponed or delayed by Buyer for any reason, Buyer agrees to pay Vendor a storage fee of Fifty Dollars (\$50.00) per day as liquidated damage Storage Cost for each day that Buyer leaves Buyer's Goods in the care, custody and safekeeping of Vendor. Risk of loss for damage and responsibility shall pass from Vendor to Buyer upon delivery to and receipt by Common Carrier at Vendor's Shipping Point. Any claims for shortage, damage or loss suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the Common Carrier.
- 7. EXCUSABLE DELAY:** Vendor shall not be deemed to be in default on account of delays in the delivery of goods or performance of services or any act required under this Order due to any cause to the extent it is beyond Vendor's control. Vendor shall provide Buyer notice thereof and specify the period of delay which may reasonably be expected. Vendor shall not be liable for delays in performance or for non-performance due to: acts of God, acts or omissions of Buyer, war, fire, flood, weather, sabotage, strikes or labor disputes, civil disturbances or riots, governmental requests, restrictions, allocations, laws, regulations, orders or actions, unavailability of or delays in transportation, default of default by or late performance of Vendor's suppliers; or unforeseen circumstances or any events or causes beyond Vendor's reasonable control.
- 8. WARRANTY:** Vendor warrants that at the time of delivery the equipment, Goods and Services provided Buyer shall be free from defects in material, workmanship and title. For new Goods (equipment) the Original Equipment Manufacturer's (O.E.M.) warranty shall exclusively apply and provide Buyer's sole remedy. The O.E.M.'s warranty for equipment sold hereunder constitutes the entire warranty and is in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose. "K.J. ELECTRIC WARRANTY FOR REPAIR & SERVICE" , @ [www.kjelectric.com](http://www.kjelectric.com) specifically provides all details of Vendor's Warranty for Repair & Service or any Vendor repair or service transaction(s): For equipment mechanically rebuilt/electrically tested (P.M.) – the Vendor provides the O.E.M.'s warranty for 90 days from delivery. For equipment mechanically and electrically rebuilt (Rewind)–the Vendor provides the O.E.M.'s warranty for one year from date of delivery. The foregoing warranties will not apply to failures occurring within the warranty period resulting from misuse, improper installation, improper maintenance, improper application, improper circuit protection, improper assembly, accident, abuse, neglect, normal wear and tear, negligence, unauthorized modification or alteration, or work on or repair of the equipment by others subsequent to delivery by Vendor; or any other cause not the fault of Vendor. Buyer agrees that in no event shall vendor's liability to buyer and/or its employees, customers, agents, successors or assigns extend to include incidental, consequential or punitive damages. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including for capital, and loss or damage to property or equipment., Vendor will not be liable under any circumstances for any incidental, consequential or special damages, including without limitation any lost profits or labor costs arising from use or installation of the equipment, or from equipment incorporated into or becoming a component of another piece of equipment, or from any breach or cause whatsoever, whether based on warranty (expressed or implied) or otherwise based in contract or on tort or other theory of liability and regardless of any advice or representations that may have been rendered by Vendor regarding the sale, use, application or installation of equipment. The warranty set forth in this section and these terms and conditions of sale are the sole and exclusive warranties given by vendor with respect to the new equipment sold and repairs or service provided to buyer and are in lieu of and exclude all other warranties, express or implied, arising by operation of law or otherwise, including without limitation, merchantability and fitness for a particular purpose whether or not the

purpose or use has been disclosed to vendor in specifications, drawings or otherwise, and whether or not vendor's products are specifically designed and/or manufactured for buyer's use or purpose.

- 9. RETURN GOODS POLICY:** Before buyer can return any Goods to Vendor, Buyer must first obtain a printed Return Goods Authorization (RGA) Form from Vendor. This applies to any and all Goods returned, including but not limited to: warranty repair/replacements, non-warranty repair, Buyer Goods (equipment) order error returns, Vendor Goods supplied error returns, credit returns, Manufacturer recall of Goods and any return-whatsoever. To obtain an RGA, the Buyer must first contact the Vendor where Buyer purchased the Goods, and provide Vendor the product Invoice #, Date of Invoice, and Buyer's request and provide the Terms and Conditions for Buyer's return of purchased Goods. [Excluded from consideration for return are any modified, non-stock, obsolete, custom or special-manufactured Goods; as these Goods are sold to Buyer as a non-cancelable and non-returnable.] Once Buyer receives the RGA, the Buyer must repackage the Goods appropriately, place a copy of the RGA in the package, then transport the Goods to the Vendor's RGA return location within twenty (20) calendar days of RGA issuance, freight prepaid, and insured! Vendor's RGA shall terminate and become VOID 20 Days after issuance, and Vendor will not accept any unauthorized returns, returns without an RGA or freight collection returns. Vendor may elect to issue an RGA for Buyer's return of Goods purchased in error, within one (1) month of Vendor's delivery of the Goods. A 35% minimum restocking charge will apply to each authorized RGA Goods return. However, the final restocking charge shall be dependent upon the costs incurred by Vendor to return the product to the Vendor's supply source. Only goods returned in new, unused, un-energized, undamaged, resalable condition and in its own original carton will be considered for acceptance and possible credit. NOTE: Costs arising from any damage to the Goods or carton will be charged back to the Buyer, and may be cause for Vendor's refusal to accept the Goods RGA's return or Vendor may refuse to issue a Credit. Any and all Credit(s) issued by Vendor to Buyer are exclusively redeemable as a form of payment for Buyer's purchases of Goods or Services from Vendor or as payment on Buyer's open account obligations to Vendor or may be redeemed for a Cash value of 1/100¢.
- 10. WARRANTY CLAIMS and LIMITATION OF REMEDY AND LIABILITY:** Claimed defective product may only be returned upon Buyer's receipt of Vendor issued Return Goods Authorization (R.G.A.) Form, and shall be returned within 20 days F.O.B. destination/freight prepaid, together with a written description of the problem. Valid in warranty new equipment defects shall be repaired under the O.E.M.'s warranty policy. Warranty claimed equipment found upon evaluation to be not defective or out of warranty shall be returned F.O.B. ship point/freight collect and invoiced an evaluation charge. Valid in warranty defects in Repair or Service shall be repaired/remedied under the "K. J. ELECTRIC WARRANTY FOR REPAIR & SERVICE". In no event, regardless of the form of claim or cause of action ( whether based in contract, infringement, negligence, strict liability, other tort or otherwise) shall vendor's liability to buyer or its customers, employees, agents, successors or assigns exceed the price paid by buyer for the specific equipment, goods or services provided by vendor giving rise to the claim or cause of action.
- 11. CANCELLATION:** Buyer may not cancel orders placed with Vendor, except with Vendor's specific written consent and then only if Buyer makes payment to Vendor to indemnify Vendor against loss, including but not limited to expenses incurred and commitments made by Vendor, and a reasonable profit thereon. Modified, nonstock, obsolete, custom or special-manufactured orders are non-cancelable and not allowed for return without a 100% penalty fee. Vendor's determination of such cancellation or termination charges shall be conclusive.
- 12. CHANGES:** No change, alteration or modification of the Order shall become effective or prevail unless authorized in writing and signed by both parties.
- 13. NEGLIGENCE:** Buyer agrees at all times to defend, hold harmless and indemnify Vendor and its employees, officers and successors from and against any and all costs, claims, suits or actions for loss, damage or personal injury ( including death) directly or indirectly caused by reason of Buyer or Buyer's employees, successors, Contractors, agents or customers negligence, error, or omission directly or indirectly incident to installation, operation, application, use or maintenance of equipment/Goods supplied or equipment/Goods repaired or serviced by Vendor.

- 14. GOVERNING LAW:** The validity, performance and all other matters relating to the interpretation, application and effect of this agreement, these Terms and Conditions and the Order(s) and all subsequent transactions between Vendor and Buyer shall be construed, enforced and governed by the law of the State of New York, excluding its or any other jurisdictions rules concerning conflict or laws. Vendor and Buyer stipulate and agree that the proper venue for all actions arising in connection herewith shall be only and exclusively in Onondaga County Supreme Court, NY 5th. Judicial District, Onondaga County, New York, and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions between Vendor and Buyer may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this agreement, and the transactions between Vendor and Buyer.
- 15. ENUREMENT:** This agreement ensures to the benefit of and is binding upon Vendor and Buyer and their respective successors, Parent Company, Subsidiary Company and assigns.
- 16. SERVERABILITY:** If any provision hereof is contrary to any law, the parties agree to observe and perform all the provisions of this agreement as if the unlawful provision were not contained herein.
- 17. NUCLEAR/MEDICAL:** GOODS and SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT, AND RELATED APPLICATIONS. Buyer accepts the Goods & Services with the foregoing restriction and understanding, and Buyer stipulates and agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Vendor and Vendor's suppliers, Officers and employees, successors and assigns from any COSTS, claims, losses, suits, judgments and damages, including incidental and consequential damages arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Vendor's liability is based on negligence or strict liability.
- 18. TITLE:** The Goods and equipment sold to Buyer; unless otherwise agreed; shall remain the property of Vendor until all amounts that Buyer owes to the Vendor for the relevant Goods have been paid in full. Until title to the Goods passes to Buyer, upon Buyer's full payment to Vendor, the Buyer shall hold the Goods as the Vendor's bailee and shall store the Goods so that they can at all times be identified as the Vendor's property. The Vendor shall be entitled at any time before title passes to the Buyer to enter the Buyer's premises to repossess and remove any Goods for which the Buyer has not paid and in so doing shall be entitled to dismantle any Goods from equipment or products to which the Goods have been attached without being liable for any damage caused thereby whereupon the Buyer's right to use or deal in the Goods shall terminate. Buyer stipulates, represents and warrants that until Buyer HAS PAID Vendor in full for the Goods, that any proceeds from the sale of Goods by the Buyer shall be held for the benefit of and in trust for the Vendor. The Buyer hereby stipulates and agrees that the Vendor shall be entitled to maintain an action for the price of the Goods notwithstanding that title to the Goods has not passed to the Buyer.
- 19. GENERAL PROVISIONS:** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment or waiver of these Terms and Conditions shall be binding upon the Vendor unless made in writing and signed by an Officer of Vendor and by the Buyer. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by an Officer of the Vendor, and no modification or additional terms shall be applicable to the agreement by Vendor's receipt, acknowledgement, or acceptance of Buyer's purchase orders, shipping instructions, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by an Officer of the Vendor and by the Buyer. All typographical or

clerical errors made by Vendor in any quotation, Invoice, email correspondence, Quote, acknowledgement or publication are subject to correction.

- 20. BUYER'S COMPLIANCE WITH U.S. GOVERNMENT EXPORT LAWS and REGULATIONS:** As a condition of sale, Buyer represents and warrants to Vendor that under no circumstances will items and equipment purchased from Vendor be exported or re-exported, in whole or in part, against or in violation of U.S. EXPORT LAWS and REGULATIONS; including but not limited to those imposed, governed, regulated or administrated by: DDTC, OFAC, NRC, DTSA, CBP, ICE, CCL, BIS, EAR, EXBS, ITAR, MTCR, AECA, BXA, BIS, CBP, OEE, OAC, OEA, U.S. DENIED /RESTRICTED LIST, U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT OF COMMERCE, U.S. DEPARTMENT OF ENERGY or U.S. DEPARTMENT OF HOMELAND SECURITY. As a condition of purchasing from Vendor, the Buyer hereby affirms and warrants that Buyer has and will comply fully with all applicable U.S. Government Export Control Laws and Regulations. Buyer represents, warrants, stipulates and agrees to indemnify and hold Vendor and Vendor's Officers, Employees, Supplier's of Goods and Agents harmless from and against any and all costs, claims, assessments, liabilities, penalties, taxes, sanctions and fines related to Buyer's actual, claimed or alleged non-compliance with applicable U.S Government Export Laws and Regulations.
- 21. LIMITATIONS OF LIABILITY:** The total liability of Vendor for all claims of any kind or nature arising from or related to the formation, performance or breach of the Order or this Contract, or any Goods or Services provided by Vendor to Buyer, shall not exceed the: (i) Order or Contract Price paid by Buyer to Vendor, or (ii) if Buyer places multiple Order(s) with Vendor, the price paid for each particular Order for all claims arising from or related to that Order and ten thousand US Dollars (US 10,000.00); for all claims not part of any particular Order. Vendor shall not be liable for loss of Profit or revenues, loss of use equipment or Goods or systems, interruption of business, cost of replacement equipment, cost of capital, downtime costs, increased operating costs any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's Customers for any of the foregoing types of damages. All Vendor liability shall end upon the expiration of the applicable warranty period. Vendor shall not be liable for advice or assistance that is not required for the work scope under the Order. If Buyer is supplying Vendor's Goods or Services to a third party, or using Goods or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Vendor from and against any and all claims by, and liability to any third party in excess of the limitations set forth in the Order and/or the within KJ Electric Terms and Conditions of Sale, or (ii) require that the third party agree, for the benefit of and enforceable by Vendor, to be bound by all the KJ Electric Terms and Conditions of Sale, including article 22. For the purposes of article 22. "Vendor" means the Vendor, the Vendor's, its affiliates, subcontractors and suppliers of any tier, and their respective Officers and Employees. The limitations in this article shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Vendor's liability.
- 22. CONFIDENTIALITY:** Vendor and Buyer [as to information disclosed, the disclosing party] may each provide the other party [as to information received, the receiving party] with Confidential Information in connection with Order(s), business interaction and business transactions. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by disclosing party at the time of written disclosure and (b) Prices quoted, emailed or Invoiced by Vendor to Buyer for Goods or Services shall be considered, at all times, to be Vendor's Confidential and Proprietary Information. Receiving Party agrees to use the Confidential Information only in connection with Orders and use of Vendor's Goods and Services and to prevent the disclosure of Confidential Information to third parties. The Receiving Party may only disclose Confidential Information to a third party with the prior specific written permission of the Disclosing Party. As to any individual item of Confidential Information, the heretofore restrictions shall expire five (5) years after the date of disclosure.