



Arkansas Electric Cooperatives, Inc.

Reliable • Affordable • Responsible

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS, MATERIALS AND/OR EQUIPMENT

These *Standard Terms and Conditions for the Sale of Goods, Material, and/or Equipment* (“Terms”) apply to all sales of goods, material and/or equipment (collectively “Goods”) made, or quotes issued by Arkansas Electric Cooperatives, Inc. (hereinafter referred to as “us,” “we,” “our,” or “AECI”). By accepting our Quote, issuing a purchase order, purchasing, or accepting Goods from AECI, the counterparty (hereinafter referred to as “you”, “your” or “Purchaser”) hereby accepts and agrees to be bound by these Terms with or without signature.

Article I Formation

- 1. Contract.** Our Quote, these Terms, and any purchase order issued by you that we specifically accept in writing (collectively the “Contract”) shall constitute the entire agreement between AECI and Purchaser. Any terms or conditions proposed in your purchase order that add to, vary from or conflict with our Quote or these Terms are deemed material and are hereby rejected.
- 2. Joint Negotiations.** The Parties have participated jointly in the negotiation and drafting of the Contract and, if an ambiguity or question of intent or interpretation arises, it is the intent of the Parties that the Contract be construed as jointly drafted and that no presumption or burden of proof arise favoring or disfavoring any Party by virtue of the authorship of any provision of the Contract
- 3. Conflict.** In the event of a conflict between your purchase order and these Terms, these Terms shall control. In the event of a conflict between our Quote and these Terms, our Quote shall control.

Article II Provision of Goods

We shall provide to you the quantities and types of Goods as set forth in our Quote. You may request a change to such quantities and types of Goods, provided that such request shall only be affected upon our written acceptance of such request. If any change causes an increase or decrease in the cost of or the time required for performance hereunder, an equitable adjustment shall be made in the price and/or delivery schedule, including but not limited to a minimum restocking fee of 15%.

Article III Pricing and Payment

- 1. Pricing.** Subject to the following, you shall pay the price(s) set forth in our Quote:
 - a. Expiration.** All prices provided in our Quote are subject to expiration (i) within thirty (30) calendar days from the date of issuance of our Quote, or (ii) automatically for Goods marked “In Stock” if we sell such goods prior to receiving your purchase order. We will take best efforts to inform you in writing of any expiration of pricing, but our failure to do so shall not extend pricing that has expired under this Article III, Section 1(a).
 - b. Supply Arrangements.** For items that are purchased by you under a supply arrangement (“Supply Arrangement”), whereby AECI agrees to sell and deliver Goods to you periodically, AECI reserves the right, upon prior written notice to you, to increase the prices of such Goods in amounts needed to offset any price increases for such Goods that AECI receives from its suppliers during the term of the Supply Arrangement. If you do not wish to accept such price increases, you may terminate the Supply Arrangement regarding the affected Goods by providing written notice to AECI within 30 days of your receipt of a price increase notice from AECI. All price increases will apply to Goods delivered after AECI gives notice of such price increases, and will continue to apply until AECI receives notice of termination from Purchaser.
 - c. Pricing Confidentiality.** The prices of all Goods are confidential, and you shall not disclose such prices to any other party. AECI and Purchaser acknowledge and agree that money damages for any breach of Purchaser’s obligation not to disclose the price of Goods or Services is both incalculable and insufficient and that any such breach would irreparably harm AECI. Therefore, in the event of an actual or prospective breach of the obligation in this Section, AECI shall be entitled to preliminary and permanent injunctions to prevent or remedy such breach, and specific enforcement of this Agreement, in addition to any other remedies to which AECI may be entitled at law or in equity.

2. Payment. Payment is due net 30 days after delivery or the date of our invoice, whichever first occurs, in the currency invoiced. If Purchaser fails to fulfill the terms of payment, AECI may defer further shipments to Purchaser or, at its option, cancel the unshipped portions of Purchaser's orders. Any invoiced amounts not paid within thirty (30) days of the date of such invoice will be considered past due. Purchaser agrees to pay interest on all past due invoices at the lesser of 18% per annum, compounded monthly, or the highest contractual rate allowable under the law. Purchaser shall reimburse AECI for all costs, including reasonable attorneys' fees, associated with such collection of any past due amounts.

3. Taxes. Our Quotes do not include applicable sales, use, or other taxes. We will invoice and collect such applicable taxes from you unless satisfactory proof is provided to us that you have either paid such taxes or are entitled to an exemption from such taxes. In all cases, you agree to indemnify and hold us harmless for any liability resulting from all taxes and/or any exemptions that you claim.

4. Adequate Assurance of Payment. Prior to fulfilling your order, we may demand in writing adequate assurances of payment of Goods, including but not limited to information necessary for us to perform a credit check, or a requirement that you provide a parent guaranty, letter of credit or other assurance of payment. Failure to provide such adequate assurances of payment may result in all sales to your being on a cash-on-delivery basis only.

5. Setoff. Purchaser shall not set off invoiced amounts or any portion thereof against sums that are due or may become due from AECI, its parents, affiliates, members or subsidiaries.

Article IV Delivery and Inspection

1. Delivery. Deliveries are FOB destination, and the delivery schedule, if applicable, shall be in accordance with the schedule set forth, or referenced, in our Quote. If no delivery schedule is set forth or referenced, a reasonable delivery schedule shall apply. Delivery times are approximate and are dependent upon prompt receipt by us of all information necessary to fulfill your order. Products will be packed in Seller's standard shipping packages, and delivery times represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transactions covered by these Terms, except with respect to Purchaser's obligation to make all related payments.

2. Inspection of Goods. All Goods delivered to Purchaser shall be deemed accepted and consistent with our Quote and itemized invoice unless Purchaser provides a written statement to AECI to the contrary within five (5) business days of Purchaser's receipt of the Goods.

Article V Title, Risk of Loss and Repossession

Until full payment of all obligations of the Purchaser for an order, AECI reserves the title (but not the risk of loss) to all Goods furnished under that order. If Goods are returned or replaced, Purchaser shall retain all risk of loss of such Goods until they are received by us and accepted for return or replacement. If the Purchaser (i) defaults in payment or performance, (ii) becomes subject to insolvency, receivership or bankruptcy proceedings, (iii) makes an assignment for the benefit of creditors, or (iv) without the consent of AECI, voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the Products, AECI may treat all amounts then or thereafter owed by Purchaser to be immediately due and payable and AECI at its election may repossess the Goods for which Purchaser has not paid in full. In the event of repossession of Products under this section Purchaser agrees that AECI may enter the premises where the Products may be located and remove them without notice and without being liable to Purchaser for such repossession.

Article VI Warranty

Goods purchased by Purchaser from AECI shall carry only those warranties issued and authorized by the manufacturers of such goods, and AECI shall have no responsibility or liability with respect to such manufacturer warranties. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, AECI DISCLAIMS AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY GOODS SOLD TO PURCHASER. IN PARTICULAR, AECI DISCLAIMS AND MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE GOODS, THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON- INFRINGEMENT OF THIRD-PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.

Article VII Limitation of Liability

Under no circumstances will we or our members, affiliates, subsidiaries, customers, directors, officers, employees and agents be liable for:

1. Consequential, incidental, indirect, special, punitive or similar damages, whether foreseeable or not, including but not limited to directly or on account of claims by your subcontractors, loss of anticipated profit, unabsorbed overhead, interest on claims,

product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of any order.

2. Attorney fees;
3. Expert fees;
4. Court costs;
5. Mediation costs; or
6. Other costs not specifically provided for recovery under the Terms

Any claim for relief by you, against us, must be commenced within one (1) year after the cause of action accrues. AECI's total and aggregate liability arising out of or otherwise in connection with these Terms, including breach of contract, tort, indemnity or otherwise, shall not exceed the purchase price received by AECI for the Good giving rise to Purchaser's claim in the calendar year in which the applicable claim is made.

Article VIII Indemnification

To the fullest extent permitted by law, you will indemnify, defend and hold harmless us and each of our members, affiliates, subsidiaries, customers, directors, officers, employees and agents (collectively, the "Indemnified Persons") against and from any and all claims, lawsuits, judgments, losses, Recalls (as defined herein), penalties or actions, costs, liabilities, damages and expenses (including attorneys' fees) incurred or to be incurred (collectively, "Claim(s)"):

- a. For your breach of the Terms;
- b. To the extent it is alleged that your use of the Goods caused or will cause:
 - i. The death of or injury to any person or damage to any property;
 - ii. Any Claim made in connection with any promotional or advertising matter, guarantees, warranties, or labels;
 - iii. Infringement of any patent, design, trade name, trademark, copyright, trade secret or other intellectual property (collectively, "IP") right or entitlement of any third party; or
- c. Otherwise arising or alleged to have arisen out of your reckless or negligent use of the Goods.

Article IX Returns

With the exception of Goods marked as non-cancellable or non-returnable (NC/NR) on our Quote, unused goods in new or resalable condition, as determined in AECI's sole judgment, may be returned within 45 days of purchase for credit to the Purchaser's account. Returned Goods may be subject to a restocking fee of not less than 15% of the original price of the Good(s) sold. Unless otherwise instructed by AECI, Goods shall be returned by Purchaser to AECI's warehouse facility in Little Rock, Arkansas, at Purchaser's sole expense.

Article X Termination

For Supply Arrangements under Article III, Section 1.b, either party may terminate these Terms at any time, upon presentation of a 60 days' written notice given to the other party. Upon termination you will pay us (i) for all Goods delivered, (ii) for any works in progress, (iii) for any costs we have incurred in preparing to fulfill the remaining portions of your order, and (iv) for any third-party penalties or charges we receive as a result of canceling your order.

Article XI Miscellaneous

1. Force Majeure. AECI is not liable to Purchaser for any delay or failure in the sale or delivery Goods due to causes beyond AECI's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, insurrection, invasion, strike,

delay by carrier, shortage of goods, national or state declared emergency, pandemic, acts or omissions of third parties, or acts or omissions of civil or military authority. Purchaser's obligations for payment shall not be suspended by Force Majeure.

2. Recalls. In the event you or we decide, or a United States or foreign government agency ("Agency") issues an order requiring us, to recall, replace, repair or make refunds with respect to any of our Goods included in the sale or that incorporate the Supplies (a "Recall"), we will fully cooperate and assist you in any such Recall.

3. Dispute Resolution. An attempt to resolve any dispute, claim or controversy arising out of the Terms must first be made, in good faith, between an executive of your company, and an executive of our company, by phone or in person. If such attempt fails, then the dispute, claim or controversy shall be submitted to mediation. If mediation fails, then final resolution of any dispute, claim or controversy arising out of the Terms shall be made before a court of law in the State of Arkansas, Pulaski County.

4. Governing Law/Jurisdiction. The Terms will be construed and interpreted according to the laws of the State of Arkansas, without regard to the laws regarding conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

5. Remedies. The rights and remedies reserved by us in the Terms will be cumulative and in addition to any other rights or remedies provided by law or equity.

6. Waiver. Our waiver of any right or remedy will not affect any right or remedy subsequently arising under the same or similar clauses. A waiver of nonperformance under the Terms must be in writing and will apply only to the specific instance addressed in the waiver and to no other past or future nonperformance.

7. Assignment. Neither party may assign any benefit or obligation under the Terms without the written consent of the other party.

8. Advertising. You shall not, without first obtaining our specific written consent, in any manner advertise, publish or disclose to any third party that you have contracted with us to purchase Goods except as specified by us in writing or required for completion of an order.

9. Continuing Obligations/Severability. The continuing obligations of each party under the Terms will survive the expiration, non-renewal or termination of the Terms. Any term or condition that is declared unlawful or unenforceable by a court of competent jurisdiction will not apply. The unenforceability of any such term or condition will not affect the enforceability of any other term or condition.