

# State Electric Supply Co.

## Terms and Conditions of Sale

1. *Acceptance/Governing Terms.* These Terms and Conditions of Sale shall apply to all sales of products by State Electric Supply Company. Unless otherwise specifically agreed in writing signed by an officer of State Electric Supply Company, any different or additional terms and conditions proposed by any customer in a purchase order or otherwise are REJECTED by State Electric Supply Company.
2. *Price.* State Electric Supply Company and Purchaser agree that State Electric Supply Company shall sell, and Purchaser shall buy, the items for the prices set forth herein. All prices are F.O.B. shipping point unless otherwise specified. The prices quoted do not include any applicable federal, state or local taxes, which shall be paid by the Purchaser. Prices quoted herein are subject to change without notice, unless otherwise noted.
3. *Acceptance of Order/Termination.* Acceptance of any order is subject to credit approval by State Electric Supply Company. If Purchaser fails to comply with this Agreement, in whole or in part, or if Purchaser's credit becomes unacceptable to State Electric Supply Company, Purchaser agrees that State Electric Supply Company may terminate this Agreement upon notice and without liability to Purchaser.
4. *Payment.* Unless otherwise agreed, Purchaser agrees that it will pay the entire purchase price within 30 days from the date of invoice (NET 30). State Electric Supply Company accepts payments made by wire transfer, credit card, and/or check. IF PAYING BY CHECK, CHECKS BEARING A "PAYMENT IN FULL" LEGEND MUST BE SENT TO STATE ELECTRIC SUPPLY COMPANY, 2010 2<sup>ND</sup> AVENUE, HUNTINGTON, WV 25703, ATTN: ACCOUNTS RECEIVABLE MANAGER.
5. *Default.* In the event the Purchaser defaults by failing to make payment in full within 30 days, or within the time period provided by any other agreement as referenced in Section 4 above, State Electric Supply Company may charge and collect a late charge of 1-1/2% of the past due balance per month (18% per annum), or the maximum allowed by state law, whichever is less. No agreement for any extension of time or postponement of any payment shall be valid unless in writing signed by an officer of State Electric Supply Company. State Electric Supply Company shall also be entitled to all costs of collection in the event of default by the Purchaser, including court costs and attorneys' fees. State Electric Supply Company reserves the right to refuse to ship any additional product or accept any new orders from Purchaser until all past due balances, and any applicable late charges, are paid in full.

6. *Security Interest.* Purchaser grants to State Electric Supply Company a security interest in the goods sold until such time as Purchaser pays to State Electric Supply Company the full purchase price for the goods and any applicable late charge.
7. *Shipping.* All sales are F.O.B. shipping point. Title shall pass from State Electric Supply Company to the Purchaser upon State Electric Supply Company's tender of the product to the carrier. Shipping dates are approximate and depend upon State Electric Supply Company's prompt receipt of all necessary information from Purchaser.
8. *Damages or Shortages in Transit.* For all deliveries made by a carrier other than State Electric Supply Company, Purchaser agrees that it must make any claim for shortages, losses, and apparent or concealed damages sustained in transit directly with the carrier. State Electric Supply Company is not liable for any shortages, losses or damages sustained in transit by carrier. In the event delivery is made by State Electric Supply Company, Purchaser agrees that it must make any claim to State Electric Supply Company for shortages, losses, and apparent or concealed damages sustained in transit within (15) days of receipt of the merchandise.
9. *Right of Inspection.* Purchaser shall have the right to inspect the goods at the time and place of delivery before accepting them. If Purchaser takes possession of the goods without inspection, this shall constitute a waiver of the right to inspect. If, upon inspection, Purchaser finds any problem with the goods, Purchaser must notify State Electric Supply Company within fifteen (15) days from the date of invoice for resolution and disposition. Failure to do so shall be deemed to be acceptance of the goods.
10. *Time of Delivery/Force Majeure.* Factory shipment or delivery dates are the best estimates of State Electric Supply Company's suppliers. State Electric Supply Company shall not be responsible or liable for any delay, directly or indirectly resulting from or contributed to by (i) any foreign or domestic embargo, seizure, act of God, insurrection, war and/or continuance of war; or (ii) the adoption or enactment of any law, ordinance, regulation, ruling or order, directly or indirectly interfering with or rendering more burdensome production or delivery hereunder; or (iii) the unavailability of the usual means of transportation; or (iv) fire, flood, explosion, strike or other accident or contingency beyond State Electric Supply Company's control; or (v) any of the foregoing conditions or events affecting State Electric Supply Company's suppliers or sources of transportation. In the event that one or more deliveries is suspended or delayed by reason of any one or more of the above occurrences or events, any and all deliveries suspended or delayed shall be made after such occurrences or events have ceased to exist. Nothing contained herein shall be construed as decreasing the quantity of the merchandise purchased by Purchaser, but shall only serve to delay delivery and payment in any of the above-mentioned occurrences or events.

11. *Cancellation of Order.* An order may be cancelled by the Purchaser only if the cancellation is agreed to by State Electric Supply Company. In the event of such an agreed-upon cancellation, Purchaser must pay all reasonable charges based upon expenses already incurred by and commitments made by State Electric Supply Company in connection with that order.
12. *Returns.* State Electric Supply Company's approval will be required before returns will be accepted. A packing slip or invoice number must accompany all returned merchandise. Returned merchandise is subject to a restocking charge. Merchandise that has been specially ordered will not be considered by State Electric Supply Company for return.
13. *Disclaimer of Warranties.* State Electric Supply Company will assign to Purchaser all transferable warranties made to State Electric Supply Company by the manufacturers or suppliers of goods. STATE ELECTRIC SUPPLY COMPANY MAKES AND GIVES NO WARRANTIES, EXPRESS OR IMPLIED, AND IT IS EXPRESSLY UNDERSTOOD THAT IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED WITH RESPECT TO ANY AND ALL GOODS, MATERIALS OR SERVICES FURNISHED BY STATE ELECTRIC SUPPLY COMPANY, EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW. This general warranty policy supersedes any other warranties contained in plans or specifications on which a quotation or proposal from State Electric Supply Company may be based and cannot be expanded without the prior and specific written consent of State Electric Supply Company.
14. *Remedy.* State Electric Supply Company shall not under any circumstances be liable for special, indirect, incidental, consequential or punitive damages, such as, but not limited to, damages or loss of property or equipment, loss of profits or revenue, cost of capital, cost of purchased or replacement goods or claims of Purchaser or its customers for service interruptions. Purchaser's sole remedy shall be pursuant to any warranty extended by the Manufacturer. The remedy of the Purchaser set forth herein is exclusive, and the liability of State Electric Supply Company with respect to any contract, or anything done in connection therewith, such as the performance or breach thereof, or from the sale, delivery, resale, installation or use of any goods sold, whether arising out of any theory of contract, negligence, strict liability, or under any warranty or otherwise, for any damages whatsoever, shall not exceed the price of the goods upon which such liability is based. If this is a "hold for release" order and/or "for drawings only" then Buyer shall not incur any liability to Seller for the products unless and/or until Buyer instructs Seller in writing to proceed with product production and/or further performance.
15. *Authority of State Electric Supply Company's Agents.* No agent, employee or representative of State Electric Supply Company has any authority to bind State Electric Supply Company to any affirmation, representation, promise or warranty

concerning the goods sold under this agreement. No affirmation, representation or warranty made by an agent, employee or representative is specifically included within the terms and conditions of this agreement, and no such affirmation, representation or warranty has formed a part of the basis of this bargain and shall not be enforceable by Purchaser.

16. *Job Specifications.* Purchaser is solely responsible for ensuring that the goods ordered, and the quantities of goods ordered, comply with job specifications and/or bid requirements. State Electric Supply Company is not responsible for meeting job specifications or quantities. State Electric Supply Company's responsibility is limited to sales of materials as ordered by the Purchaser and described herein.
17. *Retainage.* Purchaser agrees and understands that State Electric Supply Company is acting solely as a material man providing materials and/or goods and is not acting as a contractor or in any similar capacity. Purchaser therefore agrees not to withhold any amount from the payments due in accordance with Paragraph 4 above as retainage or otherwise.
18. *Assignment.* State Electric Supply Company and Purchaser agree that State Electric Supply Company may assign all its right, title and interest in the account created by this Agreement including, without limitation, its collection remedies; and, Purchaser shall honor all the terms of this Agreement as if assignee were State Electric Supply Company.
19. *Choice of Law.* This agreement is governed by the law of the State of Virginia, which law shall apply with respect to resolution of any and all disputes arising from or related to the terms of this agreement or the subject matter to which it pertains.
20. *Dispute Resolution Process.* State Electric Supply Company and Purchaser agree that any dispute between the parties arising out of or relating to this agreement, including but not limited to claims based on theories of breach of contract or tort, shall be resolved by the sole and exclusive remedy of binding arbitration. The arbitration shall be conducted by three neutral arbitrators in Charleston, West Virginia under the auspices of and in accordance with the rules of the American Arbitration Association. The decision of the arbitrators shall be final and binding on the parties thereto, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.
21. *Interpretation - Parol Evidence.* This writing is intended by the parties to be the final expression, and the complete and exclusive statement, of the terms and conditions of their agreement. Whenever a term defined by the UCC is used in this agreement, the definition contained in the UCC shall control.

22. *No Oral Modification.* This agreement can be modified or rescinded only by a writing signed by duly authorized representatives of State Electric Supply Company and Purchaser.