

## Seller's Terms & Conditions of Sale ("Terms & Conditions")

**1. ACCEPTANCE:** Acceptance of any order is subject to credit approval by Seller, acceptance of the order by Seller and, when applicable, Seller's vendor (i.e. manufacturers, vendors, or other third parties that provide goods to Seller for resale to Buyer ("Vendors")). If Seller, in its sole discretion, determines that Buyer's ability to pay or credit becomes unsatisfactory or it has reasonable grounds for insecurity, Seller reserves the right, upon notice to Buyer, to demand adequate assurance of due performance from Buyer and/or terminate this agreement with no liability to Seller. 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 (COLLECTIVELY "GOODS") BY BUYER FROM SELLER. SELLER OBJECTS TO AND REJECTS ANY CHANGES OR ADDITIONAL OR DIFFERENT TERMS (CONTAINED IN A PURCHASE ORDER ACCEPTED BY SELLER, OR OTHERWISE) AND NO SUCH TERMS 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.

**2. PRICES AND TAXES:** Buyer agrees to pay the prices quoted by Seller and is responsible for additional applicable shipping and handling charges, taxes and duties. Seller shall collect applicable taxes unless Buyer at the time of order submits a valid and complete tax exemption, reseller's permit, or resale certificate. Buyer agrees to indemnify the Seller for any tax, penalty and interest incurred as a result of Seller's good faith acceptance of a tax exemption, reseller's permit, or resale certificate that is later found to be incomplete or invalid. Prices on special-order Goods may be subject to change before shipment; Seller shall notify Buyer of any change, and Buyer may at its discretion cancel the special-order Goods if the revised prices are unacceptable, without charge other than applicable Vendor related charges. Any increase in Seller's costs associated with the imposition of new tariffs after the date of quotation may be passed through to Buyer.

**3. PAYMENT AND SET OFF:** Payment terms are 30 days net from the invoice date or upon such other terms approved by Seller in writing. Retainage shall not apply, and Buyer shall not hold back any retainage from Seller, even if retainage is part of any contract between Buyer and any other party. Payment is not contingent on Buyer's ability to collect or obtain funds from any other party. Credit card sales are billed at the time of purchase. Buyer expressly represents it is solvent at the time it places any order with Seller. Seller, in its sole discretion, may determine that Buyer's financial condition requires full or partial payment prior to manufacture or shipment. Seller may obtain and use your credit history for credit evaluation purposes. Seller may apply payments to any outstanding invoices unless Buyer provides specific payment direction. Seller may at all times set off any amount that Buyer, or any affiliate of Buyer, owes to Seller against any amount that Seller, or any Seller affiliate, owes to Buyer.

**4. REMEDIES FOR NON-PAYMENT:** If Buyer fails to make any payment when due, Seller reserves the right to suspend performance. Buyer agrees to pay a charge on all amounts past due at the rate of 1 1/2% per month (18% per year) or the maximum lawful rate, whichever is less. In the event of non-payment, Buyer agrees to pay Seller's reasonable attorney fees and court costs, if any, incurred by Seller to collect payment, and all applicable interest charges. Buyer acknowledges that transactions to which these terms relate are commercial transactions. To the extent not contrary to applicable law, Buyer (i) waives any available homestead exemption, (ii) irrevocably authorizes Seller to appoint a representative to appear in a court of competent jurisdiction to confess a judgment without process in Buyer's favor for such amount that remain unpaid, and (iii) consent to immediate execution upon any such judgment. Buyer voluntarily and knowingly waives its right to notice, demand, presentment, protest and any hearing to which it may be entitled under any state or federal law relating to any right or remedy (including prejudgment remedies) that Seller may elect to use or of which it may avail itself.

**IMPORTANT NOTICE:** A CONFESSION OF JUDGMENT PROVISION AND OTHER WAIVERS CONTAINED HEREIN CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE. IF YOU DO NOT PAY ON TIME, THESE WAIVERS ALLOW SELLER TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE OR YOUR PRIOR KNOWLEDGE. YOU ARE GIVING UP YOUR RIGHT TO NOTICE AND TRIAL. SELLER MAY OBTAIN JUDICIAL REMEDIES TO COLLECT AMOUNTS DUE REGARDLESS OF ANY CLAIMS YOU MAY HAVE (INCLUDING WITHOUT LIMITATION, CLAIMS FOR RETURNED OR FAULTY GOODS, FAILURE BY SELLER TO COMPLY WITH THIS AGREEMENT, OR ANY OTHER CAUSE).

**5. TITLE AND RISK OF LOSS OR DAMAGE:** As to Goods delivered by Seller's truck, title passes upon delivery at the place Buyer receives possession; and, thereafter, all risk of loss or damage shall be on Buyer. All other sales are F.O.B., point of shipment, and Buyer takes title and assumes responsibility for risk of loss or damage at the point of shipment for such sales. Claims for Goods damaged in transit are Buyer's sole responsibility when not delivered by Seller's truck.

**6. QUOTATIONS:** All quotations expire thirty (30) days from the date of the quotation unless otherwise noted on the quotation. This time limit applies even if Buyer uses the quotation to submit a job or project bid to any other party.

**7. ASSIGNMENT:** An order shall not be assigned by Buyer without the express written consent of Seller. Consent will not be required, however, for internal transfers and assignments as between either party and its affiliates, and nothing herein shall limit either party's right to factor or sell receivables.

**8. RETURN OF PRODUCTS AND ORDER CANCELLATION:** Seller shall accept returns of normal stock Goods for a period of ninety (90) days following shipment for exchange or refund of the purchase price; provided, that Goods must be in their original cartons, unopened and unused. Stock returns that are used, opened, and/or not in their original packaging may be subject to a minimum 15% restocking fee or the return may be refused based on the condition of the returned material. Non-stock returns will generally be disallowed except for situations where a returns material authorization or appropriate credit has been provided by the Vendor. Applicable sales tax will be refunded where allowed by applicable law or statute.

**9. TERMINATION:** Either party may terminate the whole or any part of the other party's performance under any order if (a) there is a material breach of these Terms & Conditions of Sale and the breaching party does not cure such failure within ten (10) days of written notice by the non-breaching party; provided, that the non-breaching party may require the breaching party to continue its performance to the extent not terminated; (b) the other party ceases to conduct operations in the normal course of business, (c) any proceeding under any bankruptcy or insolvency laws is brought by or against the other party, (d) a receiver is appointed or applied for by the other party, or (e) an assignment for the benefit of creditors is made by the other party.

**10. INTERPRETATION RESPONSIBILITY; PRODUCT USE AND SAFETY:** Seller does not guarantee that the Goods it sells conform to any plans and specifications or intended use. When plans and specifications are involved, Buyer is solely responsible for verifying Seller's interpretations of such plans and specifications, and it is Buyer's sole responsibility to assure that Seller's Goods will be accepted on any specific job. When Seller offers substitute Goods on any proposal, Buyer is solely responsible for confirming their acceptability. BEFORE BUYER USES OR INSTALLS ELECTRICAL PRODUCTS, IT IS BUYER'S RESPONSIBILITY TO CONSULT THE NATIONAL ELECTRIC CODE AND ANY PERTINENT LOCAL, STATE OR NATIONAL CODES, RULES OR REGULATIONS FOR APPROVED INSTALLATION PROCEDURES AND PRECAUTIONS. NOTHING SELLER SELLS IS FOR USE IN CONNECTION WITH "SAFETY-RELATED" APPLICATIONS OF A NUCLEAR FACILITY OR ANY HAZARDOUS ACTIVITY WHERE FAILURE OF A SINGLE COMPONENT COULD CAUSE SUBSTANTIAL HARM TO PERSONS OR PROPERTY.

**11. DELIVERY:** Seller is a distributor and not a manufacturer and factory shipping dates given in advance of actual shipment are approximate and not guaranteed.

**12. EXCUSABLE DELAYS:** Seller shall have no liability if its performance is delayed or prevented by causes beyond its reasonable control, including, without limitation, acts of nature, labor disputes, government priorities, transportation delays, insolvency or other inability to perform by Seller's Vendor, or any other commercial impracticability. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of delay. Should shipments be held or stored beyond the delivery date for convenience of Buyer, Seller may, at its option, assess reasonable charges for any expense incident to such delay.

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**13. CLAIMS:** Claims for any nonconforming Goods must be made by Buyer, in writing, within ten (10) days of Buyer's receipt of such Goods and must state with particularity all material facts concerning the claim then known to Buyer. Failure by Buyer to give notice within such ten (10) day period shall constitute an unqualified acceptance of such Goods by Buyer, and a waiver of any right to reject or revoke acceptance of such Goods.

### 14. WARRANTIES:

- (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 with a new product (if applicable) or termination of any security interests or liens. 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 also assign 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, IMPLIED OR BY STATUTE. 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.

**15. LIMITATIONS OF LIABILITY:** UNLESS APPLICABLE LAW OTHERWISE REQUIRES, SELLER'S AND ANY VENDOR'S TOTAL LIABILITY TO BUYER, BUYER'S CUSTOMERS OR TO ANY OTHER PERSON, RELATING TO ANY PURCHASES GOVERNED BY THESE TERMS & CONDITIONS, FROM THE USE OF THE GOODS FURNISHED OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEB SITE), IS LIMITED TO THE PRICE OF THE GOODS GIVING RISE TO THE CLAIM. NEITHER SELLER NOR ITS VENDORS SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, DIRECT, CONSEQUENTIAL OR PENAL DAMAGES (INCLUDING, BUT NOT LIMITED TO BACKCHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED GOODS, DAMAGE TO ASSOCIATED GOODS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF GOODS, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM BUYER'S CUSTOMERS OR OTHER PARTIES). IF SELLER FURNISHES BUYER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY GOODS SUPPLIED HEREUNDER, OR ANY SYSTEM OR EQUIPMENT IN WHICH ANY SUCH GOODS MAY BE INSTALLED, AND WHICH IS NOT REQUIRED PURSUANT TO THESE TERMS & CONDITIONS, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE WILL NOT SUBJECT SELLER TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS.

### 16. MISCELLANEOUS

- (a) **EXPORTS:** If Goods are sold for export, Seller's Standard Terms & Condition for Export Sales apply. Acceptance of export orders is not valid unless confirmed in writing by Seller. Buyer, NOT Seller, is responsible for compliance with all United States export control rules and regulations. Buyer shall not name Seller as shipper or exporter of record in connection with the export of any Goods purchased from Seller.
- (b) **ANTI-MONEY LAUNDERING RESTRICTIONS:** Seller rejects questionable orders and payments: Except for pre-approved credit arrangements, Seller rejects third-party payments, cashiers' checks, money orders and bank drafts. Seller accepts only checks imprinted with Buyer's name; wire transfers originated in Buyer's account; letters of credit with Buyer as account party; and credit or debit cards in Buyer's name. All payments must be by single instrument in the amount of the invoice, less credits, from banks acceptable to Seller.
- (c) **GOVERNING LAW:** These Terms & Conditions and all disputes related to it shall be governed by the laws of the State of New York, United States of America, without giving effect to its conflict of law rules.
- (d) **BUYER PARTIES:** For the purposes of these Terms & Conditions, the term "Buyer" shall mean the Buyer party set forth on the quotation or other sales agreement to which these Terms & Conditions are attached or in which they are incorporated by reference.
- (e) **SELLER PARTIES:** For the purposes of these Terms & Conditions, the term "Seller" shall mean the Seller party set forth on the quotation or other sales agreement to which these Terms & Conditions are attached or in which they are incorporated by reference which may include Rexel USA Inc. or any of its subsidiaries, affiliates, business units or divisions including but not limited to (i) Rexel Automation Solutions, (ii) Rexel Commercial and Industrial, (iii) Gexpro, (iv) Platt Electric Supply, (v) Rexel Energy Solutions, (vi) Capitol Light, (vii) Parts Super Center, (viii) Brohl & Appell, (ix) New Haven Supply, and (x) Utility Supply Group.