

# Terms and Conditions of Sale

## Roundhouse Electric & Equipment Co., Inc. STANDARD TERMS AND CONDITIONS OF SALE REPAIR, PARTS, MODIFICATION, MAINTENANCE, INSPECTION, AND TEST

### 1. ACCEPTANCE

All orders are subject to acceptance by Roundhouse Electric & Equipment Co., Inc. ("Seller"). Any acceptance by Seller of Buyer's order is expressly made conditional on Buyer's assent to any additional or different terms and conditions contained herein, and all sales and charges of the products listed herein shall be, in the case of conflict between the terms and conditions of Buyer and Seller, interpreted and governed exclusively by the terms and conditions contained herein. Seller shall not be bound by any terms and conditions proposed by Buyer, whether in its purchase order or otherwise, which are additional to or different from the terms and conditions set forth herein, unless and only if accepted in writing by a principal officer of the Seller or his designated representative.

### 2. TAXES

The Seller's prices do not include any applicable sales, use, excise, value added or similar taxes; and the amount of any such tax which the Seller may be required to pay or collect will be added to each invoice unless the Buyer has furnished the Seller with a valid tax exemption certificate acceptable to the taxing authorities. Where a Buyer fails to furnish the required documentation, the previously unpaid sales, use, excise, or similar tax will be billed to the Buyer.

### 3. TERMS

Terms are cash net 30 days. Amounts past due are subject to a service charge of 1 and 1/2 percent per month (or fraction thereof) or maximum contract rate permitted by law. If the Seller deems that by reason of the financial condition of the Buyer or otherwise, the continuance of any services or shipment on the terms specified herein is not justified, the Seller may require full or partial payment in advance. The Seller at its option may retain possession of equipment repaired, modified, inspected, tested, maintained or serviced under this agreement until its charges for services are paid.

#### 4. PRICE POLICY

Prices shall be subject to adjustment to those in effect at time of shipment.

*If tariffs apply to products or services provided by Seller, Seller reserves the right to add a tariff surcharge. A surcharge estimate may be provided at the time of quotation or purchase order, but the final surcharge will be calculated based on the applicable tariffs at the time of invoicing.*

#### 5. DELIVERY

Shipping dates given by the Seller are approximate and are based on prompt receipt of information, equipment, or access to the equipment at the customer's premise if work is performed on said premise.

The Seller will use its reasonable efforts to meet the scheduled dates, however, it shall not be responsible for its failure to do so for causes beyond its reasonable control and in no event shall it be liable for any loss or damage resulting from its failure to deliver the services within the time specified herein.

#### 6. SHIPPING/HANDLING CHARGES

Shipments are F.O.B. point of shipment. Shipping/handling will be prepaid and billed as a separate item on the equipment invoice on the basis of Seller's current shipping/handling policies.

## 7. CHANGES

Buyer may with the express written consent of the Seller make changes in the specifications for equipment, services or work covered by the contract in such event the contract price and delivery dates shall be equitably adjusted. The Seller shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for services, work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

## 8. CANCELLATION

Undelivered parts of any order may be canceled by the Buyer only with the written approval of the Seller. If the Buyer makes an assignment for the benefit of creditors, if a voluntary or involuntary petition or action in bankruptcy or for reorganization or under any other insolvency law shall be filed by or against the buyer, if the Buyer shall admit its inability to pay its debts, if a trustee, receiver or liquidator is appointed for any part of the assets of the Buyer, or if the Buyer fails to make payments to the Seller in accordance with the terms hereof, the Seller may at its option cancel all undelivered parts or any order by written notice to the Buyer.

In the event of any cancellation of this order by either party, the Buyer shall pay the Seller the reasonable cost and expense, including engineering expense and all commitments to its suppliers and subcontractors, incurred by the Seller prior to receipt of notice of such cancellation, plus the Seller's usual rate of profit for similar work.

## 9. ELECTRONIC DATA INTERCHANGE/FACSIMILE (FAX)

Orders placed hereunder by Buyer may be transmitted electronically or via FAX, as may Seller's acceptance and other communications between the Parties.

## 10. REGULATORY LAWS AND STANDARDS

Seller makes no representation or warranty that its product, services or work will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of the quotation or contract between Buyer and Seller. Seller prices do not include the cost of any related inspections or permits or inspection fees.

## 11. EXPORT CONTROL

Products and associated materials supplied or licensed under this agreement may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all such laws and regulations.

## 12. TITLE

All scrap resulting from the work shall be the property of the Seller. The title and right of possession of equipment repaired, modified, inspected, tested or maintained under this contract shall remain with the Buyer, subject to any applicable lien rights of the Seller and to its right of sale in the event of non-payment.

## 13. DISCLAIMER OF DAMAGES

**IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.** Such damages shall include but not be limited to loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment, or lease of the equipment sold

hereunder that Buyer shall secure for the Seller the protection afforded to it in this paragraph.

#### 14. LIMITATION OF LIABILITY

The Seller shall not be liable for any loss, claim, expense or damage caused by, contributed by or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise. In no event shall the Seller's liability for any cause of action whatsoever exceed the cost of the item giving rise to the claim, whether based in contract, warranty, indemnity, or tort (including negligence). Any suit arising hereunder must be commenced within one (1) year from the date the cause of action accrues. The Seller shall not indemnify any party.

#### 15. NON-SOLICITATION

Buyer agrees that, without obtaining the prior written consent of Seller, neither Buyer nor any of its affiliates or representatives (each, a "Restricted Person") shall directly or indirectly, for itself or on behalf of another (a) solicit for employment or otherwise induce, influence, or encourage to terminate employment with Seller or any of its affiliates; (b) induce, influence, or encourage any client, customer, supplier, or other similar third party of Seller (each, a "Customer or Supplier") to alter, terminate, or breach its contractual or other business relationship with Seller, or solicit business from any Customer or Supplier. Notwithstanding the foregoing, nothing in this Section 15(b) restricts Buyer from soliciting business from or engaging in business with any Customer or Supplier in the normal course of business, if the Buyer does not use any confidential information to identify such Customer or Supplier or to communicate or negotiate with such Customer or Supplier.

#### 16. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR ASSISTANCE

If Seller provides Buyer with assistance or advice which concerns any parts/products/service supplied hereunder or any system or equipment in which any

such part/product/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Seller to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

#### 17. INTERPRETATION

Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared therein. All transactions covered by these terms and conditions shall be governed by the laws of the state of Texas. This contract is not assignable by any party hereto; provided, however, that Seller may assign this contract to any purchaser of all or substantially all of Seller's business, whether by stock or asset sale, merger or any other similar transaction.