

TERMS AND CONDITIONS OF SALE AGREEMENT

THIS AGREEMENT, made and entered into by and between **FLANDERS ELECTRIC MOTOR SERVICE, INC.**, an Indiana corporation, for and on behalf of its subsidiaries and affiliated entities, hereinafter called "Seller", and the one or more persons or other entities (the "Buyer", whether one or more) joining in the execution of this Agreement.

1. **GENERAL.** The Buyer has negotiated with Seller for the purchase of certain finished products ("Products") from Seller, along with the provision of appurtenant shop or field services ("Services"). All of the foregoing are respectively subject to the provisions of this Agreement ("Terms and Conditions") without condition other than expressed herein. These Terms and Conditions shall be deemed to be the final expression of the agreement by Buyer and Seller ("Parties"), including payment terms. Purchase orders, if any, issued by the Buyer shall be deemed solely for the recordkeeping convenience of the Buyer and shall not be in any respect amendatory or definitive hereof.

2. **PURCHASE PRICE.** Unless otherwise agreed to by the Parties in writing, prices are to remain firm for a period of thirty (30) days from the date of Seller's proposal and for the duration of the delivery period quoted by Seller. All prices quoted by Seller are exclusive of all taxes, including federal, state and local, use, sales, property, import/export, and/or similar taxes; and all such taxes shall be paid in full by the Buyer, or shall be reimbursed by Buyer to Seller for any such taxes paid by Seller (other than taxes levied on Seller's income). If Buyer claims a tax or other exemption or direct payment permit, it shall promptly provide Seller with a valid exemption certificate or permit, and indemnify, defend and hold Seller, its successors, assigns and related entities harmless from any taxes, costs and penalties arising out of the same. All purchase orders are subject to Buyer's credit approval by Seller. The amount of credit or terms of payment may at any time be changed or credit withdrawn by Seller for any reason, without advance notice. Seller may, in its sole discretion, withhold further manufacture or shipment, require immediate cash payments for past and future shipments; or require other security satisfactory to Seller before further manufacture or shipment is made; and may, if shipment has previously been made, recover the Products from the carrier or placed hold on delivery pending receipt of payment assurances.

3. **PAYMENT TERMS.** Unless otherwise provided by further written agreement of the Parties, payment in full is due Seller thirty (30) days from receipt by the Buyer of Seller's invoice. Payment shall be made in United States Dollars. Invoices may be sent by the Seller to the Buyer by email or fax and receipt by the Buyer shall be deemed to have occurred on the date the invoice is emailed or faxed. Hard copy of the invoice shall be mailed by the Buyer to the Seller for confirmation purposes only. Buyers outside the United States or Canada must make payment of the full amount of invoices by wire transfer. Payments made by mail shall be directed as follows:

Flanders Electric Motor Service, Inc.
P.O. Box 23130
Evansville, IN 47724
ATTENTION: _____

Payments made by wire transfer shall be directed as follows:

Swift Number ONBAUS41
US Federal Reserve Number 086300012
Account #106058943

A finance charge of 1-1/2% per month (18% per annum), or if such rate is prohibited by applicable law, then the highest legal rate set by the Seller shall be assessed on all invoices not paid and due. Upon Buyer's default in the performance of applicable Terms and Conditions, the Seller may, in addition to its other rights and remedies in contract or law, declare the entire balance of Buyer's account immediately due and payable and/or proceed with the foreclosure of any security interest retained in the Products, including, to the extent permitted by law, its reasonable attorneys' fees and all other damage available, whether or not litigation is commenced or prosecuted to final judgment, plus court costs and all other related expenses incurred by Seller.

4. **FORCE MAJEURE/DELAY:** Seller shall not be liable for any delay in delivery or failure to perform any of its obligations if such delay or failure is caused by circumstances beyond the control of Seller or Seller's sources of supply, including, but not limited to, fires, floods, work stoppages or lock-outs, epidemics, accidents or transportation delays, irrespective of whether such contingency is specified herein or is presently occurring or anticipated.

5. **SHIPMENT:** Unless expressly stated otherwise in this Agreement, all domestic shipments are FCA Seller's plant or warehouse and title and all risk of loss with respect to any goods shipped shall pass to Buyer when such goods are delivered to the carrier at such plant or warehouse. Unless expressly stated otherwise in this Agreement, all international trade shall comply with INCOTERMS® 2010, the specific trade term and code that will apply to be determined at time of sale. All trade transactions governed by INCOTERMS® 2010 shall confer title to Buyer when any goods are delivered to the carrier at Seller's plant or warehouse. All delivery dates are estimates of approximate dates of delivery and do not constitute guaranty of delivery on such dates. Seller's prices include the costs of its standard domestic packing only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, consult Seller's sales offices. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of these terms, shall be for the Buyer's account.

6. **CANCELLATION:** Cancellation of orders for Products or Services shall require written notification from the Buyer. Upon receipt of such cancellation notice, Buyer shall:

- (a) For completed Products or Services, take delivery of the completed Products and Services and make payment to Seller at the order price;
- (b) For uncompleted Products or Services, Seller shall require Buyer to take delivery of all or part of the Product or Services at the order price representing the stage of completion, or pay Seller the amount of the order price representing the stage of completion;
- (c) For Products or Services which Seller has on firm order, Buyer shall either take an assignment of Seller's right under the order or pay the cost of settling or discharging Seller's obligation under the order;

- (d) Subject to limitations and restrictions, Seller may permit the return of parts that had been delivered to and accepted by Buyer per Seller's Parts Return Policy, providing that such returns were not otherwise subject to the terms of this section; and
- (e) Seller's rights and remedies under this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

7. **LIMITED WARRANTIES:** For each Product purchased from Seller or an authorized reseller, Seller makes the following Limited Warranties:

- (a) The Product is free from defects in material and workmanship;
- (b) The Product materially conforms to Seller's specifications which are expressly incorporated herein by reference; and
- (c) At the time of delivery, Seller has title to the Product free and clear of liens and encumbrances.

The Limited Warranties are conditioned on:

- (i) Buyer storing, installing, operating and maintaining the Product in accordance with Seller's instructions or industry accepted "best practices" as determined solely by the Seller;
- (ii) No repairs, modifications or alterations being made to the Product other than by Seller or its authorized representatives;
- (iii) Using the Product within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into these items;
- (iv) Buyer discontinuing use of the Products after it has, or should have had, knowledge of any defect in the Product;
- (v) Buyer providing prompt written notice of any warranty claims within the warranty period described below;
- (vi) At Seller's discretion, Buyer either removing or shipping the Product or non-conforming part thereof to Seller, at Buyer's expense, or Buyer granting Seller access to the Products at all reasonable times and locations to assess the warranty claims; and
- (vii) Buyer not being in default of any payment obligations to Seller under these terms.

Buyer shall have a period of twelve (12) months from its initial operation of the Product or eighteen (18) months from date of shipment, whichever occurs first, to provide Seller with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence

that the Limited Warranties have been fulfilled to the full satisfaction of Buyer, unless Buyer has previously provided Seller with notice of a breach of the Limited Warranties.

THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. **WARRANTY REMEDIES:** Buyer's sole and exclusive remedy for non-conformance of Services or Products shall be the re-performance of any non-conforming Services or Products, provided the Seller is given written notice within the Limited Warranty period. Seller shall not be liable for any other expense connected with correction or re-performance of any Service or for any special, extraordinary, incidental or consequential damages.

Buyer's sole and exclusive remedy for a failure of Seller's Product due to defects in material and workmanship during the Limited Warranty Period shall be, at Seller's election, repair or replacement of the defective Product at the Seller's plant or warehouse. Seller's maximum liability under this Agreement shall be limited to the actual purchase price received by Seller for the Product at issue. To request the provisions of this remedy, Buyer must provide a written notice to Seller within the warranty period, establish the dates of purchase, installation and removal from service, document operating hours, and provide a description of the claimed defect. Seller reserves the right to demand return of the claimed defective Products to its plant or warehouse for inspection at Buyer's expense. Should Seller agree that a Product might not be reasonably returned due to size or complexity, the same shall be cleaned and presented to an authorized Seller's representative for complete inspection. The Limited Warranty shall not include any transportation charges, or costs of disassembling or installation, equipment downtime, or any liability for direct, indirect or consequential damages or delays.

9. **NON-DISCLOSURE AND CONFIDENTIALITY:** Buyer acknowledges and agrees that in the course of conducting business with Seller Buyer may become exposed to proprietary, confidential, non public, or trade secret information that may include but not limited to Proposals, Drawings, Prints, Specifications, Trade Secrets, and other Technical Data ("Confidential Information"), Buyer shall hold Confidential Information in strict confidence and shall not directly or indirectly disclose Confidential Information to any third party or make use of Confidential Information, except as ordered by any court or any other government body of competent jurisdiction; provided however that Buyer shall give Seller prior written notice of any such disclosure and shall cooperate with Seller if Seller seeks a protective order or similar protection as Seller may deem appropriate to preserve the confidential nature of such information. The restrictions contained in this section are necessary for the protection of the business and goodwill of Seller and are considered by Buyer to be reasonable for such purposes. Buyer agrees that any breach of this Section 9 will cause Seller substantial and irrevocable damage, and therefore, in the event of any such breach, in addition to such other remedies which may be available, Seller shall have the right to specific performance and injunctive relief, as well as attorneys' fees and costs, for enforcing this section. Buyer agrees to take all necessary steps to ensure that all of its employees and subcontractors who would be exposed to the Confidential Information are aware of this section and fully comply with the restrictions set forth herein.

10. **INDEMNIFICATION:** Seller shall indemnify and hold harmless the Buyer, its officers, directors, employees, and agents from and against any claim (including costs, litigation expenses, attorney's fees and other expenses) for personal injury to or death of any person or

damage to property by whomsoever owned, to the extent caused by the negligent acts or omissions of the Seller, its agents or employees arising out of the sale, installation, use or provision of Products or Services hereunder. Buyer shall indemnify and hold harmless the Seller, its officers, directors, employees and agents from and against any claim (including costs, litigation expenses, attorney's fees and other expenses) for personal injury to or death of any person or damage to property by whomsoever owned, to the extent caused by the negligent acts or omissions of the Buyer, its agents, or employees arising out of the sale, installation, use or provision of Products or Services hereunder. Insurance recoveries or policies, warranties, or other obligations of Buyer under this Agreement shall not in any way limit this indemnity.

11. **LIMITATION OF LIABILITY:** Buyer acknowledges that the Purchase Price is predicated on the enforceability of the following limitation of liability, that the Purchase Price would be substantially higher if Seller could not limit its liability as herein provided, and Buyer accepts this limitation of liability in exchange for what Buyer deems to be a lower price.

SELLER SHALL HAVE NO LIABILITY TO BUYER WITH RESPECT TO THE SALE OF PRODUCTS OR PROVISION OF SERVICES HEREUNDER FOR LOST PROFITS OR FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE PRICE OF PRODUCTS SOLD AND SERVICES PROVIDED HERUNDER. SHOULD THE WARRANTY PROVISION OF THIS CONTRACT BE DETERMINED TO FAIL OF ITS ESSENTIAL PURPOSE FOR ANY REASON, THE PARTIES AGREE THAT ALL LIMITATIONS OF LIABILITY FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES WILL REMAIN IN EFFECT.

12. **GOVERNING LAW:** The Agreement shall be governed by the internal laws of the State of Indiana, U.S.A. without regard to its conflicts of law principles and excluding the United Nations Convention for the International Sale of Goods. At Seller's option, any disputes concerning the rights or obligations of the Parties shall be resolved by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association (or in the event of a sale to a Customer located outside of the United States, in accordance with the International Chamber of Commerce Rules of Conciliation and Arbitration) with all proceedings to be held in Evansville, Indiana. The award shall be final, and the Parties expressly concede jurisdiction to any tribunal competent to enforce such awards.

13. **WAIVER:** Unless otherwise stated in this Agreement, Seller and Buyer acknowledge and agree that the failure of either Party to enforce any term of the Agreement shall not constitute a waiver of any rights or deprive either Party of the right to insist thereafter upon strict adherence to that or any other term of the Agreement, nor shall a waiver of any breach of the Agreement constitute a waiver of any preceding or succeeding breach. No waiver of any provision of the Agreement, unless expressly stated otherwise in the Agreement, shall be valid and binding unless it is in writing and signed by the Party against whom it is sought to be enforced.

14. **SEVERABILITY:** The Agreement shall be enforceable to the fullest extent allowed by law. If any provision of the Agreement shall be found to be null, unlawful, void, or inoperative for any reason, such provision shall be struck from the Agreement and otherwise the Agreement shall continue in full force and effect.

15. **NO THIRD PARTY BENEFICIARIES** Nothing in this Agreement, express or implied, is intended to or shall confer any rights, remedies, or benefits upon any person, including without limitation, any affiliate, employees, representatives, contractors, or agents of Buyer, other than the Parties and their respective successors or permitted assigns.

16. **SURVIVAL:** Notwithstanding the expiration, termination, or completion of the Agreement, any duty or obligation which has been incurred and which has not been fully observed, performed, or discharged, and any right, unconditional or conditional, which has been created and has not been fully enjoyed, enforced, or satisfied (including but not limited to the duties, obligations and rights, with respect to payment, confidentiality, insurance, warranty, and indemnification) shall survive such expiration, termination, or completion until such duty or obligation has been fully observed, performed, or discharged and such right has been enforced, enjoyed, or satisfied.

17. **EXPORT COMPLIANCE** Buyer acknowledges that if Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal, and usage of the Products provided under the Agreement, including any export license requirements. Buyer agrees that such Products shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained by Buyer at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.