

BYRNE ELECTRICAL SPECIALISTS, Inc. TERMS AND CONDITIONS OF SALE

1. The Agreement. The terms set forth in this form are the sole terms for the sale of goods and services by Byrne Electrical Specialists, Inc. ("Seller"), unless otherwise specifically provided for by Seller in this document and shall apply to the exclusion of any inconsistent or additional terms contained in Buyer's order or acknowledgment or otherwise proposed by Buyer. **EITHER PARTY MAY USE ITS STANDARD BUSINESS FORMS TO ADMINISTER TRANSACTIONS UNDER THIS CONTRACT, BUT USE OF SUCH FORMS IS FOR THE PARTIES' CONVENIENCE ONLY AND DOES NOT ALTER THE PROVISIONS OF THE CONTRACT. ANY PREPRINTED TERMS OR CONDITIONS IN SUCH FORMS ARE NULL, VOID AND OF NO EFFECT. SELLER WILL NOT BE BOUND BY, AND SPECIFICALLY REJECTS AND OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THE PROVISIONS OF THIS CONTRACT (WHETHER PROFFERED BY BUYER VERBALLY OR IN ANY QUOTATION, INVOICE, SHIPPING DOCUMENT, OFFER, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY AN AUTHORIZED AGENT OF SELLER.** If this document is construed as an acceptance by Seller in response to an offer by Buyer and if any terms herein are additional to or different from any terms of such offer, then the issuance or other use of this document by Seller shall constitute an acceptance expressly conditioned upon Buyer's assent to all of the terms and conditions of this Contract and these terms and conditions shall supersede all terms and conditions in the offer. By taking delivery of the Goods, Buyer is deemed to have assented to all of the terms and conditions of this Contract. The Contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by an authorized agent of Seller, to the extent they differ from, modify, add to or detract from the Contract, shall not be binding on Seller. There are no agreements, promises or understandings, either verbal or written, that are not fully expressed herein. No affirmation, representation or warranty concerning the goods made by an agent, employee or representative of Seller shall be binding on Seller unless the affirmation, representation or warranty is specifically included with this written Agreement. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions hereof.

2. Termination or Modification. The contract may be modified or terminated only upon Seller's written consent. If all or part of the sales contract is terminated, Buyer, in the absence of contrary written agreement with Seller, shall pay termination charges based upon expenses and costs incurred including overhead in the production of the goods to the date such termination is accepted by Seller plus a reasonable profit, except that any goods completed on or prior to Seller's acceptance of such termination shall be accepted and paid for in full by Buyer.

3. Terms of Payment. Payments are due in advance of shipment, unless otherwise provided in a contract or approved by the Byrne Electrical Specialists, Inc. Credit Department. All payments shall be in U.S. dollars. Pro rata payments shall become due as shipments are made. If a shipment is delayed by Seller at request of Buyer, payment therefor shall become due on the date when Seller is prepared to make shipment thereof. Prices are F.O.B. Seller's facility unless otherwise stated in writing by Seller. All amounts not paid when due shall accrue interest at the rate of 1-1/2% per month to the extent allowed by law and otherwise at the highest contract rate allowed by law. In the event an outstanding balance is owed by Buyer to Seller beyond the due date for such balance, Seller may, in its discretion, delay or suspend delivery or performance until such time as Buyer pays the overdue amount to Seller. Buyer's failure to pay any amount when due shall also entitle Seller to suspend performance of any other purchase orders from Buyer. Seller is entitled to perform periodic credit reviews of Buyer. Whenever, in the judgment of Seller, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment, the Seller may require full or partial payment in advance. Buyer hereby grants Seller a security interest in all Goods sold pursuant to this Agreement as collateral for all amounts owed to Seller and agrees to allow Seller to do all things necessary to perfect the security interest. No cash discounts shall be allowed. Buyer shall reimburse Seller for any and all expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any delinquent account or enforcing its rights with respect to Buyer.

4. Reasonable Efforts. Seller will use commercially reasonable efforts to supply Buyer with goods offered by Seller and ordered by Buyer. If Buyer causes or requests delay in the shipment of products or the provision of services, Buyer shall pay Seller for all expenses and losses of Seller resulting therefrom. Under no circumstances will Seller be liable for any failure to deliver goods ordered by Buyer that is caused by the lack of availability of necessary raw materials.

5. Shipping and Risk of Loss. Unless otherwise indicates, all quoted prices are F.O.B. Seller's facility, at which time title shall pass to Buyer. Regardless of the F.O.B. point, Buyer is solely responsible for all costs of shipping and insurance for the goods and shall bear all risk of loss during transit. Breach of this contract shall have no effect upon this provision controlling the risk of loss.

6. Timing of Delivery. Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information and documentation to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond Seller's reasonable control. Seller shall in good faith endeavor to meet estimated delivery dates. Under no circumstances shall Seller be liable for any damages or losses arising out of or resulting from any delay of any kind whatsoever. "Drop in" or expedited requests may incur additional costs and will be managed on a case-by-case basis.

7. Method of Delivery. Seller agrees to put the goods in the possession of a carrier and obtain and deliver documents necessary to enable Buyer to obtain possession of the goods. Seller is not obligated to obtain insurance or to prepay transportation costs. Buyer

agrees to pay all loading, unloading and other charges incidental to transportation. Seller will attempt to follow Buyer's shipping instructions, but may make reasonable changes thereto.

8. Purchase Order Descriptions. Buyer shall not hold Seller responsible for, and releases Seller from, any liability, costs, damages, or expenses arising out of or relating to Seller's delivery of product based on Buyer's purchaser orders which are incomplete or improperly or erroneously completed, which contain conflicting product or quantity descriptions or specifications, or which are otherwise confusing or unclear.

9. Return Policy. **Unless otherwise stated herein, Seller's products are built to order, per Buyer's purchase order and therefore are non-returnable and Buyer's purchase order cannot be cancelled once placed due to the custom and made to order processes involved.**

10. Buyer's Design Responsibility. This section shall apply to the extent that Seller's goods are produced according to Buyer's specifications. Buyer acknowledges that Buyer is not relying on Seller in any way for design or engineering with respect to the goods or the adequacy of the specifications provided by Buyer. Seller has no responsibility for design, engineering or other advice regarding any product specifications provided by Buyer. Buyer's responsibility shall include, but not be limited to, responsibility for determining how goods made by Seller will perform when integrated into an assembly or subassembly with goods not made by Seller.

11. Changes. Seller shall have the right to make design or engineering changes in its parts, equipment, processes, methods and locations of manufacture, but shall make no changes in form, fit or function specifications submitted by Buyer without Buyer's prior approval. Changes in the work to be performed under the contract may be made only if Buyer submits written instructions for such changes and if Seller accepts those changes in writing. If any such approved changes in drawings, materials, quantities, dates of performance or design of the part, units, tools, or fixtures, in Seller's sole judgment, increase Seller's costs, Seller may condition approval of any such change on agreement by Buyer to a price increase to recoup such cost increase, plus a reasonable return.

12. License Regarding Buyer's Specifications. Buyer grants to Seller an irrevocable nonexclusive license to produce parts pursuant to any specifications provided by Buyer. Buyer warrants that it has the authority to grant this license to Seller, and that neither the granting of this license nor Seller's manufacture and sale of parts produced according to Buyer's specifications will violate any agreement to which buyer is subject, any patent or other intellectual property right to any party, or any applicable law.

13. Indemnification of Seller (General). Buyer shall indemnify, defend, and hold Seller, its agents and employees harmless from all claims, liabilities, and expenses, including but not limited to actual attorney fees, sustained by Seller or its agents or employees that arising out of Buyer's breach of this Agreement, or out of the use, storage, sale or other disposition of the goods sold hereunder, or out of the action or inaction of Buyer or its employees, customers, or agents by any action of Buyer relating to the goods or services sold by Seller to Buyer. Buyer shall defend, indemnify and hold Seller, its agents and employees harmless against all product liability, product recall, and other claims, liabilities and expenses, including but not limited to actual attorneys' fees, incurred by Seller arising out of any claimed design or engineering defect relating to specifications provided by Buyer to Seller.

14. Indemnification of Seller (Patents). Buyer shall indemnify, defend, and hold Seller, its agents and employees harmless from all claims, liabilities, and expenses, including but not limited to actual attorney fees, arising out of any claim of infringement of a patent, copyright, trademark, trade name, or other proprietary right, or claim of unfair trade or of unfair competition in connection with the manufacture, sale, or use of the goods sold to Buyer, except to the extent that any claim, liability, or expense arises solely from specifications developed by Seller.

15. Force Majeure. Seller shall not be responsible or liable for any delay or failure to deliver which directly or indirectly results from or is contributed to by any fire, flood, explosion, strike, accident, foreign or domestic embargo, seizure, act of God, insurrection, war, the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the production or delivery hereunder, or the lack of usual means of transportation, whether or not beyond Seller's control (foregoing events, collectively, "Disabilities"). In the event that any one or more deliveries pursuant to this Agreement is suspended or delayed by reason of any of the Disabilities, the Seller may, at its option, terminate this Agreement or delay delivery until such Disabilities have ceased to exist.

In the event Seller's supply of product is insufficient to meet current shipping requirements due to any Disability described above, Seller may allocate its supply of product for its own use and among its customers on such basis as Seller in the exercise of its discretion may determine, and in such event Seller shall not be liable to Buyer for failure to deliver all or any part of the quantities sold hereunder.

The provisions of this Section shall be effective even though the Disability shall have been operative on the date a particular order was accepted.

16. Limited Warranty. Products manufactured by Byrne Electrical Specialists, Inc. (Byrne) are warranted to be free from defects in material and workmanship under normal use and service for a period of one (1) year from the date of manufacture. Byrne will refund the price of the defective product, repair or replace, at its option, products which prove to be defective within the warranty period, if product is repaired or replaced it will be shipped F.O.B. Byrne's facility. Byrne warranty shall be voided by any repair, alteration, or modification by persons other than the employees of Byrne, or those who are expressly authorized by Byrne to make such repairs, and by any abuse, misuse or neglect of the products or by use not in accordance with the Byrne published instructions. The remedies for any failure of the Byrne products to meet its warranty specified herein shall be those remedies stated herein and no other; these remedies being exclusive remedies as a condition of sale irrespective of the theory upon which any claim might be based, including negligence, breach of contract or strict liability. The determination whether a defect exists shall be made solely by Byrne. Except as provided in this paragraph, Byrne makes no warranty, express or implied, by operation of law or otherwise, including any warranty of merchantability or fitness for any particular purpose. Byrne shall not be liable on any claim for defective goods which is

not made within thirty (30) days after such goods have been received by Buyer. This warranty does not cover any assemblies or parts not manufactured by Seller. IF THE GOODS ARE MADE ACCORDING TO BUYER'S SPECIFICATION, SELLER DOES NOT WARRANT THE ADEQUACY OR APPROPRIATENESS OF SUCH SPECIFICATIONS, OR THAT THE GOODS, EITHER ALONE OR AS COMBINED WITH OR INTO OTHER PRODUCT, WILL SATISFY OR COMPLY WITH INDUSTRY OR GOVERNMENTAL CODES, STANDARDS, SPECIFICATIONS, REGULATIONS OR REQUIREMENTS. ALL RISK AND LIABILITY ASSOCIATED WITH ANY SUCH NONSATISFACTION OR NONCOMPLIANCE IS HEREBY EXPRESSLY ASSUMED BY BUYER.

17. Remedies and Limitation of Liability. In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, including but not limited to defective goods. For alleged defective goods claims, Seller may request the return of the goods in order to inspect and confirm alleged defect. The determination whether a defect exists shall be made solely by Byrne. **No goods may be returned without Seller's request and written approval.** If Seller authorizes the return of the goods, the goods will be redelivered to Seller at Seller's expense by lowest cost mode of transportation unless otherwise authorized in writing by Seller. Dependent upon Seller's determination, Seller shall tender to Buyer the purchase price theretofore paid by Buyer, and in such event, Seller shall have no further obligation under the contract.

In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, and Seller has not yet delivered any goods to Buyer, Seller may tender to Buyer the purchase price theretofore paid by Buyer, and, in such event, Seller shall have no further obligation under the contract except to refund such purchase price theretofore paid by Buyer. **THE REMEDIES CONTAINED IN THIS AND THE PRECEDING PARAGRAPH SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST SELLER FOR ANY AND ALL TYPES OF DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING OUT OF TORT, STRICT LIABILITY OR BREACH OF ANY OF SELLER'S OBLIGATIONS UNDER THE CONTRACT, WHETHER OF WARRANTY OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES NOR SHALL SELLER'S LIABILITY FOR ANY CLAIM FOR DAMAGES ARISING OUT OF OR CONNECTED WITH THE CONTRACT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE GOODS EXCEED THE PURCHASE PRICE OF THE GOODS THERETOFORE PAID BY BUYER TO SELLER. SELLER SHALL NOT BE LIABLE FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT RESULTING DIRECTLY OR INDIRECTLY FROM CIRCUMSTANCES BEYOND SELLER'S REASONABLE CONTROL.**

18. Third Party Materials. For goods that incorporate third party materials including, but not limited to, internet connected devices, all right, title and interest in and to such third-party materials will remain with the respective owners thereof, subject to the owners' terms and conditions of use and any express licenses or sublicenses granted to Buyer.

19. Patents. Seller makes no representation or warranty that the goods are or will be free of any claims of patent, trademark or copyright infringement. In the event that any goods manufactured by Seller are in any suit held to constitute infringement and their use is enjoined, Seller, if unable within a reasonable time to secure for Buyer the right to continue using such goods, either by suspension of the injunction, by securing for Buyer a license, or otherwise shall, at its own expense, either replace such goods with noninfringing goods or modify such goods so that they become noninfringing or accept the return of the enjoined goods and refund the purchase price theretofore paid therefor. The foregoing shall constitute Buyer's sole remedy in the event of a finding of such infringement.

20. Time for Bringing Action. Any action by Buyer for tort, breach of this contract, including any breach of warranty or otherwise, must be commenced within one (1) year after the cause of action has accrued.

21. Taxes. Sales, use, occupation, excise and other taxes upon the production, sale or use of the goods as well as tariffs are not included in the price and such taxes, tariff or any costs in connection therewith, wherever levied and whether imposed before or after payment of invoice, shall be paid by Buyer.

22. Applicable Law; Consent to Jurisdiction. This Agreement shall be governed, construed and interpreted under the laws of the state of Michigan. Buyer agrees that the courts of Kent County in the state of Michigan shall have jurisdiction over Buyer and any claims arising from or related to this Agreement.

23. Assignment and Delegation. No right or interest in this Agreement shall be delegated or assigned by Buyer without the prior written permission of Seller. Any attempt at assignment or delegation shall be void unless made in conformity with this paragraph. Buyer warrants that it is purchasing for its own account and not as an agent.

24. Waiver. No claim or right arising out of breach of this contract can be waived unless the waiver is supported by consideration and is in writing signed by the aggrieved party.