

## **BYRNE ELECTRICAL SPECIALISTS, Inc. TERMS AND CONDITIONS OF SALE**

1. **The Agreement.** The agreement between Seller and Buyer (the "Contract") with respect to the sale of goods described on the other side hereof (the "Goods") shall consist only of the terms appearing hereon and on the other side hereof together with any terms mutually agreed to in writing hereafter by Seller and Buyer. Seller objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller. 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 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 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 therefore shall become due on the date when Seller is prepared to make shipment thereof. Prices are F.O.B. Rockford, Michigan unless otherwise stated in the contract. All amounts not paid when due shall incur a late charge 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.

4. **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, unless there is specific written agreement between the Seller and the Buyer to the contrary.

5. **Method of Delivery.** Seller agrees to put the goods in the possession of a carrier, make an appropriate contract for their transportation, 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 unless it has agreed to be responsible for said 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.

6. **Risk of Loss.** Buyer assumes all risk of loss of goods upon delivery by Seller to carrier. Breach of this contract shall have no effect upon this provision controlling the risk of loss.

7. **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.

8. **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. In the event that any one or more deliveries pursuant to this Agreement is suspended or delayed by reason of any of the foregoing events, 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.

9. **Limited Warranties.** Seller warrants that the goods to be delivered hereunder will be of the kind designated on the other side hereof and free from defects of material and workmanship. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING EXCLUSION, IF THE GOODS ARE MADE ACCORDING TO BUYER'S SPECIFICATIONS, 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 EXCEPT AS EXPRESSLY SET FORTH ON THE REVERSE SIDE HEREOF. ALL RISK AND LIABILITY ASSOCIATED WITH ANY SUCH NONSATISFACTION OR NONCOMPLIANCE IS HEREBY EXPRESSLY ASSUMED BY BUYER. Seller's sole obligation under the foregoing warranties will be limited to either, at Seller's option, replacing or repairing defective goods or refunding the purchase price for such goods theretofore paid by Buyer, and Buyer's exclusive remedy for breach of any of such warranties will be enforcement of such obligation of Seller. These warranties will not extend to goods subjected to misuse, neglect, accident or improper installation or maintenance or which have been altered or repaired by anyone other than Seller or its authorized representative. Seller 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.

10. 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, Seller may request the return of the goods and 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 upon redelivery of the goods. No goods may be returned without Seller's written request. If Seller requests 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. 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 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 on 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.

11. Return of Product. Except as provided in Section 9 above, if Buyer desires to return a portion of the goods to Seller, such return shall be made only upon Seller's written consent to such return, which consent may be granted or withheld at Seller's sole discretion. Such return shall further be made at Buyer's sole cost, expense, and risk of loss, including transportation, handling and insurance, and shall be subject to such restocking fee as Seller shall determine to be appropriate under the circumstances. Buyer warrants that all goods return to Seller will be in the same or better condition than the condition in which they were delivered to Buyer.

12. 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 therefore. The foregoing shall constitute Buyer's sole remedy in the event of a finding of such infringement. If Buyer furnishes specifications to Seller, Buyer shall hold Seller harmless against any such claims of patent infringement which arise out of compliance with the specifications.

13. Indemnification. Buyer agrees to indemnify Seller for any and all damages and expenses (including reasonable attorney fees) 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 which may cause injuries or damage giving rise to claims against Seller.

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

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

16. 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 the state of Michigan shall have jurisdiction over Buyer and any claims arising from or related to this Agreement.

17. Changes. 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.

18. Assignment and Delegation. No right or interest in this Agreement shall be delegated or assigned by Buyer without the 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.

19. 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.