

Standard Terms and Conditions

Effective _____, 2023

These terms and conditions, together with any written specifications or supplemental terms and conditions described on any associated statement of work (“SOW”), shall apply to the sale of any Products (as such term is defined below) and/or services by Werner Electric Supply Co. (“Werner Electric”) to the purchaser thereof (the “Customer”). Customer by entering into an SOW with Werner Electric agrees that these Standard Terms and Conditions are incorporated into, and are made a material part of, the SOW.

1. Transactions involving sale of Products. To the extent that the transactions subject to this agreement involve the sale of goods, materials, work product, or any other tangible or intangible products (including but not limited to computer software and software licenses) (hereinafter “Products”) by Werner Electric to Customer, these terms and conditions shall pertain unless expressly agreed otherwise:

- a. Description. The Products shall be as described on the SOW.
- b. Price. The price shall be as stated on the SOW. Prices are firm for a period of forty-eight (48) hours following the date of the SOW, except if expressly provided otherwise in the SOW, after which they are subject to change without notice. In the event that Customer objects to such price change, Customer may by written notice to Werner Electric rescind the SOW with respect to such Products subject to the price change, but only if such Products have not yet been accepted as provided in Section 1.f. below as of the time the notice of rescission is delivered to Werner Electric. Upon any timely rescission under this Section 1.b., the applicable Products, if they have been delivered to Customer, will be promptly returned by Customer to Werner Electric at Customer’s sole expense.
- c. Payment terms. Unless otherwise agreed in writing by an officer or other authorized representative of Werner Electric, payment terms shall be net-30 from date of invoice. Finance charges at the rate of 1.5% per month shall accrue on the unpaid portion of invoices not paid within terms.

d. Delivery terms. If Products are to be delivered via a carrier, the delivery terms shall be **F.O.B. Place of Shipment**. If Products are to be delivered by Werner Electric, the delivery terms shall be **F.O.B. Place of Delivery**.

Notwithstanding the foregoing, all delivery terms for Products shipped by the original manufacturer of the Products (the "Supplier") are subject to the Supplier's delivery terms. Except to any extent otherwise provided in this Section 1.d., title to Products and risk of loss transfers to Customer upon delivery; provided however, that title to all intellectual property rights associated with the Products remains with the applicable Supplier or licensors. Werner Electric's acknowledged or provided shipping dates are approximate, and contingent upon prompt receipt of all necessary information, cooperation and approvals from Customer.

e. Date of delivery. Delivery shall be made within such time that may be specified in the SOW.

f. Acceptance/rejection. Buyer shall provide written notice to Werner Electric of any Products failing to conform to the SOW or other agreement of sale, within five (5) days after delivery. In the absence of any such notification, Customer shall be deemed to have accepted the Products.

g. Returns. Any claims for damage, non-conformity, shortages or errors must be made in writing to Werner Electric within five (5) days after delivery and if Customer does not notify Werner Electric during this period, Customer will be deemed to have waived any and all claims based upon any defects that were or could have been discovered upon reasonable inspection during such 5-day period, except that any claims under a Supplier warranty will not be deemed waived. Regardless, any claims for damage, non-conformity, shortages or errors must be made in writing to Werner Electric promptly following discovery thereof, specifying the damage, non-conformity, shortages or errors in reasonable detail. Special orders are nonreturnable and nonrefundable. Furthermore, Werner Electric will not be required to accept any Product return without prior written authorization from Werner Electric. A restocking fee may be assessed on any returned stock Products. Customer's right to return Products is further subject to any written

returns policies of Werner Electric, as may be published from time-to-time and in effect at the time of return, which policies are hereby incorporated by reference.

h. Cancellation, Modification or Suspension Requests. Werner Electric will use reasonable efforts to accommodate any cancellation, modification, suspension, or delay in shipment requested by Customer, but is not obligated to honor any such requests. In the event a Customer cancellation, modification or suspension request is approved and/or accommodated by Werner Electric, the Customer will be responsible to fully reimburse Werner Electric for all costs, expenses and losses arising therefrom, including, without limitation, recovery of all direct costs incurred, lost profits, and Supplier cancellation fees.

i. Warranty; disclaimer of implied warranties. If any Products are covered by a manufacturer's warranty, Customer shall be entitled to the benefits of such warranty. If any Products are not covered by a manufacturer's warranty, Werner Electric hereby warrants that such Products shall be free of defects in materials or workmanship for a period of five (5) days following delivery. WERNER ELECTRIC HEREBY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, USAGE OF TRADE, COURSE OF PERFORMANCE, OR ANY OTHER WARRANTY UNLESS EXPRESSLY SET FORTH HEREIN OR OTHERWISE IN WRITING.

j. Remedies. With respect to any Products covered by a manufacturer's warranty, Customer's sole and exclusive remedy in the event that such Products should be defective shall be as provided by the manufacturer's warranty. To the extent any Products delivered by Werner Electric are covered by the express warranty made by Werner Electric herein, Werner Electric's liability shall be limited to repair or replacement of such defective Products; in no event shall Werner Electric be liable for any indirect, special, incidental, or consequential damages, including but not limited to lost profits, lost opportunity costs, and the like, regardless of whether or not Werner Electric is advised in advance of the possibility of any such damages, or for any exemplary or punitive damages.

k. Identification. With respect to Products purchased for the purpose of incorporating them into work for the improvement of real property, Customer shall promptly comply with any request by Werner Electric for information, such as the owner and location of such property, the general contractor for the project, the party with whom the Customer is in privity, and the issuer of any surety bond relating to the project.

l. Export Restrictions. Customer acknowledges that the Products may be subject to export control laws of the United States, including, without limitation, the Export Administration Regulations (“EAR”) and the International Traffic in Arms Regulations (“ITAR”). Customer will not export, re-export or divert any goods or any component thereof in violation of the EAR, ITAR or any other law of the United States.

2. Transactions involving provision of services. To the extent that the transactions subject to this agreement involve the provision of services by Werner Electric to Customer, the following terms and conditions shall pertain:

a. Description. The services shall be as described on the SOW.

b. Price. The price shall be as stated on the SOW.

c. Payment terms. Unless otherwise agreed in writing, payment terms shall be net-30 from date of invoice, and billing frequency shall be not less than monthly. Finance charges at the rate of 1.5% per month shall accrue on the unpaid portion of invoices not paid within terms.

d. Time. The services shall be provided within the time elements described in the SOW, or if there is no SOW the services will be provided within the time described in the accepted order, quote or proposal.

e. Warranty / Disclaimer. Services shall be performed in a workmanlike manner consistent with the generally recognized industry standards for similar services and in accordance with any applicable federal, state, and local laws, rules, codes, and regulations. Werner Electric makes no other warranties with respect to the quality or effect of the services, except as may be expressly provided otherwise in writing. In particular, notwithstanding any provision contained herein to the

contrary, and not by way of limitation, unless otherwise provided in an express written warranty, Werner Electric makes no warranty or representation that any services rendered or any software, software license, device, device accessory or component provided by Werner Electric, its employees, agents, contractors or subcontractors will protect against attack or encroachment upon, or breach of, Customer's data systems, or against any loss of data, data corruption, or data system usage interruption. Werner Electric is not responsible for the sufficiency or performance of any Customer-provided, Customer-installed, third party-provided or third party-installed software, computer programs, computer code, or equipment such as, but not limited to, computers, networking equipment, printers, storage devices, and other peripherals or devices.

f. Acceptance/rejection. Buyer shall provide Werner Electric with written notice of any dissatisfaction with services within five (5) days after completion. In the absence of any such notification, Customer shall be deemed to have accepted the services.

g. Remedy. In the event that any services are demonstrated to have been performed in a manner inconsistent with the standard described in paragraph 2e above, Werner Electric's liability shall, at its option, be limited to reperformance of the services, or refunding the price paid for the services; in no event shall Werner Electric be liable for any indirect, special, incidental, or consequential damages, including but not limited to lost profits, lost opportunity costs, and the like, regardless of whether or not Werner Electric is advised in advance of the possibility of any such damages, or for exemplary or punitive damages. In particular, and not by way of limitation, Werner Electric shall have no liability for damages incurred by Customer as a direct or indirect result of any attack or encroachment upon, or breach of, Customer's data systems, or any loss of data, data corruption, or data system usage interruption.

h. Assignment; subcontract. Customer may not assign its rights or obligations under this agreement without Werner Electric's prior written consent, which consent shall not be unreasonably withheld. Werner Electric may subcontract

with, or otherwise rely upon the services or assistance of, third parties for performance of this agreement.

3. Transactions to be performed at Customer's facility. If services are to be provided at, or if Products are to be delivered to, Customer's place of business, or some other premises designated by Customer, these additional terms and conditions shall apply:

a. Access. Customer shall provide or arrange for access to the premises, and respond promptly to any request for direction, information, approvals, authorizations, or decisions that may be reasonably necessary to enable Werner Electric to perform its obligations under this agreement or under the applicable SOW or accepted quote or proposal.

b. Safety compliance. Customer shall be solely responsible for ensuring compliance with all workplace safety laws, rules, and regulations.

c. Nature of relationship formed by this agreement. Werner Electric is exclusively an independent contractor, and shall have the sole authority and discretion to determine and control the method, manner, and means by which any transaction governed by this agreement is carried out. Nothing contained herein shall be construed as creating a partnership, joint venture, employer-employee, loaned employee, leased employee, or principal-agent relationship. Nothing contained herein shall be construed as requiring Customer to provide unemployment insurance, worker's compensation insurance, or to contribute to any pension or fringe benefit plan, on account of any person performing this agreement on behalf of Werner Electric. Neither Werner Electric nor Customer shall have the power to bind or obligate the other, and neither shall hold itself out as having such authority.

4. Intellectual property. Unless otherwise expressly agreed in writing, Customer shall acquire no interest in or right to any software, code, formula, invention, or any similar intellectual property developed or discovered by Werner Electric in connection with its performance of this agreement, all such rights being expressly reserved by Werner Electric. In like manner, Werner Electric shall

acquire no interest in or right to any intellectual property of Customer with which Werner Electric may become familiar, or which Werner Electric may modify or otherwise work on, in connection with its performance of this agreement.

5. Confidentiality. Neither party may disclose, or use for any purpose any non-public and proprietary information or materials, including but not limited to technical information, know-how, technology, software applications, code, prototypes, ideas, inventions, methods, data, files, marketing plans, or customer lists, disclosed or made available by the other party in connection with any transaction governed by this agreement, except to the extent that disclosure or use of such information is reasonably necessary to perform this agreement.

6. Indemnity. Customer shall defend and indemnify Werner Electric, and its directors, officers, managers, employees, and agents (collectively, the “Indemnified Parties”), from and against any and all causes of action, suits, claims, damages, losses, liabilities, judgments, penalties, costs, and expenses, including, but not limited to, reasonable attorneys’ fees (collectively, “Losses”), caused by, directly or indirectly, or arising from, the acts or omissions of Customer or Customer’s employees, agents, subcontractors, or suppliers in connection with the performance of the services hereunder. In addition, Customer shall defend and indemnify the Indemnified Parties from and against any and all Losses caused by or arising from any: (i) use, ownership, maintenance, transfer, transportation, or other disposition of Products or services by Customer; (ii) breach or violation of the SOW or these standard terms and conditions by Customer; or (iii) negligent act or omission, intentional misconduct or any violation of applicable law on the part of Customer, or Customer’s directors, officers, managers, employees or agents.

7. Force Majeure. Neither party shall be in breach of this agreement if delay in performance or non-performance (other than failure to pay any amount due under this agreement) is the result of acts of God, such as, but not limited to, flood, fire, catastrophic weather event or other natural disaster, pandemic, war, terrorism, strike, lockout or other labor dispute, or disruptions to supply-chain logistics, that are beyond the non-performing party’s reasonable ability to control.

8. Credit Approval. The provision of any goods or services shall at all times be subject to the approval of Werner Electric's Financial Services Department. Werner Electric may at any time decline to make any shipment or delivery of Products or perform any services except upon receipt of payment in advance or upon such other payments terms as are acceptable to Werner Electric's Financial Services Department.

9. Choice of law; jurisdiction; venue. This agreement shall be governed by the laws of the State of Wisconsin (exclusive of Wisconsin's conflict of laws rules). If litigation or arbitration is resorted to in order to enforce any party's rights hereunder or to assert any claim or cause of action arising, or alleged to arise, from these terms and conditions, the prevailing party in such litigation or arbitration shall be entitled to recover from the other the amount of actual reasonable attorney fees and costs thus incurred. The venue for any such legal action or arbitration shall be Outagamie County, Wisconsin, or such other proper venue that Werner Electric may select. Customer hereby submits to the jurisdiction of the Circuit Court of Outagamie County, Wisconsin for purposes of any such legal action.

10. Set-off; accord and satisfaction. Customer may not set off any amount owed under this agreement against any claim of liability by Werner Electric to Customer under any other agreement, transaction, event, or occurrence. Any instrument tendered as full satisfaction of a dispute, debt, or claim arising under or related to this agreement shall be ineffective if it is not addressed and delivered in accordance with the requirements of this agreement.

11. Waiver of breach. Werner Electric's failure to strictly enforce any provision of this agreement shall not be construed as a waiver thereof and shall not excuse Customer from liability for its failure to observe such provision, or limit or bar any right or remedy otherwise available to Werner Electric in the circumstances

12. Notices. Any notice required to be given hereunder shall be addressed and delivered via **personal delivery or United States certified mail, return receipt requested**, to:

Janet Elliott, Director of Financial Services
Werner Electric Supply Co.
4800 West Prospect Avenue
Appleton WI 54914

13. Entire agreement. These terms and conditions, including those contained in any SOW, constitute the entire agreement between Werner Electric and Customer regarding any Products and/or services described in the SOW. WERNER ELECTRIC OBJECTS TO AND REJECTS OTHER TERMS AND CONDITIONS THAT MAY BE PROPOSED BY CUSTOMER, OR THAT APPEAR ON OR ARE REFERENCED IN CUSTOMER'S PURCHASE ORDER OR OTHER ACCEPTANCE, THAT ARE IN ADDITION TO, OFFERED IN SUBSTITUTION OF, OR OTHERWISE NOT CONSISTENT WITH THE TERMS AND CONDITIONS SET FORTH HEREIN. These terms and conditions supersede all prior discussions, statements, negotiations, representations, and warranties by either party, including, without limitation, any and all prior Master Service Agreements, or other similar agreements, between Customer and Werner Electric. Notwithstanding any provision herein to the contrary, to the extent there is any direct conflict between these terms and conditions and any SOW, quote, proposal, or purchase order, these terms and conditions shall control and supersede; provided, however, that a SOW may supersede but only to the extent provided in Section 1.b. above as to the period in which the price of Products shall be firm. These terms and conditions may not be modified, omitted, supplemented or waived except by a written agreement signed by authorized representatives of both parties.

WERNER ELECTRIC SUPPLY CO.

By: _____
Name Printed: _____
Title: _____
Date: _____

CUSTOMER

By: _____
Name Printed: _____
Title: _____
Date: _____