

## Terms and Conditions of Sale

**1. Terms of Sale.** Sales made by Billows Electric Supply Company, Inc. ("Billows") and Customer's account with Billows are subject to these Terms and Conditions of Sale ("Terms") which shall take precedence over any inconsistent or additional terms in Customer's purchase order or other purchase documents. Notice is hereby given pursuant to Section 2-207 of the Uniform Commercial Code of Billows' objection to any terms and conditions in addition to or different from these Terms which may be contained in any writing issued by Customer. These Terms are the final, complete and exclusive statement of all the terms and conditions of Customer's account with Billows and the sale of goods by Billows to Customer.

**2. Service Charges and Attorneys Fees.** Customer agrees to pay to Billows service charges in the amount of one (1%) percent per month on any past due account balances. In the event Billows places the account for collection, Customer agrees to pay all of Billows' costs of collection and collection fees, including, but not limited to, attorneys' fees in the amount of the greater of: (a) twenty (20%) percent of the outstanding indebtedness, or (b) Two Thousand (\$2,000.00) Dollars, and court costs.

**3. Warranty.** Billows is not a manufacturer of goods. Billows does not provide a warranty for any goods. Goods sold by Billows are warranted only to the extent and in the manner warranted by the manufacturer of the goods. Customer accepts the manufacturer's warranty as Customer's exclusive warranty. **ALL OTHER WARRANTIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**4. Title and Risk of Loss.** Shipment dates are approximate and are subject to the availability of material, production schedules, carrier schedules and other related factors. Billows shall not be responsible for any manufacturing, shipment, transportation or any other delay in delivery of goods. Unless otherwise agreed by Billows and Customer, all shipments are F.O.B. point of shipment and all goods are shipped at Customer's risk. Title to goods passes to Customer, and Billows' responsibility for safe delivery ceases, when goods are accepted by the first carrier. Any redress for damages sustained during transportation must be obtained by Customer from the carrier. Timely pursuit of this redress is the exclusive responsibility of Customer.

**5. Acceptance.** Customer must report claims for defects, shortages or other discrepancies in writing immediately upon discovery, but in no event later than fifteen (15) days of delivery, or the goods which are sold by Billows to Customer shall be deemed irrevocably accepted and such claims shall be deemed waived. All freight and transportation claims are the responsibility of the Customer. Billows' sole responsibility for defective goods shall be to replace the defective goods provided that Billows is able to obtain replacement from the manufacturer of the goods. Billows shall not be responsible for reimbursement of any contractor fees or other costs incurred by Customer to replace the defective goods, shortages or other discrepancies.

**6. Interpretation of Plans/Specifications.** Billows does not guarantee that the goods sold to Customer conform with Customer's plans and specifications, unless specifically agreed by Billows in writing. It is Customer's responsibility to ensure that the materials conform to the plans and specifications.

**7. Security Interest.** Billows retains a purchase money security interest under the Uniform Commercial Code in the goods sold until payment in full has been made. Billows shall have the right to perfect its security interest by filing financing statements naming Customer as debtor and Billows as secured party.

**8. No Right of Set Off.** Customer shall have no right to set off amounts due with respect to one transaction for claims under any other transaction with Billows.

**9. Held Orders.** For any order held, delayed or rescheduled at the request of the Customer, Billows will require payment based on any charges by the manufacturer of the goods, carriers and/or warehousemen including, but not limited to, any delay, detention, demurrage, storage, or auxiliary charges. Customer shall further be liable for any such charges resulting from Customer's requirements for special service or Customer's failure to accept delivery in a timely manner.

**10. Cancellation.** Purchase orders may not be cancelled for any reason without the express written consent of Billows.

**11. Pricing.** Billows will ship at prices quoted in writing. Unless otherwise noted, prices are exclusive of sales, use, excise or similar taxes.

**12. Return of Products.** All returns are pursuant to Billows' instructions. Customer must contact Billows for a Return Merchandise Credit Order (RM) prior to returning any warranty and/or non-stock products. Billows, upon customer request, will work to obtain a vendor RMA (return merchandise authorization). Upon issuance of a vendor RMA, Billows' RM order will be issued. All returns of warranty and/or non-stock products will contain original invoice reference and reason for return and will be handled in accordance with the vendor's RMA terms including applicable restocking and return transportation charges and other conditions of return. Non-warranty returns of normal stock products that are unused and are in resalable condition will be subject to Billows' stock product return policy in effect at that time.

**13. Limitation of Damages.** **IN NO EVENT WILL BILLOWS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING OUT OF CUSTOMER'S PURCHASE, USE OR SALE OF GOODS SOLD BY BILLOWS TO CUSTOMER. CUSTOMER'S EXCLUSIVE REMEDY SHALL BE AGAINST THE MANUFACTURER OF THE GOODS SOLD PURSUANT TO THE TERMS OF THE MANUFACTURER'S WARRANTY.**

**14. Indemnity.** (a) Customer agrees to indemnify and hold harmless Billows: (1) from and against any and all liability for any and all claims for injury, loss, accident or damage to person or property, including death; and (2) from any and all claims, losses, expenses, damages or other costs which Billows might incur, as a result of Customer's use or installation of the goods purchased by Customer from Billows. Customer further agrees that it will defend Billows, at Customer's sole expense, against any and all lawsuits, actions, claims, demands or the like which may be filed or made against Billows arising out of any goods sold by Billows to Customer, and Customer shall reimburse Billows for any legal fees or costs incurred by Billows to defend such actions; and (b) with respect to goods manufactured either in whole or in part from Customer specifications, Customer agrees to protect and indemnify Billows against all claims for damages arising from alleged infringements to patents, designs, copyrights or trademarks.

**15. Force Majeure.** Billows shall not be liable for failure to perform or delay in performance due to fire, flood, earthquake, storm, lightening, drought, war, riot, civil disturbance, strike or other labor difficulty, accident, curtailment of supply of materials or equipment, act of God, act of any governmental authority, act of Customer, act of Vendor, inability of Vendor to supply or ship products due to any cause set forth in this provision, act of Manufacturer, inability of Manufacturer to manufacture products due to any cause set forth in this provision, embargo, delays in transportation, the COVID 19 pandemic or any other pandemic or epidemic, or due to any other cause beyond Billows' control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time equal to the time lost by such delay; and Billows shall have the right to terminate the Customer's purchase order without any penalty or liability whatsoever.

**16. Default.** The occurrence of any of the following shall, at the option of Billows and without notice or demand on Customer, constitute an event of default by Customer: (a) failure of Customer to make any payment to Billows when due; (b) failure of Customer to observe or perform any of Customer's other obligations under these Terms; (c) if any statement of Customer contained in Billows' Application for Credit and Credit Agreement ("Agreement") shall be false; (d) death of Customer or any guarantor; or (e) if Customer shall become insolvent, make an assignment for the benefit of creditors institute or have instituted against Customer bankruptcy, insolvency, reorganization, arrangement, debt adjustment or liquidation proceedings. If Customer fails to comply with these Terms, or Customer's credit becomes unsatisfactory in Billows' sole discretion, Billows reserves the right to terminate Customer's account and/or terminate or restrict any order.

**17. Rights Cumulative.** Billows retains all rights and remedies provided under law and equity. Billows' rights and remedies are cumulative and not alternative. Waiver of any default shall not constitute waiver of any subsequent default. Any forbearance by Billows to enforce any provision of these Terms shall not constitute a waiver or relinquishment by Billows of any of its rights or remedies hereunder.

**18. Assignment.** Customer's account with Billows and any purchase orders issued by Customer to Billows may not be assigned by Customer without the written consent of Billows.

**19. Binding.** The terms of the Agreement and these Terms shall be binding upon the Customer's heirs, executors, administrators, personal representatives, successors or assigns.

**20. Invalid Provisions.** If any provision of the Agreement and these Terms is found by any court of competent jurisdiction to be prohibited or unenforceable, such provision shall be ineffective only to the extent of such invalidity or unenforceability, and such prohibition or unenforceability shall not invalidate any other provision.

**21. Choice of Law/Forum.** The Agreement and these Terms shall be governed by and construed in accordance with the laws of the State of New Jersey. For any lawsuit or legal proceeding to enforce the Agreement and these Terms, Customer consents to the jurisdiction of the federal and state courts in the State of New Jersey and the Commonwealth of Pennsylvania, at the sole discretion of Billows.

**CUSTOMER WAIVES TRIAL BY JURY AND WAIVES ANY OBJECTION TO JURISDICTION AND/OR VENUE OF ANY ACTION INSTITUTED HEREUNDER, AND AGREE NOT TO ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE.**

**22. Notice.** Any written notice required under the Agreement and these Terms shall be sent by a means which provides a proof of delivery, including, but not limited to, facsimile, email, certified mail return receipt requested and overnight delivery service.

**23. Miscellaneous.** The Agreement and these Terms constitute the entire agreement between Billows and Customer with regard to the subject matter hereof and there are no prior agreements, understandings, restrictions, warranties or representations between Billows and Customer other than as set forth herein. The parties further agree that there shall be no amendment, modification, termination or other waiver of the Agreement and these Terms unless in writing signed by both Billows and Customer.

**24. Compliance.** Since Billows is not a manufacturer of goods, Billows does not guarantee that the products sold to Customer comply with the “Buy American” provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”), the Pennsylvania Steel Products Procurement Act, or any other similar federal, state or local law, unless otherwise agreed in writing by Billows.

**25. No Accord and Satisfaction.** No payment by Customer or receipt by Billows of a lesser amount than any payment due Billows shall be deemed to be other than on account of the earliest unpaid invoice then due and payable or the specific invoice(s) designated on the payment. Customer is hereby advised that Billows may instruct Customer to forward all sums due Billows to a Lock Box account maintained by Billows, which will result in such checks or payments being automatically deposited to Billows’ account without review or inspection prior to the same being deposited. Accordingly, Customer agrees that Billows should not be bound by any endorsement or statement on any check, payment or any letter accompanying any check or payment and no such endorsement, statement or letter shall be deemed an accord and satisfaction, whether such check, payment or letter is forwarded to Billows’ Lock Box or directly to Billows or elsewhere and Billows’ or Billows’ bank may accept such check or payment without prejudice to Billows’ right to recover the balance of such account or pursue any other remedy provided by these Terms and Conditions, at law or in equity.

**26. Signatures.** A facsimile or electronic signature shall have the same force and effect as an original signature on any writings between Billows and Customer.