



Allegheny Electric Service, LLC

Allegheny Electric Service, LLC – Standard Terms and Conditions

DATED: August 10, 2023

You may view, magnify, download, and/or print the most recent and governing version of these Terms and Conditions at: www.AlleghenyElectric.com

1. **Applicability.** This document sets forth the Standard Terms and Conditions (“Terms and Conditions” or “T&C”) that govern your transactions with Allegheny Electric Service, LLC (“AES”). All those entering into transaction(s) with AES are referred to herein as “you,” “your,” a “party,” a “customer,” and, at times where applicable, “Buyer” ; and all of the foregoing are subject to these Terms and Conditions. AES is involved with sales, fabrication, and services involving numerous products related to electrical contracting, automation, and machine controls. Your transactions with AES may encompass one or more of these areas. Each item within the Terms and Conditions set forth herein shall apply to your transaction(s) with AES to the fullest extent possible. The Terms and Conditions set forth herein are incorporated by reference into your agreement(s) with AES and are incorporated as if repeated and set forth within AES’s purchase orders and/or acknowledgements of the same, sales receipts, invoices, and other documentation of your transaction(s) with AES, without limitation, and irrespective of whether these full Terms and Conditions are actually printed on such documents.

2. **Notice and Consent.** Consistent with the preceding paragraph, these Terms and Conditions shall apply to your transaction(s) with AES, and you agree that you have full notice and knowledge of their contents, by virtue of their being available to you on AES’s web site and/or by internet-based or emailed dissemination to you, by inclusion upon or with documents provided or made available to you in any form, and/or by any reference made to AES’s “Terms and Conditions” contained therein or therewith. These Terms and Conditions shall apply and be in effect whether or not they are signed by you and whether or not AES sought your signature. BY ENGAGING AND CONTINUING TO ENGAGE IN YOUR TRANSACTION(S) WITH AES, YOU ACKNOWLEDGE THAT YOU ARE MANIFESTING YOUR CONSENT TO, AND THAT YOU DO CONSENT AND AGREE TO, THESE TERMS AND CONDITIONS.

3. **Price Quotations.** Price quotations are based upon current prices, including for electrical components and commodities. Price quotes are intended to be valid for thirty (30) days from the quoted date, but are subject to adjustments due to changes in market manufacturing and commodity costs. Further, price quotes are subject to change in the event of obvious typographical or clerical errors. Until an order is accepted by AES, quoted prices are subject to the above fluctuations and may change. All orders and contracts are subject to written acceptance by AES. All quotes are F.O.B. Saint Marys, Pennsylvania, unless otherwise noted.

4. **Offer and Acceptance.** Your Sales Agreement, or other written agreement specific to your transaction(s) with AES is not an acceptance of the terms and conditions of any prior or subsequent offer proposal, inquiry, or order from the customer and any such terms and conditions are expressly rejected. Your Sales Agreement, or

other written agreement specific to your transaction(s) with AES is an offer by AES to you. You, by signing such Sales Agreement, or other written agreement specific to your transaction(s) with AES, accept AES's offer contained therein on the precise terms contained therein, and this acceptance is expressly limited to those terms. Any subsequent submission of an order or similar such document to AES covering the equipment rented also constitutes and unqualified acceptance by you of AES's offer notwithstanding any terms and conditions in said order or document to the contrary. Under no circumstances shall any terms and conditions from you or contained on your business forms become part of your transaction(s) with AES or your agreement(s) with AES, except as provided for in Paragraph 32 ("Terms and Conditions from You or Other Parties"), below. Upon acceptance, your Sales Agreement, or other written agreement specific to your transaction(s) with AES shall become the final written expression of agreement between AES and you, constituting the entire Sales Agreement, or other written agreement specific to your transaction(s) with AES and superseding all previous communications, either oral or written. Such agreements may be modified only by a writing signed by AES. Reference herein to any order or other communication is only for the purpose of identifying the equipment rented and/or purchased.

5. **Payments.** In the event that payment is not made on or before delivery of the goods or products ordered, payments that remain overdue after thirty (30) days from the date of the invoice submitted by AES shall bear and be subject to late fees consisting of contractual interest equal to 1.5% per month (18% annually) of the amount of the overdue payment per month. For clarity, this provision includes, without limitation, invoices for sales and invoices for rentals; and this shall mean that, beginning on the thirty-first (31st) day after the date on a AES invoice, the new amount that is due and owing by you to AES shall be 1.015 times any unpaid amount attributable to that original invoice; and beginning on the sixty-first (61st) day, the new amount shall be 1.030 times any unpaid amount attributable to that original invoice; and so on until full payment is received by AES from you. You agree that AES is entitled to this contractual interest even if AES does not issue updated invoices to reflect the addition of such interest to the balance owed. You agree that in any court proceeding or similar such action to recover an amount owed to AES, AES may claim, and is entitled to payment of, such contractual interest as of right; that any amount owed may be calculated by the court using the simple explanatory contained herein, without more; that this interest may be included by the court in a final order or judgment against you, including in the event that a default judgment is entered against you; and that such contractual interest shall continue to accrue at 1.5% per month post-judgment, until actually paid to AES in full.

6. **Credit.** Purchases on credit are subject to approval of AES's Credit Department. AES reserves the right to require advance payment and to decline to fulfill any purchases, production, or deliveries on credit whenever, for any reason, including if doubt as to your financial responsibility develops. AES shall not, in such event, be liable for non-performance of contract in whole or in part for failure to accept payment on credit.

7. **Disclaimer of Warranties.** Parts sold are guaranteed only to meet agreed customer specifications and to be free of defects in AES's materials and AES's workmanship. AES's sole responsibility will be that AES will manufacture said goods in accordance with the plans supplied by you as the Buyer, and that they will be free of defects in material and workmanship for a period

of 90 Days from the date of receipt thereof. AES shall have no liability under the warranty for damages other than the repair, replacement, or credit at AES's exclusive option in accordance with the provisions of the "Claims" paragraph of these Terms and Conditions; and this is only if said goods are used in accordance with Buyer's specifications. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE IN CONNECTION WITH THE PURCHASE, SALE, PRODUCTION, OR DELIVERY. AES EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, FOR ANY AND ALL TRANSACTIONS EXCEPT AS EXPRESSLY SET FORTH WITHIN THIS PARAGRAPH. AES EXPRESSLY DISCLAIMS, WITHOUT LIMITATION, ANY AND ALL DESIGN WARRANTIES AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

8. **Cancellation or Stop Work Order.** Tools and Production orders entered on AES's books cannot be cancelled except with AES's consent and upon terms that will indemnify AES against loss. Shipment date is approximate only and conditional upon delays, accidents, or non-performance occasioned by Force Majeure. Orders may be cancelled or deliveries deferred only upon the condition that you assume immediate liability and make payment to AES for (a) all completed work at the order price, (b) for work in process on the basis of the percentage of completion times the order price, (c) for raw material, unamortized tooling, engineering, and other cancellation charges, including restocking fees inability to cover, lost productivity charges and lost profit, incurred on the basis of cost to AES plus handling at the time of cancellation or stop work order.

9. **Quantities.** All quotations are based on you accepting each individual item on the Purchase Order as set up on delivery schedules agreed upon by you and AES.

10. **Deliveries.** Every effort will be made to fill orders within the time promised but under no circumstances does AES assume any responsibility or liability for any damage growing out of or owing to any delays whatsoever. Unless specifically stated to the contrary, quantities are made and orders are accepted for delivery as fast as manufactured, by partial shipments or in bulk.

11. **Changes and Alterations.** You agree to pay additional expenses incurred as a result of specification or requirement changes after order acceptance by AES. Any alterations of existing tooling, material specifications, release schedules, or special instructions must be submitted in writing. AES shall not be obligated to make any changes or alterations to the order until additional costs are agreed to by you.

12. **Claims.** If you claim that the service provided are not as ordered, you must notify AES, in writing, within ten (10) days of receipt of shipment. If such claim is substantiated and service provided is proved not as ordered, to the satisfaction of both parties, AES shall have the option of (a) taking back the goods; or, (b) inspection on your premises and deciding whether it may repair or return to AES for replacement or credit. Under no circumstances will AES be liable

for defective materials, parts or products that you, or any other party, has modified, altered, or repaired. Nor shall AES be responsible for any changes to the dimensional, structural, or electrical characteristics of any material, part, or product from your original specifications. No claims of any kind will be honored, not returned goods accepted, without prior approval by AES; all documents must carry our return/rework authorization number; and failure to include AES's return/rework authorization number shall result in rejection of the shipment. Any Claims for shortage must be made within fourteen (14) days from receipt of the goods.

13. **Patents, Intellectual Property, and Trade Secrets.** If AES designs and/or manufactures a product in accord with your drawings and specifications, you will indemnify and hold harmless AES against any and all claims, losses, judgments, decrees, costs, and expenses (including attorneys' fees and costs, expert fees and costs, and court and/or alternative dispute resolution fees and costs) resulting from any alleged patent infringement thereby. Further, upon AES's request, you shall defend AES at your expense, and against any action which may be brought against AES under any such claim of intellectual property, patent infringement, or similar such action. In engaging in transaction(s) under these Terms and Conditions, AES expressly retains and protects for itself, and does not waive, abandon, or share, any and all rights and protections that it has with respect to patents, intellectual property, trade secrets, and the like; and any grant of license, assignment, or other action affecting AES's rights must be addressed separately in a writing signed by AES.

14. **Default and Damages.** In the event of any default, breach, or repudiation of a sales agreement or other agreement by you, or if you shall become insolvent, or make an assignment for the benefit of creditors, or if a bankruptcy, insolvency, reorganization, or arrangement proceeding shall be commenced by or against you, then in such event AES may cancel the agreement, with you remaining liable for damages, defer any shipment hereunder, and declare forthwith due and payable all of your outstanding bills under the agreement. In the case of any merchandise manufactured or ordered and undelivered, AES shall be entitled to damages in an amount equal to or greater than the market price of said merchandise at the date of the breach (or the net proceeds of resale if sold for your account) or the quoted price thereof, plus 15% of said price to cover AES's cost of reselling or restocking, including additional overhead. AES shall also be entitled to seek to recover any and all other unpaid amounts that you owe to AES, whether pursuant to unpaid invoices or otherwise. In all circumstances involving default and/or damages, AES shall also be entitled to exercise any and all other rights or remedies available to it by law; and, further, no waiver by AES of any one default by you shall be deemed a waiver of any other or subsequent default(s).

15. **Limitation of Liability.** To the extent that a valid claim is made against AES for any defective material, part, or product—and consistent with the "Disclaimer of Warranties" paragraph of these Terms and Conditions—AES may be liable for only the repair of the defective material, part, or product. If, in AES's sole discretion, the material, part, or product cannot or should not be repaired, AES shall be liable only for replacement of the material, part, or product by AES.

16. **Defense and Indemnity.** You agree to fully defend, indemnify, and hold harmless AES from and against any and all claims, actions, losses, costs, damages, and expenses (including attorneys' fees and costs, expert fees and costs, and court and/or alternative dispute resolution fees

and costs), for or in connection with any bodily injury, including death and/or property damage arising out of your, or any other parties', use of the material, parts, or products supplied by AES.

17. **Class actions.** If AES designs and/or manufactures a product in accord with your drawings and specifications, you will indemnify and hold harmless AES against any and all claims, losses, judgments, decrees, costs, and expenses (including attorneys' fees and costs, expert fees and costs, and court and/or alternative dispute resolution fees and costs) resulting from any class action, putative class action, collective action, or putative collective action. Further, upon AES's request, you shall defend AES at your expense, in any such action. This provision is in addition to, and is not in any way meant to limit or modify, your other obligations to AES with respect to defense, indemnification, liability, and/or damages.

18. **Recalls.** If AES designs and/or manufactures a product in accord with your drawings and specifications, you will indemnify and hold harmless AES with respect to events arising from product recalls, whether mandatory or voluntary, inclusive of any and all expenditures, claims, losses, judgments, decrees, costs, and expenses (including attorneys' fees and costs, expert fees and costs, and court and/or alternative dispute resolution fees and costs) resulting from recall-related events. Further, upon AES's request, you shall defend AES at your expense, in any action arising from such recall-related events. This provision is in addition to, and is not in any way meant to limit or modify, your other obligations to AES with respect to reimbursement of expenditures and/or defense, indemnification, liability, and/or damages.

19. **Force Majeure.** In the event of an act of God, natural disaster, act of terrorism, large-scale health pandemic, or other significant disruption to infrastructure (collectively, "Force Majeure" events), AES may, at its sole discretion, pause or make reasonable changes to the parties' agreements to account for and mitigate the Force Majeure event(s) and/or to protect, preserve, and safeguard its personnel and property. AES shall not be liable for any claimed damages, and shall not be liable for any alleged breach, due to a Force Majeure event and its response thereto.

20. **Miscellaneous.** Where relevant to your transaction(s) with AES, unless modified by a more specific written supplemental terms and conditions for your specific transaction(s) that are provided to you by AES or signed by AES, the following additional provisions apply:

- a. Pricing is firm for no more than thirty (30) days following the date of the proposal, will remain in effect until mutually agreed upon in writing, and does not include federal, state, or local taxes unless otherwise stated. Quoted rates are dependent upon an approved Credit Profile and Net Term Payment agreement. If payment terms are not met, additional rates/penalties will apply. (A signed master services agreement (MSA) may supersede as defaulted terms and conditions in part of full.)
- b. Prices quoted are net of any local taxes and/or duties. Any such taxes and/or duties levied on AES in the execution of services shall be re-billed to the customer at full cost incurred.
- c. Customer is responsible for confirming normal operation days, hours, and locations. AES may be contacted in this regard via telephone (814-781-1940) or email (office@AlleghenyElectric.com).
- d. AES is not responsible for typographical errors.

21. **Older Versions Superseded.** These Terms and Conditions are dated as of the date set forth on their first page. These Terms and Conditions supersede and replace older versions of AES’s “Standard Terms and Conditions” and older versions of Apple Tractor, Inc.’s terms and conditions. Notwithstanding the foregoing, if an older such version of terms and conditions governed your transaction with AES and contained a provision that is not addressed within these Terms and Conditions, then the older provision shall remain in effect in addition to these Terms and Conditions.

22. **Supplemental Terms and Conditions from AES.** Because AES is involved with sales, fabrication, and services involving numerous products and business lines, AES may deem it appropriate to issue written supplemental terms and conditions that govern your transaction(s) with AES. Any such supplemental terms and conditions issued by AES to govern your transaction(s) with AES shall be in addition to, and not in replacement of, these Terms and Conditions; and these Terms and Conditions and any such supplemental terms and conditions shall be construed together as governing your transaction(s) with AES.

23. **Terms and Conditions from You or Other Parties.** AES shall not be bound by any separate set of terms and conditions provided by you or other parties, and the same shall not be construed as replacing, supplanting, or changing these Terms and Conditions, unless expressly agreed to by AES in writing. In any instance where AES enters into such agreement, these Terms and Conditions shall continue to apply, in full or in part where they do not conflict with the competing agreement, unless these Terms and Conditions are expressly nullified by the competing agreement that AES has signed.

24. **Entire Set of Terms and Conditions.** Except as expressly provided for elsewhere in a writing signed by AES or as set forth in a writing issued to you by AES for your transaction(s), these Terms and Conditions are the entire set Terms and Conditions governing your transaction(s) with AES.

25. **Severability.** Should any paragraph or any portion of a paragraph contained within these Terms and Conditions be held to be unenforceable by a court of competent jurisdiction, all remaining portions of these Terms and Conditions shall be deemed to survive in full force and shall be interpreted in such a way as to give them full force and effect.

26. **Governing Law.** These Terms and Conditions, and your agreement(s) and transaction(s) with AES, are governed by the substantive and procedural laws of the Commonwealth of Pennsylvania, and no conflict-of-laws principle or similar such principle shall be applied in order to cause the law of another jurisdiction to instead apply.

27. **Jurisdiction and Venue.** For any disputes relating to your transaction(s) with AES and/or involving these Terms and Conditions, you expressly consent, submit to, and agree to the exercise of personal jurisdiction over you by all Pennsylvania state courts having jurisdiction over matters within Elk County, Pennsylvania, including the Court of Common Pleas of Elk County, Pennsylvania and the magisterial and appellate courts having jurisdiction in Elk County, Pennsylvania, and to the United States District Court for the Western District of Pennsylvania, and the federal bankruptcy and federal appellate courts having jurisdiction in Elk County, Pennsylvania. Further, you expressly consent, submit to, and agree that proceeding in any of the foregoing courts is an appropriate and convenient venue for such disputes. This paragraph does not

prohibit parties from separately agreeing to mediation, arbitration, or other alternative dispute resolution.

[End of document.]