

TERMS AND CONDITIONS OF SALE

All sales of products and services by The Kendall Group, Kendall Electric, Great Lakes Automation Supply, Cyber Connect, LLC, Galloup, Merlo Energy, Smith Instrument, and any of their subsidiaries or affiliates (“**Seller**”) are conditional on acceptance of these terms and condition by the buyer named on Seller’s quotation, acknowledgement, shipper or invoice (“**Buyer**”). In these Terms and Conditions of Sale (“**Terms**”), any products sold by Seller to Buyer are referred to below as “**goods**,” and any services sold by Seller to Buyer are called “**services**.”

1. Controlling Terms; Modification of Terms. If Buyer has not otherwise expressly agreed to these Terms, then Buyer’s acceptance of delivery of, or payment for, goods or services shall constitute Buyer’s agreement to these Terms in their entirety. These Terms shall govern all sales of goods and/or services by Seller to Buyer and, except as expressly provided herein, shall supersede the terms and conditions contained on any purchase order or other document submitted to Seller by Buyer. All other terms and conditions contained in any other communication between Buyer and Seller, oral or written, including, without limitation, Buyer’s purchase order, other than the identity of and quantity of the item(s) being purchased, are null and void and are hereby rejected and shall not be binding upon Seller. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon Seller unless made in writing and signed on its behalf by an officer of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement, purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. Any proposed modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer’s assent to any additional or different terms set forth herein.

2. Pricing. Seller shall have the right to increase its prices at any time without notice, subject to any other written agreement between Seller and Buyer concerning pricing. Stenographical and clerical errors are subject to correction.

3. Payment Terms. Payment terms are as specified in Seller’s quotation, acknowledgement, or invoice. If Buyer fails to make any payment to Seller when due, Buyer’s account(s) with Seller shall become immediately due and payable without notice or demand. Buyer acknowledges and agrees that it will be charged one and one-half percent (1½%) per month as a service charge on any unpaid balance that has not been paid by the date due, and Buyer agrees to promptly pay said service charge and interest. If at any time Seller determines that Buyer’s financial condition or credit rating does not justify a sale on credit or if Buyer is at any time in default in any indebtedness or obligation that Buyer owes to Seller, then Seller may require advance payment or may ship goods C.O.D. Unless otherwise agreed in a writing signed by Buyer and Seller, all payments shall be in U.S. Dollars.

4. Solvency and Security Interest. Buyer represents that Buyer is solvent. Buyer grants to Seller a security interest in and the right of repossession of the goods, including a purchase money security interest, until full and final payment for the goods and services (including collection costs) has been made. In the event of default in any payment due from Buyer to Seller, the full amount unpaid shall be due and payable on demand, and Seller may at Seller’s option either (i) recover the full amount unpaid or repossess the goods and all additions thereto, wherever found, free from all claims whatsoever; or (ii) treat this contract as void and retain all payments made as rent for the use of goods. The goods or any part thereof, shall not be considered a fixture, or be incorporated into any real property by reason of its attachment thereto, and may be separated from any real property, as well as personal property, for the purpose of repossession. Seller shall not be liable to Buyer nor shall Seller be subject to any legal proceedings, criminal or civil, for Seller’s acts in such repossession. Seller shall not be liable to Buyer for the repayment of any money paid as part payment for the goods. Buyer shall not grant any right or security interest in or to the goods prior to payment in full to Seller for all goods and services without prior written consent of Seller. Except as otherwise provided herein or required by law, pursuit of any right reserved herein or granted by law shall not preclude or waive the pursuit of any other such right.

5. Delivery and Risk of Loss. Unless Seller agrees otherwise in writing, Seller or the manufacturer of the goods (“**Manufacturer**”) shall deliver the goods EXW (Incoterms 2010) Seller’s facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped, except that if Seller’s facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, and

Buyer's facility are both located in the United States, then Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Seller's facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped. The risk of loss of the goods shall pass to Buyer upon identification of the goods to the contract between Buyer and Seller, whether such identification occurs at Seller's facility or a point of origin other than Seller's facility. Shipping, delivery, and performance dates are estimates only, and time is not of the essence. Seller or Manufacturer may ship all the goods at one time or in portions from time to time. Seller shall have the right, but no obligation, to determine the method of shipment and routing of the goods, unless otherwise agreed to by Seller in writing. If Seller is not able to finish or deliver the goods to Buyer, or to perform the services, on time because of anything Seller cannot control (such as casualty, labor trouble, accidents or unavailability of goods, supplies or transportation), then the estimated delivery or performance time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay. Back orders will be shipped as received unless Buyer and Seller agree to different terms.

6. Taxes. Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not Seller invoices Buyer for them. If Buyer does not provide Seller an appropriate sales and use tax exemption certificate with respect to Buyer's purchase of the goods and if Seller is required by a governmental entity to collect and remit sales or use tax with respect to Seller's sale of the goods to Buyer, then Seller's invoice to Buyer for the purchase price shall include, and Buyer shall pay to Seller, the full amount of that tax.

7. Warranties.

(a) Seller warrants that it has title to all goods sold and all goods sold are free of any security interest.

(b) Seller warrants to Buyer for a period of one year from delivery of the goods that all goods manufactured solely by Seller ("**Products**") will be free from defects in material or workmanship under normal and intended use and service. The Products shall not be defective to the extent that (i) they conform with drawings of or specifications for or a sample of goods that have been approved by Buyer; (ii) they conform with goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by Buyer; (iii) they are damaged due to the method or length of storage by Buyer; or (iv) to the extent they conform to the specifications as changed or waived if Buyer's representative agrees, either orally or in writing, to the change in or waiver of the specifications for any Product. If there is a defect in any Products constituting a breach of the warranty provided herein, Seller will at its option either (x) repair or replace such Product free of charge (F.O.B. Seller's plant), or (y) in lieu of repair or replacement, refund to Buyer the original purchase price less the reasonable value of Buyer's use of the Products.

(c) Seller will not pay for any of Buyer's labor costs or charges for correcting defects or making additions nor will Seller accept any returned goods for credit unless the correction or return is authorized in advance by Seller in writing. Seller shall furnish to Buyer instructions for the disposition of the defective goods. Seller shall have the option of requiring the return of the defective goods, transportation prepaid, and proof that the goods were not used, installed, or altered or subject to misuse or abuse to establish the claim. No goods shall be returned without Seller's prior written permission and Buyer's proof of purchase and in any event may not be returned later than thirty (30) days after shipment. Returned goods must be unused and in their original packaging. All returns are subject to freight, handling, and restocking charges. Special order and/or non/stock item returns are subject to manufacturers' approval and credit for such returns is contingent upon that approval. The acceptance of any goods returned to Seller shall not be deemed an admission that the goods are defective or in breach of any warranty, and if Seller determines that the goods are not defective they may be returned to Buyer at Buyer's expense. This paragraph sets forth Buyer's sole and exclusive remedies for any defect in the goods. The rights and obligation under this warranty may not be assigned or delegated to a third party by Buyer without the prior written permission of Seller. Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the Products. Any statements to the contrary are hereby rendered null and void unless expressly agreed to in writing by an authorized officer of Seller.

(d) If a service proves to be defective (as defined below) within one year after Seller performs the service, then Seller shall, at its option, either re-perform the service, at Seller's expense, or refund to Buyer the price that Buyer paid to Seller for that part of the service that was defective. A service shall be considered "defective" if it is found by Seller to have failed to meet the standards in Seller's industry and if that failure materially impairs the value of the service to Buyer, except that if Buyer shall have approved or furnished to Seller specifications for the service, then the service shall not be considered defective to the extent it conforms to the specifications. This paragraph sets forth Buyer's sole and exclusive remedy for any defect in services.

(e) Regarding any goods not manufactured or developed by Seller, Seller makes no warranties for these goods. Seller shall assign to Buyer any warranty for such goods extended to Seller by the Manufacturer and Buyer shall look solely to such warranty in the event of a claim or action relating to such goods.

8. Limitation of Liability.

(a) **EXCEPT AS TO THOSE WARRANTIES PROVIDED IN PARAGRAPH 7, SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO THE SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS.**

(b) **SELLER SHALL NOT HAVE ANY TORT LIABILITY WITH RESPECT TO ANY OF THE GOODS AND/OR SERVICES SUPPLIED UNDER THIS AGREEMENT AND SHALL NOT BE LIABLE TO BUYER OR ANY OTHER THIRD PARTY FOR, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR OTHER SPECIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR OTHER FINANCIAL DAMAGE, THAT ARISE FROM ANY DEFECT IN THE GOODS AND/OR SERVICES PROVIDED HEREUNDER, OR DELAY, NON-DELIVERY OR OTHER BREACH OF THIS AGREEMENT.** Seller's liability shall be limited to either repair or replacement of the goods sold or refund of the purchase price, at Seller's option, and Buyer expressly agrees that such remedies are reasonable. In no event shall Seller's liability to Buyer and/or any third party exceed the price paid by Buyer or such party for the specific goods or portion of the goods giving rise to the claim or cause of action.

9. Permits and Compliance. Seller is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the goods. Seller does not make any promise or representation that the goods will conform to any law, ordinance, regulation, code or standard.

10. Safety Features. Buyer shall install and operate the goods properly and according to Seller's or Manufacturer's operating instructions, if any, and shall not remove or change any safety device, warning or operating instructions that Seller or Manufacturer placed on the goods. Buyer shall place on the goods all safety devices and warnings that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

11. Toxic Chemicals in Goods. Some of the goods sold by Seller may contain chemicals and materials deemed potentially harmful under federal and state law. Whether or not such good complies with the law may depend on how and where the good is ultimately used. Seller does not represent that its goods meet all legal requirements for all uses in all places. If Buyer intends to use a good in such a manner that its chemical makeup is regulated by law, then Buyer agrees to notify Seller in writing of that intended use and the law that applies and request that Seller supply a compliant good. Seller shall not be responsible or liable for any losses or damages sustained by Buyer or any other party as a result of the misuse, misapplication, or mislabeling of the goods by Buyer or such other party in violation of applicable law. This paragraph shall survive the termination of the agreement created by these Terms indefinitely.

12. Components of Another Product. If any of the goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer or for a third party, then Buyer shall (a) obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (b) cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (c) place on the product all safety devices and warnings, and furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

13. Intellectual Property and Confidentiality. All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller or Seller's supplier creates or develops in the course of Seller's or Seller's supplier's design, development or manufacture of the goods or performance of the services and all drawings and specifications that Seller provides to Buyer ("**Intellectual Property**") shall be Seller's sole property, and Buyer assigns, and agrees to assign, to Seller or Seller's supplier all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller's business, operations or activities, except to the extent necessary for Buyer to use the goods or services.

14. Cancellation. Buyer does not have any right to cancel its agreement to buy the goods or services from Seller. If, however, Seller agrees in writing to permit cancellation, Buyer agrees that such cancellation will be subject to restocking fees, if any. If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller, then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell goods or services to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

15. Indemnity and Reimbursement. Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including consequential and incidental damages and actual attorney fees, that Seller incurs as a result of Buyer's breach of any of Buyer's obligations under these Terms, any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from or in connection with the sale, transport, installation or use of the goods or Seller's supplier's manufacture of the goods, or performance of the services, to Buyer's specifications. Further, Buyer shall flow through to Seller any and all indemnity offered by Buyer's customer(s), if any, including any nuclear indemnity afforded under the Price-Anderson Act, 42 U.S.C. §2210 *et seq.* If Buyer brings a claim against Seller arising out of or relating to this Agreement or the goods or services, and Seller ultimately prevails or Buyer eventually elects not to further pursue the claim, then Buyer shall reimburse Seller for all expenses incurred by Seller in connection with such claim, including but not limited to actual attorney fees.

16. Seller's Rights. Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right. No waiver of any term or condition hereunder shall be valid unless in writing and signed by an authorized representative of Seller.

17. Time For Bringing Action. Any action that Buyer brings against Seller for breach of this Agreement or for any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery or the services must be brought within one year after the cause of action accrues.

18. Applicable Law. This agreement between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in either Kalamazoo or Grand Rapids, Michigan, that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

19. Complete Agreement; Amendment. Seller's quotation, acknowledgment, and/or invoice, and these Terms, contain the entire agreement between Buyer and Seller as to the subject matter hereof. Any change in this agreement must be in a writing signed by an authorized officer of Seller.