

STANDARD TERMS & CONDITIONS FOR SALE OF EQUIPMENT

IN THE ABSENCE A PROJECT SPECIFIC CONTRACT OR ACTIVE MASTER SERVICES AGREEMENT (MSA), these **Standard Terms & Conditions for Sale of Equipment** (“**Terms**”) constitute a binding agreement (“**Agreement**”) between Metrotek Electrical Services Company, a Pennsylvania Corporation, (“**Metrotek**”) and the purchaser (and/or its affiliates or assignees, individually or collectively) (“**Client**”) of the material, equipment, components, products, goods and/or documents sold by Metrotek (“**Equipment**”) as described and set forth in any proposal to Client by Metrotek (“**Proposal**”).

1. **Proposal.** Each Proposal for the sale of Equipment by Metrotek is valid for fifteen (15) days from its effective date, unless specified otherwise therein. Unless otherwise expressly stated therein, a Proposal does not constitute an offer and Metrotek may withdraw or revise any Proposal at any time before accepting a Client’s purchase order (“**PO**”). A Client’s PO will only become binding upon Metrotek’s written acceptance, at Metrotek’s sole discretion.

2. **Acceptance of Terms.** The Terms herein, together with the Proposal and any applicable plans or specifications acknowledged and approved in writing by Metrotek, are binding and controlling, represent the full and complete understanding and agreement between Metrotek and the Client related to the applicable transaction and supersede all prior agreements (whether written or oral) with respect to the Equipment that is the subject hereof. No amendment, modification or waiver of these Terms (including any terms or conditions proposed by the client in any PO or other written acknowledgement that conflict with, or are in addition to, any of the provisions hereof) shall be binding on Metrotek unless expressly agreed to in writing by an authorized representative of Metrotek. Metrotek’s failure to object to any term or condition contained in any communication from the Client shall not be deemed a waiver of any provision of these Terms. These Terms shall be applicable whether or not they are attached to, or enclosed with, any Equipment that is sold to Client. **CLIENT ASSENTS TO ALL THE TERMS CONTAINED HEREIN AS A CONDITION OF ANY PO ACCEPTED BY METROTEK.**

3. **Proposed Price.** The price quoted in a Proposal (“**Price**”) is valid for fifteen (15) days from the Proposal’s effective date, unless specified otherwise therein, and is subject to change without notice thereafter. Prior to Metrotek’s acceptance of a PO from Client, Metrotek reserves the right, in its sole discretion, to modify the proposed Price and will promptly notify the Client of said change through a revised Proposal. In all cases, Metrotek shall not be liable for additional costs or damages of proposed Price changes prior to the written acceptance of a PO from the Client. Except as otherwise provided herein, or as otherwise agreed in writing by Metrotek, the Price will not include freight or other related delivery charges, and such costs shall be the sole responsibility of the Client. The Price does not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter apply. Client shall be solely responsible for paying all such applicable taxes.

4. **Payment.** Unless otherwise agreed upon by the parties hereto, Client shall pay Metrotek the complete Price for the Equipment (or a partial amount of the Price if the invoice represents a progress billing) in United States dollars within fifteen (15) days after receiving an applicable invoice. Time shall be of the essence of payment. The obligation of Client to make timely payment of an applicable invoice, whether for a progress payment or final payment, shall not be contingent in any way and shall not be reduced by any amount, including by any retainage. If there is any dispute by Client about any amount invoiced by Metrotek, the amount not in dispute shall be promptly paid as described above, and any disputed amount which is ultimately determined to have been due shall be paid with interest at an annual rate of twelve percent (12%) from the date of withholding to the date of payment. Client will provide a notice to Metrotek within five (5) days after receipt of Metrotek’s invoice concerning any invoiced amounts disputed by Client, after which the amount indicated on the invoice will be deemed to be accepted by Client. If any payment is not made when due, Client shall pay a late charge equal to the greater of 1½% per month cumulative or the highest applicable rate allowed by law on all amounts outstanding and prior assessed late charges. In addition, Client shall pay Metrotek all costs and expenses incurred by Metrotek in enforcing these Terms, including reasonable attorneys’ fees. If, in Metrotek’s opinion, the Client’s creditworthiness deteriorates before delivery of the Equipment, Metrotek may require full or partial payment prior to delivery, or Metrotek may require the provision of security by the Client in a form acceptable to Metrotek.

5. **Revision, Suspension or Cancellation.** Any PO for Equipment that has been accepted by Metrotek may be revised, cancelled, or suspended by the Client only upon written approval by an authorized representative of Metrotek, said approval to be in Metrotek’s sole discretion. Should Metrotek approve a revision, suspension or cancellation of an order, Client shall pay all revision, suspension or cancellation charges specified in said approval from Metrotek. Revision, suspension or cancellation charges will take into account expenses previously incurred, commitments made pursuant to or in reliance upon such order, whether or not such commitments are legally binding on Metrotek, and any other factors considered relevant by Metrotek. In the event that Metrotek does not approve a revision, suspension or cancellation request from Client, Client shall remain liable to Metrotek for the full price of the Equipment set forth in the Client’s PO. In the event Client becomes insolvent, is adjudicated bankrupt, files a voluntary petition in bankruptcy, has a receiver appointed for it, makes an assignment for the benefit of creditors, is subject to filing of an involuntary petition in bankruptcy which is not discharged within thirty (30) days after filing, takes any action or is subject to any action equivalent to any of

the foregoing, or is officially charged with a violation of any law, regulation or ordinance which may govern the sale, handling or disposition of any of the Equipment then, to the extent permitted by law, Metrotek shall have the right, at its option, at any time thereafter, to terminate the PO and its obligations therefrom by giving Client written notice thereof.

6. Delivery. Any delivery date provided by Metrotek is an estimate only and, unless specifically agreed to in writing by Metrotek, Metrotek shall not be liable to the Client for failure to deliver Equipment on any particular date(s). Delivery shall be F.O.B. Origin unless otherwise agreed to by Metrotek. Metrotek shall not be responsible or liable for any delays, damage or loss which occurs during transportation and/or shipment of the Equipment. If the Client refuses or fails to take delivery of Equipment tendered in accordance with the Agreement, Metrotek may terminate the Agreement, may dispose of the Equipment in its discretion and may recover from the Client any loss or costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery). Unless agreed otherwise by Metrotek in writing, the Equipment may be delivered in installments and each such installment shall be treated as a separate Agreement. The Client shall pay for the actual quantity delivered.

7. Delayed Shipment; Storage. When Equipment is ready for shipment and shipment cannot be made because of reasons beyond Metrotek's control, Metrotek shall submit an invoice for the Equipment due and payable in accordance with the agreed payment terms, and Metrotek, upon written notice to Client, shall store the Equipment, subject to the terms of this section. Notwithstanding anything to the contrary herein, risk of loss of the Equipment shall pass to Client upon moving the Equipment to storage. All expenses incurred by Metrotek in connection with the storage of the Equipment, including demurrage, cost of preparation for storage, storage charges, insurance and handling charges, shall be payable by Client upon submission of invoices by Metrotek.

8. Acceptance. Equipment will be deemed accepted by Client upon receipt and shall constitute unqualified acceptance of these Terms. Should Equipment not comply with the Proposal or other agreed-upon technical specifications, Client shall notify Metrotek in writing of any alleged noncompliance within two (2) calendar days of receipt and off-loading. Any notification of alleged noncompliance must cite each specification criteria that is alleged to be non-compliant, with evidence of the deviation. Correction of any confirmed noncompliance will be in accordance with Metrotek's Warranty obligations set forth herein. If Equipment is energized prior to conducting verification for correctness, Metrotek will not be responsible for any resulting damages.

9. Title; Risk of Loss. Title to the Equipment and risk of loss will pass to Client at the point of delivery. Notwithstanding delivery and passing of risk, the Equipment remain the property of Metrotek until the Client pays to Metrotek the agreed price for the Equipment (together with any accrued interest) and any other sums whatever is due from the Client to Metrotek. Until title to the Equipment passes to the Client by way of full payment made to Metrotek, the Client shall hold the Equipment on a fiduciary basis and shall not part with possession of the Equipment otherwise than in the ordinary course of business, shall take proper care of the Equipment and take all reasonable steps to prevent damage to or deterioration of them, shall keep the Equipment free from any charge, lien or other encumbrance, and shall segregate the Equipment in such a way as to show clearly that they belong to Metrotek. From delivery until title to the Equipment passes to the Client, the Client shall insure the Equipment for their full value with a reputable insurer and, upon request, shall use reasonable endeavors to have Metrotek interest in the Equipment noted on the insurance policy. Until the title to the Equipment passes to the Client, the Client shall hold the proceeds of any claim on the insurance policy in trust for Metrotek and shall immediately account to Metrotek with the proceeds. Metrotek reserves the right to repossess and resell any of the Equipment for which Metrotek has not been paid in full. Client irrevocably authorizes Metrotek or its agents to enter any premises owned, leased or otherwise occupied by Client for the purpose of taking possession of the Equipment. If Metrotek takes possession of and sells the Equipment, Client continues to be liable to Metrotek for an amount equal to the aggregate of the unpaid amounts and costs and expenses incurred by Metrotek in taking possession of, transporting, storing and selling the Equipment, less an amount equal to the proceeds of the sale. The Client also hereby grants to Metrotek a purchase money security interest in all Equipment sold hereunder until such time as payment is made in full for the Equipment. The security interest applies not only to the Equipment purchased, but also to the proceeds of sale of the Equipment. The Client shall take all reasonable steps and cooperate with Metrotek in perfecting Metrotek security interest in the Equipment.

10. Force Majeure. If Metrotek is prevented, hindered or delayed from or in supplying the Equipment in accordance with these conditions by any event or circumstance beyond the reasonable control of Metrotek (including, without limitation, acts of God; acts or omissions which are substantially attributable to Client or Client's service providers; fire; weather events; any effect of governmental action; changes in law; transportation delays or accidents; inability to obtain necessary labor, material or manufacturing facilities from usual sources; or delays of subcontractors), then Metrotek may, at its option, suspend deliveries of Equipment while such event or circumstance continues, apportion available stocks between its other customers as it decides, or terminate any contract so affected with immediate effect by written notice to the Client.

11. Warranty. Metrotek warrants to Client that, for the length of time stated in the Proposal (or if no length of time is stated, for a period of one year from the date of delivery of the Equipment), the Equipment will be free from defects in material and workmanship under normal use, service and conditions. Metrotek shall have no liability for the failure of any Equipment to conform with this warranty if such failure is caused by abnormal stresses (such as stresses caused by incorrect primary voltage, frequency or improper overload), accident, misuse, neglect, alteration, improper installation or repair, inadequate maintenance, normal wear and tear, negligence of Client or others, accidents, natural forces, misuse or use contrary to any Equipment specifications or instructions of Metrotek. In the event Equipment fails to conform to this warranty during the warranty period, Metrotek, at its sole option, will repair the Equipment, replace the Equipment, or refund the purchase price of the Equipment to Client. Excluded from this warranty are all newly manufactured Equipment and all other Equipment rebuilt by other rebuilders, in which case such other manufacturers' or

rebuilders' warranties will apply and be Client's exclusive warranty to be enforced directly by Client against such third party. The Equipment has been purchased from Metrotek based upon Client's independent determination that the Equipment is appropriate for Client's intended application. The giving or failure to give any advice or recommendation by Metrotek shall not constitute any warranty or impose any liability upon Metrotek. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY CONSTITUTES METROTEK'S SOLE LIABILITY, AND CLIENT'S SOLE REMEDY, FOR ANY NONCONFORMITY OF EQUIPMENT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL EQUIPMENT IS PROVIDED AS IS AND WITH ALL FAULTS. THE WARRANTIES MADE HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUCH IMPLIED WARRANTIES OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.**

Metrotek does not extend this warranty, and Client may not transfer it, to any third party; in the event this warranty is deemed to extend to any third party, this warranty shall be subject to all conditions and limitations of these Terms.

12. Limitation of Liability. The total, aggregate, and cumulative liability of Metrotek, and its affiliates, parent, subsidiaries, shareholders, directors, officers, employees, agents, assigns and their respective predecessors and successors, to Client or any third party, whether by indemnity, in contract, guaranty or tort (including negligence or strict liability), by statute or under any other legal theory, shall in no event exceed the amount paid by Client for the Equipment giving rise to such liability. The existence of multiple claims with respect to the same Equipment will not enlarge this limit. No action, regardless of form, arising with respect to any Equipment may be brought by Client more than one year after the event giving rise to the cause of action occurred. Metrotek shall be entitled to the payment of its attorneys' fees and costs in the event Metrotek is forced to defend a legal action by Client on a claim precluded by this section. The remedies of Client set forth in these Terms are exclusive and include anything done in connection with the Equipment, such as the performance or breach of these Terms or the manufacture, sale, repair, replacement, delivery, resale or use of the Equipment. Client acknowledges that Metrotek set its Price and agreed to sell the Equipment to Client, in reliance on the limitations of liability, disclaimer of warranties, and remedies set forth in these Terms, and that such provisions form an essential basis of the bargain between the parties, without which Metrotek would not have agreed to sell the Equipment to Client. **UNDER NO CIRCUMSTANCES WILL METROTEK BE LIABLE TO CLIENT OR ANY THIRD PARTY, WHETHER BY INDEMNITY, IN CONTRACT, GUARANTY OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), BY STATUTE OR UNDER ANY OTHER LEGAL THEORY, FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY NATURE, EVEN IF CLIENT ADVISED METROTEK IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF PRODUCTION, LOSS OF CONTRACT, LOSS OF REVENUE, COST OF REPLACEMENT POWER OR TEMPORARY EQUIPMENT, CLAIMS OF CLIENT'S CLIENTS, COST OF MONEY, LOSS OF INVESTMENT OR BUSINESS OPPORTUNITY, INCREASED OPERATING COSTS, FINANCING COSTS OR GOVERNMENT FINES, PENALTIES OR SUMS DUE.**

13. Indemnity and Release. Client agrees to indemnify, defend and hold harmless Metrotek, its owners, officers, directors, employees, representatives and any affiliate of Metrotek and the owners, officers, directors, employees and representatives thereof, from and against any and all damages, claims, expenses (including reasonable attorneys' fees), losses or liabilities of any nature whatsoever, and whether involving injury or damage to person or property, and any and all suits, causes of action and proceedings thereon arising or allegedly arising out of, based upon or attributable to the Equipment sold hereunder or from the use thereof.

14. Transfer. In the event Client sells, assigns or otherwise transfers Equipment or any right or interest therein to a third party, such third party shall be bound by these Terms in the same manner as Client. In the event such third party is for any reason determined to not be bound by these Terms, Client shall indemnify, defend and hold harmless Metrotek from and against all liability of Metrotek to such transferee or any subsequent transferee in excess of what Metrotek's liability would have been if such transferee had been bound by these Terms in the same manner as Client.

15. Dispute Resolution. In the event a dispute arises between Client and Metrotek regarding the application or interpretation of, or in any way relating to these Terms including any breach of these Terms, Client and Metrotek shall use reasonable efforts to reach an equitable resolution of the dispute on an expedited basis. The validity, interpretation and effect of these Terms shall be governed by laws of the Commonwealth of Pennsylvania without consideration of its choice of law analysis. Any dispute between the parties related to the Equipment or these Terms shall be determined by the Pennsylvania Court of Common Pleas, Northampton County, with the parties hereby consenting to such venue as the sole forum for such disputes except as otherwise noted. Client hereby consents to the personal jurisdiction of the Courts of the Commonwealth of Pennsylvania. In the event of any action before the court, the court shall award reasonable attorneys' fees and expert costs, if any, to the substantially prevailing party. **EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).**

Metrotek, at its sole discretion, may elect to subject disputes arising out of this Agreement to resolution by mediation, arbitration or litigation. This election may be made at any time by Metrotek. Unless otherwise agreed by the Parties at the time of such election, the rules governing mediation or arbitration invoked by Metrotek shall be the Construction Industry Dispute Resolution

Procedures of the American Arbitration Association. Client hereby waives the right to elect the method of dispute resolution and agrees that this waiver is supported by sufficient and appropriate consideration. In the event of an election of arbitration, the Arbitrator(s) shall have the exclusive power to determine issues of arbitrability. Such arbitration shall be final and binding upon the parties. The arbitrator(s) shall award reasonable attorneys' fees, arbitration costs and expert costs, if any, to the substantially prevailing party. In the event of any claim or dispute between Metrotek and Client, Metrotek shall proceed diligently with performance of the Proposal, including that in dispute, and Client shall continue to make payments in accordance with this Agreement. The obligations set forth herein shall not be binding upon either party hereto with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other equitable relief, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution of the actual dispute or (ii) actions to collect payments not subject to a bona fide dispute or (iii) claims permitted hereunder against third parties.

16. Representations by Client. (i) Client is validly existing and in good standing under the laws of its state of incorporation with full legal right, power and authority to contract with Metrotek for the sale of Equipment by Metrotek and to perform its obligations under this Agreement. (ii) Client has cash on hand and/or binding financial commitments to deliver the Price to Metrotek in accordance with the terms of the Proposal or this Agreement. (iii) Client voluntarily elects to be bound by all of the Terms contained herein.

17. Severability, Non-Waiver. Every provision of these Terms is intended to be severable. If any term or provision is illegal, invalid, or unenforceable, such shall not affect the remainder. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically, as part of these Terms, provisions similar in terms as necessary to render such provision legal, valid, and enforceable. Metrotek's failure to enforce any or all of these Terms shall not constitute a waiver of its rights with respect to the same or any subsequent breach.

18. Notices. Any notice pursuant to the Terms of this Agreement shall be in writing and effective when received by the party to whom addressed when either: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service with delivery receipt requested; or (d) sent by electronic mail or other electronic means and acknowledged by recipient.

<< End of Agreement >