

**STANDARD TERMS AND CONDITIONS OF SALE
USSI HOLDINGS, INC., d/b/a Utility Sales and Service**

PARTS AND SERVICE

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY

Acceptance of orders by USSI HOLDINGS, INC. d/b/a Utility Sales & Service ("USSI"), from any Buyer is conditioned upon Buyer's consent and agreement to the Terms and Conditions of Sale set forth below. Buyer's placement of an order for product from USSI constitutes consent and agreement to these Terms and Conditions. These Terms and Conditions shall apply to all orders, whether said order is via electronic delivery including email, verbal (by telephone) or by written orders sent by Buyer to USSI, notwithstanding any variance with the terms or conditions of any order or other instrument provided by Buyer to USSI. USSI may change these Terms and Conditions upon written notice to Buyer, which changes shall apply to orders made by Buyer after Buyer's receipt of such notice. USSI reserves the right to refuse to fill orders from, or otherwise do business with, any party for any reason, whether or not set forth in these Terms and Conditions.

- 1) **ACCEPTANCE.** Once Buyer's order is accepted by USSI, a binding contract is created to purchase and sell the product identified on Buyer's order on these Terms and Conditions. Acceptance of any purchase order may be contingent upon approval of the Buyer's credit.

- 2) **PRICES AND CHARGES.** All prices contained within the USSI product catalog or quotation are, unless specifically identified therein, exclusive of applicable sales, use, and other taxes relating to the sale, purchase, or delivery of the product and all such taxes shall be paid by Buyer. Product prices published by USSI are subject to change without notice. Typographical and other errors in stated prices are subject to correction.

- 3) **TERMS OF PAYMENT.** Generally, the purchase price for product is due and payable prior to delivery. Subject to approved credit and to established credit limits, USSI may extend credit, which may be withdrawn at any time in the sole discretion of USSI. Absent terms agreed upon in writing by USSI, the general terms of any credit transaction are:
 - a) Finance charges are imposed on all past due invoices at the lesser of (i) a periodic rate of 2% per month (an annual percentage rate 24%), or (ii) a rate per month equal to 1-12th of the maximum annual percentage allowed under applicable state laws. If Buyer fails to make payments when due, USSI may recover all incidental and consequential damages caused by Buyer's breach, including all fees paid to collection agencies and attorneys' fees and costs without prior notice.
 - b) All past due invoices (i.e. invoices not paid within 30 days) paid with a credit card will be charged a service fee of 3.5%.
 - c) Non-sufficient funds checks received by USSI from Buyer are subject to a minimum \$40.00 service charge. Future orders from any Buyer from whom a non-sufficient funds check is received must be paid in full in advance by acceptable credit card, money order, or certified check.
 - d) Orders for product refused or cancelled following delivery of product to the common carrier for shipment may be restocked, less a minimum ten percent restocking fee charged to Buyer, provided, however, that specially ordered or manufactured product may not be returned or the order cancelled, whether inventoried by USSI or not. Additionally, Buyer will be responsible for all shipping charges incurred to restock.
 - e) No payment by Buyer shall contain a restrictive endorsement of any kind. Any payment containing a restrictive endorsement may be accepted by USSI and such acceptance shall not be deemed to be an accord and satisfaction with respect to any obligation of the Buyer.

- 4) **SHIPMENT, RISK OF LOSS, AND DELAY.** The methods of shipment and packaging shall be in accordance with USSI's standard procedures. USSI will use all commercially reasonable efforts to deliver product to Buyer on the schedule requested by Buyer. However, USSI shall not be liable for delays in product shipments for any reason. Product may be delivered in installments and a delay in delivery shall not relieve Buyer of the obligation to accept and pay for such installment deliveries.
- a) Unless otherwise agreed to in writing, all transportation and shipping charges shall be invoiced to and paid by Buyer. Title to product shall pass to Buyer and USSI's liability as to delivery shall cease on delivery of product to the common carrier for shipment. Risk of loss or damage to product shall pass to Buyer upon delivery of product to the common carrier for shipment.
 - b) Each order placed by Buyer shall constitute a separate and independent transaction and shall be invoiced separately. All invoices rendered by USSI covering product not in dispute shall be paid by Buyer regardless of disputes relating to other invoices or other delivered or undelivered product. In the event of dispute regarding an invoice(s), USSI may accept payment on an amount less than that showing under the invoice; however, such acceptance of partial payment shall not constitute acceptance of payment in accord and satisfaction of such dispute unless specifically stated by USSI in writing. Items temporarily out of stock will be back ordered and delivered to Buyer upon availability, unless the order is cancelled prior thereto by Buyer.
 - c) USSI shall not be liable for failure to perform resulting from unforeseen circumstance or causes beyond USSI's direct control.
- 5) **SECURITY INTEREST.** USSI retains and Buyer hereby grants to USSI a security interest in shipped product until the full purchase price has been paid. Buyer's failure to pay any amount when due shall give USSI the right to possession and removal of the product at any time upon giving ten (10) days prior notice. USSI's taking of possession shall be without prejudice to any other remedies USSI may have. Upon request, Buyer agrees to execute financing statements or other documents reasonably required by USSI to protect and perfect USSI's security interest in the shipped product.
- 6) **INSPECTION AND ACCEPTANCE.**
- a) Buyer shall inspect all products upon receipt and shall notify USSI in writing of any overages, shortages, defectiveness of product, or other failures to conform to the order which are reasonably discoverable within five (5) business days of product receipt. All notifications shall be accompanied by packing slips, inspection reports, and other documents necessary to support Buyer's claims. All shortages or other failures to conform not timely reported to USSI as required by this Section will be deemed forever waived by Buyer.
 - b) For all services provided by USSI, Buyer shall inspect the equipment on which the service was provided and notify USSI in writing of any failure to conform to the order which is reasonably discoverable within five (5) business days of the return of the equipment following service. All notifications shall be accompanied by inspection reports or other documents necessary to support Buyer's claims. Any failure to timely report issues with service shall be deemed forever waived by Buyer.
- 7) **LIMITED PARTS AND SERVICE WARRANTIES.** USSI warrants that this product is composed of the materials described on the label and free from defects. USSI warrants that the services provided will be free from defects. USSI makes no warranty if the product or equipment is covered by a manufacturer's warranty. USSI's maximum liability under this limited warranty is the replacement of the product purchased (for new products purchased), corrective service (for service work) or the return of the price paid, in the sole discretion of USSI. USSI makes no other warranties, express or implied, arising by law or otherwise **(INCLUDING BUT NOT LIMITED TO ANY WARRANTY WITH RESPECT TO TITLE, ANY OBLIGATIONS OF THE SELLER WITH RESPECT TO THE IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE,**

COURSE OF DEALING OR USAGE OF TRADE OR OTHERWISE, AND ANY OBLIGATION OR LIABILITY OF USSI FROM TORT, OR FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES) or whether or not occasioned by the negligence of USSI. This warranty states the entire obligation of USSI in connection with this transaction. The warranty shall not be extended, altered or varied except by a written instrument signed by USSI and by the respective duly authorized representatives of the parties. It is understood and agreed that if USSI is found liable, whether in contract, in tort, under any warranty, in negligence or otherwise, liability shall not exceed the cost to replace the product, the cost to correct the service defect or the return of the amount of the purchase price paid by you, whichever is less, and under no circumstances shall USSI be liable for special, indirect or consequential damages.

8) RETURNS. Except for products described in (a) below, product may be returned only with the prior consent of USSI which may be withheld by USSI for any reason. Returns of product must be received by USSI within 30 days of the product shipment date in order to avoid a restocking charge. Product may be returned only if unmarked, unopened, in the original sealed packages and in all respects, resalable. USSI reserves the right to reject any product returned more than 30 days after the invoice date.

- a) Special, customized, personalized or government regulated products are not returnable under any circumstances.
- b) Returned product will be credited to the Buyer's USSI account and USSI may elect to charge a minimum ten percent (10%) restocking fee. Original shipping costs are not creditable or refundable. Cash refunds will be given only if Buyer's account with USSI has no balance.
- c) Prior to returning product, Buyer must call USSI's Customer Service Department to obtain a return authorization number. All returned product MUST receive a return authorization number from USSI prior to return shipment. USSI will provide a return label and instructions via email (preferred), fax or regular mail. In some circumstance, including if items are kept more than 30 days from the invoice date, Buyer will be responsible for return freight. Buyer shall be responsible for any freight loss or damage during return.
- d) Credit will be issued to Buyer only after inspection for conformity to this return policy. In the event returned product is received by USSI not in conformance to this return policy, such product will be held by USSI for 30 days. USSI shall attempt to notify Buyer of nonconformance. Such product will either be (i) returned to Buyer as is, with all shipping costs charged to Buyer, or, (ii) in the sole discretion of USSI, credited to the Buyer's account, less a 50% restocking fee.

9) GENERAL PROVISIONS.

- a) Waiver. Failure by any party to enforce any of its rights hereunder shall not be construed to be a waiver of such party's rights or ability thereafter to enforce any of such party's rights under these Terms and Conditions.
- b) Severability. If any one or more of these Terms and Conditions are for any reason held to be invalid, illegal, or unenforceable, the remaining Terms and Conditions shall be unimpaired and will continue in full force and effect.
- c) Headings. Headings are for the purpose of reference only and shall not in any way limit or affect the meaning or interpretation of these Terms and Conditions.
- d) Entire Agreement. These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous terms, conditions, and representations concerning the subject matter hereof.
- e) Assignment. Buyer may not assign any contract between USSI and Buyer without the prior written consent of USSI.
- f) Listing Errors. USSI assumes no liability for errors in listings, specifications, product numbers, or prices contained within the USSI product literature. USSI reserves the right to change listings, specifications, product numbers or prices at any time without notice.

- g) Limitations on Actions. No action against USSI for breach hereof may be commenced more than one year after the accrual of the cause of action.
- h) Technical Advice. USSI assumes no obligation or liability on account of any recommendation, opinion, or advice concerning the choice or use of any product.
- i) Venue. All proceedings involving the performance, interpretation or enforcement of any of the provisions arising out of or relating to these the Order or these Standard Terms and Conditions shall be brought exclusively in the circuit court in Outagamie County, Wisconsin or the Federal District Court located in Green Bay, Wisconsin. Buyer waives any claim that the forum selected is inconvenient.
- j) Force Majeure. Neither Buyer nor USSI shall be liable for delays occasioned by unforeseeable causes beyond their control and without their fault or negligence; provided, however, that if any such delay occurs, USSI shall have the option to cancel all or any part of the Order. Written notice of any such delay, including the anticipated duration of such delay, must be given by the nonperforming party within ten (10) days of the unforeseeable cause or event.
- k) Cancellation. USSI reserves the right at any time and from time to time without cause, to cancel all or any part of the undelivered portion of the Order by notice to Buyer. In the event of such cancellation, USSI shall not be liable to Buyer for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect USSI's right to terminate the Order for default of Buyer.
- l) Default. Upon the happening of any one or more of the following events, USSI shall forthwith have the unrestricted right to cancel and terminate the Order without cost or liability to USSI: (1) Buyer's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Buyer; (3) institution of legal proceedings against Buyer by creditors or stockholders; (4) appointment of a receiver for Buyer by any court of competent jurisdiction. The acceptance of goods or performance after the occurrence of any of the events above enumerated shall not affect the right of USSI to cancel its additional obligations.
- m) Amendment. USSI retains the right to amend, modify, add to, or delete any terms contained in these Standard Terms and Conditions. Changes shall be ten (10) business days following the posting of the amended Sales Standard Terms and Conditions on its website: utilityyssi.com
- n) Electronic Transactions. USSI and Buyer agree that all business transactions may be conducted by electronic means, including the use of electronic signatures, subject to Wisconsin Statutes Chapter 137.
- o) Notices. Any notice given hereunder shall be deemed duly given when sent by pre-paid, first class mail.

USSI Holdings, Inc.
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