



DISTRIBUTOR OF INDUSTRIAL ELECTRICAL CONTROLS

## GENERAL TERMS AND CONDITIONS OF SALE

**1. PARTIES.** "Seller" shall mean Wistex II, LLC. "Purchaser" shall mean the entity or person submitting the purchase order to Wistex II, LLC.

**2. ACCEPTANCE.** Purchaser acknowledges and agrees that these General Terms and Conditions are incorporated in, and are a part of, this Agreement and each purchase order, service job, release, requisition, work order, shipping instruction, specification and other document, whether expressed verbally, in written form or electronic commerce such as by electronic data interchange (EDI), relating to the products and/or services to be provided by Seller pursuant to this Agreement (such documents are collectively referred to as the "Agreement"), and that Seller's acceptance of Purchaser's offer to purchase is expressly made conditional upon the incorporation of these General Terms and Conditions into the Agreement. If Purchaser accepts the products and/or services which are the subject of the Agreement, Purchaser shall be deemed to have accepted the Agreement including these General Terms and Conditions in their entirety without modification. Any additions to, changes in, modifications or revisions of the Agreement (including these General Terms and Conditions) shall require the written consent of an authorized representative of Seller. All stenographic and clerical errors are subject to correction by Seller.

**3. QUOTATION EXPIRATION.** All quotations, both written and verbal, are subject to change without notice unless otherwise noted by Seller. Seller shall have the right to withdraw any quote which has not been accepted by Purchaser.

**4. PRICING.** Prices for products and other related information shown in any Seller or manufacturer product publication including, but not limited to catalogs, brochures and websites are subject to change without notice. Prices do not include related freight charges, use tax, sales tax, excise tax, value-added tax, or similar taxes, duty, customs, inspection or testing fees, or charge of any nature whatsoever imposed by any governmental authority unless otherwise noted by Seller. Extra labor or mechanical facilities required to unload shall be provided by Purchaser without any cost to the seller.

(a) Unless otherwise specified in writing, all quotations expire thirty (30) days from the date thereof.

(b) Unless otherwise stated herein, service prices are based on normal



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business hours (8 a.m. to 5 p.m. Monday through Friday). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Rates are subject to change without notice.

**5. SHIPPING AND PROCESSING.** Shipment of products will be prepaid by Wistex and added to your invoice. Any extra charges incurred for additional services approved, such as Customer specified routing, or use of Customer's carrier or special handling at the destination, must be paid by the Customer. Item will ship using local routing F.O.B. (a) Seller's facility, (b) Seller's supplier's facility when products are shipped directly from the manufacturer or (c) as otherwise indicated per Seller's quotation or order acknowledgment. Seller will use commercially reasonable efforts to ensure on time delivery. In no event shall Purchaser be entitled to liquidated, delay or consequential damages as a remedy for any delay in delivery by Seller. Title and risk of loss passes upon delivery to the delivery point per applicable shipping term. Purchaser shall pay all insurance costs associated with delivery. Delay in shipment shall not relieve Purchaser of its obligation to accept remaining shipments. In all cases, title shall pass upon delivery to the carrier at the point of shipment and thereafter all risk of loss or damages shall be upon the Purchaser. Wistex shall not be responsible for delays caused by manufacturing plants, transportation strikes, fires, floods, storms, war, insurrections, riot any government regulation, order, act or insurrection or any other circumstances beyond its control and Purchaser hereby waives any claims relating to same.

**6. TAXES.** Any use tax, sales tax, excise tax, duty, custom, value-added tax, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Purchaser shall be paid by Purchaser in addition to price quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Purchaser shall reimburse Seller therefor or, in lieu of such payment, Purchaser shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.



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**7. EDI TRANSACTIONS.** If Seller and Purchaser have mutually agreed to use an EDI system to facilitate purchase and sale transactions, customer agrees that it will not contest (a) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby or (b) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form.

**8. PAYMENT.** Unless otherwise noted by Seller, payment shall be Net 30 days from the date of Seller's invoice without discount for early payment. Late payments are subject to a service charge equal to 1 ½ % per month (18% per annum) or the maximum amount permitted under law, if less, until paid. Purchaser shall indemnify Seller for all costs of collection of past due amounts including, but not limited to, attorney's fees and court costs. Seller reserves the right at any time to suspend credit, change credit terms or terminate the Agreement or any purchase order, when, in Seller's sole opinion, Purchaser's financial condition so warrants. Purchaser shall have no right to offset any amounts due or to become due to Seller against any claims, charges, expenses, fees or other payments of any kind whatsoever under any circumstances, including, but not limited to, any liability which may arise due to any breach or alleged breach of the Agreement or any provision thereof. All NSF checks returned to Seller will be subject to a \$30 NSF fee. Seller may assign and/or sell any receivables or indebtedness owed by Purchaser without notice. If, in the judgment of Seller, the financial condition of the Purchaser at the time of manufacture or shipment does not justify the terms of payment specified, Seller reserves the right to require full or partial payment before manufacture or shipment and to suspend any future performance until such payment has been received.

**9. SECURITY INTEREST.** Seller retains a purchase money security interest ("PMSI") under the Uniform Commercial Code in the products sold until payment in full has been made. In the event of default by Purchaser under the Agreement, Seller shall have all the rights and remedies of a secured creditor under the Uniform Commercial Code. Purchaser agrees to execute such financing



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statements and other documents as Seller may request in order to perfect Seller's security interest. Purchaser agrees and hereby appoints Seller as its attorney-in-fact to do, at Seller's option, all acts and things Seller may deem desirable to perfect and continue to perfect the PMSI granted hereby, including Seller's authority to filing financing statements naming Purchaser as debtor and Seller as secured party without Purchaser's signature in those states where such filings are permitted, and to sign Purchaser's name thereto where required.

**10. CHANGES; SUSPENSION; CANCELLATION.** Any changes, suspensions or cancellations by Purchaser must be approved in writing by Wistex and may be subject to restocking and other charges. Purchaser may request changes to the Agreement. Seller shall promptly advise Purchaser in writing of the reasonable effect on price and delivery date. Seller shall not be required to institute any Purchaser-dictated change until the parties have agreed to an equitable adjustment to the price and/or delivery date. Purchaser may, by written notice, request Seller to temporarily suspend performance or delivery hereunder; provided that Seller is reimbursed for additional costs incurred as a result thereof, including but not limited to storage, insurance, preservation, and other reasonable costs attributable to such suspension. Purchaser shall be responsible for all price increases instituted by Seller during the period of suspension. Seller shall be granted a reasonable extension of the delivery date to take account of the suspended performance. In the event that the duration of such suspension exceeds ninety (90) days, Seller may, at its option, declare Purchaser to be in breach of the Agreement and shall have the right to assert any available remedy under the Agreement or otherwise available at law or in equity. Any order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified to the order incurred prior to the effective date of notice of termination and all expenses incurred by Seller attributable to the termination, plus a fixed sum of twenty-five (25%) percent of the final total price to compensate for disruption in scheduling and other indirect costs.

**11. INSPECTION AND ACCEPTANCE.** Purchaser shall have three (3) business days from the date of delivery to inspect such products for defects and nonconformance and notify Seller, in writing, of any defects, nonconformance or rejection of such products (other than defects or nonconformities due to damage,



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shortage or errors in shipping which shall be reported as set forth below). Failure to provide such written notice shall constitute a waiver of any claim by Purchaser that there are defects or nonconformities for damage or shortage. Claims for shipping errors or shortages must be made in writing to Seller not more than three (3) business days after receipt of shipment. After such period, Purchaser shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Purchaser shall have no right to reject the products for any reason or revoke acceptance. Claims for damage due to shipping must be made by Purchaser to the freight carrier.

**12. RETURN OF PRODUCTS.** All orders are final sale and are non-cancelable and non-refundable. Purchaser must contact Seller for a Return Material Authorization (RMA) prior to returning any product. All returns must reference the RMA number along with the original invoice number and the reason for return. Products that have been modified or have no record of purchase are subject to be returned to the customer at their expense. Non-warranty returns of normal stock products that are unused and are in resalable condition will be subject to Seller's return policies in effect at the time, including applicable restocking and transportation charges and other conditions of return. Products must be returned in purchased condition and are subject to manufacturers return policies. The customer is responsible for all return shipping costs on items being returned or exchanged. Restocking fee may apply, as determined by the manufacturer. Credits or exchanges will be provided once the item has been received in its original condition. No credits will be awarded for items lost or damaged during the return shipping. Please insure your packages to protect from damage. Please contact Wistex for an RMA Form for any returns at **(800)726-7307 or sales@wistexllc.com.**

**13. REMEDIES UPON TERMINATION.** Upon termination, Purchaser shall pay to Seller the following amounts without duplication: (i) the Agreement price for all finished work and completed services which conform to the requirements of the Agreement and not previously paid for; (ii) for products manufactured by others, Purchaser shall pay all applicable restocking or cancellation charges including reimbursement for direct costs assessed by the manufacturer; (iii) **special orders shall result in payment of 100% of the Agreement price**, (iv) for products manufactured by Seller, Purchaser shall pay for reasonable costs





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including cost of work-in-progress and raw materials purchased by Seller based on Purchaser's purchase order and up to 100% of the Agreement price for special order products.

### 14. LIMITED WARRANTY.

(a) The warranty obligations of Seller for products, parts, or services manufactured or provided by others and merely sold by Seller shall in all respects conform and be limited to the warranty extended by the manufacturer or service provider, if transferable. Copies of the manufacturer's warranties are available prior to the purchase of products by contacting Seller. Seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract. Purchaser agrees that if products sold hereunder are resold by Purchaser, Purchaser will include in the agreement for resale provisions which limit recoveries in accordance with these General Terms and Conditions. In case of Purchaser's failure to include in any such agreement for resale the terms providing for such limitations, Purchaser shall indemnify and hold Seller harmless against any liability, loss, cost, damage, or expense (including attorney's fees) arising out of or resulting from such failure.

(b) Seller warrants that any products or part thereof manufactured or designed by Seller will be free from defects in material or workmanship for a period of one (1) year from the date of installation if installed by Seller or one (1) year from the date of delivery if not installed by Seller. Remedies under the foregoing warranty will be limited, at Seller's option, to the replacement, repair or modification of, or issuance of a credit for the purchase price of the products. All product shipping expenses and labor, travel, and per diem expenses for repair personnel travel, lodging and premium labor expenses shall be paid by Purchaser. This warranty is of no effect if such products claimed to be defective or any part or component thereof shall have been improperly repaired, altered, installed or operated by any third party or subjected to misuse, negligence or accident.

(c) Any warranty claim must be addressed to Seller in writing setting forth sufficient detail to permit identification of the defect and be made no later than thirty (30) days after the expiration of the warranty period set forth above. No employee or agent of Seller is authorized to make any warranty other than that which is specifically set forth herein. THE FOREGOING OBLIGATIONS ARE IN



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LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES INCLUDING ALL WARRANTIES OF FITNESS OR OF MERCHANTABILITY OR OTHERWISE, EXPRESS OR IMPLIED IN FACT OR BY LAW, and state Seller's entire and exclusive liability and Purchaser's exclusive remedy for any claims in connection with the sale of services, products, their design, suitability for use or operations.

**15. USE AND SAFETY OF PRODUCTS.** SELLER DOES NOT GUARANTEE NOR WARRANT THAT ANY PRODUCTS PURCHASED HEREUNDER MEET PURCHASER'S SPECIFICATIONS OR INTENDED USE, NOTWITHSTANDING THE FACT THAT SELLER MAY HAVE BEEN SUPPLIED BY PURCHASER OR THIRD PARTIES WITH PLANS, SPECIFICATIONS, SCOPE OF WORK DOCUMENTS, ETC. FAILURE TO CONSULT THE NATIONAL ELECTRIC CODE AND ANY PERTINENT LOCAL CODES FOR APPROVED INSTALLATION, USE, STORAGE AND REPAIR PROCEDURES AND PRECAUTIONS MAY RESULT IN PROPERTY DAMAGE, INJURY OR DEATH. PURCHASER IS RESPONSIBLE FOR USE AND INSTALLATION IN ACCORDANCE WITH INSTRUCTIONS PROVIDED BY MANUFACTUROR AND SELLER SHALL NOT BE RESPONSIBLE FOR PURCHASER'S IMPROPER SELECTION OF A PRODUCT FOR A PARTICULAR APPLICATION OR USE. SELLER ASSUMES NO RESPONSIBILITY THAT THE GOODS WILL BE FIT FOR ANY OTHER PARTICULAR PURPOSE FOR WHICH PURCHASER MAY BE BUYING THESE GOODS, EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT.

**16. INDEMNIFICATION.** Purchaser represents and warrants that any specifications and information delivered to Seller hereunder do not violate, infringe or constitute a misappropriation of any intellectual property rights of any third party and that Purchaser is not aware of any facts upon which such infringement could be based. Purchaser agrees to defend and indemnify Seller, its employees, members, officers, directors, successors, insurers and assigns against any and all claims for damages, claims, suits, penalties, actions, costs and expenses, including attorneys' fees ("Losses") related to or arising out of (a) the breach of the foregoing warranty; (b) the manufacture or sale of all or any part of the products which are manufactured in accordance with the specifications furnished by Purchaser; or (c) Purchaser's negligence or willful misconduct; provided that the foregoing indemnification shall not apply to Losses



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arising solely out of Seller's willful misconduct or gross negligence. NOTWITHSTANDING THE FOREGOING, SELLER PROVIDES NO INDEMNITIES (INTELLECTUAL PROPERTY OR OTHERWISE) RELATIVE TO ANY THIRD-PARTY PRODUCTS OR SERVICES RESOLD BY SELLER.

**17. DISCLAIMER AND LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL NOT BE LIABLE FOR ANY FORM OF INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO CLAIMS FOR BUSINESS INTERRUPTION OR LOSS OF PROFIT, REVENUE, MATERIALS, ANTICIPATED SAVINGS, DATA, CONTRACT, GOODWILL OR THE LIKE (WHETHER DIRECT OR INDIRECT IN NATURE). SELLER'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL OTHER CLAIMS AND LIABILITIES, WHETHER OR NOT INSURED, INCLUDING OBLIGATIONS UNDER ANY INDEMNITY, WILL NOT EXCEED THE COST OF THE PRODUCT(S) GIVING RISE TO THE CLAIM OR LIABILITY. SELLER DISCLAIMS ALL LIABILITY RELATIVE TO GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY, BUT NOT CONTRACTUALLY REQUIRED OF SELLER. ANY ACTION AGAINST SELLER MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION HEREOF AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND FURTHER WILL EXTEND TO THE BENEFIT OF SELLER'S EMPLOYEES, REPRESENTATIVES AND SUPPLIERS AS THIRD-PARTY BENEFICIARIES. EACH PROVISION HEREOF WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED AS SUCH. THE PARTIES HEREBY AGREE THAT WITHOUT THIS LIMITATION OF LIABILITY WISTEX WOULD NOT HAVE AGREED TO THE PRICE AND TERMS OF THIS AGREEMENT. THE LIMITATION OF LIABILITY SET HEREIN APPLIES TO ALL PRODUCTS AND SERVICES PURCHASED OR OTHERWISE PROVIDED HEREUNDER.





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**18. FORCE MAJEURE.** Seller shall not be liable for any loss or damage as a result of any delay in shipment, delivery or installation due to any cause beyond Seller's reasonable control, including without limitation, flood, hurricane, or other act of God, embargo or other governmental act or authority, regulation or request, fire, theft, accident, strike, slowdown, labor dispute, war, riot delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities, whether at Seller's operations or at the operations of a supplier or sub Seller to Seller. In the event of any such delay, the date of performance shall be extended for a period equal to the time lost by reason of delay, plus a reasonable time for resuming performance.

**19. Assignment.** Any assignment of this Agreement or of any rights or obligations under the Agreement without prior written consent of Seller shall be void.

**20. Entire Agreement.** This Agreement constitutes the entire agreement between Seller and Purchaser. There are no agreements, understandings, restrictions, warranties, or representations between Seller and Purchaser other than those set forth herein or herein provided.

**21. Jurisdiction and Venue.** Purchaser agrees that any and all disputes with the Seller whether arising from contract or tort shall be resolved in the Court of Common Pleas of Bucks County, Pennsylvania and that this Court shall have the exclusive jurisdiction over all such disputes and Purchaser consents to personal jurisdiction in this court. Purchaser agrees that the laws of the Commonwealth of Pennsylvania shall govern the validity, interpretation, and enforcement of this Agreement. Any legal action brought by Purchaser against Seller shall be filed within one (1) year after the cause of action arises or it shall be deemed forever waived.

**22. Intellectual Property and Indemnification.** Seller makes no warranty or representation with regard to any patent, trademark, copyright, trade dress, or trade secret, relating to or claimed to arise from any product sold to Purchaser. Seller will not and does not indemnify or otherwise hold harmless Purchaser from any claim of misappropriation or infringement of any patent, trademark, trade dress, trade secret, copyright or other rights relating to any merchandise.



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Purchaser agrees that Purchaser will not make such a claim or seek such indemnification, and that such a claim or demand by Purchaser constitutes a breach of these Terms and that Purchaser will pay all attorney fees and other court costs incurred by Seller in defending against any such claim or demand, whether or not a legal action is commenced or filed.

**23. Entire Agreement.** These Terms constitute the entire agreement between Purchaser and Seller. These terms may not be altered or modified in any way unless signed in writing by you, the user, and a duly authorized agent of Seller.

**24. Separate Agreements.** If for any reason any provision of these Terms is considered unlawful, void or unenforceable, then that provision will be deemed to be deleted from these terms and conditions and such deletion will not affect in anyway the remaining provisions of these Terms, which will continue to constitute this agreement.

**25. Headings** The section headings used in these Terms are intended solely for the convenience of you, the user. Such headings do not affect the construction or interpretation of these Terms, and are not part of these Terms.

**26. Attorneys' Fees.** If Seller has to take any action to collect monies owed it relating to this Agreement or seek any legal relief against the Purchaser, the Purchaser shall pay Seller its attorneys' fees and costs incurred in its collection efforts, bringing suit an/or enforcing any judgment granted therein.

**27. Independent Contractors.** Seller and Purchaser are independent contractors and not principal and agent. Nothing construed or contained in these Terms and Condition shall be constructed to create a partnership, dealership, reseller, agency, employment or joint venture relationship. Purchaser is not authorized to make, and shall not make, any representations on behalf of, or which are binding on Seller. The status of Seller and its any subcontractors is that of independent contractors and at no such time will subcontractors be deemed employees or agents of Seller.

**28. E-Commence Capability.** In the event that Seller agrees to provide e-commerce capability to Purchaser utilizing Seller's website, the terms and



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conditions set forth in this document shall govern the sale of products or services to Purchaser that are purchased through such capability notwithstanding any additional or different terms or conditions on any document or separate Internet website, whether the Purchaser's or a third party's.

**29. Application of State and Federal Laws.** Nothing herein shall be construed to limit or waive any rights of Seller under applicable Federal, state or local laws.