

TERMS AND CONDITIONS OF PURCHASE
(Effective June 1, 2023)

Each purchase order or release (“Order”) issued by Electro-Mechanical, LLC and/or its affiliates, including, but not limited to, Federal Pacific and/or Line Power, (individually and collectively, “Buyer”), is an offer to Seller for the purchase of goods, services, or goods and services (collectively, “Products”) and is governed by these Terms and Conditions of Purchase (“Terms”). The Order is limited to and conditioned upon Seller’s acceptance of these Terms exclusively. The Order and these Terms supersede all prior agreements, and any additional or different terms proposed by Seller are expressly rejected by Buyer and will not become part of the Order. Performance by Seller of any part of the Order shall signify acceptance of all Terms as written.

1. **Purchase.** In consideration of the Products delivered by Seller in accordance with the Order and these Terms, Buyer shall pay to Seller the purchase price stated in the Order. Buyer shall be entitled, at all times, to set-off any amount owing at any time from Seller to Buyer against any amount payable by Buyer in connection with any Order.
2. **Changes.** Buyer reserves the right to alter, amend, omit, add to, or otherwise change the Order via written notice to Seller. Agreed purchase prices stated in the Order, or as otherwise agreed between Buyer and Seller, shall apply.
3. **Delivery.** Time and quantities are of the essence under the Order. Seller shall deliver the Products in accordance with INCOTERMS 2020 DDP, to the point of delivery specified in the Order, or Buyer’s place of business if no other point of delivery has been specified by Buyer. The Products shall be delivered during Buyer’s normal business hours, unless otherwise requested by Buyer. Title and risk of loss passes from Seller to Buyer upon delivery to Buyer’s point of delivery or place of business, as applicable. If applicable, Seller accepts full responsibility for the completeness and accuracy of the Products’ Certificate of Origin and all other customs documentation provided to Buyer. Seller accepts any liabilities resulting from inaccurate data on such customs documentation or failure to comply with import or export requirements. For Products defined by any applicable federal, state or local law, rule or regulation as “hazardous” or “toxic”, Seller shall provide at the time of delivery all required information, including without limitation, all Product Safety Data Sheets (“MSDS”) in approved form. Seller agrees to maintain such MSDS information current and shall provide Buyer with any amended information on a timely basis. Buyer may withhold payment for failure to provide such information until it is provided.
4. **Acceptance.** If Buyer requires Seller to be on Buyer’s Approved Supplier List (“ASL”), Buyer’s acceptance of the Product is conditioned upon Seller completing all ASL documentation requested by Buyer. Buyer shall not be deemed to have accepted any Products until (a) Seller completes such ASL documentation, and (b) Buyer has had a reasonable time to inspect Products following delivery or, in the case of a Product defect, until a reasonable time after such defect has become apparent. If any Products delivered to Buyer are not accepted, or are otherwise not in conformity with the Order or these Terms, then, without limiting any other right or remedy that Buyer may have under these Terms or applicable law, Buyer may reject the Products and request replacement of the Products or recover all payments made to Seller by Buyer. Buyer’s acceptance of Products shall not be deemed a waiver of Buyer’s right to hold Seller liable for any loss or damage resulting from such Products.
5. **Warranty.** Seller warrants and guarantees to Buyer that the Products: (a) are free and clear of any lien or encumbrance; (b) shall conform to the Product specifications, the requirements of the Order and all applicable laws; (c) shall be merchantable and fit for the Buyer’s or its customer’s intended use; (d) shall be free from defects in design, material and workmanship; (e) shall not infringe upon or violate any trademarks, patents, copyrights or other legal rights of third parties; and (f) do not contain Conflict Minerals (as that term is defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act) that originate from the Democratic Republic of the Congo or adjoining countries and that such Conflict Minerals are not necessary to such Products (collectively, “Seller’s Warranty”). Seller’s Warranty further states that all services shall be rendered in a safe and workmanlike manner by skilled personnel in accordance with generally accepted industry standards. Seller’s Warranty shall remain in effect for one (1) year after final acceptance of the Products by Buyer, or for such longer period of time as is normally warranted by Seller. Seller’s Warranty shall cover all losses, including costs and expenses (including reasonable attorney’s fees) to which Buyer will be exposed by any defects of Seller’s materials or performance. Neither approval by Buyer of Seller’s design nor acceptance of the Products shall release or discharge Seller from liability for damages resulting from a breach of Seller’s Warranty. Seller’s Warranty shall survive acceptance and payment and shall run to Buyer and its customers and shall not be deemed exclusive, but shall be in addition to Buyer’s other rights under the terms of any Order or at law or equity. Seller further agrees that, for one year from the date of the Order, Seller will not solicit or attempt to solicit, divert or hire away any person employed by Buyer.

6. Indemnification. To the fullest extent permitted by law, Seller agrees to indemnify, defend and hold harmless Buyer against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' fees and other professional fees, settlements and judgments) ("Damages") arising out of or related to the Products or Order; except to the extent such Damages are caused by Buyer's sole negligence.
7. Insurance. Seller shall maintain commercial general and products liability insurance with a company rated A-VII or better by A.M. Best & Co. Such policy shall have minimum coverage of \$1,000,000 per occurrence, \$2,000,000 aggregate, which can be met through an umbrella or standard policy or any combination thereof. The insurance shall be evidenced by a Certificate of Insurance naming Buyer as an Additional Insured, and Seller agrees to provide thirty days prior written notice of any material change, non-renewal or policy cancellation. Seller further agrees that the insurance shall be primary and that any other insurance carried by Buyer shall be excess of all other insurance carried by Seller and shall not contribute with the Seller's insurance.
8. Compliance with Laws. Seller, and any Products supplied by Seller, will comply with all applicable laws, regulations, and codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Seller and/or the Products. Seller certifies to Buyer that the Products purchased hereunder were produced or performed in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended. Unless the Order is exempted by law, Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and with the relevant orders of the Secretary of Labor relating to Equal Employment Opportunity. The Order incorporates by reference all clauses required by law. Seller will not, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to any other party in a manner contrary to applicable laws (including, but not limited to, the U.S. Foreign Corrupt Practices Act), and shall comply with all relevant laws, regulations, and rules regarding bribery and corruption.
9. Confidentiality. Seller acknowledges and agrees that proprietary or confidential information will be received from Buyer or developed for Buyer under the Order, regardless of whether such information is marked or identified as confidential. Seller agrees to keep all proprietary or confidential information of Buyer in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use for other than the purpose of the Order, any proprietary or confidential information of Buyer. Buyer shall own all rights, title and interest in any and all intellectual property rights created in the performance of the Order and Seller will execute any assignments or other documents needed for Buyer to perfect such rights.
10. Governing Law. Any Order and these Terms shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without regard to its rules on conflicts of law. Exclusive jurisdiction for disputes arising hereunder shall be conferred upon the courts for the City of Bristol, Virginia and/or, if applicable, the Federal District Court for the Western District of Virginia – Abingdon Division, in either event without the intervention of a jury. Seller expressly waives the right to a jury trial and any objection to jurisdiction and venue of the aforesaid courts. If otherwise applicable, the parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods.
11. Termination. In addition to any other rights of Buyer to cancel or terminate any Order, Buyer may, at its option, immediately terminate all or any part of an Order at any time and for any reason by giving written notice to Seller. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning disposition of completed and partially completed items, work in progress and Product acquired pursuant to any Order. In the event of Buyer's termination without cause, and only if Seller is not in breach or default, Seller shall be paid an amount to be mutually agreed upon by the parties which shall cover Seller's reasonable actual costs of performance incurred prior to termination in connection with the Products for which any Order is terminated. However, said payment shall not exceed the price specified in the Order for such Products, and in no event shall the Seller be entitled to recover punitive, special, incidental or consequential damages. Seller shall advise Buyer, in writing, of Seller's claim, if any, for such termination costs within ten days after receipt of the notice of termination. The obligations set forth in clauses 5 (Warranty), 6 (Indemnification), 9 (Confidentiality), 10 (Governing Law) and 11 (Termination) shall survive cancellation, termination or expiration of the Order or these Terms.
12. Waiver. Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right granted to Buyer herein. Buyer shall not be deemed to waive any such right unless such waiver is in writing and signed by Buyer.
13. Severability. If any term of an Order is invalid or unenforceable under any rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law.
14. Assignment. Seller shall not assign or delegate its obligations under the Order without Buyer's prior written consent.
15. Further Assurances. Buyer and Seller shall do and execute all such further acts as are reasonably required to give full effect to the rights given and transactions contemplated by the respective Order and these Terms.