

## TURTLE & HUGHES, INC. AND SUBSIDIARIES TERMS AND CONDITIONS OF QUOTATION AND SALE

1. Buyer understands and agrees that all quotations and accepted orders by Turtle & Hughes, Inc. and Subsidiaries ("Seller") are expressly conditioned upon these terms and conditions ("Terms and Conditions of Quotation"). Furthermore, your acceptance of this quotation indicates that you have also read, and agree, to the Terms and Conditions of Sale ("Terms and Conditions of Sale") which are deemed automatically incorporated into any and all purchase orders.
2. Prices are firm for ten days unless otherwise noted. As to all other terms, until signed and returned, the quotation is merely a quotation of sales prices. The quotation will be deemed accepted only if signed and returned within ten days after receipt.
3. Seller is not required to accept Buyer's orders. Any purchase order pursuant to Seller's quotation shall not result in a contract until it is accepted by Seller and acknowledged by it or its authorized representative. Full completion and acceptance of a Turtle & Hughes credit application form along with all associated requirements, such as references, is a condition precedent to engaging in business transactions with any customer.
4. This quotation is contingent upon Buyer meeting the financial qualifications established by Seller. Buyer shall supply Seller with such information as Seller may reasonably request in order to qualify Buyer for the rights under any Purchase Order Agreement.
5. If the manufacturer requires a deposit or full payment to be made to them at the time of order placement or release, those same requirements will be passed on to the Buyer, which Buyer accepts.
6. The quotation does not include accessory equipment, stems, mounting bars, mounting hardware, spares or plaster frames or any fitting-up charges which cover the manufacture or operating cost of the necessary tools and fixtures required to fill the order unless such items are listed or published as standard components in the manufacturer's specifications.
7. The quotation is made for the listed types and quantities only and all descriptions, items, totals and quantities are listed for your convenience only. Seller is not bound by any specifications, drawings, notes, instructions, engineering notices, technical data or any other document referred to in a Purchase Order by Buyer, and shall not be deemed to be incorporated by reference in any document or order by Buyer, unless a full copy is provided to Seller and such terms are approved and accepted in writing by Seller. Take-offs are not guaranteed. All items, including equals, are subject to approval by the Specifier.



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# TURTLE & HUGHES

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8. Special orders may not be subject to return for credit. Return privileges, if available, on special order material will involve restocking charges.
9. Unless otherwise stipulated, Prices do not include taxes for sales, use, property, excise, freight or other tax charges, which are Buyer's responsibility.
10. If the quotation is accepted and Buyer's order form is used for the purpose, it is expressly understood and agreed that these terms and conditions shall prevail if they conflict in any way with the terms and conditions set forth in such order form, and the issuance of such order by Buyer shall be deemed to note Buyer's assent to this condition.
11. BUYER AGREES TO AND ACKNOWLEDGES RECEIPT OF THESE TERMS CONDITIONS WHETHER IN HAND DELIVERED, E-MAILED OR THROUGH VIEWING ONLINE AT [www.turtle.com](http://www.turtle.com), where copies of the Terms and Conditions are available.

## TURTLE & HUGHES ELECTRIC SUPPLY COMPANY AND SUBSIDIARIES TERMS AND CONDITIONS OF SALE

**1. TURTLE & HUGHES AND ITS AGENTS.** For all sales, "Seller" or "Turtle & Hughes" shall mean Turtle & Hughes, Inc. and its subsidiaries; and wherever Seller's signature or approval is required, it must be by an Officer of Turtle & Hughes. Turtle & Hughes's agents, employees, and representatives have no authority to bind Turtle & Hughes to any affirmation, waiver, representation, or warranty inconsistent with these terms and conditions, unless expressly agreed to in writing by an Officer of Turtle & Hughes or otherwise approved by duly authorized corporation action.

**2. GENERAL AGREEMENT.** All sales are expressly conditioned on these terms and conditions. No additional or different terms shall apply (whether a part of Buyer's purchase order or other communication from Buyer) unless expressly agreed to in writing by an Officer of Turtle & Hughes. Any acceptance by Buyer with additional or different terms proposed in the acceptance shall be deemed a rejection of Turtle & Hughes's offer and construed as a counteroffer. No binding agreement shall come into existence without the written consent of Turtle & Hughes to such counteroffer. Any attempt to vary any of the terms of this offer shall be deemed a material alteration. Notice is hereby given that Turtle & Hughes objects to any different or additional terms and that such different or additional terms shall not be binding upon it. Acceptance of or payment for any of the goods constitutes Buyer's agreement to the Turtle & Hughes Conditions of Sale. If these terms and conditions are incorporated by reference in a Purchase Agreement, Sales Agreement or other Agreement with Buyer, these provisions shall control



notwithstanding anything to the contrary.

**3. WARRANTIES.** Since the goods sold hereunder are not manufactured by Turtle & Hughes, the company makes no warranties or representations, express or implied, as to workmanship, performance, quality, durability, fitness for a particular purpose, suitability or merchantability for any of the products sold. This disclaimer is for all liability including liability in contract, in tort or otherwise for incidental, consequential, special damages, or any loss or damage, whether to property or injury to persons, whether foreseeable or not foreseeable, resulting, directly or indirectly, from the use or loss of use of any product sold.

Turtle & Hughes agrees to assign and pass-through to Buyer any warranties expressly provided by the manufacturer of the product purchased, which shall be Buyer's exclusive rights of warranty. Buyer's remedies are subject to any limitations contained in manufacturer's terms and conditions to Seller. If there is no warranty provided by the manufacturer, then the goods are sold "as is." While Turtle & Hughes may provide manufacturer warranty information, it does not warrant or guarantee any such delivery or advice.

**4. LIABILITY.** Turtle & Hughes shall not be liable for special, indirect, incidental or consequential damages of any kind from the use or loss of use of any product or due to, arising out of or connected with these Terms and Conditions of Sale. In addition to the assignment of manufacturer warranty stated above, Buyer's exclusive remedy for any claim against Turtle & Hughes is for Turtle & Hughes, at its option, to repair or replace the goods, or for Turtle & Hughes to request return of the product and tender to Buyer the purchase price paid upon redelivery. The remedies of Buyer as set forth herein are exclusive, and the liability of Turtle & Hughes with respect to any contract of sale or anything done in connection with it, whether in contract, tort, negligence, strict liability, breach of contract, indemnity or under any legal theory, warranty or otherwise, shall not exceed the purchase price of the goods on which such liability is based.

**5. PATENTS.** If any goods shall be sold by Turtle & Hughes to meet Buyer's particular specifications or requirements and is not part of Turtle & Hughes's standard line offered by it to the trade generally in the usual course of Turtle & Hughes's business, Buyer shall hold Seller harmless from, and release and not make claim or suit against Seller because of, any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary rights, at common law, or claim of unfair trade or of unfair competition, resulting from, or occasioned by, Buyer's use, possession, sale, or delivery of the merchandise sold to Buyer by Turtle &



Hughes.

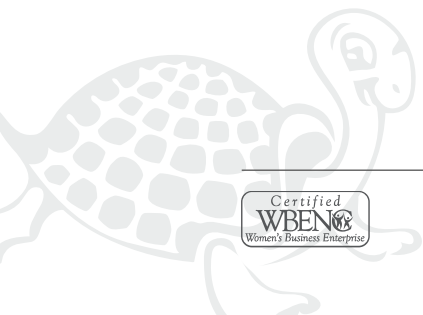
**6. DELIVERY.** Shipping dates given in advance of actual shipment are estimated. All direct shipments are F.O.B. point of shipment, and each shipment or delivery shall be considered a separate and independent transaction. Responsibility for filing claims with the manufacturer or carrier, as the case may be, rest with the Buyer.

**7. SINGLE BREACH BY BUYER.** Each shipment shall be treated as a separate and independent contract with respect to forwarding and terms of settlement. However, if Buyer defaults in the payment of any purchase price when due, Turtle & Hughes may, without prejudice to other lawful remedies, immediately place the account on hold and defer further performance until the defaulted payments are made, or on three days' written notice to Buyer, may either make future deliveries against the contract for cash in advance only, or treat the entire contract as breached by Buyer and pursue its remedies for such breach.

**8. ACCEPTANCE OF GOODS.** Buyer shall make an examination of any goods delivered immediately upon its receipt. Buyer's failure to give written notice of any claim within 10 days after the receipt of such material shall constitute Buyer's acceptance of such material. Upon acceptance, Buyer assumes all risks and liability for the results obtained in its business by the use of any materials delivered or by the use of such materials in combination with other goods or materials. In no event may customer set-off payment for any rejected or revoked acceptance goods against payment due on goods accepted.

**9. NOTICE OF CLAIM FOR DEFECTIVE DELIVERY.** Buyer will be conclusively deemed to have accepted and agreed to any invoice from Turtle & Hughes (including but not limited to the price, quantity, quality, and description of the goods as stated on the invoice and any and all terms, provisions, conditions, agreements, representations, and warranties on the invoices), unless Turtle & Hughes receives written objection to the invoice from Buyer within 10 days after the date the invoice is sent to Buyer.

**10. PAYMENT.** Unless there is an express written agreement between Turtle & Hughes and Buyer specifying different payment terms, Turtle & Hughes invoices will be due 30 days after shipment of products. All payments must be received within 30 days (or such other time period as we may mutually agree in writing). There is no grace period, and Buyer's account may be automatically placed on hold if payment is not received within the period provided by these terms and conditions. Buyer must ensure that payments are processed and mailed on time to meet these requirements. Buyer's obligation to pay Seller for the goods and services provided are not conditioned upon Buyer obtaining acceptance or approval from any third party (e.g. lenders, contractors, project managers, bondholders, insurance



companies, owners) or receiving payment from any third party (e.g. "retainage" amounts, insurance or bond proceeds, or "pay-when-paid" contract agreements).

**11. TAXES.** The prices for goods do not include any sales, use or other taxes or charges payable to state or local authorities unless otherwise stipulated. Buyer shall be responsible for and shall pay all federal, state and local sales, use, property, excise, freight or other taxes imposed on or with respect to the goods, except taxes levied on Seller's net income with respect to such goods.

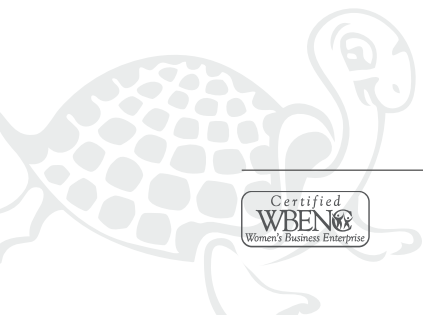
**12. SERVICE CHARGES.** Invoices that are more than 30 days past due are subject to interest from the due date until paid at the lesser of 1.5% per month (18% per annum), or the highest rate permitted by applicable law.

**13. RETURNS.** In no case are goods to be returned without first obtaining Turtle & Hughes's permission. Buyers shall pay the costs of return of any goods and shall use its best efforts to insure that all packaging materials that Turtle & Hughes supplies are maintained in suitable storage areas to protect them from damage, including, without limitation, from forklifts and weather. Goods must be securely packed to reach Turtle & Hughes without damage. Material accepted for credit may be subject to a service charge plus all transportation charges. Credit for returned goods will be allowed only to the extent agreed to in writing by a duly authorized representative of Turtle & Hughes and no application for credit will be processed unless Buyer provides the original invoice number and date.

**14. ASSIGNMENT.** No right or obligations of Buyer shall be assigned to, or assumed or performed by, a third party without the prior written consent of Turtle & Hughes, and any purported assignment or assumption without such consent shall be void.

**15. APPLICABLE LAW.** The validity, construction and performance of any agreement will be governed by the laws of the State of New Jersey without regard to conflicts of laws principles. In the event of litigation in court, each Party agrees and hereby submits to the exclusive personal jurisdiction and venue of the State and Federal Courts in the State of New Jersey. In the event that Turtle & Hughes is forced to initiate collection proceedings for amounts due to it, Buyer agrees that it will be liable for all collection and other costs incurred by Turtle & Hughes including, but not limited to, reasonable attorneys' fees whether or not litigation is commenced.

**16. NON-WAIVER BY TURTLE & HUGHES.** Waiver by Turtle & Hughes of a breach of any of these terms and condition shall not be construed as a waiver of any other breach. Turtle & Hughes's acceptance of less than full payment shall not be a waiver of any of its rights.



**17. SECURITY INTEREST, POWER OF ATTORNEY.** In addition to any security interest granted by the UCC, the Buyer grants Turtle & Hughes a security interest in all Equipment, proceeds, and products from the same to secure all obligations of the Buyer to Turtle & Hughes. Buyer shall sign financing statements evidencing the security interest as reasonably requested by Turtle & Hughes. In case of a default by Buyer, Turtle & Hughes may peaceably enter the premises of the Buyer to repossess all Equipment in which it has a security interest, Buyer shall not sell, exchange, transfer, or grant a security interest in any Equipment, which are subject to these terms and conditions if payment for same has not been made in full to Turtle & Hughes.

**18. AUTHORIZATION OF BUYER AND BUYER'S AGENTS.** In consideration of Turtle & Hughes selling goods to Buyer, the person signing any such acceptance or agreement on behalf of Buyer represents and warrants that he or she is authorized to sign on behalf of Buyer. The parent company, if any, of Buyer also guarantees performance of the agreement and payment by Buyer. The person signing and Buyer warrant that the information given to Turtle & Hughes is true and correct in all respects.

**19. CANCELLATION.** Unless the cancellation is due to a default by Seller, once an order is placed with and accepted by Turtle & Hughes, the order cannot be cancelled, unless Turtle & Hughes consents in writing. If an order is cancelled, Buyer shall reimburse Seller for any cost it incurs as a result of such cancellation, including but not limited to cancellation or restocking fees.

**20. THIRD PARTY CONTRACT OBLIGATIONS.** In the event that Buyer has contracted for or otherwise assumed with any other Party any obligation or liability to an Owner, Contractor, Construction Manager or any other person or entity responsible for the completion of any portion of any project in which Seller's goods will be used, the Parties agree that Seller is not a party to such contract, and Seller does not assume any liability or obligation under any such contract or agreement unless expressly agreed to in writing. Buyer shall not be permitted to delay, set-off or condition any payment obligation because of any third party obligation or condition, including but not limited to retainage conditions or "pay-when-paid" terms between Buyer and a third party. Buyer releases and agrees to defend, indemnify and hold Seller harmless for any claims of any nature whatsoever related to any obligation, risk, liability or responsibility which was Buyer's under any contract or which was assumed by Buyer towards any Owner, Contractor, Construction Manager or other party involving the goods or work supplied by Seller to fulfill any contractual requirement.

**21. CHANGE OF TERMS AND CONDITIONS:** Buyer acknowledges and agrees that Turtle & Hughes may change any term or part of these terms and conditions as to open accounts by sending Buyer a written notice at least 10 days before the change is to become effective. If Buyer does not agree to this change,



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Buyer must notify Turtle & Hughes within 10 days after the effective date of the change, in which case Buyer's accounts will be closed and must pay Turtle & Hughes any outstanding invoices under the existing terms of the unchanged terms and conditions for such business accounts. Placement of a new order after the effective date of any change shall be deemed acceptance of the new terms and conditions, even if the aforementioned 20 days have not yet expired.

**22. WBE APPLICABILITY:** Turtle & Hughes is a certified WBE (women business enterprise) under certain jurisdictions, the certifications of which are available at [www.turtle.com](http://www.turtle.com). Under no circumstances shall Turtle & Hughes be responsible for proper application of WBE credit on behalf of electrical contractors, general contractors or construction managers. It is fully the contractors' responsibility to ensure the WBE certification is properly applied.

**23. OTHER TERMS AND CONDITIONS.** No terms and conditions other than those herein stated, and no agreement or understanding, including but not limited to any provisions, terms and conditions contained in any confirmation order or other writing by Buyer, in any way purporting to modify these terms or conditions shall be binding upon Turtle & Hughes unless consented to in writing by an Officer of Turtle & Hughes. The invalidity in whole or in part of any of these terms and conditions shall not affect the validity or enforceability of any other term or condition. TURTLE & HUGHES'S ACCEPTANCE OF YOUR PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THESE TERMS AND CONDITIONS AND ON YOUR AGREEMENT THAT SUCH TERMS AND CONDITIONS SHALL CONSTITUTE THE SOLE TERMS AND CONDITIONS OF THE ORDER. THE CONDITIONS STATED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS, AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON THE SELLER, INCLUDING BUT NOT LIMITED TO PROVISIONS OR CONDITIONS WHICH DEEM PARTIAL PERFORMANCE OR FAILURE TO OBJECT AS ACCEPTANCE BY TURTLE & HUGHES OF BUYERS TERMS AND CONDITIONS, UNLESS ACCEPTED BY THE SELLER IN WRITING.

**24. ENTIRE AGREEMENT.** These terms and conditions and, if applicable, the Turtle & Hughes Terms and Conditions of Quotation and/or signed acceptance of offer, shall constitute the entire agreement between the parties with regard to the subject matter. The parties shall not be bound by any agent's or employee's representation, promise, or inducement not set forth in these terms or the signed agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of these terms and conditions. Acceptance of or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of these terms and conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to



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make objection. No representations, understandings or agreements have been made or relied upon in the making of the agreement other than those specifically set forth herein. These terms and the terms of the signed acceptance can only be modified by a writing signed by the parties hereto or their duly authorized agents.

**25. TERMS AND CONDITIONS RECEIPT.** BUYER AGREES TO AND ACKNOWLEDGES RECEIPT OF THESE TERMS AND CONDITIONS IRRESPECTIVE OF IN HAND DELIVERED OR THROUGH VIEWING ONLINE AT [www.turtle.com](http://www.turtle.com).

These foregoing terms and conditions are bound and shall not be edited, modified, changed or otherwise adjusted in any manner without the express written authorization of an officer (executive) of Turtle & Hughes. Any edit, modification, change or adjustment by anyone other than a Turtle & Hughes officer (executive) shall be deemed not authorized and shall have no effect on the foregoing terms and conditions.

