

## Reel Power Wire & Cable Inc. – Terms and Conditions of Seller

1. **Summary; Acceptance.** These Terms and Conditions of Seller (these “Terms”) are between Reel Power Wire & Cable Inc. d/b/a Reel-O-Matic or d/b/a Tulsa Power (“Vendor”) and the company, firm or corporation identified on the attached invoice (“Customer”, “You” or “Your”). The purpose of these Terms is to set forth the general terms and conditions that apply to all services performed by Vendor for Customer and all goods sold by Vendor to Customer. Any written or oral purchase order received from Customer by Vendor shall be construed as a written acceptance of Vendor’s offer to sell, and shall be filled in accordance with these Terms. Customer understands and acknowledges that Vendor’s acceptance of any order is expressly conditioned on Customer’s assent to these Terms, and that these Terms shall prevail over any conflicting or different terms contained in Customer’s order.

2. **Quotations and Prices.** All quotations are made for prompt acceptance and any terms quoted therein are subject to change without notice after thirty (30) days from the date quoted unless specifically stated otherwise on the quotation. Any product, service capability or manufacturing capability, which may be available at the time a quotation is made, is subject to prior sale. Prices quoted are valid for thirty (30) days unless specifically stated otherwise on the quotation and are subject to change without notice. The price in effect at the time of shipment, including any escalation formula, shall apply, unless a valid quotation or written agreement to the contrary exists between Vendor and Customer. All prices shown are in U.S. dollars and are F.O.B. Vendor’s shipping point. Any documentation pertaining to traceability requirements for raw materials or products or documentation required for any routine or special processes must be identified by the Buyer at the time of the quotation (if any) or at the time of order placement. Vendor reserves the right to impose a minimum billing charge on all sales, change orders or order supplements. Prices are subject to change without notice.

3. **Payment Terms.** All charges are due and payable in accordance with those terms set forth on Vendor’s invoice. If Customer delays delivery from the agreed upon date, payment terms shall take effect on the date Vendor is prepared to make shipment. The failure of Customer to make any payments required by these Terms shall be considered an event of default and, without limiting Vendor’s remedies at law or under these Terms, shall entitle Vendor to suspend or terminate the services or goods provided to Customer. Also, notwithstanding anything set forth below in Section 16, Customer’s failure to pay any invoice in full within the terms specified in such invoice will void all warranties, express or implied, with regard to any equipment of parts listed in such invoice, until such time as the invoice has been paid in full. Any claims for shortages or deductions for erroneous charges must be made by Customer in writing within thirty (30) days after receipt of goods or services, or shall be deemed waived.

4. **Taxes.** In addition to all other amounts payable under these Terms, Customer shall pay all United States and foreign sales, use, value added, and other taxes and duties, of whatever nature, federal, state, provincial or

otherwise (herein “Taxes”), which are levied or imposed by reason of these Terms or any of the services or goods purchased from Vendor. Customer shall promptly pay Vendor for any such Taxes paid by Vendor on behalf of Customer or which are required to be collected and paid by Vendor. Vendor may bill Customer separately for such Taxes.

5. **Recoverable Costs & Expenses.** All costs advanced and expenses incurred related to the services performed will be reimbursed by Customer to Vendor. These may include, but are not be limited to, airfare, hotel accommodations, tolls, business meals, parking, miscellaneous travel expenses, faxes, courier charges, express mailing, mileage round-trip from Vendor’s service location or shipping point, and all other out-of-pocket expenses.

6. **Finance Charges, Collection Costs and Expenses.** All bills not paid within thirty (30) days of invoice due date will be assessed a late charge of 1.5% per month (18% per annum) on the unpaid balance until paid in full. In the event that Vendor brings any arbitration or other proceeding to collect amounts owed, Vendor shall be entitled to recover the costs and expenses (including but not limited to its filing fees, witness fees and reasonable legal fees) incurred in collecting such amounts.

7. **Shipping Schedule and Delivery.** Shipment schedules are given as accurately as conditions permit and every effort will be made to make shipments as scheduled. However, Customer acknowledges and agrees that Vendor will not be responsible for deviations in meeting shipping schedules nor the any losses or damages to Customer (or any third party) occasioned by deviations in the shipping schedule, whether due to Acts of God, orders bearing priority ratings established pursuant to law, differences with workmen, local labor shortages, fire, flood, shortages or failure of raw materials, supplies, fuel, power or transportation, breakdown of equipment or any other causes beyond Vendor’s reasonable control. Quoted delivery dates are estimates only and in no event shall such dates be construed as or giving rise to an obligation that “time is of the essence.” Whether of similar or dissimilar nature than those enumerated, Vendor shall have additional time within which to perform as may be reasonably necessary under the circumstances and shall have the right to apportion its production among its customers in such a manner as it may consider to be equitable.

Vendor reserves the right to furnish commercially equivalent or better substitutes for materials or to subcontract the Customer’s order or portions thereof as Vendor deems necessary. In no event shall Vendor be liable for any consequential damages for labor resulting from failure or delay in shipment. If Customer requires drawings, procedures, standards or similar material for approval, shipping schedules will be calculated from the time such approvals are received by Vendor, since shipping schedules are based on Vendor having all required information and a firm order from Customer which is enterable into

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production. Any hold points, witness points, or need for inspection by Customer's representatives must be identified by Customer at the time of quotation (if any) and/or order placement in order that the effect on the prices or shipping schedules (if any) can be taken into account. Additional inspection or testing required by Customer which affects normal production sequence will be considered as extending the shipping dates accordingly.

**8. Transportation Charges, Allowances, and Claims.** All prices are F.O.B. Vendor's plant or other designated shipping point. No freight is allowed unless stated in Vendor's quotation (if any) or in a written contract which may exist between Vendor and Customer at the time of shipment. If Vendor's quotation or written contract states that all or a portion of freight is allowed, all prices are F.O.B. Vendor's plant or other designated shipping point, with most economical surface transportation. Vendor reserves the right to designate the common carrier and to ship in the manner it deems most economical and practical. Added costs due to special routing requested by the Customer are chargeable to the Customer. Under no circumstance may any freight allowance absorbed by Vendor be deducted from the selling price. If the quoted price or contract includes transportation, no deduction will be made in lieu thereof, regardless of whether Customer accepts shipment at plant, warehouse, freight station, or otherwise supplies its own transportation. When sales are made from Vendor's warehouse, Vendor reserves the right to charge actual or pro-rated freight from Vendor's principle point of manufacture to Vendor's warehouse. Customer assumes risk of loss upon delivery to the carrier, regardless of who pays for shipping.

Vendor endeavors to pack or prepare all shipments so that they will not break, rust, or deteriorate in transit, but does not guarantee against such damage. Unless requested in writing by the Customer, no shipments are insured by Vendor against damage or loss in transit. Vendor will place insurance as nearly as possible in accordance with Customer's written instructions, but in such case Vendor acts only as agent between the insurance company and the Customer, and Vendor assumes no liability whatsoever.

Any claims for shipping loss, breakage, or damage (obvious or concealed) are Customer's responsibility and should be made to the carrier. All claims regarding shortages must be made within thirty (30) days from receipt of shipment and must be accompanied by the packing list(s) covering the shipment.

**9. Storage.** If the goods are not shipped after notification has been made to Customer or its agent that such goods are ready for shipping, for any reason beyond Vendor's control, including Customer's failure to give shipping instructions, Vendor may store the goods at Customer's risk and expense. Customer shall pay all handling, transportation, storage and insurance cost at the prevailing commercial rates.

**10. Credit Approval.** Shipments,

deliveries and performance of work shall at all times be subject to the approval of Vendor. Vendor may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Vendor.

**11. Cancellation.** Orders are not subject to cancellation or change in specifications, shipping schedules or other conditions originally agreed upon without Vendor's written consent, which shall be in Vendor's sole discretion and then only upon Customer's agreement to compensate Vendor for all losses caused by such cancellation or changes.

**12. Returns.** Vendor reserves the right to charge a restocking fee for returned goods that it determines in its sole discretion to be reasonable. Prior written authorization from Vendor is required before returning goods. In the event Vendor authorized the return of goods, all goods must be returned prepaid to Vendor's designated location, unless otherwise instructed when the authorization is granted. Vendor reserves the right to deny authorization to return any items, in its sole discretion. Vendor reserves the right to refuse unauthorized returns. All claims on returned goods must be made within thirty (30) days from shipment and accompanied by the receipt on which original delivery was made. Electrical parts/components are not returnable.

**13. Force Majeure.** Vendor shall not be liable in any way for any default or delay due to contingencies beyond its control, or the control of its suppliers or subcontractors, which prevents or interferes with Vendor making delivery or performing services on the date specified, including but not limited to war, or restraints affecting shipping, delivery of materials or credit as a result of war or war restrictions, non-arrival delay or failure to produce materials as a result of war or war restrictions, rationing of fuel, strikes, lockouts, fires, bombings, acts of terrorism, accidents, floods, droughts and any other contingency affecting Vendor, its suppliers, or subcontractors.

**14. Third -Party Vendors.** Vendor may from time to time refer Customer to third-party vendors for specific goods or services. These vendors are not Vendor's agents, and it is Customer's responsibility to select vendors and negotiate the terms and conditions of Customer's business with them. Customer agrees that Vendor will not be responsible for any loss or damage arising out of or in connection with goods or services provided by such third-party vendors.

**15. Non-Hire.** During the time that Vendor is providing goods or services, and for a period of one (1) year thereafter, Customer and its affiliates will not (a) employ or hire, nor engage as a consultant, or subcontractor, any current employee of Vendor or any of its affiliates, (b) directly or indirectly solicit any current employee of Vendor or any of its affiliates to become an employee, consultant or subcontractor of Customer or any of its affiliates, or (c) recommend or suggest to any other person or entity that it so solicit, employ, hire, or engage any such employee. In the

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event of any breach of this provision, Vendor shall be entitled to be paid, on demand, as liquidated damages and not a penalty, an amount equal to the annualized base salary and other regular benefits or remuneration being paid to such employee as of the date of the termination of his or her employment with Vendor or its affiliate. It is agreed that the amount of damages, which would be suffered because of a breach of this provision, would be difficult or incapable of precise measure and that such payment constitutes reasonable liquidated damages for any such breach.

16. **Limited Warranty.** The goods ordered and agreed to be furnished by Vendor are warranted against defects in material or workmanship for a period of one year following the date of shipment. Vendor's obligation under this warranty is limited to repair or replacement, at Vendor's option, of the defective goods at Vendor's factory (point of shipment) and does not extend to goods other than those manufactured by Vendor. This warranty shall not apply to any goods which have been subject to misuse, negligence, accident, or attempted or unauthorized repair or modification or are considered by Vendor to be damaged as a result of normal "wear and tear". Vendor may provide technical information or advice to assist Customer in the proper application and utilization of goods, in which case Vendor disclaims all warranties, express or implied, including without limitation implied warranties of merchantability or fitness for a particular purpose, or compliance with governmental regulations to which customer is subject.

Vendor warrants that for a period of one year beginning on the date of invoice, service labor by Vendor technicians shall be free from defects in workmanship. This warranty does not cover damage due to external causes including without limitation accident, abuse, misuse, problems with electrical power, servicing not authorized by Vendor, usage not in accordance with product instructions, failure to perform required preventive maintenance and problems caused by use of parts and components not supplied by Vendor. Vendor's responsibility is limited to repair or replacement at Vendor's option, at its designated facility. This warranty does not cover replacement or repair of materials due to normal "wear and tear."

OTHER THAN AS SPECIFICALLY SET FORTH ABOVE IN THIS SECTION 15, VENDOR MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ON GOODS OBTAINED FROM VENDOR, AND VENDOR DISCLAIMS ALL SUCH WARRANTIES. FURTHERMORE, NO PERSONNEL OF VENDOR ARE AUTHORIZED TO MAKE WARRANTIES OF ANY NATURE, VERBALLY OR OTHERWISE. ANY ADDITIONAL WARRANTIES MUST BE MADE IN WRITING AND SIGNED BY AUTHORIZED PERSONNEL OF VENDOR IN ORDER TO BE BINDING UPON VENDOR.

17. **Limitation of liability.** IN NO EVENT SHALL VENDOR BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL,

CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOST REVENUE OR PROFITS, FEES OR FINES), EVEN IF VENDOR HAS BEEN ADVISED OR MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY. VENDOR'S CUMULATIVE LIABILITY FOR ALL LOSSES AND DAMAGES UNDER THESE TERMS (INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, EXPRESS OR IMPLIED WARRANTIES, ETC.) SHALL NOT EXCEED (A) IN THE CASE OF ANY SERVICES PROVIDED OR TO BE PROVIDED BY VENDOR, THE AMOUNT OF THE FEES PAYABLE BY CUSTOMER FOR SUCH SERVICES, AND (B) IN THE CASE OF ANY GOODS PROVIDED OR TO BE PROVIDED BY VENDOR, THE FULL AMOUNT OF VENDOR'S LABOR AND/OR SERVICES ASSOCIATED WITH THE SALE OF THE GOODS.

18. **Indemnification.** Customer shall, immediately upon demand and to the fullest extent permitted by law, indemnify and hold harmless Vendor, its directors, officers, employees, representatives and agents, from and against any and all liability, liens, debts, claims, demands, losses, damages, expenses, fees (including attorneys' fees), costs, fines, penalties, suits, proceedings, actions and judgments arising out of or in any way connected with Vendor's performance in selling, repairing, evaluating, starting up, testing, and providing on-going maintenance or repairs either pursuant to request or maintenance agreement, whether brought against Customer or Vendor. Vendor reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by Customer. Furthermore, Customer agrees to hold Vendor harmless from any and all losses, claims, or damages arising from subsurface damage, surface damage caused by subsurface damage, loss of hydrocarbons and from pollution, regardless of whether such damages, losses, or claims were caused by the negligence of Vendor, it being the intent of the parties that this indemnity shall apply to property of Customer or to that of any third party.

19. **Governing Law and Jurisdiction.** These Terms shall be construed and enforced in accordance with the laws of the State of Oklahoma, without regard to its conflicts of law provisions. The United Nations Convention on the International Sale of Goods shall not apply to these Terms. Any and all claims under these Terms shall be brought and filed in the state or federal courts of the State of Oklahoma located in Oklahoma City. Customer agrees to voluntarily subject itself and its affiliates to the jurisdiction of any such courts and waives any defense or objection to the exercise of jurisdiction by any such court.

20. **Assignment and Transfer.** These

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Terms may not be assigned or transferred by Customer without Vendor's prior written consent, and shall be binding upon and inure to the benefit of Vendor and Customer.

21. **Notices.** Any written notice or other written communication to a party under these Terms shall be either delivered personally, sent by fax or mailed to the party's address or fax number set forth on an invoice.

22. **Waiver of Failure to Act.** The waiver or failure of either party to exercise in any respect any right afforded under these Terms shall not be deemed a waiver of any further right hereunder.

23. **Third Party Beneficiaries.** These Terms do not create any rights in any third parties, including suppliers and customers of a party. Nor do these Terms create any obligations owed by a party to any such third parties.

24. **Security Interest.** Customer hereby grants Vendor, and Vendor will retain, a purchase money security interest and lien on any and all of Customer's right, title and interest in any goods sold hereunder as well as any future goods sold hereafter by Vendor to Customer, wherever located, and all replacements or proceeds of the same, until the invoice for the applicable goods is paid in full, including any late charges and costs of collection. Customer consents to Vendor's use of these Terms, as well as product invoices, as financing statements for perfecting and protecting this security interest and appoints Vendor as Customer's agent for any necessary signatures on such filings and hereby authorizes Vendor, at Customer's expense, to take such action as may be necessary to perfect and protect Vendor's security interest, including the filing and/or recording of Uniform Commercial Code Financial Statements, and grants Vendor the right to execute Customer's name thereto. Customer agrees to pay or reimburse Vendor for any searches, filings, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. In the event of a default by Customer of any of its payment obligations hereunder, Vendor shall be entitled to any of the rights and remedies provided by law.

Customer will not change its name, principal place of business, or state of incorporation without Vendor's prior written consent, and Customer will notify Vendor in writing of any change in the location of any other place of business prior to making such change, and of the acquisition of any new place of business prior to such acquisition. Customer shall at its expense protect and defend Vendor's rights against all persons claiming against or through Customer at all times keeping the goods sold hereunder free from any legal process or encumbrance whatsoever, including, but not limited to liens, attachments, levies and executions, and shall give Vendor immediate written notice thereof and shall indemnify and hold Vendor harmless from any claims, demands or losses caused thereby.

25. **Waiver of Subrogation.** Customer and all parties claiming to be related to or asserting the rights of Customer hereby agree to release and discharge Vendor from all claims and or liabilities arising from or caused by any casualty or hazard which may arise out of or in connection with activities associated with Vendor's work on goods or premises, and Customer agrees to waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof and further agrees to provide evidence of such waiver as may be required by Customers' insurance policies or as requested by Vendor.

26. **Acknowledgment.** Customer acknowledges that it engages in the conduct of trade or commerce and is a business entity. Customer acknowledges that this transaction is made in a business context and is not for personal, family or household purposes or for personal goods sold or delivered to a consumer.

27. **Entire Agreement, Modification.** These Terms constitute the entire agreement between Vendor and Customer with respect to the subject matter thereof, and supersede all previous communications and negotiations whether written or oral. No modification of these Terms shall be binding unless it is in writing and executed by authorized representatives of Vendor and Customer.