

Platt Electric Supply, Inc.
Terms of Sale
Revised 12/08/11

STANDARD TERMS AND CONDITIONS OF SALE APPLYING TO PRODUCTS AND SERVICES SOLD AND/OR QUOTED BY PLATT ELECTRIC SUPPLY, INC.

1. AGREEMENT

These Standard Terms and Conditions supersede all previous agreements and representations relating to the subject matter hereof, except for the terms contained in any credit application signed by the purchaser, which terms are incorporated herein by reference. These Standard Terms and Conditions are subject to change without notice. Any representation, promise, or condition in connection with the sale and/or quotation of product and/or services not incorporated herein shall not be binding upon Platt Electric Supply, Inc. (hereinafter called "Company"). Current terms are available at <http://www.platt.com/service/terms.pdf>. For further information, contact the office of the CFO at cfo@platt.com

2. ACCEPTANCE OF ORDER

All orders are subject to acceptance on these Standard Terms and Conditions of Sale applying to products sold by the Company. The acceptance of the Purchaser's order is expressly made conditional on the Purchaser's assent to the terms and conditions as stated herein. The Purchaser acknowledges and accepts the Company's Standard Terms and Conditions of Sale by virtue of (a) the issuance of a purchase order, (b) the acceptance of a delivery (either by the Company or common carrier) or of services performed, or (c) the will-call pick-up of product at a Company location. The Company agrees to furnish the merchandise or services covered by an agreement of sale and/or quotation only upon these terms and conditions. No waiver, alteration, or modification of the terms and conditions herein shall be valid unless made in writing and signed on behalf of the Company by an executive officer. No provisions of any purchase order or any form of acceptance used by the Purchaser which are inconsistent with or in addition to the terms and conditions hereof, except additional provisions specifying the quantity and type of the products or services, the shipping schedule, purchase price, invoicing, and shipping instructions, shall be considered applicable to the purchase of the Company's products or services, and none of these provisions shall be binding upon the Company unless specifically accepted or approved in writing and signed on its behalf by one of its said officers.

3. REPRESENTATIONS

The Company makes no representations with respect to compliance with project specifications. Any agreement of sale and/or quotation represents the Company's best interpretation of any applicable project and the material required for the project based on specifications and/or schedules provided to us by the Purchaser or by Custom Survey. Any change to said specifications and/or schedules will void the sale and/or quotation at the Company's option. The Company will not be liable for omissions from, nor any labor or material charges resulting from a misinterpretation of, the project requirements or information provided for the materials, regardless if the information was provided by the Purchaser or not. The Company is not responsible for verification of voltages, mounting methods, ceiling types, or suspension types and lengths, or for determining if multiple ballasts are required for switching, or for any other options or variation of products. It is the responsibility of the Purchaser to determine and verify these items and any other pertinent information required to supply each particular project per plans and specifications.

4. COMMERCIAL GRADE PRODUCTS

Products sold by the Company are sold as commercial grade products not intended for application in facilities or activities utilized for atomic purposes. The products are not intended, nor shall they be used, in any safety-related application in any nuclear facility.

5. LAWFUL USES

Purchaser acknowledges and agrees that Products sold by the Company are intended for and will be used solely for lawful purposes.

6. SHIPPING & HANDLING

Unless otherwise specifically provided in writing, all product sales are made FOB point of shipment with freight prepaid and charged to destinations (nearest freight station or common carrier delivery point) within the continental United States, except Alaska. All product sales made to Alaska and Hawaii are FOB point of shipment with freight prepaid and charged to port of embarkation. All transportation charges will be billed to and paid by Purchaser. In all cases, title to the products shall pass upon delivery to the carrier at the FOB point, and thereafter all risk of loss or damage shall be upon the Purchaser. Shipments are not insured unless so ordered. All claims for shortage, breakage, or damage must be filed with the carrier.

7. PRICES

Prices quoted by the Company, unless otherwise specified, must be accepted within 48 hours. After 48 hours, or in the event of a Declaration of War or a National Emergency, prices are immediately subject to renegotiation. All other prices not covered by an authorized quotation are subject to change without notice.

8. TAXES

The Company's prices do not include sales, use, excise, or similar taxes. Consequently, in addition to the prices specified by the Company in any agreement of sale or quotation, the amount of any present or future sales, use, excise, or other similar taxes applicable to the sale or use of the products shall be billed to and paid by the Purchaser in addition to the prices specified therein.

9. CHANGES/CANCELLATION

After a Purchaser's order is received by the Company, no changes therein, whether pertaining to the quality and type of products or services ordered, their specifications, or other provisions of the order, will be approved by the Company unless the Purchaser agrees in writing to pay the Company for any applicable cost or expenses resulting from such changes. For non-stock products, if the Purchaser cancels its order with the Company, Purchaser may be subject to cancellation fees up to value of the order. These fees are to cover any cost the Company may incur from its Manufacturers for the cancellation of such products.

10. RETURNS

The Company's permission must be obtained in writing before any products are returned to it by Purchaser for any reason whatsoever. If products are returned without such permission, Purchaser authorizes the Company, in addition to such other remedies as it may have, to hold the returned products at Purchaser's sole risk and expense. Special-ordered materials (non-stock) are not subject to return. Standard stock materials are subject to a minimum restocking charge of 25% on authorized returns. Authorized returns will be subject to an additional adjustment equal to any decrease in price from the time of sale to the time of an authorized return. The term Price in the above to have the meaning; the net price decrease the Company receives from its vendor(s) / Manufacture(s). Applicable invoice numbers must accompany returned goods.

11. ASSIGNMENT

Purchaser's assignment of its order or any interest therein, or of any rights hereunder, without the written consent of the Company shall be void at the Company's option.

12. PRIOR SALE

Stock material is subject to prior sale. The Company reserves the right to limit quantities based on product availability and advertised limits, including the right to limit or prohibit sales to re-sellers.

13. DELIVERY DATES

The Company does not guarantee delivery dates. Shipping dates given by the Company prior to shipment are estimated only, and the Company shall not be liable for failure to meet such dates for any reason, including delays in or failure of delivery by a manufacturer resulting from product shortages or other manufacturing delays or causes beyond the Company's reasonable control. Causes beyond the Company's reasonable control include the following, whether in the Company's own facilities or in any other facility affecting its supply, production, transportation, or delivery: fire, windstorm, earthquake, or other natural disaster; strikes, lockouts, or other work stoppages; wars, riots, or civil commotion; priorities or other Government allocations or controls; interference or restraint of public authority (whether lawful or not); explosion or accident; epidemic or quarantine restrictions; failure of the Company's suppliers to deliver; shortage of raw material or labor; or any other cause, whether or not of the same kind as those here specified, which the Company cannot provide against by the exercise of reasonable diligence. In the event of any delay from such causes, shipping and/or delivery dates shall be extended to a period equal to the time lost by reason of the delay. In the event of a product shortage, the Company shall have the right to allocate its available products among its customers on such a basis as it may determine at its sole discretion in the exercise of its business judgment.

14. PRO-RATA PAYMENTS

Pro-rata payments are due when shipments are made or services performed and invoices rendered. If shipments are delayed by the Purchaser, payments shall become due when the Company is prepared to make shipment. Products so held for the Purchaser shall be at the risk and expense of the Purchaser.

15. CREDIT

All sales are subject to prior approval by the Company's credit department and agreement to the extension of credit by the Company's main office. If the financial condition of the Purchaser at any time does not, in the judgment of the Company, justify continued performance by the Company on the terms of payment as agreed upon, the Company may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges, and in the event of bankruptcy or insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser, voluntarily or involuntarily, under bankruptcy or insolvency laws, the Company shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges. No credit will be issued for goods returned without the Company's permission, and a restocking charge will be made. See the paragraph on Returns, above. All claims for shortage must be reported immediately upon receipt or shipment, or otherwise will be deemed waived.

16. LIMITED WARRANTY

The parties hereto expressly agree that the Purchaser's sole and exclusive remedy against the Company shall be for the repair or replacement of a defective product under the terms of the manufacturer's warranty for each of the products sold by the Company. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Company is willing and able to negotiate in good faith with the manufacturer on behalf of the Purchaser for either repair or replacement of defective goods. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT EXPRESSLY SET FORTH HEREIN. The Company's liability, whether under theories of breach of contract or warranty, negligence, or strict liability, shall be limited to repairing or replacing parts found by the Company to be defective or, at the Company's option, to refund the purchase price of such product. In no event shall the Company be liable for incidental or consequential damages arising out of or in connection with a product or services sold by the Company. Consequential damages shall include, but not be limited to, loss of use, income, or profit, and losses sustained as a result of injury (including death) to any person or loss of or damage to property. Material Safety Data Sheets may be obtained upon written request.

17. INDEMNIFICATION

The Purchaser will indemnify, defend, and hold the Company harmless from and against all claims, demands, causes of action (including third-party claims, demands, and causes of action, whether directly or for contribution or indemnification), losses, damages, expenses (including attorney's fees), and liabilities of every kind and nature (each a "Claim") asserted by any person that arises out of or results from any one or more of the following with respect to products sold to Purchaser by the Company: (a) any breach by Purchaser of these Standard Terms and Conditions, including without limitation, any use of the Products not permitted by these Standard Terms and Conditions; (b) any negligent act or omission by Purchaser; (c) any use of any Product that is not in accordance with the manufacturer's specifications or instructions for such Product; (d) any breach by any manufacturer of any of its representations, warranties, or covenants; (e) without limiting the preceding, any defective product, whether such defect is one of design or manufacture; (f) any recall of any product, regardless of who initiates the product recall; and (g) any negligent act or omission by a manufacturer. Purchaser's duty to indemnify the Company will apply whether the Claim arises under theories of tort, contract, warranty, strict liability, product liability, statute, or otherwise. To the extent that the Company incurs any loss for death, personal injury, or loss of property to unrelated third parties, whether during any warranty period or after its expiration, in connection with any products or services, Purchaser will indemnify, defend, and hold the Company harmless from and against such loss, notwithstanding the expiration of the warranty period, the amount of insurance to be carried by the manufacturer, or any other limitation. This indemnity applies except to the extent that the Claim arises out of the sole negligence or willful misconduct of the Company.

18. METAL / PETROLEUM / CHEMICAL ESCALATION

Prices quoted by the Company for products are those in effect as of the date of the agreement of sale or quotation, and are predicated on immediate release for manufacture and/or shipment. These prices shall be adjusted for escalation in price of metals (ferrous and non-ferrous), petroleum products or other chemicals which may occur between the date of sale/quotation and the dates shipments are made (No adjustment will be made for de-escalation of price). All such escalation adjustments will be made against the net price after all discounts and will be calculated using commonly accepted industry indexes for the specific metal, petroleum product and/or chemical (e.g. COMEX for copper). Orders received without cutting lengths or for subsequent release, shall be billed at the price quoted or the price in effect on the day release is received (which ever is greater) and shall be adjusted thereafter for any escalation in the prices of metals, petroleum products, and/or chemicals which may occur between the date of release and the dates shipments are made (No adjustment will be made for de-escalation).

19. LIGHTING FIXTURES

Unless otherwise stated, prices do not include lamps, mounting hardware, or accessories. All fixtures are quoted with 120V as supplied by the fixture manufacturers in accordance with their UL listings unless otherwise noted.

20. GOVERNING LAW

This agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon applicable to contracts made and to be performed entirely within the State of Oregon. Any and all disputes arising out of or in connection with this agreement shall, at the option of the Company, be resolved by binding arbitration in the State of Oregon. Venue of any arbitration or other legal action arising out of or in connection with this agreement shall be at the sole option of the Company. The prevailing party in any such arbitration or other legal action shall be entitled to recover its attorney's fees and expenses, including expert witness fees, in addition to any other costs allowed by law. Notwithstanding and in addition to the foregoing, should the Company retain any attorney or collection agency for the purpose of collecting monies owed by Purchaser to Company for products or services sold hereunder, Purchaser shall pay all of Company's costs of collection, including attorney's fees, whether or not a lawsuit is filed to collect the debt.

21. SEVERABILITY

If any provision of these Standard Terms and Conditions is held by an arbitrator or a court of competent jurisdiction to be unenforceable as written, such provision will be deemed reformed and enforced to the maximum extent permissible and the remaining provisions of these Standard Terms and Conditions will remain in full force and effect.