

PURCHASE ORDER TERMS AND CONDITIONS

In consideration of the terms and conditions set forth herein, the parties agree:

1. **Contract Documents.** The documents ("Contract Documents") governing this Order shall include this Purchase Order ("Order") with its terms and conditions, any master supply or other agreement between the parties accepted as governing the transactions between them, and all contracts and agreements to which Cupertino Electric, Inc. ("CEI") is bound in connection with the project for which the items and services hereunder are purchased. These agreements include any upper-tier contracts with other contractors and any prime contract or other agreements with the owner of subject projects. CEI shall make all such agreements available to Seller. Where any terms of other Contract Documents are inconsistent with the terms herein, the terms imposing the strictest duties shall prevail.
2. **Prices.** CEI shall not be billed at prices higher than those stated on the face sheet of this PO or as otherwise stated herein. If no price is shown, Supplier must notify the CEI Buyer who issued the Order of the price and his/her acceptance must be obtained in writing before filling the Order. The price shall not in any event be higher than the lowest price Supplier provides to any of Supplier's other customers ordering similar quantities, after taking into consideration all rebates, discounts and allowances. Except as clearly specified, the price stated includes all charges for packing, hauling, storage, transportation, insurance, and other costs requisite to delivery on site. The price stated includes all taxes except state and local sales or use taxes which Seller is required by law to collect from CEI. Such taxes, if any, shall be separately stated in Seller's invoice and paid by CEI unless an exemption is available. Seller agrees that any price reduction made with respect to the items covered by this Order subsequent to its placement, but prior to payment will be applicable to this Order.
3. **Invoices.** Each invoice shall state the Order number, line number, product part number, complete bill-to address, description of products or services, quantities, unit prices, extended totals, and any applicable taxes or other charges. Taxes that are to be collected by Supplier shall be stated separately and shall be timely remitted by Supplier to the appropriate taxing authority. All invoices shall comply with the requirements of each relevant taxing authority. All invoices shall be sent to the email or street address on the Order. Failure to comply with the above may result in delayed payment or returned invoices. Seller must submit invoices to Buyer within 45 days of shipment of goods or pursuant to project closing letter instructions provided to Seller, if applicable. Failure to comply with the above may result in delayed payment or returned invoices.
4. **Payment.** As full consideration for Supplier's satisfactory provision of the products or performance of the services, CEI will pay Supplier's invoice in accordance with the terms expressed on the face of the Order.
5. **Delivery.** Substitutions will not be accepted. The Order must be shipped completely or staged in accordance with the dates specified. Orders may not be delivered in advance of the date or dates specified without CEI's prior approval. Except as otherwise provided herein, CEI shall not be obligated to accept untimely, excess, or under shipments and CEI may return such shipments to Seller or hold such shipments for disposition at Seller's expense and risk. A copy of the invoice must be attached to the original bill of lading or other shipping document.
6. **Changes.** CEI may make changes in drawings, specifications, quantities, delivery schedules, place of delivery, and methods of shipment or packaging at any time. If such changes result in an increase or decrease in cost, an equitable adjustment of price and delivery schedules may be made, or CEI may, at its option, terminate the Order if agreement on the adjustment cannot be reached. Claims for adjustment must be received in writing from Seller within ten (10) days of notification of the change Order.
7. **Warranties.** Seller warrants that the items and services covered hereunder will conform to the applicable specifications, instructions, drawings, data, and other particulars, and that items will be merchantable, of good material and workmanship, free from defects, fit, and sufficient for the purpose intended. The warranty period shall extend to a period of twelve (12) months after the items are placed in service or such longer time as is specified in the Contract Documents. Acceptance or inspection of the items or services delivered, or payment of the invoice relating to them shall not constitute a waiver of any breach of warranty. Upon failure of any item or service to conform to the warranty requirements during the warranty period, Seller shall pay for the cost of replacement, including costs of removal and reinstallation as applicable, and shall reimburse any costs incurred by CEI.
8. **Inspection and Testing.** All items and services ordered hereunder shall be subject to inspection and testing by CEI to the extent practicable at all times and places, including during the period of manufacture and in any event prior to acceptance. Seller agrees to permit access to Seller's facilities at all reasonable times for inspection and testing by CEI's employees or agents, and will provide all facilities reasonably necessary to accommodate such inspection and testing. All items and services shall be subject to final inspection and testing after delivery. If the items or services delivered do not meet the specifications or otherwise do not conform to the requirements in the Order, CEI shall have a right to reject such items or services. Any rejected items may be, at CEI's option, either be returned to Seller or held for Seller's disposition, at Seller's risk and expense. From issuance of this Order until three (3) years after its completion, CEI shall have a right to examine Seller's books and records to the extent necessary to determine compliance with this Order. Such examination shall be during normal business hours and shall be at CEI's cost unless the examination reveals that Seller has overcharged five percent (5%) or more, in which case Seller shall pay for the cost of the examination and refund such overcharge.
9. **Quality and Non-Conformance** - Seller's goods must comply with all Buyer-provided technical specifications and drawings ("Specifications") and quality control criteria pertaining to manufacturing, testing, delivery, acceptance and service of such goods ("Quality Requirements"). Buyer may periodically approve Seller's facilities, processes, materials and

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subcontractors. Seller's services shall comply with the scope of services (as agreed upon or attached hereto) and shall be performed by qualified, certified and adequately supervised personnel. Any goods not in conformance with this Order on the date of delivery may be rejected and returned at Seller's expense. Any services not in conformance with this Order on the date of performance may be rejected and suspended. Buyer shall notify Seller of the grounds for rejection. Buyer may (i) permit Seller to cure the non-conformance, (ii) cancel such non-conforming goods or services without cost or liability, (iii) or accept them with a reasonable reduction in the purchase price; provided that Seller's repeated non-conformance may, at Buyer's option, result in cancellation of all Orders without cost or liability.

10. Buyer's Property. Title to and right of immediate possession of any property, including without limitation, patterns, tools, jibs, dies, equipment, or materials furnished or paid for by CEI shall remain in CEI. No articles made therefrom shall be furnished by Seller to any other party without CEI's written consent. Seller shall keep adequate records of such property, which shall be made available to CEI upon request, and shall store, protect, preserve, repair, and maintain such property in accordance with sound business practices, all at Seller's expense. Unless otherwise agreed to in writing, Seller shall insure all of CEI's interests in such property against all risks of theft, loss, or damage. Copies of insurance evidencing this coverage shall be furnished to CEI on demand. Seller agrees to repair or replace all such property damaged or lost due to any cause. At the conclusion of the Order(s) related to such property, Seller shall contact CEI for disposition and will either dispose of or return such property to CEI as directed, at CEI's expense.
11. Drawings and Specifications Review. If, during the term of this Order, CEI representatives review drawings, specifications, or other data developed by Seller and make suggestions, comments, or recommendations, such actions are only expressions of opinion and shall not relieve Seller of any duty of performance or other requirements under this Order. Changes in specification must be clearly designated in writing by CEI.
12. Drawings and Data. Seller shall keep confidential all information, drawings, specifications, and data furnished by CEI or prepared by Seller in connection with the performance of this Order, and shall not divulge or use such information, drawings, specification, or data for the benefit of any other party or itself except to the extent necessary to perform this Order. All such information, drawings, specifications, and data shall be returned to CEI upon CEI's demand or upon termination of the parties' relationship.
13. Use of Information. Seller agrees that all information provided or disclosed to CEI in connection with the placing or fulfillment of this Order is furnished for the consideration included in this Order, that such information is not to be considered confidential except as agreed to in writing by a separate agreement, and that Seller shall assert no claim related to the use or disclosure of such information by CEI.
14. Advertisement. Seller shall not in any manner advertise or publish the fact that it has or will furnish CEI with any items or services except as approved in writing. Seller shall not disclose

any details connected to this Order except as necessary to complete its obligations hereunder.

15. Tooling. Unless otherwise specified in this Order, all tooling and other articles required for the performance of this Order shall be furnished and maintained by Seller.
16. Termination. CEI may terminate the performance of the work under this Order in whole at any time, or from time to time in part, by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice specifies otherwise, immediately discontinue all work and the placing of orders for material, facilities, and supplies in connection with the performance of this Order, proceed to promptly cancel all existing orders, terminate all subcontracts or other agreements, and take other action as commercially practicable to prevent costs insofar as they are chargeable under this Order. Upon the termination of work under this Order, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows:
 - a. As compensation to Seller for such termination, unless such termination is for the default of Seller, CEI shall pay Seller the percentage of the total Order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done, to the extent not reasonably recoverable in the normal course of Seller's business, as Seller's full compensation under this Order; and
 - b. Upon CEI's payment to Seller as above, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which CEI has paid shall vest in CEI.
17. Default – Cancellation. CEI reserves the right, by written notice of default, to cancel this Order, without liability to CEI, in the event of any of the following: a) insolvency of Seller; b) the filing of a voluntary petition in bankruptcy by Seller; c) the filing of an involuntary petition to have Seller declared bankrupt; d) the appointment of a Receiver or Trustee for Seller, or e) the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, CEI reserves the right, without any liability to CEI, upon giving Seller written notice, to cancel this Order in whole or in part. Upon such cancellation, Seller shall be responsible to CEI for all damages, costs, and liabilities arising from Seller's breach, including, without limitation, the cost to cover with replacement items and services, costs of delays, and other related costs.
18. Force Majeure. Neither party shall be liable to the other for delays or defaults due to acts of God, war, insurrection, riots, or acts or threats of terrorism.
19. Compliance with Laws. Seller shall, at all times during the term of this Order, comply with all applicable laws and regulations and shall refrain from engaging in any illegal, unethical, or deceptive practices. Such laws include, but are not limited to: a) Department of Labor Standards; b) Government Procurement Provisions; c) Occupational Safety and Health Act Standards; d) Environmental

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- Compliance regulations; e) Customs regulations, and f) immigration and other government standards and regulations.
20. Indemnification. Seller will defend, hold harmless, and indemnify CEI, its directors, officers, employees, and agents, as well as all parties for whom indemnity is required under the Contract Documents, from and against any liability and expenses, including, without limitation court, attorney, and other professional fees and costs, arising from or in connection with any damages, injuries, third party claims, or demands to recover for personal injury, death, or property damage allegedly or actually caused by or arising out of any of the goods or services provided by Seller. This indemnity shall not apply to the extent that it is finally determined that such damages or claims were caused by the active negligence or willful misconduct of CEI or anyone under its direct control.
21. Insurance. Seller shall provide and maintain insurance as detailed in Exhibit # "1" hereto.
22. Drawings and Manuals - Seller will supply proper operating, training and maintenance manuals, drawings and any other document required with respect to the goods or services ordered.
23. Intellectual Property Indemnification. Seller shall defend, hold harmless, and indemnify CEI, its customers, and users from and against all losses, liabilities, or damages, including costs and expenses resulting from alleged or actual infringement of any third party rights related to performance by Seller of this Order. Seller shall, when notified, immediately provide a defense with counsel approved by CEI, which approval shall not be unreasonably withheld. Additionally, Seller shall: a) obtain licenses or other permissions to avoid infringement of third party rights; b) replace such elements of the items or services as are necessary to avoid such infringement; or c) shall reimburse the cost of CEI's procurement of replacement items or services that do not infringe upon third party rights.
24. Assignment. Neither this Order nor any related rights or obligations may be assigned by Seller, nor may Seller delegate the performance of any of its duties hereunder without CEI's written permission.
25. Dispute Resolution. In the event of any dispute arising under this Order, the parties agree to meet within five (5) days after either party provides written notice to the other of such dispute to undertake a good faith effort to resolve the dispute. If those efforts fail, both parties agree to submit the dispute in a timely manner for resolution by mediation through JAMS utilizing its Construction Mediation Rules. If not then resolved, the dispute shall be submitted for resolution in a timely manner through binding arbitration at JAMS using its Construction Arbitration rules.
26. Applicable Law and Venue. The parties agree that this Order shall be governed by the laws of the State of California without reference to its conflict of law provisions and agree that any action related to this order shall be maintained in the federal or state courts in Santa Clara County, California.
27. Attorneys' Fees and Costs. In the event that the parties find it necessary to pursue any legal action pertaining to the performance of or default in any terms of this agreement, the prevailing party in such action shall be entitled to recover its cost from the other party. Such costs shall include, without limitation, attorney fees, experts and other professional fees, court costs, and all costs reasonably necessary to affect such an action.
28. Remedies. Any remedy that is set forth in this Agreement is not exclusive of any remedies that are provided by law.
29. Correspondence and Notices. All correspondence regarding this Order must be addressed to CEI at the address indicated on the face of the Order. The parties agree that facsimile signatures shall be accepted with the same force as an original signature and that orders may be transmitted and received electronically. Notices shall be deemed received upon confirmation of delivery through overnight courier services, five (5) days after certified proof of mailing in the USPS, or upon reply confirmation by the addressee of email. All notices to CEI shall be sent to:
Cupertino Electric, Inc.
1132 N. 7th Street
San Jose, CA 95112
Attn: General Counsel
30. Severability. In case any one or more of the provisions herein is found to be invalid or otherwise unenforceable, the validity and enforceability of the remaining provisions shall not be affected. If the provision at issue is integral to the Order, it shall be submitted to interpretation pursuant to the Dispute Resolution process detailed herein.
31. Schedule, Delay, Force Majeure - Seller will comply with the schedule set forth in the Order or as otherwise directed by Buyer. Buyer may change the schedule if required by changes in job conditions. Seller may not back order any Orders without the express written authorization of Buyer. Seller understands that if Seller does not deliver goods and services in a timely manner, Buyer's work will be disrupted and delayed. Buyer may cancel all or any part of an Order if deliveries are delayed and Seller will pay Buyer any damages sustained as a result. Seller shall notify Buyer immediately of any anticipated late deliveries or facility shutdowns. If necessary to ensure timely delivery, Seller shall deliver via expedited transit at its cost, except that Buyer will pay such cost if necessitated solely by Buyer's delay or request. In the event of delay in delivery of products or services under this Order, Buyer may also incur liability to Buyer's customers, and in such event, Seller will indemnify Buyer against such damages. Neither party shall be liable for any costs, losses, damages, claims or liabilities ("Damages") due to non-performance caused by events beyond its reasonable control ("Force Majeure") as long as such party is reasonably diligent and gives immediate notice of anticipated or actual Force Majeure events.

EXHIBIT 1
Purchase Order Terms and Conditions
Vendor Insurance Requirements

Please forward a copy to your insurance broker for compliance:

1.1 Vendor shall, subject to all of the terms set forth below, maintain at its own expense, throughout the life of each Project and period of applicable statutes, the minimum types and minimum amounts of insurance described below, and shall ensure that its subcontractors of every tier maintain insurance in like form and amounts including additional insured and waiver of subrogation requirements.

- (a) Workers' compensation insurance as required by any applicable law or regulation.
- (b) Employer's liability insurance in amounts not less than:

- Bodily injury by accident \$1,000,000 each accident
 - Bodily Injury by disease \$1,000,000 policy limit
 - Bodily Injury by disease \$1,000,000 each employee

- (c) Commercial general liability insurance covering all operations by or on behalf of the Vendor under a policy at least as broad as ISO (Insurance Services Office, Inc.) Form CG 00 01. Claims made and "modified occurrence" policy forms are not acceptable. Coverage shall include defense in addition to the policy limit.

Limits of liability shall be the maximum limits provided under Vendor's commercial general liability insurance, but in no event less than \$2,000,000 per occurrence and \$2,000,000 general aggregate. Limits may be satisfied through a combination of primary general liability and umbrella/excess liability policies. (minimum \$5,000,000 limit per occurrence and aggregate for scaffolding/crane/hoists)

- (d) Automobile liability insurance covering Vendor's liability for owned, hired and non-owned autos under a policy at least as broad as ISO Form CA 00 01. Limits of liability shall be no less than \$2,000,000 each accident.
- (e) Where umbrella or excess liability policies are used to satisfy the limit requirements for insurance described in (b), (c) and (d) above, the policy shall (i) follow form of the underlying policy including additional insured and waiver of subrogation, (ii) drop down as primary, and (iii) have policy dates that are concurrent with underlying policies.
- (f) Vendors using any owned, leased, chartered or hired aircraft of any type (including helicopters and unmanned aircraft) in the performance of this Agreement, shall maintain aircraft liability insurance in an amount not less than \$10,000,000 per occurrence including Passenger Liability for manned aircraft, and \$2,000,000 per occurrence for unmanned aircraft.
- (g) Vendors furnishing design, engineering or testing services are required to maintain professional liability or errors and omissions insurance in an amount not less than \$2,000,000 each claim and aggregate. The policy (i) cannot exclude bodily injury, property damage or environmental liability, (ii) must be in effect prior to the effective date of the Purchase Order and prior to commencement of services, and (iii) must be maintained for no less than three (3) years after completion of the services.
- (h) Contractor's pollution liability in an amount not less than \$2,000,000 per occurrence or claim, and policy aggregate. Coverage provided under a claims made policy must (i) be in effect prior to the effective date of the Purchase Order and prior to commencement of services, and (ii) provide no less than three (3) years extended reporting from date of completion.
- (i) Additional Insured

Vendor shall obtain additional insured coverage in favor of **Contractor Parties** on general liability and umbrella/excess liability policies. Acceptable forms of endorsement include ISO Forms CG 20 10 or CG 20 38, plus CG 20 37, or an equivalent of these forms.

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Vendor shall also obtain additional insured coverage in favor of **Contractor Parties** on automobile liability and contractor's pollution liability policies and, as applicable, aircraft liability.

Contractor Parties: *Cupertino Electric, Inc., its subsidiaries, officers, directors and employees; all other parties for whom Cupertino Electric is required by the contract documents to provide additional insured coverage*

(j) Primary and Non-Contributory

It is agreed that the insurance maintained by Vendor, whether such insurance is provided on a primary, excess, umbrella or contingent basis, shall be primary and not seek contribution from any other valid and collectable insurance or self-insurance maintained by **Contractor Parties**.

(k) Waiver of Subrogation

Where permitted by law, all policies of insurance shall include a waiver of subrogation endorsement in favor of **Contractor Parties**.

- (l) Deductibles and self-insured retentions above \$50,000 require prior written approval by Cupertino Electric. All deductibles and self-insured retention are the sole responsibility of Vendor.
- (m) Policies shall be placed with insurers authorized to do business in the state where the Project is located and have a minimum A.M. Best's Rating of A- VIII. Each insurance policy shall provide that Cupertino Electric is given no less than a thirty (30) day written notice of cancellation. Ten (10) day notice of cancellation is acceptable for non-payment of premium.
- (n) Vendor shall not be permitted to commence work on behalf of Cupertino Electric unless written evidence of the insurance described herein including required endorsements has been received and approved. Notwithstanding anything to the contrary in the Purchase Order, production of such written evidence shall be an express condition precedent to Vendor's right to be paid any compensation or expenses under the Purchase Order.
- (o) Cupertino Electric makes no representation that the minimum requirements stated herein are adequate to protect Vendor's interest nor shall the requirements be construed as a limitation of Vendor's liability under the Purchase Order.
- (p) Endorsements confirming primary additional insured coverage and waiver of subrogation must be attached to the insurance certificate and are subject to approval.
- (q) General liability policy endorsements that exclude coverage for Wrap-Up Projects and for Residential work must also be attached to the insurance certificate and are subject to approval.
- (r) Certificates for All Operations are acceptable in lieu of project specific certificates.
- (s) Wrap-Up Insurance Programs (e.g. OCIP, CCIP, CIP, etc.) – where applicable, Vendor shall comply with the requirements of an Owner or General Contractor furnished Wrap-Up insurance program. Cupertino Electric insurance requirements remain in effect for insurance that falls outside the coverage area of such Wrap-Up programs. If the Wrap-Up terminates before Vendor's operations are complete, Vendor shall furnish proof of insurance for both on and off-site operations effective as of the termination date of the Wrap-Up program.

Certificate Holder: Cupertino Electric, Inc.
Attn: Risk Management
1132 North 7th Street
San Jose, CA 95112

Please file certificates via email or fax
riskmanagement@cei.com
FAX 408.273.6590