

PURCHASE ORDER TERMS AND CONDITIONS

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

1. **Terms and Conditions.** All Work will be performed in accordance with the Contract Documents as defined in Section 2, below. As used herein, "Work" means the Materials, Equipment, and/or Services furnished or performed by Vendor under this Purchase Order, including any incidental items and services reasonably necessary to comply with the Contract Documents. Reference to Vendor's proposal is for the purpose of scope definition only. Vendor's terms and conditions attached to Vendor's proposal are null, void and unenforceable, and are superseded in their entirety by the terms and conditions of this Purchase Order and the Contract Documents set forth in Section 2, below.
2. **Contract Documents.** This Purchase Order ("Order") incorporates by reference (a) the Prime Contract between the Project Owner and the General Contractor, (b) the Subcontract or other Upper-Tier agreement(s) between CEI and the General Contractor, and (c) any other Upper-Tier contracts, amendments, change orders, plans, specifications, schedules, and project-wide programs that govern CEI's performance on the Project (collectively, the "Upper-Tier Agreements"). Vendor has had the opportunity to review the Upper-Tier Agreements and agrees to assume toward CEI every duty and obligation that CEI, under the Upper-Tier Agreements, assumes toward the General Contractor and the Owner with respect to the Equipment and/or Materials or services furnished under this Order.
3. **Prices.** CEI shall not be billed at prices higher than those stated on the face sheet of this Order or as otherwise stated herein. If no price is shown, Vendor must notify CEI of the price and CEI's acceptance must be obtained in writing before filling the Order. The price shall not in any event be higher than the lowest price Vendor provides to any of Vendor's other Buyers 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 Vendor is required by law to collect from CEI. Such taxes, if any, shall be separately stated in Vendor's invoice and paid by CEI unless an exemption is available. Vendor agrees that any price reduction made with respect to the materials and/or equipment and/or services covered by this Order subsequent to its placement, but prior to payment will be applicable to this Order.
4. **Invoicing Requirements.** Vendor shall submit all invoices electronically through CEI's designated payment-management platform (currently Oracle Textura Payment Management ("TPM")), unless CEI expressly authorizes another submission method in writing. Each invoice must:
 - (a) state the Purchase Order ("PO") number, line number, product part number, complete bill-to address, description of Work, quantities, unit prices, extended totals, and any applicable taxes or other charges;
 - (b) include all supporting documentation required by the Contract Documents or reasonably requested by CEI or the Owner, including, as applicable, signed conditional or unconditional lien waivers, sworn statements, certified payrolls, and receipts or bills of sale for stored materials;
 - (c) identify separately any taxes that are to be collected by Vendor, which taxes shall be timely remitted by Vendor to the appropriate taxing authority; and
 - (d) comply in all respects with the requirements of each relevant taxing authority.

Failure to comply with the above invoicing requirements may result in rejection or delayed processing of the invoice. Vendor shall submit invoices to CEI no later than forty-five (45) days after shipment of Equipment and/or Materials or performance of Services or pursuant to any project-closing letter instructions provided to Vendor, whichever is earlier.
5. **Payment.** As full consideration for Vendor's delivery of the Equipment and/or Materials or performance of the Services under this PO, and upon presentation of an invoice that complies with Section 4 and all other Contract-Documents prerequisites (including, without limitation, properly executed lien waivers and insurance certificates), CEI will pay Vendor in accordance with the terms expressed on the face of the Order. Notwithstanding any other provision, payment to Vendor is expressly conditioned upon (i) CEI's receipt and acceptance of the Equipment and/or Material and/or Services in accordance with Section 6, and (ii) CEI's actual receipt of corresponding payment ("Owner Payment") from the Owner or other upper-tier party for the Work for which Vendor seeks payment. Until both conditions are satisfied CEI shall have no obligation to pay Vendor, nor shall interest accrue.

CEI may retain ten percent (10 %) of each progress payment (or such other percentage required by the Contract Documents) until final completion and acceptance of the Project and Vendor's delivery of all close-out documents. CEI may set off against any sums due or to become due to Vendor any amounts owed by Vendor to CEI, including back-charges and costs incurred to remedy Vendor's default. Payment by CEI shall not constitute acceptance of non-conforming Equipment and/or Materials and/or Services and shall not waive any warranties or other rights.
6. **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 Vendor or hold such shipments for disposition at Vendor's expense and risk. A copy of the invoice must be attached to the original bill of lading or other shipping document.

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7. 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 of price and/or delivery schedule cannot be reached. Claims for equitable adjustment of price and/or delivery schedules must be received in writing from Vendor within ten (10) days of notification of the Change Order.
8. Warranties. Vendor warrants to CEI, the Owner, and every other party to whom CEI owes warranty obligations under the Contract Documents that all Work: (i) shall strictly conform to all plans, specifications, drawings, samples, performance requirements, and other Contract Documents; (ii) shall be new (unless otherwise expressly approved in writing by CEI), of good quality, and free from design, material, and workmanship defects; (iii) shall be merchantable and fit for their intended purposes; (iv) shall be performed in a prompt, diligent, and workmanlike manner by properly trained and qualified personnel; and (v) shall be transferred with good and marketable title, free of all liens and encumbrances. The warranty period shall extend for the longer of (a) twelve (12) months after final acceptance of the Work by CEI (and, if applicable, the Owner); (b) the period specified elsewhere in the Contract Documents; or (c) the period provided by applicable law. Acceptance or inspection of the Work, or payment therefor, shall not constitute a waiver of any Vendor's warranties. Upon determination that any portion of the Work does not comply with the foregoing warranties during the warranty period, Vendor shall, at CEI's option and at Vendor's sole cost and expense, (i) promptly repair, re-perform, or replace the non-conforming Work (including all costs of removal, access, reinstallation, shipping, testing, and inspection), or (ii) reimburse CEI for all costs, losses, and damages incurred in correcting or replacing such Work. If Vendor fails to promptly and diligently discharge its warranty obligations, CEI may perform or procure the necessary corrective work and Vendor shall reimburse CEI on demand. The warranties provided in this Section 8 are in addition to, and shall not limit, any other warranties or remedies available at law, in equity, or under the Contract Documents, and they shall survive inspection, acceptance, payment, completion, and termination of this Purchase Order.
9. Inspection and Testing. All equipment, materials, and services ordered which are the subject of this Order shall be subject to inspection and testing by CEI to the extent practicable at all times and places, including during the period of manufacturing and/or prior to acceptance. Vendor agrees to permit access to Vendor's facilities at all reasonable times for inspection and testing by CEI's employees or agents and will make available all facilities reasonably necessary to accommodate such inspection and testing. All materials, equipment and services shall be subject to final inspection and testing after delivery. If the materials, equipment 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 materials, equipment or services. Any rejected materials and/or equipment and/or services may be, at CEI's option, either be returned to Vendor or held for Vendor's disposition, at Vendor's risk and expense. From issuance of this Order until three (3) years after its completion, CEI shall have a right to examine Vendor'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 Vendor has overcharged five percent (5%) or more, in which case Vendor shall pay for the cost of the examination and refund such overcharge.
10. Quality and Non-Conformance - Vendor's Equipment and/or Materials must comply with all CEI-provided technical specifications and drawings ("Specifications") and quality control criteria pertaining to manufacturing, testing, delivery, acceptance and service of such goods ("Quality Requirements"). Vendor'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 Equipment and/or Materials not in conformance with this Order on the date of delivery may be rejected and returned at Vendor's expense. Any services not in conformance with this Order on the date of performance may be rejected and suspended.

CEI shall notify Vendor of the grounds for rejection. CEI may (i) permit Vendor to cure the non-conformance, (ii) cancel such non-conforming goods or services without cost or liability, or (iii) accept them with a reasonable reduction in the purchase price; provided that Vendor's repeated non-conformance may, at CEI's option, result in cancellation of all Orders without cost or liability.
11. CEI's Property. Title to and right of immediate possession of any property, including without limitation, patterns, tools, equipment, materials, or services furnished or paid for by CEI shall remain in CEI. No articles made therefrom shall be furnished by Vendor to any other party without CEI's written consent. Vendor 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 Vendor's expense. Unless otherwise agreed to in writing, Vendor shall insure 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. Vendor 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, Vendor shall contact CEI for disposition and will either dispose of or return such property to CEI as directed, at CEI's expense.
12. Drawings and Specifications Review. If, during the term of this Order, CEI representatives review drawings, specifications, or other data developed by Vendor and make suggestions, comments, or recommendations, such actions are only expressions of opinion and shall not relieve Vendor of any duty of performance or other requirements under this Order. Changes

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in specification must be clearly designated in writing by CEI.

13. Drawings and Data. Vendor shall keep confidential all information, drawings, specifications, and data furnished by CEI or prepared by Vendor 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.
14. Use of Information. Vendor 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 Vendor shall assert no claim related to the use or disclosure of such information by CEI.
15. Advertisement. Vendor shall not in any manner advertise or publish the fact that it has or will furnish CEI with any Work except as approved in writing. Vendor shall not disclose any details connected to this Order except as necessary to complete its obligations hereunder.
16. 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 Vendor.
17. Termination; Default; Convenience.
 - (a) Demand for Adequate Assurance. Whenever CEI has reasonable grounds for insecurity regarding Vendor's performance, CEI may deliver a written demand for adequate assurance. Vendor shall furnish such assurance acceptable to CEI within ten (10) calendar days after receipt; failure to do so constitutes a default.
 - (b) Termination for Default. If Vendor (i) fails to supply conforming Equipment, or Materials, or Services, meet schedule, or comply with any warranty, covenant, or obligation; (ii) becomes insolvent or admits inability to pay debts; (iii) fails to provide adequate assurance as required above; or (iv) otherwise commits a default under the Contract Documents, and fails to commence and diligently continue correction within forty-eight (48) hours after written notice, CEI may, without prejudice to any other right or remedy: (1) perform or procure the Work and charge Vendor all resulting costs plus a fifteen-percent (15 %) markup for overhead and profit; (2) use Vendor's materials, equipment, or tools to complete the Work without additional compensation; (3) withhold or set off amounts otherwise due Vendor; and/or (4) terminate this Order, in whole or in part, for default. Vendor shall not be entitled to further payment until the Work is complete; after completion CEI shall deduct its completion costs (plus markup) from any unpaid balance, and Vendor shall promptly reimburse any deficiency within ten (10) days of CEI's demand.
 - (c) Termination for Convenience. CEI may, at any time and for any reason, terminate this Order, in whole or in part, for convenience by giving Vendor written notice. Upon receipt of any termination notice (whether for default or convenience) Vendor shall (i) immediately cease Work as directed; (ii) cancel or assign to CEI, as requested, outstanding purchase orders and subcontracts; (iii) take all reasonable steps to mitigate costs; and (iv) deliver to CEI all Work-in-progress, materials, drawings, specifications, and other items for which CEI has paid. Vendor's sole and exclusive remedy for a termination under Section 17(c) shall be: (A) payment for conforming Work delivered and accepted before the effective termination date; and (B) Vendor's reasonable, documented, and unavoidable direct costs actually incurred in winding down Work and cancelling commitments, less salvage or resale value. Vendor shall not be entitled to anticipated profits, consequential damages, or unabsorbed overhead on unperformed Work
 - (d) Title. Upon CEI's payment of the amounts due under this Section 17, title to all Equipment and/or Materials, materials, Work-in-progress, plans, drawings, specifications, information, special tooling, and other items for which CEI has paid shall vest in CEI, free and clear of all liens and encumbrances.
 - (e) Wrongful Termination. If a termination for default is finally determined to have been improper, the termination shall automatically convert to a termination for convenience, and Vendor's recovery shall be limited to the amounts specified in Section 17(c).
18. Force Majeure. This Section 18 shall be interpreted in harmony with, and shall not grant broader relief than, the force-majeure provisions contained in the applicable Upper-Tier Contracts. For clarity, any schedule relief or compensation to Vendor on account of force-majeure is limited to the extent CEI actually receives corresponding relief from the Owner, General Contractor, or Upper-Tier Subcontractor.
19. Compliance with Laws. Vendor 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 Compliance regulations; e) Customs regulations, and f) Immigration and other government standards and regulations.
20. Indemnification. Vendor shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless CEI, its parent, subsidiary, and affiliated companies, and each of their respective directors, officers, managers, shareholders, members, partners,

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employees, consultants, and agents, together with the Owner, the General Contractor (if any), and every other party to whom CEI is obliged to provide indemnity under the Contract Documents (collectively, the "Indemnitees"), from and against any and all liability, expenses, claims, demands, damages, losses, fines, penalties, and judgments, including, without limitation, reasonable court, attorney, and other professional fees and costs, arising from or in connection with (i) defects in, or non-conforming condition of, the Work furnished by Vendor; (ii) personal injury, death, or property damage arising out of or relating to the Work; (iii) Vendor's violation of any statute, ordinance, rule, or regulation (including, without limitation, those governing occupational health and safety, environmental protection, and employment); (iv) infringement or alleged infringement of any patent, trademark, copyright, or other proprietary right by the Equipment and/or Materials; (v) claims for unpaid wages, benefits, or labor-related assessments asserted by Vendor's employees, suppliers, or lower-tier subcontractors; (vi) Vendor's breach of any covenant, representation, or warranty contained in the Contract Documents; and (vii) any other act or omission of Vendor or those for whom Vendor is responsible that gives rise to a claim against an Indemnitee. Vendor's duty to defend the Indemnitees is separate and independent from its duty to indemnify and shall arise immediately upon written tender of a claim, without the need for any prior determination of Vendor's liability, consistent with California Civil Code § 2782.05(e). This indemnity and defense obligation shall not apply to the extent that it is determined by a court of competent jurisdiction in a final, non-appealable judgment that the claimed injuries, losses, or damages were caused by the active or sole negligence or willful misconduct of an Indemnitee. If any provision of this Section 20 would, but for this sentence, be unenforceable under applicable law, it shall be automatically reformed to afford the maximum protection to the Indemnitees permitted by such law. If Vendor, its agents, employees, lower-tier subcontractors, or suppliers utilize any machinery, tools, hoists, lifts, scaffolding, or other equipment owned, leased, or controlled by CEI, Vendor shall be responsible for, and hereby agrees to defend, indemnify, and hold harmless the Indemnitees from, any and all loss or damage (including bodily injury or death) arising out of such use..

21. Insurance. Vendor shall provide and maintain insurance as detailed in Exhibit "1" hereto.
22. Drawings and Manuals - Vendor will supply proper operating, training and maintenance manuals, drawings and any other document required with respect to the Work ordered.
23. Intellectual Property Indemnification. Vendor 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 Vendor of this Order. Vendor shall, when notified, immediately provide a defense with counsel approved by CEI, which approval shall not be unreasonably withheld. Additionally, Vendor shall: a) obtain licenses or other permissions to avoid infringement of third-party rights; b) replace such elements of the Work as are necessary to avoid such infringement; or c) shall reimburse the cost of CEI's procurement of replacement Work that do not infringe upon third party rights.
24. Assignment. Neither this Order nor any related rights or obligations may be assigned by Vendor, nor may Vendor delegate the performance of any of its duties hereunder without CEI's written permission.
25. Dispute Resolution.
 - (a) Notice and Negotiation. Either party may initiate a dispute by delivering written notice describing the matter in reasonable detail (a "Dispute Notice"). Within five (5) business days after delivery of a Dispute Notice, authorized representatives of the parties shall meet (in person or virtually) and, in good-faith, attempt to resolve the dispute. All statements made during such negotiations shall be confidential settlement communications.
 - (b) Disputes Involving Upper-Tier Parties ("Pass-Through" Claims). If the dispute involves the Owner, the General Contractor, or any other upper-tier party, Vendor agrees that the dispute shall be resolved in accordance with the dispute-resolution procedures set forth in the applicable Upper-Tier Contracts, and Vendor shall be bound by the outcome to the same extent that CEI is bound. Vendor shall prepare, at its sole cost, any documentation reasonably required for CEI to present Vendor's claim, shall fully cooperate in the proceeding, and shall reimburse CEI for its reasonable attorneys' fees and costs to the extent attributable to Vendor's claim. Vendor shall stay any separate action against CEI pending completion of the upper-tier proceeding.
 - (c) Mediation. If the dispute is not resolved under Section 25(a) within fifteen (15) days after the initial meeting, the parties shall endeavor to settle the dispute by non-binding mediation administered by JAMS in accordance with its Construction Mediation Rules. The mediation shall occur within thirty (30) days after a written request for mediation unless the parties agree otherwise. Each party shall bear its own attorneys' fees and share equally the mediator's fees.
 - (d) Binding Resolution. If the dispute is not settled through mediation within forty-five (45) days after the mediator's appointment, the dispute shall be finally resolved, at CEI's sole election, (i) by binding arbitration administered by JAMS in Santa Clara County, California, under its Construction Arbitration Rules, or (ii) by litigation in a state or federal court of competent jurisdiction located in the county where the Project is situated. The arbitration award or court judgment shall be final, conclusive, and enforceable in any court having jurisdiction.
 - (e) Continued Performance. Notwithstanding the existence of a dispute, Vendor shall continue diligently with the performance of the Work as directed by CEI and shall not suspend, delay, or stop the Work.

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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 Order, 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 Order is not exclusive of any remedies that are provided by law.
29. Correspondence and Notices. All notices, demands, requests, or other communications under this Purchase Order ("Notices") must be in writing and are deemed received: (a) on actual receipt if delivered by hand; (b) five (5) days after deposit in the United States Mail, certified or registered, return-receipt requested, postage prepaid; or (c) on the date the sending party receives an electronic delivery receipt confirming successful transmission of an electronic-mail notice sent to the applicable email address below, provided the sender retains that evidence. Facsimile, PDF, and other electronic signatures shall be treated as originals. Notwithstanding the foregoing, any Notice from Vendor asserting an "Affirmative Claim" (defined as any demand or request for additional time, adjustment to price or compensation, change order, impact or delay costs, or other affirmative relief) must be delivered by certified or registered United States Mail (return-receipt requested) or by a nationally recognized overnight courier with proof of delivery; e-mail alone shall not be sufficient for an Affirmative Claim. A courtesy copy by e-mail may be sent but is not required for effectiveness. An Affirmative Claim shall be deemed received only upon the date shown on the postal return receipt or the courier's delivery record:

To CEI:
Cupertino Electric, Inc.
Attn: General Counsel
1132 N. 7th Street
San Jose, CA 95112
Email: legalnotices@cei.com

To Vendor:
Attn: [Title or Department]
[Full Legal Name of Vendor]
[Street Address]
[City, State ZIP]
Email: [notice@vendor-domain.com]

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. - Vendor shall strictly comply with the Project schedule set forth in the Order or as otherwise subsequently directed by CEI. Vendor acknowledges that the Project schedule flows down from the Upper-Tier Agreements and agrees that time is of the essence. CEI may unilaterally change the schedule to reflect adjustments to Project requirements or the Upper-Tier Agreements, and Vendor shall, without additional cost, promptly conform its performance to any revised schedule. Vendor may not back-order any portion of the Work without CEI's prior written authorization. Vendor understands that its failure to deliver the Equipment and/or Materials or perform the Services when required will expose CEI to delay damages, including liquidated damages assessed under the Upper-Tier Agreements. CEI may cancel all or any part of an Order if deliveries are delayed, and Vendor will pay CEI all damages sustained as a result, including any liquidated or actual delay damages CEI is required to pay to the General Contractor or Owner or Upper-Tier Subcontractor. Vendor shall give CEI written notice of any anticipated late deliveries, labor disruptions, or facility shutdowns as soon as Vendor becomes aware of the potential impact— and in no event later than forty-eight (48) hours after such awareness—so that CEI can furnish notice within the time frames required by the Upper-Tier Agreements. Failure to provide timely notice constitutes a material breach and waives Vendor's right to schedule relief or additional compensation. If necessary to ensure timely delivery, Vendor shall ship via expedited transit at its own cost, except that CEI will bear such cost only if the sole and proximate cause of the need for expediting is CEI's written change or delay. At CEI's request, Vendor shall promptly prepare and implement a recovery schedule, including acceleration measures, at Vendor's expense unless the delay is attributable solely to CEI. Vendor shall defend, indemnify, and hold harmless CEI from and against any and all claims, losses, costs, or damages (including extended general conditions, acceleration costs, liquidated damages, and attorneys' fees) arising out of or relating to Vendor's failure to meet the required schedule.
32. Integrated Agreement. This Order constitutes the entire Agreement between Vendor and CEI with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect hereto not incorporated herein are hereby canceled. This Order can only be modified or amended by a written document duly executed on behalf of the parties hereto. CEI and Vendor shall both be deemed to have participated in the drafting of this Agreement; hence, in the event any provision of this Agreement is deemed to be ambiguous, it shall not be construed against either party.
33. Captions and Titles. The captions of articles, sections, divisions, paragraphs, subparagraphs, clauses in this Order (including documents incorporated by reference into this Order) are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the sections, divisions, articles, paragraphs, subparagraphs, clauses and the like.

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34. Independent Contractor. The Work shall be performed by Vendor as an independent contractor at its sole risk, cost and expense.
35. No Third-Party Beneficiaries. Nothing contained in this Order shall be deemed to create any third-party contract rights for Vendor or any subcontractor, supplier or other provider of labor, services, materials or equipment under this Order, except as required by the Contract Documents.
36. Waiver. No waiver, express or implied, by either party to this Order by CEI of any term or provision in this Order, or any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a waiver of any other term or provision in this Order. Failure on the part of CEI hereto to complain of any act or failure to act of Vendor, or to declare Vendor in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of CEI's rights hereunder. Inspection or failure of CEI to perform any inspection hereunder shall not release Vendor of any of its obligations hereunder.
37. Bonds. If Performance and/or Payment bonds, Supply bonds, or Warranty bonds are required at any time, Vendor shall pay for and deliver such bonds, within 10 days of Contractor's request using the form specified by Contractor and attached to this Agreement, each in the full amount of this Agreement, issued by a United States (U.S.) Treasury listed surety (Surety) with an A.M. Best rating of A- Financial Size IX or better, approved and licensed to do business in the state where the Project is located (Controlling State), duly executed by agents with complete Power of Attorney to the full limits therein.

In the event a Surety has an A.M. Best rating fall below (A-), becomes insolvent, or its license is revoked or suspended, or in the event a Surety is listed as an approved federal surety, and such federal approval is revoked or suspended, the Principal, within ten (10) days after notice by Obligee, shall substitute other and sufficient surety or sureties, at Vendor's cost; if the Principal fails to do so, such failure shall be an Event of Default.

Vendor is not permitted any mark up on bond costs and shall present an invoice from its surety to establish the actual cost of any bonds. Vendor shall refund to CEI any rebate or refund in bond premiums resulting from adjustment in bonds.

CEI shall have the right, without notice to Vendor's surety, to order changes in the performance or time of performance of the Work and to modify this Agreement. No extension of time, change, addition, or omission of terms in this Agreement or the Prime Contract shall affect the surety's obligation on the bonds. Vendor and its surety waive notice to the surety of any such extension of time, change, addition, or omission. Vendor and surety agree without the necessity for any further authorization, to increase the bonds' penal sums if or when additive changes to the Contract Sum are executed. CEI's response to any surety inquiry as to Vendor's performance shall not estop or impair CEI's rights under this Agreement or any bond, and surety shall be required to conduct its own independent investigation of Vendor's performance.

Any Performance Bond shall guaranty Vendor's performance through the end of any warranty period and any statute of limitation as to surety's obligations under the Performance Bond shall not accrue until the warranty period ends.

EXHIBIT 1
CUPERTINO ELECTRIC, INC. INSURANCE REQUIREMENTS

1. **Insurance Coverage Required and Minimum Limits.** Vendor must procure and maintain in effect, without interruption, at its own expense, throughout the life of each Project and period of applicable statutes, insurance policies complying with all requirements set forth in this Exhibit 1, as required by the Order and providing at least the following coverages, terms, conditions and limits:
2. **Workers' Compensation and Employer's Liability Insurance**
 - 2.1.1. Scope. Workers' Compensation insurance coverage covering Vendor's legal liability under applicable state or federal workers' compensation or occupational disease laws (including, if applicable, Longshore and Harbor Workers' Compensation Act, The Jones Act, Maritime Employer's Liability and Federal Employer's Liability Act) for personal injury or death claims in amounts required by statute. Coverage must also include Employer's Liability insurance coverage to cover injury, disease, or death of an employee which, for any reason, may not fall within the provisions of the applicable workers' compensation law.
 - 2.1.2. Minimum Required Limit.

Workers' Compensation:	Statutory
Employer's Liability:	\$1,000,000 each accident, bodily injury by accident
	\$1,000,000 each employee, bodily injury by disease
	\$1,000,000 policy limit, bodily injury by disease
 - 2.1.3. Waiver of Subrogation. The insurance must provide that insurer waives all rights to recover any payment made from CEI Parties.
 - 2.1.4. Utilization of Professional Employer Organization (PEO) or Similar Service. If Vendor utilizes a Professional Employer Organization (PEO) or similar service, an Alternate Employer endorsement, NCCI Form WC 00 03 01 A or equivalent, is required in favor of Cupertino Electric, Inc. under the PEO workers' compensation insurance policy. Vendor shall also maintain a separate workers' compensation policy in its name.
 - 2.1.5. When Workers' Compensation Coverage Not Required by Applicable Law. If applicable law does not require workers' compensation coverage and Vendor has none, then Vendor, before performing services, must receive written authorization from CEI and provide an acceptable waiver and release.
3. **Commercial General Liability Insurance**
 - 3.1.1. Scope. Commercial general liability insurance written on Insurance Services Office, Inc. (ISO) Form CG 00 01 (or a substitute occurrence form providing equivalent coverage) covering liability arising from premises, operations, products-completed operations, property damage, independent contractors, personal and advertising injury and contractual liability, including oral and written contracts, defense in addition to policy limit, and a general aggregate per project. The policy shall provide that all provisions thereof, except the limits of liability, shall operate in the same manner as if there was a separate policy covering each insured.
 - 3.1.2. Minimum Required Limit

\$2,000,000 per occurrence
\$2,000,000 personal and advertising injury
\$4,000,000 general aggregate
\$4,000,000 products and completed operations aggregate
 - 3.1.3. Additional Insured and Primary and Non-Contributory Coverage. The insurance must include CEI Parties as additional insureds via the combination of ISO Forms CG 20 10 04 13 and CG 20 37 04 13 or a substitute form(s) providing equivalent coverage. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured. Insurance or self-insurance maintained by CEI Parties or other additional insureds is in excess of Vendor's insurance, contingent and non-contributory.
 - 3.1.4. Waiver of Subrogation. The insurance must provide that insurer waives all rights to recover any payment made from CEI Parties.
 - 3.1.5. Additional Requirements for Blasting, Explosive Conditions and Underground Operations. If any work or services involve or require blasting, explosive conditions or underground operations, then coverage must not contain any exclusion relative to blasting, explosion, the collapse of buildings or damage to underground structures.
 - 3.1.6. Additional Requirements for Crane and Rigging Operations. If any work or services involve lifting, lowering, rigging, or hoisting of property or equipment belonging to others, then coverage must include rigger's liability with limits not less than \$5,000,000 per occurrence and a \$5,000,000 general aggregate. This requirement may be met through purchasing a standalone rigger's liability policy.
 - 3.1.7. Wrap-Up Insurance Programs. For projects insured under a wrap-up insurance program (OCIP, CCIP, CIP, etc.), vendor's commercial general liability coverage, and if applicable, umbrella / excess liability coverage, must apply excess of any wrap-up insurance program.

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4. Auto Liability Insurance

- 4.1.1 Scope. Automobile Liability insurance written on ISO Form CA 00 01 (or a substitute occurrence form providing equivalent coverage) covering liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the work or services. The policy shall provide that all provisions thereof, except the limits of liability, shall operate in the same manner as if there was a separate policy covering each insured.
- 4.1.2 Minimum Required Limit.
\$2,000,000 combined single limit
- 4.1.3 Additional Insured and Primary and Non-Contributory Coverage. The insurance must include CEI Parties as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured. Insurance or self-insurance maintained by CEI Parties or other additional insureds is in excess of Vendor's insurance, contingent and non-contributory.
- 4.1.4 Waiver of Subrogation. The insurance must provide that insurer waives all rights to recover any payment made from CEI Parties.
- 4.1.5 Transportation of Chemicals, Hazmat or Similar Pollutants. If Vendor is transporting chemicals, hazardous materials or similar pollutants, then the Auto Liability Insurance must include pollution liability coverage at least as broad as the coverage provided under the ISO endorsement CA 99 48 03 06 "Pollution Liability – Broadened Coverage for Covered Autos".

5. Contractors Pollution Liability Insurance

- 5.1.1 Scope. Contractors pollution liability insurance to cover claims arising from the discharge, dispersal, release or escape of any pollutant, irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater arising out of the acts, errors or omissions of Vendor or its lower-tier subcontractors in connection with the materials and/or equipment and/or services. The policy must provide coverage for: bodily injury, sickness or disease sustained by any person, including death; property damage, including physical injury to or destruction of tangible property, including the resulting loss of use thereof; on and offsite cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and natural resources damages; defense costs, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims; contractual liability coverage; claims arising from owned and non-owned disposal sites utilized in connection with the work or services (if applicable); claims arising from transportation of pollutants, irritants or contaminants in connection with the work or services (if applicable); and claims arising from above ground and below ground storage tanks (if applicable).

The policy may not contain restrictions for insured versus insured actions (however, exclusions for claims made between insured within the same economic family are acceptable), any form of fungus, including mold, or completed operations in any coverage part of the policy for either the insured or an additional insured or work performed by vendors.

- 5.1.2 Minimum Required Limit.
Vendors, including their lower-tier subcontractors, that perform demolition, hazardous material remediation or perform any work using or involving hazardous waste material:
\$5,000,000 per claim
\$5,000,000 aggregate
Vendors, including their lower-tier subcontractors, that perform excavation or trench work:
\$2,000,000 per claim
\$2,000,000 aggregate
All other vendors:
\$2,000,000 per claim
\$2,000,000 aggregate
- 5.1.3 Additional Insured and Primary and Non-Contributory Coverage. The insurance must include CEI Parties as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured. Insurance or self-insurance maintained by CEI Parties or other additional insureds is in excess of Vendor's insurance, contingent and non-contributory
- 5.1.4 Waiver of Subrogation. The insurance must provide that insurer waives all rights to recover any payment made from CEI Parties.
- 5.1.5 Claims-Made Policies. If coverage is written on a claims-made basis, then the retroactive date shall precede the effective date of the Order and prior to the delivery of the equipment and/or materials and prior to the commencement of work or service and coverage shall continue uninterrupted for a period ending three (3) years

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after the date of completion.

If coverage is cancelled or non-renewed within three (3) years after the date of completion and not replaced with another claims-made policy form with a retroactive date prior the effective date of the Subcontract and the commencement of work or services, then Vendor must purchase an extended reporting period / tail coverage for minimum of three (3) years after the date of completion.

6. Professional Liability Insurance

- 6.1.1. When Coverage is Required. Vendors providing or subcontracting design, engineering, surveying, or testing services must maintain professional liability (errors & omissions) insurance coverage.
- 6.1.2. Scope. Professional liability insurance covering claims arising from Vendor's acts, errors, or omissions in connection with the work or services. The policy must not contain any restrictions for bodily injury, property damage or environmental liability.
- 6.1.3. Minimum Required Limit.
\$2,000,000 per claim
\$2,000,000 aggregate
- 6.1.4. Claims-Made Policies. If coverage is written on a claims-made basis, then the retroactive date shall precede the effective date of the Order and prior to the delivery of the materials and/or equipment and/or prior to the commencement of work or service and coverage shall continue uninterrupted for a period ending three (3) years after the date of completion.
- 6.1.5. If coverage is cancelled or non-renewed within three (3) years after the date of completion and not replaced with another claims-made policy form with a retroactive date prior the effective date of the Order and delivery of the materials and/or equipment and/or the commencement of work or services, then Vendor must purchase an extended reporting period / tail coverage for minimum of three (3) years after the date of completion.

7. Aircraft Liability Insurance

- 7.1.1. When Coverage is Required. Vendors utilizing any owned, leased, chartered, or hired aircraft of any type (including unmanned aircraft / drones) in the performance of this Agreement shall maintain aircraft liability insurance.
- 7.1.2. Scope. Aircraft liability insurance must be written on an occurrence basis covering liability arising from claims for injuries to persons, including passengers if manned aircraft are being utilized, property damage and invasion of privacy arising from or in connection with the ownership, maintenance or use of aircraft.
- 7.1.3. Minimum Required Limit.
Vendors utilizing manned aircraft: \$10,000,000 per occurrence
Vendors only utilizing unmanned aircraft (including drones): \$2,000,000 per occurrence
- 7.1.4. Additional Insured and Primary and Non-Contributory Coverage. The insurance must include CEI Parties as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured. Insurance or self-insurance maintained by CEI Parties or other additional insureds is in excess of Vendor's insurance, contingent and non-contributory
- 7.1.5. Waiver of Subrogation. The insurance must provide that insurer waives all rights to recover any payment made from CEI Parties.

8. Cyber Liability Insurance

- 8.1.1. When Coverage is Required. Vendors whose scope of work involves access to computer or information systems, sensitive or confidential information shall maintain cyber liability insurance.
- 8.1.2. Scope. Cyber liability insurance covering liability arising from theft, wrongful dissemination and/or unauthorized use of confidential information and liability arising from the introduction of a computer virus into, or otherwise causing damage to a third person's computer, computer system, network or similar computer related property and software and programs stored thereon.
- 8.1.3. Minimum Required Limit.
\$2,000,000 per claim
\$2,000,000 annual aggregate

- 9. **Excess or Umbrella Insurance.** The required minimum coverages, terms, conditions and limits outlined in this Exhibit 1 may be met through any combination of primary or excess insurance policies.
- 10. **Acceptable Deductibles and Self-Insured Retentions.** Deductibles and self-insured retentions greater than \$25,000 (\$50,000 for professional liability) require prior written approval of CEI.
- 11. **Responsibility for Deductibles and Self-Insured Retentions.** With respect to any insurance policy(s) required in this Exhibit 1, Vendor must bear all costs of all deductibles or self-insured retentions.

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12. **Acceptable Insurers.** All insurance required in this Exhibit 1 must be obtained from insurers duly authorized to do business in the state in where the Project is located and which maintain a minimum financial strength rating of "A- VIII" by the A.M. Best Key Rating Guide.
13. **Notice of Cancellation.** No insurance policy providing coverage required in this Exhibit 1 may be cancelled or materially modified unless Vendor or insurer(s) provide at least thirty (30) days prior written notice to CEI. Ten (10) day notice for non-payment of premium is acceptable.
14. **Certificates of Insurance.** Prior to commencing any Work, and within ten (10) days of each renewal date of all policies providing insurance required in this Section, Vendor must furnish CEI with a Certificate of Insurance evidencing compliance with the requirements set forth in this Exhibit 1. Endorsements confirming primary additional insured coverage, waiver of subrogation, and excess wrap-up insurance (or limited Wrap-up exclusion) must be attached to the insurance certificate and are subject to approval.

Vendor shall continue to provide evidence of insurance required by this Order for a period of three (3) years from the expiration of the warranty period as defined in this Order.

Vendor shall ensure that its lower-tier subcontractors maintain insurance in accordance with this and furnish copies of lower-tier subcontractors insurance certificates upon CEI's request.

Certificates for All Operations under this Order are acceptable in lieu of project specific certificates.

Certificate Holder: Cupertino Electric, Inc.
 Attn: riskmanagement@cei.com
 1132 North 7th Street
 San Jose, CA 95112

Please file certificates via email – do not mail hard copy documents

15. **Certified Copies of Insurance Policies.** CEI shall have the right to request and Vendor shall provide, upon request, certified copies of all insurance policies required under this Order at any time.
16. **Certificate Acceptance.** The acceptance of insurance certificates by CEI shall in no way limit or relieve Vendor of the duties and responsibilities imposed under this Order. If higher limits or other forms of insurance are required by the Contract Documents, Vendor will comply with such requirements.
17. **No Waiver.** CEI's failure to demand a Certificate of Insurance or to identify a deficiency from a Certificate of Insurance or other evidence provided will not be deemed a waiver of Vendor's obligations. Furthermore, the insurance requirements referenced in this Section must not be construed in any manner as waiving, restricting, or limiting CEI's rights or Vendor's obligations under this Agreement.
18. **No Representation of Coverage Adequacy.** CEI does not represent that the insurance coverage and limits required in this Section will be adequate to protect Vendor's interest nor shall the requirements be construed as a limitation of Vendor's liability under the Order. Vendor remains responsible for any liability not paid by insurance policies required herein.
19. **Cooperation.** Vendor shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of its operations conducted under or in connection with the Work and shall cooperate with CEI, Owner, General Contractor, their insurance representatives and insurance carriers. Said cooperation shall include, but not be limited to the adjustment, settlement, arbitration, or litigation of all said claims, including responsibility for deductibles or self-insured retention payments, appearance in arbitration or court proceedings, and participation in settlement conferences as may be required.
20. **Lower-Tier Subcontractors.** Vendor shall, subject to the terms set forth in Exhibit 1, as required by Contract Documents and applicable to Vendor's Work, 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 herein. Vendor agrees to include these insurance requirements, in their entirety, in any lower-tier subcontract and/or purchase order executed by Vendor for any part of its scope of Work to be performed by Vendor or said lower-tier subcontractors under this Order. Vendor agrees to enforce with its employees and all lower-tier subcontractors all requirements, obligations and as specified in this Exhibit 1.
21. **CEI Parties.** CEI Parties includes Cupertino Electric, Inc., its subsidiaries, officers, directors, and employees as well as all parties for whom Cupertino Electric, Inc. is required by the contract documents to provide additional insured coverage.
22. **Damage to Vendor's Work.** Builder's Risk insurance, if purchased by others in accordance with the Contract Documents, may or may not provide coverage for loss or damage to Vendor's Work. Vendor shall be responsible for the insurance policy deductible amount applicable to damage to Vendor's Work, and applicable to damage to other work caused by Vendor or

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its lower-tier subcontractors.

23. **Vendor Property.** Vendor and its lower-tier subcontractors are solely responsible for insuring and protecting its and their equipment and tools from damage and shall arrange for waivers of subrogation in favor of CEI, Owner, and General Contractor on any property insurance policies carried by Vendor and its lower-tier subcontractors for such equipment and tools. Vendor hereby releases and shall cause its lower-tier subcontractors to release, CEI, Owner, and General Contractor from all claims, causes of action, liability, and damage resulting from or relating to any loss or damage to equipment or tools at the Project, regardless of whether such loss or damage was caused by the negligence of CEI, Owner, General Contractor.
24. **Wrap Up Insurance Programs.** If a Wrap-Up insurance program (OCIP, CCIP, CIP, etc.) is implemented for a project, Vendor shall comply with the requirements as further described in the program manual and other Contract Documents. Insurance requirements under this Exhibit 1 remain in effect for insurance that is not part of the Wrap-Up program. 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 for the Wrap-Up program. Vendor agrees to include the Wrap-Up program requirements, in their entirety, in any lower-tier subcontracts and/or purchase orders issued by it for any part of Vendor's scope under the Order. Vendor is responsible for enforcing compliance of its lower-tier subcontractors with the Wrap-Up program.