



SUPPLIER AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 20____, between Ferndale Electric Company (FECO) and _____ (Seller) for a Project known as _____ (the Project).

The Parties hereby agree as follows:

1. Seller shall sell FECO the items fully described in attached Exhibit A which is hereby incorporated by this reference into this contract.
2. The terms and conditions of this Contract in the attached Purchase Order are hereby incorporated by reference into this contract.
3. FECO shall pay Seller _____ Dollars and _____/100 (\$ _____) plus any applicable taxes including but not limited to Michigan Sales Tax

Dated: _____

FERNDALE ELECTRIC COMPANY (FECO)

By: _____

Its: _____

Dated: _____

_____ (SELLER)

By: _____

Its: _____

EXHIBIT B - TERMS AND CONDITIONS OF PURCHASE

1. **CONTRACT.** Shipment of goods or performance of services pursuant to this order shall be deemed to be an acceptance by Seller of the terms and conditions of this order. Acceptance of these terms binds Seller to comply with all of the terms and conditions of this order, including any supplements thereto, and all specifications and other documents Seller incorporates by reference in this order. Any additional or different terms or conditions which may in any communication from Seller or in Seller's acknowledgement or signed return of this order are hereby expressly objected to, shall not become part of this contract despite Buyer's acceptance of goods or services and shall not be effective or binding unless specifically recognized, assented to and agreed to in writing by Buyer.
2. **DELIVERY; TIME IS OF THE ESSENCE.** If any goods are not delivered or services not performed within the time specified in this contract or within a reasonable time if no time is so specified, Buyer may refuse to accept such goods or services and cancel this contract and shall be relieved of all liability for any undelivered goods or unperformed services, or Buyer may cause the goods to be shipped or the services to be performed by the most expeditious means. Any additional transportation charges in excess of those which would be the usual means of transportation shall be for the account of Seller. Risk of loss or damage in transit, or by deviation in specified route, noncompliance with instructions or improper description of the goods or services, excess transportation charges and insurance costs not specified otherwise will be for the account of Seller. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by the Uniform Commercial Code, by law, at equity or under this contract.
3. **INSPECTION.** All goods, services and work are subject to inspection and test by Buyer and its customer at any and all times. Seller shall maintain all test and inspection data for six (6) years. Regardless of when payment is made and without prejudice arising from prior performance, delivery or acceptance under this contract, Buyer, in addition to its other rights, reserves the right to reject any part of the goods, services or work which does not conform to this contract with an adjustment in purchase price, or to require prompt correction or replacement thereof at Seller's expense, including transportation charges and labor costs for receipt or return of the rejected goods or services. Buyer's final acceptance or rejection of the goods or services shall be made as promptly as practical after delivery but failure to inspect and accept or reject goods or services or failure to detect defects by inspection shall neither relieve Seller from responsibility for such goods or services as are not in accordance with this contract's requirements nor impose liabilities on Buyer for them. Buyer's approval of Seller's design, material, process, drawing, specifications shall not be construed to relieve Seller of the warranties set forth herein, nor shall any waiver by Buyer or any drawing or specification request for one or more articles constitute a waiver of any such requirements for the remaining articles to be delivered hereunder unless so stated by Buyer in writing.

- 4. MODIFICATION; WAIVER; ASSIGNMENT.** This contract may not be orally modified or terminated. No modification or termination nor any claimed waiver or any of the provisions of this contract shall be binding unless in writing and signed by the party against whom such modification, termination or waiver is sought to be enforced. Any failure of a Party to exercise its rights or remedies with respect to any installment or part performance shall not be deemed a waiver of remedies as to subsequent performance or installments. This contract may not be assigned without the written consent of Buyer and any attempt at assignment shall be void or voidable at the election of Buyer. If any term or condition of this contract or its application shall be held unenforceable, the remainder of this contract shall not be affected. Notwithstanding, Buyer may at any time, by written order and without notice to the sureties or any assignees, issue additional instructions, change the extent or the amount of the work covered by this contract or make changes in or additions to the drawings and specifications. If such changes cause a material increase or decrease in the amount or character of such work or in the time required for its performance, an equitable adjustment of the prices to be paid to Seller shall be made by Buyer and Seller, and the contract shall be modified in writing accordingly. Any claim for adjustment under this provision must be asserted by Seller within thirty (30) days from the date on which the change is ordered and shall set forth the amount by which it is claimed the price is increased or decreased, together with information sufficient to justify the claimed increase or decrease, provided however that Seller, if it determines that the facts justify such action, may receive and consider and adjust any such claim asserted at any time prior to the date of the final settlement of the contract. Nothing provided in this section shall excuse Seller from proceeding with the prosecution of the work so changed.
- 5. FORCE MAJEURE.** Neither party shall be liable to the other for default, failure or delay in providing or accepting goods or services hereunder if such failure is caused by extraordinary event or occurrence beyond that party's control such as fire, accident, strike, civil disturbance, war, act of terrorism, act of God, embargo, delay of couriers, delay in transportation, government order or regulation, complete or partial shutdown of Buyer's operation by reason of mechanical breakdown, inability to obtain sufficient raw materials or power, floods, windstorms, explosions, riots, natural disasters, sabotage or any other similar or different contingency beyond the reasonable control of the Buyer or Seller. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Seller, Buyer at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Buyer, or cause Seller to provide the goods from other sources in quantities from other sources in quantities and at times requested by Buyer and at the price set forth in this contract. If requested by Buyer, Seller shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Seller does not provide adequate assurance that the delay will cease with such time period, Buyer may, among its other remedies, immediately cancel this contract without liability.

6. **WARRANTIES.** With respect to the goods or services purchased under this contract and all other goods or services purchased from Seller, Seller expressly warrants for the Warranty Period as follows: (a) the goods shall strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions and samples; (b) the goods shall be free from defects in workmanship and material and shall be new and of the highest quality; (c) Buyer shall receive title to the goods that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (d) the goods shall be merchantable, safe, and fit for the Buyer's intended purposes, which purposes have been communicated to Seller; (e) the goods shall be adequately contained, packaged, marked and labeled, (f) all services performed by Seller shall be performed in a competent, workmanlike manner and in accordance with industry standards; (g) the goods shall be manufactured in compliance with all applicable federal, state and local laws, regulations or orders and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification. These warranties shall be in addition to all other warranties, expressed, implied or statutory. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, and customers and the users of Buyer's products. These warranties may not be limited or disclaimed by Seller. If Buyer experiences any defect, failure or non-conformity during the Warranty Period, Buyer shall have the right to take the following actions, at Buyer's option: (1) retain the defective goods in whole or in part with an appropriate adjustment in the price of the goods; (2) require Seller to repair or replace the defective goods in whole or in part at Seller's sole expense, including all shipping, transportation and installation costs; (3) correct or replace the defective items with similar items and recover the total cost from Seller; and (4) exercise all other rights under the Uniform Commercial Code and any other applicable statutes. For purposes of this contract, "Warranty Period" shall mean the longer of the following time periods: (a) 18 months from the day of the first use of the goods by Buyer or acceptance by Buyer, whichever occurs later; (b) if the goods are incorporated, in whole or in part, into goods sold by Buyer to third parties, 18 months after acceptance by such third parties or the time period of warranty that Buyer gives to such third parties, whichever occurs later. Acceptance of this contract shall constitute an agreement upon Seller's part to indemnify and hold Buyer harmless from all claims, liability, loss, damage and expense, including attorney's fees incurred or sustained by Buyer by reason of any breach of such warranty.

7. **CONFIDENTIALITY; PROPRIETARY INFORMATION; BUYER'S PROPERTY; INVENTIONS.** All equipment and material furnished to Seller by Buyer shall be property of the Buyer and shall be promptly delivered to Buyer at its request. All drawings, blueprints, jigs, fixtures, printing plates, dyes, tools or patterns, etc itemized separately hereunder shall become property of Buyer upon payment for same, but Buyer shall not be obligated to pay for same under this contract until acceptance by Buyer of the first run of parts fabricated by the same and Seller shall be responsible for such tools and all material furnished by Seller without charge hereunder, for all loss or damage thereto while in its possession and the same shall be (a) appropriately segregated, marked as property of Buyer, (b) kept in good working condition and (c) used exclusively for the production of goods for Buyer and subject to no other use without the written permission of Buyer.. All plans, drawings, specifications, documents and the subject matter contained therein and all other

information given to Seller in connection with performance of this contract involve valuable property rights of Buyer and, whether or not marked as such, shall be held confidential by Seller and shall not be used by Seller for any purposes other than those for which they are being prepared or supplied or used under this contract. Seller agrees that it will keep confidential all information used in the business of Buyer to which Seller may become acquainted with, exposed to or familiar with during the course of this contract and that Seller shall keep confidential the terms of this contract. Seller agrees not to use for publicity purposes any information in connection with the performance of this contract without obtaining the prior written consent of Buyer. Seller hereby grants to Buyer an irrevocable, nonexclusive and royalty-free license to make, have made, use and sell any improvement in the goods which is conceived, developed or reduced to practice by Seller in the production of the goods under this contract. Buyer agrees not to furnish any material made to Buyer's designs or specifications to any other person or firm during the life of this contract and for a period of five (5) years from the date of completion or other termination of this contract without having first obtained Buyer's written consent.

8. **PATENTS; TRADEMARKS; COPYRIGHTS.** Seller shall indemnify and hold buyer harmless from all losses and expenses (including reasonable attorney fees), as defined herein, for infringement or alleged infringement of any patents, trademarks, or copyrights, misappropriation of trade secrets, or any litigation based on or related in any connection with the sale or use of the goods or out of the services furnished pursuant to this contract. Seller shall, if requested by buyer, assume at its own expense the defense of all suits alleging such infringements.
9. **INDEPENDENT CONTRACTORS.** In the event that any goods or services purchased under this contract required the services or goods of a contractor engaged by Seller and Seller agrees to furnish the same either with or without charge, such third party shall not be deemed to be the agent of Buyer and Seller shall take full responsibility for the same.
10. **INDEMNIFICATION.** Seller shall indemnify and hold harmless buyer, its officers, directors, agents, servants, employees, contractors and assigns from any and all claims, demands, actions, penalties, fines, losses, costs or other liabilities (including but not limited to loss of goods, damages to person or property, claims for wrongful death, worker's compensation or similar benefits and attorney's fees, including those incurred to enforce this indemnification) (collectively "losses") arising out of or resulting from seller's breach of warranty or performance of this contract or any act or omission of seller, whether occurring on buyer's premises or elsewhere. However, seller shall have no obligation to buyer to the extent such losses are attributable to the negligence or willful misconduct of buyer. Seller's obligations under this paragraph extent to the acts or omissions of its employees, contractors, subcontractors and agents.
11. **INSURANCE.** Seller shall maintain insurance required to meets its obligations under this Contract and its Indemnification clause, in amounts sufficient to cover any Losses sustained by Buyer.
12. **TAXES.** Seller agrees that, unless otherwise indicated in this contract, (a) the prices herein do not include any state or local sales, use or other tax from which an exemption is available for purposes of this contract, and (b) the prices herein do not include all

other applicable Federal, state, local taxes in effect at the date of this contract. Seller agrees to accept and use tax exemption certificates when supplied by Buyer if acceptable to the taxing authorities. In case it shall ever be determined that any tax included in the prices hereunder was not required to be paid by Seller, Seller agrees to notify Buyer and upon request and at Buyer's expense, to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to Buyer.

13. **COMPLIANCE WITH LAWS AND RULES.** Seller warrants that its performance of this contract shall comply with all applicable federal, state and local laws, regulations, ordinances, rulings and orders. Without limiting the above warranty, Seller warrants compliance with the following: Toxic Substances Control Act, Federal Consumer Product Safety Act, Federal Hazardous Substances Act, Mine Safety and Health Act and Occupational Safety and Health Act.
14. **APPLICABLE LAW.** This contract and respective rights and obligations of the parties hereto, shall be govern by and construed in accordance with the laws of the State of Michigan.
15. **SHIPPING ANDTRANSPORTATION.** Shipping: Seller shall enclose a packing slip in each separate container and a master packing slip with each shipment. Buyer's count or weight shall be accepted as final and conclusive on shipments not accompanied by packing slips. Packing slips shall not show any prices. Unless authorized in writing by Buyer, Seller shall not under ship or over ship on this contract. Seller shall issue separate invoices for each shipment against this contract which shall show the amount of material shipped. Bills of lading, expressed receipts or other evidences of shipment shall be attached to the invoices. The purchase order number and part number or where there is no part number then a description of material shall appear on all invoices, packing slips, bills of lading, express receipts, correspondence and other instruments in connection with this contract. Where Seller and the shipper are not the same, the names of both must be shown thereon to facilitate identification of shipment. The purchase order number shall also appear on all packages, crates or boxes. Transportation: No extra charges of any kind will be allowed unless specifically agreed to in writing by the Buyer. All prices under this contract are established as F.O.B. Buyer's dock (or buyer's customer's dock), freight collected. Title will transfer at Buyer's dock and Seller assumes responsibility for freight damaged goods. Transportation for goods sold delivered destination must be prepaid. Seller shall not declare any value on such materials shipped via United Parcel Service, Rail Express, Air Express or Parcel Post. Seller shall release rail or truck shipments at the lowest release valuation permitted in the governing tariff or any classification.
16. **OFFSETS, SET-OFFS.** Seller and Buyer agree that Buyer shall have the right at any time to reduce and set-off against amounts payable hereunder any indebtedness or other claim which Buyer, or its affiliated or related companies, may have against Seller, or its related or affiliated companies, under this contract or any other agreement between the referenced parties.
17. **TERMINATION.** Buyer, by giving notice in writing at any time, may terminate this contract, in whole or in part, even though Seller is not in default hereunder and no breach hereof has occurred; such notices shall state the extent of the effective date of

termination and upon receipt by Seller, of such notice, Seller will, as and to the extent prescribed by Buyer, stop work under this contract and placement of further orders of subcontracts hereunder, terminate work under orders subcontract outstanding hereunder and take any necessary action to protect property in the Seller's possession in which Buyer has or may acquire an interest. Termination by Buyer under this section shall be without prejudice to any claims for damages or otherwise of the Purchaser against Seller.

18. **MISCELLANEOUS. Seller's Inventory:** Buyer has no obligation to place orders with Seller and any orders placed shall be in Seller's sole discretion. Any forecasts supplied by Buyer from time to time are estimates only. **Payment:** Payment terms are net 45 days, provided that Seller acknowledges that receipt of payment by Buyer from Buyer's customer on account of materials and/or services provided by Seller are a condition precedent to Buyer's obligation to make payment to Seller. Seller shall provide Buyer with lien releases in a form acceptable to Buyer. **Severability:** If any term of this contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this contract shall remain in full force and effect. **Entire Contract:** this contract and the authorized modifications thereof shall constitute the entire agreement between the parties.
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