

TERMS AND CONDITIONS OF PURCHASE

These Terms of Purchase are part of each purchase order that Kendall Electric, Inc., Great Lakes Automation Supply, Cyber Connect, LLC, J. O. Galloup Company, Merlo Energy, Merlo Steam Equipment Company, Steam Economies Company, Smith Instrument, and any of their subsidiaries or affiliates (“**Buyer**”), issues. In these Terms of Purchase, “**Seller**” means the seller named in the purchase order, “**goods**” and “**services**” mean the goods or services that Buyer is to purchase from Seller, as described in the purchase order, “**Contract**” means any contract formed pursuant to the purchase order, and “**order**” means the purchase order.

1. **Agreement.** These Terms of Purchase, together with Buyer’s purchase order and any exhibits, attachments and other documents incorporated by reference constitute Buyer’s offer to buy the goods and/or services described in the order on these Terms of Purchase, and Buyer rejects any earlier offers to sell those goods and/or services made by Seller. If the order nevertheless is in legal effect an acceptance of an earlier offer by Seller, then Buyer’s acceptance is conditional upon Seller’s assent to all of these Terms of Purchase that are additional to or different from the terms of Seller’s offer and by signing and returning a copy of the order or by accepting the order electronically or by shipping the goods or performing the services, Seller accepts Buyer’s offer, as set forth in the order, and agrees and assents to these Terms of Purchase. Notwithstanding the foregoing, if both Buyer and Seller have signed a separate contract that specifies the terms that will apply to Seller’s sales to Buyer, and Buyer’s purchases from Seller, of the goods and/or the services (“**Special Contract**”) and if there is ever a direct conflict between a provision of the Special Contract and these Terms of Purchase, then the provision of the Special Contract shall control.

2. **Modification.** Subject to Buyer’s rights to make changes to an order, the Contract or these Terms of Purchase, including without limitation as set forth in Paragraph 12 below or terminate an order or the Contract as set forth in Paragraph 13 below, none of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of both Seller and Buyer.

3. **Price and Payment.** Unless Buyer agrees otherwise in writing, Buyer shall not be required to pay any sales, use or other taxes arising because of Buyer’s purchase from Seller. Buyer shall not be required to pay any late charge, interest, finance charge or similar charge. Buyer’s payment of the purchase price does not indicate its acceptance of the goods or services. Payment terms, including discount periods, shall run from the latest of (a) the scheduled date for delivery or performance, (b) the actual date of delivery of conforming goods or performance of conforming services, (c) the date of Seller’s invoice, (d) in the case of capital equipment, completion of Buyer’s final inspection and acceptance after installation and (e) in the case of tooling, Buyer’s approval of production pieces produced by the tooling at Buyer’s facility. Buyer shall have the right to credit toward the payment of any monies that may become due Seller under the Contract, any sums which are now or hereafter may be owed to Buyer by Seller or an affiliate of Seller.

4. **Delivery and Force Majeure.** Unless Buyer agrees otherwise in writing, Seller shall deliver the goods DDP (“delivered duty paid”) (Incoterms 2010) at Buyer’s facility identified in the order, except that if Buyer’s facility and Seller’s facility (from which the goods will be shipped) are both located in the United States, then Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Buyer’s facility identified in the order, except that Buyer may at its option take delivery of all or any part of the goods at Seller’s facility. Time of delivery or performance is of the essence, and Buyer’s stated delivery or performance date and the date for performance of any other obligation of Seller shall not be extended or excused for any reason, including anything that Seller cannot control. Seller shall not, however, be liable for any non-performance or delay in performance caused solely by a strike, lockout, riot, war, insurrection or act of God or public enemy, or any other event or circumstance that is beyond Seller’s reasonable control, if Seller immediately notifies Buyer of the event and gives Buyer a detailed description of the non-performance or delay that it will cause. Buyer shall then have the right to terminate the Contract, without liability to Seller.

5. **Excess, Installment and Early Deliveries.** If Seller delivers more goods than Buyer ordered, then, unless Buyer agrees otherwise in writing, Buyer shall not have to pay for the excess. Unless Buyer agrees otherwise in writing, Seller shall deliver all of the goods in a single delivery and not in installments. Buyer’s acceptance of a delivery that contains less than the required quantity shall not relieve Seller of its obligation to deliver the balance of the ordered goods at the price and on the other terms that the order specifies. If Seller delivers the goods before the scheduled

delivery date, then Buyer may, at Seller's expense and risk, either store them or return them to Seller. Buyer's acceptance of an early delivery shall not change the payment terms.

6. **Export and Import Requirements; Drawback and Refund Rights.** Seller shall prepare, maintain and, to the extent that applicable law, regulation or customs authority requires it to do so, submit to the applicable customs authorities, all information and documentation that is necessary to comply with the applicable customs and export and import requirements of each country from which the goods will be exported and each country into which they will be imported, and Seller shall comply with all other applicable customs requirements. Whenever Buyer requests it to do so, Seller shall promptly furnish to Buyer copies of that information and documentation, in addition to any other information required by any government agency to be available with the goods. Seller is solely responsible for complying with all technical compliance and country of origin requirements of each country into which the goods are to be imported. Seller assigns and transfers to Buyer all transferable customs duty and tax drawback or refund rights relating to the goods, including rights developed by substitution and rights that Seller acquires from its suppliers. Seller shall promptly inform Buyer of each such right and, upon Buyer's request, shall promptly provide to Buyer all documents and information that are required for Buyer to obtain each such drawback and refund. Seller at all times shall maintain, and shall cause each of Seller's suppliers and logistics providers to maintain, at each facility where the goods are manufactured or located, strict security measures that are reasonably calculated to prevent acts of terrorism with respect to the goods.

7. **Inspection.** Buyer's employees or agents may at any time enter Seller's premises to inspect and test the goods, Seller's process of manufacturing of them and any materials, components or work-in-process that Seller will use in their manufacture.

8. **Blanket Order.** If the order states that it is a blanket purchase order or blanket purchasing agreement, then, except to the extent otherwise expressly stated in the order, (a) Seller is obligated to deliver to or perform for Buyer all goods or services that Buyer orders or releases during the period or in accordance with any delivery or performance schedule specified in the order, (b) Buyer is not obligated to order, release or purchase from Seller any particular quantity or volume of goods or services, regardless of any estimates or projections of future purchases, and (c) Buyer may purchase any or all of the goods or services from others.

9. **Representations, Warranties and Agreements about Seller.** Seller represents and warrants to Buyer, and agrees, that (a) Seller has all necessary experience, qualifications, expertise, authority, licenses and permits to enable it to perform its obligations under the Contract, (b) the Contract is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, (c) Seller is and, at the time of each order will be, solvent, (d) Seller has not offered or given, and shall not offer or give, any gratuity or thing of value to any employee of Buyer or of any affiliate of Buyer and (e) Seller is and shall continue to be in compliance with all equal employment and affirmative action provisions of Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA"), Section 503 of the Rehabilitation Act of 1973 and all implementing regulations under that Order, VEVRAA and Section 503.

10. **Representations, Warranties and Agreements about the Goods and Services.** Seller represents and warrants to Buyer, and agrees, that (a) the goods shall be new, (b) the goods and services shall be merchantable, of good material, workmanship and quality, fit for the purposes for which Buyer intends them and free from faults and defects, (c) the goods and services shall conform to any samples, drawings, specifications, performance criteria standards or other requirements that are referred to in the order or that Buyer has otherwise specified or agreed to in writing, (d) the goods, their manufacture, packaging, labeling, branding and sale and the services shall comply with all applicable federal, state and local laws, regulations, standards and orders, including, without limitation, the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970, as amended, (e) the prices of the goods and services and any discounts, advertising allowances or other merchandising payments or services that the Contract requires Seller to provide to Buyer are as favorable to Buyer as the lowest prices and the highest discounts, advertising allowances or other merchandising payments or services that Seller provides to other buyers of comparable goods or services, (f) Seller shall promptly furnish to Buyer all information and copies of documents (including, but not limited to, complaints, inquiries, test or inspection results and warnings) that Seller receives from an end-user of the goods, a government agency, an employee or agent of Seller or any other person or source and that suggests or indicates that the goods may not conform to the requirements of this paragraph, and (g) Seller has and follows, and will continue to have and follow, adequate quality and security

procedures that will assure that the goods and services will comply with the foregoing warranties, representations and agreements. If Buyer requests it, then Seller shall give Buyer certificates of compliance with applicable laws and regulations. Buyer's approval of a sample, drawing, specification or standard shall not relieve Seller of any of its warranties under this paragraph, including, without limitation, its warranties of merchantability, fitness and compliance with laws. Seller's warranties extend to future performance of the goods and services and survive inspection, tests, acceptance and payment and shall be considered to have been given not only to Buyer but also to Buyer's customers and to end-users of the goods. Acceptance or any use of the goods shipped to Buyer or Buyer's customer hereunder shall not affect Seller's obligation under the above warranties.

11. **Indemnity.** Seller shall indemnify and hold Buyer and its directors, officers and employees ("**representatives**") harmless (and defend Buyer and its representatives if it requests) as to any claims, liabilities, losses, damages and expenses (including, without limitation, attorneys' fees and other legal expenses) brought against or incurred by Buyer or its representatives because of (a) any breach by Seller of any of its warranties to, or agreements with, Buyer, (b) any claim that any of the goods or services infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world or (c) any death, injury or damage to any person or property alleged to have been caused by the goods or services or by Seller's manufacture of the goods or performance of the services.

12. **Changes.** Buyer may at any time, by written notice to Seller, change the order or the Contract as to (a) specifications for the goods or services, (b) time or place of delivery or performance, (c) method of packing or shipment or (d) quantity of the goods or extent of the services. If this causes a change in Seller's cost or time of performance, then an equitable adjustment shall be made in the price or time for delivery or performance, or both, if Seller gives Buyer a written request for an adjustment within 20 days after Buyer notifies Seller of the change.

13. **Termination at Buyer's Option.** Buyer may terminate the order or the Contract, in whole or in part, at any time by written notice to Seller stating the extent and effective date of termination. When Seller receives notice of termination under the preceding sentence or under Paragraph 4, Seller shall, unless otherwise directed by Buyer, stop work and acquisition of materials under the Contract and protect property in Seller's possession in which Buyer has or may acquire an interest. Not later than 30 days after the effective date of termination, Seller may submit to Buyer its claim, if any, for reasonable compensation for termination. Buyer shall have the right to audit and inspect Seller's books, records and other documents that relate to the termination claim. If the parties cannot agree within a reasonable time upon the amount of fair compensation for the termination, then Buyer will pay to Seller, without duplication, (a) the Contract price for conforming goods or services that Seller shall have completed and delivered or performed (as applicable) in accordance with the provisions of the Contract and that Buyer shall not have paid for and (b) the actual costs that Seller incurs and that are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of the Contract, but not to exceed the Contract price for the terminated portion of the Contract, less (i) any payments that Buyer made and (ii) the value to Seller of any raw materials, work-in-process and finished goods that Seller retains and that are allocable to the terminated portion of the Contract under such practices. Buyer will pay these amounts after Seller delivers to Buyer any completed goods. If Buyer shall have made payments of the purchase price to Seller that in the aggregate exceed the total amounts payable by Buyer to Seller under the preceding provisions, then Seller shall promptly refund the excess to Buyer. Termination under this paragraph shall terminate only Seller's obligation and right to deliver goods or provide services under any provision of the Contract other than this paragraph and shall not terminate or impair Seller's other obligations, or any of Buyer's rights, under the Contract.

14. **Insecurity and Adequate Assurance.** If Buyer ever believes in good faith that it has grounds for insecurity as to Seller's performance, then Seller shall provide adequate assurance of due performance within 10 days after Buyer demands the assurance, which shall be considered to be a reasonable time. Seller's failure to do so shall be considered to be a repudiation by Seller of the Contract and of all other then-existing contracts that provide for Seller to sell goods and/or services to Buyer ("**Outstanding Contracts**"). "Grounds for insecurity" include (a) Seller's failure to perform an obligation under the Contract or an Outstanding Contract, (b) Seller's insolvency, (c) a deterioration in Seller's financial condition after the Contract was entered into and (d) Seller's failure to provide financial statements and other financial information to Buyer promptly upon Buyer's request.

15. **Buyer's Remedies.** Without limiting other rights and remedies available to it, Buyer may, at its option, (a) return nonconforming goods to Seller, at Seller's risk and expense, and require Seller either to give Buyer full credit against the price or promptly to repair or replace the goods at Seller's risk and expense, (b) retain nonconforming goods and set off losses against any amount that Buyer owes Seller, or (c) repair or replace nonconforming goods and charge Seller with the expense. If at any time (i) Seller defaults in the performance of any of Seller's obligations to Buyer under the Contract or under any other agreement between Seller and Buyer, (ii) Seller repudiates the Contract or (iii) a warranty or representation that Seller made to Buyer in or in connection with the Contract is false or misleading in a material respect, then Buyer may terminate the Contract, in whole or part, without liability to Seller, and Seller shall promptly pay to Buyer all damages that Buyer incurred as a result of the termination and as a result of the event or circumstance on the basis of which Buyer terminated. If Buyer does terminate the Contract, then Seller, if and to the extent that Buyer demands, shall immediately deliver to Buyer all finished and unfinished goods and all work-in-process and raw materials that Seller acquired for use in the manufacture or processing of the goods and all designs, drawings, specifications and software that Buyer is purchasing from Seller under the Contract, including all work-in-process, all source, object and pseudo codes, all preexisting programs intended to be incorporated in the software and all intellectual property rights in the foregoing. Buyer's payment of part or all of the purchase price shall not be a precondition to Seller's obligation to make the delivery. After Seller has made the delivery and Buyer has determined its damages (including, without limitation, any cost of "cover" or of completing the manufacture or processing of the goods), then Buyer will pay to Seller any excess of (x) any unpaid part of the purchase price properly allocable to any conforming goods, work-in-process and raw materials that Seller delivered to Buyer over (y) Buyer's damages. Buyer's termination under this paragraph shall terminate only Seller's obligation and right to deliver goods or provide services other than as this paragraph requires and shall not terminate or impair Seller's other obligations, or any of Buyer's rights, under the Contract. In addition to Buyer's rights described in these Terms of Purchase, Buyer has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages that result from Seller's breach. Buyer shall not lose any right just because it does not exercise it. Buyer shall have the full statutory period of limitations to bring any action that arises out of Buyer's agreement with Seller. A reasonable time for Buyer to notify Seller of any breach is not less than two years from when Buyer discovers the breach.

16. **Buyer's Property.** Any designs, drawings, specifications, methods of manufacture, intellectual property, documents and other information and any tooling, equipment or other property that Buyer furnishes to, or acquires from, Seller in connection with Seller's manufacture of the goods or performance of the services ("**Buyer Property**") are and shall at all times be Buyer's sole and exclusive property. Seller shall (a) maintain the Buyer Property in good condition, (b) mark the Buyer Property "**PROPERTY OF KENDAL ELECTRIC, INC.**" or the applicable Buyer party to the Contract, (c) not commingle the Buyer Property with property of Seller or third parties, (d) allow Buyer to inspect and examine the Buyer Property at any time and (e) return the Buyer Property to Buyer upon its request.

17. **Government Contracts.** If Buyer will use the goods or services covered by the order in connection with a contract with the United States or other government, then all terms and conditions that the government contract or any law or regulation requires to be included in any contract formed pursuant to the order ("**Government Terms**") are incorporated in the order by reference. If a provision of the order is inconsistent with a Government Term, then the Government Term shall control. As to material contained in an order, which is for delivery under Government contracts, if any corresponding order from Buyer's customer is terminated in whole or in part, Seller shall accept termination of that portion of the order upon notice from Buyer. Settlement shall be made pursuant to the provisions of the United States Government's standard termination clauses then in force.

18. **Insurance.** Seller shall maintain insurance coverage that will fully protect both Seller and Buyer from all claims and liabilities of any kind or nature for property damage, personal injury, death and economic damage, to any person, that arises from the goods or their use or the performance of the services or any activities connected with the services. Seller shall maintain employee's liability and compensation insurance that will protect Buyer from any and all claims and liabilities that Seller or any employee or agent of Seller makes under any applicable worker's compensation or occupational disease acts. All insurance that this paragraph requires shall be in amounts and coverages, and shall be issued by insurers, that are satisfactory to Buyer. Upon Buyer's request at any time, Seller shall furnish to Buyer certificates evidencing required insurance.

19. **Prepayment.** If Buyer pays any part of the purchase price of the goods before Seller delivers them to Buyer, then (a) title (but not risk of loss) to each item of the goods shall pass to Buyer upon identification of the item to the Contract, (b) to the extent necessary to protect Buyer's title to the goods, Seller grants Buyer a security interest in the goods to secure Seller's obligation to deliver them to Buyer and all of Seller's other present and future obligations to Buyer and (c) Seller shall obtain from each person that holds a security interest in or lien upon the goods a written agreement releasing that security interest or lien or subordinating it to Buyer's interest in the goods.

20. **Work on Premises.** If Seller's performance of services or delivery or installation of goods involves activity by its employees or subcontractors on Buyer's premises or the premises of a customer of Buyer, then (a) Seller shall at all times enforce strict discipline and maintain good order among all persons engaged in the activity on the premises and shall cause them to comply with all fire prevention and safety rules and regulations in force at the premises and (b) Seller shall keep the premises free from accumulation of waste materials and rubbish that its employees or subcontractors cause and upon completion shall promptly remove all of Seller's equipment and surplus materials.

21. **Services.** If the order covers services, then (a) Seller is an independent contractor, and neither Seller nor any of Seller's employees or agents shall be considered agents or employees of Buyer, and (b) Seller shall furnish, at Seller's expense, all labor, materials, equipment, transportation, facilities and other items that are necessary to perform the services.

22. **Confidentiality and Non-Use.** Seller shall not sell or offer to sell or otherwise provide to anyone other than Buyer any goods made in accordance with any drawings, designs or specifications that Buyer furnishes to Seller or that incorporate, embody or are made in accordance with any of Buyer's intellectual property. Seller shall maintain the confidentiality of, and shall not disclose or use or permit to be disclosed or used or to be viewed by any third party (including any of Seller's suppliers), the goods, any designs of or specifications for the goods, any Buyer Property or any information concerning Buyer's business, operations or activities, including, without limitation, information concerning Buyer's present or proposed products, product developments, plans, strategies, finances, know-how, sales, customers and marketing or sales techniques ("**Confidential Information**"), except that Seller may disclose Confidential Information to a third party (other than a competitor of Buyer or a subsidiary or affiliate of a competitor) to the extent disclosure is necessary in order for Seller to perform its obligations under the Contract. If Seller breaches or threatens to breach this paragraph or Paragraph 16, then Buyer's remedies at law will be inadequate. Therefore Buyer shall have the right of specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and Buyer's rights and remedies shall be cumulative.

23. **Intellectual Property.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, trademarks, trade names, trade dress, service marks, names, software and other works and matters that Seller creates or develops in the course of Seller's performance of the services or Seller's design or development of the goods for Buyer, including all proprietary rights in the foregoing ("**Intellectual Property**") shall be Buyer's sole property, and Seller assigns, and agrees to assign, to Buyer all right, title and interest that Seller now has or in the future acquires in the Intellectual Property. All copyrightable works that Seller creates or develops in the course of Seller's performance of the services or Seller's design or development of the goods for Buyer shall be considered "works made for hire" within the meaning of the federal Copyright Act of 1976, as amended, and under the equivalent laws of any other country. To the extent that any such copyrightable work is not considered a "work made for hire," it shall be the sole property of Buyer, and Seller assigns, and agrees to assign, to Buyer all right, title and interest that Seller now has or in the future acquires in it and in all copyright rights in it. Seller shall sign and deliver to Buyer all assignments and other documents, and Seller shall take all other actions, that Buyer requests for the purpose of perfecting Buyer's ownership of and title to the Intellectual Property and in any copyrightable work that is not considered a "work made for hire" and in all copyright rights in it. If the goods or their design are subject to any pre-existing patent rights or other proprietary rights that Seller holds, then Seller grants to Buyer an irrevocable, non-exclusive, royalty-free license of the patent rights and other proprietary rights to the extent necessary to enable Buyer to modify, repair or rebuild any or all of the goods. This license is in addition to all licenses impliedly granted to Buyer as a purchaser of the goods. Seller shall not use Buyer's name or any trademark, trade name, service mark or trade dress that Buyer owns or that is licensed to Buyer or to any affiliate of Buyer, without Buyer's express, written consent, and Seller shall not sell to anyone other than Buyer any goods bearing any such trademark, trade name, service mark or trade dress.

24. **Governmental Declaration.** If a governmental agency declares that any material included in any of the goods is unsafe or unfit for the intended use of the goods, then, without limiting other rights and remedies that are available to Buyer under these Terms of Purchase or applicable law, (a) Seller shall give Buyer written notice of any such declaration and shall furnish to Buyer copies of the declaration and of all relevant notices, documents and correspondence, (b) Seller shall stop including the material in the goods, (c) Buyer may terminate the order or the Contract, without liability to Seller, by giving written notice to Seller, which shall be effective immediately or on any later date that the notice specifies, (d) if Buyer does terminate, then Buyer's obligations under the Contract shall terminate immediately and Buyer shall not be obligated to pay Seller damages or other compensation by reason of the termination, (e) without limiting other remedies that Buyer may exercise, Buyer shall have the right to recall (i.e. purchase or repurchase) any or all of the goods from its customers and end-users and any others having possession of the goods, and Seller shall reimburse Buyer for all costs that Buyer incurs in doing so and shall assist Buyer in the recall, to the extent that Buyer requires Seller to do so, (f) if Seller demonstrates to Buyer's satisfaction that there is a safe and fit substitute material that conforms to all of the requirements of the Contract and that Seller can and will use the substitute in the goods, then Buyer shall have the right, but no obligation, in Buyer's sole discretion, to reinstate the Contract and to require Seller to perform in accordance with the Contract, except that Seller shall use the substitute material, and (g) whether or not Buyer terminates and/or reinstates the Contract, Seller shall pay to Buyer an amount equal to all damages that Buyer incurs by reason of the declaration by the governmental agency and any resulting recall or delay in performance and/or any termination of the Contract by Buyer.

25. **Other Terms.** Seller shall not have and waives any security interest in or lien (including any statutory or common law lien) upon any Buyer Property or the goods. Seller may not delegate or subcontract any of its obligations under the order or the Contract without Buyer's written consent. Buyer may deduct, recoup and set off any amounts that Buyer at any time owes to Seller under the Contract from and against any damages or other amounts that Seller then owes to Buyer, whether under the Contract or otherwise and whether or not Seller shall have assigned to another ("Assignee") its rights to receive amounts that Buyer is required to pay under the Contract. All such rights of an Assignee shall be subject to all of the terms of the Contract and to all claims and defenses that Buyer at any time has against Seller, whether arising under the Contract or otherwise. Buyer shall continue to have all of its rights under the Contract even if it does not fully and promptly exercise them on all occasions. Buyer's failure to exercise, or Buyer's waiver of, a right or remedy on one occasion is not a waiver of that right or remedy with respect to any future occasion.

26. **Applicable Law.** The order and the Contract shall be governed by, and interpreted according to, Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. Any state or federal court in Kalamazoo County, Michigan, may handle any action based upon or arising out of the order or the Contract, and Seller irrevocably consents that the court shall have personal jurisdiction over Seller and waives any objection that the court is an inconvenient forum.

27. **Complete Agreement.** Seller has not made any promises or representations to Buyer, and Buyer has not made any to Seller, that are not in the order. A change in, or waiver of, a provision of these Terms of Purchase or the order must be contained in a writing signed by Buyer.