



Arkay Electric, LLC

Design - Installation - Service

Arkay Electric, LLC Standard Terms and Conditions

All orders of goods and/or services from Arkay Electric, LLC are subject to the following terms and conditions in addition to those appearing in any job or project specific proposal. By placing any orders for goods and/or services or by accepting any job or project specific proposal, the customer agrees to be bound hereby. If these terms contradict the terms of any purchase order or order acknowledgment, these terms will take precedence.

For the purposes of this document, Arkay Electric, LLC shall be abbreviated to Arkay Electric.

1. PRICE AND TERMS OF PAYMENT

- 1.1 **Pricing.** Unless otherwise stated in this document, pricing will be at current hourly rates and mark-ups for "Time and Material" orders or as stated in any job or project specific proposal except for orders whose requested delivery date is more than 90 days after the confirmed order date. Pricing for orders with requested delivery dates more than 90 days from the confirmed order date will be priced at the applicable rates at the time of delivery.
- 1.2 **Payment Terms.** Customer will pay Arkay Electric in US dollars within 30 days from the date printed on the invoice, unless otherwise agreed to in writing by Arkay Electric.
- 1.3 **Past Due Accounts.** Past Due Accounts are subject to a monthly interest charge of 1.5% (18 % annual interest rate) for the invoice amount (subject to applicable law). All finance charges for overdue payments will be assessed on the Customer's monthly statements, and shall be due upon receipt. In no event shall the terms of this document require payment in excess of the maximum amount permitted by law. Any such excess which may be collected from Customer shall, at final payment of all amounts owed, be applied as a credit against future invoices of Customer or returned by Arkay Electric to Customer.

2. TAXES

- 2.1 **Taxes.** Unless otherwise indicated, sales taxes are collected by Arkay Electric for all taxable items as required by Maryland law. Customer agrees to pay any taxes which are due or payable, or assessed in connection with any order.
- 2.2 **Tax-Exempt Accounts.** All tax-exempt customers must provide a copy of their Exemption Certificate to Arkay Electric's office within 3 days of placing an order.

3. SHIPMENT

- 3.1 **Shipment Terms.** Unless otherwise stated in this document or as agreed upon in writing by Arkay Electric, all shipping and handling charges incurred by Arkay Electric in the procurement of goods for resale to customer shall be paid by customer. All such charges shall be individually indicated on invoices for Time and Material work but may not be individually indicated on invoices for Quoted work.
- 3.2 **Packing and Shipping.** Arkay Electric will pack and ship products delivered hereunder in accordance with its general practice unless specific instructions are supplied by Customer. Any additional costs incurred by Arkay Electric as a result special packaging and/or shipping requests will be paid entirely by Customer.

4. SECURITY INTEREST

- 4.1 **Purchase Money Security Interest.** Arkay Electric or its assigns shall have purchase money security interest in the products purchased hereunder until all charges including installation and/or service charges, if any, are paid in full. Customer agrees to convey power of attorney to Arkay Electric for the sole purpose of execution of documents necessary to perfect the Purchase Money Security Interest. Further, Customer agrees to execute and deliver, so that Arkay Electric may file or record any documents reasonably requested by Arkay Electric for the purpose of protecting and/or perfecting said security interest.

Arkay Electric, LLC

3801 Justin Road
Monkton, MD 21111
Phone: 410-557-9201
Fax: 410-557-9202
www.arkayelectric.biz

Rev. 1-1-07



Arkay Electric, LLC

Design - Installation - Service

5. TITLE AND RISK OF LOSS

5.1. Title and risk of loss shall pass to Customer upon delivery of goods to Customer's facility by Arkay Electric.

6. EQUIPMENT WARRANTY

6.1 **Warranty Period.** Subject to the exclusions set forth in this section 6 and in section 7 hereof entitled "Warranty Exclusions", the warranty period for Arkay Electric products and services is 12 months from the date of delivery, unless a different period is agreed to in writing by Arkay Electric. Arkay Electric warrants to Customer that the products and services sold hereunder will be in good working order in accordance with Arkay Electric's standard specifications upon delivery to Customer. Arkay Electric will at its sole option either repair, replace, or refund the purchase price of the non-conforming product (or component thereof) if the product or component becomes inoperable due to a defect in materials or workmanship during the specified warranty period. Repair parts or replacement products may be new, remanufactured, or refurbished, at the sole discretion of Arkay Electric.

6.2 **Extended Warranty.** No extension of the warranty period, beyond that stated in this Document, is agreed to by Arkay Electric unless specifically agreed to in writing by Arkay Electric. Any costs arising from Customer's contractual requirements for extension of said warranty shall be paid by Customer, including any liquidated damages.

6.3 **No Other Warranty.** Except as specifically provided in this document or as agreed to in writing by Arkay Electric, the warranty shall only apply as long as the Customer owns the product. Except as specifically made herein, Arkay Electric, and its affiliated subcontractors and suppliers make no warranties, express or implied and specifically disclaim any warranty of merchantability or fitness for a particular purpose. With the sole exception of a written extension for the warranty period as provided in item 6.2 herein, the warranty provided herein is in lieu of any other written warranty which may be delivered with products delivered hereunder.

7. WARRANTY EXCLUSIONS

7.1 **Warranty Exclusions.** The warranties provided herein do not cover maintenance required to repair damages, malfunctions, or service failures caused by: (a) failure of Customer to follow Arkay Electric's installation, operation, or maintenance instructions; (b) Customer's repair, modification, or movement of the product, or incorrect attachment to other non-Arkay Electric products; (c) abuse, misuse, or negligent acts; and (d) power failure, surges, lightning, fire, flood, pest damage, accident, action of third parties, and other events outside of Arkay Electric's reasonable control or not arising from normal operating conditions.

7.2 **Time and Materials Service.** Arkay Electric may agree to perform maintenance or other services on a time and materials basis to correct damages, malfunctions, or service failures not otherwise warranted herein.

8. CHANGES

8.1 **Specialized Product Orders.** If an Arkay Electric quotation is premised on products to be customer designed and produced for special application, the quoted price is applicable unless the specifications are changed by the Customer. Such changes in specifications must be agreed to in writing by Arkay Electric prior to acceptance. If changes in materials or installation are required by reason of incorrect information furnished, or deviation from documents, specifications, drawings or other information submitted by Customer, its representatives, or agents, the cost of such changes shall be at Customer's expense and shall be added to the quoted price. If the specification, as modified, can not be met by Arkay Electric, Arkay Electric may, at its option, terminate the order subject only to Customer's obligation to reimburse Arkay Electric as provided in Section 11.

9. FAILURE TO PAY

9.1 **Remedies for Breach of Payment Terms.** In the event Customer fails to fulfill the terms of payment or if Arkay Electric shall have any doubt at any time as to Customer's financial

Arkay Electric, LLC

3801 Justin Road
Monkton, MD 21111
Phone: 410-557-9201
Fax: 410-557-9202
www.arkayelectric.biz



Arkay Electric, LLC

Design - Installation - Service

responsibility, Arkay Electric may decline to make any further deliveries of goods and/or services except upon receipt of payment in cash or other security satisfactory to Arkay Electric. In addition, Arkay Electric shall have all rights and remedies at law or equity available under Maryland law to collect any unpaid amounts owed by Customer. Customer hereby agrees to indemnify and hold harmless Arkay Electric and its affiliated companies against any claims, losses, damages, or expenses arising from a refusal to make deliveries resulting from Customer's failure to pay described herein.

10. CANCELLATION AND RETURNS

- 10.1 **Return or Cancellation of Custom Orders.** In the event Customer cancels a custom ordered item or system, Customer agrees to pay Arkay Electric as liquidated damages, the agreed upon price for custom ordered goods which are completed plus order cancellation charges as follows: (a) 10 percent of completed and/or shipped products' cost plus any actual restocking charges levied by Arkay Electric's vendor(s) if cancellation is received by Arkay Electric on or after confirmed ship date and/or time. (b) 15 percent of products' cost if cancellation is received by Arkay Electric within 14 days before confirmed ship date. (c) 10 percent of products' cost if cancellation is received 15 to 30 days before confirmed ship date. (d) No charge when cancellation is received more than 30 days before confirmed ship date.
- 10.2 **Restocking Fee.** Customer agrees to pay Arkay Electric a 15% restocking fee on all products shipped from Arkay Electric stock (i.e. not involving custom specification), if they are returned by Customer to Arkay Electric subject to the terms in section 10.3 herein.
- 10.3 **Condition of Returned Goods.** Upon termination or cancellation of any order, any product will be returned to Arkay Electric in the same condition as originally supplied, or Customer will pay for restoration of the product to such condition. If the Customer does not return the product, all payment obligations of the customer shall remain in full force and effect.
- 10.4 **Other Cancellation.** Customer may terminate or cancel an order if Arkay Electric fails to perform or observe any material term or condition of the order and such failure shall continue unremedied for 30 days after receipt of written notice of the default from Customer.
- 10.5 **Non-Unique Goods.** The parties hereto acknowledge that the goods to be supplied by Arkay Electric hereunder are not unique unless the item(s) or system(s) are ordered or manufactured or installed to the Customer's unique specifications.
- 10.6 **Arkay Electric Cancellation.** Notwithstanding anything contained herein to the contrary, Arkay Electric shall have the right to cancel any order, without any liability whatsoever; by delivery of written notice to Customer at any time on or before that date which is 10 business days after the date of the receipt of an order.

11. EXCLUSIVE REMEDIES

- 11.1 **Customer Remedies.** Except as provided specifically below, Customer's sole remedy against Arkay Electric for loss or damage caused by any product defect or failure, or arising from the performance or non-performance of any work hereunder, regardless of the form of action, whether in contract, tort, including negligence, strict liability or otherwise, shall be: (a) Customer's right to demand repair; (b) replacement or refund set forth in section 6 hereof; (c) Customer's right to terminate as set forth in section 11.4 hereof; (d) the lesser amount of actual direct damages which are proved by Customer or the amount of the order; or (e) Customer's right to claim damages to bodily injury to any person pursuant to the laws of Maryland.
- 11.2 **Delivery delay.** If delivery by Arkay Electric is delayed by more than 30 days or more by cause not attributable to Customer, Customer's sole remedy shall be the right to cancel the order without payment of any cancellation charges. These remedies shall be exclusive of all other remedies against Arkay Electric and its affiliates, except for Customer's right to claim damages to bodily injury to any person.
- 11.3 **Limit on Liability.** Notwithstanding any other provisions in this Document, neither Arkay Electric nor its affiliates shall be liable for any indirect, incidental, or consequential damages

Arkay Electric, LLC

3801 Justin Road
Monkton, MD 21111
Phone: 410-557-9201
Fax: 410-557-9202
www.arkayelectric.biz



Arkay Electric, LLC

Design - Installation - Service

(including loss of profits) sustained or incurred in connection with the performance of the order or the use or operation of the products and services provided hereunder, or for damages due to causes beyond the reasonable control of Arkay Electric, its employees, subcontractors, and agents.

11.4 **Force Majeure.** Neither Arkay Electric nor its affiliates shall be liable in any way for delays, failures in performance, loss or damages due to any of the following force majeure conditions: fire, strike, embargo, explosion, power blackout, earthquake, volcanic action, flood, war, water, the elements, labor disputes, civil disturbance, government requirement, civil or military authority, acts of God, public enemy, inability to secure products, transportation, facilities, acts of omission of carriers or other causes beyond its reasonable control whether or not similar to the foregoing.

12. CONFIDENTIALITY

12.1 **Confidential Information.** The parties may obtain information about each other that is considered confidential. "Confidential Information" includes all non-public information regarding Arkay Electric or Customer, such as private personnel information, credit information, business and/or personal references, sales information, prices and methods of pricing, marketing techniques and plans, and any other information that, if disclosed to others, might be competitively detrimental to either party. Confidential Information does not include any information that has been publicly disseminated in writing by the disclosing party, any information that the other party can show it knew before the disclosing party's disclosure, or any information that was rightfully received by the other party from a third party without restriction.

12.2 **Non-Disclosure.** Each party will maintain the other party's Confidential Information in strictest confidence, may not disclose it to any third party, and may use it only as necessary to perform under this Document. The parties will cause their officers, directors, employees, and agents to abide by the terms of this section 12, and will be responsible for any wrongful disclosure and use by any of them.

13. INDEMNITY

13.1 **General Indemnification.** Customer will defend and indemnify Arkay Electric and Arkay Electric's affiliates, directors, employees and contractors (collectively "Indemnitees") against any claim or action brought by a third party against an Indemnitee arising from (a) an allegation of Customer's negligence or willful misconduct, or (b) Customer's failure to comply with the requirements of this document.

14. DISPUTE RESOLUTION

14.1 **Good Faith Negotiation.** The parties will first attempt to resolve any dispute relating to the fulfillment of these terms and conditions through good faith informal negotiation.

14.2 **Arbitration.** Any action to enforce or interpret these terms and conditions shall be settled by arbitration in accordance with the laws of Maryland. Any party may commence arbitration by sending a written demand for arbitration to the other party. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at the facility nearest Harford County, Maryland. The substantive law of the State of Maryland shall be applied by the arbitrator of the dispute. The parties shall share equally in the initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney's fees, costs, and reasonable expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

14.3 **Governing Law.** Any dispute arising out of the enforcement of these terms and conditions shall be subject to the laws of the State of Maryland. Venue for any action filed to enforce this Document shall be Harford County, Maryland.

14.4 **Survival.** This section 14 will survive the termination or expiration of this document.

Arkay Electric, LLC

3801 Justin Road
Monkton, MD 21111
Phone: 410-557-9201
Fax: 410-557-9202
www.arkayelectric.biz



Arkay Electric, LLC

Design - Installation - Service

15. MINIMUM ORDERS

15.1 All purchase orders are to be a minimum of \$1,500.00. Any purchase order placed under this amount will incur a \$25.00 processing fee. At the sole discretion of Arkay Electric, this section may be waived.

16. ADVERTISING

16.1 **Advertising Policy.** Customer is authorized to advertise its relationship with Arkay Electric and Customer is encouraged to use Arkay Electric's name and logo in its advertising. However, Arkay Electric retains the right to revoke the consent granted in this section at its sole discretion with or without cause.

17. HEADINGS

17.1. **Article, Section, and Paragraph Titles.** The article, section, and paragraph titles and headings contained in this document are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this document or any of its provisions.

18. ENTIRE DOCUMENT

18.1 **Entire Understanding of the Parties.** This document, together with any proposals, quotes, or documents incorporated by reference, constitutes the entire terms and conditions between the parties and supersedes all prior or contemporaneous documents, representations, promises or inducements, written or oral regarding its subject matter. No failure or delay in exercising any right is a waiver of that right. All notices and other communications must be delivered to the primary addresses of the parties.

Arkay Electric, LLC

3801 Justin Road
Monkton, MD 21111
Phone: 410-557-9201
Fax: 410-557-9202
www.arkayelectric.biz

Rev. 1-1-07