



PENTA Electrical Safety Products, LLC
Terms and Conditions of Sales

1. Applicability. All product sales by PENTA Electrical Safety Products, LLC ("**PENTA**") are subject to the following terms and conditions of sale (the "**Terms**") and are the only terms which govern the sale of the goods ("**Goods**") to any buyer ("**Buyer**") upon the acceptance and entry of Buyer's written purchase order by PENTA. Acceptance of any purchase order by PENTA is subject to the availability of Goods and the ability of PENTA to deliver. No alternative or additional terms and conditions are accepted. Buyer's receipt of the accompanying order confirmation (the "**Order Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Price. Buyer shall purchase the Goods from PENTA at the price (the "**Price**") set forth in PENTA's published price list in force as of the date that PENTA accepts Buyer's purchase order. If the Price should be increased by PENTA before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased price was originally inserted herein, and Buyer shall be billed by PENTA on the basis of such increased price. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or municipal governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, PENTA's income, revenues, gross receipts, personnel or real or personal property or other assets.

3. Payment Terms. Buyer shall pay all invoiced amounts due to PENTA within thirty (30) days from the date of PENTA's invoice. Invoices will be dated as of the day of shipment of the Goods. Buyer shall make all payments hereunder in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse PENTA for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which PENTA does not waive by the exercise of any rights hereunder), PENTA shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for fourteen (14) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with PENTA, whether relating to PENTA's breach, bankruptcy or otherwise.

4. Cancellation. No order shall be cancelled without PENTA's prior written consent. Cancellation of any order for non-stock or special-order Goods is strictly prohibited and will not be accepted.

5. Delivery. The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order. PENTA shall make delivery in accordance with the terms on the face of the Order Confirmation with drop shipments accepted under the same conditions as single destination shipments. Delivery shall be made F.O.B. PENTA's North Carolina warehouse facility. PENTA shall not be liable for any delays, loss or damage in transit. PENTA may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. Freight costs shall be prepaid and allowed on all standard shipments of products with a net purchase order amount of \$3,000.00 or more to single destinations within the continental United States; freight charges will be added to all standard shipments that are under the minimum amount for prepaid freight. Freight allowance remains at PENTA ESP's discretion and, is not applicable for all oversized and/or overweight shipments. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to PENTA's notice that the Goods have been delivered to Buyer's destination, or if PENTA is unable to deliver the Goods to Buyer's destination on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii)



PENTA, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6. Non-Delivery. The quantity of any installment of Goods as recorded by PENTA on dispatch from PENTA's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. PENTA shall not be liable for any non-delivery of Goods (even if caused by PENTA's negligence) unless Buyer gives written notice to PENTA of the non-delivery within ten (10) days of the date when the Goods would in the ordinary course of events have been received. Any liability of PENTA for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

7. Quantity. If PENTA delivers to Buyer a quantity of Goods of up to ten percent (10%) more or less than the quantity set forth in the Order Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

8. Title and Risk of Loss. Title and risk of loss passes to Buyer upon shipment of the Goods from PENTA's North Carolina warehouse facility. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to PENTA a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the North Carolina Uniform Commercial Code.

9. Return of Goods. Buyer shall request written permission from PENTA to return any Goods and such Goods are non-returnable until PENTA gives its prior written consent and an authorization form (the "**Returned Goods Authorization Form**") has been issued and included with the Goods to be returned accompanied by prepaid freight costs. Such request by Buyer shall include the original PENTA invoice number and must be made in writing within six (6) months from the date of shipment of the Goods or within ninety (90) days of identification of an issue with the Goods. All returned Goods must be standard stock Goods from PENTA and must be in new, unopened packaging and in re-saleable condition. All Goods that do not meet the criteria in the preceding sentence, including all non-stock and special order Goods and any other unauthorized returns shall be refused return, shall be denied credit to Buyer, and shall be sent back to Buyer without consideration for freight.

10. Limited Warranty.
(a) PENTA warrants to Buyer that for a period of one (1) year from the date of shipment of the Goods ("**Warranty Period**"), such Goods will be free of manufacturing defects, workmanship and material. PENTA shall not be liable for a breach of the warranty set forth in this Section 10(a) if: (i) the defect arises because Buyer failed to store, install, operate or maintain the Goods in accordance with PENTA's recommendations and standard industry practice when used under proper and normal use; (ii) the defect arises because Buyer alters, modifies, or repairs such Goods without the prior written consent of PENTA; or (iii) Buyer misapplies or misuses the Goods. This warranty shall run only to the first Buyer of the Goods from PENTA or the first Buyer of those Goods from that PENTA Buyer (collectively, the "**First Buyers**") and such warranty is non-assignable and non-transferable and shall be of no force and effect if asserted by any person other than such First Buyers. **EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 10(A), PENTA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (1) WARRANTY OF MERCHANTABILITY; (2) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (3) WARRANTY OF TITLE; OR (4) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**



(b) PENTA shall not be liable for a breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to PENTA within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) PENTA is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by PENTA) returns such Goods to PENTA's place of business at PENTA's cost for the examination to take place there; and (iii) PENTA reasonably verifies Buyer's claim that the Goods are defective. With respect to any such Goods during the Warranty Period, PENTA shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if PENTA so requests, Buyer shall, at PENTA's expense, return such Goods to PENTA. The warranty provided in Section 10(a) does not include reimbursement for expenses of labor, transportation, removal, installation or reinstallation of the Goods. **THE REMEDIES SET FORTH IN THIS SECTION 10(B) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND PENTA'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(A).**

11. Limitation of Liability. **IN NO EVENT SHALL PENTA BE LIABLE TO BUYER OR ANY THIRD PARTY FOR DAMAGES OR INJURIES RESULTING FROM MODIFICATIONS, ALTERATIONS, MISAPPLICATION OR REPAIRS TO GOODS BY BUYER OR OTHERS, OR DAMAGE CAUSED OR INJURIES RESULTING FROM NEGLIGENCE, ACCIDENT OR IMPROPER USE BY BUYER OR OTHERS. IN NO EVENT SHALL PENTA BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT PENTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL PENTA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THREE TIMES THE TOTAL OF THE AMOUNTS PAID TO PENTA FOR THE GOODS SOLD HEREUNDER. The limitation of liability set forth in this Section 11 shall not apply to (i) liability resulting from PENTA's gross negligence or willful misconduct and (ii) death or bodily injury resulting from PENTA's acts or omissions.**

12. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

13. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

14. Termination. In addition to any remedies that may be provided under these Terms, PENTA may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Waiver. No waiver by PENTA of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by PENTA. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.



16. Force Majeure. PENTA shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of PENTA including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

17. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of PENTA. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

18. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

19. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

20. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of North Carolina.

21. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of North Carolina in each case located in the City of Charlotte and County of Mecklenburg, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

22. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

23. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Governing Law, Submission to Jurisdiction and Survival.