



# RESOURCE ELECTRIC, LLC

2854 Hwy 72 West, Clinton, SC 29325 Phone: 864-833-1010; Fax: 888-458-9314

## Resource Electric Standard Terms and Conditions

### 1. Name Reference

RE herein after means Resource Electric LLC, of Clinton, SC or its affiliates, whichever is noted in the proposal letter of which these Terms and Conditions are a part, and its affiliated local offices throughout the United States and referred to as SELLER. BUYER refers to person or entity that receives this proposal and/or authorizes Seller to perform the Work, and which person or entity is responsible for payment for the Work. SELLER may use one or more of its related entities for fabrication, engineering, or construction management services, and such services, if performed, will be deemed to be performed by an approved subcontractor or supplier.

### 2. Applicable Terms

These terms govern the quotation by SELLER for the sale of the equipment and/or services (collectively, "Work"), referred to in SELLER's quotation, proposal or acknowledgement, as the case may be ("SELLER's Documentation"). SELLER's quotation, whether these terms are included in an offer or an acceptance, is conditioned on BUYER's assent to these terms. SELLER rejects all additional or different terms in any of BUYER's forms or documents and, if BUYER insists on one or more of its terms, then there is no meeting of the minds as to this transaction.

### 3. Authorization to Proceed

Acceptance of this proposal in writing by the BUYER shall be authorization for SELLER to proceed with the Work, in accordance with these terms and conditions and SELLER's proposal. The terms and price of SELLER's proposal and Documentation are valid for a period of 30 days from the date of this quotation, unless SELLER in its sole discretion withdraws the proposal for any reason, prior to 30 days and prior to Buyers unqualified acceptance of the proposal. The resulting final Contract is subject to the terms and conditions set forth herein which shall take precedence over any contrary terms or conditions made part of BUYER's acceptance, unless SELLER expressly authorizes in a writing executed by an authorized representative of SELLER, a deviation from one or more of these Terms and Conditions.

### 4. Direct Expenses

SELLER's direct costs shall be those costs incurred on or directly for the Work or in connection with BUYER's project. Reimbursement for these costs shall be on the basis of expense rate schedules maintained and updated by SELLER in the ordinary course of its business, which schedules include overhead and profit. If Work is provided on a lump sum basis, SELLER will provide any additional or extra Work at SELLER's standard rates (including any markup) in effect at the time of the additional or extra Work.



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**5. Payment to SELLER**

Invoices, in US dollars, shall be issued by SELLER for all Work performed under the terms of the Agreement. Invoices are due and payable no later than 30 calendar days after the date of SELLER's invoice. Invoice shall be issued monthly for labor hours, materials and expenses (including markups for overhead and profit) or per the schedule of values/payments for Work incurred included with SELLER's proposal. BUYER shall be charged the lower of 1.5% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of SELLER's reasonable costs (including attorneys' fees and costs) of collecting unpaid amounts. If BUYER disputes a part of an invoice, it shall promptly pay all undisputed portions in accordance with these Terms and shall state in writing the reason(s) for its dispute, within five (5) days of receiving SELLER's invoice, which reasons must be reasonable and made in good faith. All orders are subject to credit approval by SELLER.

**6. Cost Estimates**

Any budgetary cost estimates that may be provided by SELLER, as a part of its Work, or as a quotation for extra work, shall be on the basis of experience and judgment, but because SELLER has no control over market conditions or bidding procedures, SELLER cannot warrant that the bids or ultimate construction costs will not vary from these cost estimates.

**7. Standard of Care**

The standard of care applicable to SELLER's services will be the degree of skill and diligence normally employed by professional design organizations performing the same or similar services at the time SELLER's services are performed. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, FOR ITS SERVICES OR HARDWARE FURNISHED BY SELLER, BUT MANUFACTURED BY OTHERS, THE STANDARD MANUFACTURER'S WARRANTY SHALL APPLY AND SHALL BE PASSED ON TO BUYER BY SELLER. ADDITIONAL WARRANTY TERMS CAN BE PROVIDED, AT ADDITIONAL COSTS, IF REQUESTED.

**8. Termination**

The right or obligation to proceed under this agreement may be terminated, in whole or in part, by either party for convenience on 30 days' written notice, or for cause, if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five days of written notice and diligently complete the correction thereafter. On termination, SELLER shall be paid for all Work performed including termination expenses, such as, but not limited to reassignment of personnel, demobilization costs, subcontract termination costs, equipment order cancellation costs, and related closeout costs, including, but not limited to design and project management coordination work, and its overhead and profit on such costs, as well as on the Work performed prior to termination.



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**9. Cancellation**

If, prior to finalizing the Agreement, BUYER cancels or suspends its order, or any part of it, for any reason other than SELLER's breach, BUYER shall promptly pay SELLER for work performed prior to cancellation or suspension and any other direct costs incurred by SELLER as a result of such cancellation or suspension, as well as overhead and profit on all such costs and expenses.

**10. Legal Expenses**

In the event legal action is brought by SELLER to enforce any of the obligations hereunder or arising out of, or in connection with, any dispute concerning the terms and conditions governing the Work or any part thereof, BUYER shall pay the SELLER such reasonable amounts for fees, costs and expenses, including attorneys' and expert fees and costs.

**11. Ownership of Materials and Confidentiality**

All devices, designs (including sketches, drawings, plans, specifications, programs, graphic screens, configuration and program documentation), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by SELLER (in electronic or hard copy formats), and all related proprietary software and intellectual property rights, shall remain SELLER's property. SELLER grants BUYER a limited non-transferable license to use any such material solely for BUYER's use to maintain the installed application. BUYER shall not disclose any such material to third parties or use material for another application or use material at another location without SELLER's prior written consent.

**12. Limitation of Liability**

To the maximum extent permitted by law, SELLER's liability for BUYER's damages for any cause or combination of causes shall, in the aggregate, not exceed the greater of: (i) the fee received by SELLER under this Agreement, or (ii) the amount of available insurance coverage, if any. This provision takes precedence over any conflicting provisions of the Agreement or any document incorporated into it or referenced by it, including the terms of any purchase order.

**13. Consequential Damages**

Notwithstanding any other provisions of the Agreement, in no event shall SELLER be liable for special, indirect or consequential damages, including, but not limited to, loss of use of equipment or facility, escape of contaminants, employment or lack of employment of BUYER's personnel or equipment, loss of opportunity, or any other such damage whatsoever.



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### **14. Hazardous Substances**

It is understood that, in seeking the services of SELLER under this Agreement, BUYER may request SELLER to undertake uninsurable obligations for BUYER's benefit involving the presence of hazardous substances. Therefore, BUYER agrees to hold harmless, indemnify and defend SELLER from and against, any and all claims, losses, damages liability and costs, including, but not limited to costs of defense (attorneys and experts costs and expenses), arising out of or in a way connected to the presence, discharge, release, or escape of contaminants of any kind, including, but not limited to any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, fumes, chemicals, acids or alkalis, and waste. As a condition to proceeding, SELLER may, in its sole discretion, require BUYER to pay SELLER its estimates in advance for any work which in whole or in part, falls within the scope of this Paragraph 14.

### **15. Changes to Scope**

Both BUYER and SELLER may request/propose changes to the Work. These changes may be implemented, provided that the other party formally accepts the proposed change in writing. If any changes impact pricing or schedule, SELLER shall prepare a formal change proposal. Formal acceptance of the change proposal shall be marked by issuance of a BUYER change order. SELLER shall not be required to proceed with such a change until the BUYER-executed change order has been received and accepted. Charges for the Work for all changes shall be charged at the standard SELLER rates in effect at the time of the change or, if agreed in the change order, on a lump sum basis.

### **16. Interpretation**

The limitations of liability and Article 14 indemnities shall apply whether SELLER's liability arises under breach of contract or warranty, tort, including negligence, strict liability, statutory liability, except for those items arising from SELLER's gross negligence. Where permissible by the law of the jurisdiction, the limitations and Article 14 indemnities apply regardless of whether the underlying cause is or is alleged to be due to the joint or partial negligence of SELLER or one or more of its employees. The limitations of liability and the Article 14 indemnification shall apply to SELLER's officers, affiliated corporations, employees, and subcontractors. The law of the State of South Carolina, without regard to its choice of law rules, shall govern the validity of this Agreement and any subsequent agreements between SELLER and BUYER, its interpretation and performance, and any other claims related to it.

### **17. No Third Party Beneficiaries**

This proposal and any resulting agreements give no rights or benefits to anyone other than the BUYER and SELLER and have no third party beneficiaries. SELLER's Work is defined solely by this Agreement, and not by any other contract or Agreement that may be associated with the Project.



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**18. Force Majeure**

Neither party shall be liable for unforeseen and unforeseeable delays due to causes beyond its control such as, but without limitation, labor shortages, strikes, lockouts, fires, acts of God and nature, unforeseen material shortages, or acts of war, terrorism, sabotage, third party software anomalies, or computer viruses. If force majeure continues for longer than 90 days, either party may terminate its obligation to proceed under this contract and BUYER shall thereupon pay SELLER for the Work accomplished prior to termination, as well as for all its termination costs and expenses, and profit and overhead on each.

**19. Indemnification**

Except as provided for in Article 14 regarding Hazardous Substances and Article 16 regarding the interpretation of the Article 14 indemnification requirements, the Parties agree to indemnify, to the extent of the Indemnifying Party's fault, each other from all liabilities claims, expenses, losses or damages, including attorney's fees and costs, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the Indemnifying Party.

**20. Taxes**

Unless otherwise specified, SELLER's prices do not include sales, use or other such taxes, or project bonding. Any applicable taxes shall be added to the invoice unless a valid exemption certificate or self-pay certificate has been provided by BUYER. SELLER shall not bear any risk of sales, use, or any other such taxes.

**21. Shipping**

Unless otherwise agreed in writing by SELLER, the FOB point of delivery shall be at SELLER's dock. If requested by BUYER in selling, freight can be prepaid and added to SELLER's invoice, or if requested by BUYER, SELLER shall arrange for the delivery and transportation insurance of the goods by common carrier but shall have no liability for loss or damage during transit or upon delivery. Should BUYER wish to make the shipping arrangements, or have a carrier preference, notification to SELLER must be made in writing two weeks prior to shipment. Unless SELLER's Documentation expressly provides otherwise, BUYER shall be solely responsible for unloading, storing, assembling and installation of the Equipment.

**22. Arbitration**

Any controversy or claim arising out of, in connection with, or relating to this Agreement or any subsequent agreements between BUYER and SELLER or the breach thereof shall be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and any award tendered shall be final and binding upon the parties hereto, and judgment on the award rendered by the arbitrator or arbitrators may be entered in and enforceable in any court having jurisdiction thereof. The right to arbitrate shall be enforceable under the Federal Arbitration Act. The location of arbitration shall be in Laurens County, South Carolina.



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If for any reason the governing law and venue provisions set forth herein this Article are deemed to be in violation of law or against public policy, then in such event the terms and conditions of this Agreement shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by the laws of the State where the Work is performed, and the site of the arbitration shall be determined by SELLER in its sole discretion, in accordance with the prevailing state law or policy.

### 23. Insurance

Resource bases this proposal on furnishing the following insurance coverage:

- General/Contractual Liability:

Each Occurrence	\$1,000,000.00
Personal and ADV Injury	\$1,000,000.00
General Aggregate	\$2,000,000.00
- Automobile Liability  
Combined Single Limit \$1,000,000.00
- Excess Liability  
Each Occurrence \$5,000,000.00  
Aggregate \$5,000,000.00
- Workman's Comp  
Each Accident \$ 100,000.00