

## BATTERY R&R TERMS AND CONDITIONS

**1. Acceptance of Terms:** By submitting a purchase order or accepting a price quotation of ABB Power Protection LLC ("Seller") for the products or services described therein, Customer, hereinafter Purchaser, ("Purchaser") accepts and is bound to these standard terms and conditions. No additional or differing terms or conditions proposed or delivered by Purchaser, whether proposed or delivered verbally, through writing, electronic communication, facsimile, or any other means, shall retroactively alter the Seller price quotation, service agreement or these terms and conditions in any way. This Agreement, including all of its terms and conditions, may only be amended in a writing signed by both parties.

**2. Payment Terms:** The fee to be paid by the Purchaser shall be the amount set forth in this proposal. Seller will invoice upon shipment of the batteries. Payment terms are Net 30. Prices for the batteries are FOB Origin Prepaid and Add. Risk of loss/damage to the batteries shall transfer from Seller to Purchaser upon delivery (FOB Origin). Purchaser will pay any Municipal, County, State or Federal sales, excise or other taxes which may be levied upon the sales, transfer of ownership or installation of the batteries, or levied or assessed against the batteries or the ownership or use thereof. Additional charges apply for contracts billed with extended payment terms. Late payments shall be subject to a late payment charge of 1.5% per month (18% per year) on any outstanding and delinquent balance. All quoted prices are in US Dollars.

### **3. Installation-Purchaser Responsibilities:**

To assure a smooth installation the Purchaser shall:

- a. Permit or arrange for access to the Ship To location for Seller's installation and maintenance personnel.
- b. Provide suitable environmental conditions for the batteries; Temperature: 65-75F, Relative Humidity: 40%-60% (Non-Condensing). Conditions which exceed these parameters will void the warranty.
- c. Obtain all required permits.

**4. Warranties and Limitation on Warranties:** Warranty will vary as the manufacturer dictates, therefore warranties and Warranty Period, dependent on the battery type, will be outlined as per each Seller proposal in a project-specific manner. The Warranty Period shall commence upon the date of installation or sixty (60) days past the date of shipment, whichever occurs first. During the Warranty Period, Seller will repair or replace any battery that has malfunctioned, other than as a result of casualty or product misuse. Installation service shall be warranted against defects in labor for a period of thirty (30) days from the date of installation. Freight charges associated with replacing a warranted battery are not covered under this Agreement and will be charged accordingly. Any labor associated with repair or replacement of a warranted battery beyond the thirty (30) day period stated herein, is not covered under this Agreement and shall be charged accordingly. Purchaser is responsible for preventative maintenance services on the batteries purchased herein. Purchaser must submit documentation to Seller which verifies preventative maintenance services have been completed on at least a semi-annual basis, in support of any warranty claims under this agreement. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED.

**5. Limitation/Disclaimer of Liability:** SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS, OR EXPENSE (INCLUDING, BUT NOT LIMITED TO LOSS OF USE, REVENUE, DATA, OR PROFIT), DIRECTLY OR INDIRECTLY ARISING FROM THE PURCHASER'S USE OF, OR INABILITY TO USE, THE BATTERIES EITHER SEPARATELY OR IN COMBINATION WITH OTHER EQUIPMENT, OR FOR PERSONAL INJURY OR LOSS OR DESTRUCTION OF OTHER PROPERTY, OR FROM ANY OTHER CAUSE. UNDER NO CIRCUMSTANCES SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE PRICE PAID HEREUNDER FOR THE GOODS AND SERVICES PROVIDED.

**6. Additional Installation and Construction Charges:** Seller has estimated the cost of the batteries and the cost of installation of the batteries based upon a reasonable review and inspection of the Ship To location. If installation of the batteries will require additional material, labor or construction: (i) not originally estimated because of hidden or unknown conditions; (ii) necessary to accommodate the batteries or move or change any existing equipment or cable; or (iii) at Purchaser's request, Purchaser agrees to pay all the additional charges associated with the required material and work. Seller will make reasonable efforts to notify Purchaser if additional installation or related charges will be incurred, however, because the information may not be known by Seller until the actual installation is underway, lack of notification of Purchaser by Seller shall not alter Purchaser's obligation to pay all such additional charges.

**7. Insurance:** Seller agrees to maintain at its expense during the term of this Agreement policies of commercial or comprehensive general liability insurance (to include contractual liability and products/completed operations liability) and automobile liability insurance, each with policy limits of \$2,000,000 per occurrence and \$5,000,000 in the annual aggregate, and policies of workers compensation insurance with such limits of coverage as are required by law. Seller shall include Purchaser as an additional insured under the general and automobile liability insurance required herein when required by Purchaser, but such additional insured status will be limited to third party claims to the extent such claims are caused by Seller's negligence. When applicable, Seller shall also include, any other beneficiary (i.e. building owners and/or property managers) as their interests may appear, as additional insured, but only when required by Purchaser, and only to the extent as being named an additional insured to this Agreement.

**8. Force Majeure:** Seller shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production.

**9. Training:** Seller will provide initial instruction and training (as deemed reasonably necessary by Seller) in the operation of the batteries to personnel and employees of the Purchaser (which Purchaser requests be trained) at the time of the installation. Any subsequent training or instruction which Purchaser may desire will be charged to Purchaser at Seller's then prevailing rate.

**10. Cancellation of Agreement:** If Purchaser cancels a BRR related Project prior to Seller's shipment of the batteries, refuses to permit Seller to install the batteries, or notifies Seller after Purchaser's authorization to proceed, of its refusal to accept such installation, Purchaser hereby agrees to pay Seller, a "Cancellation Fee" equal to all of the actual costs related to BRR Project incurred by Seller through the date of cancellation (including, but not limited to, restocking fees in the amount of twenty percent (20%) of the Project price, freight charges, employee labor charges and any materials or equipment special ordered for Purchaser which cannot be returned).

**11. Security Interest:** The sale or other disposition of any of the batteries prior to payment of the entire Purchase Price is prohibited. Seller shall be permitted to file appropriate UCC financing statements in order to preserve its interest in the batteries until the purchase price is paid in full.

**12. More than One Party as Purchaser:** If more than one (1) party is named as Purchaser in this Agreement, the liability of each shall be joint and several.

**13. Export/Import:** Purchaser agrees to adhere to all applicable import and export control laws, regulations, orders and requirements, including but not limited to those of the United States and the jurisdictions to or through which the purchased goods are transported. With respect to orders that have been accepted by Seller but not delivered, Seller commits (i) to full transparency in regard to the cost increases associated with any legislation or tariffs; and (ii) that any increases resulting from changes in legislation or tariffs will solely reflect the additional costs incurred as a result of legislation or tariffs and will not include any additional overhead costs or profits.

**14. Miscellaneous:**

- a. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance, with the law of the State of Wisconsin, and the venue of any court action initiated pursuant to this Agreement shall be the Circuit Court of Dane County, Wisconsin.
- b. **Legal Cost.** If Seller is the prevailing party in any legal proceedings instituted by Seller for the enforcement of the terms and provisions of this Agreement, Seller shall be reimbursed by Purchaser for all of its reasonable costs, expenses and attorney's fees.
- c. **Partial Invalidation.** The terms and provisions of this Agreement shall be deemed separable. If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to person(s) or circumstance(s) other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be enforceable to the fullest extent permitted by law.
- d. **Notices.** All notices will be effective when received by the other party. Email is an acceptable method of giving notice if received by the person identified above.
- e. **Purchase Orders.** Notwithstanding terms and conditions contained in the Purchaser's purchase order, the terms and conditions of this Agreement shall prevail.
- f. **Entire Agreement.** THE TERMS OF THIS AGREEMENT REPRESENT THE COMPLETE AND ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER WITH RESPECT TO THE TRANSACTION DESCRIBED HEREIN.
- g. **Waiver.** A waiver of the strict performance of any term of this Agreement by Seller shall not be deemed waiver of any other provision of this Agreement.