

STATEMENT OF TERMS AND CONDITIONS - EQUIPMENT

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 Seller's 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. Installation - Purchaser's Responsibilities:

To assure a smooth installation and cutover, the Purchaser shall:

- a. Provide a dedicated electrical circuit in the location of the common equipment.
- b. Provide for suitable equipment placement, as recommended by Seller Representative.
- c. Permit or arrange for access to the Ship To location for Seller's maintenance personnel.
- d. Provide suitable environmental conditions for the Equipment; Temperature: 65-75F, Relative Humidity: 40%-60% (Non-Condensing). Conditions which exceed these parameters may nullify the warranty provided herein.
- e. Contact companies providing any auxiliary equipment that may interface with the Equipment (if any).
- f. Obtain any legal permits as may be required.
- g. Arrange for electrical installation by a licensed electrical contractor.

3. Warranties and Limitations on Warranties:

- a. Warranty for 3-Phase UPS Equipment shall commence upon completion of Seller start-up or 30 days after shipment, whichever is sooner. Warranty for all other equipment shall commence upon shipment from Seller.
- b. Seller warrants that, except for Equipment sold "As Is," the Equipment will be free from defects in material and workmanship for the period described in the equipment description (the "Warranty Period"), and that Seller will repair the Equipment when and as necessary to satisfy this warranty with all expenses incident to such repair to be borne by Seller. Expressly excluded from Seller's obligations are any damages to or failure of the Equipment caused by other than latent defects in the design or manufacture of the Equipment and reasonable wear and tear resulting from normal use. Conditions not covered by this warranty include, but are not limited to, misuse, negligence, accident, theft or unexplained loss, abuse, connection to direct current, fire, flood, wind, lightning or other electrical surge, acts of God or public enemy, or improper wiring, installation, repair or alteration by anyone other than Seller. Failure of the Purchaser to use the Equipment according to the instructions provided by Seller shall void the warranty provided herein. Purchaser agrees to immediately notify Seller of any difficulties in the operation of the Equipment, and first notice shall be to Seller as opposed to any other party. All of Seller's warranty liability, in all events, will cease and terminate at the end of the Warranty Period, unless a separate warranty is agreed to in writing between Seller and Purchaser in a separate document.
- c. During the Warranty Period, Seller shall respond to the requests to perform repair and maintenance service in connection with any malfunction of the Equipment, (hereinafter "Regular Service") within one (1) working day of the receipt of notice from Purchaser requesting such service.
- d. 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.
- e. If the start-up will be performed by a Seller Field Engineer, an expediting fee may apply if the start-up is performed within two weeks. Additional fees may apply for re-scheduling or excess on-site time due to Purchaser delays.

4. 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 EQUIPMENT 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. 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 Equipment, or levied or assessed against the Equipment or the ownership or use thereof. Purchaser shall indemnify Seller against and hold Seller harmless from any and all claims, actions, suits, proceeds, costs, expenses, damages and liabilities, including attorney's fees, claimed by any person, organization, association, or otherwise arising out of, or relating to the Equipment, use, possession, operation and/or condition, thereof, arising out of any event on or after the date of delivery of the Equipment to the Ship To location.

5. Payment and Shipping Terms: Purchaser to provide 20% of the total purchase price as down payment upon initial purchase order, with product held for 5 business days. If Purchaser fails to submit the down payment within 5 business days, Seller may at its discretion, declare the contract null and void. Remaining balance shall be invoiced upon shipment with payment terms of Net 30 days from the date of invoice. Delivery expected in 4-6 weeks after receipt of order and/or receipt of deposit, subject to availability. The price of Equipment in this proposal does not include Taxes or Shipping & Handling charges unless specified as separate line items. Prices for the Equipment are FOB Origin Prepaid and Add. Risk of loss/damage to the Equipment shall transfer from Seller to Purchaser upon delivery (FOB Origin). Applicable Taxes and Shipping & Handling charges will be added to the related invoices. Project pricing is based upon full and clear access to the final equipment location upon arrival. This proposal remains valid for thirty (30) days. This proposal does not include costs for electrical installation unless specified as a separate line item. If start-up is included in your project, Seller requires a ten (10) day notification for scheduling.

6. 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.

7. 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.

8. Additional Installation and Construction Charges: Seller has estimated the cost of the Equipment and in some cases, the cost of installation of the Equipment based upon a reasonable review and "Inspection of the Ship To" location. However, should installation of the Equipment require additional material, labor or construction, either: (i) not originally estimated because of hidden or unknown conditions, or (ii) which Purchaser may request or desire, or that may be necessary to accommodate the Equipment or move or change any existing equipment, cable or both, 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 and agreement to pay all such additional charges. Additionally, Purchaser hereby agrees to pay any additional installation or related charges incurred by Seller which are related to any delay or stoppage of work caused by the Purchaser.

9. Training: Seller will provide initial instruction and training (as may be reasonably necessary) in the operation of the Equipment to personnel and employees of the Purchaser (which Purchaser requests be trained) at the time of the installation or start-up of the Equipment. Any subsequent training or instruction which Purchaser may desire will be charged to Purchaser at Seller's then prevailing rate for similar services in the same area.

10. Cancellation of Agreement: If Purchaser cancels this Agreement prior to Seller's shipment of the Equipment, refuses to permit Seller to install the Equipment, or notifies Seller after the execution of this Agreement 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 this Agreement incurred by Seller through the date of cancellation (including, but not limited to, restocking fees in the amount of twenty percent (20%) of the contract amount, freight charges, employee labor charges and any materials or equipment special ordered for Purchaser which cannot be returned) plus twenty five percent (25%) of such amount.

11. Security Interest: The sale or other disposition of any of the Equipment 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 Equipment 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 Invalidity** – 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. **Late Payment** – Late payments shall be subject to a late payment charge of 1.5% per month (18% per year) on any outstanding and delinquent balance.
- g. **Entire Agreement** – THE TERMS OF THIS AGREEMENT REPRESENT THE COMPLETE AND ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER WITH RESPECT TO THE TRANSACTION DESCRIBED HEREIN. NO VERBAL REPRESENTATION OF ANY SALESPERSON, AGENT, OFFICER OR EMPLOYEE OF SELLER SHALL OPERATE TO VARY THE WRITTEN TERMS HEREOF.
- h. **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.
- i. **Currency** – All quoted prices are in US dollars.