

## TIME AND MATERIALS 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 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. These terms and conditions, may only be amended in a writing signed by both parties.
- 2. Service Agreement:** Unless covered by an existing service agreement with Seller, Seller agrees to service the Equipment listed under "EQUIPMENT INFORMATION" per the terms and conditions set forth below (the "Agreement").
- 3. Acknowledgement:** By signing this form, Purchaser authorizes work to be performed, commits to payment for said work, and accepts the terms of this Agreement.
- 4. Payment Terms:** Payment terms are Net 30 after completion of the service work. Additional charges apply for invoices billed with extended payment terms. Purchaser will pay any Municipal, County, State or Federal sales, excise or other taxes which may be levied upon the service or materials provided pursuant to this Agreement. Late payments shall be subject to a late payment charge of 1.5% per month (18% per year) on any outstanding and delinquent balance.
- 5. Service:** Seller shall, in accordance with services purchased and in accordance with generally accepted professional practices, furnish all necessary service, parts and materials to maintain/restore the Equipment to good working condition and repair. All Seller supplied parts, replaced by Seller, shall comply with the equipment manufacturer's published standards and/or specifications. 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. See "LIMITATION ON EQUIPMENT AND SERVICES COVERED BY THIS AGREEMENT" below. The parties agree that this Agreement constitutes a contract for services and is not subject to any Uniform Commercial Code. Similarly, Seller will not accept those terms and conditions offered by the Purchaser in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgment of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein. Purchaser hereby grants Seller full and reasonable access to the Service Location at which the Equipment is located for the performance of these services. Seller shall not be liable for damages to the equipment if Purchaser authorizes service, operation, and/or modification of said equipment by another party whereby it results in a shutdown, removal or alteration of the equipment by the other party. In the event of such an occurrence, Seller will invoice separate of this Agreement for costs incurred to return the equipment to industry standards, in accordance with Seller's then current time and materials rates, and Seller shall not be liable for future damages arising from the services performed by the third party authorized by Purchaser.
- 6. Warranty:** T&M Services: Services are warranted to be free from defects in labor for a period of thirty (30) days from the date of performance and defects in parts for a period of ninety (90) days from the date of installation. Liability under this warranty is limited to re-performance and replacement of any defective labor or parts. 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.
- 7. Discontinuance of Parts:** With respect to Equipment no longer supported by the manufacturer, Equipment greater than 7 years of age and any Equipment for which parts are not available through customary sourcing channels, Seller will continue to source replacement parts to the best of its ability. Should replacement parts for such Equipment not be available, Seller will notify Purchaser of such unavailability; and, where applicable, provide Purchaser a pro-rata credit for the balance of the Agreement for any un-repaired Equipment for which parts coverage is included in this Agreement.
- 8. Termination of Agreement:** Seller shall have the right to terminate this Agreement at any time and for any reason. Purchaser has the right to cancel this contract with a 24-hour written notice. In the event of a cancellation, Seller will invoice Purchaser for all work performed prior to Agreement cancellation, a cancellation penalty, any costs associated with special order items, and/or a 20% parts re-stocking fee, as applicable.
- 9. Limitation on Equipment and Services Covered by this Agreement:** This Agreement, and Seller's obligations hereunder, covers only the equipment listed in the "EQUIPMENT INFORMATION" section. Any equipment not listed may be serviced by Seller at the Purchaser's request, or if deemed necessary by Seller, but all such work shall be billed to Purchaser at Seller's standard prevailing rates for such labor and materials, and Purchaser agrees to pay all such charges pursuant to the terms of this Agreement. This Agreement does not cover damages caused by misuse, negligence, accident, theft or unexplained loss, abuse, fire, flood, wind, lightning or other electrical surge, tornado, sandstorm, hail, explosion, earthquake, smoke, vandalism, terrorism, acts of God or public enemy, or improper wiring, installation, repair or alteration by anyone other than Seller. Misuse shall apply whereby the equipment is

operated in a condition extending outside of the equipment manufacturer's recommended operating conditions or specifications, or exceeds the equipment's original design limits. Examples include, but are not limited to, phase-imbalanced conditions (more than 20%). Repairs required by any of the above causes will be made by Seller at the standard prevailing rates for the necessary labor and materials and shall be billed to the Purchaser, and Purchaser agrees to pay all such charges pursuant to the terms of this Agreement.

**10. 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.

**11. Limitation/Disclaimer of Liability:** IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOSS, OR EXPENSE (INCLUDING, BUT NOT LIMITED TO LOSS OF USE, REVENUE, DATA, OR PROFIT). 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.

**12. 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.

**13. 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.

**14. Legal Costs:** In any legal proceedings instituted by Seller for the enforcement of the terms and provisions of this Agreement where Seller is the prevailing party, Seller shall be reimbursed by Purchaser for all of its reasonable costs, expenses and attorneys' fees.

**15. 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.

**16. Purchase Orders:** Notwithstanding terms and conditions contained in the Purchaser's purchase order, the terms and conditions of this Agreement shall prevail.

**17. Entire Agreement:** THE TERMS OF THIS AGREEMENT REPRESENT THE COMPLETE AND ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER REGARDING THE MATTERS DESCRIBED HEREIN. NO VERBAL REPRESENTATION OF ANY SALESPERSON, AGENT, OFFICER, OR EMPLOYEE OF SELLER SHALL OPERATE TO VARY THE WRITTEN TERMS HEREOF. ANY ALTERATIONS OR MODIFICATIONS MUST BE IN WRITING, REFERENCE THIS AGREEMENT, AND BE SIGNED BY BOTH PARTIES.

**18. 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.