

ABB Power Protection LLC
STANDARD TERMS AND CONDITIONS OF SALE FOR CYBEREX PRODUCTS

1. **ACCEPTANCE:** EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY STATED IN A SEPARATE AGREEMENT SIGNED BY ABB POWER PROTECTION LLC (REFERRED TO HEREIN AS "SELLER"), THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO ALL QUOTATIONS MADE, SUBSEQUENT ORDERS ACCEPTED BY AND PRODUCTS SOLD BY SELLER. PLACING AN ORDER OR OTHERWISE PURCHASING GOODS OR SERVICES FROM SELLER SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF AND ASSENT TO THESE TERMS AND CONDITIONS BY THE PURCHASER (REFERRED TO HEREIN AS "PURCHASER"). NO UNDERSTANDINGS OR AGREEMENTS THAT DIFFER FROM, MODIFY OR ADD TO THESE TERMS AND CONDITIONS AND NO ADDITIONS, DELETIONS OR MODIFICATIONS PROPOSED BY PURCHASER IN ITS PRINTED FORMS OR OTHERWISE SHALL BE BINDING ON SELLER REGARDLESS OF WHETHER SUCH UNDERSTANDINGS, AGREEMENTS, ADDITIONS, DELETIONS OR MODIFICATIONS WOULD MATERIALLY ALTER THE TERMS HEREOF. NO ADDITIONS TO OR MODIFICATIONS OF ANY OF THE TERMS AND CONDITIONS HEREOF SHALL BE EFFECTIVE UNLESS MADE IN WRITING AND SIGNED BY SELLER.

No waiver of any right granted herein shall be deemed a subsequent waiver of such right nor a waiver of any other right or obligation contained in these Terms and Conditions. All stenographic and clerical errors in Seller's Quotations are subject to correction. These Terms and Conditions of Sale, Seller's Quotation, any resulting order/contract, and the relationship of the parties thereunder shall be governed by and construed in accordance with the laws of the State of Tennessee, U.S.A.

2. **PRICES:** All prices are F.O.B. Seller's facility for destinations in the United States and EXWORKS Seller's facility (INCOTERMS 2010) for destinations outside of the United States. Prices are subject to change without notice at any time prior to acceptance of Purchaser's order by Seller. Prices for deliveries scheduled more than 90 days from the date an order is accepted by Seller are subject to change in the event of any material increase in the costs of energy or raw materials between the date of the order and the date of shipment.
3. **PAYMENT TERMS:** Unless otherwise specified herein, payment terms are cash net 30 days from date of invoice. A finance charge of one and one-half percent per month (or at the highest rate allowed by law, whichever is less) will be assessed on past due balances.

DELIVERY: Shipping dates given by Seller are approximate and are based on prompt receipt of all necessary information regarding the order. Seller will use its best efforts to meet the scheduled date shown on its acknowledgment.

Method and route of shipment will be at the discretion of Seller unless Purchaser shall specify otherwise. Title to and risk of loss in the purchased products shall pass to Purchaser at that time Seller tenders such products complete and in good order to the carrier. All claims for loss and damage must be made by Purchaser to the carrier. Seller will provide reasonable assistance to Purchaser in collecting claims for loss or damage, but Seller will not be responsible for collection of claims or replacement of products lost or damaged after tender by Seller to the carrier.

5. **TAXES:** Prices do not include state or local sales, use, excise, or any import or export duty unless otherwise stated on the face of this form. The Purchaser is responsible to pay and/or report all of the above referenced taxes.
6. **CHANGES:** Purchaser may, within a reasonable time after placing the order and prior to shipment thereof, direct changes within the general scope of the order, in any of the following areas: (i) method of shipment, place of delivery or packing or (ii) quantities or delivery schedules. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the order, an equitable adjustment shall be made and the order modified in writing accordingly.
7. **WARRANTY:** Seller agrees, subject to the terms of this limited warranty, to correct any defects in materials or workmanship in any product occurring during normal use and reported to Seller in writing within eighteen (18) months from the date of shipment.

Seller's obligation under this warranty shall be only to provide, on an exchange basis, the part or parts necessary to correct any defect in material or workmanship. Seller will pay normal surface transportation charges for delivery of replacement parts to the product location, but shall not be liable for any other expenses, including the cost of returning any part to be replaced to Seller for exchange. No allowances shall be made to Purchaser nor shall Purchaser be allowed to take an offset against any order amount owed to

Seller for any transportation, labor charges or parts, adjustments or repairs, or any other work performed by Purchaser, unless such charges are authorized in advance by Seller.

In the event that Purchaser purchases product start-up services from Seller, Seller's obligations under this warranty with respect to the products for which Seller has performed start-up services shall be to repair or replace any part or parts as necessary to correct any defect in material or workmanship in such product, to perform diagnostic services and labor for the repair and/or replacement parts, and to pay shipping charges for transportation of defective parts to and from Seller's factory.

This warranty shall be void in the event that any service, repair or modification of any product is performed by anyone other than an authorized service representative of Seller, or under the direction of Seller's Technical Support Department.

Seller's warranty obligation with respect to all components, equipment and accessories that are integrated into Seller's product, such as batteries or special transformers, regulators or rectifiers, shall be limited to those express written warranties made to Seller by the manufacturer, which Seller hereby assigns and transfers to Purchaser.

THE WARRANTIES AND REMEDIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES REGARDING THE PRODUCTS AND SERVICES OF SELLER AND THE SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF OR NONCOMPLIANCE WITH SUCH WARRANTIES, EVEN IF ANY WARRANTY SHALL BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SUCH WARRANTIES AND REMEDIES ARE MADE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY DISCLAIMED. LIABILITY FOR BREACH OF WARRANTY IS LIMITED TO THE COST OF REPAIR OR REPLACEMENT OF THE WARRANTED PRODUCT.

8. LIMITATION OF LIABILITY: IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE, BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION ARISING, DIRECTLY OR INDIRECTLY, IN RESPECT TO THE PRODUCT OR SERVICES PURCHASED FROM SELLER, OR THE USE OR FAILURE THEREOF, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF OPPORTUNITY OR PROFITS. UNDER NO CIRCUMSTANCES SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE PRICE PAID HEREUNDER FOR THE PRODUCT PROVIDED BY SELLER.
9. PATENT INDEMNIFICATION: Seller will defend any suit or proceeding brought against Purchaser to the extent that such suit or proceeding is based on a claim that any Seller product or any part thereof constitutes an infringement of any United States patent. If notified promptly in writing and given authority, information and assistance (at Seller's expense) for the sole defense and settlement of the same, and if such alleged infringement is not the result of a design or other special requirement specified by Purchaser or the result of the application or use to which such product is put by Purchaser or others, Seller will pay all damages and costs awarded in such suit or proceeding against Purchaser. In case such product or part thereof is held to infringe any patent and the use thereof is enjoined, Seller shall, at its expense and option, either (a) obtain for Purchaser the right to use continue using such product or part thereof, (b) replace the same with non-infringing product, or (c) modify the same so that it becomes non-infringing, or (d) remove said product and refund the purchase price, less applicable depreciation. The foregoing states the entire liability of Seller to Purchaser for patent infringement.
10. FORCE MAJEURE / DELAYS: 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.
11. CANCELLATION / RETURNS: Any purchase order or contract may be canceled by the Purchaser only upon written notice to Seller. Non-refundable deposits shall be forfeited by Purchaser on all cancellations, and Purchaser shall pay to Seller cancellation charges as follows:

<u>Cancellation Period</u>	<u>Cancellation Charge (Percentage of Order Price)</u>
More than 5 weeks prior to shipment	30 percent
Between 5 and 2 weeks prior to shipment	75 percent
Less than 2 weeks prior to shipment	100 percent

Seller may cancel an order if Purchaser becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Purchaser under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

All Cyberex products are special order/custom products. Returns will not be accepted.

12. DRAWINGS: Where applicable, prices, schedules and shipping dates are contingent on timely acceptance of preliminary approval drawings. Seller will provide preliminary approval drawings within two (2) weeks after receipt of order, specifying the basic parameters (not otherwise already covered in the sales order contract) needed by Purchaser for site and installation design. Subsequent thereto, when the product design process is underway (some weeks prior to the scheduled ship date), Seller will provide final one-line and outline drawings. Wiring diagrams, manuals and other job specific documentation will be provided with final document submittal. Approval by Purchaser of the preliminary drawings constitutes acceptance of site-critical product parameters; the final one-line and outline drawings are informational only and are not subject to Purchaser initiated changes. Such changes, if requested after receipt of final one-lines and outlines, may impact price and delivery and will be handled in accordance with the change clause.

All written data, such as drawings, plans, reports, designs and specifications, prepared by Seller in connection with its products shall remain the property of Seller. Upon request, Seller will grant to Purchaser a perpetual, royalty-free, non-exclusive license to use, disclose, copy and reproduce such data solely for the purposes of installing, operating, maintaining and repairing the products to which such data specifically applies.

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.
14. SYSTEM START-UP: If system start-up is included in the negotiated unit price, it will include site time for site inspection and start-up of the Product. System start-up includes the cost of a technician for one day (or as indicated on the order) on-site at Purchaser's facility during normal business hours, Monday through Friday, 8:00 AM - 5:00 PM.

System start-up DOES NOT include site test load banks, off-loading, set-in-place and interconnection hardware.

Technician time in addition to one day of standard system start-up may be purchased from Seller at the standard domestic field service per-diem rate schedule, plus expenses. Please call the Field Service Department as soon as possible to schedule additional technician time and for a check of the then current rates for such services.

To schedule start-up service, please contact Seller's Field Service Department two (2) weeks in advance of the date needed at 1-800-292-3739.

(Revised 10/01/2018)