

PRODUCT PURCHASE CONTRACT

THIS CONTRACT (Contract) is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and WESCO INTERNATIONAL, INC, a Pennsylvania Corporation (Contractor), as follows:

1. CONTRACT DOCUMENTS. The “Terms and Conditions of Sale” from Wesco International, Inc. and “Scope of Work” from Eaton Corporation documents are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. PRICE. For the monetary consideration of NINE HUNDRED THOUSAND SIX HUNDRED THIRTY-SEVEN DOLLARS AND ZERO CENTS (\$900,637), as set forth in the Proposal, the Contractor promises and agrees to furnish or cause to be furnished, in a new and working condition, and to the satisfaction of the City, and in strict accordance with the Specifications, all of the items as set forth in the Contract Documents.

3. PAYMENT. The City accepts the Contractor's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Contractor agrees to accept electronic payment from the City.

4. INDEMNIFICATION: To the furthest extent allowed by law, including California Civil Code section 2782 (if applicable), the Contractor shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by the City, the Contractor or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses, and costs to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Contract. The Contractor's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or by the willful misconduct, of the City or any of its officers, officials, employees, agents, or volunteers.

If the Contractor should subcontract all or any portion of the work to be performed under this Contract, the Contractor shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

5. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Contractor's, and this Contract shall be binding and effective upon execution by both parties.

CITY OF FRESNO,
A California municipal corporation

By: _____
BROCK D. BUCHE, PE, PLS, Director
Department of Public Utilities

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

DocuSigned by:
By: Brandon Collet 7/5/2023
1CFE5444CAA84DB
Brandon Collet Date
Supv./Senior Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Clerk Attesting Date
Deputy

Addresses:
CITY:
City of Fresno
Attention: Charles Masters, Engineer
1626 E Street
Fresno, CA 93706
Phone: (559) 621-1630
E-mail: Charles.Masters@fresno.gov

WESCO INTERNATIONAL, INC,
a Pennsylvania Corporation

By: Matthew Hopper 7/5/2023
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Name: Matthew Hopper

Title: Sales Manager
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

REVIEWED BY:

DocuSigned by:
Jesus A. Gonzalez 7/5/2023
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Jesus A. Gonzalez
Assistant Director

CONTRACTOR:
WESCO INTERNATIONAL, INC
Attention: Matthew Hopper, Sales
Manager
3712 W Gettysburg Ave
Fresno, CA 93722
Phone: (559) 786-8944
E-mail: mhopper@wesco.com

TERMS AND CONDITIONS OF SALE***City of Fresno – 5-15-23*****1. DEFINITIONS**

- 1.1. "Application" means Seller's application for business credit extended to and signed by Buyer in connection with these Terms.
- 1.2. "Buyer" means the person or entity specified in the Order or SOW.
- 1.3. "Buyer Material" means Buyer's preexisting intellectual property provided by Buyer for the purpose of an Order or SOW.
- 1.4. "Confidential Information" means information received by the receiving party from the disclosing party which (a) is marked as "Confidential" or "Proprietary"; or (b) would reasonably be considered confidential and/or proprietary under the circumstances surrounding disclosure.
- 1.5. "Customer" means Buyer's customer, including any end user, of the Products, Software, and/or Services.
- 1.6. "Deliverables" means any work product, reports, or other deliverables developed and provided by Seller as part of the Services and required under an Order or SOW.
- 1.7. "Existing Agreement" means a mutually-executed agreement between the parties that governs the purchase and sale of the Products, Software and/or Services.
- 1.8. "Order" means a purchase order issued by Buyer to Seller for the purchase and/or use of the Products, Software, and/or Services.
- 1.9. "Products" means those products, materials, or goods described in an Order or SOW.
- 1.10. "Seller" means the selling entity specified in the Order or SOW.
- 1.11. "Seller Materials" means any and all processes, formulas, tools, ideas, concepts, methodologies, software, know-how, business practices, trade secrets, object code, source code, documentation, information and ideas developed by Seller or its licensors, and all intellectual property rights therein.
- 1.12. "Services" means those specific tasks, functions, responsibilities, Deliverables and other services described in an Order or SOW.
- 1.13. "Software" means the computer programs, operating systems, interfaces, software-as-a-service, applications or other software specified in an Order or SOW.
- 1.14. "SOW" means a document between Seller and Buyer that specifies Products and/or Services provided by Seller to Buyer.
- 1.15. "Special-Order Product" means any Product (i) that Seller procures or specially stocked for Buyer (including Products that are custom made, modified, altered, or includes special features), (ii) not readily saleable by Seller to other customers, or (iii) identified by Seller as non-cancelable or non-returnable.
- 1.16. "Terms" means these Terms and Conditions of Sale.

2. **SCOPE OF AGREEMENT.** Unless there is an Existing Agreement, these Terms govern the sale, purchase and use of Products, Software, and/or Services by Buyer from Seller and, together with the Application, and each Order and SOW, constitutes the entire and separate agreement between the parties with respect to the subject matter of these Terms. If a conflict arises between or among these Terms, the Application, and an Order and/or SOW, these Terms shall prevail unless otherwise expressly agreed in writing by authorized representatives of the parties. If Buyer is accepting these Terms on behalf of another party, Buyer represents and warrants that Buyer has full authority to bind such party to these Terms. Any additional, preprinted or different terms contained on any purchase order, portal, or other communication from Buyer purporting to apply shall be deemed void and unenforceable unless expressly agreed and signed in writing by authorized representatives of both parties. Buyer's or its Customer's placement of an Order or receipt or acceptance of the Products, Software and/or Services constitute acceptance of these Terms.

3. **ORDERS.** Seller has the right, in its sole discretion, to cancel, accept or reject any Order, in whole or in part, at any time. If Seller cancels or rejects any Order after payment has been made, Buyer is entitled to a refund within three (3) days of the cancellation, of the amount paid. Buyer is not obligated to pay any remaining balance in the event that Seller cancels or rejects an order. Any change requested by the Buyer to any aspect of the scope of an Order or SOW must be agreed in writing by both parties and may result in a price and/or delivery adjustment as determined by Seller. Seller reserves the right to implement a minimum order size of \$350 per Order. If Seller authorizes that all or part of an Order or SOW be terminated or suspended by modification, rescission or as otherwise provided in Sections 6 and 16 by Buyer, Buyer shall pay termination charges equal to Seller's costs associated with the Order or SOW, as determined by generally accepted accounting principles. Seller's costs shall include any amount Seller must pay to its suppliers and manufacturers relating to the relevant Order or SOW. Buyer agrees it (i) must take possession and accept delivery of any Special-Order Product within ninety (90) days upon completion of Seller's delivery obligations or the Product being available for pick-up, as applicable, and (ii) cannot cancel any Order for Special-Order Product. If Buyer (a) does not take possession and/or accepts delivery of any Special-Order Product upon completion of Seller's delivery obligations or the Special-Order Product being available for pick-up, as applicable, or (b) cancels an Order for Special-Order Product, Buyer shall then pay or reimburse Seller the purchase price of the Special-Order Products plus any associated cancellation fees, including, but not limited to, any storage and transportation fees incurred by Seller. Seller may, in its discretion, require a non-refundable deposit for any Special-Order Product ordered by Buyer.

4. **SERVICES.** The Services requested by Buyer shall be specified in an Order or SOW. When applicable, Buyer shall provide Seller with sufficient, free, safe and timely access to its premises and/or system as required to provide the Services. Buyer warrants that the premises where the Services will be performed will comply with all applicable federal, state and local occupational safety, welfare and health standards, rules, and regulations. Buyer agrees to ensure, so far as is reasonably practicable, the health, safety and welfare of Seller's personnel when on Buyer's premises including, but not limited to providing and maintaining premises and systems that are, so far as is reasonably practicable, safe and without risks to health. Seller may use subcontractors to perform its contractual obligations under an Order or SOW. If Seller uses subcontractors, Seller will be solely responsible for ensuring that they comply with their respective contractual requirements. Buyer shall not supervise or direct the performance of any Seller subcontractors. Seller or Seller's subcontractors, when applicable, shall obtain and maintain the necessary licenses, certifications, and permits, specialty or otherwise, required to provide the Services. If Seller's performance of any of its obligations is prevented or delayed by Buyer: (a) Seller shall, without limiting its other rights or remedies under these Terms or as otherwise provided by law or equity, have the right to suspend or terminate performance of the Services; and (b) Buyer shall be liable for any costs and expenses sustained or incurred by Seller as a result thereof. Without limiting the foregoing, completion times referenced in an Order or SOW are only estimates.

5. **PRICE.** Prices on Seller's website, catalogs or in Seller quotes are subject to change without notice. Unless otherwise extended in writing by Seller, all prices on a Seller quote will expire and become invalid upon the expiration date stated therein, provided however, Seller reserves the right to update its quote or price in the event of any increase in tariffs, levies, duties, freight or importation cost or charges, supplier pricing or surcharge, or a material exchange rate fluctuation. In such event, Seller will provide an updated quote or price and will not ship Product or provide Software or Services until Buyer receives an Order with the correct price. Any manifest errors are not binding on Seller. Buyer is liable for applicable transaction taxes, including sales, use, and value-added taxes, goods and services taxes, duties, customs, tariffs, and other government-imposed

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transactional charges however designated (and any related interest or penalty) on amounts payable by Buyer (collectively, "Transaction Taxes"), regardless of when such Transaction Taxes are levied or imposed. Buyer shall provide Seller with proof of exemption from Transaction Taxes at least fifteen (15) business days before the invoice due date.

6. **PAYMENT.** (a) Payment for Products, Software and Services must be made (i) in the currency identified in the invoice or in its equivalent as specified in writing by Seller, and (ii) by check or wire transfer or any other means specified by Seller, at its sole discretion. Buyer shall pay any Seller invoice within thirty (30) days from invoice date without any right to offset, counterclaim, holdback or deduction. Buyer must provide notice of any payment dispute within ten (10) days of the date of the invoice or Buyer waives any right to dispute such invoice; however, any such dispute shall not delay timely payment to Seller. Seller reserves the right to require guarantees, security or payment in advance of shipment from Buyer. In the event Buyer fails to pay the total sums due on an invoice by the due date or if an Insolvency Event (as defined in section 15.4 below) occurs, the entire outstanding balance due to Seller on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to suspend performance of any outstanding Orders or SOWs and to recover reasonable attorneys' fees and/or other expenses incurred collecting all outstanding sums from Buyer or otherwise enforcing or successfully defending these Terms. Seller may set off any amount due from Buyer from any amounts due to Buyer. Seller reserves the right to convert any payment into electronic funds at its discretion. (b) If Seller extends business credit to Buyer under an Application, then Seller's Business Credit Terms published at www.wesco.com/termsofsale, as amended from time-to-time, shall apply and are expressly incorporated herein by reference.
7. **SHIPPING.** Unless otherwise agreed to in writing, (i) all Product shipments shall be FOB shipping point, and (ii) Seller may, in its sole discretion, use any commercial carriers and method and route of transportation for shipment of the Products. Buyer shall be responsible for shipping charges, including all applicable freight, shipping, insurance and handling charges, unless otherwise agreed to in writing. Title to and risk of loss of the Products passes to Buyer upon transfer to the carrier at the shipping point. Software may be delivered electronically. Shipping dates or other applicable performance dates are estimated on the basis of prompt receipt of the Order and all information, drawings and approvals required to be furnished by Buyer. In the event Buyer, verbally or in writing, confirms a delivery date with Seller but subsequently suspends the Order or is unable to accept delivery, Buyer shall reimburse Seller for all costs and expenses Seller incurs as a result thereof, including, but not limited to, reasonable storage costs. No delay in the shipment or delivery of any Products relieves Buyer of its obligations under these Terms. Seller reserves the right to make partial or early shipments without liability or penalty. Buyer shall pay for the units shipped whether such shipment is in whole, partial or early fulfillment of an Order.
8. **ACCEPTANCE.** Buyer shall be deemed to have accepted the Products and Services unless written notice of rejection is given to the Seller within five (5) business days from date of delivery.
9. **RETURNS.** Product returns shall be made pursuant to Seller's Product Return Policy, published at www.wesco.com/termsofsale, as modified from time to time. Seller reserves the right to apply a re-stocking fees to any Product returns. Software cannot be returned without Seller's express prior written authorization.
10. **SHORTAGES.** Buyer shall submit all claims for shortages in writing to Seller within ten (10) days of receiving the Products; otherwise such claims will be deemed waived. Quantities are subject to normal manufacturer allowances. In the case of wires and cables, such allowances are plus 10% and minus 5%.
11. **RECOMMENDATIONS.** Buyer acknowledges and agrees that any drawings, designs, suggestions, recommendations, or advice as to any products, software, or services including installation or use recommendations (collectively, "Recommendations") are provided "as is" and are for informational and conceptual purposes only. Buyer acknowledges that in the event it follows any such Recommendations, it does so at its own risk and agrees that Seller will not be liable for any damage, claims, liabilities, or losses suffered by Buyer or any third party, directly or indirectly, due to Buyer following any Recommendations. Any legal or regulatory compliance obligations shall remain Buyer's sole responsibility, and nothing herein is intended to shift any such burden from Buyer to Seller.
12. **WARRANTY.**
 - 12.1. **Product and Software Warranty.** Seller is only a reseller of Products and Software and shall transfer and assign to Buyer any and all transferable warranties made to Seller by the manufacturer of the Products and Software. Unless otherwise specified in a writing signed by Seller, Seller provides no independent warranty for any Products and Software. Any order arising out of this offer will be governed by the conditions contained in Eaton Selling Policy 25-000 effective November 1, 2017 (copy attached). Buyer's sole and exclusive remedy for any alleged non-conforming part, defect, failure, inadequacy, or breach of any warranty related to Products and Software (collectively, "Defects") shall be limited to those warranties and remedies provided by the manufacturers or licensor thereof. Seller is not responsible for obtaining or paying for access to, or uninstalling, installed Products, delivering replacement Products to the installation site, or installing replacement Products. Seller's obligations under this Section 12.1 will be void unless Buyer provides Seller with notice of the Defect within 30 days of the date Buyer discovered or should have discovered the Defect. Buyer shall contact Seller prior to contacting the manufacturer or licensor. In the event Buyer provides notice of a Defect to the manufacturer or licensor, Buyer shall immediately notify and engage Seller on any and all discussions and actions to be taken with such manufacturer. Seller DOES NOT WARRANT that the Software will be free from errors or defects, will meet Buyer's needs, or will operate without interruption. Seller DOES NOT WARRANT that the Software will provide fail-safe performance when used in hazardous environments, including any application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage. If Seller supplies any Products and Software which include open source software, Seller is not liable for defects in title or quality of the information, software or documentation, or for ensuring that it is correct, accurate, free of third-party property rights and copyrights, complete and/or usable.
 - 12.2. **Private Label Product Warranty.** Solely as it pertains to those Products with Seller's private label brands (collectively "Private Label Products"), Seller warrants that the Private Label Products are new and are free from defects in material and workmanship under normal use and conditions for a period of one (1) year from the original invoice date. If the Private Label Products fail to conform with the foregoing warranty during the warranty period, Buyer shall promptly notify Seller and Seller will, at its option and as Buyer's sole and exclusive remedy, either (i) repair or replace the defective Private Label Products; or (ii) refund to Buyer the amount paid for the defective Private Label Products.
 - 12.3. **Services Warranty.** Seller warrants that the Services it provides will be performed in a professional manner consistent with relevant industry standards. Provided Buyer notifies Seller in writing and in sufficient detail of a breach of the Services warranty in this section 12.3 within fifteen (15) days after provision of the non-conforming Services, Seller will, at its option, (a) re-perform the Services at no additional cost to Buyer or (b) credit Buyer the fees actually paid to Seller associated with the non-conforming Services. This is Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, with respect to any breach of warranty relating to the Services it provides. This Services warranty is personal to Buyer and may not be assigned, transferred or passed-through to any third party.
 - 12.4. **Forfeiture of Warranty.** The warranties described herein do not cover wear and tear and shall be ineffective and not apply to those Products,

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Software and Services that have been subjected to misuse, abuse, neglect, accident, damage, improper installation, unauthorized modification, or improper or unauthorized maintenance or repair, including, but not limited to, use, maintenance or repair not in accordance with the manufacturer's or other provider's specifications, license or instructions.

- 12.5. **Buyer's Information.** Buyer acknowledges and agrees that, in performing its obligations under these Terms, Seller will rely upon the accuracy and completeness of the information and documentation Buyer provides, and that Seller's performance is dependent on Buyer's provision of complete and accurate information and data. It is Buyer's responsibility to ensure that the Products, Software, and Services are the ones that it has requested and that all specifications and quantities are correct.
- 12.6. **DISCLAIMER.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND SELLER DISCLAIMS AND EXCLUDES, AND BUYER WAIVES, ALL OTHER EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST REDHIBITORY DEFECTS, CONFORMITY TO ANY REPRESENTATION, DESCRIPTION, OR SPECIFICATION, PERFORMANCE, NON-INFRINGEMENT, AND OF ANY OTHER TYPE, REGARDLESS OF WHETHER ARISING BY LAW (STATUTORY OR OTHERWISE), COURSE OF PERFORMANCE, COURSE OF DEALING, OR ANY OTHER LEGAL OR EQUITABLE BASIS. IN THE EVENT DISCLAIMER OF WARRANTY STATEMENTS ARE DISALLOWED BY LAW, SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE LESSER OF THE APPLICABLE WARRANTY PERIOD OR THE MINIMUM PERIOD REQUIRED BY LAW. EXCEPT AS OTHERWISE SET FORTH HEREIN, THE PRODUCTS, SOFTWARE, AND SERVICES ARE PROVIDED "AS IS" EXCEPT TO THE EXTENT THE MANUFACTURER OR LICENSOR HONORS ANY WARRANTY EXPRESSLY MADE BY IT.

13. PROPRIETARY RIGHTS. LICENSE.

- 13.1. **Intellectual Property Ownership.** Each party shall retain ownership of all right, title and interest in and to its pre-existing intellectual property, Confidential Information, materials and/or Deliverables. Buyer grants to Seller a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license to use Buyer Material to perform its obligations during the term of the applicable SOW or Order. Upon payment in full of the applicable fees, Seller grants Buyer a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, perpetual license to use and reproduce, for Buyer's own internal business operations, the Deliverables (and any Seller Materials solely as provided by Seller as part of the Deliverables). Services will not be interpreted as "work for hire".
- 13.2. **Software License.** If applicable, Buyer shall be granted a limited license to use any Software strictly pursuant to the license agreement provided by the Product or Software manufacturer, and Buyer shall be bound by and comply with and ensure that its Customer complies with, at all times, any license terms pertaining to such Product or Software. If applicable, unless otherwise agreed to in writing, Software associated with a Product is licensed and not sold to Buyer. Buyer shall, and shall cause its Customer to (i) comply with any applicable laws, regulations, industry standards and third party rights in connection with its access to and use of the Software; (ii) accept and comply with all obligations contained in the license agreement provided by the Product or Software manufacturer; and (iii) use reasonable and diligent efforts pursuant to industry standards to protect and maintain user information collected by Buyer's applications, including personally-identifiable information, from unauthorized access or use. Buyer shall not, and Buyer shall instruct its Customer to not: (i) transfer, assign or sublicense the Software, or its license rights thereto, to any other person, organization or entity, including through rental, timesharing, subscription, hosting, or outsourcing the Software, except as specifically set forth herein; (ii) use the Software for any unauthorized purpose; (iii) attempt to create any derivative version thereof; (iv) remove or modify any marking or notice on or displayed through the Software or documentation; or (v) de-compile, decrypt, reverse engineer, disassemble or otherwise reduce same to human-readable form. In the event Software and/or Services are provided and accessed by Buyer through the internet at a website provided by Seller, Buyer acknowledges and agrees that Seller is not responsible for (i) Buyer's access to the internet, (ii) any breaches of security, interruptions and/or interceptions of information or communication through the internet, and (iii) changes or losses of data through the internet. Further, Buyer acknowledges that security of transmissions over the internet cannot be guaranteed.

14. INDEMNIFICATION AND INSURANCE REQUIREMENTS.

- 14.1. **By Seller.** Seller hereby transfers any intellectual property indemnity from the manufacturer of Products, Software, and Services to Buyer. Seller's obligation to indemnify Buyer shall not be greater than the intellectual property indemnity provided by the manufacturer of such Products, Software, and Services and shall only apply if Buyer complies with section 14.3 herein. In the event of any such infringement claim, Seller shall, as Buyer's sole and exclusive remedy, and at Seller sole option: (i) procure for Buyer the right to continue using the affected Products, Software or Services; (ii) replace the affected Products, Software, or Services with non-infringing Products, Software or Services; (iii) modify the affected Products, Software, or Services so they are non-infringing; or (iv) if fees were paid in advance, refund any prepaid fees associated with the affected Products, Software, or Services. Seller's indemnification obligation does not apply if (a) Buyer continued to use the Products, Software or Services after Seller informed Buyer of modifications required to avoid infringement; or (c) the alleged infringement results from Buyer's misuse, modification or enhancement of the Products, Software, and/or Services, whatever the case may be, or from the use of such in combination with other products not provided or approved by Seller.

To the furthest extent allowed by law, Seller shall defend, indemnify and hold harmless Buyer from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including losses and costs incurred by Buyer and any reasonable attorney's fees and costs) which arise from Seller's negligence or willful misconduct; a breach of Seller's confidentiality (information not of public record) obligations arising from Seller's negligence or willful misconduct; or Seller's violation of a law applicable to Seller's performance under the contract.

If Seller subcontracts all or any portion of the services to be performed in connection with this Agreement, Seller will require each subcontractor to indemnify, hold harmless and defend you and your officers, officials, employees, agents and volunteers in accordance with this paragraph.

This section shall survive termination or expiration of this Agreement.

- 14.2. **By Buyer.** Buyer shall indemnify and defend Seller and its affiliates, directors, officers, affiliates, employees, agents, successors, and permitted assigns ("Indemnitees") against any claims, demands, damages, liabilities and expenses (including court costs and reasonable attorneys' fees) that Indemnitees incur as a result of or in connection with: (a) any third-party claims arising from Buyer's: (i) failure to obtain any consent, authorization or license required for Indemnitees' use of Buyer Materials; (ii) use of the Products, Software, or Services in any manner (e.g., solely or in combination) not expressly permitted by these Terms or the applicable license agreement or specifications provided by the Product and/or Software manufacturer or provider of Services; (iii) misuse, modifications, enhancements, or programming to the Products, Software, Services; (iv) breach of its obligations, representations, and warranties under these Terms; or (v) gross negligence in connection with the performance of its obligations under these Terms; (b) Indemnitees' compliance with any technology, designs, instructions or requirements, including any specifications provided by Buyer or a third party on Buyer's behalf; and (c) any reasonable costs and attorneys' fees and expenses required for Indemnitees to respond to a subpoena, court order or other official government inquiry regarding Buyer's use of the Products, Software, or Services.
- 14.3. **Notification.** The indemnified party shall: (i) provide prompt written notice to the indemnifying party; (ii) reasonably cooperate in connection with the defense or settlement of the claim, including providing all reasonable information and assistance at the indemnifying party's cost; and (iii) give

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the indemnifying party sole control over the defense and settlement of the claim, provided that any settlement of a claim shall not include a specific performance obligation or admission of liability by the indemnified party. Failure to provide timely notice that prejudices the indemnifying party shall relieve the indemnifying party of its obligations under these Terms to the extent the indemnifying party has been prejudiced and the failure to provide timely notice shall relieve the indemnifying party of any obligation to reimburse the indemnified party for its attorney's fees incurred prior to notification.

- 14.4. The foregoing indemnities are personal to Seller and Buyer and may not be transferred or assigned to anyone except the manufacturer or a subcontractor performing any of the work in connection with this agreement. This section 14 states the parties' exclusive remedies for any claims arising under sections 14.1 and 14.2, other than any remedies that may be available against third party manufacturers or providers of the Products, Software or Services.
- 14.5. **INSURANCE REQUIREMENTS** (a) Throughout the life of this Agreement, SELLER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by BUYER'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to BUYER, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.
- 14.6. (b) If at any time during the life of the Agreement or any extension, SELLER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to SELLER shall be withheld until notice is received by BUYER that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to BUYER. Any failure to maintain the required insurance shall be sufficient cause for BUYER to terminate this Agreement. No action taken by BUYER pursuant to this section shall in any way relieve SELLER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by BUYER that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- 14.7. (c) The fact that insurance is obtained by SELLER shall not be deemed to release or diminish the liability of SELLER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify BUYER shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SELLER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SELLER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.
15. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS, LOST BUSINESS, LOST REVENUE, OR ANY OTHER SPECIAL, INCIDENTAL, LIQUIDATED, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. NO LIQUIDATED OR DELAY DAMAGES SHALL APPLY UNLESS AMOUNTS AND ASSOCIATED DELIVERY MILESTONES ARE EXPLICITLY STATED IN THE ORDER. FURTHERMORE, TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER'S LIABILITY ON ANY CLAIM ARISING OUT OF OR CONNECTED WITH THESE TERMS OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS, SOFTWARE, OR SERVICES, WHETHER IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), MISREPRESENTATION, BREACH OF CONTRACT, OR OTHERWISE; , SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID FOR THE PRODUCTS, SOFTWARE, AND/OR SERVICES GIVING RISE TO THE CLAIM; however, such limitation of liability does not apply to: (i) SELLER'S indemnity and insurance obligations per Section 14 herein; or (ii) any claims arising out of SELLER's fraud or willful misconduct.
16. **TERMINATION AND SUSPENSION.**
- 16.1. In addition to and subject to Seller's rights set forth in section 6, in the event of any material breach of these Terms, Order, or SOW by either party, the non-breaching party may cancel the applicable Order or SOW by giving thirty (30) days' prior written notice thereof; unless the party in breach has cured the breach prior to the expiration of the thirty (30) day period.
- 16.2. In the event Seller or Buyer terminates an Order, Buyer shall not be entitled to any refund or credit of fees paid or payable hereunder. Buyer shall remain liable for Payment of invoices for Products and Software already delivered and Services already performed and for the fees and costs described in section 3 above, and payment of any manufacturer cancellation charges for unshipped items. In the event an Order is terminated, all licenses granted therein shall also terminate. Subject to the limitations and other provisions of these Terms, any provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of these Terms.
- 16.3. In addition to any other remedies provided under these Terms or applicable law, Seller may exercise any reclamation rights and/or suspend or terminate an Order or SOW with immediate effect if Buyer: (i) fails to pay any amount owed to Seller when due; (ii) fails to comply with any of its obligations herein; (iii) experiences an adverse change in financial position or becomes a credit risk; or (iv) becomes insolvent, receivership, reorganization or assignment for the benefit of creditors, to the extent permissible under law (each, an "Insolvency Event").
17. **CONFIDENTIALITY.** The receiving party shall protect the disclosing party's Confidential Information with the same degree of care as the receiving party normally uses in the protection of its own Confidential Information, but in no case with any less degree than reasonable care. The receiving party shall not disclose to any third party any Confidential Information it receives from the disclosing party. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party; (iii) was known by the receiving party prior to its receipt without any breach of any confidentiality obligations; or (iv) was independently developed by the receiving party without use of the disclosing party's Confidential Information. If the receiving party becomes legally obligated to disclose any Confidential Information by subpoena, court order or other lawful government action, the receiving party may disclose the Confidential Information only to the extent so ordered and, to the extent permitted by law, after providing prompt written notification to the disclosing party of the pending disclosure. Neither party may use such Confidential Information in any way for any purpose, except as authorized under the Order or SOW. Either party may disclose Confidential Information to its auditors or attorneys under an obligation of confidentiality no less stringent, or Seller to its affiliates and/or third parties on a need-to-know basis to the extent necessary. If Seller offers to sell Buyer Products, Software, or Services from a specific manufacturer, Buyer shall not purchase such Products, Software, or Services directly from said manufacturer unless Seller provides prior written approval.
18. **COMPLIANCE WITH LAW.** Each party shall comply with all applicable laws, rules and regulations, including but not limited to, export and import, trade restrictions, FARs, anti-bribery and anti-corruption, anti-money laundering, anti-human trafficking and slavery, environmental protection, and health and safety. Products and Software may be subject to export controls under the laws, regulations, sanctions and/or directives of the United States and other countries, in which case, these Products and Software are only authorized for use (e.g., via a government-approved and issued export license, which Buyer must obtain) by the ultimate end-user in the destination identified in the transaction documents between

TERMS AND CONDITIONS OF SALE

Seller and Buyer. Buyer shall not sell, export, re-export or transfer, or cause a deemed export or re-export of the Products and Software (in their original form or after being incorporated into other items) to any county or person to which/whom sell, export, re-export or transfer (actual or deemed) is prohibited without first obtaining all required authorizations or licenses. To the extent permitted by law, Buyer shall indemnify and hold Seller harmless from any loss or damage arising from its violation of any such laws, rules, and regulations. Furthermore, Buyer shall not use, transfer or access any Products, Software, or Services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the manufacturer and the U.S. government by regulation or specific license. If Seller receives notice that Buyer is or becomes identified as a sanctioned or restricted party under applicable law (including without limitation, the

U.S. Commerce Department Bureau of Industry and Security (“BIS”) Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) Specially designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls (“DDTC”) Debarred Parties List), Seller will not be obligated to perform any of its obligations under any Order or SOW. Equipment, systems, or services provided by Seller may incorporate, include, or use telecommunications equipment, systems, parts, components, elements, or services that have sourcing restrictions depending on the intended use under section 889 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. No. 115-232).

19. **PRIVACY.** Each party shall comply with all applicable laws governing the collection, use and disclosure of personal data (as defined by applicable domestic and international data protection laws) and must obtain any required consents with respect to the handling of personal data as required by law. Buyer acknowledges that Seller is headquartered in the United States and operates globally, that data collected by Seller from Buyer in connection with these Terms may be transferred into and/or processed in the United States or other locations by Buyer or an authorized third party/subcontractor, Buyer and expressly consents to such transfer and processing.
20. **FORCE MAJEURE.** Seller shall not be liable for any failure to perform its obligations under an Order or SOW resulting directly or indirectly from, or contributed to or by acts of God, acts of terrorism, civil or military authority, epidemic or pandemic, fires, strikes or other labor disputes, accidents, floods, war, riot, inability to secure raw material or transportation facilities, hacking or other malicious attack, dissolution of the applicable manufacturer’s business, acts or omissions of carriers, or any other circumstances beyond Seller’s reasonable control.
21. **LAW. VENUE.** These Terms and any transactions contemplated herein shall be governed according to the substantive laws of the State of California, without regard to principles of conflicts of law, and shall not be governed by the U.N. Convention on the International Sale of Goods. Any issue, dispute or controversy (“Dispute”) between the parties, including with respect to contract formation or the interpretation of these Terms, that cannot be commercially resolved by the parties shall, by agreement of parties, be submitted to nonbinding mediation as a condition precedent to litigation. If Seller elects mediation, the parties shall mutually agree upon the mediator and shall share equally in the mediator’s fees.
22. **RELATIONSHIP OF PARTIES.** The parties are independent contractors and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. A person who is not a party to an Order or SOW shall not have any benefit or rights under or in connection with either.
23. **GENERAL.** These Terms shall be construed and interpreted without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. No amendments, modifications, waivers, rescission or termination of these Terms can be made through the parties’ course of dealings and no such change can be made except in writing and signed by authorized representatives of the parties. Failure by a party to exercise any right or remedy under these Terms shall not be deemed a waiver of such right or remedy unless in writing signed by the party, nor shall any waiver be implied from the acceptance of any payment. No waiver by a party of any right shall extend to or affect any other right, nor shall a waiver by a party of any breach extend to any subsequent breach. Buyer shall not assign an Order or SOW, by operation of law or otherwise, without the express written approval of Seller. Any attempt to assign or transfer all or any part of these Terms without first obtaining that written consent will be void or voidable, at Seller’s election. Any provision of these Terms that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be limited or eliminated to the minimum extent required by that jurisdiction, and the remaining provisions shall remain in full force and effect. Buyer acknowledges that the terms or content of any hyperlinked document, as amended from time to time, are incorporated in these Terms by reference and that it is Buyer’s responsibility to review the terms or content in the hyperlinks referenced. All notices under these Terms must be in writing (e.g., e-mail or physical mail) and addressed to the other party at its address set forth in the Order or SOW.

In the event Seller provides *product storage-related Services to Buyer under a Storage Term Sheet, Order or other documentation* which specifically references these Terms; then the following additional terms and conditions shall apply. Any capitalized terms used herein and not defined shall have the meaning set forth in the Storage Term Sheet, as applicable. The term “Company” and “Buyer” shall have the same meaning for purposes of the Terms. In the event of a conflict between the following additional terms and conditions and the Terms, these terms and conditions shall prevail.

24. **Term and Termination.** The Storage Term Sheet shall run for the Storage Term (if no Storage Term is specified, the term shall be 90 days) and shall thereafter automatically renew for successive thirty (30) day renewal terms unless earlier terminated as provided herein. Either party may terminate the Storage Term Sheet by providing at least thirty (30) days prior written notice to the other party. Further, Seller may immediately terminate this Storage Term Sheet in the event Buyer fails to timely satisfy any invoice due to Seller. Upon the effective date of the termination of this Storage Term Sheet, Seller shall ship, at Buyer’s sole risk and expense, any remaining Products that are being stored on Buyer’s behalf to the Designated Buyer Ship-To Location.

25. **Storage of Products.** For Buyer’s benefit, Seller shall receive, unload, and store the Products at the Facility. Upon prior notice to Buyer, Seller may change the location of the Facility. The Products shall be stored at the Facility at Buyer’s sole risk and expense.

26. **Shipping.** Upon Buyer’s issuance of a Shipping Order (as defined below), and at Buyer’s sole risk and expense, Seller shall ship the Products to the Designated Ship-To Location. A “Shipping Order” shall mean a written request issued by Buyer to Seller that identifies: (i) the specific Product to be shipped; (ii) the quantity of Products to be shipped; (iii) the method of shipping selected by the Buyer; and (iv) the shipping destination, if different from the Designated Ship-To Location. Following acceptance of a Shipping Order, Seller shall ship the requested quantity of Products identified in the Shipping Order as soon as commercially reasonable, unless a specific date is mutually agreed to by the parties. If Buyer does not specify the mode of shipment or carrier, Seller shall use commercially reasonable efforts to ship the Products in the most cost-effective manner but does not guarantee that it will be the least expensive option available. Delivery of the Products being stored on Buyer’s behalf may be made in one or multiple shipments based on Seller’s discretion. Shipping charges shall be included on Seller’s invoice to Buyer; provided, however, that Seller may require, in its discretion, that Buyer prepay the fees and costs associated with shipping.

27. **Invoicing and Payment.** Regardless if the Products are being stored on Buyer’s behalf or if they have already been shipped to the Designated Buyer Ship-To Location, Buyer shall timely satisfy the invoices issued by Seller to Buyer for the purchase of the Products. Seller shall invoice Buyer for the Storage Fees plus applicable tax, and Buyer shall pay Seller the Storage Fees within Payment Terms of the date of the invoice. In the event Buyer fails to pay the total sums due on an invoice by the due date, the entire outstanding balance due to Seller on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts

TERMS AND CONDITIONS OF SALE

commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to suspend performance of under the Storage Term Sheet and recover reasonable attorneys' fees and/or other expenses incurred collecting all outstanding sums from Buyer or otherwise enforcing or successfully defending the Terms. Seller may set off any amount due from Buyer from any amounts due to Buyer.

28. **Title and Risk of Loss to the Products.** Seller is only storing Product that has been purchased by Buyer. As such, in the case of a Storage Terms Sheet, title to the Product and risk of loss shall at all times remain with Buyer, including, but not limited to, when they are being stored at the Facility. Buyer acknowledges and agrees that Seller shall have no obligation whatsoever to maintain any insurance specifically covering the Product. As such, Buyer shall be solely responsible for, and shall be required to maintain insurance to cover any risk of loss to the Products while in storage at the Facility. Buyer agrees to indemnify, defend, hold harmless and release Seller and its affiliates and their respective shareholders, officers, directors, employees, agents, successors and assigns from all liabilities arising from any loss or damage to the Products due to any cause whatsoever, including fire, insects, rodents, rust, normal wear and tear, leakage, moisture, changes in temperature, acts of God, deterioration by time, or damage or for any loss or damage from causes beyond Seller's reasonable control. Further, Buyer shall be responsible for all risk of loss to the Products while en route to the Designated Buyer Ship-To Location or to such other destination as Buyer may designate in writing.

TERMS AND CONDITIONS OF SALE**Exhibit A****MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Technology Professional Liability (Errors and Omissions) insurance appropriate to SELLER’S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by SELLER in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

MINIMUM LIMITS OF INSURANCE

SELLER, or any party the SELLER subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to BUYER, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS’ COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER’S LIABILITY:**
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.
5. **TECHNOLOGY PROFESSIONAL LIABILITY** (Errors and Omissions) appropriate to the Seller’s profession:
 - (i) \$1,000,000 per claim/occurrence; and,
 - (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event SELLER purchases an Umbrella or Excess insurance policy(ies) to meet the “Minimum Limits of Insurance,” this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the BUYER, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

TERMS AND CONDITIONS OF SALE

SELLER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and SELLER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the BUYER'S Risk Manager or his/her designee. At the option of the BUYER'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects BUYER, its officers, officials, employees, agents and volunteers; or
- (ii) SELLER shall provide a financial guarantee, satisfactory to BUYER'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall BUYER be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. BUYER, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. SELLER shall establish additional insured status for the Buyer and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to BUYER, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, SELLER'S insurance coverage shall be primary insurance with respect to the BUYER, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the BUYER, its officers, officials, employees, agents and volunteers shall be excess of SELLER'S insurance and shall not contribute with it. SELLER shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: SELLER and its insurer shall waive any right of subrogation against BUYER, its officers, officials, employees, agents and volunteers.

If the Technology Professional (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by SELLER.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by SELLER, SELLER must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to BUYER for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to BUYER. SELLER is also responsible for providing written notice to the BUYER under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, SELLER shall furnish BUYER with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for BUYER, SELLER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by SELLER shall not be deemed to release or diminish the liability of SELLER, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by

TERMS AND CONDITIONS OF SALE

SELLER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SELLER, its principals, officers, agents, employees, persons under the supervision of SELLER, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

VERIFICATION OF COVERAGE

SELLER shall furnish BUYER with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the BUYER'S Risk Manager or his/her designee prior to BUYER'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of BUYER, SELLER shall immediately furnish Buyer with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

SUBCONTRACTORS

If SELLER should subcontract all or any portion of the services to be performed under this Agreement, SELLER shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and SELLER shall ensure that BUYER, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with SELLER and BUYER prior to the commencement of any work by the subcontractor.

Proposal for Power Metering Dashboard Solution



Wastewater Treatment Plant

City of Fresno, California

Power Metering Dashboard & Integral Remote Racking Installation

March 24, 2023

Eaton Proposal No.: SFK1-220630-01-RC REV. 3 FINAL



Powering Business Worldwide

Eaton Corporation
Electrical Engineering Service & Systems

5735 W. Las Positas Blvd., Suite 100
Pleasanton, California 94588

Contact: Raymond Cooper
Phone: (925) 416-9169
raymondcooper@eaton.com

City of Fresno, California Power Metering Dashboard

MARCH 2023

1. Project Summary

The Wastewater Treatment Plant for the City of Fresno, California is seeking to procure the hardware for an Eaton Power Metering Dashboard. This proposal outlines the Power Metering Dashboard hardware necessary per our knowledge of the current facility conditions.

2. Equipment Bill of Material

Eaton will provide the following Bill of Material:

Qty.	Description	Catalog Number	Drawing No.
4	PX Dashboard	PXDBCSRT-2A1-D2	71Y8989
59	MR2 Pan Assembly and Integral Remote Racking Mechanism	MR2APCANGABBB	71Y8989
7	Handheld Pendant	1C19628G02	71Y8989

3. Services Scope of Work

Eaton Corporation will provide the necessary field service personnel, tools, materials, and approved test equipment to perform the scope of work as described herein.

INCOMING 12KV SWITCHGEAR

- Install Setup and Configuration of (1) PX Dashboard System for communication
 - *Note: PX Dashboard already purchased by customer*
- Install Integral Remote Racking System in each of the circuit breaker cells below:
 - Main Breaker Cell "53-BKR-201"
 - Tie Breaker Cell "53-BKR-301"
 - Main Breaker Cell "53-BKR-101"
 - Feeder Breaker Cell "53-BKR-202"
 - Feeder Breaker Cell "53-BKR-102"
 - Feeder Breaker Cell "53-BKR-203"

MAIN SWITCHGEAR BUILDING**SWITCHGEAR M-MVS A**

- Install Setup and Configuration of (1) PX Dashboard System for communication
 - *Note: PX Dashboard already purchased by customer*

- Install Integral Remote Racking System in each of the circuit breaker cells below:
 - Main Breaker Cell “29-BKR-101”
 - Tie Breaker Cell “29-BKR-301”
 - Feeder Breaker Cell “29-BKR-102”
 - Feeder Breaker Cell “29-BKR-103”
 - Feeder Breaker Cell “29-BKR-104”
 - Feeder Breaker Cell “29-BKR-105”
 - Feeder Breaker Cell “29-BKR-106”
 - Feeder Breaker Cell “29-BKR-107”
 - Feeder Breaker Cell “29-BKR-108”
 - Feeder Breaker Cell “29-BKR-109”

SWITCHGEAR M-MVS B

- Install Setup and Configuration of (1) PX Dashboard System for communication
 - *Note: PX Dashboard already purchased by customer*

- Install Integral Remote Racking System in each of the circuit breaker cells below:
 - Main Breaker Cell “29-BKR-201”
 - Feeder Breaker Cell “29-BKR-202”
 - Feeder Breaker Cell “29-BKR-203”
 - Feeder Breaker Cell “29-BKR-204”
 - Feeder Breaker Cell “29-BKR-205”
 - Feeder Breaker Cell “29-BKR-206”
 - Feeder Breaker Cell “29-BKR-207”
 - Feeder Breaker Cell “29-BKR-208”
 - Feeder Breaker Cell “29-BKR-209”

A SIDE SWITCHGEAR BUILDING**A SIDE SWITCHGEAR - 100**

- Purchase (1) PX Dashboard System
- Install Setup and Configuration of (1) PX Dashboard System for communication

City of Fresno, California Power Metering Dashboard

MARCH 2023

- Install Integral Remote Racking System in each of the circuit breaker cells below:
 - Main Breaker Cell “60-BKR-100”
 - Tie Breaker Cell “60-BKR-300”
 - Feeder Breaker Cell “60-BKR-101”
 - Feeder Breaker Cell “60-BKR-102”
 - Feeder Breaker Cell “60-BKR-103”
 - Feeder Breaker Cell “60-BKR-104”
 - Feeder Breaker Cell “60-BKR-105”
 - Feeder Breaker Cell “60-BKR-106”
 - Feeder Breaker Cell “60-BKR-107”
 - Feeder Breaker Cell “60-BKR-108”

A SIDE SWITCHGEAR - 200

- Purchase (1) PX Dashboard System
- Install Setup and Configuration of (1) PX Dashboard System for communication

- Install Integral Remote Racking System in each of the circuit breaker cells below:
 - Main Breaker Cell “60-BKR-200”
 - Feeder Breaker Cell “60-BKR-201”
 - Feeder Breaker Cell “60-BKR-202”
 - Feeder Breaker Cell “60-BKR-203”
 - Feeder Breaker Cell “60-BKR-204”
 - Feeder Breaker Cell “60-BKR-205”
 - Feeder Breaker Cell “60-BKR-206”
 - Feeder Breaker Cell “60-BKR-207”
 - Feeder Breaker Cell “60-BKR-208”

BLOWER BUILDING 1

DOUBLE ENDED SWITCHGEAR – 100 & 200

- Purchase (1) PX Dashboard System
- Install Setup and Configuration of (1) PX Dashboard System for communication

- Install Integral Remote Racking System in each of the circuit breaker cells below:
 - Main Breaker Cell “04-BKR-101”
 - Tie Breaker Cell “04-BKR-301”
 - Feeder Breaker Cell “04-BKR-102”
 - Feeder Breaker Cell “04-BKR-103”
 - Feeder Breaker Cell “04-BKR-104”
 - Main Breaker Cell “04-BKR-201”

City of Fresno, California
Power Metering Dashboard

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- Feeder Breaker Cell "04-BKR-202"
- Feeder Breaker Cell "04-BKR-203"
- Feeder Breaker Cell "04-BKR-204"

DOUBLE ENDED SWITCHGEAR 400 & 500

- Purchase (1) PX Dashboard System
- Install Setup and Configuration of (1) PX Dashboard System for communication

- Install Integral Remote Racking System in each of the circuit breaker cells below:
 - Main Breaker Cell "04-BKR-501"
 - Tie Breaker Cell "04-BKR-601"
 - Feeder Breaker Cell "04-BKR-502"
 - Feeder Breaker Cell "04-BKR-503"
 - Main Breaker Cell "04-BKR-401"
 - Feeder Breaker Cell "04-BKR-402"
 - Feeder Breaker Cell "04-BKR-403"

ADDITIONAL SCOPE OF WORK

- Dashboard User Accessibility Configuration & Training
 - User creation/deprovisioning
 - Ability to access audit logs
 - Remove or disable the ability to power off systems remotely
 - Provide user accessibility configuration training to COF administrative staff

City of Fresno, California
Power Metering Dashboard

MARCH 2023

4. PRICING

Item	Description	Each	QTY.	Price (CN)
001	Materials			
	PX Dashboard, Processor and Mounting Kits	\$40,911	4	\$163,642
	MR2 Pan Assembly & Integral Remote Racking Mechanism	\$4,290	59	\$253,107
	Handheld Pendant	\$991	7	\$6,936
	Misc. Materials (Hardware, Mounting, Wire, Etc.)	\$144	59	\$8,508
	Foreseer to DT3000 Relays LOT	\$693	59	\$40,898
Total Materials Price:				\$473,091

Task	Description	Job Title =>	Field Service Specialist / Engineer	Design Engineer	Scheduler	Project Manager	Total Labor Costs	Total Other Direct Costs	Total Costs
		Hourly Rate =>	\$232	\$276	\$276	\$323			
1	Job Safety Review		56	0	0	20	\$19,452		\$19,452
2	Planning, Meetings, and Site Visits		0	0	0	80	\$25,840		\$25,840
3	Engineering and Design		0	80	0	0	\$22,080		\$22,080
4	Mobilization and Demobilization		0	0	0	24	\$7,752		\$7,752
5	Installation, Setup, and Configuration of PX Dashboard System		56	0	0	0	\$12,992		\$12,992
6	Installation of Integral Remote Racking System in each Breaker Cell / FSR Specialist		1037	0	0	0	\$240,584	\$41,630	\$282,214
7	Project Travel Time		112	0	0	0	\$25,984		\$25,984
8	Project Reporting		56	0	0	0	\$12,992		\$12,992
9	Prevailing Wage Reporting		0	0	56	0	\$15,456		\$15,456
Additional Scope of Work									
10	Dashboard User Accessibility Configuration & Training		12	0	0	0	\$2,754		\$2,784
* Task 6 - other direct cost includes hotels, meals etc.							Total Labor Price:		\$427,546

Price for the above scope of work is based on performing site work Monday – Friday, 8:00AM – 5:00PM.

5. ORDER ENTRY

1. Reference the Eaton Proposal Number listed on this proposal
2. Issue a purchase order to **EATON CORPORATION**
3. Email purchase order to: raymondcooper@eaton.com

Please reference Proposal Number SFK1-220630-01-RC on any purchase order issued in response to this proposal.

6. DELIVERY

The scheduling of work will be mutually agreed upon between the customer and Eaton's Electrical Engineering Services & Systems. Please allow three weeks for scheduling purposes.

7. QUALIFICATION / CLARIFICATIONS

- *Seller shall not be responsible for any failure to perform, or delay in performance of, its obligations resulting from the COVID-19 pandemic or any future epidemic, and Buyer shall not be entitled to any damages resulting thereof.*
- All work to be completed at straight time, Monday through Friday except for scheduled outages as defined in our proposal.
- No time/labor included for site specific training meetings/classes/videos. If required, additional charges will apply and will be billed separately from this proposal.
- Minor repairs and adjustments taking a minimal amount of time will be included in our base price. If additional time or material is required, it will be charged as an extra.
- Any significant delays due to adverse weather will result in additional charges.
- If straight time work is required to be performed on an overtime basis, Customer will be billed the difference between the straight time and overtime rate.
- Stand-by power needs, if deemed necessary, are not included.
- Applicable fees for outage related costs including stand-by and re-connect services are not included.
- Eaton will correct minor deficiencies. Minor deficiencies are those that require no special tools, parts, etc. and take a minimal amount of time to perform. Repair labor beyond this, and all material, will be considered as extra.
- Method of procedure (MOP) development or meeting time not outlined in the scope of work will be treated as an extra.
- Replacement parts and additional labor required to perform any repairs necessary for proper operation of your equipment will be accomplished exclusively at your written direction and authorization.
- Delays beyond the control of Eaton, extras and authorized additional work will be charged in accordance with the Eaton's Electrical Engineering Services & Systems 2022 Price List PL02700001E.
- Delay time: If Eaton arrives onsite to perform scheduled work and the work is cancelled, Eaton will charge for four (4) hours minimum per person, plus travel expenses if no replacement work can be scheduled. If sufficient notice (72 hours) is given to Eaton when canceling scheduled work, no additional charge will apply.
- Third party billing will be subject to an additional 15% fee.

8. SAFETY TRAINING OF EATON FIELD PERSONNEL

- All Eaton field personnel received training to comply with OSHA CFR1910 Electrical Safety Standard, which sets minimum safety rules and practices for the design, operation, and maintenance of high-voltage systems (over 600 volts). Safety standards are in place to meet or exceed NFPA 70E requirements, and appropriate Personal Protective Equipment (PPE) have been issued.
- The customer is responsible to ensure that any supporting plant personnel have also be fully trained in electrical safety and provided with the appropriate personnel protective equipment.

9. DIVISION OF RESPONSIBILITY

Eaton Responsibilities:

City of Fresno, California Power Metering Dashboard

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- Eaton will perform necessary adjustments, which are required to bring equipment to satisfactory operating condition, or review these with you prior to commencement of any additional work.
- Eaton will obtain authorization in advance before performing any additional work. In these cases, Eaton will provide services on a time and material basis. Eaton will provide a listing of all applicable skills classifications that apply to the execution of this contract and identify the hourly rates (both straight time and overtime) that will apply for the duration of the contract. Eaton will also indicate escalation if applicable and, and in addition, provide a definition of when overtime rates apply.
- Eaton will provide you with a minimum notice of 72 hours of intent to service any equipment.
- Eaton shall furnish test engineers, field technicians, support personnel, tools, equipment, materials, supplies and transportation as required.
- Eaton will provide and install safety locks, as required, and in accordance with the facility safety guidelines.
- Eaton will perform voltage test and install necessary circuit / equipment safety grounds to assure safe working conditions
- Upon completion of work:
- Eaton will remove safety grounds installed by Eaton
- Eaton will remove safety locks installed by Eaton.

Customer Will Be Responsible For The Following:

- Providing free access to equipment within their facility.
- Ensuring that all equipment is available upon arrival of Eaton personnel, including removal from service to permit continuous progression of work. Delay time in making equipment available will be treated as an extra.
- Identifying site contact for this project.
- Providing electricians to remove equipment covers and re-install the same when required.
- Coordinating all outages and perform all switching to de-energize and isolate equipment to be serviced.
- Ensuring that all circuits to be de-energized have been clearly identified and that all plant personnel and downstream operations are aware of the required outage date, time and duration. This includes maintaining power to vital or necessary plant equipment and processes during the performance of this scope of work.
- Providing a copy of the past maintenance records to Eaton personnel.
- Providing manufacturers maintenance manuals upon arrival of Field Engineer/s.
- Supplying a complete set of electrical plans, including the plant single-line diagram, specifications, and any pertinent change orders to Eaton before commencement of work.
- Supply a suitable and stable source of power for operation of test and motorized equipment at each test site when normal power is removed or authorize Eaton to obtain a source of auxiliary power, Eaton shall specify requirements. Any non-standard generators rentals will result in a price adder to this proposal.
- Providing a place to receive and unload replacement equipment, test equipment or other supplies.
- Providing special tools supplied by equipment manufacturers.

10. WHY EATON FOR THIS PROJECT

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- Eaton field personnel have years of experience with low, medium, and high voltage electrical distribution equipment and have been factory trained at the Eaton Distribution Equipment Manufacturing Facilities and obtained outside training on other competitors' equipment.
- Eaton maintains a fully functional and operational remote monitoring center, which can be incorporated as part of the solutions to improve your overall electrical system reliability.
- Eaton has access to the engineering departments who currently design electrical equipment.
- Eaton has the following in-house technical support available to the specification engineer:
 - Environmental-Health and Safety personnel
 - Factory design engineers
 - Power Systems Engineers
 - Quality and Standards Engineers
- Eaton test equipment is state of the art and calibrated yearly.
- Emergency Service available 24 hours per day, 365 days per year.

11. PROPRIETARY AND CONFIDENTIAL INFORMATION

This submittal contains Eaton proprietary and confidential information, which may only be used by the City of Fresno to evaluate and respond to this submittal. By accepting this submittal from Eaton, City of Fresno agrees to not use this submittal, or any information contained herein, in any manner adverse to Eaton's interests; to keep in confidence the submittal and all information contained; and to not disclose to any third party or publish this submittal, any portion thereof, or any information contained herein without Eaton's prior written consent.

12. TERMS AND CONDITIONS

Any order arising out of this offer will be governed by the conditions contained in Eaton Selling Policy 25-000 dated November 1, 2008. Taxes, if applicable, not included. This offer is valid for 30 days unless otherwise extended, modified, or withdrawn, in writing, by Eaton. Payments are due and payable net within thirty (30) days from the date of each invoice.

Please use proposal reference number **SFK1-220630-02-RC** on any purchase order issued in response to this proposal.

It is a privilege to have this opportunity to be of service. If there are any further questions or needs, please contact one of your proposal team members listed in the next section. Eaton's Electrical Engineering Services & Systems looks forward to working with you on this project.

13. PROPOSAL TEAM CONTACTS

City of Fresno, California
Power Metering Dashboard

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For questions regarding this proposal, please contact:

Eaton Corporation
Electrical Engineering Service & Systems
Service Sales Representative:
Raymond Cooper
Phone: (925) 416-9169
Email: raymondcooper@eaton.com

Eaton Corporation
Electrical Engineering Service & Systems
Technical Application Support Engineer:
Lee Kambestad
Phone: 909-247-6559
Email: leekambestad@eaton.com

14. ATTACHMENTS

Eaton Selling Policy 25-000



Supersedes Selling Policy 25-000,
Pages 1-4, dated
November 1, 2008

**DOMESTIC U.S.A.
GENERAL TERMS AND
CONDITIONS OF SALE**

Selling Policy

Effective: November 1, 2017 Page 1

**Distribution and
Control Products
and Services
25-000**

TERMS AND CONDITIONS OF SALE

The Terms and Conditions of Sale set forth herein, and any supplements which may be attached hereto, constitute the full and final expression of the contract for the sale of products or services (hereinafter referred to as Product(s) or Services by Eaton Corporation (hereinafter referred to as Seller) to the Buyer, and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between the Seller and the Buyer. Notwithstanding any contrary language in the Buyer's purchase order, correspondence or other form of acknowledgment, Buyer shall be bound by these Terms and Conditions of Sale when it sends a purchase order or otherwise indicates acceptance of this contract, or when it accepts delivery from Seller of the Products or Services. THE CONTRACT FOR SALE OF THE PRODUCTS OR SERVICES IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF SALE STATED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER. No contract shall exist except as herein provided.

Complete Agreement

No amendment or modification hereto nor any statement, representation or warranty not contained herein shall be binding on the Seller unless made in writing by an authorized representative of the Seller. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

Quotations

Written quotations are valid for 30 days from its date unless otherwise stated in the quotation or terminated sooner by notice.

Verbal quotations, unless accepted, expire the same day they are made.

A complete signed order must be received by Seller within 20 calendar days of notification of award, otherwise the price and shipment will be subject to re-negotiation.

Termination and Cancellation

Products

Any order may be terminated by the Buyer only by written notice and upon payment of reasonable termination charges, including all progress billings and all incurred direct manufacturing costs.

Services

Any order may be terminated by the Buyer only by written notice and upon payment of reasonable termination charges including all costs plus profit.

Seller shall have the right to cancel any order at any time by written notice if Buyer breaches any of the terms hereof, becomes the subject of any proceeding under state or federal law for the relief of debtors, or otherwise becomes insolvent or bankrupt, generally does not pay its debts as they become due or makes an assignment for the benefit of creditors.

Prices

All prices are subject to change without notice. In the event of a price change, the effective date of the change will be the date of the new price or discount sheet, letter or telegram. All quotations made or orders accepted after the effective date will be on the new basis. For existing orders, the price of the unshipped portion of an order will be the price in effect at time of shipment.

Price Policy – Products and Services

When prices are quoted as firm for quoted shipment, they are firm provided the following conditions are met:

1. The order is released with complete engineering details.
2. Shipment of Products are made, and Services purchased are provided within the quoted lead time.
3. When drawings for approval are required for any Products, the drawings applicable to those Products must be returned within 30* calendar days from the date of the original mailing of the drawings by Seller. The return drawings must be released for manufacture and shipment and must be marked "APPROVED" or "APPROVED AS NOTED." Drawing re-submittals which are required for any other reason than to correct Seller errors will not extend the 30-day period.

* 60 days for orders through contractors to allow time for their review and approval before and after transmitting them to their customers.

If the Buyer initiates or in any way causes delays in shipment, provision of Services or return of approval drawings beyond the periods stated above, the price of the Products or Services will be increased 1% per month or fraction thereof up to a maximum of 18 months from the date of the Buyer's order. For delays resulting in shipment or provision of Services beyond 18 months from the date of the Buyer's order, the price must be renegotiated.

Price Policy – BLS

Refer to Price Policy 25-050.

Minimum Billing

Orders less than \$1,000 will be assessed a shipping and handling charge of 5% of the price of the order, with a minimum charge of \$25.00 unless noted differently on Product discount sheets.

Taxes

The price does not include any taxes. Buyer shall be responsible for the payment of all taxes applicable to, or arising from, the transaction, the Products, its sale, value or use, or any Services performed in connection therewith regardless of the person or entity actually taxed.

TERMS OF PAYMENT

Products

Acceptance of all orders is subject to the Buyer meeting Seller's credit requirements. Terms of payment are subject to change for failure to meet such requirements. Seller reserves the right at any time to demand full or partial payment before proceeding with a contract of sale as a result of changes in the financial condition of the Buyer. Terms of Payment are either Net 30 days from the date of invoice of each shipment or carry a cash discount based on Product type. Specific payment terms for Products are outlined in the applicable Product discount schedules.

Services

Terms of payment are net within 30 days from date of invoice for orders amounting to less than \$50,000.00.



Terms of payment for orders exceeding \$50,000.00 shall be made according to the following:

1. Twenty percent (20%) of order value with the purchase order payable 30 days from date of invoice.
2. Eighty percent (80%) of order value in equal monthly payments over the performance period payable 30 days from date of invoice.

Except for work performed (i) under a firm fixed price basis or (ii) pursuant to terms of a previously priced existing contract between Seller and Buyer, invoices for work performed by Seller shall have added and noted on each invoice a charge of 3% (over and above the price of the work) which is related to Seller compliance with present and proposed environmental, health and safety regulations associated with prescribed requirements covering hazardous materials management and employee training, communications, personal protective equipment, documentation and record keeping associated therewith.

Adequate Assurances

If, in the judgment of Seller, the financial condition of the Buyer, at any time during the period of the contract, does not justify the terms of payment specified, Seller may require full or partial payment in advance.

Delayed Payment

If payments are not made in accordance with these terms, a service charge will, without prejudice to the right of Seller to immediate payment, be added in an amount equal to the lower of 1.5% per month or fraction thereof or the highest legal rate on the unpaid balance.

Freight

Freight policy will be listed on the Product discount sheets, or at option of Seller one of the following freight terms will be quoted.

F.O.B. – P/S – Frt./Ppd. and Invoiced
Products are sold F.O.B. point of shipment freight prepaid and invoiced to the Buyer.

F.O.B. – P/S – Frt./Ppd. and Allowed
Products sold are delivered F.O.B. point of shipment, freight prepaid and included in the price.

F.O.B. Destination – Frt./Ppd. and Allowed
At Buyer's option, Seller will deliver the Products F.O.B. destination freight prepaid and 2% will be added to the net price. The term "freight prepaid" means that freight charges will be prepaid to the accessible common carrier delivery point nearest the destination for shipments within the United States and Puerto Rico unless noted

differently on the Product discount sheets. For any other destination, contact Seller's representative.

Shipment and Routing

Seller shall select the point of origin of shipment, the method of transportation, the type of carrier equipment and the routing of the shipment.

If the Buyer specifies a special method of transportation, type of carrier equipment, routing or delivery requirement, Buyer shall pay all special freight and handling charges.

When freight is included in the price, no allowance will be made in lieu of transportation if the Buyer accepts shipment at factory, warehouse or freight station or otherwise supplies its own transportation.

Risk of Loss

Risk of loss or damage to the Products shall pass to Buyer at the F.O.B. point.

Concealed Damage

Except in the event of F.O.B. destination shipments, Seller will not participate in any settlement of claims for concealed damage.

When shipment has been made on an F.O.B. destination basis, the Buyer must unpack immediately and, if damage is discovered, must:

1. Not move the Products from the point of examination.
2. Retain shipping container and packing material.
3. Notify the carrier in writing of any apparent damage.
4. Notify Seller representative within 72 hours of delivery.
5. Send Seller a copy of the carrier's inspection report.

Witness Tests/Customer Inspection

Standard factory tests may be witnessed by the Buyer at Seller's factory for an additional charge calculated at the rate of \$2,500 per day (not to exceed eight (8) hours) per Product type. Buyer may final inspect Products at the Seller's factory for \$500 per day per Product type.

Witness tests will add one (1) week to the scheduled shipping date. Seller will notify Buyer fourteen (14) calendar days prior to scheduled witness testing or inspection. In the event Buyer is unable to attend, the Parties shall mutually agree on a rescheduled date. However, Seller reserves the right to deem the witness tests waived with the right to ship and invoice Products.

Held Orders

For any order held, delayed or rescheduled at the request of the Buyer, Seller may, at its sole option, (1) require payment to be based

on any reasonable basis, including but not limited to the contract price, and any additional expenses, or cost resulting from such a delay; (2) store Products at the sole cost and risk of loss of the Buyer; and/or (3) charge to the Buyer those prices under the applicable price policy. Payment for such price, expenses and costs, in any such event, shall be due by Buyer within thirty (30) days from date of Seller's invoice. Any order so held delayed or rescheduled beyond six (6) months will be treated as a Buyer termination.

Drawing Approval

Seller will design the Products in line with, in Seller's judgment, good commercial practice. If at drawing approval Buyer makes changes outside of the design as covered in their specifications, Seller will then be paid reasonable charges and allowed a commensurate delay in shipping date based on the changes made.

Drawing Re-Submittal

When Seller agrees to do so in its quotation, Seller shall provide Buyer with the first set of factory customer approval drawing(s) at Seller's expense. The customer approval drawing(s) will be delivered at the quoted delivery date. If Buyer requests drawing changes or additions after the initial factory customer approval drawing(s) have been submitted by Seller, the Seller, at its option, may assess Buyer drawing charges. Factory customer approval drawing changes required due to misinterpretation by Seller will be at Seller's expense. Approval drawings generated by Bid-Manager are excluded from this provision.

WARRANTY

Warranty For Products

Seller warrants that the Products manufactured by it will conform to Seller's applicable specifications and be free from failure due to defects in workmanship and material for one (1) year from the date of installation of the Product or eighteen (18) months from the date of shipment of the Product, whichever occurs first.

In the event any Product fails to comply with the foregoing warranty Seller will, at its option, either (a) repair or replace the defective Product, or defective part or component thereof, F.O.B. Seller's facility freight prepaid, or (b) credit Buyer for the purchase price of the Product. All warranty claims shall be made in writing.



Seller requires all non-conforming Products be returned at Seller's expense for evaluation unless specifically stated otherwise in writing by Seller.

This warranty does not cover failure or damage due to storage, installation, operation or maintenance not in conformance with Seller's recommendations and industry standard practice or due to accident, misuse, abuse or negligence. This warranty does not cover reimbursement for labor, gaining access, removal, installation, temporary power or any other expenses, which may be incurred in connection with repair or replacement.

This warranty does not apply to equipment not manufactured by Seller. Seller limits itself to extending the same warranty it receives from the supplier.

Extended Warranty for Products
If requested by the Buyer and specifically accepted in writing by Seller, the foregoing standard warranty for Products will be extended from the date of shipment for the period and price indicated below:

24 months – 2% of Contract Price
30 months – 3% of Contract Price
36 months – 4% of Contract Price

Special Warranty (In and Out) for Products

If requested by the Buyer and specifically accepted in writing by Seller, Seller will, during the warranty period for Products, at an additional cost of 2% of the contract price, be responsible for the direct cost of:

1. Removing the Product from the installed location.
2. Transportation to the repair facility and return to the site.
3. Reinstallation on site.

The total liability of Seller for this Special Warranty for Products is limited to 50% of the contract price of the particular Product being repaired and excludes expenses for removing adjacent apparatus, walls, piping, structures, temporary service, etc.

Warranty For Services

Seller warrants that the Services performed by it hereunder will be performed in accordance with generally accepted professional standards.

The Services, which do not so conform, shall be corrected by Seller upon notification in writing by the Buyer within one (1) year after completion of the Services.

Unless otherwise agreed to in writing by Seller, Seller assumes no responsibility with respect to the suitability of the Buyer's, or its customer's, equipment or with respect to any latent defects in equipment not supplied by Seller. This warranty does not cover damage to Buyer's, or its customer's, equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. Buyer will, at its cost, provide Seller with unobstructed access to the defective Services, as well as adequate free working space in the immediate vicinity of the defective Services and such facilities and systems, including, without limitation, docks, cranes and utility disconnects and connects, as may be necessary in order that Seller may perform its warranty obligations. The conducting of any tests shall be mutually agreed upon and Seller shall be notified of, and may be present at, all tests that may be made.

Warranty for Power Systems Studies

Seller warrants that any power systems studies performed by it will conform to generally accepted professional standards. Any portion of the study, which does not so conform, shall be corrected by Seller upon notification in writing by the Buyer within six (6) months after completion of the study. All warranty work shall be performed in a single shift straight time basis Monday through Friday. In the event that the study requires correction of warranty items on an overtime schedule, the premium portion of such overtime shall be for the Buyer's account.

Limitation on Warranties for Products, Services and Power Systems Studies
THE FOREGOING WARRANTIES ARE EXCLUSIVE EXCEPT FOR WARRANTY OF TITLE. SELLER DISCLAIMS ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

CORRECTION OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE SELLER'S SOLE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR FAILURE OF SELLER TO MEET ITS WARRANTY OBLIGATIONS, WHETHER CLAIMS OF THE BUYER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE.

Asbestos

Federal Law requires that building or facility owners identify the presence, location and quantity of asbestos containing material (hereinafter "ACM") at work sites. Seller is not licensed to abate ACM. Accordingly, for any contract which includes the provision of Services, prior to (i) commencement of work at any site under a specific Purchase Order, (ii) a change in the work scope of any Purchase Order, the Buyer will certify that the work area associated with the Seller's scope of work includes the handling of Class II ACM, including but not limited to generator wedges and high temperature gaskets which include asbestos materials. The Buyer shall, at its expense, conduct abatement should the removal, handling, modification or reinstallation, or some or all of them, of said Class II ACM be likely to generate airborne asbestos fibers; and should such abatement affect the cost or time of performance of the work then Seller shall be entitled to an equitable adjustment in the schedule, price and other pertinent affected provisions of the contract.

Compliance with Nuclear Regulation

Seller's Products are sold as commercial grade Products not intended for application in facilities or activities licensed by the United States Nuclear Regulatory Commission for atomic purposes. Further certification will be required for use of the Products in any safety-related application in any nuclear facility licensed by the U.S. Nuclear Regulatory Commission.

Returning Products

Authorization and shipping instructions for the return of any Products must be obtained from Seller before returning the Products. When return is occasioned due to Seller error, full credit including all transportation charges will be allowed.

Product Notices

Buyer shall provide the user (including its employees) of the Products with all Seller supplied Product notices, warnings, instructions, recommendations and similar materials.

Force Majeure

Seller shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the Buyer, riot, embargo, fuel or energy shortage, car shortage, wrecks or delays in transportation, or due to any other cause beyond Seller's reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Selling Policy 25-000
 November 1, 2008
 Page 4



Liquidated Damages

Contracts which include liquidated damage clauses for failure to meet shipping or job completion promises are not acceptable or binding on Seller, unless such clauses are specifically accepted in writing by an authorized representative of the Seller at its headquarters office.

Patent Infringement

Seller will defend or, at its option, settle any suit or proceeding brought against Buyer, or Buyer's customers, to the extent it is based upon a claim that any Product or part thereof, manufactured by Seller or its subsidiaries and furnished hereunder, infringes any United States patent, other than a claim of infringement based upon use of a Product or part thereof in a process, provided Seller is notified in reasonable time and given authority, information and assistance (at Seller's expense) for the defense of same. Seller shall pay all legal and court costs and expenses and court-assessed damages awarded therein against Buyer resulting from or incident to such suit or proceeding. In addition to the foregoing, if at any time Seller determines there is a substantial question of infringement of any United States patent, and the use of such Product is or may be enjoined, Seller may, at its option and expense: either (a) procure for Buyer the right to continue using and selling the Product; (b) replace the Product with non-infringing apparatus; (c) modify the Product so it becomes non-infringing; or (d) as a last resort, remove the Product and refund the purchase price, equitably adjusted for use and obsolescence. In no case does Seller agree to pay any recovery based upon its Buyer's savings or profit through use of Seller's Products whether the use be special or ordinary. The foregoing states the entire liability of Seller for patent infringement.

The preceding paragraph does not apply to any claim of infringement based upon: (a) any modification made to a Product other than by Seller; (b) any design and/or specifications of Buyer to which a Product was manufactured; or (c) the use or combination of Product with other products where the Product does not itself infringe. As to the above-identified claim situations where the preceding paragraph does not apply, Buyer shall defend and hold Seller harmless in the same manner and to the extent as Seller's obligations described in the preceding paragraph. Buyer shall be responsible for obtaining (at Buyer's expense) all license rights required for Seller to be able to use software products in the possession of Buyer where such use is required in order to perform any Service for Buyer.

With respect to a Product or part thereof not manufactured by Seller or its subsidiaries, Seller will attempt to obtain for Buyer, from the supplier(s), the patent indemnification protection normally provided by the supplier(s) to customers.

Compliance with OSHA

Seller offers no warranty and makes no representation that its Products comply with the provisions or standards of the Occupational Safety and Health Act of 1970, or any regulation issued thereunder. In no event shall Seller be liable for any loss, damage, fines, penalty or expenses arising under said Act.

Limitation of Liability

THE REMEDIES OF THE BUYER SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS HEREUNDER.

NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD HEREUNDER, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, COST OF CAPITAL, CLAIMS OF CUSTOMERS OF THE BUYER OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF WHETHER SUCH POTENTIAL DAMAGES ARE FORESEEABLE OR IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL CUMULATIVE LIABILITY OF SELLER ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED.

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