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**HWD DC Breaker Retrofill**

**Powell Opportunity Number: 259159**

Dear Mr. Floyd Bailey,

Date: **May 21, 2024**

Powell has a long history in providing custom electrical equipment and solutions and would like to continue the relationship/tradition. Enclosed you will find a proposal for HWD DC Breaker Retrofill. Please let us know if you have any questions. Proposal was based on bid documents listed under reference documents.

Please note that this retrofill has been completed successfully at another transit agency with the same issue of an obsolete and aging breaker install base. It's critical that Powell and NORTA collaborate when it comes to the field work of the retrofill which we can do during the manufacturing phase of the project to ensure success for the installation and operation phases.

Thank you for the opportunity to earn your business.

Sincerely,



Joey Nelson  
National Service Sales Executive

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Cc: Matt Zeedyk

## Table of Contents

1	PROPOSAL REVISIONS .....	3
1.1	Proposal Attachments .....	3
2	REFERENCE DOCUMENTS .....	3
3	BILLS OF MATERIAL .....	4
3.1	HWD DC Breaker Retrofill .....	4
3.1.1	HWD DC Breaker Retrofill .....	5
3.1.2	Installation Drawing Package .....	5
3.1.3	Field Technical Support .....	5
3.1.4	O&M Manual Amendment .....	5
3.1.5	Installation and Commissioning.....	5
3.1.6	Spare DC Breaker .....	5
3.1.7	Training.....	5
3.2	Options .....	6
3.2.1	Extended Warranty .....	6
3.2.2	Freight-FCA .....	6
3.2.3	Factory Acceptance Testing (FAT), Demonstration.....	6
3.2.4	<del>Spare DC Breaker</del> .....	6
3.2.5	Spare CBCM.....	6
3.2.6	<del>Training</del> .....	6
4	WARRANTY .....	7
5	PAYMENT TERMS .....	7
6	SCHEDULE.....	8
7	PRICING.....	9
7.1	Base Bid .....	9
7.2	Options .....	9
8	CLARIFICATIONS, DEVIATIONS, AND EXCEPTIONS.....	10
9	POWELL VALUE ADDED FEATURES.....	11
10	STANDARD CONDITIONS OF SALE .....	12

## 1 PROPOSAL REVISIONS

Date	Revision	Reason
May 15, 2024	00	Initial Proposal
May 21, 2024	01	Revised Base Bid

### 1.1 Proposal Attachments

- A. Powell Clarification Log, SAE-FO-0037, Rev00
- B. Powell Services Proposal, 259180-R1-QOT
- C. Powell Services Clarification Log, 259180-R1-SAE-FO-0033
- D. HWD Breaker Obsolescence Letter

## 2 REFERENCE DOCUMENTS

For HWD DC Breaker Retrofill Powell utilized the following information to bid:

**Drawings:**

Powell Project Drawings: G6291 (Calliope, Dublin, Valance)

**Specification Sections:**

None

All of the addenda shown below were reviewed as applicable to Powell's scope.

**Addenda:**

None

### 3 BILLS OF MATERIAL

#### 3.1 HWD DC Breaker Retrofill

Equipment & Services Summary (More detail to follow):

ITEM	QTY	DESCRIPTION
3.1.1	6	HWD DC Breaker Retrofill: 2-4000A Feeder Breakers at Calliope, Dublin, Valance
3.1.2	1	Installation Drawing Package
3.1.3	1	Field Technical Support
3.1.4	1	O&M Manual Amendment
3.1.5	1	Field Services: Site Walk, Demo, Installation, SAT (Phase 1 and Phase 2), Energization Assistance (Phase 3), Final Operation Checks (Phase 4)
3.1.6	3	Spare DC Feeder Breaker
3.1.7	1	Training

### 3.1.1 HWD DC Breaker Retrofill

Retrofill Feeder Breaker BOM (Typical)	
Qty	Standard
1	Cell
1	Vent Chamber
1	Vent Chamber Adapter
2	Control/Aux Relay
2	Control/Aux Relay Socket
1	Misc Bus
1	Miniature Circuit Breaker 1-Pole
2	Miniature Circuit Breaker 2-Pole
1	Miscellaneous (Hardware, General cell parts)
53	Modular Terminal Blocks
3	Modular Terminal Block End Plate
3	Modular Terminal Block Marking Strip
2	Strip Heaters (2 per cell std)
4	1" Standoff Insulator (2 per Strip Heater)
1	TOC 8 stage
1	Umbilical Assembly SIS (STD)
1	NDC BREAKER, 800V,4000A

### 3.1.2 Installation Drawing Package

Set of drawings for each site that depict the changes needing to be made and the final configuration once changes have been implemented. These drawings will be used for the installation and represent the AsBuilt status.

### 3.1.3 Field Technical Support

Up to one week of remote technical support during field activities from the North Canton, OH office.

### 3.1.4 O&M Manual Amendment

Standard Instruction Manuals for the NDC DC Breaker to be incorporated into the existing O&M Manuals.

### 3.1.5 Installation and Commissioning

See Attachments B and C.

### 3.1.6 Spare DC Breaker

Three spare 4000A DC Feeder Breakers.

### 3.1.7 Training

See Attachments B and C.

## 3.2 Options

### Equipment & Services Summary (More detail to follow):

ITEM	QTY	DESCRIPTION
3.2.1	1	Extended Warranty, Six Months
3.2.2	1	Freight-FCA Factory (Prepay and Add, Cost Plus 20%)
3.2.3	1	FAT, Demonstration
3.2.4	0	<del>Spare DC Feeder Breaker</del>
3.2.5	1	Spare CBCM
3.2.6	0	<del>Training</del>

#### 3.2.1 Extended Warranty

Six months of extended warranty. This can be added at the time of purchase in increments required by the customer up to total (Standard and Extended) warranty duration of five years.

#### 3.2.2 Freight-FCA

Freight costs are NOT included. Shipment preparation only is provided. A good faith estimate can be provided upon request. Where agreed to Powell will facilitate shipment to site (to gate) in a Prepay and Add arrangement, invoicing at Cost Plus 20%.

#### 3.2.3 Factory Acceptance Testing (FAT), Demonstration

One (1) day at Powell North Canton Facility for up to five project representatives. Demonstration of NDC Breaker and inspection of Retrofill equipment.

#### 3.2.4 ~~Spare DC Breaker~~

#### 3.2.5 Spare CBCM

One spare Circuit Breaker Control Module (CBCM).

#### 3.2.6 ~~Training~~

## 4 WARRANTY

### Standard Warranty (No Additional Cost)

Powell's standard warranty is included in the lump sum bid for this proposal. Powell's standard warranty is 18 months from shipment or 12 months from energization (whichever comes first).

Note: Extended Warranty can be offered upon request.

## 5 PAYMENT TERMS

Milestone	Payment Due
Order Acceptance	20%
Approval Drawing Submittal	25%
Release to Manufacture	35%
Shipment	20%

**Payments are NET 30 from date of invoice. Invoices are subject to a charge of 1.5% per month until payment is received.**

## 6 SCHEDULE

<b><u>Estimated Schedule - NORTA HWD Retrofill (6VS)</u></b>			
<b>Milestone</b>	<b>Weeks to Complete</b>	<b>Time Totalled</b>	<b>Date Complete</b>
Purchase Order Accepted	0	0 days	7/15/2024
Technical Review	3	3 weeks	8/5/2024
Drawings for Approval, Cycle 1	20	24 weeks and 4 days	1/3/2025
Drawings out for Approval (Customer Review), Cycle 1	4	28 weeks and 4 days	1/31/2025
Review and Incorporate Comments, Cycle 1	6	34 weeks and 4 days	3/14/2025
Shop Drawings	6	40 weeks and 4 days	4/25/2025
Production Start/Receipt of Long Lead	24	65 weeks and 2 days	10/15/2025
Production	10	77 weeks	1/5/2026
Internal Test	1	78 weeks	1/12/2026
Factory Acceptance Test (FAT)	1	79 weeks	1/19/2026
Shipment Preparation	1	80 weeks	1/26/2026
Warranty Trigger (Shipment)	TBD	TBD	1/26/2026
Warranty Expiration (Standard Warranty)	TBD	TBD	7/20/2027
<p>The above schedule is based on an assumed Purchase Order acceptance date. In the event of a different date, the rest of the schedule will be affected accordingly.</p> <p>Each working week is five working days long. Please note that Powell holidays do not count as working days. Working days are Monday through Friday 8:00AM to 5:00PM EST. Schedule and Pricing is based on quantity of review cycles within the number of weeks defined above. The above schedule includes time added for Powell holidays.</p> <p>Please note that dependencies drive this schedule. Powell will not be held responsible for delays related to late return of Approval Drawings/Documents, failure to provide timely responses to RFIs, or schedule impacts related to customer requests for changes.</p> <p>Schedule/s in this proposal are estimated based on the information provided and evaluated considering timing of project, backlog, and current lead times. Project schedule/s will be provided as tentative at time of receipt of customer order. Final Schedules to be confirmed after RTM documents have been approved and returned, any changes incorporated, and current factory loading has been evaluated. Project PM will contact customer to address any concerns over firm delivery dates and discuss any possible changes required.</p> <p>Bus Duct: Where bus duct is included in the Powell scope the approval documents for bus duct will be provided only after the associated equipment designs have been approved. This is to avoid unnecessary revisions to the submittals due to incomplete information. Ratings information can be provided in advance of design drawings.</p>			



## 7 PRICING

### 7.1 Base Bid

Item/s	Description	Price Each	Quantity	Extended Price
3.1.1-3.1.4	NDC Breaker Retrofill (HWD) Equipment	\$90,219	6	\$541,314
3.1.5	Field Service Scope See Attachment B.	\$366,007	1	\$366,007
3.1.6	Spare DC Feeder Breaker	\$35,168	3	\$105,505
3.1.7	Training	\$5,299	1	\$5,299
			<b>Total</b>	<b>\$1,018,125</b>

### 7.2 Options

Item	Description	Price Each	Quantity	Extended Price
3.2.1	Extended Warranty (Six Months)	\$5,465	1	\$5,465
3.2.2	Freight-FCA Factory (Prepay and Add, Cost Plus 20%) <b>Estimate Only</b>	\$17,365	1	\$17,365
3.2.3	FAT, Demonstration	\$3,625	1	\$3,625
3.2.4	Removed			
3.2.5	Spare CBCM	\$7,450	1	\$7,450

## 8 CLARIFICATIONS, DEVIATIONS, AND EXCEPTIONS

**Clarifications, Deviations, and Exceptions:** Commercial and technical clarifications, deviations, and exceptions will be detailed in either

1. Powell's standard Clarification Log (SAE-FO-0037) or
2. Customer supplied Clarification Log which was provided with the RFP/RFQ.
3. Note: The applicable Clarification Log will accompany this proposal as an attachment and shall be included as a part of any resulting contract or purchase order.

## 9 POWELL VALUE ADDED FEATURES

### **BriteSpot™ Thermal Monitoring**

**Ask Powell about this amazing thermal monitoring technology. No more IR cameras, real time temperature monitoring of cable connections and bus joints. Now you can monitor the main bus and other live parts without exposing personnel. The future of thermal monitoring is here.**

Each year, thousands of dollars are spent for electrical equipment downtime and repair expenses are spent due to electrical hot spots. Because electrical currents generate heat, temperature monitoring has become an efficient way to predict potential equipment failure. The BriteSpot Thermal Monitoring Kit is a fiber-optic based temperature system, which is a most effective solution for accurate and consistent recording of electrical equipment temperatures. When mounted on bus bars, splices, circuit breaker disconnects or cable connections, you shall know immediately if thermal issues are rising. With this field proven fiber-optic technology, temperatures are logged 24 hours a day, 7 days a week. Please contact us for more information.

### **EcoVisor™ Environmental Monitor**

**Ask Powell about this technology that will keep a close eye on environmental conditions of your switchgear.**

Ambient environmental conditions are major factors associated with the safe operation and long duration of your electrical assets. In fact, non-optimal environmental conditions can often be the triggers for Partial Discharge issues and tracking failures. Although often not monitored, these parameters are critical to ensuring your investment is protected.

To provide visibility on this, Powell has developed the EcoVisor™ system which provides continuous (24/7) real-time monitoring of temperature, relative humidity and settled dust contaminants. If any abnormality is detected, EcoVisor™ will alert you so that proactive remedial efforts can be taken to avoid problems in the long run.

## 10 STANDARD CONDITIONS OF SALE

Sale of any of the equipment or services described or referred to in any quotation at the quoted prices is expressly conditioned upon the terms and conditions set forth below. Any purchase order for or any statement of intent to purchase any such equipment or services, or any direction to proceed with engineering, procurement, manufacture or shipment, shall constitute assent to these terms and conditions and a representation that the Purchaser is solvent. Powell Electrical Systems, Inc. (the "Company") will accept orders submitted on the Purchaser's purchase order form or other communication containing terms or conditions in addition to, different from or inconsistent with the terms and conditions contained herein only upon the condition that together with the price and payment information, the identification of the equipment or services involved and any technical specifications for the equipment agreed upon by the Company, the terms and conditions contained herein shall nevertheless be the sole commercial terms and conditions of the agreement between the parties. The Company objects to and rejects any inconsistent, additional or different terms or conditions set forth in any purchase order or other communication from the Purchaser and those additional, different and inconsistent terms shall not be included in any agreement between the parties or binding on Company unless expressly and specifically agreed to in writing by a duly authorized representative of the Company.

### WARRANTY

The Company warrants to the Purchaser that Purchaser will have good title to the equipment delivered hereunder, that the equipment to be delivered hereunder is new, unless otherwise stated, and that subject to the conditions below, the equipment will be free from defects in material or workmanship and will conform to specifications as separately approved in writing by Company. The Company warrants to the Purchaser that services, if any, will be performed in a good and workmanlike manner.

The warranty of performance, if any, and against defects in equipment and/or for services shall apply only to issues for which the Company receives written notice of during the applicable warranty period that appear during proper operation in normal use and service and which are due to causes other than those excluded below. For equipment that is not installed by the Company, this warranty period is eighteen (18) months from the date of shipment by the Company or twelve (12) months from first energization, whichever comes first. For equipment installed by the Company and/or service work, if any, this warranty period is twelve (12) months from the completion of installation or the services, as applicable, provided same is not unreasonably delayed by the Purchaser. The date and conditions of any tests shall be mutually agreed upon by Company and Purchaser.

Provided that the Company has timely received written notice of a valid warranty claim, the Company shall thereupon correct any defect or remedy any performance failure, either (at its option) by repairing any defective or damaged parts of the equipment at the Company plant or at the location of the equipment, or by making available at the Company's plant necessary repaired or replacement parts. The Purchaser shall be responsible for providing "free and clear" access to the affected portion of the equipment and any required costs for shipping the equipment or the parts to the Company plant for all Company corrective work. The liability of the Company under this warranty (except as to title), or for any loss or damage to the equipment whether the claim is based on contract or tort (including negligence), shall not in any case exceed the cost of correcting defects in the equipment and for services the Company's cost of reperforming the services, as herein provided and upon the expiration of the warranty period all such liability shall terminate.

These warranties and remedies are applicable only to the extent Purchaser's receipt, handling, storage, installation, testing, operation and maintenance, including tasks incident thereto, of the equipment are in accordance with the recommendations of the Company; and, such equipment shall not have been operated in excess of limitations specified by Company and not have been subjected to accident, alteration, abuse or misuse. Company expressly excludes any warranty for defect or failure of performance caused by erosion, corrosion or normal wear and tear. With respect to equipment or parts delivered under the agreement, Purchaser agrees to accept responsibility for (i) their selection to achieve Purchaser's intended results, (ii) their use of the item and their non-use of any feature thereof, (iii) the results obtained therefrom and (iv) the selection of, use of and results obtained from any equipment, programs or services not provided by Company and used in connection with items delivered hereunder.

**THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY (EXCEPT AS TO TITLE). THE COMPANY DISCLAIMS AND MAKES NO OTHER WARRANTIES TO PURCHASER, PURCHASER'S CUSTOMERS OR ANY OTHER PERSON OR ENTITY REGARDING THE EQUIPMENT, WORK, GOODS, ENGINEERING AND DESIGN SERVICES, FIELD INSTALLATION SERVICES OR ANY OTHER GOODS OR SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS AND EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION: (1) THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, PERFORMANCE, SUITABILITY AND THE ABSENCE OF REDHIBITORY DEFECTS; (2) ANY WARRANTIES RELATING TO PURCHASER-SPECIFIED THIRD-PARTY PARTS,**

**COMPONENTS, PRODUCTS, SOFTWARE OR SERVICES; (3) ANY WARRANTIES RELATING TO LATENT DEFECT(S) AND/OR (4) ANY WARRANTIES THAT THE SERVICES, FIRMWARE OR SOFTWARE, IF ANY, WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR.**

### INTELLECTUAL PROPERTY

Except as set forth below, the Company shall defend any suit or proceeding brought against the Purchaser to the extent based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Company's expense) for the defense of same, and the Company shall pay all damages and costs awarded therein against the Purchaser. In case said equipment, or any part thereof, is in such suit held to constitute infringement and the use of said equipment or parts is enjoined, the Company shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said equipment or part; or replace same with non-infringing equipment; or modify it so it becomes non-infringing; or remove said equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Company for patent infringement by said equipment or any part thereof.

The preceding paragraph shall not apply to any equipment or part thereof provided by the Purchaser or manufactured according to the Purchaser furnished or specified design and/or third party parts or goods to be incorporated into the Equipment by Company. As to any such design, product, part, or use in such combination, the Company assumes no liability whatsoever for patent infringement and the Purchaser shall indemnify, defend, and hold Company harmless against any damages, expenses, costs, reasonable attorney's fees, or losses resulting from any legal action or claim made against Company, either

severally or jointly with Purchaser, or any suit or proceeding based thereon, for infringement (either direct or contributory) of patents, trademarks, or for unfair competition or misappropriation of trade secrets based upon or arising from (1) compliance with Purchaser's designs, specifications, or instructions; (2) the use of any item furnished hereunder, in combination with goods not supplied by Company, or (3) in connection with a manufacturing or other process utilizing any item, or part thereof.

Equipment or any parts thereof sold hereunder may be protected by intellectual property rights of the Company, including but not limited to, rights under issued and pending patents, mask work rights, copyright rights, trademark rights and trade secret rights. Neither the sale of items or any parts thereof hereunder nor the provision by Company of any supporting or related documentation, technical information or advice shall confer on Purchaser any license, express or implied, under any intellectual property rights of Company covering or relating to (1) apparatus or circuits in which the items or parts thereof may be used; (2) a process, machine, use or application in connection with which the items or parts thereof may be used; (3) the process of their manufacture; or (4) a combination in which the items or parts hereof may be used. **COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT THE USE OF ITS EQUIPMENT OR PRODUCTS WILL NOT INFRINGE ITS INTELLECTUAL PROPERTY RIGHTS OR THE RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY PARTICULAR USE OR APPLICATION AND SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF ANY SUCH USE OR APPLICATION, INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL OR INCIDENTAL DAMAGES.**

#### **DELIVERY**

Shipping dates are approximate and are based upon prompt receipt of all payments due and necessary information from the Purchaser. Unless otherwise specified by the Company and at additional cost to the Purchaser, delivery will be made in accordance with Incoterms 2010 FCA Company's facility. Risks of loss or damage and title shall pass to the Purchaser upon delivery.

The Company shall not be liable for delays in delivery or in performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control, or (2) acts of God, acts or inactions of the Purchaser, acts of civil or military authority, priorities, fires, strikes or other labor disturbances, floods, storms, severe weather events, epidemics, war, riot, delays in transportation, or railcar or vessel shortages, or (3) inability on account of causes beyond its reasonable control to obtain necessary labor, materials, components, or manufacturing facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay plus a reasonable number of days to remobilize.

#### **PAYMENTS**

Pro rata payments shall become due as shipments are made and/or agreed milestones are reached. If shipments are delayed by the Purchaser, payments based on shipments shall become due on the date when the Company is prepared to make shipment. If the work to be performed hereunder is delayed by the Purchaser, payments shall be made based on the purchase price and the percentage of completion. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser.

If the financial condition of the Purchaser at any time does not, in the judgment of the Company, justify continuance of the work to be performed by the Company hereunder on the terms of payment agreed upon, the Company may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges as set forth below. In the event of bankruptcy or insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, the Company shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges as set forth below. The rights of the Company under this paragraph are cumulative and in addition to all rights available to the Company at law or in equity.

#### **SALES AND SIMILAR TAXES**

The Company's prices do not include sales, use, excise or similar taxes. Purchaser shall be responsible for all sales, use, excise and similar taxes and shall promptly reimburse Company for any such taxes it is required to pay or advance; provided, however, Company's invoices shall separately itemize all sales and use taxes included in any amounts due from Purchaser, and Company will not collect or remit such taxes (to the extent Company is legally able to do) if Purchaser presents Company with valid exemption or direct payment certificates or other appropriate documentation evidencing that Purchaser will itself pay taxes directly to the appropriate authority(ies) or its exempt from payment of taxes.

#### **DISCLOSURE OF INFORMATION**

Any information, suggestions or ideas transmitted by Purchaser to the Company in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative of the Company.

Purchaser agrees not to use or disclose drawings, specifications, technical information or other data furnished by Company and identified by Company as confidential or proprietary data without the prior written consent of Company. Purchaser agrees and acknowledges that any improvement or modification to such confidential or proprietary data shall be the sole property of Company, regardless of whether any such improvement or modification was the creation of Purchaser. Purchaser further agrees to use all appropriate copyright and proprietary notices on all items delivered hereunder regardless of their intended use. Purchaser recognizes that such proprietary data is unique and consents to the remedy of injunction in addition to damages for violation of these provisions. Nothing in this clause, however, shall restrict

Purchaser's right to use or disclose drawings, specifications, technical information or other data which are to become generally known to the public without the breach of this clause by Purchaser, or are rightfully obtained from other sources.

#### **CANCELLATION**

The Purchaser may only cancel this order for convenience upon ten (10) days written notice, and upon payment by Purchaser to Company of the cancellation charges specified in the Company's quotation or proposal. If no cancellation charges are specified in the Company's quotation or proposal, then the Purchaser shall pay reasonable and proper cancellation charges, which shall include, without limitation, cancellation charges the Company incurs to its suppliers and subcontractors, costs of materials incurred through to the date of cancellation, charges for labor for work done through the date of cancellation (both of which shall include work in progress), and reasonable absorbed overhead and profit on all such materials and labor.

**INDEMNITY**

COMPANY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND PURCHASER, AT ITS OWN EXPENSE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND COMPANY FROM AND AGAINST, ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY (I) THE FAILURE OR DEFECTIVENESS OF ANY ITEM FURNISHED BY COMPANY HEREUNDER, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF COMPANY, OR (II) THE USE OR MISUSE OR NONUSE BY PURCHASER, PURCHASER'S EMPLOYEES, PURCHASER'S CUSTOMERS OR OTHERS OF ANY ITEM OR ANY FEATURE THEREOF FURNISHED BY COMPANY HEREUNDER. THESE PROVISIONS ARE INTENDED TO INDEMNIFY THE COMPANY AGAINST THE RESULTS OF ITS OWN NEGLIGENCE.

#### **LIMITATION OF LIABILITY**

Unless otherwise agreed in writing by a duly authorized representative of the Company, products sold hereunder are not intended for use in connection with any nuclear facility or activity. If so used, the Company disclaims any liability for any nuclear damage, injury or contamination, and Purchaser shall indemnify the Company against any such liability, whether as a result of breach of the contract, warranty, tort (including negligence) or otherwise.

**IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL THE COMPANY OR ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE OR PENAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED FACILITIES, DAMAGE TO ANY FACILITIES, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN-TIME COSTS, OR CLAIMS OF PURCHASER'S CUSTOMERS FOR SUCH DAMAGES.**

Any additional or different terms specifically relating to or addressing the subject matter of this paragraph shall be deemed material alterations within the meaning of Section 2.207(b)(2) of the Texas Business and Commerce Code.

**EXCEPT FOR COMPANY'S OBLIGATION TO DELIVER TO PURCHASER FULL LEGAL TITLE TO AND OWNERSHIP OF ALL OR ANY PORTION OF THE EQUIPMENT AND SERVICES, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL CONDUCT OR STRICT**

**LIABILITY) OR OTHERWISE, SHALL THE COMPANY'S TOTAL AGGREGATE LIABILITY TO PURCHASER FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RESULTING FROM, THIS CONTRACT, OR FROM THE COMPANY'S PERFORMANCE OR BREACH, OR FROM THE EQUIPMENT OR SERVICES FURNISHED HEREUNDER, EXCEED THE PRICE OF THE SPECIFIC EQUIPMENT OR SERVICE WHICH GIVES RISE TO THE CLAIM.**

If the Company furnishes Purchaser with advice or other assistance which concerns any products supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject the Company to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

#### **ANTI-CORRUPTION**

Purchaser acknowledges that the Foreign Corrupt Practices Act of the United States ("FCPA"), the Corruption of Foreign Public Officials Act ("CFPOA") of Canada, and the Bribery Act ("BA") of the United Kingdom will or may apply to transactions conducted under this agreement and agrees to comply with the FCPA, CFPOA and BA and any other applicable anti-bribery and/or anti-corruption rules as required. Purchaser agrees that it will not engage in any of the following activities in connection with this agreement: (A) offer, promise, or give any financial or other advantage to any persons (public or private); (i) in order to induce a person to improperly perform a relevant function or duty, or (ii) to reward a person for such improper activity, or (iii) where the person knows or believes that the acceptance of the advantage is itself an improper performance of a function or duty; or (B) offer, promise, or give any financial or other advantage to a public official, either directly or through a third party intermediary, with the intent to obtain or retain business or an advantage in the conduct of business by either; (i) influencing the official in his/her official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of his/her lawful duties, (iii) securing any improper advantage, or (iv) inducing the official to use his/her influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

Purchaser shall (a) maintain, throughout the duration of dealings between the parties, its own anti-corruption policies and procedures, including without limitation, adequate procedures designed to ensure that the party complies with the FCPA, CFPOA and BA, (b) provide a copy of such policies and procedures to the other party on request, and (c) monitor and enforce such policies and procedures as appropriate.

Purchaser shall maintain true, accurate, and complete accounting books and records relating to all of its activities under this agreement. Purchaser shall provide information, documentation and reasonable assistance to Company to support an inquiry or investigation of a suspected violation of the FCPA, CFPOA and/or BA.

Company may immediately terminate this contract or suspend its performance under this contract if it has reasonable belief that the other party has breached its compliance with these anti-corruption policies.

#### **GENERAL**

The Company represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. **The Company represents that it will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.**

Any assignment of this agreement or any rights hereunder, by the Purchaser (other than to its customer) without written consent of the Company shall be void.

Purchaser agrees that, with respect to the resale or any other disposition of items sold hereunder, Purchaser shall comply fully with the export control laws and regulations of the United States Government and any applicable laws and regulations of any other country including, but not limited to, the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR").

The provisions of this agreement are for the benefit of the parties hereto and not for any other person. No understanding, promise or representation, and no waiver, alteration or modification of any of the provisions hereof, shall be binding upon the Company unless agreed to in writing by an authorized representative of the Company. The invalidity, in whole or part, of any of the provisions in these terms and conditions will not affect the remainder of such paragraph or any other paragraph contained herein.

The purchase order price is based on steel, aluminum, copper and third party material buyout prices in effect on the date of Company's quotation. In the event the prices for any of these materials increases in excess of five percent (5%) from the price for them in effect on the date of quotation, then Company shall be entitled to increase the purchase order price to cover same.

**GOVERNING LAW**

The agreement, including any Purchase Order, sales confirmation, Company quotation, all aspects of the transactions referenced in the Company's invoice to Purchaser, and any dispute related to any the foregoing, shall be governed by, and interpreted in accordance with the laws of the state of Texas (USA) which shall be the applicable law, without regard to its principles of conflict of laws. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

**DISPUTE RESOLUTION**

Any dispute arising out of or related to the agreement shall be brought exclusively in federal or state court within Houston, Harris County, Texas. **EACH PARTY HEREBY IRREVOCABLY CONSENTS TO PERSONAL JURISDICTION IN ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN HOUSTON, HARRIS COUNTY, TEXAS AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE LAWS OF THE STATE OF TEXAS, ANY CLAIM OR OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE, THAT VENUE OR PERSONAL JURISDICTION IS NOT PROPER WITH RESPECT TO ANY SUCH DISPUTE. THIS WAIVER SHALL INCLUDE, BUT IS NOT LIMITED TO, ANY CLAIM THAT SUCH DISPUTE BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

Purchaser agrees that valid service of process of any legal action against it shall be considered in all respects and for all purposes complete and binding on it if copies of all such process are mailed to it at the address appearing on Company's invoice, quotation or sales confirmation by registered mail, return receipt requested.

**WAIVER OF JURY TRIAL**

**EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE ARISING UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND TECHNICAL ISSUES AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.**