

# Terms & Conditions of Sale

## Power Transformers



**1. General.** The terms and conditions contained herein, together with any additional or different terms contained in WEG Proposal, if any, submitted to Purchaser (which Proposal shall control over these terms and conditions to the extent it contains any conflicting terms and conditions) constitute the entire agreement between the parties with respect to this order and supersede all prior communications and agreements. Acceptance by WEG of Purchaser's order, or Purchaser's acceptance of WEG's Proposal is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions which may not be changed or waived except in a writing signed by both parties. Any additional, inconsistent or different terms and conditions contained in Purchaser's purchase order or other documents supplied by Purchaser are hereby expressly rejected. Unless the context otherwise requires, the term "Equipment" as used herein includes all equipment, parts, and accessories sold, and all software and application software licensed to Purchaser under this order. Unless the context otherwise indicates, the term "Services" as used herein shall mean labor, supervision and project engineering services provided under this order.

**2. Prices, Taxes, Customs Duties.** (a) The price does not include any Federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment, its sale, its value or its use, or any services performed in connection herewith. Purchaser agrees to pay or reimburse any such taxes which WEG or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide WEG a copy, acceptable to the relevant governmental authorities of any such certificate or permit. (b) Unless specified to the contrary in writing in the **specific WEG terms and conditions**, WEG's prices herein include customs duties and other importation or exportation fees applicable to sales in North America.

**3. Payment.** (a) Unless specified to the contrary in writing by WEG, payment terms are net cash, payable without offset, by wire transfer, in United States Dollars, 30 days from date of invoice. (b) If, in the judgment of WEG the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, then WEG may require payment in advance, payment security satisfactory to WEG or cancel any outstanding order, whereupon WEG shall be entitled to receive reasonable cancellation charges. (c) If delivery is delayed by Purchaser, payment shall become due on the date WEG gives written notice of readiness to ship. (d) Delays in delivery or non-conformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments. (e) If Purchaser does not pay an invoice when due, Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1.5 % per month or the highest applicable rate allowed by law on all such overdue amounts plus WEG's attorneys' fees and court costs incurred in connection with collection.

**4. Changes.** (a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by WEG and resulting adjustments to affected provisions including price, schedule, and guarantees, mutually agreed in writing prior to implementation of the change. (b) WEG may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to meet any performance guarantees provided for in the Proposal. If Purchaser refuses to approve any such changes, WEG shall be relieved of its obligations to meet such guarantees to the extent to which WEG may be affected by such refusal.

**5. Delivery, Title and Risk of Loss.** (a) Equipment delivered in the continental United States or Canada is delivered Delivery Duty Paid (DDP)- common carrier delivery point nearest to named destination. All shipping terms are Incoterms 2017 unless otherwise indicated in writing in the specific terms and conditions. (b) Where the delivery of Equipment is delayed by Purchaser or by Force Majeure, WEG may deliver the equipment by moving it to storage for the account of Purchaser. (c) Purchaser shall be responsible for providing free and clear access for WEG to deliver Equipment to, and perform field assembly and testing at, named destination. Clear access includes appropriate roads to transport Equipment and cranes alongside the transformer pad with clearance to offload, assemble, and test Equipment free from obstructions, structures, energized lines, or other equipment. Any additional access costs shall be the responsibility of Purchaser. (d) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for WEG's performance hereunder. Claims for shortages or other errors in delivery must be made in writing to WEG within ten (10) days of delivery. (e) Unless specified to the contrary in writing in the **specific WEG terms and conditions**, title to and risk of loss of the Equipment shall pass upon delivery.

**6. Inspection, Testing and Acceptance.** (a) Any inspections by Purchaser of Equipment on WEG's premises shall be scheduled in advance and during normal working hours. (b) When factory acceptance testing is included in the Agreement, WEG shall notify Purchaser when WEG will conduct a standard acceptance test for Purchaser prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of the test, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and authorizes shipment. (c) When on-site acceptance testing is included in the Agreement, a standard WEG on-site acceptance test will be performed by WEG's personnel to

verify that all Equipment supplied hereunder has arrived at site complete, without physical damage, and is ready for use. Completion of the on-site acceptance test constitutes full and final acceptance of the Equipment. (d) If Equipment is not accepted by Purchaser within thirty (30) days after arrival of the Equipment at the site, final acceptance shall be deemed made.

**7. Warranty.** (a) Unless specified to the contrary in writing in the **specific WEG terms and conditions**, WEG warrants the Equipment (excluding software) against defects in material and workmanship for a period expiring on the earlier of twelve (12) months after installation or eighteen (18) months from date of shipment. (b) Services. WEG warrants Services against defects in workmanship for a period of ninety (90) days from the date of completion of such Services. (c) Parts. If applicable to the scope of WEG's work hereunder, WEG further warrants: (i) spare parts and components sold by WEG against defects in material and workmanship for a period of twelve (12) months after shipment and (ii) repaired or refurbished parts repaired by WEG against defects in material and workmanship for a period of ninety (90) days after shipment, unless repaired pursuant to an original Equipment warranty, in which case the repair is warranted for the time remaining of the original warranty period. (d) Remedies. Should any failure to conform with the applicable warranties appear during the specified periods under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained, and if given prompt written notice by Purchaser, WEG shall correct such nonconformity by, at its option, (i) repair or replacement of the nonconforming Equipment or parts thereof, or (ii) refund of the purchase price of the nonconforming Equipment or parts thereof, or (iii) in the case of nonconforming Services, provide equivalent Services at the job site or refund the price therefor. Repairs or replacements pursuant to warranty shall not renew or extend the applicable original warranty period, provided however, that any such repairs or replacement of Equipment or parts thereof shall be warranted for the time remaining of the original warranty period or 30 days, whichever is longer. Purchaser shall be responsible for providing free and clear working access to repair or replace the nonconforming Equipment, including de-energizing and re-energizing the Equipment and any necessary disassembly and re-assembly of other equipment or structures, is for the Purchaser's risk and expense; whereas transportation only to and from repair or factory facility is for the Seller's risk and expense. (e) These warranties shall not apply to any Equipment or parts thereof which (i) have been improperly repaired or altered; (ii) have been subjected to misuse, negligence or accident; (iii) have been used in a manner contrary to WEG's instructions; (iv) are comprised of materials provided or design stipulated by Purchaser; (v) are used equipment; or (vi) result from normal wear and tear. (f) **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED, AND WEG HEREBY DISCLAIMS ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.** (g) Correction of nonconformities in the manner and for the period of time provided above shall be Purchaser's sole and exclusive remedy for any failure of WEG to comply with its obligations hereunder.

**8. Patent Indemnity.** (a) WEG shall defend at its own expense any actions brought against Purchaser alleging that the Equipment furnished hereunder by WEG or the use of said Equipment to practice any process supplied hereunder by WEG directly infringes any claim of a patent of the United States of America, Canada or Mexico and to pay all damages and costs finally awarded in said actions. WEG shall have the right to settle or otherwise terminate said actions in behalf of Purchaser. (b) WEG shall have no obligations hereunder and this provision shall not apply: (i) to any other equipment or processes, including Equipment or processes supplied hereunder by WEG which have been modified or combined with other equipment or processes; (ii) to any products or articles manufactured by any equipment or processes; (iii) to any patent issued after the date of this Agreement; and (iv) in the event any of said actions is settled or otherwise terminated without the prior written consent of WEG. (c) If, in any action hereunder, the Equipment is held to constitute infringement, or the practice of any process using the Equipment is finally enjoined, WEG shall, at its option and its own expense, either procure for Purchaser the right to continue using said Equipment; or, modify or replace it with non-infringing equipment; or, with Purchaser's assistance, modify the process so that it becomes non-infringing; or remove it and refund the purchase price allocable to the infringing equipment. **THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF WEG WITH RESPECT TO PATENT INFRINGEMENT.** (d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that WEG is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by WEG or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against WEG, Purchaser agrees to defend and indemnify WEG in the same manner and to the same extent that WEG indemnifies Purchaser in this "Patent Indemnity" paragraph.

**9. Limitation of Liability.** (a) In no event shall WEG, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or any associated

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equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, or claims of customers of the Purchaser or other third parties for such or other damages. WEG's liability for any claim whether in contract, warranty, negligence, tort, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, shall in no case (except as provided in the section entitled "Patent Indemnity") exceed the purchase price allocable to the Equipment or part thereof or Services which gives rise to the claim. The limitations in this section shall prevail over any conflicting terms, except to the extent that such terms further restrict WEG's liability. (b) All WEG liability shall end upon expiration of the applicable warranty period, provided that Purchaser may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Agreement, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period. (c) In no event, regardless of cause, shall WEG assume responsibility for or be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/or Services.

**10. Nuclear Liability.** In the event that the Equipment or parts sold hereunder are to be used in a nuclear facility, the Purchaser shall, prior to such use, arrange for insurance or a governmental indemnity protecting WEG against liability and hereby releases and agrees to indemnify WEG and its suppliers from any nuclear damage, which in any manner arises out of a nuclear incident, whether alleged to be due, in whole or in part, to the negligence of WEG or its suppliers.

**11. Laws and Regulations.** Purchaser has sole responsibility for compliance with all applicable Federal, state and local laws and regulations relating to the operation or use of the Equipment. If Purchaser desires a modification to the order as a result of any change or revision to any law or regulation after the date of the proposal, such modification shall be treated as a change order. Nothing contained herein shall be construed as imposing responsibility or liability upon WEG for the obtaining of any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment. WEG's obligations are conditioned upon Purchaser's compliance with all U.S. and other applicable trade control laws and regulations. Purchaser shall not trans-ship, re-export, divert or direct Equipment other than in and to the ultimate country of destination declared by Purchaser and specified as the country of ultimate destination on WEG's invoice.

**12. Software License.** (a) If software is furnished as part of the sale made hereunder, Purchaser obtains a limited license to use certain proprietary software identified in WEG's proposal, subject to the following: (i) the software may be used only in conjunction with equipment specified by WEG, (ii) the software is to be kept strictly confidential, (iii) the software shall not be copied, reverse engineered, or modified, (iv) the Purchaser's right to use the software shall become effective upon delivery and shall continue until the related equipment is no longer used by the Purchaser or until otherwise terminated hereunder, and (v) the rights to use the software are non-exclusive, and non-transferable, except with WEG's prior written consent. (b) Nothing contained in this Agreement shall be deemed to convey any title to or ownership in the software or the intellectual property contained therein in whole or in part to Purchaser, nor to designate the software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Purchaser shall immediately cease using the software and without retaining any copies, notes or excerpts thereof, return to WEG the software and all copies thereof and shall remove all machine readable software from all of Purchaser's storage media.

**13. Inventions and Information.** Unless otherwise agreed in writing by WEG and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with WEG. Any design, manufacturing drawings or other information submitted to the Purchaser remain the exclusive property of WEG. Purchaser shall not, without WEG's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

**14. Force Majeure.** WEG shall not be liable for loss, damage, detention, or delay, nor be deemed to be in default from causes beyond its reasonable control including but not limited to acts of war (declared or undeclared) fire, strike, labor difficulties, Acts of God, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay.

**15. Cancellation.** Unless specified to the contrary in writing in the **specific WEG terms and conditions**, Purchaser may cancel any order or contract only upon prior written notice and payment of termination charges, including but not limited to, all

costs identified to the order or contract incurred prior to the effective date of termination and all expenses incurred by WEG attributable to the termination, plus a fixed sum of ten (10) percent of the final total selling price to compensate for disruption in scheduling, planned production and other indirect costs.

**16. Termination.** No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by WEG of Purchaser's written notice specifying such default, WEG shall have failed to initiate and pursue with due diligence correction of such specified default.

**17. Assignment.** Any assignment of this Agreement or any rights or obligations hereunder without prior written consent of WEG shall be void.

**18. Choice of Law.** This agreement shall be governed by the laws of the State of Georgia, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding Georgia law with respect to conflicts of law. Purchaser agrees that all causes of action under this agreement shall be brought in the Superior Court of Gwinnett County, Georgia, or the U.S. District Court for the Northern District of Georgia, and hereby waives any challenges that Purchaser may have to such court's personal jurisdiction over Purchaser. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

**19. Entire Agreement.** This Agreement, including written bid proposal and written (email or otherwise) clarifications made to the original bid proposal, constitutes the entire agreement between WEG and Purchaser, and there are no agreements, understandings, restrictions, warranties, or representations between WEG and Purchaser other than those set forth or provided for herein.