

## Virginia Transformer Corp's General Terms and Conditions of Sale

Virginia Transformer Corp, hereinafter referred to as Seller, hereby offers to supply the items and/or services identified in the quotation, proposal, or acknowledgment expressly conditional upon the Buyer's acceptance of the following terms. Seller, by its commencement of performance, shall not prejudice its rights to enforcement of these conditions. Any confirmatory action by the Buyer hereunder, or any acceptance of such equipment or services, installation, energization or utilization shall constitute assent to said terms or conditions. Stenographic and clerical errors on this quotation, proposal, or acknowledgment are subject to correction.

1. **ACCEPTANCE OF ORDER:** None of Buyer's Terms and Conditions contained in the Purchase Order shall alter Seller's Terms and Conditions in any respect and shall not apply to this transaction unless specifically agreed to in writing on the face of Seller's sales contract form.
2. **EXPIRATION OF OFFER:** All offers of sale by Seller are valid for thirty (30) days from the date of the offer based on product delivery within 6 months unless otherwise specifically stated in the Seller's offer or as otherwise may be expressly agreed to in writing by the Seller. All such offers of Seller are subject to change without notice after this period unless earlier withdrawn by the Seller.
3. **MINIMUM ORDER VALUE:** The minimum acceptable value of any order is \$500.00. Buyer's accumulation of a number of items into one purchase is authorized to reach the minimum order value.
4. **F.O.B. POINT AND SHIPMENTS:** Title to the goods and risk of loss shall pass to Buyer at the FOB point. All supplies and services are sold FOB origin and the point of origin shall be that of Seller's factories or locations identified in its proposal or sales contract form unless as otherwise specifically agreed to in writing on the face of Seller's sales contract. Seller assumes no responsibility for delay, breakage, damage or loss after delivery to the carrier as evidenced by "in good order" receipts from the carrier. All claims for loss, damage and delay in transit are to be handled by Buyer directly with the carrier. Seller shall select method of transportation and route on behalf of Buyer, unless Buyer specifies the method and route and is to pay freight costs in addition to price. Seller reserves the right to make partial shipments at its discretion. Claims for shortages or incorrect items must be made in writing to Seller within seven days after receipt of shipment. Failure to give such notice shall constitute an unqualified acceptance of equipment and waiver by Buyer of all claims for such shortages or incorrect items.

When terms are F.O.B. destination or freight allowed to destination, "destination" means common carrier delivery point nearest the destination (within the continental United States, excluding Alaska, Hawaii, Puerto Rico, etc.). When terms are F.O.B. job site or pad, Buyer guarantees all access roads are suitable for normal un-impeded access to site with free and clear access to area directly adjacent to the placement point of the unit with no physical obstructions and clear of stored materials.

Shipping schedules and delivery arrangements are made in best effort and good faith. Seller cannot, however, accept liability for penalty or damages resulting from shipping delays caused by Force Majeure including but not limited to strikes, fires, truck availability or any other cause beyond VTC's control. Ship Separate Parts may not arrive concurrently with the transformer and some assembly may be required. Shipment may be made earlier after due notice to Buyer.

5. **BUYER'S OBLIGATION OF ASSISTANCE:** Except to the extent Seller has otherwise assumed such responsibility for itself under express provisions of the attachment hereto entitled "Statement of Work" Buyer shall:
  - a) place at Seller's disposal all information necessary for performance of the work including any plans, plant layout, wiring instructions and operational information that may reasonably be expected to affect the performance of the work. This includes to the extent reasonable previous studies or reports and other data relative to the design, installation and selection of equipment for the work to be performed by Seller.
  - b) Buyer guarantees access to and to make all reasonable provisions for Seller to enter on its property and other public and private lands as is required for performance of the work including safe storage of equipment, materials and tools during the process of any such off-site work.
  - c) Buyer agrees to cooperate in all reasonable ways necessary to Seller's performance of the work.

d) Buyer covenants that it has disclosed fully and accurately to Seller all general and local conditions which can effect performance of the work prescribed hereunder or the price thereof. Buyer acknowledges that Seller is entitled to rely on information furnished by Buyer in developing its specifications, equipment selection, price and other terms of this order.

6. PAYMENT TERMS: Terms are "NET thirty (30) days" calculated from the date of invoice if credit arrangements have been approved in advance by Seller and these terms are included on the Seller's sales contract form. Otherwise, payment is required before shipment or delivery in a form and arrangement acceptable to Seller. In addition to any other rights or remedies available to seller, failure to pay the amount(s) due within the time specified will result in a late charge of one and one half (1-1/2%) percent per month to Buyer's account until final payment. Payments shall not be contingent on end-user payment to Buyer and Seller reserves the right to refuse to fulfill any and all obligations (including field service and voiding of warranty) if payment is not received by the terms of sale.

Except to the extent otherwise specified by Seller in its quotation, pro rata payments shall become due without setoff as shipments are made. If Seller consents to delay shipments after completion of any product, the goods may be placed in storage by Seller for Buyer's account and risk, and Buyer shall pay all charges for storage, trucking and other incidental expenses incurred by Seller.

Any order for products by Buyer shall constitute a representation that Buyer is solvent. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to shipment. If Buyer's financial condition at any time does not justify continuance of the work to be performed by Seller hereunder on the agreed terms of payment, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency; or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws; Seller 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 proper cancellation charges. Seller's rights under this article are in addition to all rights available to it at law or in equity.

7. CHARGEBACKS, SET-OFF, OFFSETS OR WITHHOLDING : In no event will Seller accept any back charges, set-off, offsets, withholding for material or services without the prior written consent of Seller's authorized personnel.

8. DELIVERY: The prices quoted are for the shipment dates provided on the Seller's sales contract form or proposal. While the Seller shall have no obligation to comply with unilateral directives to change schedules or temporarily cease work, Seller will endeavor to accommodate Buyer's reasonable written requests for acceleration or deceleration made at least ninety/sixty(90/60) days respectively prior to scheduled delivery. Such changes may or may not be accepted by Seller at its sole discretion. In the event Seller accepts such changes, Seller shall be under no obligation to comply therewith until a price adjustment acceptable to Seller is negotiated between the parties and evidenced by an amendment to the order. Any agreement to delay delivery shall not exceed 6 months from original acknowledgement ship date; goods not released for shipment within such revised time frame shall be automatically deemed canceled and subject to Seller's Cancellation terms listed below.

9. EXPORT REGULATIONS: Buyer acknowledges that if the items purchased hereunder are to be exported, they are subject to the U.S. Commerce and/or State Department Export Regulations. Buyer accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission unless otherwise agreed that Seller is to be exporter of record.

10. CANCELLATION & TERMINATION: In the event of cancellation of this order for breach of the provisions hereof by Buyer, Seller shall have no further liability to Buyer and Seller shall not be liable for any costs of cancellation, special, incidental or consequential damages (including punitive or exemplary damages) for any cause or of any nature whatsoever and such cancellation shall be in addition to any other rights and remedies of Seller under this order or at law. Further, Seller reserves the right to cancel this order or any portion thereof without liability if Buyer fails to make payment as required by the terms of the acknowledgement or if Buyer is adjudicated bankrupt, files a petition in bankruptcy, makes an assignment for the benefit of creditors or if action under any law for the relief of debtors is taken. All terminations shall be subject to the following cancellation charges:

- 10 % of order amount after order entry by Seller;
- Additional 20 % of order amount after outline drawing completion / submission;
- If manufacturing has begun, charges will be based upon percent completion plus 30 % for engineering and order entry

11. **PATENT INFRINGEMENT:** To the extent that the items ordered are manufactured to designs, drawings, specifications or instructions furnished by Buyer, Buyer guarantees that the manufacture and sale or use of such items will not infringe upon any U.S. or foreign patents. Buyer further agrees to indemnify and hold harmless the Seller from any expense, loss, cost, damage or liability of any kind which may be incurred because of any such infringement or alleged infringement of patent rights with respect to such items and to defend, at its own cost and expense, any action or claim in which such infringement is alleged. Buyer shall promptly notify Seller of any such action and shall provide Seller an opportunity, at Seller's option, to participate in any defense of such action or claim at Seller's own expense.

Seller shall hold Buyer harmless from costs actually incurred arising directly from the defense of any suit for infringement of any domestic or foreign patent by a Seller-manufactured item, provided Seller shall be given timely written notice of such suit and the option to replace the same, obtain a license, make other arrangements to avoid litigation or to defend the suit. No indemnification is offered for alleged infringement arising from the use of Seller's items in combination with other items supplied by Buyer or from compliance with drawings, specifications or instructions furnished by Buyer as described in the paragraph above. Further, no indemnification by Seller applies if this order is accepted under a U.S. government contract containing an Authorization and Consent Clause applicable hereto as prescribed by federal procurement laws and regulations.

12. **DISCLOSURE OF INFORMATION / PROPERTY OF SELLER:** Any information, suggestions or ideas transmitted by either Buyer or Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in writing signed by a duly authorized representative of the disclosing party. Neither party shall use or disclose such property to any third party or any one not having a need to know, including employees, without the prior written consent from the disclosing party. Title to all tools, test equipment and facilities not furnished by Buyer or specifically paid for by Buyer as a separate line item under any order, shall remain with Seller. Further, Seller does not agree to submit to Buyer as a result of the Consideration paid under this order, any information, technical data or drawings which are proprietary to Seller; nor does Seller agree to grant to Buyer any patent rights, title or license without Seller's expressed prior written consent.

13. **TAXES:** In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of any products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

14. **EQUIPMENT WARRANTIES AND REMEDY:**

(A) Seller warrants that each newly manufactured item sold hereunder and such portion of a repaired/refurbished item as has been repaired or replaced by Seller under this warranty, shall be free from defects in material, workmanship or title at the time of shipment and shall perform during the warranty period in accordance with the specifications incorporated herein. Should any failure to conform to these warranties (excluding any defects in title) be discovered and brought to Seller's attention during the warranty period and be substantiated by examination at Seller's factory or by authorized field personnel, then (i) Seller shall correct such failure by, at Seller's exclusive option, repair or replacement of the nonconforming item or portion thereof with Buyer promptly making product available to be worked by Seller's personnel or agents without interference with no additional cost to the Seller; or (ii) Buyer making available product F.O.B. Seller's plant with Seller's written return authorization, at Seller's exclusive option, for repair or replacement of the nonconforming item or portion thereof. Buyer agrees that this remedy shall be its sole and exclusive remedy against Seller and that no other remedy shall be available or pursued by Buyer against Seller. In no event shall the Seller be liable for any costs or expenses in excess of those described in this paragraph and expressly excluding any liability or damages for special, incidental or consequential damages.

The warranty period for newly manufactured items shall extend 12 months from the date of first energization or 18 months from the date of shipment whichever occurs first or unless a different warranty period is agreed to by Seller. The warranty period for repaired/refurbished articles shall extend for the unexpired warranty period of the item repaired or replaced or for 90 days, whichever is longer. This warranty shall be voided and not extend to any item that upon examination by Seller is found to have been subject to:

- a) mishandling, misuse, negligence or accident.

- b) storage, installation, operation or maintenance that either was not in accordance with Seller's specifications and instructions or otherwise improper.
- c) tampering as evidenced for example by broken seals, damaged packaging containers, etc.
- d) testing of equipment above normally accepted field tests.
- e) repair or alteration by any one other than Seller without Seller's express advance written approval.
- f) payment(s) not received per terms of sale.

Failure to promptly notify Seller in writing upon discovery of any non-conforming items during the warranty period shall void the warranty as to such items. Buyer shall describe any such non-conformity in detail, expressing its position as to return of any article under the remedy provided herein. No returns shall be accepted without prior approval by Seller. No back charges shall be accepted without the prior written consent of Seller's authorized representative. Where a failure cannot be corrected by Seller's reasonable efforts, the parties shall mutually agree upon an equitable adjustment in price. The preceding sets forth the exclusive remedies for claims (except as to title) based on defect contract or tort (including negligence) and however instituted. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**(B) SELLER'S INSTALLATION WARRANTY:** Seller warrants that all work hereunder shall be performed in accordance with the standards employed by Seller in performing the same or similar services for itself. Seller disclaims any and all other representations or warranties expressed or implied including without limitation any representation or warranty that a) any unauthorized entry, burglary, theft, embezzlement or any other crimes will be prevented by the equipment and/or installation thereof or that b) any particular purpose or standard of care intended or desired or any particular results to be achieved by Buyer through the installation and operation of the items to be delivered hereunder. Seller's installation services and installation warranty does not include or imply any assistance for system field troubleshooting and no back charges for such services shall be accepted without the prior written consent of Seller's authorized representative.

**(C) EXTENDED WARRANTY OPTION:** When purchased, warranty may be extended by the period specified covering core and coils only against failure occurring with respect to normal operation and within the parameters for which the transformer was designed.

**(D) IN/OUT COVERAGE OPTION:** When purchased, Seller will cover only the expenses to transport the transformer to a repair facility and back to site for warranty failures occurring within the period defined. Buyer will make transformer ready for shipment in the condition it was originally received per the Outline Drawing with clear and free access by Carrier. Craning, civil work, disconnection and reconnection of the transformer, etc. is the responsibility of the Buyer.

**15. CONFIGURATION STATUS AND SUBSTITUTION OF MATERIALS:** Seller reserves the right to make substitution of materials without degrading the quality of product. Customer approval will be solicited when changes affect form, fit or function. Seller further reserves the right to discontinue any items without notice and to change or modify specifications at any time without incurring any obligation to incorporate new or modified features in components or products previously sold or shipped.

**16. LIMITATION OF LIABILITY:** Seller's liability on any claim for loss or damage arising out of this contract or from the performance or breach thereof or connected with the design, manufacturing and supplying of any good hereunder, or their sale, resale, operation or use, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price allowed to such goods or part thereof involved in the claim. Seller shall not, under any circumstances, be liable for any labor charges without the prior written consent of the Seller.

Seller shall not in any event be liable, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds, for special, consequential, incidental or penal damages including, but not limited to, loss of profits or revenue, loss of use of the product or any associated product, cost of capital, cost of substitute products, facilities or services, downtime costs, or claims of customers of the Buyer for such damages.

**17. HAZARDOUS BUSINESS:** Unless otherwise agreed in writing by an authorized representative of the Seller, goods sold hereunder are not intended for use in connection with any nuclear facility or any other hazardous activity such as commercial or military aircraft, missile installation, space exploration or other critical applications where failure of a

single component could cause substantial harm to persons or property. If so used, Seller disclaims all liability for any nuclear damage contamination or other injury and Buyer shall indemnify and hold Seller harmless from such liability whether as a result of breach of contract, warranty, tort (including negligence) or other grounds. Neither Seller nor its suppliers shall have any liability to the Buyer or its insurers whether based on contract warranty, tort (including negligence) or other grounds for on-site damage to any property located at a nuclear facility.

18. COMPLIANCE WITH LAW: Buyer shall comply with all applicable Federal, State and local laws including but not limited to: laws concerning procurement integrity (particularly subsections 27(a), (d) and (f) of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §423 and FAR 3.104-3; the Byrd Amendment (31 U.S.C. §1352); laws governing lobbying activities (2 U.S.C. §261 *et seq.*, particularly § 267); laws prohibiting the giving of bribes (18 U.S.C. §201(b) or gratuities (18 U.S.C. §201 (c); the Foreign Corrupt Practices Act of 1977, as amended, (15 U.S.C. §78m, 78dd-1, 78dd-2, and 78ff). Buyer acknowledges that if items purchased are to be exported, Buyer has the complete responsibility and agrees to comply with all export laws and regulations of the U.S. Department of Commerce and of the U.S. State Department.

Seller hereby certifies that all goods sold hereunder which are produced or manufactured in the United States of America are products in compliance with the Fair Labor Standards Act of 1938 which shall be considered as satisfied by this certification.

19. INSURANCE: Buyer shall maintain its usual and customary insurance coverage for automobile, workmen's compensation and third party liability claims during performance of this order and, if requested by Seller, name Seller an insured under its third party liability coverage.

20. NON-WAIVER: The failure of Seller to enforce at any time any of the provisions of this order shall not constitute a waiver of such provisions or a waiver of the right of Seller to enforce any or all provisions. If any term or provisions of this order is held invalid or unenforceable by any court of competent jurisdiction, the remainder of this order shall continue to be valid and binding upon the parties unless performance thereof is rendered legally impractical and no longer fulfills the intention of the parties under this order.

21. APPLICABLE LAW AND FORUM FOR RESOLUTION OF DISPUTES: This contract shall be deemed to have been made and performed in, and shall be construed, interpreted and the rights and obligations of the parties determined by the law of the Commonwealth of Virginia excluding choice of law rules. Any action, controversy or claim arising out of or related to this contract, or any breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such arbitration shall take place in Roanoke, Va. In case of non-performance by Buyer requiring legal action, Seller's cost of action shall be the responsibility of the Buyer.

22. PRICE VARIATION: This agreement is on the basis of present commodity prices. Commodity prices at the time of shipment will be considered in determining if the prices for goods are to be modified. Seller reserves the right to adjust prices for alterations or changes authorized by the Buyer subject to Seller's acceptance of the order.

23. ASSIGNMENT: Except as otherwise expressly provided herein, no assignment of this order or Buyer's rights under this order shall be made by Buyer without the prior written agreement of the Seller.

24. FORCE MAJEURE: In addition to other liability limitation herein contained Seller shall not be responsible to the Buyer for any loss or damage due to failure or delay in performance or delivery of any of the items or services required under this order when such delay or failure is due to causes beyond the failing or delaying parties reasonable control. Such causes shall include without limitation fires, floods, epidemics, quarantines, unusually severe weather, strikes, embargoes, wars, political strife, riots, delays in transportation, compliance with any regulation or directives of any national, state or local municipal government or authority and unforeseeable shortages in fuel, power, materials or labor. Seller shall not be liable for delays in delivery or performance, or for failure to manufacture, deliver or perform, due to an inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials, components, services or facilities. Seller will notify Buyer of any material delay excused by this clause and will specify the revised delivery date as soon as practicable. In the event of any such delay, there will be no termination and the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

25. ORDER TERMS EXCLUSIVE: This order constitutes the entire and sole agreement between the parties concerning the subject matter of this order and the parties acknowledge and agree that none of them has made any representation with respect to the subject matter of this order or any representations including the execution and delivery hereof except as specifically set forth herein. Captions as used herein are for convenience or reference only and shall not be deemed or construed as in any way limiting or extending the meaning of any terms and conditions contained herein.

26. MODIFICATION: This order may not be modified except by written instrument executed by the parties with the same formality.

27. SECTION TITLES: Section titles appearing in the General Terms and Conditions of Sale are for convenience only and shall not be construed as interpretations of text.

28. APPENDICIES: Any appendix or other terms and conditions of the Seller as may be attached hereto and/or identified herewith are hereby incorporated and made a part of these terms and conditions. All orders or contracts shall be subject to such additional terms and conditions which shall control over any inconsistency with the terms and conditions stated herein.

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### **Revision Record**

<b>No.</b>	<b>Description</b>	<b>Date</b>
1	Insert Arbitration requirement. Revise formatting.	10/30/02
2	Reformat, upgrade of terms	8/20/04