

SUPPLIER TERMS AND CONDITIONS

- 1. Terms and Conditions.** The supplier identified on the purchase order (the "Seller") agrees to sell, and PACS Switchgear, LLC (the "Purchaser") agrees to purchase, the goods identified in the purchase order which incorporates these Terms and Conditions (collectively, the "Order"). Any Seller terms and conditions in any specific order acknowledgement documentation, invoice, or other writing, preprinted or otherwise, shall be inapplicable and shall not modify this Order.
- 2. Acceptance.** Acceptance of Purchaser's Order is expressly limited to the terms and conditions set forth in the Order. This Order shall be deemed to be accepted by Seller and to become a contract (a) upon receipt by Purchaser of an acknowledgment of the Order being accepted by the Seller, (b) commencement by Seller of performance of the work called for herein, or (c) shipment of any goods called for herein by Seller to Purchaser.
- 3. Time of Performance; Delivery.** Time is of the essence. Goods shall be packed and shipped per Purchaser's instructions and good commercial practice. If Seller has reason to believe that deliveries will not be made as scheduled, Seller shall immediately give written notice to Purchaser stating the cause of the anticipated delay. Seller shall be charged for loss sustained by reason of delay or failure except that beyond its reasonable control.
- 4. Quality.** Seller expressly warrants that the goods will conform to the stated descriptions and specifications, be of merchantable quality, be fit for the use intended by Purchaser, and be free from defects in material or workmanship. If any goods are defective, at Purchaser's option and without prejudice to any other rights Purchaser may have, Seller shall (a) remedy the defect or replace the defective goods at its expense or (b) reimburse Purchaser for Purchaser's cost to remedy or replace.
- 5. Inspection.** All goods delivered are subject to final inspection and approval at Purchaser's premises. Payment by Purchaser will not constitute approval. Purchaser shall be the sole judge of the suitability of the goods for its use, and Seller shall pay all transportation charges on rejected goods. Acceptance of goods shall not relieve Seller from liability, damage, or other legal remedy for breach of any warranty.
- 6. Changes.** The quality, quantity, or nature of goods to be delivered may not change nor will additional charges be allowed without a change order signed by an authorized representative of Purchaser. Purchaser shall have the right at any time prior to delivery to make changes in drawings, designs, specifications, packaging, place of delivery, and method of transportation, or require additional or diminished work. If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of the Order, an equitable adjustment shall be made and the Order shall be modified in writing accordingly. Seller's claims for adjustment under this section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Purchaser within thirty (30) days from the date Seller receives the change order.
- 7. Delay.** Seller shall immediately notify Purchaser of any threatened or actual labor dispute or other matter which may delay Seller's performance under this Order and the anticipated duration of the delay, and Seller agrees to insert the substance of this requirement in all subcontracts and purchase orders connected to this Order. Excusable delays are those delays which arise out of causes beyond the control and without the fault or neglect of Seller, including acts of God or of the government, fires, floods, strikes, embargoes, or unusually severe weather. Notwithstanding any other provision of this Order, Purchaser may terminate this Order in whole or in part without cost to Purchaser where any actual or projected excusable delay is material or indefinite, would result in frustration of purpose of this Order, or would require Purchaser to cover by purchasing substitute goods.
- 8. Default.** Purchaser may terminate this Order in whole or in part upon written notice to Seller if Seller: (a) fails to deliver products or perform services within the Order schedule; (b) fails to make progress that endangers any scheduled performance, and does not cure such failure within a period of ten (10) days (or such longer period as Purchaser may authorize in writing) after receipt of written notice from Purchaser specifying such failure; (c) fails promptly to provide adequate written assurances of performance satisfactory to Purchaser when it appears that Seller may not perform in accordance with the Order and assurances are requested by Purchaser; or (d) fails to perform any other material provisions of this Order. If Purchaser terminates part of the work, Seller shall diligently continue performance of the remainder. Purchaser may terminate this Order at any later time for any continuing or subsequent breach. If Seller's default is not the result of excusable delay, as defined in Section 7, Seller shall be liable to Purchaser for any excess costs for repurchasing similar products or services and other damages incurred. If it is determined Seller was not in default, such termination shall be converted to a termination for convenience under Section 9. In no event shall Seller be entitled to profit on terminated work remaining to be performed. Upon any termination for default of Seller, Purchaser may require Seller to transfer title and deliver, as directed by Purchaser, (a) any completed goods, and (b) such partially completed goods and materials, parts, tools, fixtures, plans, drawings, information, and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order; and Seller shall, at Purchaser's direction, protect and preserve property in Seller's possession in which Purchaser has an interest. Payment for delivered goods or other materials accepted by Purchaser and for the protection and preservation of property shall be in an amount mutually agreed upon by the parties.
- 9. Termination for Convenience.** Purchaser may, by written notice to Seller, terminate the Order, or any part thereof, for any or no reason, for Purchaser's convenience. Upon notice of termination, Seller shall immediately stop all work and cause its suppliers and/or subcontractors to stop all work in connection with the Order. If Purchaser terminates for convenience, Purchaser shall pay Seller for goods and services accepted as of the date of termination, and, subject to Section 16, for Seller's actual, reasonable, out of pocket costs incurred directly as a result of such termination. Purchaser shall have no responsibility for work performed after Seller's receipt of notice of termination.
- 10. Price Warranty.** Supplier warrants that the prices charged hereunder are in compliance with applicable government laws, rules, and regulations.
- 11. Set-off.** Purchaser, at its election, may set-off any indebtedness of Seller to Purchaser against amounts owing by Purchaser to Seller hereunder.
- 12. Taxes; Packaging.** No charges for taxes, transportation, packaging, or returnable containers will be allowed or paid by Purchaser unless separately agreed by Purchaser in writing. All sales, use, excise, or similar taxes to be paid by Purchaser must be itemized separately on invoices.
- 13. Risk of Loss; Insurance.** Seller shall bear the risk of loss of the goods until delivery to Purchaser's premises. Seller shall procure and maintain such insurance as Purchaser may reasonably request.
- 14. Indemnity.** Seller shall indemnify, defend, and hold harmless Purchaser, its agents, employees, and representatives from and against any and all loss, damage, liability, claims, liens, demands, or causes of action of every nature whatsoever in any manner arising out of or incident to or in connection with the performance under the Order resulting from (a) breach of the terms of Order or Seller's warranties; (b) any negligent act or omission or willful misconduct of Seller or its subcontractors or their employees or representatives causing injury to or death to any person or loss or damage to the facilities, material, and equipment of any person; and (c) any claim or suit for infringement of any patent or copyright, or the misappropriation of trade secrets or other proprietary right.
- 15. Limitation of Purchaser's Liability.** Purchaser shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental damages (except to the extent expressly provided in Section 9) or consequential damages. Without limiting the foregoing, Purchaser's liability for any claim arising directly or indirectly under or in connection with the Order shall in no event exceed the cost of the goods giving rise to the claim. Purchaser shall have no liability for penalties of any kind.
- 16. Compliance with Laws.** Seller represents and warrants that it is in compliance with all applicable laws, rules, and regulations that affect this Order or Seller's ability to perform hereunder.
- 17. Confidentiality.** Seller agrees to keep confidential and not to disclose to others or use in any way to the detriment of Purchaser confidential business or technical information that Purchaser may disclose or deliver to Seller in conjunction with this Order or that Seller learns from being on Purchaser's property to deliver the goods or to perform work.
- 18. Assignment.** Seller may not assign any rights nor delegate or subcontract any duties under this Order without the prior written consent of Purchaser. Purchaser may assign or otherwise transfer this Order, in whole or in part, to a subsidiary or affiliate, or a purchaser or transferee of substantially all of the assets used by Purchaser in its business to which this Order relates upon written notice to Seller. Whether or not assigned, all payments shall be subject to set-off or recoupment for any present or future claims that Purchaser may have against Seller.
- 19. General.** The Order constitutes the entire agreement between Purchaser and Seller. It supersedes any prior or contemporaneous oral or written understanding. Only a written signed by both parties agreement may modify this Order. The laws of Ohio shall govern this Order. Any delay, failure, or omission of Purchaser to enforce any provision of this Order shall not constitute a waiver of such provision or a waiver of any default or remedy. If any provision of the Order is determined to be invalid, illegal, or unenforceable, the remaining provisions of the Order remain in full force. The remedies herein reserved are cumulative and in addition to any other remedies at law or in equity. All notices shall be given in writing and be personally delivered or sent by postage prepaid mail addressed to the parties at their addresses set forth in the Order or as otherwise designated to the other by notice as herein required.