

IMPORTANT – PLEASE READ

STANDARD TERMS & CONDITIONS OF SALE AND SERVICE 2024

The following terms and conditions will apply to any sale of goods or provision of services by 3E Power Services Ltd. ("3E"), and acceptance of these terms and conditions is an express condition of such sale or provision. Buyer will be deemed to have full knowledge of, and to have accepted, these terms and conditions if any goods or services are requested, ordered, or delivered to and accepted by Buyer from 3E.

I. SPECIFIC SERVICE-RELATED MATTERS

- i. With respect to orders for services accepted by 3E, Buyer must provide at least three weeks' notice prior to the scheduled date of inspection, to coordinate isolations and inspections.
- ii. Except as otherwise expressly stipulated in writing by 3E, all customer owned waste oil, hazardous substances, etc. arising out of services provided by 3E at Buyer's location will remain on site, and Buyer will have the sole responsibility at Buyer's sole expense to properly dispose of all such waste oil, etc.
- iii. Buyer will ensure that a representative of Buyer is on-site for the duration of any power outage or services to ensure that 3E has full access to all switches and disconnects and areas required for the proper performance of services.
- iv. Except as otherwise expressly stipulated in writing by 3E, 3E shall not be responsible for making any necessary arrangements for utility isolation.
- v. Except as otherwise expressly stipulated in writing by 3E, any and all charges from the local utility or municipal or other public authority will be the sole responsibility of Buyer.
- vi. If 3E is required to correct any existing deficiencies identified by any public authority as a result of such inspections as required by the work, the cost thereof will be in addition to 3E's quoted pricing.
- vii. Buyer will be responsible for any additional costs incurred by 3E where 3E crew is unable to complete a project in a timely manner due to unanticipated delays beyond 3E's control, including but not limited to delays caused by (i) Buyer, (ii) the utility's failure to disconnect or re-connect service in a timely manner, or (iii) the weather.

II. WARRANTIES and INDEMNITIES

- i. **New Products** – New products supplied by 3E may be accompanied by manufacturers' warranties. 3E makes no guarantees, representations or warranties, whether express or implied, with respect to any new products supplied by 3E. The Buyer acknowledges that its warranty with respect to new products supplied by 3E is limited to the warranty available from the original manufacturer.
- ii. **Used or Refurbished Products** – 3E warrants that all used or refurbished products supplied by 3E pursuant to this contract will conform to all specifications and drawings agreed to in writing by 3E and will be free from defects in material and workmanship, for a period of one year from the date of shipment or delivery, unless otherwise specifically stated in writing by 3E. Notwithstanding the foregoing, 3E will not be responsible for any labour costs relating to the removal of any defective product or the installation of any replacement product. 3E's sole liability and Buyer's exclusive remedy under this warranty in this Section II will be limited to (i) the repair or replacement of any product found to be defective in 3E's reasonable judgment, or (ii) at 3E's sole discretion, the refund of the purchase price of such used or refurbished product. Buyer will be solely responsible at Buyer's sole expense to deliver any such defective product to 3E's repair facility and for the return of the repaired product to Buyer's location.
- iii. **Services** – 3E warrants that all services provided by 3E in designing, installing, supervising, servicing, repairing and/or overhauling the equipment or those parts of the equipment specified in this contract (i) will be completed in a good and workmanlike manner, consistent with normal and accepted practices in the industry, (ii) will conform to all specifications and drawings agreed to in writing, and (iii) will be

completed in compliance with all applicable legislation, including the Electrical Safety Code. Subject to anything else contained herein, 3E will correct any breaches of this warranty of which 3E has been provided notice. 3E may rely on the accuracy and completeness of all information provided by the Buyer, including but not limited to all information in relation to property lines or the condition of the premises, electrical requirements, and 3E shall not be liable for damages or costs resulting from any errors or omissions in same. The Buyer agrees to indemnify 3E from any and all claims made for losses or damages in respect to property boundaries or unforeseen conditions, including subservice or concealed conditions, encroachment onto adjoining lands, easements or setback requirements. If access to adjoining lands is required, the Buyer will obtain written approval for such access prior to the start of Work.

- iv. 3E shall perform the Work based on the drawings and specifications provided by the Buyer or developed by 3E using information supplied by the Buyer. 3E shall not be responsible for any Work not expressly documented by such drawings and specifications.
- v. **General** – 3E gives no warranty in respect of the Work except as specifically provided in this Section II. All of the foregoing warranties of 3E in this section II will survive for a period of 1 year from the date of the provision of the relevant services or the sale of the relevant goods, whereupon they will automatically terminate, subject to the limitation contained in this Section II. 3E gives no warranty with respect to the design or work completed by other contractors or the Buyer itself. Any warranty set out in these Terms and Conditions will be void if the Buyer fails to provide written notice of any claim to 3E within 30 days of the Buyer becoming aware of such claim. The foregoing warranty will only apply if the Buyer has paid 3E in full for all Work performed under the Agreement. The foregoing warranty in this Section II will not apply in any of the following circumstances:
 - i. if the Buyer was ever in default of any provision of the Agreement,
 - ii. to the effects of normal corrosion, erosion or wear and tear, or
 - iii. if the damage or deficiencies are caused by any act or omission of the Buyer, including the faulty operations or maintenance of the Buyer, i.e. the failure to properly maintain products or equipment in accordance with any maintenance manuals or guidelines provided to the Buyer.
- vi. **Warranties** - Other than as set out in these Terms and Conditions, all other guarantees, representations and warranties, whether express or implied, are hereby excluded, including but not limited to any implied warranty of merchantability, suitability or fitness for a particular purpose. The warranties in these Terms and Conditions do not cover damage or failure caused by misuse, abuse, neglect, vandalism, excessive wear and tear, improper or abnormal usage, handling or operation, unauthorized repair, lack of or improper maintenance, lightning strikes, floods or other natural occurrences, power surges or operation outside of the nameplate rating of the equipment, if any. Any work performed on any material or equipment which is not specifically authorized in writing or performed by 3E will be considered a breach of the Agreement and will render all warranties in respect of such material or equipment void.
- vii. **Permits** - Except as otherwise expressly stipulated in writing by 3E, The Buyer shall obtain any necessary building permit(s) for the Work. After the issuance of a building permit, and at the Buyer's sole expense in accordance with the rates set out in the Rate Sheet, 3E will provide any other permits, licenses, inspections, or certificates that are customarily obtained by contractors in Ontario and necessary for the performance of the Work. 3E shall comply at all times with all laws, rules, regulations, and building and fire codes that relate to the provision of the Work, including applicable health and safety legislation.
- viii. **Indemnity** – Buyer will indemnify 3E and its employees, agents, directors, officers and representatives from and against any and all claims, demands, liabilities, losses, actions, damages, expenses and costs (including reasonable legal fees) arising from (i) any breach or violation by Buyer's of any of the terms of this contract including these terms and conditions, and (ii) any of Buyer acts or omissions.

III. QUOTATIONS

- i. Except as otherwise expressly stipulated in writing, 3E's quotation will be void unless accepted by Buyer within **30** days from the date of quotation. Any additional work required that is beyond the scope of 3E's quotation will be charged as additional work, pre-approved by the Buyer or the designated Buyer representative. All quotations are based on plans, specifications and information provided by Buyer. Any alteration in such plans, specifications or information may result in a revision to the quoted price.

IV. PRICES

- i. Prices are subject to correction for error at any time. Unless otherwise indicated, prices are based on the performance of the Work during normal business hours and 3E reserves the right to make additional charges to the extent that the Buyer requires Work to be performed outside of normal business hours. Unless otherwise indicated, 3E reserves the right to make additional charges to the extent that the Work is adversely affected by contaminated soil, frost, winter or other harsh conditions or other abnormal or unexpected conditions. 3E reserves the right to adjust quoted prices to reflect increased material costs based on changes to settlement prices on the London Metal Exchange (LME) between the date of quotation and the delivery of goods required to fill the order by 3E.

V. TAXES

- i. Except as otherwise expressly stipulated in writing, prices for goods or services do not include any applicable goods and services tax (GST), HST, Provincial sales tax or any other sales, use, value-added or other taxes, whether present or future. Buyer will be responsible for all such taxes, in addition to the sale price specified herein.

VI. FREIGHT and INSURANCE CHARGES

- i. Except as otherwise expressly stipulated in writing by 3E, prices for goods are F.O.B. at 3E's location and include packaging costs, but do not include freight or insurance charges. Buyer will be responsible for all such freight and insurance charges, in addition to the sale price specified herein.

VII. DELIVERY and TRANSPORTATION

- i. Customary methods of transportation/shipment, as selected by 3E, will be used to ship goods, provided that special methods of transportation/shipment may be used at Buyer's additional expense if reasonable notice of Buyer's request is given by Buyer to 3E prior to shipment. Delivery schedules are approximate and are based on prevailing market conditions applicable at the time of order and on prompt receipt by 3E of any specifications and other information required. 3E may extend delivery schedules without liability where required or, at its option acting reasonably, cancel Buyer's order in full or in part without liability.
- ii. Where the transport and delivery of equipment or materials is arranged through a carrier selected by the Buyer, upon the acceptance of the shipment by that carrier, 3E shall not be responsible for any such equipment or materials damaged or lost in transit.

VIII. HEALTH and SAFETY

- i. When 3E personnel are required to attend at Buyer's location, Buyer will prior thereto furnish a copy of such location's health and safety policy. In addition, Buyer will provide a safe and healthy place for such personnel to work and will always take all necessary precautions to ensure their safety, including instructing them in Buyer's safety practices and ensuring a safe and effective lockout tag procedure is in effect with respect to all electrical and mechanical equipment. Except as otherwise specified in writing by 3E, Buyer will be responsible for the operation of all cranes, rigging and other equipment and tools and will provide free access to all utilities that 3E may require to carry out its services. Buyer will immediately take all such precautions as may be required to eliminate to the extent required by applicable law any hazardous or toxic substances, wastes and other contaminants present so that the provision of services by 3E may proceed. If the presence of any of the foregoing causes an increase in the cost of carrying out this contract, an equitable adjustment will be made to the contract price to reflect such increased cost. Buyer will indemnify 3E and its directors, officers, employees, agents, representatives and subcontractors with respect to any claims, damages, losses and/or expenses arising out of Buyer's failure to properly notify and protect 3E and its onsite personnel from and against any hazards existing at the site.

IX. INSURANCE

- i. 3E shall maintain at its own expense comprehensive general liability insurance for personal injury, death and property damage in the minimum amount of \$5 million per occurrence, and evidence of such coverage shall be provided to the Buyer upon the Buyer's request. If requested by the Buyer, 3E shall provide evidence of compliance with applicable workers' compensation legislation in Ontario, including payments due thereunder. However, if other contractors or the Buyer perform work on-site concurrently

with the Work, the Buyer shall assume overall responsibility for compliance with applicable health and construction safety legislation and ensure that appropriate all-risks or builder's risk property and liability insurance is obtained, naming 3E as an additional insured under those policies of insurance and providing evidence of such insurance to 3E upon request.

X. FORCE MAJEURE

- i. 3E will not be responsible or liable for any loss or damage directly or indirectly incurred by Buyer resulting from any cause(s) beyond the reasonable control of 3E, including, without limitation, acts of God, war, terrorism, insurrection, riot, the order or injunction of any civil or military authority, fire, flood, wind, ice storm or other harsh weather, natural disasters, acts of the elements, materials or power, sabotage, lock-outs, strikes or labour disputes, faulty equipment or the failure of 3E suppliers to meet their delivery promises.

XI. TITLE and LIEN

- i. Except as otherwise expressly stipulated in writing, title to the goods supplied by 3E will not pass to Buyer upon delivery to Buyer but will remain with 3E until all payments for the goods and for any services provided to Buyer have been paid in full. Such goods will be and will remain personal or moveable property, notwithstanding any attachment to real property. If default is made in any of the payments herein, Buyer agrees that 3E may retain all payments which have been made on account of the purchase price as liquidated damages, and 3E will be free to enter the premises where the goods may be located and remove them as 3E property, without prejudice to 3E's right to recover any further expenses or damages 3E may suffer by reason of such non-payment. This retention of title constitutes a security interest in the goods securing payment of all debts due to 3E by Buyer and may be enforced by any remedy available at law to secured parties in similar circumstances. 3E is authorized to register such notices or other documentation as may be necessary to fully evidence, effect or perfect such security interest. For greater certainty, 3E will have a lien and security interest over (i) the Goods furnished by it, and (ii) the equipment in which such goods are installed, to secure payment of all amounts owing from Buyer to 3E. Upon request, Buyer will execute any documentation required to perfect such security interest.

XII. DISPUTE RESOLUTION

- i. In the event that any question, dispute, difference or claim arises out of or in connection with the Contract, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either 3E or Buyer has notified to the other in a written notice stating that it is a "Notice of Dispute," senior management personnel from both 3E and Buyer shall attempt to resolve the Dispute for a minimum period of fifteen (15) Days following issuance of the Notice of Dispute, and such attempt shall include at least one in-person meeting between senior management personnel from both 3E and Buyer, within the minimum period of fifteen (15) Days, each of whom has the authority to finally settle the Dispute on behalf of that party. If the Dispute is not resolved by negotiation, then the Dispute shall be then submitted to arbitration in Toronto, Ontario in accordance with the procedures set forth in the Arbitration Act, 1991 (Ontario), as amended. The decision of the arbitrator shall be final and binding.

XIII. LIMITATION of LIABILITY

- i. Notwithstanding any other provision of the Contract or any applicable law, neither 3E nor any of its directors, officers, employees, agents, representatives and subcontractors nor any of their respective heirs, executors, administrators, legal personal representatives, successors and assigns, will be liable to the Buyer for any indirect, special, consequential, incidental or punitive damages, losses, expenses or claims (including, without limitation, damages for or in relation to loss of use of equipment or facilities, lateness in delivery, loss of revenue or profits, downtime costs, the cost of capital or of substitute facilities, equipment or services or the cost of replacement power) directly or indirectly arising from or relating to or a consequence of any breach of the Agreement (fundamental or otherwise) or of any warranty, provision or indemnity contained in the Agreement or from any act or omission of any such persons which may give rise to legal liability (whether in negligence or other tort, strict liability, contract or under any other theory of legal liability). The maximum total liability of 3E and its directors, officers, employees, agents, representatives and subcontractors, for any claim whatsoever, under any circumstance(s), regardless of the cause of action and including without limitation claims for breach of contract, tort, negligence or otherwise, and the Buyer's sole remedy therefore, shall be strictly limited to an award for direct, provable damages not to exceed the amount received by 3E from its insurers in respect of such claim. For greater

certainty, the maximum total liability of 3E in respect of any incident shall not be greater than the amount of insurance proceeds received by 3E in respect of such incident. 3E will not be liable to the Buyer for any damage caused by 3E to the Buyer's property to the extent that such damage is covered by the Buyer's insurance. It is intended that the aforementioned limitations in this paragraph shall apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. The Buyer acknowledges that these limitations are reasonable and that the amount payable to 3E in consideration of the Work has been negotiated with these limitations in mind.

XIV. RETURNED GOODS

- i. No goods may be returned to 3E without 3E's prior written consent, and 3E acting reasonably reserves the right to decline any such return of goods. Goods will be considered for return only if they are in their original condition and are being returned by the original Buyer. Any return of goods consented to by 3E will be made only for credit and will be subject to a handling/restocking charge.

XV. TERMS OF PAYMENT

- i. All 3E invoices are due when rendered, unless otherwise expressly stipulated in writing by 3E. Interest at a rate of 2.0% per month (26.82% per annum) will be applied to all overdue accounts. A processing fee of \$250 will be applied to any cheques returned NSF. The Buyer agrees to indemnify and hold harmless 3E for all costs and expenses incurred by it for the collection of unpaid accounts, including all legal fees on a solicitor and client basis. If the Buyer postpones the scheduled date of delivery of goods ordered, or otherwise fails to accept delivery on such date, 3E shall be entitled to invoice the Buyer as if delivery had been made on the scheduled date, and the Buyer shall be obligated to pay such an invoice in accordance with the terms of this contract. The Buyer shall also be responsible for any reasonable additional costs (including for trucking, loading, and/or storage) incurred by 3E as a result of such delay. If the Buyer defaults in the payment of any 3E invoice or any other obligation hereunder, 3E may, at its sole discretion, suspend its performance, terminate the Agreement, or cancel the Buyer's credit, and in any case, the Buyer will have the sole responsibility to monitor and manage the safety and condition of the premises where the Work was being carried out. 3E also reserves the right to suspend its performance hereunder until adequate assurance of payment has been received from the Buyer.

XVI. CHANGE or CANCELLATION

- i. Orders for goods and/or services accepted by 3E are not subject to change or cancellation by the Buyer, except with 3E's written consent in its sole discretion, acting reasonably. Buyer must provide a minimum of five working days prior notice in order to re-schedule planned deliveries of goods and/or services for construction projects or to cancel or re-schedule planned deliveries of maintenance services. If (i) 3E consents to a change or cancellation of an accepted order for goods and/or services for a construction project, or (ii) a planned delivery of goods and/or services is re-scheduled with at least five working days prior notice, a minimum \$250.00 change/cancellation/re-scheduling fee will apply to cover administrative expenses. If a planned delivery of goods and/or services is re-scheduled with less than five working days prior notice, a minimum \$500.00 rescheduling fee will apply to cover administrative expenses. 3E may immediately terminate this contract without liability to Buyer in the event of Buyer's bankruptcy or insolvency or if a receiver or trustee or similar official is appointed in respect of Buyer or in respect of all or any significant portion of its business or assets or if Buyer repudiates or breaches any of the terms of this contract. In addition, 3E reserves the right on any such change, cancellation, re-scheduling or termination to charge Buyer with 3E's reasonable resulting costs based upon expenses already incurred and commitments made by 3E, including, without limitation, reasonable costs from any labour done, any materials purchased, 3E's usual overhead and reasonable profit and cancellation/restocking charges from 3E suppliers.

XVII. OTHER TERMS and CONDITIONS

- i. Except where expressly communicated in writing by 3E (through formal quote or scope of work), these terms and conditions will supersede and take priority over any and all previous verbal or written arrangements in connection with this contract. In the event of any conflict or inconsistency between these terms and conditions and the terms and conditions contained in Buyer's purchase order, request for proposal or any other form issued by Buyer, whether or not any such form has been acknowledged or accepted by 3E, these terms and conditions will prevail. Any additional terms and conditions of Buyer will be deemed objected to by 3E and will not be binding unless 3E accepts the same in writing. The Buyer

acknowledges that these limitations are reasonable and that the amount payable to 3E in consideration of the Work has been negotiated with these limitations in mind.

XVIII. RELATIONSHIP of PARTIES

- i. Nothing herein will be construed so as to constitute Buyer and 3E as principal and agent, employer and employee, partners or joint venturers, and neither party will have any authority to obligate or bind the other. The relationship of the parties is that of independent contractors. All Work to be provided by 3E will be carried out according to its own methods, subject only to these terms and conditions and any specifications and/or drawings provided by the Buyer and approved by 3E and contract to which these terms and conditions are appended. 3E will have full and exclusive control of its employees engaged in the performance of any Work or the delivery of any Goods.

XIX. NOTICE

- i. Notice under these Terms and Conditions must be in writing and must be delivered in person or sent by registered mail postage prepaid and addressed to the Buyer at the address provided in the Buyer's purchase order on file with 3E, or to 3E Power Services Ltd. at P.O. Box 428, 500 Hwy # 3, Tillsonburg, Ontario N4G 4G8. A notice will be considered to have been given or made on the day that it is delivered, or, if sent by registered mail, 5 business days after the date of mailing. Either party may give notice to the other of a change in the address set out above and if such notice is given the address specified in that notice will then apply for the purposes of giving notices under this Agreement.

XX. GENERAL

- i. This contract will endure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. This contract may only be modified by a contract amendment issued by 3E and executed by both parties. If any term of this contract is invalid or unenforceable under any statute, regulation or other rule of law, such term will be deemed deleted, but only to the extent necessary to comply with such statute, regulation or rule, and the remaining provisions of this contract will remain in full force and effect. The failure of one party at any time to require performance by the other party of any provision of this contract will in no way affect the right to require such performance at any time thereafter, nor will the waiver of one party of a breach of any provision of this contract by the other party constitute a waiver of any succeeding breach of the same or any other provision. All rights and remedies of 3E are cumulative and not alternative. This contract will be governed by and construed in accordance with the laws of the Province of Ontario and the Federal laws of Canada applicable therein. The parties hereby adhere to the non-exclusive jurisdiction of the courts of the Province of Ontario. The parties agree that domestic sale of goods laws will apply to this Contract and not the International Sale of Goods Contracts Convention Act. For Québec residents only: It is the express wish of the parties hereto that this Contract and all related documents be drawn up in English. / C'est la volonté express des parties aux présentes que ce contrat et les documents y afférents soient rédigés en langue anglaise. This Contract may not be assigned by either party without the prior written consent of the other.

