



TERMS & CONDITIONS

The accompanying purchase order ("PO") and these terms collectively constitute the agreement between the parties ("Agreement"). The Agreement becomes binding when MGM Transformer Co. ("Seller") provides a written acknowledgment of Buyer's PO. Seller's acceptance of any Buyer PO is expressly conditioned on Buyer's acceptance of the terms and conditions stated herein, and any additional or different terms proposed by Buyer are expressly rejected and shall not become part of the Agreement unless expressly agreed to in writing by Seller. The parties acknowledge that all stenographic or typographic errors in a PO or any other document associated with this Agreement are subject to correction to reflect the intent of the parties.

1. **Pricing.** Notwithstanding any terms or conditions in Buyer's PO or any other documents, the price for goods shall be as specified in Seller's written quotation or order acknowledgment, whichever is issued last (the "Price"), unless otherwise expressly agreed upon in writing by Seller. Seller is not obligated to honor quotations for goods destined for Federal, State, or Local government unless Buyer notifies Seller at the time of requesting a quotation as these orders frequently involve higher administrative costs. If an agreed-upon shipment date extends beyond 30 days from the originally quoted lead time, or if delays beyond Seller's control prevent production of an order within this period, Seller reserves the right to adjust the Price to reflect any increases in raw material, labor, transportation, or other input costs upon written notice to Buyer. Buyer shall acknowledge the new price by submitting a change order within ten (10) days after receipt of such notification or elect to cancel the applicable order pursuant to the terms of Section 9.
2. **Production and Shipment Dates.** For orders entered as hold for approval, the time period quoted for lead time commences after approval and release to production and the shipment date will be entered as best available at the time of release. The expectation is that the approval and release to production shall be provided by Buyer within two (2) weeks of receipt of drawings. Should this approval and release to production be delayed by Buyer, Seller reserves the right to adjust the Price to reflect any increases in the production costs and advise Buyer in writing of any such changes in Price. Buyer shall acknowledge the new price by change order submission within (10) days after receipt of such new price notification or elect to cancel the applicable order per the terms of Section 9. If orders go unreleased by Buyer for more than 180 days, Seller may cancel the order pursuant to Section 9. Seller will not pay or be liable for any penalty, either liquidated damages or otherwise, for late delivery or installation. Shipping dates are estimated and are dependent upon many variables including but not limited to prompt receipt of all information and material necessary. The Buyer has the right to change their order if agreed upon by Seller in a signed writing. Should such change(s) alter the price or lead time, Seller shall make a reasonable adjustment of price and/or lead. Changes affecting function or performance of the goods ordered may not be made without Seller's prior written consent.

3. **Invoices/Taxes.** Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. At Seller's sole discretion, payment shall be made via (i) progress payments for orders \$200,000 and greater as follows: (a) for liquid-filled transformers, 25% due at time of order acknowledgment, 25% due at time of order release, and 50% due net 30 after shipment with approved line of credit, and (b) for dry transformers, 30% due at time of order acknowledgment and 70% due net 30 after shipment with approved line of credit, (ii) invoiced and paid monthly or (iii) as otherwise provided in the order acknowledgement. Under any payment process, Buyer shall make all payments hereunder by wire transfer or check and in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 2.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. In addition, Seller may suspend performance or delay further shipments until all overdue payments, including interest, are paid in full. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Seller's rights under this Section are cumulative and in addition to any other remedies available under this Agreement or at law. Buyer shall not withhold payment of any amounts due and payable as a set-off, counterclaim, or deduction of any kind. The Price is exclusive of all sales, use, and excise taxes, and any other similar taxes and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Seller shall include, and Buyer shall pay the amount of taxes and charges by government authorities as a line item, when invoiced. Buyer shall be responsible for all such charges, costs, and taxes, if applicable; provided that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

In the event that, after the Agreement becomes effective and before all of the goods under the PO have been delivered to Buyer, any tariffs or duties (collectively, "Tariffs") applicable to the goods or components of the goods increase, the Seller shall be entitled to an adjustment in the Price commensurate with the change in Tariffs, and Buyer shall execute a change order to reflect such adjusted Price.

4. **Title/Risk of Loss.** Title to, and risk of loss of, the goods shall pass from Seller to Buyer upon meeting shipment terms as specified on the face of the order acknowledgement. Unless otherwise indicated on the face of the order acknowledgement, all goods delivered shall be FCA Seller's location. Seller shall not be liable for any delays, loss, or damage in transit. Buyer shall be responsible for all off-loading costs and provide equipment and labor reasonably suited for receipt of the goods at the applicable delivery point.

5. **Confidentiality.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. This section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure, except to the extent such knowledge was improperly obtained; or (c) obtained by Buyer from a third-party that is not subject to any confidentiality obligations with respect to the Seller's information. Seller shall be entitled to immediate injunctive relief, without the need to prove harm, for any violation of this section, in addition to any other remedies available at law or in equity.
6. **Security Interest.** As collateral security for the payment of the Price of the goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code as adopted in Delaware and shall be released upon full payment of the applicable goods.
7. **Limited Warranty.**
- a. Seller warrants to Buyer that the goods shall be free of any material defect in workmanship or material which may develop when operating under normal load, usage, conditions, and competent supervision for a period of twelve (12) months from date of energization or eighteen (18) months from date of shipment, whichever occurs first (the "Warranty Period").
- b. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 7(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

- c. Seller shall not be liable for a breach of the warranty set forth in Section 7(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 14 days of the time when Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such goods and Buyer (if requested to do so by Seller) returns such goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the goods are defective.

- d. Seller shall not be liable for a breach of the warranty set forth in Section 7(a) if: (i) Buyer makes any further use of such goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods; or (iii) Buyer alters or repairs such goods without the prior written consent of Seller.

- e. Subject to Section 7(c) and Section 7(d) above, with respect to any such goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace the goods or defective part of such goods; or (ii) credit or refund the price of such goods at the pro rata contract rate. In either scenario, upon Seller's request, Buyer shall return such goods DAP Seller's location. Seller will not be liable for any expenses incurred in removal and re-installation or transportation of goods. A repaired or replaced transformer shall be delivered to the purchaser FCA Seller's Location freight prepaid. Repair, replacement, or issuance of credit with regard to the defective transformer will constitute fulfillment of all of Seller's liabilities with respect to said transformer.

The following applies to Buyer's return of goods:

- 1) In no case are goods to be returned to Seller without Seller's express written consent
 - 2) Any goods or materials returned to Seller without authorization will not be accepted and will be directed back deadhead to sender
 - 3) Goods accepted for credit are subject to a MINIMUM restocking charge of 20% of the price of such goods plus all transportation charges
 - 4) Goods built to order are not eligible for credit under any circumstances
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- f. THE REMEDIES SET FORTH IN SECTION 7(e) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 7(a) AND SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY, WHETHER WRITTEN, ORAL OR IMPLIED.

8. **Limitation of Liability.**

- a. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF GOODWILL, LOSS OF DATA, BUSINESS INTERRUPTION, COST OF SUBSTITUTE GOODS OR SERVICES, OR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER BY BUYER FOR THE GOODS SOLD HEREUNDER.
- c. The limitation of liability set forth in Section 8(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

9. **Seller Termination.** In addition to any remedies that may be provided under these terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or (iv) fails to release the goods to production within 180 days from the drawing submittal, and Buyer shall pay to Seller 25% of the Price as a termination fee.

10. **Buyer Cancellation for Convenience.** Buyer may cancel for convenience any order by delivery of written notice to Seller and the payment of a fee as follows:

- a. if the PO is cancelled by Buyer after the order acknowledgment: 5% of the Price
- b. if the PO is cancelled by Buyer after drawing submission: 25% of the Price
- c. if the PO is cancelled by Buyer after order release to production: 50% of the Price

- d. if the PO is cancelled by Buyer after commencement of production: 100% of the Price
11. **Waiver**. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
12. **Force Majeure**. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 10 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.
13. **Compliance with Law**. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the goods under this Agreement or any resale of the goods by Buyer. Buyer assumes all responsibility for shipments of goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the goods. Buyer is prohibited from shipping, delivering, or re-exporting any of the goods delivered pursuant to this Agreement to any country other than the country of the port of destination in the applicable PO, unless otherwise agreed. Buyer recognizes that U.S. law or regulations may prohibit delivery of product or transshipment to restricted individuals, destinations (E.G., IRAN (IRISL), SYRIA, SUDAN, CUBA, NORTH KOREA) or entities and Buyer agrees that it shall make due inquiry and not cause or permit the goods sold hereunder to be delivered to any such individual, destination or entity. Seller will not be obligated to any terms or

requests including any documentary requests which are prohibited or are penalized under U.S. anti-boycott laws regulations. Buyer shall indemnify, defend and hold Seller harmless against all costs (including, without limitation, professional fees, penalties and interest), claims, damages, assessments, causes of action, judgments, fines, settlements, penalties and liabilities (joint and several), without regard to amount, to the extent arising out of, caused by or resulting from, or alleged to be caused by or resulting from the Buyer's (i) material breach of its obligations under this section or any other obligations under this Agreement, (ii) negligence, gross negligence or intention acts or omissions, and (iii) infringement of an Intellectual Property right of any third party.

14. **Assignment**. Unless provided otherwise in the order acknowledgement, Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. Seller may assign this Agreement and any PO between the parties arising out of this Agreement to any surviving entity in a merger of Seller into another entity or affiliate of Seller or any person or entity acquiring substantially all of the assets of Seller.
15. **Relationship of the Parties**. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
16. **No Third-Party Beneficiaries**. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
17. **Governing Law/Jurisdiction**. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in Wilmington, New Castle County, Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
18. **Notices**. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the PO or to such other address that may be designated by a party in writing. All Notices shall be delivered by



personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this section.

19. **Severability**. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
20. **Survival**. Provisions of this Agreement which by their nature should apply beyond the expiration of this Agreement will remain in force after any termination or expiration.