

## Standard Terms and Conditions of Sale

# GE Zenith Controls

Acceptance of any proposal of GE Zenith Controls, Inc., operating as GE Energy - Digital Energy, herein called GEZC or the "Seller" for supply, or manufacture, repair, modification, inspection and/or field services, and acceptance by the Seller of any order for the foregoing is expressly limited to the terms and conditions set forth herein. Any different or additional terms or conditions set forth by Buyer, whether in Buyer's purchase order or another communication are expressly objected to and will not be binding on Seller unless agreed to in writing by the Seller.

In the event of conflict between this Standard Terms and Conditions of Sale and the applicable Limited Warranty Rider, the applicable Limited Warranty Rider shall take precedence.

### 1.0 WARRANTIES

- .1 Seller warrants to Buyer that, unless otherwise stated by the Seller, any products and services furnished hereunder will be free from defects in material, workmanship and title, under normal use and services and quality specified in Seller's quotation. This warranty shall apply only to failure to meet said warranties (excluding any defects in title) which appear within twelve (12) months from date of installation or eighteen (18) months from the date of shipment, whichever occurs first.
- .2 The conditions of any tests shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made. The warranties and remedies set forth herein are conditioned upon (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Seller and (b) Buyer promptly notifying Seller of any defects and, if required, promptly making the product available for correction.
- .3 If any product or service fails to meet the foregoing warranties (except title), Seller shall thereupon correct any such failure either, at Seller's option, (i) by repairing any defective or damaged part or parts of the products, and/or re-performing any defective service, or (ii) making available any necessary repaired or replacement parts or necessary service which will be performed during normal working hours on a straight time basis. Repaired or replaced products will be returned FCA (INCOTERMS 2000) the Seller's plant or other mutually agreed upon point of shipment. If re-performance is not practicable, Seller will furnish without charge services in an amount essentially equal to those that, in the sole judgment of Seller, would have been required for re-performance. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price.
- .4 This Paragraph sets forth the exclusive remedies for claim (except title) based on defect, failure or nonconformity of the products or services supplied, whether claim is in contract or tort (including negligence) or otherwise and however instituted. Upon the expiration of this warranty, all such liability shall terminate. Except as set forth in "Patents" the foregoing warranties are exclusive and in lieu of all other warranties or conditions whether written, oral, implied or statutory. No implied or statutory warranties or conditions of merchantability or fitness for particular purpose shall apply. Seller does not warrant any products or services of others, which Buyer has designated.
- .5 For a complete outline of customer rights and details regarding policy, procedures and limitations for Seller's equipment, please refer to the following Limited Warranty Rider product specific publication numbers:

### Uninterruptible Power Supply – Publication # GETCPQ-UPS

<http://www.gedigitalenergy.com/products/warranty/PowerQuality/GETCPQ-UPS-Warranty-Rider.pdf>

### Transient Voltage Surge Suppression / Surge Protective Device – Publication # GETCPQ-TVSS

<http://www.gedigitalenergy.com/products/warranty/PowerQuality/GETCPQ-TVSS-Warranty-Rider.pdf>

### Paralleling Switchgear – Publication # GETCPQ-PSG

<http://www.gedigitalenergy.com/products/warranty/PowerQuality/GETCPQ-PSG-Warranty-Rider.pdf>

### Automatic Transfer Switch – Publication # GETCPQ-ATS

<http://www.gedigitalenergy.com/products/warranty/PowerQuality/GETCPQ-ATS-Warranty-Rider.pdf>

### 2.0 PRICES

- .1 Unless otherwise stated, prices are in US dollars FCA (INCOTERMS 2000) Seller's factory.

### 3.0 PAYMENTS

- .1 Terms of payment shall provide for one hundred (100%) percent cash for each shipment, payment due net thirty (30) days upon presentation by the Seller of its invoices and evidence of readiness to ship to the Buyer or at a paying agency in United States acceptable to the Seller.
- .2 If the Buyer delays shipments, Seller reserves the right to bill Buyer for any payments tied to shipments that shall become due on the date when the Seller is ready to make shipment. If the cost to the Seller of production, delivery, erection or installation of such products is increased by reason of delay caused by the Buyer, the Buyer shall pay such additional expense incurred by the Seller.
- .3 At the request of the Seller, payments shall be made by an irrevocable Letter of Credit established by the Buyer in favor of and acceptable to the Seller and confirmed by a United States bank satisfactory to the Seller.
- .4 If Buyer fails to fulfill any conditions of its payment obligations or 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 before proceeding with any further activities related to the products or service to be supplied. Upon the occurrence of said non-fulfillment or financial condition, the Buyer shall compensate the Seller for any additional related costs and shall grant an extension of time for any related delays equal to said delays.
- .5 In the event of Buyer's bankruptcy 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 Paragraph are in addition to all rights available to it at law or in equity.
- .6 Interest at the rate of 1.5% per month (18% per annum) shall be payable by the Buyer from and after the date upon which any, and all, payments are due and payable by the Buyer to the Seller.



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## 4.0 PATENTS

- .1 The Seller shall defend any suit or proceeding brought against the Buyer so far as based on claim that any product, or any part thereof, furnished under this contract and manufactured by the Seller, constitutes an infringement of any patent of United States belonging to a third-party, if notified promptly in writing and given authority, information and assistance (at the Seller's expense) for the defense of same, and the Seller shall pay all damages and costs awarded therein against the Buyer. In case the product, or any part thereof, in such suit is held to constitute an infringement and the use of said product or part is enjoined, the Seller shall, at its own expense and at its option, either procure for the Buyer the right to continue using said product or part, or replace same with non-infringing product, or modify it so it becomes non-infringing or remove said product and refund the purchase price and the transportation and installation costs thereof.
- .2 The preceding paragraph shall not apply to and the Seller shall assume no liability for (i) any products, or any part thereof, manufactured to Buyer's design or, (ii) circumstances where the patent infringement claim arises from using the products in combination with the Buyer's equipment or process.
- .3 In respect of any product not manufactured by the Seller, the patent infringement protection offered by the manufacturer thereof shall apply.
- .4 The right and obligations of the parties with respect to Patents or any other intellectual property rights are solely and exclusively as stated herein and the foregoing states the entire liability of the Seller for infringement of Patents or any other intellectual property rights.

## 5.0 DELIVERY, TITLE AND RISK

- .1 Seller shall, unless otherwise agreed, deliver the products FCA (INCOTERMS 2000) Seller's factory. Partial shipment shall be allowed. Any delivery dates given are approximate and are based upon prompt receipt by Seller of all information necessary to permit Seller to proceed with work without interruption.
- .2 Title to the products and in any additional substitutions thereto shall pass when the products are placed in the hands of a carrier at the point of shipment, or on a pro rata basis as services are performed. It is expressly understood and agreed, however, that the passage of title shall not be construed by Seller as a release from Seller's responsibility to fully carry out its obligations under the contract. Upon the Buyer's failure to pay any amount payable, Seller, in addition to any other rights it may have, may immediately seize and remove the products regardless of whether they are attached to Realty. Seller may retain any sums paid by the Buyer to the date of seizure and removal as compensation for use of the products; this is without prejudice to the Seller's right to sue for further compensation. The Buyer shall not do anything or omit to do anything as a result of which Seller's title and property in the products is adversely affected.
- .3 Risk of loss or damage to the products and in any additional substitutions thereto shall pass when the products are placed in the hands of a carrier at the point of shipment, unless Buyer and Seller agree on an alternative point. Any damage to or loss of the product while the product is in-transit to Buyer shall be borne by Buyer.
- .4 If shipment of the products or any part thereof is delayed by an act, request or omission of the Buyer or due to any cause referred to in Paragraph 7.0 the Seller may place such products into storage (which may be at the place of manufacture). In such event,
  - (i) Seller's shipment obligation shall be deemed fulfilled and risk of loss and damage shall pass to Buyer.
  - (ii) Any amounts payable to the Seller on delivery shall be payable upon presentation of Seller's related invoices.
  - (iii) All expenses incurred by the Seller, including, but not limited to, all expenses of preparation and shipment into storage, handling, storage, inspection, preservation and insurance shall be for Buyer's account and shall be payable upon Seller's presentation of related invoices.

## 6.0 INSURANCE

- .1 During the period between shipment (or if the product is installed by the Seller, from the time the product is turned over to the Buyer) and final payment for the products, the Buyer will maintain sufficient insurance thereon in the name of the Seller against loss or damage from any cause to cover the unpaid balance of the purchase price, and failing to do so no loss or damage suffered during the aforesaid period shall relieve the Buyer from payments of the balance of the purchase price or from any of the terms of this contract. During such period, the Buyer will maintain the products and related materials delivered by the Seller in good condition.

## 7.0 EXCUSABLE DELAY

- .1 The Seller shall not be in breach of any of its obligations under this contract where failure to perform or delay in performing any obligation is due, wholly or in part, to (i) a cause beyond its reasonable control, (ii) an act of God, an act or omission of the Buyer or of any governmental authority, governmental priorities, riots, strike or other labor disputes, fires, flood, sabotage, earthquake, storm, epidemic, accident, or (iii) inability due to a cause beyond the Seller's reasonable control to obtain necessary or proper labor, materials, components, facilities, energy, fuel, transportation, required instructions or instructions or information from the Buyer. The foregoing shall apply even though any such cause exists at the time of the order or occurs after the Seller's performance of its obligations is delayed by another cause.
- .2 The Seller will notify the Buyer promptly of any failure to perform or delay in performing due to a cause set out in Paragraph 7.1 and shall specify, as soon as practicable, when the obligation will be performed. Subject to Paragraph 7.3, the time for performing the obligation shall be extended for the period lost due to such a cause.
- .3 Where the period lost is at least 60 days and the parties have not agreed upon a revised basis for performing the obligation, including adjustment of the prices, then, either partly may, upon 30 days written notice, terminate this contract whereupon the Buyer shall pay all outstanding monies due to the Seller and any Cancellation Charges as determined in accordance with Paragraph 11.0.

## 8.0 LIMITATION OF LIABILITY

- .1 In no event, whether as a result of a breach of contract, indemnity, warranty or tort (including negligence), strict liability, or otherwise, shall the Seller be liable to the Buyer for:
  - (i) Loss of profit or revenue, loss of use, cost of capital, downtime costs, cost of substitute products, facilities, services or replacement power;
  - (ii) Property damage external to the product and loss arising out of such damage;
  - (iii) Special, indirect, punitive or consequential damage; or for
  - (iv) Any of the foregoing suffered by a customer of the Buyer.
- .2 Except as may be provided under patents, Paragraph 4.0, in no event, whether as a result of a breach of contract, indemnity, warranty or tort (including negligence), strict liability or otherwise, shall the liability of the Seller to the Buyer exceed the price of or allocable to the service or product, or components thereof, which gives rise to the claim. Except as to title, any such liability shall terminate upon expiration of the warranty period referred to in Paragraph 1.1. and the applicable Limited Warranty Rider. Any such claim of liability must be timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations, but in no event later than one year from the termination of the warranty period.
- .3 If the Buyer transfers title to or leases the products sold hereunder to any third party, Buyer shall obtain from such third party a provision in writing affording Seller and its suppliers the protection of this Paragraph 8.0. Seller acknowledges that Buyer may after a period of time transfer title of the hardware sold hereunder to a third party, where at such time the Buyer will execute a Software License Agreement, in a form to be provided by Seller, that protects the intellectual property rights of Seller.

- .4 If the Seller furnishes Buyer with advice or other assistance which concern the products supplied hereunder or any system or equipment in which any such product may be installed and which is not required to an express term of this contract, the furnishing of such advice or assistance is done without assumption of responsibility or liability therefore and the Buyer shall not institute a claim in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, arising out of or in any way connected therewith.
- .5 The provisions of this Paragraph 8.0 shall survive expiration, cancellation or termination of this contract for any reason (including fundamental breach by Seller) and shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the contract, except to the extent that such provisions further restrict Seller's liability. For the purposes of this Paragraph 8.0, the term Seller includes Seller's subcontractors and suppliers of any tier.

## 9.0 TAXES AND DUTIES

- .1 Unless otherwise stated, the prices quoted herein do not include any present or future sales, use, excise, value added or any other applicable duties, business transfer or similar taxes, whether Federal, State or Provincial, and all such taxes shall be paid by the Buyer or the Buyer shall provide the Seller with evidence of exemption there from. If any such taxes referred to in the preceding sentence are included in the prices, the prices shall be adjusted to reflect any changes subsequent to the date of the proposal in such taxes including, but not limited to, changes in the rate and amount. All amounts to be paid by the Buyer are payable as invoiced.

## 10.0 CANCELLATION

- .1 The buyer may cancel this order at any time upon written notice and payment to the Seller of the Cancellation Charges referred to in Paragraph 11.0.

## 11.0 CANCELLATION CHARGES

- .1 In the event that this contract is cancelled pursuant to the Excusable Delay, Cancellation or Nuclear Use Paragraphs, the Cancellation Charges payable by the Buyer to the Seller shall be calculated as follows:
  - (i) In the event that Buyer cancels all or part of an Order, Buyer agrees to pay to Seller a cancellation charge for each product that has been cancelled in accordance with the following schedule:
    - 10% – Order received and entered on factory, work not started, material not ordered
    - 30% – Drawings for approval submitted
    - 60% – Approved drawings returned. Job release for manufacture and shipment
    - 80% – Material accumulated and production started
    - 100% – Manufacturing completed
  - (ii) 60 days or more prior to Ship Date, 100% for each item of Third Party Hardware or Third Party Software that has been cancelled.
- .2 The Cancellation Charges shall be payable upon presentation of Seller's invoice therefore.

## 12.0 EXPORT SHIPMENT

- .1 In the absence of an agreement to the contrary, the Buyer shall arrange for (i) export shipment to Buyer's country and (ii) marine warehouse-to-warehouse insurance (including war risk, if available). If the Seller performs any, or all, of the aforementioned Export Shipment arrangements, the Buyer shall pay Seller for all related fees and expenses, including, but not limited to, those covering preparation of consular documents, consular fees, ocean freight, storage, insurance, and Seller's then current fee for such services upon submission of Seller's invoices therefore.

- .2 In performing any of the foregoing services, Seller shall comply with any reasonable instructions of Buyer or, in the absence thereof, shall act according to its best judgment. In so acting on Buyer's behalf, neither Seller nor its agents shall be liable for fines or other charges due to incorrect declarations or for negligence or for any special, consequential, incidental, indirect, or exemplary damages to the Buyer resulting there from.

## 13.0 GOVERNMENT AUTHORIZATION

- .1 The party that arranges for export shipment (or Buyer's designated export agent) shall be responsible for the timely application in its own name for any required United States export license. Buyer shall be responsible for timely obtaining and maintaining any required import license, exchange permit or any other governmental authorization. Buyer and Seller shall assist each other when such help is reasonably possible. Seller shall not be liable if any authorization of any government is delayed, denied, revoked, restricted or not renewed, and the Buyer shall not be relieved thereby of its obligations to pay Seller for its products or any other charges which are the obligation of the Buyer hereunder.
- .2 All shipments hereunder shall at all times be subject to the export control laws and regulations of United States and any amendments thereto. Buyer agrees that it shall not make any disposition of United States-origin products purchased from Seller by way of trans-shipment, re-export, diversion or otherwise, other than in and to the ultimate country of destination specified on Buyer's order or declared as the country of ultimate destination on Seller's invoices, except as said laws and regulations may expressly permit.

## 14.0 NUCLEAR USE

- .1 Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity without the written consent of Seller. Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, unless Seller agrees to the use in writing. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damages, injury or contamination, and in addition to any other legal or equitable rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against any such liability. If Seller agrees in writing to any such use, the parties shall agree upon special terms and conditions that provide Seller protections against nuclear liability and which are acceptable to Seller under the then current laws that apply. If the products or any part thereof are used by the Buyer contrary to the aforesaid, the Buyer shall provide, at its own expense, insurance and indemnity satisfactory to the Seller which protects the Seller and all of its subcontractors and suppliers from all loss, expense, damages, costs, or liability of every kind, whether in contract or in tort (including negligence) or the Seller may terminate this contract. Upon such a termination, the Buyer shall pay to the Seller cancellation charges determined according to the cancellation charges in Paragraph 11.0.

## 15.0 CONFIDENTIALITY

- .1 The Buyer acknowledges that all material and information related to the Seller's products and services which has or will come into its possession or knowledge, consists of confidential and proprietary data, which disclosure to or use by third parties will be damaging. The Buyer therefore agrees to hold such material and information in strictest confidence, not to make use thereof other than for the performance of the products or services supplied hereunder, to release it only to employees requiring such information, and not to release or disclose it to any other party under less stringent conditions than the Buyer would take to protect its own intellectual property.
- .2 The Buyer agrees to take the appropriate action with respect to its employees to ensure that the above-referenced obligations of non-use and non-disclosure of confidential information can be fully satisfied.

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## 16.0 INDEMNIFICATION

- .1 Subject to the provisions of section 8, "Limitations of Liability", Seller agrees to indemnify and save harmless Buyer from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, arising out of the performance of this agreement, to the extent such damage or injury is attributable to the negligence of Seller; provided that Buyer gives Seller prompt notice of any such claim and all necessary information and assistance so that Seller, at its option, may defend or settle such claim and Buyer does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss, expense or claim shall be borne by Seller and Buyer in proportion to their negligence.

## 17.0 SOFTWARE LICENSING

- .1 Unless subject to a separate license or agreement, any software furnished hereunder whether separately or incorporated with supplied hardware, including any subsequent updates is furnished under following terms and conditions.
  - (i) The software and any part thereof designed to be used only on the type unit on which the software is first installed.
  - (ii) No exclusivity of use of the software is transferred to Buyer.
  - (iii) Software and hardware documentation that is copyrighted by Seller shall not be copied in whole or in part, but additional copies of software and documentation in printed form may be obtained from Seller or its representatives at Seller's then standard charges, subject to applicable import and export laws and regulations. Buyer agrees that any copyright, proprietary, trade secret or similar notices appearing on and in software will be reproduced and included on and in any modifications and copies, in whole or in part, of software.
  - (iv) The source code for software is not included.
  - (v) On occasion, third party licensed software is provided, it will be identified as such and the Buyer will be required to complete any sublicense specified by the software licensor and provided by the Seller.
  - (vi) If the Seller requires a separate software license agreement, Buyer shall execute the software license agreement provided by the Seller on or before installation, and the provisions of the separate software license agreement shall supersede the foregoing subparagraphs to the extent they are inconsistent with such license.

## 18.0 GENERAL

- .1 The rights and obligations of the parties shall be governed in all respects by the domestic substantive laws of the State of New York, United States, excluding its conflict of law rules.
- .2 Unless otherwise stipulated herein, the products shall be installed by and at the expense of the Buyer.
- .3 Any representation, understanding, proposal, agreement, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on the Seller. No modification, amendment, rescission, waiver or other change shall be binding on Seller unless assented to in writing by Seller.

- .4 This proposal is subject to change at any time prior to acceptance of an order by the Seller and unless otherwise stated in the proposal, expires after 30 days from the date hereof.
- .5 All orders are subject to final acceptance by the Seller in United States and shall only be binding on the Seller upon approval in writing by a senior officer of the Seller.
- .6 Any assignment of an order, or right there under, by the Buyer without the written consent of the Seller shall be void.
- .7 Any products sold shall comply with United States Federal and State laws and regulations of United States in effect applicable to the manufacture, packing and shipment of such products, at the date of the Seller's Proposal, and shall comply with any amendments thereto which may have come into effect prior to the time such products are shipped, provided that the prices and, if necessary, delivery shall be equitably adjusted to compensate the Seller for having to comply with such amendments.
- .8 The invalidity, in whole or in part, of any of the clauses in this contract will not affect any other clauses in this contract.
- .9 The reference to the Seller in Paragraphs 8.0 and 16.0 shall be deemed to include the Seller's suppliers and employees.

## 19.0 FEDERAL GOVERNMENT CUSTOMERS OR END USERS (IF APPLICABLE)

### **Terms of Sale - GE selling "commercial items" to a higher tier customer where the end customer is a US Federal Government entity under the Federal Acquisition Regulation (FAR) (GE as a subcontractor at any tier)**

If Buyer is procuring Products or Services on behalf of the US Federal Government, Purchaser agrees that all Products and Services provided by Seller meet the definition of a "commercial-off-the-shelf" (COTS) or "commercial item" as those terms are defined in FAR 2.101. Buyer agrees the subparagraph terms of FAR 52.212-5(e) or 52.244-6 (whichever is applicable) apply only to the extent applicable to COTS or commercial items and only as appropriate for the dollar value of this order.

### **Terms of Sale - GE selling "commercial items" directly to a US Federal Government entity under the Federal Acquisition Regulation (FAR)**

Purchaser agrees that all Products and Services provided by Seller meet the definition of "commercial-off-the-shelf" (COTS) or "commercial item" as those terms are defined in FAR 2.101. As permitted by FAR 12.302, Purchaser agrees FAR 52.212-4 is tailored by replacing all paragraphs (except those listed in 12.302(b)) with the GE customary commercial Terms and Conditions set forth in this Contract.

Purchaser agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable to COTS or commercial items and as appropriate for the dollar value of this order. The version of the clauses shall be those that are in effect as of the Effective Date of this order.

With regard to any terms related to Buy American Act or Trade Agreements that may be applicable to this Contract, the country of origin of Products is unknown unless otherwise specifically stated by GE.

Purchaser agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41).

Purchaser agrees this Contract is not funded, in whole or part, by American Recovery Reinvestment Act funds unless otherwise set forth in the Contract.



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