

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this **2nd day of April, 2003**, by and between the City of Naples, Florida, a municipal corporation, (hereinafter referred to as the "OWNER") and **Cutler Hammer, Inc., a Delaware corporation**, whose business address is **1700 South Powerline Road, Suite J, Deerfield Beach, FL 33442** (hereinafter referred to as the "CONTRACTOR").

WITNESSETH:

WHEREAS, the OWNER desires to obtain the services of the CONTRACTOR concerning certain services related **to the replacement of three variable frequency drives** (hereinafter referred to as the "Project"), said services being more fully described in Exhibit A, "Scope of Services", which is attached hereto and incorporated herein; and

WHEREAS, the CONTRACTOR has submitted a proposal for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE ONE CONTRACTOR'S RESPONSIBILITY

1.1. The Basic Services to be performed by CONTRACTOR hereunder are **to replace three variable frequency drives**.

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within five (5) calendar days after receiving its Notice to Proceed, a qualified licensed professional to serve as the CONTRACTOR's project manager (hereinafter referred to as the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the OWNER that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the OWNER's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR hereunder. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding

Revised 7/18/02

resolution of the conflict.

1.6. CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

1.7. CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. In the event CONTRACTOR violates the provisions of this paragraph, CONTRACTOR shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

1.8. CONTRACTOR agrees not to provide services for compensation to any other party other than OWNER on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of OWNER.

1.9. Except as otherwise provided herein, CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of CONTRACTOR'S contractual relationship with OWNER for the special gain or benefit of CONTRACTOR or for the special gain or benefit of any other person or entity.

ARTICLE TWO OWNER'S RESPONSIBILITIES

2.1. The Owner shall designate in writing a project coordinator to act as OWNER's representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR hereunder;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the OWNER is obligated or committed to pay the CONTRACTOR.

2.2. The Project Coordinator shall:

(a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;

(b) Arrange for access to and make all provisions for CONTRACTOR to enter the Project site to perform the services to be provided by CONTRACTOR under this Agreement; and

(c) Provide notice to CONTRACTOR of any deficiencies or defects discovered by the OWNER with respect to the services to be rendered by CONTRACTOR hereunder.

2.3. CONTRACTOR acknowledges that access to the Project Site, to be arranged by OWNER for CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

ARTICLE THREE TIME

3.1. Services to be rendered by CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNER for all or any designated portion of the Project and shall be **performed and completed by July 30, 2003**. Time is of the essence with respect to the performance of this Agreement.

3.2. Should CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONTRACTOR shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONTRACTOR's services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the CONTRACTOR, the services to be provided hereunder have not been completed within 18 months of the date hereof, the CONTRACTOR's compensation may be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONTRACTOR after expiration of said 18 month period.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

ARTICLE FOUR COMPENSATION

4.1. The total compensation to be paid CONTRACTOR by the OWNER for all Basic Services shall be **\$24,975.00** and shall be paid in the manner set forth in and Exhibit A.

ARTICLE FIVE MAINTENANCE OF RECORDS

5.1. CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONTRACTOR for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later.

OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

**ARTICLE SIX
INDEMNIFICATION**

6.1. CONTRACTOR agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employer or utilized by the Contractor in the performance of the Contract.

**ARTICLE SEVEN
INSURANCE**

7.1. CONTRACTOR shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit C to this Agreement.

**ARTICLE EIGHT
SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by CONTRACTOR's own staff, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

**ARTICLE NINE
WAIVER OF CLAIMS**

9.1. CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against OWNER arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of CONTRACTOR's services nor payment by OWNER shall be deemed to be a waiver of any of OWNER's rights against CONTRACTOR.

**ARTICLE TEN
TERMINATION OR SUSPENSION**

10.1. CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONTRACTOR or by any of CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The OWNER may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR seven (7) calendar day's written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that CONTRACTOR was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and CONTRACTOR's remedies against OWNER shall be the same as and limited to those afforded CONTRACTOR under paragraph 10.3 below.

10.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONTRACTOR. In the event of such termination for convenience, CONTRACTOR's recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONTRACTOR that are directly attributable to the termination, but CONTRACTOR shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work not required to be performed.

ARTICLE ELEVEN CONFLICT OF INTEREST

11.1. CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE TWELVE MODIFICATION

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE THIRTEEN NOTICES AND ADDRESS OF RECORD

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following OWNER's address of record:

City of Naples
735 Eighth Street South
Naples, Florida 34102-3796
Attention: Kevin Rambosk, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

Cutler Hammer, Inc.
1700 South Powerline Road
Suite J
Deerfield Beach, FL 33442
ATTN: Robert A. Miller

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

**ARTICLE FOURTEEN
MISCELLANEOUS**

14.1. CONTRACTOR, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by CONTRACTOR without the prior written consent of OWNER.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

**ARTICLE FIFTEEN
APPLICABLE LAW**

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

OWNER:

CITY OF NAPLES, FLORIDA,
A Municipal Corporation

By: _____
Tara A. Norman, City Clerk

By: _____
Kevin Rambosk, City Manager

Approved as to form
and legal sufficiency:

By: _____
Robert D. Pritt, City Attorney

CONTRACTOR:

CUTLER HAMMER, INC.
A Delaware Corporation

By: _____
Kathleen M.Kolsun, Manager
Contracts Management

witness

(CORPORATE SEAL)



Cutler-Hammer

Eaton Corporation
Engineering Services & Systems
1700 South Powerline Road, Suite J
Deerfield Beach, FL 33442
(954) 571-8282
(954) 419-9881 Fax

Neg. No. 1249MIK1C249

City of Naples – WWTP
Dept. of Public Works
Utilities- Wastewater Treatment
1400 3rd. Ave North
Naples, FL 34102

March 6, 2003

PROJECT: 03M20

Attn: Ken Kemlage

Subject: Replacement of Variable Frequency Drive at the City of Naples WWTP

Reference: C-HESS Neg. # 1249MIK1C249

Dear Mr. Kemlage,

Cutler-Hammer Engineering Services and Systems is pleased to provide the following proposal for your review and consideration.

1A. Scope of work: Replacement of 3 existing variable frequency drives.

3 each:

SV9 Oversized NEMA 1, 20 HP Rating, Variable Torque, 440V to 500V
5 digital inputs, relay output, thermistor input, 4-20ma input
Speed Potentiometer
Manual HOA, Bypass Contactor and Controller
Time Delay Relay for start
Elapse Time Meter
Pushbuttons
Push to Test Pilot Lights
or Switch

1B. Scope of Work Option: Replacement of 1 existing variable frequency drive.

1 each:

SV9 Oversized NEMA 1, 20 HP Rating, Variable Torque, 440V to 500V
5 digital inputs, relay output, thermistor input, 4-20ma input
Speed Potentiometer
Manual HOA, Bypass Contactor and Controller
Time Delay Relay for start
Elapse Time Meter
Pushbuttons
Push to Test Pilot Lights
or Switch

2. **Scopes includes:**

Startup and commissioning, setting drive(s) parameters, programming control as necessary.
It is the customers responsibility to remove existing drives & to install/mount/cable new drives.
Travel time and local expenses.

3. **Price for 1A:** ***Replacement of 3 existing variable frequency drives has been quantity discounted for purchase of 3 each.***

The investment for 1A scope of work is: ----- \$ 24,975.00
Delivery is 4 to 6 weeks after receipt of order.

4. **Price for 1B Option:** ***Replacement of 1 existing variable frequency drive.***

The investment for 1B scope of work is: ----- \$ 9,325.00
Delivery is 4 to 6 weeks after receipt of order.

This proposal is subject to Cutler-Hammer's Selling Policy 25-000 attached. The following terms and conditions will apply to this proposal.

Taxes and fees are not included in this proposal.
This quotation is valid for 30 days from date of issue.
Price is based on customer providing ready access to the equipment for continuous, uninterrupted work. Any unusual delays not caused by C-H ESS will be billed at the applicable regular or overtime rates.
Price is based on an 8-hour day Monday through Friday, holidays, hours in excess of an eight-hour day and weekend time will be billed at the applicable rates.
Customer provides tag out of the equipment and performs all switching or plant reconfiguration.
Single-phase 115vac 20amp electrical power will be supplied by the customer.
Offloading and storage of equipment provided by the customer.
Welding, burning or cutting of equipment or interference's is the responsibility of the customer
Applicable work permits gas free certificates, etc. are the responsibility of the customer.
Customer is to provide and accurate and up to date electrical one-line diagram.
Any equipment found to be defective would require customer approval prior to repair or replacement.
Three-phase 480vac 150amp power is to be provided by the customer.
Disposal of trash, oil or hazardous material is the responsibility of the customer.
Customer provides written notification of any site specific safety practices prior to start of work. In the absence of site-specific safety practices, C-H personnel will follow the safety procedures in the Cutler-Hammer Safety Manual.
Customer is to arrange and pay for any necessary utility outage.
Customer is to provide lighting in any work area.
Customer is to provide a System coordination study for setting of breaker trips. In absence of study C-H ESS will set trip setting at minimum.
Customer is to provide three (3) weeks of notification prior to start of proposed work.
Customer is to provide written notification of insurance requirements three (3) weeks prior to start of work.
Cancellation charge may apply is work if cancelled without sufficient notice.

We appreciate this opportunity to be of service to you. If you have any questions or comments please feel free to contact us at any time.

Respectfully,

Robert A. Miller

Robert A. Miller
Sales Engineer - South Florida & Caribbean Region
Email: robertamiller@eaton.com



Supersedes Selling Policy 25-000,
Pages 1-4, dated February 1, 1998

GENERAL TERMS AND CONDITIONS OF SALE

Selling Policy
Effective: May 1, 2000 Page 1

Distribution and Control Products and Services 25-000

Terms and Conditions of Sale

The Terms and Conditions of Sale set forth herein, and any supplements which may be attached hereto, constitute the full and final expression of the contract for the sale of products or services (hereinafter referred to as Product(s) or Services by Cutler-Hammer Inc. (hereinafter referred to as Seller) to the Buyer, and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between the Seller and the Buyer. Notwithstanding any contrary language in the Buyer's purchase order, correspondence or other form of acknowledgment, Buyer shall be bound by these Terms and Conditions of Sale when it sends a purchase order or otherwise indicates acceptance of this contract, or when it accepts delivery from Seller of the Products or Services. THE CONTRACT FOR SALE OF THE PRODUCTS OR SERVICES IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF SALE STATED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER. No contract shall exist except as herein provided.

Complete Agreement

No amendment or modification hereto nor any statement, representation or warranty not contained herein shall be binding on the Seller unless made in writing by an authorized representative of the Seller. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

Quotations

Written quotations are valid for 30 days from its date unless otherwise stated in the quotation or terminated sooner by notice.

Verbal quotations, unless accepted, expire the same day they are made.

A complete signed order must be received by Seller within 20 calendar days of notification of award, otherwise the price and shipment will be subject to re-negotiation.

Termination and Cancellation

Any order may be terminated by the Buyer only by written notice and upon payment of reasonable termination charges, including all costs plus profit.

- Ⓛ 60 days for orders through contractors to allow time for their review and approval before and after transmitting them to their customers.

Seller shall have the right to cancel any order at any time by written notice if Buyer breaches any of the terms hereof, becomes the subject of any proceeding under state or federal law for the relief of debtors, or otherwise becomes insolvent or bankrupt, generally does not pay its debts as they become due or makes an assignment for the benefit of creditors.

Prices

All prices are subject to change without notice. In the event of a price change, the effective date of the change will be the date of the new price or discount sheet, letter or telegram. All quotations made or orders accepted after the effective date will be on the new basis. For existing orders, the price of the unshipped portion of an order will be the price in effect at time of shipment.

Price Policy – Products and Services

When prices are quoted as firm for quoted shipment, they are firm provided the following conditions are met:

1. The order is released with complete engineering details.
2. Shipment of Products are made, and Services purchased are provided within the quoted lead time.
3. When drawings for approval are required for any Products, the drawings applicable to those Products must be returned within 30 calendar days from the date of the original mailing of the drawings by Seller. The return drawings must be released for manufacture and shipment and must be marked "APPROVED" or "APPROVED AS NOTED". Drawing re-submittals which are required for any other reason than to correct Seller errors will not extend the 30-day period.

If the Buyer initiates or in any way causes delays in shipment, provision of Services or return of approval drawings beyond the periods stated above, the price of the Products or Services will be increased 1% per month or fraction thereof up to a maximum of 18 months from the date of the Buyer's order. For delays resulting in shipment or provision of Services beyond 18 months from the date of the Buyer's order, the price must be renegotiated.

Price Policy - BLS

Refer to Price Policy 25-050.

Minimum Billing

Orders less than \$250 will be charged a \$30 handling fee.

Taxes

The price does not include any taxes. Buyer shall be responsible for the payment of all taxes applicable to, or arising from the transaction, the Products, its sale, value, or use, or any Services performed in connection therewith regardless of the person or entity actually taxed.

TERMS OF PAYMENT

Products

Terms of payment for assembled Products listed below are net within 30 days from date of invoice:

Adjustable Speed Drives
Automatic Transfer Switches
Custom Control Panels
Electrocenters
Excitation Control
Industrial PC's
Load Interrupter Switchgear
LV and MV Busway
LV and MV Motor Control Centers
LV and MV Switchgear
Navy Circuit Breakers
Network Protectors
Operator Interface
Panelboards & Switchboards
Power Circuit Breakers and Fuses
Solid State Starters
Unit Substation Transformers

Terms of payment for standard or stock Products will be:

2% 10th proximo, Net 25th proximo for invoices dated 1st through 15th of the month; 2% 25th proximo, Net 10th 2nd proximo for invoices dated 16th through 31st.

Note: Refer to Product discount sheets for further clarification as to which terms of payment apply.

Services

Terms of payment are net within 30 days from date of invoice for orders amounting to less than \$50,000.00.

Terms of payment for orders exceeding \$50,000.00 shall be made according to the following:



Selling Policy 25-000
May 1, 2000
Page 2

1. Twenty percent (20%) of order value with the purchase order payable 30 days from date of invoice.
2. Eighty percent (80%) of order value in equal monthly payments over the performance period payable 30 days from date of invoice.

Except for work performed (I) under a firm fixed price basis or (II) pursuant to terms of a previously priced existing contract between Seller and Buyer, invoices for work performed by Seller shall have added and noted on each invoice a charge of 3% (over and above the price of the work) which is related to Seller compliance with present and proposed environmental, health, and safety regulations associated with prescribed requirements covering hazardous materials management and employee training, communications, personal protective equipment, documentation and record keeping associated therewith.

Adequate Assurances

If, in the judgment of Seller, the financial condition of the Buyer, at any time during the period of the contract, does not justify the terms of payment specified, Seller may require full or partial payment in advance.

Delayed Payment

If payments are not made in accordance with these terms, a service charge will, without prejudice to the right of Seller to immediate payment, be added in an amount equal to the lower of 1.5% per month or fraction thereof or the highest legal rate on the unpaid balance.

FREIGHT

F.O.B. - P/S - Frt./Ppd. and Invoiced
Automatic Transfer Switches and Renewal Parts, and Electronic Operator Interface Products are sold F.O.B. point of shipment freight prepaid and invoiced to the Buyer.

F.O.B. - P/S - Frt./Ppd. and Allowed
All other Products sold are delivered F.O.B. point of shipment, freight prepaid and included in the price.

F.O.B. Destination - Frt./Ppd. and Allowed
At Buyer's option, Seller will deliver the Products F.O.B. destination freight prepaid and 2% will be added to the net price.

Shipment and Routing

Seller shall select the point of origin or shipment, the method of transportation and the routing of the shipment.

If the Buyer specifies a special mode of transportation or routing, Buyer shall pay all freight.

When freight is included in the price, no allowance will be made in lieu of transportation if the Buyer accepts shipment at factory, warehouse, or freight station or otherwise supplies its own transportation.

Risk of Loss

Risk of loss or damage to the Products shall pass to Buyer at the F.O.B. point.

Concealed Damage

Except in the event of F.O.B. destination shipments, Seller will not participate in any settlement of claims for concealed damage.

When shipment has been made on an F.O.B. destination basis, the Buyer must unpack immediately and, if damage is discovered must:

1. Not move the Products from the point of examination.
2. Retain shipping container and packing material.
3. Notify the carrier in writing of any apparent damage.
4. Notify Seller representative within 72 hours of delivery.
5. Send Seller a copy of the carrier's inspection report.

Witnessed Tests/Customer Inspection

Standard factory tests may be witnessed by the Buyer for \$1500 per day per Product type. Buyer may final inspect Products at the factory for \$500 per day per Product type.

Seller will notify Buyer fourteen (14) calendar days prior to schedule witness testing or inspection. In the event Buyer is unable to attend, the Parties shall mutually agree on a rescheduled date. However, Seller reserves the right to consider the witness tests waived with the right to ship and invoice the Products.

Held Orders

For any order held, delayed or rescheduled at the request of the Buyer, Seller may, at its sole option (1) require payment to be based on any reasonable basis, including but not limited to the contract price, and any additional expenses, or cost resulting from such a delay; (2) store Products at the sole cost and risk of loss of the Buyer; and/or (3) charge to the Buyer those prices under the applicable price policy. Any order so held delayed or rescheduled beyond twelve (12) months will be treated as a Buyer termination.

Drawing Approval

Seller will design the Products in line with, in Seller's judgment, good commercial practice. If at drawing approval Buyer makes changes outside of the design as covered in their specifications, Seller will then be paid reasonable charges and allowed a

commensurate delay in shipping date based on the changes made.

WARRANTY

Warranty For Products

Seller warrants that the Products manufactured by it will conform to Seller's applicable specifications and be free from failure due to defects in workmanship and material for one (1) year from the date of installation of the Product or eighteen (18) months from the date of shipment of the Product, whichever occurs first.

In the event any Product fails to comply with the foregoing warranty Seller will, at its option, either (a) repair or replace the defective Product, or defective part or component thereof, F.O.B. Seller's facility freight prepaid, or (b) credit Buyer for the purchase price of the Product. All warranty claims shall be made in writing. Seller requires all non-conforming Products be returned at Seller's expense for evaluation unless specifically stated otherwise in writing by Seller.

This warranty does not cover failure or damage due to storage, installation, operation or maintenance not in conformance with Seller's recommendations and industry standard practice or due to accident, misuse, abuse or negligence. This warranty does not cover reimbursement for labor, gaining access, removal, installation, temporary power or any other expenses which may be incurred in connection with repair or replacement.

This warranty does not apply to equipment not manufactured by Seller. Seller limits itself to extending the same warranty it receives from the supplier.

Extended Warranty for Products

If requested by the Buyer and specifically accepted in writing by Seller, the foregoing standard warranty for Products will be extended from the date of shipment for the period and price indicated below:

- 24 months - 2% of Contract Price
- 30 months - 3% of Contract Price
- 36 months - 4% of Contract Price

Special Warranty (In and Out) for Products

If requested by the Buyer and specifically accepted in writing by Seller, Seller will, during the warranty period for Products, at an additional cost of 2% of the contract price, be responsible for the direct cost of:



1. Removing the Product from the installed location.
2. Transportation to the repair facility and return to the site.
3. Reinstallation on site.

The total liability of Seller for this Special Warranty for Products is limited to 50% of the contract price of the particular Product being repaired and excludes expenses for removing adjacent apparatus, walls, piping, structures, temporary service, etc.

Warranty For Services

Seller warrants that the Services performed by it hereunder will be performed in accordance with generally accepted professional standards.

The Services which do not so conform shall be corrected by Seller upon notification in writing by the Buyer within one (1) year after completion of the Services.

Unless otherwise agreed to in writing by Seller, Seller assumes no responsibility with respect to the suitability of the Buyer's equipment or with respect to any latent defects in the same. This warranty does not cover damage to Buyer's equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. Buyer will, at its cost, provide Seller with unobstructed access to the defective Services, as well as adequate free working space in the immediate vicinity of the defective Services and such facilities and systems, including, without limitation, docks, cranes and utility disconnects and connects, as may be necessary in order that Seller may perform its warranty obligations. The conducting of any tests shall be mutually agreed upon and Seller shall be notified of, and may be present at, all tests that may be made.

Warranty for Power Systems Studies

Seller warrants that any power systems studies performed by it will conform to generally accepted professional standards. Any portion of the study which does not so conform shall be corrected by Seller upon notification in writing by the Buyer within six (6) months after completion of the study. All warranty work shall be performed in a single shift straight time basis Monday through Friday. In the event that the study requires correction of warranty items on an overtime schedule, the premium portion of such overtime shall be for the Buyer's account.

Limitation on Warranties for Products, Services and Power Systems Studies
THE FOREGOING WARRANTIES ARE EXCLUSIVE EXCEPT FOR WARRANTIES OF TITLE AND AGAINST PATENT INFRINGEMENT. SELLER DISCLAIMS ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

CORRECTION OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE SELLER'S SOLE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR FAILURE OF SELLER TO MEET ITS WARRANTY OBLIGATIONS, WHETHER CLAIMS OF THE BUYER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE.

Asbestos

Federal Law requires that building or facility owners identify the presence, location and quantity of asbestos containing material (hereinafter "ACM") at work sites. Seller is not licensed to abate ACM. Accordingly, for any contract which includes the provision of Services, prior to (i) commencement of work at any site under a specific Purchase Order, (ii) a change in the work scope of any Purchase Order, the Buyer will certify that the work area associated with the Seller's scope of work includes the handling of Class II ACM, including but not limited to generator wedges and high temperature gaskets which include asbestos materials. The Buyer shall, at its expense, conduct abatement should the removal, handling, modification or reinstallation, or some or all of them, of said Class II ACM be likely to generate airborne asbestos fibers; and should such abatement affect the cost of or time of performance of the work then Seller shall be entitled to an equitable adjustment in the schedule, price and other pertinent affected provisions of the contract.

Compliance with Nuclear Regulation

Seller's Products are sold as commercial grade Products not intended for application in facilities or activities licensed by the United States Nuclear Regulatory Commission for atomic purposes. Further certification will be required for use of the Products in any safety-related application in any nuclear facility licensed by the U.S. Nuclear Regulatory Commission.

Returning Products

Authorization and shipping instructions for the return of any Products must be obtained from Seller before returning the Products.

When return is occasioned due to Seller error, full credit including all transportation charges will be allowed.

Product Notices

Buyer shall provide the user (including its employees) of the Products with all Seller supplied Product notices, warnings, instructions, recommendations, and similar materials.

Force Majeure

Seller shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the Buyer, riot, embargo, fuel or energy shortage, car shortage, wrecks or delays in transportation, or due to any other cause beyond Seller's reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Liquidated Damages

Contracts which include liquidated damage clauses for failure to meet shipping or job completion promises are not acceptable or binding on Seller, unless such clauses are specifically accepted in writing by an authorized representative of the Seller at its headquarters office.

Patent Infringement

Seller will defend any suit or proceeding brought against Buyer, or Buyer's customers, so far as based upon a claim that any Products infringe any United States patent, if notified in reasonable time and given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all legal and court costs and expenses and court assessed damages awarded therein against Buyer and resulting from or incident to such suit or proceeding. In addition to the foregoing, if at any time Seller determines there is a substantial question of infringement of any United States patent or in case any Products are judicially held to infringe United States patent and the use of such Products are enjoined, Seller may, at its option and expense, either procure for Buyer the right to continue using and selling the Products; or replace the Products with non-infringing apparatus; or modify it so it becomes non-infringing; or, as a last resort, remove the Products and refund the purchase price. In no case does Seller agree to pay any recovery based upon its Buyer's savings or profit through use of Seller's Products whether the use be special or ordinary. The foregoing states the entire liability of Seller for patent infringement.



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The preceding paragraph does not apply to modifications made by Buyer to Products furnished by Seller or to Products manufactured to Buyer's design and specifications or to the use of Products with other products where Products do not in itself infringe a United States patent. As to any Products manufactured to Buyer's design or specifications, or when Products are used with other products, Buyer shall hold Seller harmless in the same manner and to the extent of Seller's obligation described in the preceding paragraph. Buyer shall be responsible for obtaining all license rights required by Seller for software products in the possession of Buyer whose use is required by Seller in performing Services for Buyer.

Compliance with OSHA

Seller offers no warranty and makes no representation that its Products comply with the provisions or standards of the Occupational Safety and Health Act of 1970, or any regulation issued thereunder. In no event shall Seller be liable for any loss, damage, fines, penalty or expenses arising under said Act.

Limitation of Liability

THE REMEDIES OF THE BUYER SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS HEREUNDER.

NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD HEREUNDER, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, COST OF CAPITAL, CLAIMS OF CUSTOMERS OF THE BUYER OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER.

THE TOTAL CUMULATIVE LIABILITY OF SELLER ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED.

GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples and their Engineer must be named as **Additional Insured** on the insurance certificate **and the following must also be stated on the certificate**. "These coverages are primary to all other coverages the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. **The Certificate Holder shall read as follows:**

**The City of Naples
735 Eighth Street South
Naples, Florida 34102**

No City Division, Department, or individual name should appear on the Certificate.

No other format will be acceptable.

Thirty (30) days cancellation notice required.

The Certificate must state the bid number and title.

When using the "Accord" form of insurance certificate, please note that under the cancellation clause, the following must be deleted: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company"

