

**CITY OF WATERTOWN, NEW YORK**  
**AGENDA**  
**Thursday, July 19, 2018**  
**6:00 p.m.**

This shall serve as notice that an Adjourned City Council Meeting from July 16, 2018, is scheduled to be held on Thursday, July 19, 2018, at 6:00 p.m. in the City Council Chambers, 245 Washington Street, Watertown, New York.

**AGENDA**

**RESOLUTIONS**

Resolution No. 15 - Accepting Proposal for Emergency Issuance of Agreement,  
Turbine No. 1, Hydroelectric Plant

**ADJOURNMENT**

**NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING IS MONDAY,  
AUGUST 6, 2018.**

Res No. 15

July 19, 2018

To: The Honorable Mayor and City Council

From: Bradford J. Minnick, City Manager

Subject: Accepting Proposal for Emergency Issuance of Agreement,  
Turbine No. 1, Hydroelectric Plant

Attached for City Council's consideration is a Resolution accepting the proposal from Schulz Electric to perform the repairs necessary on turbine number one at the hydroelectric plant.

July 19, 2018

Resolution No. 15

Page 1 of 1

Accepting Proposal for Emergency Issuance of Agreement, Turbine No. 1, Hydroelectric Plant

Council Member HENRY-WILKINSON, Ryan J.  
Council Member HORBACZ, Cody J.  
Council Member RUGGIERO, Lisa A.  
Council Member WALCZYK, Mark C.  
Mayor BUTLER, Jr., Joseph M.

YEA	NAY

Total .....

**Introduced by**

WHEREAS the City of Watertown’s hydroelectric plant is down for maintenance on all three turbines, and

WHEREAS during cleaning of the windings of turbine number one it was found that the turbine cannot be operated due to a short to ground on the rotor and several coils being out of specification, and

WHEREAS re-energizing the turbine without repairs will cause extensive property damage to the turbine itself, and

WHEREAS the lack of the use of turbine number one for any extended period of time will negatively impact production of the hydroelectric plant, and

WHEREAS the City may proceed to award a contract for necessary repairs without the public bidding requirements contained in Section 103 of the New York General Municipal Law due to the emergent situation, and

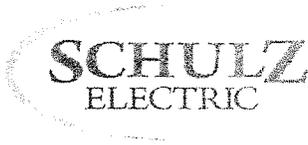
WHEREAS the City has received three (3) proposals and Water Superintendent Vicky L. Murphy and City Engineer Justin L. Wood have reviewed the proposals and found two of them to satisfy the repairs needed, and

WHEREAS Schulz Electric, New Haven, Connecticut, is the lower cost proposal at \$337,835, and City staff recommend entering into an agreement with Schulz Electric, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby accepts the proposal from Schulz Electric, a copy of which is attached and made part of this resolution, in the amount of \$337,835 to perform the repairs to turbine number one at the City’s hydroelectric plant, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to sign all contracts associated with implementing the award to Schulz Electric.

**Seconded by**



Timken Motor & Crane Services LLC  
 Schulz Electric  
 30 Gando Drive  
 New Haven, CT 06513

**QUOTATION**  
**Quote Number: 47982**  
**Quote Date: 7/3/2018**  
*Please reference this quote number on all correspondence*

*Thank you for your inquiry. We are pleased to offer this quote for your consideration.*

**To:** City Of Watertown  
 245 Washington Street  
 Watertown, NY 13601  
 USA

**Ship To:** City Of Watertown  
 245 Washington Street  
 Watertown, NY 13601  
 USA

**Attn:**

Phone:  
 Fax:  
 Email:

**Quote Description:** Disassembly, Pole Reinsulation, and Reassembly - Unit 1 - City of Watertown

**Quote Reference:**

**PO Reference:**

**Sales Rep:** Talarico, Michael  
 30 Gando Drive  
 New Haven, CT 06513  
 USA  
**Phone:** 203-994-5526  
**Fax:**  
**Email:** Michael.Talarico@timken.com

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**Inside:** Davis, Calef  
 30 Gando Drive  
 New Haven, CT 06513  
**Phone:** +1 203 562 5811  
**Fax:**  
**Email:** calefdavis@schulzelectric.com

*Credit card orders may be subject to a 3% convenience fee.*

*Visit us at [www.schulzelectric.com](http://www.schulzelectric.com)*

**In House Capabilities**

- Motor and Generator Repairs In-House
- Full Voltage Testing to 13,800V AC, 1200V DC
- UL Authorized Facility
- Large Machining
- Environmentally Controlled Rewind Department
- Full Load Testing Capabilities
- Gearbox Repair
- Custom Controls & Integration

**Field Service**

- Motor Installation and Removals
- AC and DC Drive Repairs, Installations, and Retrofits
- Laser Alignment Services
- Vibration Trending and Analysis
- Infrared Thermography
- On and Off-Line Motor Testing
- Engineered Solutions and Energy Efficient Upgrades

**Hydroelectric Services**

- On-site Inspection and Servicing
- Complete Mechanical Rebuilds and Electrical Rewinds
- Redesign and Uprate
- Core Lamination Replacement/Repair
- Recondition and Rewedge
- Cryogenic Cleaning

**Switchgear Services**

- Full Switchgear Testing Services
- Oil Analysis
- Transformer Turn ratio Testing
- Power Factor Testing
- Circuit Breaker Retrofits

*Applicable Terms & Conditions (see attached - subject to credit approval)*

<b>Terms of Payment:</b> Net 30	<b>Freight Payment:</b> See comments
<b>Shipping Via:</b> To Be Determined	<b>Quote Validity:</b> 30 Days

*Each Timken Power Systems Site Independently ISO 9001 Certified*

**QUOTATION**

**Quote Number: 47982**

**Quote Date: 7/3/2018**

*Please reference this quote number on all correspondence*

Project Findings from Field Service Call 6/28/2018 and Attachments

- Technician Performed Voltage Drop on All 60 Pole Pieces
- Voltage Drop Test Results can be Found Attached
- Video of Movement in Pole Pieces
- Sample Repair Report for Pole Piece Project
- Summary and Conclusion of Findings. Below
- Hydro Appendix

**Summary of Results:**

Based on the rotor testing performed we noticed a significant variation in voltage drop results ~18% variation. We performed the testing and evaluated the results based on Schulz Group - Maine Division Work Instruction (WI) 05-11. WI 05-11 describes the steps necessary to perform a voltage drop test on field coils/poles. It was developed in reference with, Schulz Group - Maine Divisions, Quality Assurance (QA) Manual, Schulz Group - Maine Divisions, Quality Assurance Procedures (QAP), IEEE Standard Number 112 "IEEE Standard Test Procedures for Polyphase Induction Motors and Generators", IEEE Standard Number 113 "IEEE Guide: Test Procedure for Direct Current Machines, as well as NEMA MG-1 "Motor and Generator Standards" Based on Schulz Group - Maine Divisions Work Instruction 05-11 the acceptance criteria shall be +/-5% of the average of all measured voltage drops. The results of our testing onsite have yielded unsatisfactory results.

**Conclusion:**

Without a baseline, unsatisfactory test results, and with such a wide range of variation in test results pole to pole, it is our recommendation that all pole pieces should be reinsulated. These are edge wound pole pieces (different from lap wound pole pieces), which is why the terminology is for reinsulation of pole pieces, instead of rewinding the pole piece.

Please be sure to review the testing results, attached, the sample completed project report for another customer for pole pieces, and the video of the movement in the pole pieces. All of these items either, provide added justification of our conclusion above, or help show our experience and completed project work.

Please let us know if you need anything else. We appreciate this opportunity and look forward to working with you on this project.

**Please Note:**

Proposal as written assumes scope is limited to disassembly, re-insulation, and reassembly of unit as outlined below. We also assume that we will be provided crane access within the building. Our technicians using the cranes, are crane certified and have received rigging training for units large and small. We assume all dunnage for blocking unit and components will be provided by the customer. We assume there is not a project specification, if there is, we will require review of the specification, which may change scope, price, and/or delivery. We did not perform any testing on the stator coils or laminations, nor did we test the exciter. It is unknown the status of those components, if any of those components show issues during our testing and inspections, we will advise the customer, and supply a revised scope, updated dollar value, and delivery period. Our schedule assumes six, ten hour days a week to complete in the project. We also assume that we can start the repair promptly. If awarded the project, Schulz can provide a detailed project schedule once a start date is determined.

If any of the assumptions above are incorrect our pricing, delivery, and scope may change. After identification, a revised proposal will be supplied to the customer for review and approval prior to commencement with added work.

Delivery: We can complete the quoted scope below, by September 28, 2018 based on the assumptions above. We may be able to improve on delivery and will advise the customer if and when available.

**Project Payment Schedule**

- 30% After Completion of Unit Disassembly and Pole Piece Removal
- 40% After Completion of Reinsulation of Pole Pieces and Return to Site
- 30% After Project Completion



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**Quote Date: 7/3/2018**  
*Please reference this quote number on all correspondence*

Item	Part/Description	Qty	Net Price Each	Extended Price	Shipment / Lead Time
1	<b>Part: FS-47982</b> <b>Description:</b> Disassembly, Pole Reinsulation, Reassembly <b>Comments:</b>  Scope of Work - Disassembly and Rotor Pole Removal: Dispatch Field Service Technicians Perform Lock-Out-Tag-Out (LOTO) Procedures Upon Completion of LOTO, Disconnect Unit Perform Mechanical and Electrical Tests and Inspections Document Existing Units Location, Jack Up Runner Shaft Assembly and Block Disassemble Unit - Remove - Exciter Stator, Exciter Rotor, Upper Bearing Cartridge, Upper Bridge, Rotor Stage Unit and Components for Storage while Rotor Components are Offsite Blockup Rotor and Document Rotor Connections Disconnect Connections and Remove Rotor Pole Pieces Palletize and Band for Shipment Ship to TPS Facility for Reinsulation  Scope of Work - Rotor Work In House Incoming Electrical and Mechanical Tests and Inspections Remove Pole Piece Collars and Take Winding Data to Extent Possible Burnout, Strip Pole Piece, and Blast Copper Clean, Cryogenically Clean Pole Laminations Order New Insulation Papers, Collars, and B Stage Felt Rewind Pole Piece to Class F Insulation Press and Cure Pole Piece Upon Completion of Pressing, VPI Pole Pieces Post VPI Electrical Tests and Inspections Package and Ship  Scope of Work - Rotor Pole Reinstallation and Reassembly Receive Pole Pieces from TPS Facility Cryogenically Clean Rotor Spyder and Paint Reinstall Pole Pieces and Connect as per Original Documentation Perform Voltage Drop Test After Completion of Reinstallation Reassemble Unit - Reinstall - Rotor, Upper Bridge, Upper Bearing Cartridge, Exciter Rotor, Exciter Stator Ensure Equipment Returned to Original Location and Remove Blocking Perform Mechanical and Electrical Tests and Inspections Reconnect Unit, Remove LOTO Assist with Startup Balance Rotor if Needed  Provide Project Report  Please Note: Any added labor or material may extend price and delivery. Upon discovery, we will notify the customer and provide an updated quote, schedule, and explanation for the change for the customer's review and approval, prior to commencement with the additional work.	1	327,835.00	327,835.00	See Comments
2	<b>Part: FS-47982-1</b> <b>Description:</b> Potential Added Scope	1	10,000.00	10,000.00	



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**Comments:**

Scope of Work - As per Email From M. Talarico to Jeff Hammond on 7/18/18 @ 10:50 AM

Lead Tabs – Barry reviewed photos: from what they see the lead tabs are actually integral to the wire of the pole piece. Therefore it would not be something we would not replace unless there are significant deficiencies found. We would expect these to be minimal and not exceed \$3,000.00. We would document any repairs as a part of any findings.

Collector Rings – Per the photos, attached, the rings are bolt on. As such the collector ring repair costs will not exceed \$7,000.00.

Repairs for the above will not to exceed \$10,000.00 in total.

Please Note: Any added labor or material may extend price and delivery. Upon discovery, we will notify the customer and provide an updated quote, schedule, and explanation for the change for the customer's review and approval, prior to commencement with the additional work.

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**Quote Total US Dollars (Excludes Options):     **\$337,835.00****

Ex Works

- For parts orders: On your purchase order please include complete nameplate information.
- To avoid delays, please provide tax exempt certification with your purchase order.

**TIMKEN MOTOR & CRANE SERVICES LLC  
STANDARD TERMS AND CONDITIONS OF SALE,  
SERVICE, REPAIR, PARTS, MODIFICATION, MAINTENANCE, INSPECTION AND TEST**

**1. ACCEPTANCE**

All orders are subject to acceptance by Timken Motor & Crane Services LLC ("Seller"). Any acceptance by Seller of Buyer's order is expressly made conditional on Buyer's assent to any additional or different terms and Conditions contained herein, and all sales and charges of the products listed herein shall be, in the case of conflict between the terms and conditions of Buyer and Seller, interpreted and governed exclusively by the terms and conditions contained herein. Seller shall not be bound by any terms and conditions proposed by Buyer, whether in its purchase order or otherwise, which are additional to or different from the terms and conditions set forth herein, unless and only if accepted in writing by a principal officer of the Seller or his designated representative.

**2. TAXES**

The Seller's prices do not include any applicable sales, use, excise, value added or similar taxes; and the amount of any such tax which the Seller may be required to pay or collect will be added to each invoice unless the Buyer has furnished the Seller with a valid tax exemption certificate acceptable to the taxing authorities.

Where a Buyer fails to furnish the required documentation, the previously unpaid sales, use, excise, or similar tax will be billed to the Buyer.

If, upon subsequent sales, use, excise, or similar tax audit, an exemption certificate provided to the Seller by Buyer is, through no fault of the Seller, determined to be invalid, the Seller will attempt to acquire a valid exemption certificate, notarized affidavit of exempt use, or other necessary documentation from Buyer. If Buyer fails to timely furnish a valid exemption certificate, notarized affidavit or other necessary documentation, the previously unpaid sales, use or similar excise tax will be billed to Buyer.

**3. TERMS**

Progress payments are required for on any order exceeding \$250,000. Payment shall be due thirty (30) days from date of invoice, which shall be the date of shipment or agreed progress payments as applicable. Amounts past due are subject to a service charge of 1 and ½ percent per month (or fraction thereof) or if less, the maximum contract rate permitted by law. If the Seller deems that by reason of the financial condition of the Buyer or otherwise, the continuance of any services or shipment on the terms specified herein is not justified, the Seller may require full or partial payment in advance. The Seller at its option may retain possession of equipment repaired, modified, inspected, tested, maintained or serviced under this agreement until its billings (final or progress) are paid. If such charges are not paid within 90 days following completion of the work and the invoicing to the Buyer, the Seller may upon not less than 7 days written notice by certified mail to the Buyer at the Buyer's last known address sell the equipment at public or private sale and apply the net proceeds to the Seller charge.

Upon Seller's approval in each case, portions of an invoice in dispute may be deducted and the balance remitted with a detailed explanation of the deduction. Such disputed amounts that are later paid are subject to the above interest charges from the original date due.

**4. PRICE POLICY**

In the event of a standard Seller price increase or decrease, the price of goods in order will be adjusted to reflect such increase or decrease. As it relates to price decreases, this does not apply to shipment held by request of Buyer. Goods already shipped are not subject to price increase or decrease. Orders placed on a bid or contract basis are not subject to this article and the mutually agreed upon terms within the bid or contract will apply. Seller's prices include the costs of standard domestic packing only. Any deviation from this standard packing (domestic or export), including U.S. government sealed packing, will result in extra charges. To determine such charges, consult Seller's sales offices. The minimum order amount is \$20.

**5. DELIVERY**

Shipping dates given by the Seller are approximate and are based on prompt receipt of information, equipment, or access to the equipment at the customer's premise if work is performed on said premise.

The Seller will use its reasonable efforts to meet the scheduled dates, however, it cannot be held responsible for its failure to do so for causes beyond its reasonable control and in no event shall it be liable for any loss or damage resulting from its failure to deliver the services within the time specified herein.

**6. SHIPPING/HANDLING CHARGES**

Shipments are F.O.B. shipping point (or Ex Works) and Buyer assumes all risk of loss or damage to goods in transit, but except to the extent of Seller's proven negligence. Buyer's exclusive remedy for shortage, loss or damage in transit shall be a claim against the carrier. Shipping/handling will be prepaid and billed as a separate item on the equipment invoice on the basis of Seller's current shipping/handling policies. Seller assumes no responsibility for tariff classifications on carriers.

**7. CHANGES**

Buyer may, with the express written consent of the Seller, make changes in the specifications for equipment covered by the contract in such event the contract price and delivery dates shall be equitably adjusted. The Seller shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

## **8. CANCELLATION**

Undelivered parts of any order may be canceled by the Buyer only with the written approval of the Seller. If the Buyer makes an assignment for the benefit of creditors, if a voluntary or involuntary petition or action in bankruptcy or for reorganization or under any other insolvency law shall be filed by or against the buyer, if the Buyer shall admit its inability to pay its debts, if a trustee, receiver or liquidator is appointed for any part of the assets of the Buyer, or if the Buyer fails to make payments to the Seller in accordance with the terms hereof, the Seller may at its option cancel all undelivered parts or any order by written notice to the Buyer. In the event of any cancellation of this order by either party, the Buyer shall pay the Seller the reasonable cost and expense, including engineering expense and all commitments to its suppliers and subcontractors, incurred by the Seller prior to receipt of notice of such cancellation, plus the Seller's usual rate of profit for similar work.

## **9. RETURN POLICY**

Upon prior written approval in each case, the Seller may accept merchandise returns on items normally stocked by Seller under the following conditions. The Buyer contacts the Seller to obtain an RMA (Return Merchandise Authorization) number prior to returning the product. All returns must be made within 30 days of the date of invoice and be accompanied by the original invoice number and a brief explanation of the reason for the return. Return freight charges must be prepaid. All returned merchandise must be in original unopened packaging and in reasonable condition. Parts returned due to customer error will be charged a 25% restocking charge. Special order items are not returnable. Defective merchandise may be returned within 90 days of the original invoice date.

## **10. ELECTRONIC DATA INTERCHANGE/FACSIMILE (FAX)**

Orders placed hereunder by Buyer may be transmitted electronically or via FAX and in such event, such orders shall be subject to the terms and conditions contained in Seller's Electronic Data Interchange Agreement, in addition to the terms and conditions contained herein.

## **11. REGULATORY LAWS AND STANDARDS**

The Seller makes no promise or representation that its product, services or work will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of the quotation or contract between Buyer and Seller. The Seller prices do not include the cost of any related inspections or permits or inspection fees.

## **12. EXPORT CONTROL**

Products and associated materials supplied or licensed under this agreement may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all such laws and regulations.

## **13. PRODUCT AND SERVICE STANDARD**

The standards of OSHA, CMAA Crane Manufacturer's Association of America, NEC National Electrical Code, ASME American Society of Mechanical Engineers, AWS American Welding Society, AISC American Institute of Steel Construction will be used where agreed upon in each case and applicable in the manufacture of the crane and crane units. Products of Seller's design and original manufacture will comply with applicable federal government occupational safety, noise, environmental, health and sanitation standards. As related to Buyer's use of the products, Buyer is solely responsible for compliance of the products in their operation with any state or local laws, codes, rules or regulations, and for all necessary precautions and protections to insure the safety of persons, including when Seller's products are used as a component of a larger installation.

## **14. WARRANTY**

### **A. WARRANTY PERIOD**

All sales, repair, inspection, test, rental service, modification or maintenance sold or serviced by the Seller is warranted to be free from defects of material and workmanship and to conform to any applicable drawings, specifications, or written documents approved by the Seller for a period of time as detailed below, or if different, such other period as included in Seller's quote:

1. Reconditioned components: as agreed to by the parties.
2. Recondition and/or standard motor rewind: one (1) year in service or 18 months from date of shipment, whichever occurs first.
3. New Product Sales: one (1) year in service or 18 months from date of shipment, whichever occurs first.

The above warranties shall be based on such equipment operating with competent supervision under normal load, usage and conditions. Seller's warranty excludes issues that arise from incorrect operation or improper maintenance, or external influences.

### **B. WARRANTY - REPAIR, MODIFICATION, REBUILD**

If within the period specified above, the Seller receives from the Buyer written notice of any alleged defect or non-conformity and if the services provided are found by Seller not to be in conformity with this warranty (the Buyer having provided the Seller reasonable opportunity to perform any appropriate test thereon) the Seller will, at its option, correct such nonconformity or supply a replacement thereof. This warranty shall only apply to parts repaired or replaced by the Seller. No separate warranty shall apply to repaired apparatus as a whole or to parts not repaired or replaced by the Seller. The Seller shall have the right to require the Buyer to deliver any apparatus covered by this warranty to a designated service center and the Buyer shall pay both in-bound and out-bound transportation charges, with Seller accepting only the direct and actual cost of apparatus repair or replacement as provided above.

### **C. EQUIPMENT, COMPONENT AND PARTS WARRANTY**

If any of the equipment or component parts provided by the Seller shall prove defective in material and/or workmanship within the warranty period, Buyer shall immediately thereupon notify the Seller in writing of such defect. Where the defect is found by Seller to be covered hereunder, the Seller shall, at its option, modify, repair, supply a replacement part or refund the purchase price of said item.

The Seller shall have the option to have the part returned to it, F.O.B. its factory, or to make such adjustment at the point of installation. The Seller shall invoice for all travel and labor involved. The Seller shall accept no responsibility if such item has been improperly operated or maintained or if Buyer has permitted any unauthorized modifications, adjustments and/or repairs to the part.

Parts not manufactured by the Seller shall be covered by the warranty of the manufacturer or supplier thereof.

### **D. WARRANTY - INSPECTION, TEST, MAINTENANCE, CALIBRATION, CONSULTATION**

The Seller warrants that these services will be provided in accordance with accepted industry practice. If any service fails to meet the foregoing warranty, the Seller shall duplicate the service to the same extent and on the same conditions as the original service rendered.

### **E. REMANUFACTURED EQUIPMENT/COMPONENTS**

All equipment components remanufactured by Seller will be warranted for a period of one (1) year from date of shipment. Repair of electronic boards will be warranted for a period of six (6) months from date of shipment.

### **F. NUCLEAR APPLICATIONS**

NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, BUYER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER FROM ANY LIABILITY, COST OR EXPENSE ARISING OUT OF OR RELATING TO NUCLEAR MATERIAL AND CUSTOMER SHALL INCLUDE SELLER AS AN ADDITIONAL INSURED ON ANY POLICIES OF INSURANCE THAT COVER NUCLEAR DAMAGE OR LIABILITY AND SHALL WAIVE AND CAUSE ITS CARRIERS TO WAIVER SUBROGATION AGAINST SELLER UNDER SUCH POLICIES.

### **G. EXCLUSIVE WARRANTY**

THESE WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING WITHOUT LIMITATIONS, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS ARISING IN CONNECTION WITH THIS AGREEMENT OR WITH THE USE OR INABILITY TO USE THE SERVICES FURNISHED UNDER THIS AGREEMENT. THE SELLER DOES NOT WARRANT THE DESIGN OF ANY EQUIPMENT, MATERIAL, COMPONENTS OR SERVICES OF OTHERS.

### **15. INSURANCE**

Seller shall provide such insurance as is reasonable and customary for the work being provided and that is generally consistent with the coverage that Seller has provided to other customers for which it has performed similar work. Seller maintains the option to self-insure. As an alternative to additional insured designation if any, Seller's insurance may contain blanket contractual liability coverage. The Seller is required to provide an insurance certificate reflecting that the City of Watertown, New York, is an additional insured, reflecting coverage of at least \$1 million/\$2 million.

### **16. SUBCONTRACTING**

In providing the work, equipment and component parts hereunder, Seller reserves the right to subcontract the same to third parties.

### **17. PATENT INFRINGEMENT**

The Seller shall defend any suit or proceeding brought against the Buyer so far as the same is based on a claim that any apparatus of the Seller's design furnished hereunder or any part thereof, constitutes an infringement of any United States patents, if notified promptly in writing and given authority, information and assistance (at the Seller's expense) for the defense of the same and if such alleged infringement is not the result of a design or other special requirement specified by the Buyer as the result of the application or the use to which such apparatus is put by the Buyer or others. The Seller will pay all covered damages and costs awarded in such suit or proceeding against the Buyer. In case such apparatus or part is in such suit held to infringe any such patent and the use thereof is enjoined, the Seller shall at its expense either, at its option, (a) obtain for the Buyer the right to continue using such apparatus or part, or, (b) replace the same with non-infringing apparatus, or (c) modify the same so that it becomes non-infringing or, (d) remove said apparatus and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Seller to the Buyer for patent infringement.

### **18. TITLE**

All scrap resulting from the work shall be the property of the Seller. The title and right of possession of equipment upgraded and modified under this contract shall remain with the Buyer, subject to any applicable lien rights of the Seller and to its right of sale in the event of non-payment as provided herein.

### **19. FORCE MAJUERE**

Seller shall not be liable for any loss, damage, expense, cost, product failure, cover, non-performance, delay or breach caused or occasioned by acts of God or any governmental authority, labor disputes (including lockouts), unusual weather conditions, fire, flood, accident, unavailability of materials or components, or late delivery thereof, boycott, embargo, insurrection, riot, civil disturbance, war, exposure to conditions or processes not specified by Seller, or any other cause which is unavoidable or beyond Seller's reasonable control.

## **20. DISCLAIMER OF DAMAGES**

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. Such damages which are disclaimed shall include but not be limited to loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment, or lease of the equipment sold hereunder that Buyer shall secure for the Seller the protection afforded to it in this paragraph.

## **21. LIMITATION OF LIABILITY**

The Seller shall not be liable for any loss, claim, expense or damage caused by, contributed to by or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise. Seller's liability to Buyer on any claim or cause of action of any kind in contract, tort or otherwise, for any losses, costs, damages, expense, statutory violation, fine or penalty, loss of use, non-performance, exercise of cover or any breach or fault by Seller whatsoever, shall be limited to the purchase price paid by Buyer for the portion of the products or services allocable to the part, component or work out of which the claim arose. Any suit arising hereunder must be commenced within one (1) year from the date the cause of action accrues.

## **22. DISPUTES**

At the sole and exclusive election of Seller, any claim or controversy arising out of or relating to the transaction (s) between Seller and Buyer shall be settled by the Supreme Court in Jefferson County, New York.

## **23. GOVERNING LAW, LIMITATION PERIOD AND FEES**

These Terms and the transaction between Buyer and Seller shall be governed, interpreted and enforced in accordance with the laws of New York, without regard to its conflict of laws rules. No claim for breach of contract or warranty shall be asserted by Buyer in any court or arbitration proceeding after one year from the date the cause of action accrues. Seller shall be entitled to recover its reasonable attorneys' fees incurred in connection with collection of all or a portion and/or reasonable additional charges from Buyer.

## **24. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR ASSISTANCE**

If Seller provides Buyer with assistance or advice which concerns any parts/products/service supplied hereunder or any system or equipment in which any such part/product/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Seller to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

## **25. INTERPRETATION**

Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared therein. All transactions covered by these terms and conditions shall be governed by the laws of the state of New York. This contract is not assignable by any party hereto; provided, however, that Seller may assign this contract to any purchaser of all or substantially all of Seller's business, whether by stock or asset sale, merger or any other similar transaction.

## **26. NO OTHER REPRESENTATIONS**

There are no understandings, agreements, representations or warranties, either written or oral, relative to the goods that are not fully expressed in these Terms, which supersede or cancel any previous understanding or agreement between the parties with respect to the subject matter of the order. Any subsequent representation made by any person, including distributors, dealers, employees and representatives of Seller, which is inconsistent with or adds to these Terms shall not be binding on Seller unless approved in writing by an officer of Seller.

Rev4. 18 May 2018