

ASCO Services, Inc. is herein referred to as the "Seller" and the customer or person or entity purchasing goods, parts, and/or services (collectively, "Work") from Seller is referred to as the "Buyer." These Services Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope of work, or invoice from Seller relevant to the provision of Work and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of this agreement ("Agreement") governing the sale of Work by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of the terms of this Agreement, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Work will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Work shall remain in effect for ninety (90) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Work, whichever occurs first, provided an unconditional authorization from Buyer for the performance of the Work is received and accepted by Seller within such time period. If authorization is not received by Seller within such ninety (90) day period, Seller shall have the right to change the price for the Work. All prices are exclusive of taxes, which are to be borne by Buyer. Unless otherwise specified by Seller, parts required for the Work will be furnished at Seller's then prevailing prices.

2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of Work or costs of production, sale, delivery or shipment of goods, or which Seller is otherwise required to pay or collect in connection with the provision of Work, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms of payment are net 30 days from date of Seller's invoice. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this Agreement and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future performance of Work. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue performance of Work.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the performance dates acknowledged or quoted by Seller, all performance dates are approximate and not guaranteed. Seller, at its option, shall not be bound to tender delivery of any goods for which Buyer has not provided shipping instructions and other required information. If the provision of Work or shipment of the goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Unless otherwise specified by Seller, for sales of goods in which the end destination of the goods is outside of the United States, risk of loss and legal title to the goods shall transfer to Buyer immediately after the goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title shall pass from Seller to Buyer upon delivery to and receipt by carrier at Seller's shipping point. Notwithstanding the above, risk of loss and legal title to goods shall transfer to Buyer (i) when delivered by the individual providing the Work, or (ii) at the time goods are placed in storage due to Buyer's delay or postponement. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller warrants that it will perform the Work as described in this Agreement and will exercise all reasonable skill, care and due diligence in the performance of the Work and shall perform the Work in accordance with professional practice. Seller warrants that all Work performed shall be free from faulty workmanship for a period of thirty (30) days from completion of Work. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of goods and parts. For goods manufactured by Seller, Seller's standard warranty that is applicable to the goods at the time of purchase is the only warranty applicable to the sale of Seller's goods and its terms, conditions and limitations are incorporated by reference herein. For parts manufactured by Seller or Work that is a Modification, the warranty shall be one (1) year from the date of shipment of such by Seller. A "Modification" is integrating new controls and/or switchgear components into existing switchgear or upgrading an automatic transfer switch with new components or accessories. **EXCEPT AS SPECIFIED ABOVE, GOODS AND PARTS NOT MANUFACTURED BY SELLER ARE FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 7 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE WORK AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.**

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller that is used in (i) the selection of the Work and (ii) the preparation of Seller's quotation and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Work, either alone or in combination with other goods or services.

6. **LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, EITHER CORRECT PERFORMANCE FOR THAT PORTION OF THE WORK FOUND BY SELLER TO BE DEFECTIVE, REPAIR, CORRECTION OR REPLACEMENT OF GOODS, OR REFUND OF THE PRICE PAID FOR WORK.

SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

It is expressly understood that any technical advice furnished by Seller with respect to the Work is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **PATENTS AND COPYRIGHTS:** Seller warrants that the Work, except as performed specifically for Buyer according to Buyer's specifications, does not infringe any valid U.S. patent or copyright in existence as of the date of performance/shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Work.

8. **INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and aggregate. CGL includes Contractual Liability. CGL does not include Products and Completed Operations coverage, which is self-insured. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability and Cross Liability, but no special endorsements. Additional information related to the insurance coverage provided by Seller can be found at <http://www.marsh.com/mo?client=0900>.

9. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requisitions, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances; acts or omissions of Buyer, including, without limitation, those specified in Section 18; or any events or causes beyond Seller's reasonable control. Performance of Work and deliveries of goods may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Work or to obtain material used directly or indirectly in the manufacture of the goods is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance of Work or allocate its available supply of the goods among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. **CANCELLATION/CHANGES:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred and to cover commitments made by the Seller, and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive. Buyer may request changes or additions to the Work. In the event such changes or additions are accepted by Seller, Seller may revise the price and performance dates. Seller reserves the right to change designs and specifications for the goods without prior notice to Buyer, except with respect to goods being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any goods manufactured prior to the date of such change.

11. **NUCLEAR/MEDICAL:** WORK SOLD HEREUNDER IS NOT FOR USE IN THE CONTROL AREA OR ANY REACTOR CONNECTED OR SAFETY APPLICATIONS OR WITHIN THE CONTAINMENT AREA OF A NUCLEAR FACILITY OR FOR INTEGRATION INTO MEDICAL DEVICES. Buyer accepts Work with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

12. **INSPECTION:** Buyer shall have ten (10) days from the date of completion of each portion of the Work to inspect the Work, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Work is not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Work.

13. **BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates for any of the following: (a) any Work not specified in Seller's quotation, Seller's order acknowledgment, Seller's scope of work, or other documents referenced herein and therein; (b) any Work performed at times other than Seller's normal service hours; (c) if timely and reasonable site and/or equipment access is denied the Seller service representative; (d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller Service personnel will provide supervision only and the cost of such union or contractor labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein; or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry, or technical training.

14. **RETURNED GOODS:** Except as may be otherwise provided with respect to warranty returns, advance written permission to return non-conforming goods must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such goods must be new, unused, of current manufacture and free of all liens, encumbrances, or other claims. Goods must be shipped freight prepaid to Seller. Goods returned without the prior written permission of Seller will not be accepted by Seller. Seller reserves the right to inspect goods prior to authorizing their return. Upon receipt of the returned goods, Seller will replace returned goods with conforming goods or, at Seller's option, issue credit to Buyer in an amount equal to the billing price of the goods less its restocking fee then in effect. All goods must be returned within ninety days of shipment.

15. **DRAWINGS:** Seller's documentation, prints, and drawings ("Documents") (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Notwithstanding the foregoing, Buyer may use the Documents in connection with the Work.

16. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States, and the jurisdictions in which the Seller and Buyer are established or from which Work may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, or export goods in violation of such applicable laws, regulations, orders or requirements.

17. **GENERAL PROVISIONS:** These Services Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Services Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Services Terms and Conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Work to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment or delegation, without such consent, shall be void.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of New Jersey without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in New Jersey and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

18. **ADDITIONAL CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Work is to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Work. Buyer authorizes Seller to send a service technician to access any site requested by Buyer to perform Work, including services on different scopes of work and equipment as requested by Buyer, at prices set forth by Seller. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of parts or equipment unless specifically agreed upon in Seller's scope of work. Seller removed parts become the property of Seller. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller performance of Work. Buyer shall appoint a representative familiar with the site and the nature of the Work to be performed by Seller to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer. Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective software, including without limitation all rights of ownership and title in its respective copies of such software. Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Work solely for purposes of Buyer properly utilizing such Work purchased from Seller. All other software shall be furnished to, and used by, Buyer subject to Seller's (or the licensor's) applicable standard licensing agreement, the terms of which are incorporated herein by reference. Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Work is being provided to Buyer and for a period of one (1) year after the last provision of Work.

19. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: (i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; (ii) given all reasonable information and assistance by the other party; (iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims; or the indemnifying party's obligations herein shall be deemed waived.