



AZZ incorporated, Electrical Products Group

Standard Terms and Conditions of Sale

Date: 7/1/04

Rev. No. 0

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| Atkinson Industries | Electrical Enclosures |
| EPSI | Power Distribution Centers |
| The Calvert Co. | Isolated Phase and Non-Segregated Bus Systems |
| CGIT Westboro, Inc. | Compressed Gas Transmission Bus Systems |
| Central Electric Mfg. Co. | Medium Voltage Outdoor Switchgear |
| Carter and Crawley Co. | Relay Panels and Automation Control Systems |
| Rig-A-Lite | Hazardous Duty Industrial Lighting |

The terms and conditions set forth below shall constitute the expression of all the terms of this agreement as a complete and exclusive statement of the agreement between COMPANY (hereafter referred to as SELLER) and the PURCHASER (hereafter referred to as BUYER).

TERMS AND CONDITIONS OF SALE

Unless different or additional terms and conditions are stated or referred to in the SELLER's proposal or final order acknowledgement, in which event such different or additional terms and conditions shall be exclusive as to the particular subject covered, the terms and conditions stated below shall apply. These terms and conditions shall supersede any prior or contemporaneous agreements or correspondence between the parties. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to approval by SELLER. Any additional or different terms or conditions set forth in the BUYER's order or other communications are objected to and shall not be effective or binding unless assented to by an authorized representative of the SELLER. Any waiver or alteration of terms herein shall not be binding unless in writing and signed by an authorized representative of the SELLER.

Each quotation is valid for 60 days.

PRICES

All product prices are F.O.B. SELLER's plant, or point of origination of shipment unless otherwise specified and shall be the prices in effect at the time of shipment. All prices for service shall be at SELLER's prevailing rates at the time service is performed. However, prices are subject to change without notice in the event of: (1) alterations in specifications, quantities, designs, or delivery schedules; and (2) foreign or domestic legislation (including tax legislation) enacted by any level of government which would increase the cost of producing, warehousing or selling the goods purchased hereunder. In addition, prices may be subject to escalation as negotiated at the time of quotation and receipt of order.

All costs for modification or adjustment to the products required to suit unforeseen field conditions, or, errors or omissions in the information supplied to SELLER, with or without SELLER's aid, shall be assumed and paid by BUYER. No discount will be allowed unless specifically set forth in accordance with the established price and discount schedules of the SELLER. In the event of a price change, the effective date of the change will be the date shown on the new price or discount sheets. However, where a price change is made by in writing, the effective date may be given as part of the announcement.

TAXES

Any manufacturer's excise tax, sales tax, or tax duty of any nature whatsoever arising out of, or assessed against orders, shall be added to the prices quoted and paid by the BUYER unless BUYER provides SELLER with an exemption certificate or other documents acceptable to taxing or customs authorities at the time an order is submitted. In the event SELLER is required to pay any such taxes or duties, the BUYER shall reimburse SELLER thereon.

PAYMENT, AND CREDIT TERMS

Subject to establishment of satisfactory credit, terms are strictly net cash thirty (30) days from date of invoice, payable in U.S. funds. Invoices will be issued as shipments are made. Until the purchase price and all other sums due pursuant hereto are paid in full, SELLER retains a security interest in the materials sold (hereafter sometimes referred to as 'Goods') and in all proceeds of said Goods. BUYER shall execute financing statement(s) on request and authorizes SELLER to execute and file same.

PROVISIONS ON PAYMENT VOUCHERS

Exception is taken to any provisions printed either on the front or back of payment drafts, vouchers and checks. Those provisions will not be considered a part of this Agreement. SELLER's endorsement is not an acceptance of such provisions.



ORDERS

Orders are subject to a minimum billing per order and acceptance at the home office of the SELLER. All orders and shipments shall, at all times, be subject to the approval of the SELLER's Credit Department. If in SELLER's judgment, the financial condition of BUYER at any time prior to shipment does not justify the terms of payment specified, SELLER reserves the right of requiring payment in advance or canceling any outstanding orders. In event of cancellation, SELLER shall be entitled to receive reasonable cancellation charges and shall not in such event be liable for breach or nonperformance of contract in whole or in part. For products manufactured specifically for BUYER and in accordance with BUYER's instructions, SELLER shall cause plans and/or drawings to be prepared and submitted to BUYER for approval. The approved plans and/or drawings shall be a part of the agreement between BUYER and SELLER and the products will be manufactured by SELLER in accordance therewith.

PACKAGING

All materials are carefully packed/package for Domestic shipment and prices stated are based on SELLER's standard packaging. SELLER reserves the right of packaging material in any manner acceptable to commercial carrier. Special customer packaging will be furnished only when specified in writing, and the cost thereof shall be borne by the BUYER.

SELLER will not be responsible for loss, delay or damage made by carriers. However, SELLER will render BUYER all possible assistance in securing satisfactory adjustments of such claims.

DELIVERY

Unless otherwise specified, all products are shipped F.O.B. point of shipment, whereupon delivery to a carrier shall constitute delivery to BUYER per INCOTERMS. Any claim by BUYER for shortage or damage occurring subsequent to such delivery or for nonconformance of Goods must be made within forty-eight (48) hours after receipt of the Goods from carrier in the condition claimed, or such Goods shall be deemed finally inspected, checked and accepted by BUYER.

Should the Purchaser request that SELLER delay shipment, once manufacturing and testing are completed, SELLER will store such equipment, subject to the following conditions:

- a) **Upon completion, the Purchaser will allow SELLER to issue an invoice for the equipment and process said invoice, within the payment terms of the purchase order, as if the equipment had actually shipped.**
- b) **Purchaser agrees to assume title and ownership of the equipment on the date the invoice is issued.**
- c) **Purchaser agrees to pay SELLER applicable handling and storage fees until time of shipment. If shipment is delayed for more than three months, an additional fee will be assessed for inspection and cleaning of the equipment prior to shipment.**
- d) **Purchaser agrees to accept and sign a Bill & Hold Agreement that includes items a) through**

c) above, a sample of which is attached to this proposal.

STORAGE CHARGES

Goods held in the factory or placed in storage beyond the completion/delivery date for the convenience of BUYER will be invoiced on the date of completion. Terms of payment will apply from invoice date. Title and risk of loss shall pass to the BUYER upon invoicing or moving of such Goods to storage. Said Goods will be subject to charges for warehousing, any direct costs of storage, and any other expenses incidental to such delay. BUYER agrees to pay SELLER any direct costs of storage charges plus an additional 10% thereof. Such direct costs may include delivery charges to a storage facility if necessitated.

FORCE MAJEURE

The SELLER shall not be liable in any way for default or delay in delivery or in performance or failure to manufacture or deliver, due to contingencies beyond its control or the control of its suppliers or sub-contractors. This includes but is not limited to acts of God, acts of the BUYER, acts of civil or military authority, acts of war, priorities, bombings, accidents, fires, strikes or other labor disturbances, floods, droughts, epidemics, riot, inability on account of causes beyond SELLER's reasonable control to obtain necessary labor, materials, components or manufacturing facilities, or any other contingency affecting the SELLER, its suppliers, or sub-contractors. In the event of any such delay, the SELLER shall have the right to cancel a contract of sale or to extend the date of delivery or performance by a minimum period at least equal to the time lost by reason of the delay.

SELLER will notify BUYER when the products or any part thereof are ready for shipment. If the contemplated shipment cannot be made for any cause referred to under "Force Majeure" hereof, including the lack of shipping instructions for the BUYER or BUYER appointed independent freight forwarder, SELLER may, unless other agreement is made with the BUYER, store such products or parts in which event the following conditions shall apply:

BUYER shall advise SELLER of shipping instructions within ten days from the date of SELLER notification that the products are ready for shipment. If SELLER does not receive shipping instructions within such ten day period, then all expenses incurred by SELLER in connection with the storage of products including demurrage, the cost of preparation for storage, storage charges, taxes, insurance, if placed, and handling charges shall be payable by the BUYER upon submission of invoices and warehouse receipts therefore.

Except in the event of FOB destination shipments, SELLER will not participate in any settlement of claims for concealed or other shipment damage. When shipment has been made on an FOB destination basis, the BUYER must unpack immediately and, if damage is discovered, must:

1. Not move the product from the point of examination.
2. Retain shipping container and packing material.



3. Notify the carrier of any apparent damage in writing on carrier's delivery receipt and request the carrier to make an inspection.

4 Send SELLER a copy of the carrier's inspection report.

CANCELLATIONS AND CHANGES

Orders are not subject to cancellation, additions, changes in specifications, shipping schedules, or other conditions originally agreed upon except with SELLER's written consent and subject to conditions then agreed upon. In the case of cancellations, these additional conditions shall indemnify SELLER against liability and expense incurred and commitments made, and shall provide for compensation for work in process (including labor, material and overhead) and contract value of products or parts completed and ready for shipment, plus an additional 10% thereof. Any orders delayed or rescheduled at the request of the BUYER will be subject to the prices and conditions of sale in effect at the time of the release of the hold or reschedule.

ERRORS

All clerical errors are subject to correction.

PATENTED PROCESSES

The purchase of the Goods does not entitle BUYER to employ the same with any patented process owned by SELLER or others.

PATENT INFRINGEMENT

(A) SELLER shall, at its expense, defend any lawsuit brought against BUYER based on a claim that any product furnished by SELLER pursuant to this agreement constitutes an infringement of any United States patent, and SELLER shall pay all judgments and costs recovered against BUYER in any such suit and shall reimburse BUYER for costs or expenses incurred by BUYER in the defense of any such suit, provided that BUYER gives SELLER prompt notice of such suit, reasonable assistance in the defense thereof, and full opportunity to control all aspects of the defense thereof, including settlement. In the event such product is held to constitute infringement, and the use of the product is enjoined, SELLER shall, at its option, procure for the BUYER the right to continue using the product, replace it with non-infringing product, modify it so it becomes non-infringing, or remove the product and refund the portion of the contract price applicable thereto, including the transportation and installation thereof.

(B) SELLER's liability for patent infringement shall not apply to:

1. Patented processes performed by the product or another product produced thereby;
2. Products supplied according to a design other than that of SELLER and which is required by the BUYER; or
3. Modifications of the product or combinations of the product with another product not furnished by SELLER.

(C) **THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF SELLER FOR PATENT**

INFRINGEMENT BY ANY PRODUCT FURNISHED PURSUANT TO THIS AGREEMENT.

(D) If a suit is brought against SELLER on account of: any patented processes performed by the product or with respect to another product produced thereby, products supplied according to a design other than that of SELLER and which is required by the BUYER; or modifications of the product or combinations of the product with another product not furnished by SELLER, BUYER shall indemnify SELLER in the same manner and to the same extent that SELLER would indemnify BUYER pursuant to the foregoing paragraphs.

DESIGNS

All designs and specifications shown in SELLER's catalogs/brochures are subject to change without notice.

ASSIGNMENT OF CONTRACT

Any assignment of this contract or any rights hereunder without written consent of the SELLER shall be void. The provisions of this contract are for the benefit of the parties thereto and not for any other individual or company.

LIMITATION OF REMEDIES

SELLER's liability (whether under the theories of breach of contract or warranty, negligence or strict liability) for its products shall be limited to repairing or replacing parts found by SELLER to be defective, or at SELLER's option, to refunding the purchase price of such products or parts. At SELLER's request BUYER will send, at BUYER's sole expense, any allegedly defective parts to the plant of SELLER which manufactured them or such other place as SELLER may request. Parts or products which are repaired or replacement parts or products shall be delivered to BUYER F.O.B. SELLER's plant or such other place as SELLER may designate.

WARRANTY

SELLER warrants that the Goods manufactured by it and/or services provided by it, will be free from defect in workmanship, material and manufacture for one (1) year from the date of shipment. In the event any service supplied or product sold hereunder manufactured by the SELLER is defective due to workmanship or material, the SELLER agrees for a period of one (1) year from the date of shipment, at its option, to correct such non-conformity or replacement of defective part or product. The agreement, however, is upon condition that the BUYER promptly notifies the SELLER in writing of any claim in this respect, setting forth in detail any such claimed defect and that the SELLER be afforded a reasonable opportunity to examine the product and to investigate the claimed defect.

This warranty does not obligate the SELLER to bear any transportation charges in connection with the replacement or repair of defective products. The SELLER shall be, in no event, liable for damages beyond the price paid by the BUYER for such defective product and shall not be liable for any incidental or consequential damage whatsoever.



SELLER's warranty does not apply to any product which has been subjected to misuse, mishandling, misapplication, neglect (including but not limited to improper maintenance), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), or adjustment or repair performed by anyone other than SELLER or one of SELLER's authorized agents.

Goods which may be sold by SELLER but which are not manufactured by SELLER are not warranted by SELLER, but are sold only with the warranties, if any, of the manufacturers thereof. The liability of the SELLER shall not exceed any adjustments with respect to which such manufacturer accepts responsibility. No affirmation, modification, or addition to this agreement with respect to warranty of the SELLER, either before or after contract of sale, shall be made except in writing by an authorized representative of the SELLER.

In no event shall Seller be responsible for gaining access to the product(s), disassembly, or reassembly.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN. BY ACCEPTANCE HEREOF, THE BUYER AGREES THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES BY THE SELLER OR BY ANY MANUFACTURER AS TO THE FITNESS FOR A PARTICULAR USE, MERCHANTABILITY, CAPACITY, OR EFFICIENCY OF ANY PRODUCT SOLD OTHER THAN EXPRESSLY SET FORTH HEREIN, AND THAT THERE ARE NO ORAL OR IMPLIED ADDITIONAL WARRANTIES MADE IN CONNECTION WITH ANY SALE BASED HEREON.

GOVERNING LAW

The rights and remedies of the parties hereunder shall be governed by the law of the State of Missouri. SELLER certifies that its goods will be produced in compliance with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U. S. Department of Labor issued pursuant thereto.

DISCLAIMER OF CONSEQUENTIAL DAMAGES.

In no event, shall SELLER its contractors, and suppliers of any tier be liable in contract, in tort (including negligence or strict liability) or otherwise for damage or loss of other property or equipment, loss of profits or revenue, loss of use of equipment or power system, cost of capital, cost of purchased or replacement power or temporary equipment (including additional expenses incurred in using existing facilities), claims of customers of the BUYER, or for any special, indirect, incidental, or consequential damages whatsoever. Consequential damages for purposes hereof shall include without limitation, loss of income or profit, or losses sustained as the result of injury (including death) to any person, or loss of or damage to property. BUYER shall indemnify seller against all liability, cost, or expense which

may be sustained by SELLER on account of any such loss, damage or injury.

NUCLEAR INSURANCE – INDEMNITY

For applications in nuclear projects, the BUYER or Owner shall have complete and proper insurance protection against liability and property damage resulting from a nuclear incident and shall indemnify SELLER, its suppliers and subcontractors, or any tier, against all claims resulting from a nuclear incident.

CLAIMS

Any claim by BUYER with reference to the Goods sold hereunder shall be deemed waived by the BUYER unless submitted in writing to SELLER within ten (10) days from the date BUYER discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty. Any cause of action for breach of the foregoing warranty shall be brought within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first. At SELLER's request, BUYER will send at BUYER's sole expense, any allegedly defective parts to the plant of SELLER which manufactured them or such other place as SELLER may request. Parts, products which are repaired, or replacement parts or products, shall be delivered to BUYER F.O.B. SELLER's plant or such other place as SELLER may designate.

FAILURE TO ENFORCE

Forbearance or failure of the SELLER to enforce any of these conditions, or to exercise any right accruing from any default of the BUYER, shall not affect or impair the SELLER's rights should default continue, or in case of subsequent default of BUYER. Such forbearance or failure shall not be deemed a waiver of the SELLER's rights in case of other or future defaults of the BUYER.