

Minute Entry Sign Up Sheet

Date: 3/29/2023

Time: 10:00 AM

001WL;
002WL;004
WL;005WL;
006WL

Bid #

Department: TW&L

BID# 2023-001WL; 2023-002WL; 2023-004WL; 2023-
005WL;2023-006WL

Project:

N. Green Substation

Attendance

Company

Ben Logan

City of Tupelo

Casey Turner

Howard Agency

JASON SIMON

HV Sales

Jesse Hall

Virginia Transformer

Gunnar Shemphel

COT

Norman Cause

TWL



Allen&Hoshall

1661 International Drive, Suite 100
Memphis, Tennessee 38120
Office 901.820.0820
Fax 901.683.1001
www.allenhoshall.com

March 31, 2023

Mr. Johnny Timmons, General Manager
Tupelo Water and Light Department
320 North Front Street
Tupelo, MS 38802

RE: 2023-002WL
Voltage Regulators
North Green Street Substation

Dear Mr. Timmons:

We have evaluated the bids on the above-referenced project. After careful consideration and evaluation, we recommend you accept the following bid:

ITEM 1	\$426,156.00	(12) 333kVA Single Phase Voltage Regulators and Sub-Base manufactured by Siemens Energy Inc. per Siemens Proposal Number – SF232046496, dated March 21, 2023.
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The Purchase Order should state: "Item 1: North Green Street Substation – (12) 333kVA Single Phase Voltage Regulators and Sub-Base manufactured by Siemens Energy Inc. per Siemens Proposal Number – SF232046496, dated March 21, 2023 with delivery 59-63 weeks"

Purchase Order should be sent to:

Siemens Energy, Inc.
444 Hwy 49 South
Richland, MS 39218

mariano.arellano@siemens-energy.com
601-572-9693

Attached is the Bid Tabulation and Siemens Energy Inc. Bid Proposal for your use.

If there are any questions or you need additional information, please contact me at 901.261.4639.

Sincerely,

Allen & Hoshall

Russell Scott Burleson, P.E.
Sr. Vice President



Allen&Hoshall
engineers-architects-surveyors

BID TABULATION

**Voltage Regulators
FOR
NORTH GREEN STREET SUBSTATION
TUPELO WATER & LIGHT**

Bids Due: March 29, 2023

<u>Bidder</u>	<u>Quantity</u>	<u>Price Each</u>	<u>Price Total</u>	<u>Delivery</u>
<i>Eaton</i>				
ITEM 1	12	_____	NO BID	_____
<i>GE-Prolec</i>				
ITEM 1	12	_____	NO BID	_____
<i>Siemens</i>				
ITEM 1	12	\$35,513	\$426,156	59-63 weeks
<i>Howard</i>				
ITEM 1	12	\$36,509	\$438,108	28-30 weeks

Engineer's Recommended Acceptance in **BOLD**

C:\EU\TUPELO L&W\81925-N GREEN ST SUBSTATION\SECS\REGULATOR\BID TAB REGULATORS.DOC

Len T Deloney Co.
601 Barataria Blvd.
Marrero, LA
(601)613-7284
chris@deloney.com
www.Deloney.com



MARCH 22, 2023

Johnny Timmons
320 North Front Street
Tupelo, MS 38802

Dear Mr. Timmons,

Thank you for the opportunity to bid on your RFQ for single phase voltage regulators on the North Green Street Substation project. Enclosed is our proposal from Siemens and bid forms. I am also enclosing a standard outline drawing and data sheet for your reference. If there is anything else that I can help you with feel free to reach out to me anytime.

Warm regards,

A handwritten signature in blue ink, appearing to read "Chris Grossie", is written over the "Warm regards," text.

Chris Grossie

SIEMENS SALES REPRESENTATIVE – LOUISIANA/MISSISSIPPI

**DOCUMENT 00301
PROPOSAL**

Date: _____

To: Tupelo Water and Light
320 North Front Street
Tupelo, MS 38804

Gentlemen:

The undersigned, hereinafter called the "Materialman", hereby proposes to sell and deliver to Tupelo Water and Light, hereinafter called the "Owner", upon the terms and conditions herein stated, the material specified in the attached Specifications dated January, 2023, for the following sum:

BASE BID:

<u>ITEM</u>	<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>BID PRICE EACH</u>	<u>TOTAL BID PRICE</u>
1	12	333 kVA, 7620/13200 Voltage Regulators	\$ <u>35,513</u>	\$ <u>426,156</u>

DELIVERY:

Delivery Site: North Green Street Substation

Delivery Date: March 2024

59-63 weeks from Purchase order.

An alternate Delivery Date of _____ is proposed by the Materialman. If this alternate Delivery Date is accepted by the Owner, a price reduction of \$ N/A is offered.

GENERAL:

In submitting this Proposal, the Materialman agrees as follows:

The prices set forth herein do not include any sums which are or may be payable by the Materialman on account of taxes imposed by any taxing authority upon the sale, purchase, or use of the equipment. If any such tax is applicable to the sale, purchase, or use of the equipment, the amount thereof shall be added to the purchase price and paid by the Owner.

The Materialman agrees to the terms and conditions of the Document 00531 - MATERIALS CONTRACT.

The prices set forth herein are firm if accepted by the Owner within thirty (30) days and shall include the cost of delivery to the job site; unloading onto existing concrete pads; field inspection, testing, and certification; and shall include, if any, necessary field assembly, to provide the Owner with material ready for external connection. The material shall be delivered to the Delivery Site and certified for the Owner's use on or before the Delivery Date.

The Materialman shall be responsible for securing all permits required for shipping to the

Delivery Site and shall be responsible for any damages to road and utilities or other damages caused by the Materialman or his Delivery Agent during shipment to Delivery Site.

Notice of Shipment - The Materialman shall notify the Owner at the following times:

1. 10 days prior to shipment.
2. 24 hours prior to shipment.
3. 24 hours prior to delivery.

Shipments arriving after 2:00 p.m. on weekdays or arriving on weekends or holidays shall not be unloaded until the next working day and the Materialman shall be responsible for any demurrage.

Failure to provide notice shall result in Materialman being responsible for any demurrage charges resulting from the unavailability of equipment to unload equipment.

The Materialman agrees that all requests for time extensions shall be in writing, and that only such time extensions as are granted by the Owner in writing shall be considered.

Time is of the essence in order for the Owner to comply with established construction schedules. Should the Materialman fail to complete the terms of this Proposal by the Delivery Date, after all time extensions granted by the Owner have been added, then in that event the Owner shall have and is hereby given the right to deduct and retain out of such monies which may then be due, or which may become due and payable to the Materialman, the DAMAGE AMOUNT per calendar day as liquidated damages for each and every day that Certification is delayed beyond the Delivery Date. The Materialman and Owner agree that liquidated damages are for costs associated with project delay and not as a penalty and that proof of such losses or damages shall not be required. The DAMAGE AMOUNT shall be \$300 per day.

The GENERAL CONDITIONS and SUPPLEMENTARY CONDITIONS describe the Owner's requirements as to Performance and Payment Bonds. When the successful Bidder delivers the executed Materials contract to the Owner, it must be accompanied by the required Performance and Payment Bonds.

Proposal requirements, as outlined in the technical sections, shall be submitted with this proposal. Failure to submit requested data can result in Bid rejection.

The qualifications of the Materialman's Field Services Representative for field inspection, testing and certification shall be attached to this proposal. Include the name of the proposed field service firm, if these services are not supplied by employees of the manufacturer. A schedule of field tests, applicable ANSI standards and test limits shall be submitted by the Materialman. The qualifications of the Field Service Representatives or Field Service Firm will be included in the overall evaluation of this proposal.

In estimating the lowest cost to the Owner as one of the factors in deciding the award of an order, the Owner will consider, in addition to the price quoted in the proposal, the following:

1. Stated exceptions to the specifications.
2. Method of delivery.
3. Warranty.
4. Installation, erection and operating costs.
5. Delivery time.
6. Work history on previous projects.

Failure to submit bid evaluation data as specified can lead to bid rejection.

Title of each equipment item shall pass to the Owner upon:

1. Delivery and placement of equipment onto foundation at location specified.
2. Satisfactory inspection for in transit damage.
3. Satisfactory installation and field test.
4. Acceptance by the Owner following completion of Item 3.
5. Payment: See Document 00531 - MATERIALS CONTRACT, Article II Payment.

The Materialman shall submit bids on this PROPOSAL. Submit complete PROPOSAL in (2) two unaltered copies with all blank spaces completed. There shall be no exceptions for basic bid submitted by the Materialman; however, an alternate, with exceptions, may be bid as an attachment to a basic bid.

The Materialman acknowledges that he has received the following Addenda (insert Addenda number(s) and date(s) or NONE):

ADDENDUM NUMBER

DATE

EXCEPTIONS: Any and all exceptions that the Materialman takes to the attached specifications shall be **itemized on this proposal page** even though the exceptions may be covered elsewhere in the bid materials. The bidder shall indicate to which items exceptions apply or indicate no exceptions.

Specification Section

Associated with EXCEPTION

Description of Exception

Please see proposal for list of exceptions.

This image shows a blank sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

It is understood by the undersigned that the Owner retains the privilege of accepting or rejecting all or any part of this Proposal and to waive any informalities or technicalities therein.

MATERIALMAN: Siemens Energy Inc

BY: Mariano Arellano

TITLE: Application Engineer - VR

MAILING

ADDRESS: 444 US HWY 49 S.

DATE: 3/21/2023

Richland, MS 39218

TELEPHONE: 601-572-9693

STREET

ADDRESS: 444 US HWY 49 S.

FAX: _____

EMAIL: mariano.arellano@siemens-energy.com

Richland, MS 39218

PRINCIPAL

CONTACT: Mariano Arellano

TELEPHONE: 601-572-9693

EMAIL: mariano.arellano@siemens-energy.com

ALTERNATE

CONTACT: Jeff Johnston

TELEPHONE: 601-260-0717

EMAIL: jeffrey.johnston@siemens-energy.com

END OF DOCUMENT

**DOCUMENT 00301
PROPOSAL**

Date: _____

To: Tupelo Water and Light
320 North Front Street
Tupelo, MS 38804

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_____	_____
_____	_____

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MATERIALMAN: Siemens Energy Inc

BY: Mariano Arellano

TITLE: Application Engineer - VR

MAILING

ADDRESS: 444 US HWY 49 S.

DATE: 3/21/2023

Richland, MS 39218

TELEPHONE: 601-572-9693

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EMAIL: mariano.arellano@siemens-energy.com

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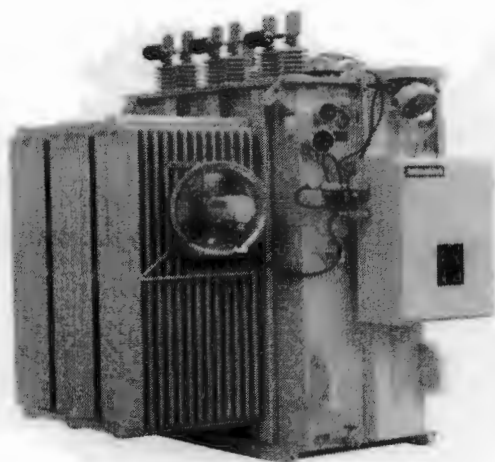
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**SIEMENS
ENERGY**

We
energize
society

Voltage Regulator

Proposal SF232046496



March 21, 2023

SF232046496

Tupelo Water and
Light



Presented by:
Mariano Arellano
Application Engineer VR
Tel: +1 (601) 572-9693
Mariano.arellano@siemens-energy.com

Siemens Energy, Inc.
444 Hwy 49 South
Richland, MS 39218

Unrestricted

Proposal

To (Purchaser): Tupelo Water and Light

Ref: Voltage Regulators

Siemens Energy, Inc. agrees to sell to Purchaser and Purchaser agrees to purchase from Company the goods described below.
All pricing is in USD

		Qty	Product	Price	Ext Total
Item 1	Single Φ Voltage Regulator	12	JFR	\$35,513	\$426,156

Description:

Voltage regulators by Siemens Energy to provide +/-0.1 voltage regulation in 32 steps of 0.625% each. Catalog # 10-07.6-333.0 B (198) Rated 333 kVA, 7620 Volts, 437 Amps, 95 kV BIL, 55/65°C, 60Hz, ANSI type "B", Class ONAN. Manufactured and tested per IEEE C57.15.

SEL SEL-2431 24310111X1246XXX10XX

Factory connected at 7200 Volts

Stand Included

Please see attached datasheet for the confirmation of design

Comments and Exceptions

- 1) Siemens Energy regulators are manufactured and tested as per ANSI C57.15
- 2) Siemens Energy standard drawing package which includes outline, name plate drawing, and control diagram shall be provided for approval 16-19 weeks from delivery. Drawings need to be returned within 2 weeks' time frame to get the design completed in time. Otherwise, delivery of the units shall be affected.
- 3) Clarification unloading onto existing concrete pads; field inspection, testing, and certification will not be provided. All testing will be performed at the factory before being shipped out.
- 4) Siemens Energy will NOT accept any Liquidated damages or late penalties.
- 5) Siemens Energy scope of supply does not include installation of voltage regulators.
- 6) Clarification our standard mild steel NEMA ~3R cabinet will be provided.
- 7) Clarification the entire interior is not painted only a portion of both ends is painted. If the entire interior tank is required to be painted, then this topic can be discussed between both parties.

Commercial Terms

TERMS OF PAYMENT:

Net 30 days after shipment. (Subject to credit approval)

BID VALIDITY:

60 days from Proposal/ Bid Date.

SHIPPING DATE:

Lead times are 59-63 weeks from receipt of order. Shipping dates shall be confirmed by Siemens Energy order acknowledgement document based on technically and commercially clear order entered.

DELIVERY TERMS:

FOB Destination (Contiguous United States) Freight Allowed.

PRICE POLICY CLAUSE:

Prices are firm for quoted shipment provided that the unit price as evaluated by Formula 1 and defined in Table 1 below do not vary by more than $\pm 15\%$. The base price (bs) for Formula 1 will be established in the month in which the proposal was provided. The price for the period of indexation (n) will be established based upon the 3-month average values prior to shipment.

WARRANTY:

The Warranty period covers the equipment for twelve (12) months after in service date or eighteen (18) months after shipment, whichever expires first.

CONDITIONS:

See attached ("Siemens Energy Standard Terms and Conditions of Sale.")

CANCELLATION POLICY:

Cancellation of Voltage Regulator equipment will be subject to cancellation charges based on below table

Cancellation Schedule	Percentage
Order received and entered in Siemens Energy Inc System	5%
4 Weeks after the SEI order acknowledgment date	50%
Scheduled to Ship in less than thirty (30) days	100%

Table 1

Cost Element	Description	Source	% Of Cost	Coefficient
Copper (CU)	London Metal Exchange monthly cash offer price for copper	<u>LME Copper London Metal Exchange</u>	7.00%	(a)
Aluminum (AL)	London Metal Exchange monthly cash offer price for High Grade (HG) Aluminum	<u>LME Aluminium London Metal Exchange</u>	5.00%	(b)
Mineral Oil (OI)	Spot prices for crude oil in dollars per barrel Europe Brent spot price FOB	<u>Spot Prices for Crude Oil and Petroleum Products (eia.gov)</u>	4.00%	(c)
GOES – Grain oriented electrical steel (CS)	T&D Europe GOES Conv. Monthly price	<u>Tdeurope.eu</u>	15.00%	(d)
Steel (TS)	CRU hot rolled coil USA domestic FOB Midwest monthly USD/cwt	<u>crugroup.com</u>	19.00%	(e)
Controls (CT)	Open book purchaser price for third party controls	Siemens Energy Inc	5.00%	(f)
Other (IP)	WPUFD4131 – PPI for final demand NSA to reflect increases in transformations and fixed costs	<u>Bureau of Labor Statistics Data (bls.gov)</u>	45.00%	(g)

Formula 1:

$$P_n = P_{bs} * [a \left(\frac{CU_n}{CU_{bs}} \right) + b \left(\frac{AL_n}{AL_{bs}} \right) + c \left(\frac{OI_n}{OI_{bs}} \right) + d \left(\frac{CS_n}{CS_{bs}} \right) + e \left(\frac{TS_n}{TS_{bs}} \right) + f \left(\frac{CT_n}{CT_{bs}} \right) + g \left(\frac{IP_n}{IP_{bs}} \right)]$$

Where:

P = Price

bs = a subscript meaning base (I.E. Base price of copper is CUbs)

n = a subscript indicating the period of indexation (I.E. the price of aluminum during the evaluation period is ALn)

Siemens Energy, Inc.

SIEMENS STANDARD TERMS AND CONDITIONS OF SALE FOR PRODUCTS (7/30/2021)

(Far Sales in the USA, Excluding the State of Louisiana & International Sales)**These Terms and Conditions Govern the Sale of Equipment and Services**

The terms and conditions set forth in the Siemens proposal and these terms and conditions govern the Siemens proposal and any Agreement between the parties for the Equipment and/or Services covered by such proposal. Each proposal is valid for forty (40) days from the date of the proposal unless extended or withdrawn in writing by Siemens. The issuance of a Purchaser purchase order or any other reasonable manner of acceptance by Purchaser communicated to Siemens during such validity period will form an Agreement based upon the terms and conditions of the Siemens proposal and these terms and conditions. The following order of precedence shall prevail: (i) an integrated agreement, if any, signed by Siemens and Purchaser; (ii) any change orders executed by the Parties; (iii) Siemens' proposal; (iv) these terms and conditions; (v) Purchaser's purchase order (as accepted by Siemens and excluding those items noted in Article 1(b) below).

I. Definitions

Whenever used in this document with initial capitalization, the following definitions shall be applicable:

"ACM" as used herein shall mean Asbestos and Presumed Asbestos Containing Materials.

- (a) "Agreement" means the Siemens proposal, these terms and conditions, Purchaser's purchase order, as accepted by Siemens, (excluding any preprinted terms and conditions on said purchase order and in any attachments to or Purchaser documents referenced in said purchase order) or other document evidencing acceptance of the Siemens offer as set forth in the Siemens proposal; or an integrated agreement signed by Siemens and Purchaser; for the Equipment, and/or Services.
- (b) "Asbestos" shall have the meaning set forth in United States Code of Federal Regulations Chapter 29, Sections 1926.1101 et seq.
- (c) "Delivery" means delivery in accordance with the applicable delivery term stated in Article 5(a) below or, unless otherwise provided in the proposal.
- (d) "Equipment" means equipment, components, parts, materials and Software provided by Siemens pursuant to the Agreement.

- (e) "Field Installation Services" means the installation by Siemens of Purchaser's Material at the Site.
- (f) "Field Repair and Modernization Services" means the repair, modification or modernization work, or some or all of them, performed by Siemens on Purchaser's Material at the Site and for certain activities at a repair facility selected by Siemens.
- (g) "Hazardous Material" means any material listed in the "Hazardous Material Table" set forth in 49 CFR 172.101 as amended.
- (h) "Maintenance Services" means the disassembly, inspection and reassembly of Purchaser's Material at the Site.
- (i) "Nuclear Incident" shall have the meaning set forth in the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., as amended.
- (j) "Party" means individually either Siemens or Purchaser.
- (k) "Parties" means collectively both Siemens and Purchaser.
- (l) "Presumed Asbestos Containing Material" shall have the meaning set forth in United States Code of Federal Regulations Chapter 29, Sections 1926.1101 et seq.
- (m) "Purchaser" means the entity purchasing Equipment and/or Services, as well as any other owners of the facility where the Equipment or Purchaser's Material is or will be situated.
- (n) "Purchaser's Material" means the equipment, materials, components and items of any kind owned by Purchaser or any other owner of the Site for which Services are to be provided or are provided under the Agreement.
- (o) "Resultant Data" means data or information that is generated or derived from or a result of any modification, adaption, revision, translation, abridgement, condensation, compilation, evaluation, expansion or other recasting or processing of the Purchaser's data.
- (p) "Services" means Shop Repair and Modernization Services, Field Installation Services, Field Repair and Modernization Services, Maintenance Services, Training Services and Technical Services; or some or all of them provided by Siemens pursuant to the Agreement.
- (q) "Services on Third Party Parts" means Services in connection with Third Party Parts.
- (r) "Shop Repair and Modernization Services" means work performed by Siemens on Purchaser's Material at a Siemens manufacturing plant, a Siemens repair facility or another suitable facility selected by Siemens.
- (s) "Siemens" means Siemens Energy, Inc. or its affiliated companies and subsidiaries (including but not limited to Siemens Demag Delaval Turbomachinery, Inc., Dresser-Rand, Co.) as set forth in the Agreement, and their respective successors and assigns, and each of their partners, principals, shareholders, directors, officers, employees, and agents.
- (t) "Site" means the Purchaser's facility where the Equipment or Purchaser's Material is or will be situated.
- (u) "Special Services" means the performance by a Siemens field service representative of diagnostic and operational troubleshooting on Purchaser's Material, both online and offline. This work may be conducted on Site or by telecommunication.
- (v) "Software" means instructions in machine readable form, other than source code, and associated documentation delivered by Siemens to Purchaser in chip, disk and/or tape format.
- (w) "Sub supplier" means any subcontractor or supplier of any tier who supplies goods and services to Siemens in connection with the obligations of Siemens under the Agreement.
- (x) "Technical Field Advice" (sometimes referred to as Technical Field Assistance) means the advice and consultation given to Purchaser's personnel by a field service representative of Siemens with respect to:
 - a. installation, inspection, repair and/or maintenance activities performed by others at the Site, and
 - b. any Siemens recommended quality assurance procedures for activities performed at the Site.
- (y) Technical Field Advice does not include management, supervision or regulation of Purchaser's personnel, agents or contractors.
- (z) "Technical Services" means (i) Technical Field Advice; (ii) Special Services; (iii) inspection of equipment which has been disassembled by Purchaser or others; (iv) technical evaluation of inspections performed by Siemens, Purchaser or others; (v) technical information provided by Siemens, including data interpretation and reports; (vi) inspections, technical evaluation of inspections, technical analysis of materials and technical recommendations related to Shop Repair and Modernization Services; (vii) advice and consultation given to Purchaser's personnel at the Site or at a Siemens facility by a Siemens engineer or technician; and/or (viii) advice and guidance given to Purchaser by Siemens field engineer(s) regarding methods and procedures for installation, maintenance and/or calibration of the Equipment or Purchaser's Material.
- (aa) "Third Party Parts" means parts, components, equipment or materials provided by Purchaser under the Agreement or that exist in the Purchaser's Material which were not manufactured or supplied by Siemens or the predecessors of Siemens or which were originally supplied by Siemens or the predecessors of Siemens and subsequently repaired, serviced or otherwise modified or altered by any party not affiliated with Siemens or with a predecessor of Siemens.
- (bb) "Training Services" means training and consultation services given to Purchaser's personnel or Purchaser subcontractor at the Site or at a Siemens facility by a Siemens trainer or technical advisor.

2. Scope

Siemens will furnish to Purchaser Equipment, and/or Services as specified in and pursuant to the Agreement.

3. Price Policy

Unless otherwise stated in the Siemens proposal, the price does not include unloading, disassembly and reassembly of Purchaser equipment or Equipment and/or installation of Software at the Site. The price for the Equipment and/or Services is set forth in the proposal, which amount shall be adjusted as expressly provided in the Agreement.

4. Terms of Payment

- A. Unless otherwise specified, Siemens shall issue invoices in accordance with the schedule set forth in the Siemens proposal. If an invoice schedule is not set forth in the Siemens proposal, Siemens shall issue invoices as the work is completed. In any event, all invoices shall be paid by Purchaser within thirty (30) days after the date of the invoice.
- B. In any instance where Purchaser is unable to return Equipment or components to Siemens for fitting or for coordination with other assemblies by the specific date agreed to in the Agreement or where a portion of the work is to be performed by

Siemens at a later date, Siemens reserves the right to invoice Purchaser for work performed to date and either ship the components to Purchaser in their existing state or hold the components in storage at Purchaser's risk and expense. That portion of the work which is to be performed by Siemens at a later date will be performed as a Purchaser requested change under Article 18, Changes.

If shipments are delayed by Purchaser, affected payments shall become due based on the date Siemens is prepared to make shipment.

Any past due amounts shall, without prejudice to the right of Siemens to payment when due, bear interest at a floating rate equivalent to one-twelfth (1/12) of the per annum prime rate charged by JPMorgan Chase Bank, New York, New York, U.S.A., as such prime rate is published on the first banking day following the date payment is due, plus an additional one-half of one percent (0.5%), payable each month or portion thereof that payment is delayed. If payments are not made when due Siemens may, upon fifteen (15) days written notice and at its option, (i) terminate this Agreement (which termination shall be treated as a termination pursuant to Article 11(C), Termination) or (ii) suspend all further work hereunder. Resumption of work thereafter is contingent upon correction of the payment deficiency by Purchaser. The schedule for the resumed work will be established by Siemens based on its then current workload and the availability of other resources. All Siemens expenses associated with any such suspension shall be for the account of Purchaser.

If a good faith dispute exists over the amounts to be paid, Purchaser shall notify Siemens in writing of such dispute and Purchaser shall pay the undisputed amount. The disputed portion may be held in abeyance until resolution of the dispute with the disputed portion, together with interest as specified in subsection D above, due thirty (30) days after said resolution.

Unless otherwise set forth in the Siemens proposal, if shipment (from the manufacturing plant or repair facility where the work is performed) and/or Delivery of an item of the Equipment or completion of a portion of the Services is delayed for causes which are within the reasonable control of Siemens, issuance of the invoice covering the final five percent (5%) payment for the delayed work will be deferred for twice the number of months by which shipment/Delivery of such item of the Equipment or completion of such portion such Services is delayed; provided, however, that such deferral of the final invoice shall only be applicable if the delay in shipment and/or Delivery of the Equipment or the delay in completion of the Services has actually delayed the Purchaser's project for which the Equipment and/or Services were purchased.

UNLESS OTHERWISE AGREED BY THE PARTIES EXPRESSLY IN THE AGREEMENT, THE REMEDIES OF PURCHASER SET FORTH ABOVE AND/OR IN THE SIEMENS PROPOSAL FOR DELAY IN SHIPMENT/DELIVERY OR COMPLETION OF SERVICES CAUSED BY SIEMENS ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL APPLY. Deferral of the issuance of the final five percent (5%) invoice as set forth above or provision of the remedy set forth in the Siemens proposal shall constitute complete fulfillment of all liabilities of Siemens to Purchaser for delay in shipment/Delivery of Equipment or completion of Services whether based in contract, in tort (including negligence and strict liability), or any other theory of recovery. Further, the Parties agree that such deferral or any other option noted in Siemens's proposal are a reasonable determination of the damages that Purchaser would incur as a result of the delay in Delivery of the Equipment or in completion of the Services and do not constitute a penalty.

i. Delivery, Title and Risk of Loss or Damage

A. Unless otherwise stated in the Siemens proposal, delivery of each component of Equipment shall be made FCA (Incoterms 2020) at the manufacturing plant. Subject to the provisions of subsection B below, legal and equitable title and risk of loss or damage to each such component of the Equipment shall pass from Siemens to Purchaser upon Delivery. Upon Delivery, the Equipment shall be deemed accepted if Purchaser does not, in writing, reject such Delivery within forty-eight (48) hours.

B. Title to and right of possession of any Software licensed hereunder, without legal process, shall remain with Siemens or its licensor, except that Purchaser shall have the right of possession and use of the Software provided hereunder for the terms of the corresponding license provided herein, so long as no breach of this Agreement has been made by Purchaser and all payments due Siemens have been paid. Nothing in this Agreement shall be construed as giving Purchaser any right to sell, assign, lease or in any other manner transfer or encumber Siemens' or its licensor's ownership of the Software, or as limiting Siemens or its licensor from using and licensing the Software to any third party.

C. Purchaser's Material sent to Siemens for Shop Repair and Modernization Services or Purchaser's Material or Equipment being returned pursuant to the provisions of the Warranty or Patents Articles of the Agreement will be delivered by Purchaser at its expense to the repair or manufacturing plant designated by Siemens where the work is to be performed. Title to such Equipment or Purchaser's Material will remain at all times with Purchaser. Risk of loss or damage to such Equipment or Purchaser's Material will transfer to Siemens upon its arrival on board the carrier at the repair or manufacturing plant and will transfer back to Purchaser upon its delivery to the carrier at the repair or manufacturing plant for return to Purchaser. Delivery of Purchaser's Material shall be made when the item is placed on board carrier at the repair or manufacturing plant. When repair work is performed by Siemens at the Site, title and risk of loss or damage to the Equipment, to Purchaser's Material and to other property shall remain at all times with Purchaser. Title to any defective or nonconforming components of the Equipment that are replaced by Siemens, as part of its warranty obligations or as part of the Shop Repair and Modernization Services shall, at Siemens' option, revert back to Siemens upon completion of the replacement, with a deemed value of zero.

D. Risk of loss of or damage to Purchaser's Material or other property located at the Site shall remain with Purchaser at all times during the performance of work hereunder. If Purchaser procures or has procured property damage insurance applicable to occurrences at the Site, Purchaser shall obtain a waiver by the insurers of all subrogation rights against Siemens and its Sub-suppliers.

6. Transportation

A. Transportation and Storage: When items of Equipment are ready for shipment or Shop Repair and Modernization Services are completed on Purchaser's Material, Siemens will notify Purchaser to arrange for shipment. If Siemens has agreed in the Siemens proposal to transport Equipment, when items of Equipment are ready for shipment or Shop Repair and Modernization Services is completed on Purchaser's Material, Siemens will (i) in the absence of shipping instructions, inform Purchaser of pending shipment and Purchaser will thereafter promptly give shipping instructions to Siemens; (ii) determine the method of transportation and the routing of the shipment and (iii) ship the Equipment or Purchaser's Material freight prepaid and included in the price by Normal Carriage:

- (1) to Purchaser's designated destination when shipped by highway transport; or
- (2) to the nearest suitable rail siding to Purchaser's designated destination when shipped by rail transport.

In the event that Purchaser fails to provide Siemens with timely shipping instructions, Siemens will ship the Equipment or Purchaser's Material by Normal Carriage to Purchaser or to a suitable storage location selected by Siemens.

If the Equipment and/or Purchaser's Material is to be placed into storage in accordance with the above, Delivery of the Equipment or Purchaser's Material shall be deemed to have occurred for all purposes under the Agreement, including any payment due upon Delivery, at the time the Equipment or Purchaser's Material is placed on board the carrier for shipment to the storage location. If the Equipment and/or Purchaser's Material is to be stored in the facility where manufactured, or where Shop Repair and Modernization Services are performed, Delivery shall be deemed to have occurred when the Equipment and/or Purchaser's Material is placed into the storage location at such facility.

In the event of storage pursuant to the preceding paragraph, all expenses thereby incurred by Siemens, such as preparation for and placement into storage, handling, freight, storage, inspection, preservation, and taxes, shall be payable by Purchaser upon receipt of an invoice(s) from Siemens. When conditions permit and upon payment to Siemens of any additional amounts due hereunder, Purchaser shall arrange, at its expense, for removing the Equipment and/or Purchaser's Material from storage. Purchaser shall be responsible for insuring the Equipment and Purchaser's Material while in storage.

B. Normal Carriage: When Siemens is providing the transportation of the Equipment and/or Purchaser's Material, Siemens shall make every reasonable effort to ship by highway transport unless rail transport is required. Normal Carriage means carriage either by highway transport (provided this does not necessitate use of specialized riggers trailers) or by rail transport, on normal routing from the repair facility or manufacturing plant to (i) Purchaser's designated destination when shipped by highway transport or (ii) the nearest accessible suitable rail siding to Purchaser's designated destination when shipped by rail transport or (iii) the port of export selected by Siemens in the forty-eight (48) continental United States if Purchaser's designated destination is outside the United States or is in Alaska or Hawaii.

C. Special Transportation and Services: Purchaser agrees to pay or to reimburse Siemens for any transportation charges in excess of regular charges for Normal Carriage, including, but not limited to, excess charges for special routing, special trains, specialized riggers trailers, lighterage, barging and air transport.

Purchaser also agrees to pay or to reimburse Siemens for any cost incurred or charge resulting from special services performed in connection with the transportation of the Equipment or Purchaser's Material, including, but not limited to, the construction and repair of transportation and handling facilities, bridges and roadways, of whatever kind and wherever located.

7. Warranty

A. Equipment Warranty and Exclusive Remedy (excluding Software): Siemens warrants that each component of the Equipment (excluding Software and consumables) furnished to Purchaser will be free of defects in workmanship and materials until the earlier of eighteen (18) months after the Delivery of such component of the Equipment or one (1) year from the date of first use of such component of the Equipment (the "Equipment Warranty Period").

If during the Equipment Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that the Equipment or any component thereof fails to conform to the Equipment Warranty, Siemens will at its option and expense correct such nonconformity by repair or replacement.

B. Software Warranty and Exclusive Remedy: Siemens also warrants that the Software will comply with the functional specifications as set for in this Agreement until the earlier of eighteen (18) months after the Delivery of such Software or one (1) year from the date of first use of the Software (the "Software Warranty Period"). Siemens does not warrant that the Software will be error free or that Purchaser will experience uninterrupted performance.

If during the Software Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that the Software fails to conform to its warranty, and such failure is reproducible Siemens will at its option and expense correct the nonconformity by correction or deployment of an updated version, or patch in the medium originally supplied, or by providing a procedure to Purchaser for correction of the nonconformity. The obligations to provide software updates hereunder shall not include any obligation on Contractor to provide software upgrades without entitlement to a Change Order. Third party Software shall be warranted on a pass-through basis in the same manner and for the same period and extent provided to Siemens by the entity which supplied said third party software.

C. Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty

and Exclusive Remedy: Siemens warrants that the work performed by Siemens on Purchaser's Material, including any materials (excluding consumables) supplied by Siemens in connection therewith (hereinafter in this subsection C referred to as the "Work"), will be free of defects in, workmanship and materials until one (1) year after the completion of such services (the "Field and Shop Repair and Modernization Services Warranty Period").

If during the Field and Shop Repair and Modernization Services Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that the Work or any part thereof fails to conform to the Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty, Siemens will at its option and expense correct such nonconformity by repair, replacement or reperformance of the defective portion of the Work. If repair, replacement or reperformance is impracticable, Siemens will refund the amount of the compensation paid to Siemens by Purchaser for such nonconforming portion of the Work.

D. Technical Services and Training Services Warranties and Exclusive Remedy: Siemens warrants for each item of Technical Services that (i) the advice, recommendations and performance of its personnel will reflect competent professional knowledge and judgment and (ii) the technical information, reports and analyses transmitted by Siemens in connection therewith will reflect competent professional knowledge and judgment, beginning with the start of the item of Technical Services and ending one (1) year after completion of said item of Technical Services by Siemens (the "Technical Services Warranty Period"). Siemens warrants that for each item of Training Services that such shall be performed in a professional and workmanlike manner beginning with the start of the item of Training Services and ending ninety (90) days after completion of said item of Training Services by Siemens.

If during the Technical Services Warranty Period or Training Services Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that any portion of the Technical Services fails to conform to the Technical Services Warranty, Siemens will promptly reperform such nonconforming portion of the Technical Services. If reperformance is impracticable Siemens will refund the amount of the compensation paid to Siemens for such nonconforming portion of the Technical Services.

E. Title: Siemens warrants that the Equipment, upon Delivery, shall not be subject to any encumbrances, liens, security interests, or other defects in title. In the event of any failure to conform to this warranty, Siemens, upon prompt written notice of such failure, shall defend the title to the Equipment.

F. Warranty Conditions: The warranties and remedies set forth in this Article are conditioned upon:

(1) Purchaser's receipt, handling, storage, installation, testing, operation and maintenance, including tasks incident thereto, of the Equipment, Purchaser's Material or Purchaser's equipment, in accordance with the recommendations of Siemens to the extent applicable or, in the absence of such recommendations or to the extent not applicable, in accordance with the generally accepted practices of the industry. In addition, such Equipment, Purchaser's Material or Purchaser's equipment shall not have been operated in excess of limitations specified in writing by Siemens and not have been subjected to accident, alteration, abuse or misuse.

(2) For all warranty work, Purchaser shall provide access to any operating and maintenance data as requested by Siemens, which may include broadband connection.

(3) For all warranty work where disassembly, removal, replacement and reinstallation of Equipment, materials, structures or Purchaser's Material was not part of the Siemens scope of work under the Agreement, Purchaser providing, without cost to Siemens, access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, materials,

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structures or Purchaser's Material to the extent necessary to permit Siemens to perform its warranty obligations.

(4) All warranty work being performed on a single-shift straight-time basis, Monday through Friday. In the event Purchaser requests correction of warranty items on an overtime or multiple shift schedule, the premium portion of such overtime or multiple shifts shall be to Purchaser's account.

(5) Purchaser, without cost to Siemens, making its Site facilities and personnel (to the extent consistent with personnel job classifications) available to assist Siemens in the performance of its warranty obligations.

(6) Purchaser, with respect to subsection 5 above, reimbursing Siemens for all costs incurred in the transportation of personnel and defective, repaired or replacement parts to and from the Site.

(7) Prior to the return of any Equipment or Purchaser's Material to Siemens, the Purchaser must obtain authorization and shipping instructions from Siemens. The Equipment or Purchaser's Material must be returned with complete identification in accordance with instructions furnished by Siemens. In no event will Siemens be responsible for Equipment or Purchaser's Material returned without proper authorization and identification. Siemens reserves the right to reject any unauthorized returns and/or Hazardous Material; and

(8) Siemens will have no warranty responsibility for any Software, or portion thereof, which has been modified or merged with another computer program without the prior written consent of Siemens to such modification or merger. Further, Purchaser shall indemnify, hold harmless and defend Siemens from any claims demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) resulting from any unauthorized Software modifications,

(9) Siemens shall be entitled to issue updates, upgrades and/or changes to the Software solutions and applications or to provide functionally equivalent replacements during the term of this Agreement.

G. For the avoidance of doubt, in the event that physical loss or damage to the Purchaser's property results from the failure of a warranted defective portion of the Equipment or Services to conform to its respective warranty during the applicable warranty period, should Siemens have any liability at all, Siemens' liability shall in no case exceed Siemens' obligation to perform the warranty remedies specified in Article 7 subsections A, B, C, or D, as applicable, which Siemens would have had to perform if such warranty remedy had been carried out immediately following such failure but prior to the occurrence of the physical loss or damage.

H. The warranty period for any Services or Equipment (except Software) repaired or replaced by Siemens pursuant to this Article 7 shall not exceed the earlier of (i) twelve (12) months after the date of completion of the item of repaired, replaced or reperfomed Equipment or Services or (ii) six (6) months after the expiration of the original warranty period (the "Warranty Repair Warranty Period").

I. Additional Conditions Applicable to the Sale of Monitoring Devices: Monitoring devices supplied by Siemens pursuant to the Agreement may enable users to better diagnose and control conditions within the monitored equipment. While such monitors may permit earlier detection of harmful conditions, Siemens does not warrant or represent that the use of such monitors will prevent failure or detect all harmful conditions in the monitored equipment and Purchaser acknowledges the same.

J. Additional Conditions Applicable to Diagnostic and Non-Destructive Examination and Testing: Diagnostic and non-destructive examination and testing techniques employed by Siemens may not detect all of the defects in Purchaser's Material (including indications of cracking) and such failure shall not constitute a breach by Siemens of its warranty obligations. Purchaser acknowledges that Siemens

will not be responsible for the consequences of undetected defects including undetected cracks.

K. Additional Conditions Applicable to Technical Field Advice: Where Siemens furnishes Technical Field Advice under the Agreement, Purchaser is responsible for (i) the supervision, management, regulation, arbitration and determination of the number of its personnel, agents, or contractors and their work and (ii) the planning, scheduling, management and progress of the work. Unless expressly agreed to in writing by Siemens, under no circumstances shall Siemens provide or be obligated to provide Technical Field Advice directly or indirectly to any competitor of Siemens or their employees, representatives, or consultants.

L. Additional Conditions Applicable to Remote Services: Where Siemens furnishes Services remotely under the Agreement, Siemens relies upon the proper and correct transmission of information from the Purchaser personnel. Prior to executing any advice given by Siemens remotely, the Purchaser personnel shall repeat the advice given. The Purchaser represents and warrants that any user using a Siemens application for the Services provided under a Purchaser account or using Purchaser's log-in credentials duly acts on behalf of the Purchaser and accepts the terms of use which will be made accessible to such user, e.g. on the landing page of an application. The terms of use published on any landing page of an application shall apply in their then current version with respect to the use of the application. The Purchaser shall be responsible for the acts and omissions of any such user as if they were the Purchaser's own acts and omissions.

M. Siemens does not warrant or guarantee that any Equipment or Software will be secure from or protect against all cyber threats, hacking or similar malicious activity. Equipment or Software that is networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Purchaser and owner/end-user against unauthorized access and for implementing product updates, and using the latest product versions, performing regular vulnerability scanning, implementing and maintaining appropriate password policy and using appropriate network security measures such as firewalls, network client authentication and/or network segmentation.

N. Exclusivity of Warranties and Remedies: THE WARRANTIES PROVIDED BY SIEMENS AS SET FORTH IN THIS ARTICLE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). Correction of nonconformities in the manner and for the period of time provided above constitute Siemens' sole and exclusive liability and Purchaser's sole and exclusive remedy for defective or nonconforming Equipment and/or Services whether claims of the Purchaser are based in contract, in tort (including negligence and strict liability), or any other theory of recovery.

8. Taxes

The price paid or to be paid to Siemens under the Agreement does not include any federal, state, or local property, license, privilege, sales, use, excise, value added, gross receipts, or similar taxes (other than federal and state income taxes imposed on Siemens) now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment and Purchaser's Material, its or their sale, their value or their use, or any Services performed in connection therewith. Purchaser agrees to defend, pay, and reimburse Siemens for any such taxes or costs, expenses, claims, liabilities, or losses including without limitations tax liabilities, penalties, and interest as a result of Purchaser's acts or omissions related to such taxes, which Siemens or its Sub suppliers are required to pay or are incurred by Siemens and its Sub suppliers. Should Purchaser be exempted from any such tax(es) it shall provide Siemens certification thereof within the earlier of thirty (30) days after the effective date of the Agreement or the time the exemption is obtained.

9. Additional Conditions Applicable to Nuclear Installations

In the event the Services and/or the Equipment provided under the Agreement are to be performed or utilized at or in any manner in connection with a nuclear installation, the following conditions shall apply:

A. Purchaser Insurance

(1) If Purchaser procures property damage insurance applicable to occurrences at the Site and third party non-nuclear liability insurance, or either of such types of insurance, such insurance will name Siemens and its Sub suppliers as additional insureds.

(2) Purchaser shall have at its own cost, prior to the arrival of nuclear fuel at the Site, secured and shall thereafter maintain in force protection against liability arising out of or resulting from a Nuclear Incident as required by the Nuclear Regulatory Commission; provided, however, that if the nuclear liability protection system in effect on the date of the Agreement expires or is repealed, changed, or modified, Purchaser will, without cost to Siemens, maintain liability protection through government indemnity, limitation of liability, and/or liability insurance which will not result in a material impairment of the protection afforded Siemens and its Sub suppliers by such nuclear liability protection system which is in effect as of the date of the Agreement, taking into account the availability of insurance, customary practice in the industry for plants of similar size and character, and other relevant factors in light of then existing conditions. In any event, the protection provided pursuant to this Article shall remain in effect until the decommissioning of the nuclear plant.

B. **Waivers by Purchaser:** Neither Siemens nor its Sub suppliers shall be liable for any loss of, damage to, or loss of use of property or equipment wherever located, arising out of or resulting from a "Nuclear Incident," as defined in the Atomic Energy Act. Purchaser waives and will require its insurers to waive all rights of recovery against Siemens and its Sub suppliers on account of any such loss, damage, or loss of use. All such waivers shall be full and unrestricted and in a form acceptable to Siemens, and will take precedent over any other clauses in the Agreement.

In the event Purchaser recovers damages from a third party based on losses at the Site resulting from the hazardous properties of source, special nuclear or byproduct material (as defined in the Atomic Energy Act of 1954, as amended), Purchaser shall defend, indemnify and hold Siemens and its Sub suppliers harmless against claims by such third party which are based on Purchaser's recovery of such damages. In addition, Purchaser waives and will require its insurers to waive all rights of recovery against Siemens and its Sub suppliers, for any and all costs or expenses arising out of or in connection with the investigation and settlement of claims or the defense of suits for damage resulting from the nuclear energy hazard.

C. **Third Party Property Protection:** Purchaser will indemnify and hold Siemens and its Sub suppliers harmless for any liability arising out of loss of or damage to property at the Site which arises out of a Nuclear Incident. In addition, Purchaser shall obtain for the benefit of Siemens and its Sub suppliers, protection against liability for, arising out of, or resulting from damage to any property or equipment located at the Site which is used or intended for use by Purchaser in connection with the operation of the nuclear power plant (including but not limited to fuel) and which is owned by parties other than Purchaser.

D. **Decontamination:** Purchaser shall, without cost to Siemens, perform any required decontamination and health physics necessary for, related to or resulting from Siemens performance of its contractual obligations. This includes but is not limited to decontamination of any Siemens equipment or tools used in the performance thereof. Purchaser shall provide documentation demonstrating that components or parts being returned to Siemens after such decontamination meet the requirements designated for unrestricted release as set forth in the United States Code of Federal Regulations, Title 10 Part 20.

O. Force Majeure and Delays

A. Siemens will not be liable for failure to perform or delay in performance of any obligation resulting from or contributed to by any cause beyond the reasonable control of Siemens or its Sub suppliers or from any act of God; act of civil or military authority; act of war whether declared or undeclared; act (including but not limited to delay, failure to act or priority, governmental allocations or restrictions

upon the use of transportation, materials or labor, public curfews, shelters in place, shut-ins, or lock-downs) of any governmental authority; act of terrorism or threat thereof; civil disturbance, rebellion, insurrection, riot or sabotage; fire, inclement weather conditions, earthquake, flood or natural disaster; strike, work stoppage or other labor difficulty; embargo, public health event, contagion, epidemic, pandemic (whether known or unknown) or quarantine; breakdown or unavailability of telecommunication networks; attacks on Siemens' or a Sub suppliers' digital infrastructure (such as malware, virus attacks, hacker attacks, or exploitation of vulnerabilities); railroad car, fuel or energy shortage; major equipment breakdown; delay or accident in shipping or transportation; or failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor, work permits or working visas for Siemens' personnel or its Sub suppliers' personnel, necessary import or export licenses, or materials from usual sources.

B. Additionally, Siemens will not be liable for failure to perform or delay in performance of any obligation resulting from or contributed to by the acts, omissions, neglect, delay or fault of parties outside of Siemens' control including, but not limited to, Purchaser and Purchaser's contractors, subcontractors, representatives or agents;

C. In the event of a delay in performance excusable under this Article, the date of Delivery or time for performance of the work will be extended by a period of time reasonably necessary to overcome the effect of such delay, and Purchaser will reimburse Siemens for its additional costs and expenses resulting from the delay.

11. Termination

A. Purchaser may terminate the Agreement for convenience upon thirty (30) days prior written notice to Siemens, subject to Purchaser's payment of Termination Charges. For purposes hereof, "Termination Charges" means either: (a) the applicable termination fee from the termination fee schedule set forth in the Siemens proposal; or (b) in the absence of a termination fee schedule, the portion of the purchase price for the work performed, man hours expended and materials acquired as of the date of termination plus the expenses associated with the termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its Sub suppliers, and any applicable cost allocated in contemplation of performance. The Parties agree that such Termination Charges, including termination fees set forth in the termination fee schedule, are a reasonable determination of the damages that Siemens would incur as a result of such termination and do not constitute a penalty. All Termination Charges shall be due and payable thirty (30) days from the date of the Siemens invoice.

B. Purchaser may terminate the Agreement for cause in the event of (i) an act of insolvency or bankruptcy by Siemens; or (ii) a material breach of the Agreement by Siemens, which Siemens fails to commence to cure within thirty (30) days after notice thereof from Purchaser and fails to diligently pursue thereafter. In such event, as Purchaser's sole remedy for such default, Siemens will reimburse Purchaser for its reasonable and verifiable costs to complete the Services or obtain replacement Equipment up to the price for such item of Equipment or Services under the Agreement.

C. In the event of any breach of the Agreement by Purchaser, Siemens shall be entitled to an extension of time to the extent necessitated by the breach and to reimbursement for all costs and expenses ("Breach Costs") incurred by Siemens as a result of such breach. Siemens may terminate the Agreement if (i) the work is delayed for a period in excess of six (6) months for any reason attributable to Purchaser and/or force majeure, (ii) any payment from Purchaser is thirty (30) days or more past due, or (iii) Purchaser materially breaches this Agreement. If Siemens terminates the Agreement pursuant to this Article 11.C, Purchaser shall pay Siemens the Termination Charges (as defined in Article 11.A) plus any Breach Costs within thirty (30) days from the date of the Siemens invoice.

D. In addition, if at any time during the performance of its work under the Agreement Siemens reasonably determines that the Purchaser's financial condition

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may render it insolvent or unable to make future payments under the Agreement, then Siemens shall be entitled to one or more of the following at Siemens' option: (i) adequate written assurances, supported by documentation, of Purchaser's ability to pay; (ii) payment in advance for any further work; (iii) future payments against an irrevocable Letter of Credit on terms, and from an issuing bank, acceptable to Siemens; (iv) other payment security or credit support mutually agreed by Purchaser and Siemens.

12. Intellectual Property Infringement

A. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Purchaser so far as based on an allegation that any Services on Purchaser's Material or the Equipment (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent, copyright or misappropriation of a third party's trade secret, so long as Siemens is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Services on Purchaser's Material or the Equipment, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement of any such United States patent, copyright or misappropriation of a third party's trade secret, or its use by Purchaser is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Purchaser the right to continue using said Equipment or Purchaser's Material; (b) replace it with substantially equivalent non-infringing equipment; or (c) modify it so it becomes non-infringing.

B. Siemens will have no duty or obligation to Purchaser under this Article to the extent that the Services on Purchaser's Material or Equipment is (a) supplied according to Purchaser's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Purchaser or its contractors after Delivery by Siemens, or (c) combined by Purchaser or its contractors with items not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Purchaser. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Purchaser shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Purchaser under the provisions of Article 12.A above.

C. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS, COPYRIGHTS OR TRADE SECRETS AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF AND OF ALL THE REMEDIES OF PURCHASER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS, COPYRIGHTS OR TRADE SECRETS. Compliance with this Article as provided herein shall constitute fulfillment of all liabilities of the parties under the Agreement with respect to patents, copyrights or trade secrets.

13. Confidential Information

A. Siemens may have a proprietary interest in information that is furnished pursuant to or in connection with the Agreement. Purchaser will keep in confidence and will not disclose any such information, or any of Siemens' intellectual property (including, but not limited to, any patents, copyrights or trade secrets), which is specifically designated as being confidential by Siemens or use any such information for other than the purpose for which it is supplied without the prior written permission of Siemens. The provisions of this paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Purchaser without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any confidentiality obligation of Purchaser, or which is received from a third party, including Purchaser's subsidiaries or affiliates, without limitation or restriction on said third party or Purchaser at the time of disclosure.

B. Siemens also has a proprietary interest in (i) its proposal and the Agreement and (ii) the processes and procedures used by its personnel in Unrestricted

performance of the Agreement. Accordingly, the quotation, the Agreement and such processes and procedures shall not be disclosed or viewed in whole or in part by third parties without the prior written permission of Siemens.

C. Siemens also has a proprietary interest in the manner of performance of the work, including but not limited to the know-how, processes, methods and techniques employed by Siemens in connection therewith. The observing or recording of the work or any part thereof, whether by photographic, video or audio devices or in any other manner is prohibited. In the event any such prohibited observation or recording occurs, any and all copies of any such recording(s) shall be turned over to Siemens for destruction by Siemens. Siemens may (in addition to any other legal or equitable rights and remedies) stop the work until Siemens has satisfied itself that the prohibited conduct has ceased, and in such event (a) the date of delivery or time for performance will be extended by a period of time which Siemens determines necessary and (b) Purchaser will reimburse Siemens for Siemens' and its Sub suppliers' additional costs and expenses resulting from such delay, including but not limited to any for demobilization or remobilization.

D. Without limiting its obligations pursuant to Articles 13.A and 13.B above, Purchaser agrees not to reverse engineer, modify, improve, or make derivative works of Siemens' confidential information or intellectual property. Purchaser further agrees not to seek any intellectual property rights directly or indirectly based in whole or part on Siemens' confidential information or intellectual property without Siemens' prior written consent. Purchaser further agrees that if it obtains any such intellectual property rights, it has acted or will act as an agent for the benefit of Siemens for the limited purpose of obtaining and securing such intellectual property rights and will upon written direction from Siemens assign the same to Siemens.

E. Purchaser shall indemnify and hold Siemens harmless from and against any loss, damage or liability arising or resulting from non-compliance with the provisions of this Article 13.

F. When required by appropriate governmental authority, including governmental regulations, applicable law or regulation, by order of a court of competent jurisdiction or lawful subpoena (hereinafter collectively referred to as "Governmental Authority"), Purchaser may disclose such confidential information to such Governmental Authority; provided, however, that prior to making any such disclosure, Purchaser will: (a) provide Siemens with timely advance written notice of the proprietary information requested by such Governmental Authority and Purchaser's intent to so disclose; (b) minimize the amount of proprietary information to be provided consonant with the interests of Siemens and its Sub suppliers and the requirements of the Governmental Authority involved; and (c) make every reasonable effort (which shall include participation by Siemens in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the proprietary information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, Siemens shall have the prior right to revise such information to minimize the disclosure of such information in a manner consonant with its interests and the requirements of the Governmental Authority involved.

14. Limitation of Liability

A. PURCHASER EXPRESSLY AGREES THAT NEITHER SIEMENS NOR ITS SUBSUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OR PUNITIVE DAMAGES WHATSOEVER; EXCEPT AS OTHERWISE SET FORTH IN ARTICLE 14(C) BELOW DAMAGE TO OR LOSS OF ANY PROPERTY OR EQUIPMENT; LOSS OF INTEREST OR PROFITS OR REVENUE OR LOSS OF USE THEREOF; LOSS OF USE OF PURCHASER'S MATERIAL, EQUIPMENT OR POWER SYSTEM; LOSS OF, ALTERATION OR INABILITY TO ACCESS OR USE INFORMATION OR DATA; LOSS OF PRODUCTION (INCLUDING LOSS OF HYDROCARBONS); LOSS OF POWER; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR ANY CLAIMS OR DAMAGES OF CUSTOMERS OF PURCHASER.

B. PURCHASER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED IT IN THE AGREEMENT ARE EXCLUSIVE, AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SIEMENS OR ITS SUBSUPPLIERS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID TO SIEMENS UNDER THE APPLICABLE PURCHASE ORDER.

C. SIEMENS' LIABILITY FOR PURCHASER'S PROPERTY DAMAGE DIRECTLY RESULTING FROM SIEMENS, ITS AFFILIATES AND ITS SUBSUPPLIERS NEGLIGENT ACTS OR OMISSIONS AT THE SITE OR WARRANTED DEFECT SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF (i) THE PURCHASER'S INSURANCE DEDUCTIBLE, (ii) THE DIRECT COST OF REPAIRING OR REPLACING SAID PROPERTY, (iii) THE LIMITATIONS IDENTIFIED IN ARTICLES 14 (A)&(B), OR (iv) FIVE HUNDRED THOUSAND DOLLARS (\$500,000). PURCHASER WILL WAIVE AND REQUIRE ITS PROPERTY INSURER TO WAIVE ALL RIGHTS OF RECOVERY AGAINST SIEMENS AND ITS SUBSUPPLIERS OF ANY TIER FOR LOSS OF OR DAMAGE TO PROPERTY AND EQUIPMENT OF PURCHASER IN EXCESS OF THE FINANCIAL OBLIGATION ASSUMED BY SIEMENS HEREUNDER. IN ADDITION, SIEMENS SHALL HAVE NO LIABILITY FOR DAMAGE TO PURCHASER'S PROPERTY AS THE RESULT OF ANY TECHNICAL FIELD ADVICE OR TRAINING SERVICES.

D. ALL LIABILITY OF SIEMENS AND ITS SUBSUPPLIERS UNDER THIS AGREEMENT SHALL TERMINATE NO LATER THAN THE EXPIRATION OF THE WARRANTY PERIOD.

E. THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS AGREEMENT.

15. Transfer; Ownership and Export Compliance

A. Prior to the transfer to another party of any Equipment, Purchaser's Material, work product furnished hereunder by Siemens' or its Sub suppliers, or the transfer of any interest in said Equipment, Purchaser's Material or work product, or the facility in which or the site on which said Equipment, Purchaser's Material or work product is or will be installed or furnished, Purchaser shall obtain for Siemens written assurances from the transferee of limitation of and protection against liability following the proposed transfer at least equivalent to that afforded Siemens and its Sub suppliers under the Agreement.

B. If Purchaser is not the sole owner of the Equipment, Purchaser's Material, work product furnished hereunder by Siemens or its Sub suppliers, or the facility in which or the site on which the Equipment, Purchaser's Material or work product is or will be installed or furnished, Purchaser represents and warrants that it has (and will maintain) written assurances from each and every other owner of limitation of and protection against liability of Siemens and its Sub suppliers with respect to each and every such other owner at least equivalent to that afforded Siemens and its Sub suppliers under the Agreement.

C. If Purchaser transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Siemens or works and services (including all kinds of technical support) performed by Siemens to a third party worldwide, Purchaser shall comply with all applicable national and international (re-) export control regulations. In any event Purchaser shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

D. If required to conduct export control or sanctions checks, Purchaser, upon request by Siemens, shall promptly provide Siemens with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Siemens, as well as any export control restrictions existing.

E. PURCHASER SHALL INDEMNIFY AND HOLD HARMLESS SIEMENS FROM AND AGAINST ANY CLAIM, PROCEEDING, ACTION, FINE, LOSS, COST AND DAMAGES ARISING OUT OF OR RELATING TO ANY NONCOMPLIANCE WITH EXPORT CONTROL REGULATIONS BY PURCHASER, AND PURCHASER SHALL COMPENSATE SIEMENS FOR ALL LOSSES AND EXPENSES RESULTING THEREOF, UNLESS SUCH NONCOMPLIANCE

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WAS NOT CAUSED BY FAULT OF THE PURCHASER. THIS PROVISION DOES NOT IMPLY A CHANGE IN BURDEN OF PROOF.

F. Siemens shall not be obligated to fulfill this agreement if such fulfillment is prevented by what it determines to be any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

G. Transfer contrary to the provisions of Article 15 or in breach thereof, shall make Purchaser the indemnitor of Siemens and its Sub suppliers against any liabilities incurred by Siemens and its Sub suppliers in excess of those that would have been incurred had no such transfer or breach, as the case may be, taken place.

16. Software License

To the extent set forth in the Agreement, Siemens grants to Purchaser a nonexclusive, nontransferable license to utilize the Siemens Software furnished hereunder solely for Purchaser's internal use in connection with the Siemens equipment for which it is supplied or in which such Software is incorporated. All title and ownership of the Siemens Software, including, without limitation, the copyright to such Software and any improvement or development thereof, shall remain exclusively with Siemens. Purchaser may make one backup copy of the Software for the sole purpose of replacement of a worn, impaired, damaged, or destroyed original copy. Purchaser shall not itself, or with the assistance of others, reverse compile, reverse engineer, or in any other manner attempt to decipher in whole or in part the logic or coherence, underlying ideas, or algorithms of any Software licensed hereunder. Third party Software provided by Siemens may be subject to a separate license agreement and /or registration requirements and limitations on copying and use.

Insofar as the Software contains Open-Source Software ("OSS"), Siemens will provide the applicable OSS license terms together with the Services. The OSS license terms shall prevail over this Contract. Details regarding any third-party software and OSS contained in the Services are available in the software documentation (e.g., README_OSS).

The Purchaser shall notify Siemens promptly about any possible misuse of its accounts or authentication credentials or any security incident related to the provided Software or associated application.

17. Compliance with Laws

In the performance of work under the Agreement, Siemens and its Sub suppliers shall comply with all applicable provisions of Executive Order 11246 and 13496, as amended, relating to equal opportunity and non-segregated facilities, the Fair Labor Standards Act of 1933 and the Occupational Safety and Health Act of 1970. The price for the work is based on compliance by Siemens with applicable laws, regulations and technical codes and standards as they are in effect on the date of the Siemens proposal (or the effective date of the Agreement if no proposal was provided).

Purchaser shall be responsible for identifying to Siemens all applicable laws, regulations, codes and standards of state, provincial or local authorities, or any subdivision thereof, and shall bear the expense if Equipment modifications or changes to Services are necessary to comply with such laws, regulations, codes or standards. Any such modifications shall be made under the terms of Article 18, Changes. The work will comply with Siemens' standards which meet the intent of the applicable industry codes as of the date of the Siemens proposal (or the effective date of the Agreement if no proposal was provided).

18. Changes

A. Purchaser may request changes within the scope of the Agreement and, if accepted by Siemens, the price, performance, schedule and other pertinent provisions of the Agreement will be adjusted by mutual agreement of the parties prior to implementation of the change.

B. Expenses incurred by Siemens due to (i) delays, other than delays which are deemed to be within the reasonable control of Siemens, and (ii) changes in applicable laws, regulations and technical codes and standards or the imposition of new laws, regulations and/or technical codes and standards after the applicable date set forth in Article 17 will be treated as changes to the scope of work and the Agreement will be adjusted as set forth in the previous paragraph.

C. Siemens may make a change(s) in the Equipment, Services on Purchaser's Material or the other Services without additional compensation from Purchaser if such change(s) does not adversely affect the warranties, the interface with Purchaser's equipment, materials and plant, the technical soundness of the work, the operability of the facility where the Equipment or Purchaser's Material is installed or for which Siemens is providing Services under the Agreement, or the schedule.

19. **Inspection by Purchaser**

Purchaser shall have reasonable access to the areas of the Siemens plants where work under the Agreement is being performed to enable Purchaser to observe tests on the work. Siemens, if requested, will inform the Purchaser of those tests and procedures which can be witnessed. Should Purchaser elect to witness specific tests, Purchaser must so specify such requirement in ample time to permit Siemens to include said witness tests in the schedule. Siemens, if requested, will advise Purchaser of the schedule of such tests. However, no rescheduling of tests or delays in manufacturing or shipment will be made to accommodate such inspection. Siemens will exercise reasonable efforts to secure similar rights with respect to the inspection of the work at Sub supplier's premises.

20. **Purchaser Data Usage**

Purchaser acknowledges that in order to perform certain Services, Siemens may require access to Purchaser's non-personal data. Purchaser hereby grants Siemens a limited worldwide, perpetual, irrevocable, transferable, sub-licensable, royalty-free license to access, collect, store, compile and use the Purchaser's data for the purposes of providing Services to Purchaser and for purposes of generally improving Siemens services or products. Siemens' use of the Purchaser data to improve Siemens' services or products shall be in such manner as to provide anonymity as to the Purchaser. Siemens shall own all right, title and interest in and to the Resultant Data. In the event that Resultant Data is incorporated in a report or other document generated by and output from software or hardware provided by Siemens as a feature of such software or hardware, the Purchaser shall own only personal title to any such report or document upon output thereof and have the right to make copies of, modify and distribute such report or document for the sole purpose for which the report has been created, and shall not share it with any third-parties without Siemens' consent.

21. **Removal of Hazardous Material**

Prior to the shipment of any Equipment or Purchaser's Material to Siemens for Services at Siemens' or its Sub suppliers' manufacturing plant or repair facility, the Purchaser must remove all Hazardous Material and ACM.

22. **Purchaser's Third-Party Parts Warranty**

Purchaser warrants that any and all Third Party Parts which may be the subject of any Services shall (a) be fully compatible with the corresponding part, component, equipment or material of the Original Equipment Manufacturer ("OEM") in terms of form, fit, and function; (b) shall be timely provided to Siemens hereunder; and (c) shall be capable of installation in the same manner and within the same time as the corresponding OEM part, component, equipment, or material. Purchaser assumes the entire liability and risk arising out of or resulting from Third Party Parts and Services on Third Party Parts. Siemens' warranties set forth in Article 7 do not apply to any Third-Party Parts or Services on Third Party Parts, and SIEMENS DISCLAIMS ANY AND ALL WARRANTIES AND REMEDIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), OR OTHERWISE, FOR OR WITH RESPECT TO THIRD PARTY PARTS OR SERVICES ON THIRD PARTY PARTS.

23. **Indemnity**

Until the expiration of the applicable Warranty Period, Siemens shall indemnify, hold harmless and defend Purchaser its officers, directors and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) for personal injury or death or loss of or damage to third party property (except property of customers of Purchaser or property incorporated in or intended to be incorporated in the project), to the extent caused by or arising out of any negligent act or omission or willful misconduct of Siemens, or any of its officers, directors, agents, employees or Sub

suppliers in connection with performance of work at Purchaser's Site under the Agreement ("Purchaser Indemnity Claim"). Siemens' indemnification obligations under this Article 23 are conditioned upon Purchaser providing Siemens with: (i) prompt notice of any Purchaser Indemnity Claim; (ii) the unrestricted right to defend any Purchaser Indemnity Claim; and (iii) full cooperation and support in the investigation, defense and/or settlement of the Purchaser Indemnity Claim. Purchaser shall indemnify, hold harmless and defend Siemens its officers, directors and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) for personal injury or death or loss of or damage to third party property to the extent caused by or arising out of any negligent act or omission or willful misconduct of Purchaser, or any of its officers, directors, agents, employees or subcontractors in connection with performance of work under the Agreement ("Siemens Indemnity Claim"). Purchaser's indemnification obligations under this Article 23 are conditioned upon Siemens providing Purchaser with: (i) prompt notice of any Siemens Indemnity Claim; (ii) the unrestricted right to defend any Indemnity Claim; and (iii) full cooperation and support in the investigation, defense and/or settlement of the Siemens Indemnity Claim. For the avoidance of doubt, any property of the Purchaser, any owner, end-user or the final recipient of any Equipment, Services or Software provided under this Agreement is not considered a third party as per any of the indemnity obligations in the foregoing.

24. **Siemens Insurance**

In connection with the Agreement, Siemens shall maintain insurance (or self-insurance) as specified below:

A. **Workers' Compensation:** Siemens shall comply with workers' compensation laws (or equivalent) in each jurisdiction where work is performed and shall maintain a Workers' Compensation and Employer's Liability insurance policy. If any work is to be performed on or near navigable waters, the policy shall include coverage for United States Longshoreman's and Harbor Worker's Act, Death on the High Seas Act, Jones Act, or their equivalent as required by the applicable law in the jurisdiction where such work is performed. The limits of such insurance shall be as follows:

Workers' Compensation: Statutory	
Employer's Liability:	\$1,000,000 each accident
	\$1,000,000 disease each employee
	\$1,000,000 policy aggregate for disease

B. **Commercial General Liability:** Siemens shall maintain Commercial General Liability insurance on an occurrence basis to provide coverage for bodily injury; personal injury; property damage; explosion, collapse and underground hazards (XCU); contractual liability (applicable to Siemens' obligations under Article 23 of this Agreement); and products/completed operations. Such policy shall provide limits of \$1,000,000 each occurrence and in the aggregate.

C. **Business Automobile Liability:** Siemens shall maintain business automobile liability insurance which shall include coverage for all owned, non-owned and hired vehicles with a \$1,000,000 Combined Single Limit.

D. **Excess Liability:** Siemens shall maintain excess liability insurance with a limit of \$4,000,000 each occurrence and in the aggregate. The policy shall be excess over the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.

E. The coverages set forth in B, C and D above shall include Purchaser as additional insured to the extent that bodily injury, death and third-party property damage are caused by the negligent acts or omissions of Siemens or its Sub suppliers. The coverage afforded to Purchaser as an additional insured shall apply on a primary basis.

25. Purchaser's Insurance

In connection with the Agreement, Purchaser shall purchase and maintain insurance as specified below:

A. **Property Insurance:** Purchaser shall purchase and maintain property insurance (including builder's risk, if applicable) on an all-risk's basis covering physical loss or damage to the property at the Site (including the Equipment and Purchaser's Material after Delivery thereof), which coverage shall be maintained until the expiration of the last of the applicable Warranty Periods. Such insurance will include Siemens and its Sub suppliers as an additional insured, with a waiver of subrogation.

B. **Workers' Compensation:** Purchaser shall comply with applicable workers' compensation laws (or equivalent) and shall maintain a Workers' Compensation and Employer's Liability insurance policy. If the Site is on or near navigable waters, the policy shall include coverage for United States Longshoreman's and Harbor Worker's Act, Death on the High Seas Act, Jones Act, or their equivalent as required by the applicable law in the jurisdiction where the Site is located. The limits of such insurance shall be as follows:

Workers' Compensation: Statutory

Employer's Liability: \$1,000,000 each accident
 \$1,000,000 disease each employee
 \$1,000,000 policy aggregate for disease

C. **Commercial General Liability:** Purchaser shall maintain Commercial General Liability insurance on an occurrence basis to provide coverage for: bodily injury; personal injury; property damage; explosion, collapse, and underground (XCU) hazards; contractual liability (applicable to Purchaser's obligations under Article 23 of this Agreement); and products/completed operations. Such policy shall provide limits of \$1,000,000 each occurrence and in the aggregate.

D. **Business Automobile Liability:** Purchaser shall maintain Business Automobile Liability insurance which shall include coverage for all owned, non-owned and hired vehicles with a \$1,000,000 Combined Single Limit.

E. **Excess Liability:** Purchaser shall maintain Excess Liability insurance with a limit of \$4,000,000 each occurrence and in the aggregate. The policy shall be excess over the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.

F. The coverages set forth in subsections C, D, and E above shall include Siemens as additional insured to the extent that bodily injury, death and third-party property damage are caused by the negligent acts or omissions of Purchaser or its subcontractors. The coverage afforded to Siemens as an additional insured shall apply on a primary basis.

26. Miscellaneous Provisions

A. **Shipment Dates:** Shipment dates are the dates the Equipment or Purchaser's Material will be ready for shipment from the manufacturing plant, Siemens repair facility or other facility where the Services are performed and are predicated on the prompt receipt by Siemens from Purchaser of all information necessary to commence and complete the work without delay or interruption. Unless otherwise stated in a Purchase Order, shipment dates are not guaranteed. Should Purchaser request Siemens to ship any Equipment or Purchaser's Material prior to a date established based on Siemens standard lead time for such Equipment or Purchaser's Material, and provided Siemens accepts in writing the earlier date, an additional fee will be applied to cover the costs associated with such expedited shipment.

B. **Waivers:** The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed to be a waiver of such

provision, nor in any way to affect the validity of the Agreement or any parts thereof, or the right of either Party thereafter to enforce each and every provision.

C. **Modification:** No waiver, modification, or amendment of any of the provisions of the Agreement shall be binding unless it is in writing and signed by duly authorized representatives of both parties.

D. **Headings:** The headings used in the Agreement are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in the Agreement.

E. **Assignment & Subcontracting:** The Agreement will not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment without such prior written consent shall be null and void. Notwithstanding the foregoing, Siemens may assign or novate the Contract, in whole or in part, to any of its Affiliates without Purchaser's consent and further may subcontract the same as Siemens may deem reasonably necessary for the fulfillment of the Agreement.

F. **Governing Law:** The Agreement will be construed and interpreted in accordance with the laws of the State of Florida without application of its choice of law or conflict of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to any Agreement.

G. **Personnel:** Siemens reserves the right to change any of its personnel performing Services under the Agreement. In such event, Siemens will provide replacement personnel of equivalent capabilities and bear any additional travel and living expense associated with providing such replacement personnel.

H. **Performance Guarantee(s) and Exclusive Remedy:** There are no performance guarantees of the Equipment, Software and/or Services unless specifically set forth in the Siemens proposal. In the event any performance guarantees are provided in the Siemens proposal, Purchaser's sole and exclusive remedy and Siemens' sole and exclusive liability for any failure of the Equipment, Software and/or Services to comply with such performance guarantees under any theory of recovery shall be the liquidated damages specified in such Siemens proposal up to the limit specified therein, which liquidated damages shall only be paid on a "no harm, no foul" basis. The Parties agree that such liquidated are a reasonable determination of the damages that Purchaser would incur as a result of the failure of the Equipment and/or Services to meet the Performance Guarantees and do not constitute a penalty.

I. **Environmental Compliance:** Purchaser recognizes that the performance of Services at the Site may involve the generation of Hazardous Material. Purchaser shall at its expense furnish Siemens with containers for Hazardous Material and shall designate a waste storage facility at the Site where such containers are to be placed by Siemens. Purchaser shall handle, store and dispose of Hazardous Material in accordance with all applicable federal, state and local laws, rules, regulations and ordinances. Purchaser shall reimburse Siemens for additional costs, if any, incurred in complying with any such laws, regulations, rules and/or ordinances.

Siemens shall have no responsibility or liability with regard to any Hazardous Material, including any hazardous waste, which it does not know or have reason to know will be generated in the performance of the Services, and Purchaser shall indemnify and hold Siemens harmless for all pollution and environmental impairment arising from the Purchaser's property, the Equipment or the Services.

J. **Asbestos and Thermal Insulation**

(1) The Purchaser warrants, represents, and certifies that, in any areas which may be accessed by Siemens or its Sub suppliers, any ACM which is or is contained in thermal insulation or sprayed-on surfacing material is conspicuously and specifically marked as ACM, and any other ACM is in a lawful condition.

(2) Prior to Siemens' commencement of Services at the Site:

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(a) The Purchaser shall, at Purchaser's expense remove all thermal insulation, sprayed-on surfacing material, and/or ACM, including ACM which may be disturbed during or removal of which is required for the performance of the Services; and

(b) The Purchaser shall ensure that any areas where any activities involving the abatement or removal of thermal insulation, sprayed-on surfacing material or ACM shall be conspicuously identified, posted and isolated, all as required by applicable law.

PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT SIEMENS IN PERFORMING THE SERVICES AND PERMITTING EMPLOYEES TO ENTER THE WORK AREAS IS RELYING UPON THE COVENANTS, AGREEMENTS, WARRANTIES, CERTIFICATIONS AND REPRESENTATIONS MADE BY PURCHASER ABOVE.

Without limiting its other rights and remedies Siemens shall not be obligated to commence or may stop any work in any Work Areas unless fully satisfied that the Purchaser is in compliance with Article 26.J(1) above and this Article 26.J(2) and shall be entitled to an equitable adjustment in the schedule, price and other provisions of the Agreement affected thereby or otherwise affected by Purchaser's non-compliance.

(3) In no event shall Siemens be obligated to install, disturb, handle, or remove any thermal insulation, sprayed-on surfacing material, or ACM except as specifically agreed in writing by Siemens and only after Siemens has been provided acceptable chemical analyses verifying that the same are not ACM.

(4) Siemens makes no representation that it is licensed to abate ACM. Notwithstanding anything set forth in the Agreement and unless Siemens is provided satisfactory written evidence that such GPW is not ACM, Siemens shall be obligated to handle, remove, or reinstall generator wedges, packing, or high temperature gaskets (such materials herein "GPW") only if such activities are within the scope of the Services and only then to the extent that:

- (a) such activities would be classified as Class II or Class III activity under United States Code of Federal Regulations Chapter 29 Section CFR 1926.1101 et seq.
- (b) such activities do not require a permit, license, or authorization.
- (c) such activities are not likely to generate airborne asbestos fibers, and
- (d) all such GPW is non-friable.

In all other cases, such activities shall be Purchaser's responsibility and Siemens shall be entitled to an equitable adjustment in the schedule, price and other pertinent affected provisions of the Agreement should the same not be performed in a timely manner. The disposal of any GPW or scrap or waste material resulting from its disturbance or removal shall in all cases be the Purchaser's responsibility.

(5) Purchaser shall defend, indemnify and hold Siemens and its Sub suppliers harmless against any and all claims, demands, damages, losses, liabilities, fines, penalties, costs or expenses, including without limitation any clean up or remedial measures arising out of, connected with, or resulting from the Purchaser's failure to comply with the provisions of this Article 26.J.

K. **Integration:** The Agreement contains the entire agreement and understanding between the parties as to the subject matter of the Agreement, and merges and supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior or contemporaneous obligations, conditions, warranties, or representations with respect to the subject matter of the Agreement.

L. **Dispute Resolution:** Either Party may give the other Party written notice of any dispute arising out of or relating to this Agreement and not resolved in the normal course of business. The Parties shall attempt in good faith to resolve such dispute promptly by negotiations between executives who have authority to settle the dispute. Litigation of any dispute arising from, under or in connection with this

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Agreement shall be brought exclusively in either: (i) a federal court having jurisdiction over Orange County, Florida; or (ii) if a federal court does not have jurisdiction of the dispute, in a state court of competent jurisdiction presiding within Orange County, Florida. Each Party hereby consents to the personal jurisdiction of such courts and irrevocably waives, to the fullest extent permitted by applicable law and the laws of the State of Florida, any claim or any objection it may now or hereafter have, that venue or personal jurisdiction is not proper in such a court including, but not limited to, any claim that such legal action, suit, or proceeding brought in such court has been brought in an inconvenient forum. Each Party further consents and agrees that such litigation will be presented to and resolved by a judge presiding without a jury and **EACH PARTY EXPRESSLY WAIVES ITS RIGHT TO A JURY TRIAL**. The parties further agree that, for purposes of this provision, tort claims relate to this Agreement if they involve or relate to any products or service provided under or pursuant to this Agreement or any action or conduct related to this Agreement.

M. **Survival:** The provisions entitled "Intellectual Property," "Additional Conditions Applicable to Nuclear Installations," "Confidential Information," "Limitation of Liability," "Transfer; Ownership and Export Compliance," "Software License," the second paragraph of "Delivery, Title and Risk of Loss or Damage," Article 26.J.(5). of the provision entitled "Asbestos and Thermal Insulation", and "Dispute Resolution" shall survive termination, expiration or cancellation of the Agreement.

N. **Site Safety:** Purchaser shall comply with all federal, state, and local safety regulations and standards applicable to the site and to the equipment on which Siemens will perform the work. Siemens shall not be obligated to commence or perform work unless Purchaser's site complies with all applicable safety requirements. Should Siemens require use of Purchaser's equipment, including lifting devices, in performance of the Services, Purchaser shall ensure that such equipment complies with all applicable laws, including all OSHA regulations and certifications, and is capable of performance of the Services. If requested by Siemens, Purchaser shall provide Siemens with documentation confirming Purchaser's equipment's compliance with applicable law. In the event Purchaser's site safety is non-compliant, Siemens may suspend work until such time as Purchaser corrects the noncompliance. To the extent Siemens incurs additional time and expense as the result of Purchaser's non-compliance, Siemens shall be entitled to an equitable adjustment in the schedule, price and other affected provisions of the Agreement. Purchaser shall defend, indemnify and hold harmless Siemens from and against all damages, losses, costs and expenses (including attorneys' fees and litigation expenses) arising out of or resulting from the injury or death or damage to or destruction of property due to Purchaser's non-compliance with this Article or due to the condition of, defects, deficiencies, or non-conformities in Purchaser's equipment.

O. **Severability:** In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

Publicity: Neither party shall, without the prior written consent of the other party, issue any public statement, press release, publicity hand-out or other material relating to the Equipment and Services performed.

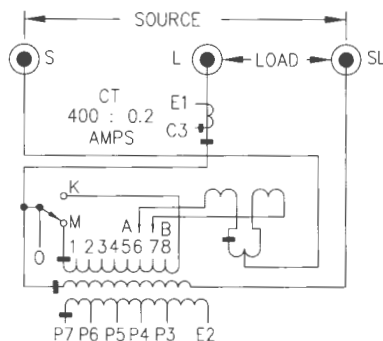
SIEMENS

⊕ 5/8% Step-Voltage Regulator Serial No. ⊕
 Single Phase Type JFR 60 Hz 55/65°C Rise 95 BIL Class ONAN
 333/373 kVA 7620 Volts $\pm 10\%$ in 32 - 5/8% Steps 437/489 Amps

Insulating Fluid : ASTM D-3487 Type II Mineral Oil Less than 1 ppm PCB
 Untanking Hgt = 155 in. Oil = 160 gals.
 Untanking Wgt = 1702 lbs. Total Wgt = 3436 lbs. ANSI TYPE "B"

% Regulation	10	8 3/4	7 1/2	6 1/4	5
7620 V AMPS	437	481	524	590	668
7200 V AMPS	463	509	554	625	668

Load Volts $\pm 10\%$	Voltage Source	
	P2 to	P2-PT
7970	P3	125 V
7620	P3	120 V
7200	P4	121 V
5000	P5	126 V
4800	P5	121 V
4330	P5	109 V
4160	P6	122 V
2500	P7	126 V
2400	P7	121 V



Control diag : 21-204-122-407

Nameplate : 21-117-129-401

CT sec conn C2 to C3
 Aluminum conductor in shunt winding.
 Aluminum conductor in series winding & P.A.
 Tank withstands full vacuum.

DATE:

Do not by-pass unless on neutral and control switch on panel is off
 See instruction book before placing in service.

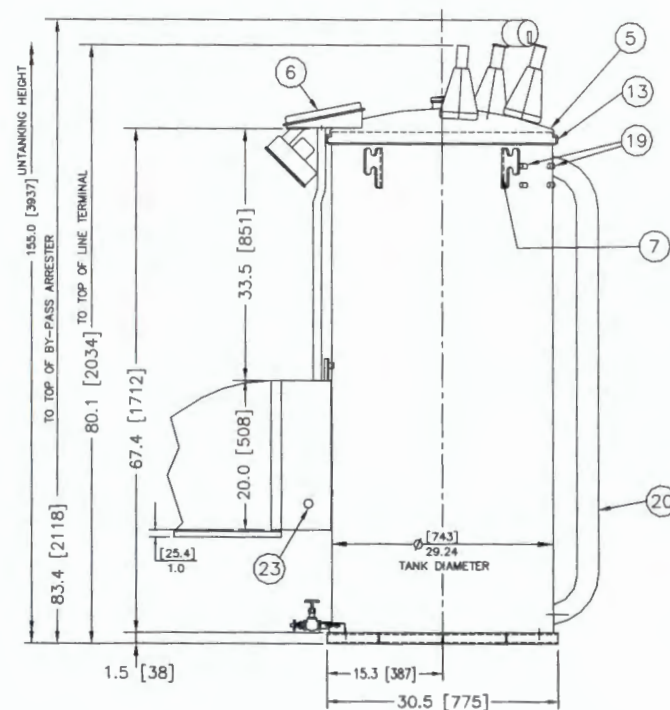
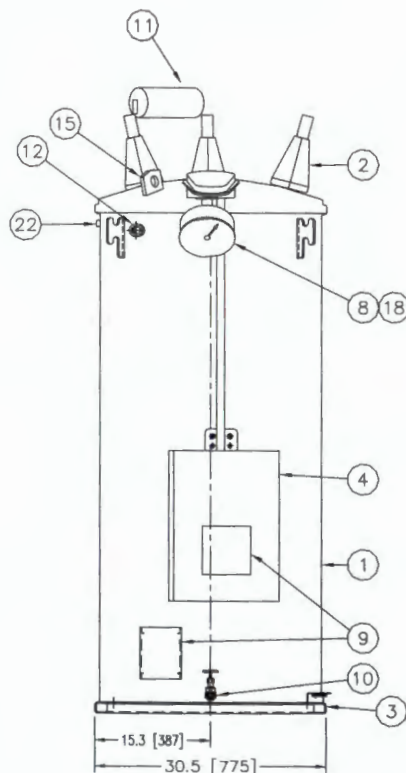
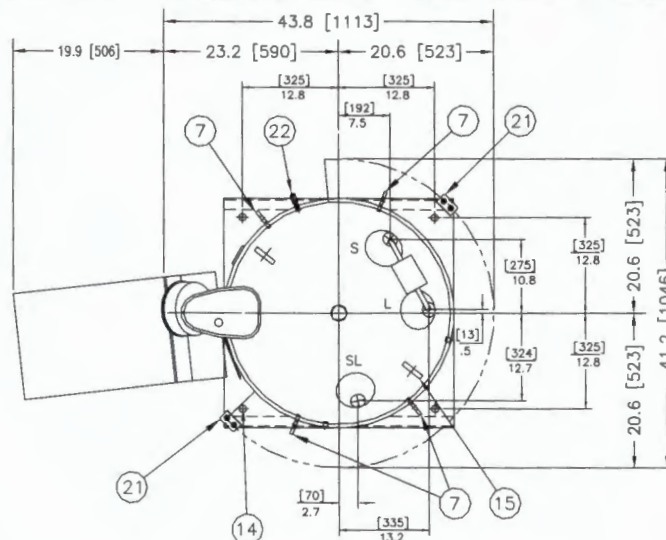
⊕ Siemens Energy, Inc. Jackson, MS ⊕
 Made in U S A

NOTE:

ENGRAVE OR ETCH: SERIAL NO. (STOCK ORDER NO. AND NO. OF UNIT), NAMEPLATE NO., CONTROL DIAGRAM NO., DATE AND BIL.

02 8-11-10 JL	ADDED ADDITIONAL VOLTAGE TAPS	01 1-25-10	UNLESS OTHERWISE SPECIFIED		-Confidential-		Property of	
			ALL DIMENSIONS ARE IN INCHES		Siemens Energy, Inc.			
			1-PLACE DECIMAL $\pm .050$ 2-PLACE DECIMAL $\pm .020$ 3-PLACE DECIMAL $\pm .005$ INTERNAL DIA EXCLUDED		MACHINED SURFACE TEXTURE			
			FOR TOL NOT SPECIFIED SEE 500 SERIES SHOP PRAC STD		UNLESS OTHERWISE SPECIFIED			
			THIRD ANGLE PROJ		SIMILAR TO		DWG NAME	
			DRAWN BRS DATE 1-25-10		NAMEPLATE			
			CHECK JKA DATE 2-2-10		FSCM NO. (464)		DWG NO. 21-117-129-401	
			APVD JKA DATE 2-2-10		SCALE NTS		WT R F	
					SHEET 1 OF 1			

LEAD CLAMPS MAYBE USED FOR VERTICAL OR
HORIZONTAL TAKE OFF - #6 TO 800 MCM CABLE



- (1) TANK
- (2) 3 BUSHINGS (15 KV)
- (3) BASE
- (4) CONTROL COMPARTMENT
- (5) MAIN COVER
- (6) TERMINAL BOX FOR CONTROL LEADS
- (7) LIFTING HOOKS (4) FOR LIFTING ENTIRE UNIT
- (8) POSITION INDICATOR
- (9) NAMEPLATE
- (10) 1.0 [25] DRAIN VALVE WITH SAMPLING DEVICE
- (11) BY-PASS ARRESTER 3 KV (MOV)
- (12) OIL SIGHT GAUGE
- (13) COVER CLAMP
- (14) 1.0 [25] DIA. HOLES IN BASE FOR BOLTING DOWN
- (15) LIFTING EYES (2) FOR UNTANKING UNIT
- (16)
- (17)
- (18) VARI-AMP ADJUSTMENT OUTSIDE (8)
- (19) PROVISION FOR MOUNTING (3) GROUND ARRESTERS
- (20) TUBE RADIATORS
- (21) (2) STAINLESS STEEL GROUND PADS
- (22) .500-13 UNC-2B TAPPED HOLES
- (23) ON 1.75 [44] CENTERS
- (24) PRESSURE RELIEF DEVICE (5 PSI)
- (25) .50-13 UNC-2B GROUND TAP LUG

Property of
Siemens Energy, Inc.

REGULATOR OUTLINE			
TYPE	JFR	1 PH.	60 HZ
333	kVA	7620	VOLTS \pm 10 %
N	32 STEPS		437 AMPS
	kVA		VOLTS \pm 10 %
N	32 STEPS		AMPS

01	1-25-10	UNLESS OTHERWISE SPECIFIED		MACHINE SURFACE TEXTURE (SEE GENERAL NOTES)	1-PLACE DECIMAL # 000 2-PLACE DECIMAL # 000 3-PLACE DECIMAL # 000	INTERNAL DIA EXCLUDED FOR DIA NOT SPECIFIED SEE DIM 500 SERIES SHOP PRACTICE	DIM 50 	DRAWING NO. DATE 1-25-10 CHKD. JWA DATE 2-2-10 APPD. JWA DATE 2-2-10
		REVISIONS						

21-304-399-499	01
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WEIGHT - UNTANKING	=	1702 LBS.	772KG.
WEIGHT - CASE & FITTINGS	=	534 LBS.	242KG.
WEIGHT - OIL (160 GAL)	=	1200 LBS. (606L)	544KG.
WEIGHT - TOTAL	=	3436 LBS.	1558 KG.

Quote/Order Number

SF232046496

Customer

Tupelo Water and Light

Sales Channel

Agent

Date

3/21/2023 AE Initials : MA

Item Number

10-07.6-333.0 B (198)

Ref.Master #

P3R21198021801

Description	Contract Review Data	Comment	Description	Contract Review Data	Comment
Specification	No Specification		ANSI Type	B	
Pinning Voltage	7200		Current	437	
			Voltage	7620	
Control Panel Manufacturer	SEL		Base KVA	333	
Control Panel Model	SEL-2431	24310111X1246XXX10XX	Base AN Temp Rise	55°C	
Control Box	Std. 20" Cabinet		Is 65°C Rise Req'd	Yes	
Control Box Mounting Level	Standard		Oil	Mineral	ONAN
Aux PT Required	None		HV BIL (kV)	95	
Cabinet Heater	Heater Required		Frequency (Hz)	60	
Ratio Correction XFMR	None		Mounting Arrangement	Platform	
Spare Fuses	None		SSPT	No	
			Max Tap	10.00%	
Remote Kit Length	Standard Cable		Min Tap	-10.00%	
S & L Bushing Terminal	Standard terminal	Clamp Type #6-800 kcmil	HV Winding Material	Siemens Standard	
SL Bushing Terminal	Standard terminal	Clamp Type #6-800 kcmil	LV Winding Material	Siemens Standard	
Ground Lugs/ Terminals	Standard Grounding Provisions				
Adapter Plates	None		No-Load Losses (Watts)	Not Required	
Animal Protectors	None		Load Losses (Watts)	Not Required	
HV Arrester	None		Loss Terms	For Customer Reference	
Arrester Location	None		Loss Tolerance	IEEE Standard	
Drain Valve	Standard Drain Valve w/Sample		Penalties	No	
			NL Evaluation (\$/Watt)		
PCB Label	None		LL Evaluation (\$/Watt)		
Bar Code	None		Max Power Factor	None	
Nameplate	Black Aluminum				
Stencil Info	No		By Pass switch	None	
			Sub-Base	Included	21-401-599-803
Forced Air Rating	No				

Revisions and Comments

Additional Manufacturing Notes

Howard Industries, Inc.
Utility Transformer Division
P.O. Box 1588
Laurel, MS 39441-1588
Phone: 601 425 3151
Fax: 601 649 8090

TUPELO WATER & LT. DEPT
PO BOX 1485 ACCT PAYABLE
TUPELO, MS 38802

FOB: DESTINATION
PRICING: * SEE STATEMENT BELOW *
AGENT: HOWARD AGENCY

VALIDITY: 30 DAYS
TERMS: NET 30 DAYS
INQUIRY: BID 81925

QUOTATION NO: ME-6467
QUOTATION DATE: 03/28/2023
PAGE NO: 1

Item	Qty	Description	Unit Price	Shipment ARO
ITEM 1	12	<p>PRODUCT: SVR-1 STEP VOLTAGE REGULATOR KVA: 333 KVA VOLTAGE RATING: 7620/13200Y 95KV BIL RATED CURRENT: 00438 AMPS TANK: MILD STEEL OIL TYPE: MINERAL</p> <p>NOTE: WE ARE QUOTING 333 KVA, 438AMP, 7620V REGULATOR FOR 60 HZ OPERATION & WIRED FOR 7620V OPERATION.</p> <p>PLEASE SEE INCLUDED BID NOTES AND EXCEPTIONS.</p> <p>**NOTE** * DUE TO CURRENT COST VOLATILITY, HOWARD INDUSTRIES RESERVES THE RIGHT TO CHANGE PRICES AT ANY TIME TO COVER INCREASES IN THE KEY TRANSFORMER COST FACTORS BEYOND THE COMPANY'S CONTROL.</p> <p>DUE TO COVID-19, LABOR AND RAW MATERIAL SHORTAGES, AS WELL AS OTHER SUPPLY CHAIN DISRUPTIONS, HOWARD INDUSTRIES RESERVES THE RIGHT TO MODIFY LEAD TIMES AT ANY TIME ON BOTH ORDERS THAT HAVE ALREADY BEEN PLACED AND ON FUTURE ORDERS.</p> <p>ORDERS REQUIRING APPROVAL DRAWINGS: LEADTIMES QUOTED ASSUME THAT APPROVAL DRAWINGS WILL BE SIGNED AND RETURNED TO HOWARD INDUSTRIES WITHIN TWO WEEKS OF RECEIPT OF SAID DRAWING. SHOULD THE PROCESS REQUIRE ANY ADDITIONAL TIME BEYOND THESE TWO WEEKS, THAT ADDITIONAL TIME WILL BE ADDED TO THE QUOTED LEADTIME.</p> <p>** ADD 4 WEEKS TO THE QUOTED LEADTIME FOR TYPE A REGULATORS TO ALLOW FOR VT</p>	\$36,509.00	28-30 WKS

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Item	Qty	Description	Unit Price	Shipment ARO
		DELIVERY. **		