



## TERMS AND CONDITIONS

These Terms and Conditions apply to work performed by all Divisions and Subsidiaries of. Electrix USA, Inc. ("Seller"). This quotation supersedes and controls over the terms of any Buyer Purchase Order ("Order") or prior quotation for the services covered by this quotation.

### 1. QUOTATIONS:

The quotation expires thirty (30) days from its date and is subject to cancellation or modification by Seller, within that time, upon written notice, prior to execution by Buyer and delivery to Seller, Clerical, estimating or other errors in this quotation may be corrected at any time, upon written notice to Buyer, whether caused by unilateral or mutual mistake, before or after Buyer's execution and delivery.

### 2. ORDER ACCEPTANCE: CHANGES OR ADDITIONAL TERMS; FINAL ACCEPTANCE:

A. All Orders are subject to Seller's acceptance of the terms hereof, and to final written acceptance of any changes or additional hereto. B. Seller hereby objects to any terms stated by Buyer at any time, which add to, delete or change any terms of this quotation, whether orally, in an order, or in any other writing responding to this quotation. Any such terms shall not become part of any contract between Seller and Buyer and shall be void and unenforceable against Seller, unless Seller expressly agrees to such terms in writing, signed by Seller and Buyer, as a change or addition to this quotation. Any additions, deletions or changes to this quotation by Buyer, shall constitute an objection to the offer of Seller to provide services, and a counter-offer to Seller, until accepted in writing by Seller.

C. If there are any conflicts between the terms and conditions of this quotation and any additions, deletions or changes made by Buyer, but not accepted in writing by Seller, then the original terms and conditions of this quotation shall control.

D. In the event Seller does accept any additions, deletions or changes to this quotation, such acceptance is limited to the specific services provided under this quotation, and not to any other previously existing, contemporaneous or future quotation by Seller, unless specifically referenced, and accepted in writing by Seller, as provided above.

### 3. PRICES AND MINIMUM CHARGE:

Prices quoted are firm for ninety (90) days from the date of Order. If shipment of goods to Seller or completion of service extends beyond ninety (90) days from the date of Order, due to causes beyond Seller's reasonable control, then the prices will be adjusted to those in effect at the time of such shipment or completion. Minimum billing for services performed on a single call out order for services to be performed at Buyer's site shall be four (4) hours at the current rate for service technicians.

### 4. SALES AND OTHER TAXES:

Seller's quoted or published prices do not include applicable sales, use or possession taxes, tariffs, duties or taxes of any other kind whatsoever ("sales taxes"), which may now or hereafter be imposed upon, or with respect to this transaction, or any services performed in connection therewith. All sales to Buyer are subject to applicable sales taxes, unless Buyer furnishes a valid exemption certificate prior to the sale. Applicable sales taxes shall be added to the invoice and paid by Buyer to Seller. In interstate sales, Buyer is solely responsible for determining, reporting, and paying any sales taxes directly to applicable government taxing agency. In such cases, Seller will not include such taxes on any quotations or invoices, and any such taxes remitted to Seller will not be forwarded to any agencies, but will either be returned or credited to Buyer's account, in Seller's sole discretion.

### 5. CREDIT; TERMS OF PAYMENT: LATE CHARGE; INTEREST; CEASING SERVICE; DAMAGES; SECURITY INTEREST; SERVICE CHARGE

A. Payment is due in full upon receipt of invoice.

B. For partial shipments, pro rata payments are due as partial shipments are made and invoice received. Under no circumstances, shall any Invoice or percentage thereof be withheld as a retainer or other set-off against Buyer's obligation to Seller, without Seller's prior written consent.

C. Payments not made within 30 days of the due date are subject to a one-time "late charge" equal to four (4) % of the payment then due. In addition, all past due payments shall accrue interest at the rate on 1.5% per month (non-compounded) until paid in full.

D. Notwithstanding the above provision for payment terms, if Buyer's financial condition at any time becomes unsatisfactory to Seller, in Seller's reasonable but sole discretion, or if payment due Seller is in arrears over 30 days, or if Buyer materially breaches any term of this quotation, then Seller reserves the right to suspend work on current orders, and/or to withhold shipment of completed equipment, and to demand full payment of all amounts in arrears, plus full or partial payment in advance for work in process or as a condition to delivery. In the event of such suspension of work of withholding or shipment, Buyer shall defend, indemnify and hold Seller harmless from any and all loss, damages, expenses, fees, costs, fines or penalties whatsoever which may result to any person or entity due to any delays and damages occasioned thereby.

E Seller shall retain a security interest in all equipment, parts and accessories until all services and other charges due Seller are fully paid for by Buyer. If requested, Buyer agrees to execute and pay for the preparation and filing of any document necessary or desirable to perfect Seller's Security interest. Seller's Security interest shall be subject to foreclosure as provided by the law of Florida.

### 6. CANCELLATIONS OR RETURNS:

Buyer's Orders accepted by Seller may not be canceled, changed or returned without the prior express written consent of Seller and shall be subject to Buyer's payment of reasonable cancellation charges.



**TERMS AND CONDITIONS CONT.**

**7. SHIPPING; RISK OF LOSS; SHIPPING RATES; PENALTY CLAUSES:**

A. Buyer shall ship goods to and from Seller's service facility. FOB Seller's service facility unless otherwise agreed. If Seller transports Buyer's goods to or from Seller's service facility, Buyer acknowledges and agrees that the transport of Buyer's goods shall be entirely at Buyer's risk, except in cases of Seller's gross negligence.

B. Shipping dates quoted are based and conditioned on:

(1) Seller's best good faith estimates, (2) prompt receipt of a necessary information, deposits, goods, progress payments and other reasonable requirements from Buyer, and (3) absence of delays or other causes beyond Seller's reasonable control. Buyer agrees that Seller shall not be held liable for damages of any kind or nature whatsoever, including, without limitation, direct or indirect, incidental or consequential damages, resulting from any delays in shipment to Buyer, unless the measure of damage is covered by special written agreement signed by Seller and Buyer.

C. Any shortages or damages in shipments of goods, caused by any freight carrier will not be Seller's responsibility. Buyer shall make any such claim directly against the carrier, Buyer shall, however, notify Seller within 48 hours of receiving goods, of any alleged damage or shortage, so that Seller can provide reasonable cooperation to Buyer, without expense to Seller. D. Buyer assumes all risk of loss or damage to any of Buyer's reused goods and components, which fail or is damaged during any tests made by Seller, or requested by buyer. Buyer assumes all risks of loss or damage to any goods, properly or persons, arising directly or indirectly from Buyer's operation of serviced goods beyond their operating specifications. Any additional goods or services, and any damages to Seller resulting directly or indirectly from such failure, damage or operation beyond specifications, shall be at Buyer's sole expense, and shall be added to the price of the services. All test values and operating specifications shall be established by Seller, in its reasonable, but sole, discretion unless otherwise agreed in writing between Buyer and Seller.

**8. DELAY IN SHIPMENT OR SERVICE; STORAGE CHARGES; EARLY SHIPMENT:**

A. If delivery of Buyer's goods is delayed by Buyer, or any other cause beyond Seller's reasonable control, for any reason, including, without limitation, the Buyer's default or convenience, Seller may elect to invoice Buyer for the goods, parts and services on the date originally scheduled for delivery, and terms of payment shall apply from the date of such invoice. Buyer shall bear all risk of loss and be liable to Seller for all reasonable expenses incurred by Seller incidental to such delay in shipment and storage of undelivered goods.

B. Seller shall not be liable to Buyer, as a result of shipment delays, for any damages, penalties or liquidated damages of any kind, unless expressly agreed to, in writing, by Seller at the time Buyer's order is accepted.

**9. LIMITED, EXCLUSIVE WARRANTY, LIMITS OF LIABILITY:**

A. As its limited and exclusive warranty to Buyer, Seller warrants the goods and services provided by Seller to be of the kind and quality described in this quotation, and free of parts or labor defects:

I. For a period of ninety (90) days if repairs did not including rewinding.

II. For a period of one (1) year on electrical windings.

III. For a period of one (1) year if repairs included both electrical rewinding and mechanical rebuilding.

Seller also assigns to Buyer, without recourse to Seller the original manufacturer's warranties, if any. Should Seller be notified, in writing, of failure to conform to this warranty during the applicable warranty period, Seller shall correct such nonconformity at Seller's option, by repair or replacement of the defective item, FOB Seller's plant. Buyer shall enforce all original manufacturers' warranties directly against the manufacturer and not against Seller. EXCEPT AS IS EXPRESSLY STATED HEREIN, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, EXCEPT SUCH AS IS EXPRESSLY STATED IN THIS QUOTATION. Buyer's sole and exclusive remedies are as provided herein for any gross failure of Seller, its supplier's or subcontractors, to comply with its or their obligations. Correction of any non-conformity in the manner and for the period of time provided above shall constitute complete fulfillment of all the liabilities of Seller whether the claims of the Buyer are based in contract, in tort or otherwise with respect to or arising out of the product furnished hereunder. UNDER NO CIRCUMSTANCES SHALL SELLER, ITS SUPPLIERS OR SUBCONTRACTORS, BE LIABLE FOR ANY OTHER GENERAL, SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF THIS CONTRACT, OR ANY WARRANTY PROVIDED HEREIN, AND UNDER NO CIRCUMSTANCES, SHALL SELLER, ITS SUPPLIERS OR SUBCONTRACTORS, BE LIABLE IN AN AMOUNT WHICH EXCEEDS THE PRICE OF THE SERVICES PROVIDED UNDER THIS QUOTATION.

B. In no event shall Seller be responsible for providing, or for the expense of providing, working access to Buyer's goods, for their removal and disassembly for service, reassembly and re-installation, or for warranty work, or for alteration or removal of any structure or other equipment for such purposes, or for transportation costs or expenses in connection with warranty work hereunder. Buyer agrees to assume and pay for all such expenses.

C. All warranty work hereunder shall be on single shift, straight time. If buyer requests overtime work to complete warranty service, then Buyer agrees to pay for all such overtime costs, unless Buyer's original order authorized billing for overtime work on the order, in which case the warranty repairs, if requested in writing, shall also be performed on an overtime basis.



**TERMS AND CONDITIONS CONT.**

D. Please be advised that any Electric Motor, Generator, etc. repaired by Electrix USA, Inc. will be electrically/electronically tested at our facility before it is shipped to the client. It is our policy to have the client and/or their representative witness these tests and then sign off on our test report before the equipment is shipped. It will be the client's responsibility to witness these tests and follow up with Electrix USA, Inc. as to the time the equipment will be tested in order to be present for the tests. If the client does not make themselves or a representative available to witness the tests they forego and/or waive their rights and fully accept our test report as being correct in all manner. Please also be advised that Electrix USA, Inc. cannot run test and/or load test very large motors and/or generators, subsequently, only electrical/electronic tests can be performed. All electric motors and/or generators, etc. must also be commissioned by Electrix USA, Inc. (of which the price for the commissioning is not included in our repair price and therefore is to be quoted separately). Alternatively the client may use another professional Electrical company that is qualified to perform such commissioning in accordance with the relevant standards set forth by the industry. If either of the above is not performed, the warranty from Electrix USA, Inc. will be null and void. If any electric motor, generator, etc. that is under warranty and is disassembled or opened or repaired by another company, the warranty will be null and void. Also if a client chooses to have what may be a warranty claim, repaired by another company our warranty will be null and void. In all cases, any and all balance/s owed for the repair performed by Electrix USA, Inc. will be valid and have to be paid to Electrix USA, Inc. in accordance with our credit terms.

**10. ENVIRONMENTAL MATTERS:**

A. Buyer shall not deliver to Seller any radioactive material, oils or fluids, either inside or with any goods delivered for service, unless otherwise specifically agreed to by Seller, in writing. All such radioactive material, oils and fluids shall at all times remain the property of Buyer and shall not be subject to any security interest of Seller. Buyer assumes all expense and all risk of loss or damage arising directly or indirectly out of the removal, disposal, spillage, reconditioning, replacement or use of any such radioactive material, oils, fluids or gases, whether by Seller or any other person.

10. B. Seller will not accept any goods known or suspected to contain any radioactive material and or poly-chlorinated biphenyl ("PCB's"). If after receipt of goods from Buyer, Seller discovers radioactive material, PCB's or PCB contamination of the goods, then Buyer assumes all risk and expenses of loss, liability or damage to Seller or any other person, and all costs of clean-up, removal and other decontamination of the goods and any other contaminated place or equipment, and all risk of loss or damage of every kind whatsoever, associated with radioactive material or PCB fluids or contamination in connection with its goods.

**11. FORCE MAJEURE:**

Seller shall not be liable to Buyer, or any third party, for failure to perform, or for delay in performance, of this quotation due to any cause beyond its reasonable control, including, without limitation, fire, flood, labor problems, war, governmental action, energy shortage, transportation delay or shortage; unavailability of necessary parts or services from customary sources, or acts of God. Seller's performance shall be extended by the amount of time, and the contract price shall be increased in an amount reasonably necessary to overcome the delay and extra expense of such cause beyond Seller's tort reasonable control.

**12. INDEMNIFICATION:**

Buyer agrees to indemnify, defend and save the Seller harmless from any loss, damage or liability, of any nature whatsoever, which arises directly or indirectly to Seller, its officers, directors, agents or subcontractors, as a result of Buyer's failure to comply, negligently or willfully, with any of the terms or provisions of this quotation, or any Credit Agreement enforced in connection with this quotation.

**13. ENFORCEMENT:**

This quotation and any amendment thereto enforceable together with it shall be governed and enforced under Florida law. The exclusive venue of any suit to interpret or enforce any contract resulting from this quotation shall be the Courts of Miami, Florida, USA, in Seller's sole discretion. No party shall hold the other in default without first giving at least seven (7) days written notice of the default and the action necessary to cure the default. In any litigation to enforce or interpret this quotation, or arising out of it the prevailing party shall recover court costs and a reasonable attorney's fee from the non-prevailing party, at all levels of litigation and appeal, post judgment relief, and alternative dispute resolution in connection therewith. In no event shall any provision of this quotation be interpreted or enforced against Seller merely because Seller was the drafter of the quotation or amendments thereto.

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