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**ERMCO**  
DISTRIBUTION  
TRANSFORMERS

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ERMCO Selling Terms  
Form 100 Revision #4  
March 11, 2015

## **ERMCO Terms and Conditions of Sale**

### **Quote for Sale of Product or Service**

A quotation for the sale of ERMCO products or services is valid for 30 days from the quote date. No quote is binding upon ERMCO. Any purchase order resulting from a quote is subject to acceptance by ERMCO, at its home office, which will be accomplished by ERMCO issuing the prospective purchaser a written order acknowledgment from a duly authorized representative of ERMCO. Said order acknowledgment will be transmitted in writing to Purchaser and may be transmitted via email, facsimile, overnight carrier or U.S. Mail, at the election of ERMCO.

### **Payment Terms**

At the time of product shipment as described herein, an invoice will be issued and transmitted to the purchaser. Invoice payment terms are net 30 days from the date of invoice due and payable in cash or equivalent at the offices of ERMCO at 2225 Industrial Road, Dyersburg, Tennessee, 38024. Purchaser shall be liable for and pay a late charge as specified on the invoice if payment is not made within the stated terms, plus costs of collection and reasonable attorney's fees in connection with the enforcement of the terms and conditions of sale.

### **Transportation Terms**

All transformers and/or other products or components are sold F.O.B. point of shipment, freight prepaid to the first destination served by common carrier in the continental United States with the risk of loss passing to the purchaser upon delivery to the carrier.

### **Lead Time**

Quoted shipping dates are approximate and based on available production capacity, component and material availability, the Force Majeure terms set forth herein and is further contingent upon the order containing complete and accurate information. The proposed shipping date will be contained in the order acknowledgment issued to the purchaser after receipt and acceptance of the order.

### **Drawing Approval and Changes**

If approval drawings or other specifications are required, purchaser acknowledges that same are strictly the proprietary property of ERMCO and agrees not to disclose the content thereof and to return the drawings and/or specifications to ERMCO within 10 days of receipt with approval or instructions for changes. Delay in returning the drawings and/or specifications may result in production delays and increased prices. If purchaser makes changes to the product design after the ERMCO quote has been submitted, purchaser will be responsible for and pay any price and lead time adjustments that result from the change.

## **Force Majeure**

Neither ERMCO, its owners, subsidiaries, officers, directors, shareholders, employees nor insurers thereof, shall be liable for failure to perform or for delay in performance due to any cause beyond its reasonable control, including but not limited to fire, flood, strike or other labor difficulty, acts of God, acts of terrorism, acts of governmental authority or of the Purchaser, riot, embargo, fuel or energy shortage, faulty castings or forgings, wrecks or delay in transportation, accidents, and/or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources. In the event of delay in performance due to any such cause, the date of delivery or time for completion and shipment will be extended by a period of time reasonably necessary to overcome the effect of such delay.

## **Limitation of Liability**

ERMCO, its owners, subsidiaries, officers, directors, shareholders, employees, insurers, contractors and suppliers of any tier, **SHALL NOT BE LIABLE** in contract, tort (including but not limited to negligence of any type or strict liability) or otherwise for charges or loss of other property or equipment, loss of profits or revenue, loss of use of materials or equipment of power system(s), costs of capital, cost of replacement power, materials, or temporary equipment (including but not limited to additional expenses incurred in using existing facilities), claims, demands, charges, causes of action of customers of Purchaser, or for any **SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES** whatsoever.

The remedies of the Purchaser set forth herein are exclusive and the total cumulative liability of ERMCO and its related parties set forth above with respect to this contract, or anything done in connection therewith, including but not limited to performance or breach thereof, or from the manufacture, sale, delivery, resale, or use of any product covered by or furnished under the contract, whether in contract, tort (including but not limited to negligence of any type or strict liability) or otherwise, shall not exceed the price of the product or part on which such liability is based.

## **Warranty**

Conventional pole mounted transformers and all pad mounted transformers are warranted as provided herein for a period of two years from date of delivery to the purchaser. C.S.P. pole mounted transformers are warranted for a period of three years from date of delivery to the purchaser.

ERMCO warrants that the transformer and its component parts will be of the kind and quality described in the order or contract, and will be free of defects in workmanship or materials.

If the purchaser notifies ERMCO in writing of any failure to conform to this warranty within the warranty period, ERMCO will transport the defective transformer to a repair location, correct the non-conformity by replacing or repairing (in its elective discretion) the defective part or parts, and deliver the transformer back to the purchaser utilizing the transportation terms set forth herein. The costs for removal of defective transformer and re-installation of repaired or replaced transformer shall be at Purchaser's expense.

In order to be covered by this warranty, the transformer must be properly installed according to accepted industry practices. Transformers must be protected by properly installed and coordinated voltage surge protection, current overload devices, and other current protective devices as appropriate. This warranty does not apply if the transformer is installed without the methods and protection normally accepted in the industry, nor in the cases of mishandling, misapplication, vandalism, alterations, prior repairs by other than ERMCO authorized personnel or stored or installed in "Unusual Service Conditions" as defined by IEEE Standard C57.12.00.

## **LIMITATION OF WARRANTY AND REMEDY**

**THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF AND NO ONE HAS THE AUTHORITY TO MODIFY THE TERMS OF THIS WARRANTY. There is no liability for damage or loss of other property, equipment, claims, demands, causes of action of the customer or of the Purchaser, or CONSEQUENTIAL DAMAGE. The remedies of the purchaser shall not exceed the price of the product or part on which such liability is claimed.**

## **Returning Products**

Authorization and shipping instructions for the return of any product must be obtained from ERMCO before returning the product. The product must be returned with the identification markings and packaged as instructed by ERMCO.

## **Contract Variations**

Where Purchaser's specifications are not sufficiently detailed, ERMCO, at its elective discretion reserves the right to design the product in accordance with ERMCO's judgment and practice. If at any time the Purchaser makes changes to the design as requested in his specifications, the contract shall be subject to renegotiation of the price terms and delivery to reasonably compensate for any additional costs and commitments occasioned by the change, and further, ERMCO shall not be liable or responsible for defective design changes provided or requested by Purchaser.

## **Cancelling Orders**

Any order may be cancelled by the Purchaser by notifying ERMCO in writing. If ERMCO incurs costs or charges associated with the cancelled order, including but not limited to specifically manufactured product or product specifically identified to the contract, then the purchaser shall be liable for payment of said costs and same shall be due and payable pursuant to the Payment Terms set forth above.

## **Held Orders**

The purchaser has the right to hold or delay an order by notifying ERMCO. An order held or delayed beyond a reasonable amount of time will be considered and treated as a cancelled order. If product is placed in storage as a result of the request for delay, the Purchaser shall be responsible for any costs or charges associated with the storage and same shall be due and payable pursuant to the Payment Terms set forth above.

## **Miscellaneous**

The rights and remedies of the parties to this contract, and any disagreement or litigation resulting therefrom, shall be governed by and construed under the laws of the State of Tennessee and the parties further agree that the venue of any proceedings shall be in Dyer County, Tennessee.

These terms of sale are the entire agreement between the parties and no prior or contemporaneous oral statements or subsequent modifications can change or alter this agreement unless in writing and signed by an authorized representative of ERMCO.

Purchaser acknowledges receipt and understanding of the Terms of Sale and acceptance of the product or placing of an Order constitutes acceptance of the terms hereof by Purchaser.