

**STANDARD PURCHASING TERMS AND CONDITIONS
ELECTRIC POWER BOARD (NES)
NASHVILLE, TN**

Seller and Buyer agree as follows:

1. NES reserves the right to request additional drawings and specifications, if we so desire.
2. All late bids will be stamped, dated, and returned to bidder.
3. If reels are involved, reel-deposits, if applicable, must be quoted with bid; otherwise, there will be no reel deposit considered.
4. No verbal bid results will be available. A copy of quotations will be posted in the bid room for two (2) weeks after public opening. Proposals may be viewed after evaluation is complete.
5. No copies are to be duplicated by or for bidders.
6. NES reserves the right to reject any or all bids, as well as the right to waive any irregularity or informality.
7. In order for your bid to be considered, you must indicate the brand you are quoting; and if quoting a brand other than specified, you must specify the brand and catalog number with complete descriptive literature accompanying your bid.
8. NES will generally award bids based on firm quotations. However, NES reserves the right to award quotes tied to a public indicator when deemed in NES' best interest.
9. Successful vendor must acknowledge purchase order by return fax or mail immediately.
10. The invitation to bid will be a part of all agreements or contracts arising out of this invitation to bid, and in case of a conflict, the terms and conditions of the invitation to bid will prevail and control.
11. The invitation to bid and any agreement or contract arising out of the invitation to bid will be governed and construed with the laws of the state of Tennessee.
12. **VENUE** Both parties agree that venue for any litigation arising from this contract shall lie in Davidson County, Nashville, TN.
13. **APPLICABLE LAW** This agreement shall be governed by the uniform commercial code. Wherever the term "uniform commercial code" is used, it shall be construed as meaning the uniform commercial code as adopted in the state of Tennessee, as effective and in force on the date of this agreement.
14. **ADVERTISING** Seller shall not advertise or publish, without buyer's prior consent, the fact that buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
15. **RIGHT OF INSPECTION** Buyer shall have the right to inspect the goods at delivery before accepting them.
16. **TITLE & RISK OF LOSS** The title and risk of loss of the goods shall not pass to buyer until buyer actually receives and takes possession of the goods at the point or points of delivery.
17. **DELIVERY TERMS & TRANSPORTATION CHARGES** F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; buyer agrees to reimburse seller for transportation costs in the amount specified in seller's bid, or actual costs, whichever is lower. If the quoted delivery terms do not include transportation costs, buyer shall have the right to designate what method of transportation shall be used to ship the goods.
18. NES will neither accept nor pay for any overrun of purchase order quantities which exceed 10%.
19. NES may cancel the balance of any contract by giving 7 days notice if funds are not appropriated or are cancelled by the President.
20. **ASSIGNMENT-DELEGATION** No right or interest in this contract shall be assigned, or delegation of any obligation made by seller, without the written permission of the buyer. Any attempted assignment or delegation by seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
21. **MODIFICATIONS** This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

"RIGHT TO KNOW LAW"

22. Manufacturers and distributors that are regulated by and complying with the provisions of the OSHA hazard communication standard must provide NES a material safety data sheet (MSDS) for any element, chemical or mixture that presents a physical hazard or a health hazard as defined by the OSHA standard in 29 CFR §1910.1200 (C) or any hazardous substance as defined by the standard under 1910.1200 (D). The data sheet must be provided to NES at the time of delivery. Manufacturers and distributors must insure that each container of hazardous

chemical delivered to NES be properly labeled, tagged or marked in accordance with OSHA 1910.1200 standards. Labels and other forms of warning for each incoming hazardous chemical will be inspected for compliance with section (F) of the standard.

23. Tennessee Code Annotated §50-3-2007. Rules and regulations - Duties and liabilities of contractors, (a) The commissioner may promulgate rules and regulations in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement the provisions of this part. (b) The commissioner is authorized to promulgate such rules and regulations to establish dates for filing reports required by the provisions of this part and forms for making such reports which correspond to the reporting dates and forms required by the "Emergency Planning and Community Right-To-Know Act of 1986" (Pub. L. No. 99-499). (c)(1) It is the legislative intention that a contractor or subcontractor who introduces hazardous materials into the workplace shall be construed, solely for the purposes of this part, to be responsible for such contractor's or subcontractor's employees in such workplace. (2) The commissioner shall promulgate regulations as needed to establish the duties and responsibilities of contractors and subcontractors under this part. (3) Any such contractor or subcontractor who introduces hazardous chemicals into the workplace shall provide MSDSs for such chemicals to all other parties of the contract prior to introducing such hazardous chemicals. (Acts 1985, ch. 417 §7, 1989, ch. 490, §1.)
24. **NO REPLACEMENT OF DEFECTIVE TENDER** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and seller shall not have the right to substitute a conforming tender, provided where the time for performance has not yet expired, the seller may seasonably notify buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
25. **INVOICES & PAYMENTS** A. Seller shall submit separate invoices, in duplicate, on each contract milestone or each purchase order after each delivery. Invoices shall indicate the purchase order number. Invoices shall be itemized with transportation charges, if any, listed separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. **MAIL TO: ACCOUNTING DEPARTMENT, 1214 CHURCH STREET, NASHVILLE, TN 37203.** Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the accounting department advised of any changes in your remittance address. B. Buyer's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to seller by buyer. C. Do not include federal excise, state or city sales tax. NES shall furnish tax exemption certificate.
26. **FORCE MAJEURE** If, by reason of Force Majeure, either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this agreement, then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein shall mean acts of God, strikes, lock-outs, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Tennessee or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lock-outs shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lock-outs by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.
27. **SELLER TO PACKAGE GOODS** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) seller's name and address; (b) consignee's name and address and purchase order or purchase release number and the supply agreement number if applicable; (c) container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear the cost of packaging unless otherwise provided. Goods shall be suitably packaged to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing slips.