



Terms and Conditions of Sale

- 1. CONTRACT OF SALE:** Enercon Engineering, Inc. (hereinafter called "Seller") agrees to provide ONLY the goods and services described in the Proposal attached hereto, which shall constitute the entire contract of sale between Buyer and Seller. THE PROPOSAL AND THIS DOCUMENT EXPRESSLY LIMIT ACCEPTANCE TO THE TERMS STATED IN THE PROPOSAL AND THIS DOCUMENT AND ANY DIFFERENT OR ADDITIONAL TERMS PROPOSED BY BUYER (including, without limitation, terms in any specifications or purchase orders submitted by Buyer to Seller) ARE REJECTED UNLESS EXPRESSLY ASSENTED TO IN WRITING AS PROVIDED HEREIN.
- 2. ORDERS:** Orders are subject to acceptance at home office of Seller.
- 3. PRICES:** Unless otherwise specified in writing, all prices are F.O.B. Seller's plant, and all quotations automatically expire sixty (60) calendar days from date of issue unless communicated differently by the Seller. The price of any equipment scheduled for shipment on a date beyond a period of six (6) months from date of Seller's order confirmation is subject to increase by Seller, unless otherwise agreed to in writing. All equipment will be suitably packed for domestic shipment, not suitable for long term storage, unless otherwise agreed to in writing.
- 4. TERMS:** Payment in U.S. Dollars, 10% payment due with purchase order, 20% payment due after completion of approved drawings, 35% payment due upon release to production, 35% payment due upon completion of factory testing, unless otherwise agreed to. All invoices are due net fourteen (14) days from date on the invoice. Payment and Late Charges: Final payment must be paid to Enercon within fourteen (14) days of the date on the invoice. A late fee of 1.5% per month on the unpaid balance will be applied beginning on day one after the due date.
- 5. SHIPPING DATE:** Seller shall not be responsible for any default or delay in shipping due to contingencies beyond its control, or the control of its suppliers, which prevents or interferes with Seller making delivery on the date specified, including but not limited to wars, or restraints affecting shipping, delivery of materials or credit as a result of strikes, lockouts, fires, floods, or any other contingency affecting the seller or its suppliers. The Seller shall have the right to cancel a contract of sale or to extend the shipping date in the event that any such contingencies prevent or delay shipments. Seller shall not be liable for any losses incurred by late delivery of equipment. Equipment held by Seller beyond scheduled delivery date for convenience of Buyer will be invoiced on date of completion. Such equipment will be subject to charges for warehousing and other expenses incident to such delay.
- 6. DELAYS:** In the event Buyer causes Seller to delay engineering, manufacturing, shipping, installation, or startup of equipment under this Proposal, any additional costs incurred by the Seller shall be reimbursed by the Buyer. Seller shall not be responsible for delays in delivery caused by acts of God, government rulings, strikes, accidents, delays or default of Seller's suppliers, delays caused by acts of the Buyer, or other causes outside of Seller's reasonable control. Should the Buyer require the Seller to delay engineering, manufacturing, shipping, installation or startup by more than thirty (30) days, then Seller shall invoice the Buyer for a total of one hundred percent (100%) of the value of all work completed, and such invoice shall be due and payable net fifteen (15) days.
- 7. ENERCON DESIGN:** The design information contained herein is propriety and the sole property of Enercon Engineering, Inc. The pricing and equipment selections in this Proposal are based on the interpretation of the information supplied to Enercon Engineering, Inc. The Proposal is complete as presented herein. Any changes deviations or additions to the bill of materials as listed will require an adjustment to the price, and may require additional engineering and may adversely affect the delivery date. All software programs for PLC or touch screen are the Seller's intellectual property. Should the project drawings or programs be amended by others without Enercon's consent during the warranty period, Enercon will not be responsible for any mis-operations or damage caused by unauthorized changes.
- 8. RELAY SETTINGS AND COORDINATION STUDIES:** Unless specifically noted in our bill of materials, no Arc Flash Studies, Relay Coordination Studies, relay setting, or relay calibration services are included in our Proposal. The engineer of record or an independent engineer will need to be contracted to perform any of these services as required.
- 9. CHANGES:** Should Seller make any changes at the request of the Buyer, or should changes in site conditions or installation requirements occur subsequent to this Proposal, the parties shall re-negotiate the price and the time schedules quoted herein to reflect cost or schedule adjustments caused by said changes. Seller shall not be obligated to perform work on any changes without written agreement from the Buyer.
- 10. CONFIDENTIALITY:** Buyer shall keep confidential all prices, drawings, and technical information disclosed by the Seller as part of, or in conjunction with, this Proposal or any resulting contract, including, but not limited to, information relating to the design, installation, materials of construction, operation repair, maintenance, or otherwise of the equipment or component parts thereof or other related items. Buyer may disclose said drawings and documents only to its authorized employees or contractors who agree to the terms of this paragraph and who agree not to use said information except for the installation, operation, and maintenance of the equipment for the Buyer only. Buyer shall return to Enercon Engineering all drawings and information, including that given to others by Buyer when contract is completed. Buyer shall return to Enercon Engineering all drawings and information, including that given to others by Buyer, if the job is not awarded to Enercon Engineering. This paragraph does not limit Buyer's right to use this information if it is obtained from another source without restriction.
- 11. INSTALLATION:** Enercon Engineering, Inc. shall not be responsible for any field installation/site design. Site design includes ventilation, pad specifications, and code compliance as pertains to location and/or layout. Installation includes setting in place, anchorage, interconnect wiring, load cabling, lugs (unless specifically called out), installation of shipping split bus splices, shipping split interconnect wiring, and testing of site installed equipment. If, commissioning field service is required, applicable Field Service rates apply. Pricing is based on complete electrical and mechanical integration performed by Enercon Engineering, Inc.
- 12. CANCELLATION:** Orders are not subject to cancellations or change in specifications, shipping schedules or other conditions originally agreed upon without Seller's written consent, and then only upon agreement to compensate Seller for expenses incurred by such cancellation or changes. Cancellation schedule shall be as follows: 10% - Order received and entered on factory, work not started, material not ordered. 30% - Drawings for approval submitted. 60% - Approved drawings returned. Job released for manufacture. 80% - Material accumulated and production started. 100% - Manufacturing completed.
- 13. TAXES:** Any excise tax, sales tax, other taxes, or duty of any nature arising out of or assessed against equipment or orders shall be the sole and exclusive responsibility of Buyer and shall be added to the prices quoted or invoiced and shall in all circumstances be paid by the Buyer.
- 14. INSURANCE AND RISK OF LOSS:** The equipment manufactured by Enercon shall at all times after delivery to Buyer, Buyer's agent, or transportation company, whichever occurs first, be the sole responsibility of the Buyer, and all loss or damage to said equipment or any part thereof shall be borne by the Buyer (even if Seller has arranged for transportation), unless otherwise agreed in writing. Any equipment not manufactured by Enercon which is delivered by Buyer or Buyer's agent to Enercon shall be the sole and exclusive responsibility of Buyer. Buyer must maintain insurance on any such equipment delivered to Seller.
- 15. LIMITED WARRANTY:** Warranty shall be per the Enercon Engineering, Inc. Standard Warranty. The Warranty Statement is available upon request.
- 16. LIMITATION OF REMEDIES AND DAMAGES:** The Limited Warranty set forth in Section 15 above is in lieu of any and all other express and/or implied warranties. All other warranties, both express and/or implied, including but not limited to implied warranties of performance, merchantability or fitness for a particular purpose are expressly disclaimed and denied. Except for the remedy set forth in Section 15 above, Seller shall not be liable to Buyer or any third party under this contract, or for anything in any manner relating to or arising out of the subject matter of this contract, for any loss of business or profits or for any general, direct, indirect, special, consequential, exemplary, punitive, incidental or other damages, loss or expenses, even if Seller has been advised of the possibility of such damages, loss or expense. Seller is not responsible for any consequence of the use or application of the products by the Buyer. Buyer shall indemnify and hold Seller, and its officers, directors, employees and agents harmless against any and all losses, claims, damages, judgments, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or in any way related to the use of Seller's products by Buyer and/or any third party.
- 17. VENUE:** Any and all disputes, claims, or causes of action arising out of or in any way relating to any equipment manufactured by Enercon must be brought in the Circuit Court for the Tenth Judicial Circuit, Tazewell County, Illinois.
- 18. FUEL SURCHARGE:** Due to unexpected fluctuations of fuel prices tied to ever changing world events and subsequent market speculation, a fuel surcharge may be applied to any Engine Load Testing. The surcharge will be adjusted weekly based on the U.S. National Average Fuel Index of the current Monday publication minus on-road taxes. The fuel index, published by the Energy Information Administration of the U.S. Department of Energy, is available by telephone at 202-586-6966 or on the department's internet site: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>.
- 19. SITE INSPECTION SERVICE:** Enercon Engineering, Inc. will pay a one-time \$200 fee for the receiving customer to document the condition of Enercon Engineering, Inc.'s enclosures, tanks, packages, and/or switchgear upon arrival at the site. To qualify for this credit, the customer must provide digital pictures and/or video showing the equipment on the vehicle as arrived on site, equipment being set in place, final installation location prior to installation, and equipment in final installation location. Both interior and exterior condition must be documented. Documentation must be delivered to Enercon Engineering, Inc. via FTP or USB drive no later than 10 days from delivery.
- 20. EXCEPTIONS:** Anything not specifically quoted above in lieu of any specification. Enercon Engineering, Inc. takes general exceptions to components, designs, and structures which are the proprietary products of any particular manufacturer or designer. We make no claim to comply with any specification sections, plans, or addendums not provided and/or noted on the Proposal.