

# TERMS AND CONDITIONS OF TECO-WESTINGHOUSE MOTOR COMPANY

**1. Terms and Conditions of Sale.** The following terms and conditions, together with such terms and conditions as are set forth on the face of this purchase order, with such plans specifications, or other documents as are incorporated by reference on the face of this purchase order, constitute the full and final terms and conditions of the entire purchase order or contract between Buyer and Seller and supersede any prior or contemporaneous agreements or correspondence between Buyer and Seller whether written or oral. Buyer hereby gives notice of its objection to any different or additional terms proposed by Seller. These terms and conditions shall be deemed to have been accepted by Seller upon Buyer's receipt of the attached acknowledgement copy duly executed by Seller, or upon Seller's commencement of performance on this purchase order, whichever occurs first. Any reference herein to any proposal, quotation, or other communications by Seller shall be deemed to be limited to the description of the products and to be limited by the terms and conditions set forth or incorporated by reference herein.

**2. Assignment; Subcontracting.** Seller shall not have any right to assign this order or any benefits arising from this order without the prior written consent of Buyer, and, unless otherwise agreed in writing the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable right arising hereunder. Seller shall not, except in the case of raw materials (including castings, forgings, and rough welded structure) or standard commercial items or except as otherwise agreed in writing by Buyer, delegate or subcontract all or substantially all of the work or any item or material to be furnished under this order.

**3. Substitutions; Extras.** No substitutions of material or accessories may be made without Buyer's written consent. No charges for extras will be allowed unless such extras have been ordered in writing by Buyer and the price agreed upon.

**4. Information.** Unless otherwise agreed in writing between the parties, (i) any designs, drawing, specifications, or other manufacturing information furnished by Buyer to Seller shall be deemed to be confidential to Buyer and to have been furnished solely for the performance of this order and all copies of such information shall be returned to Buyer upon completion of the same. The foregoing shall apply notwithstanding the presence or absence of any contrary legend or statement on any of such information.

**5. Terms of Payment.** The date of payment shall, subject to any contrary term on the face hereof, be computed from the later of (i) Buyer's receipt of an accurate invoice or (ii) Buyer's receipt of the product, together with any required documents, in apparently good order. Draft will not be honored.

**6. Compliance with Laws.** Seller's performance of work hereunder and all product to be delivered hereunder shall be in accordance with any and all applicable executive orders. Federal, state, municipal, and local laws, and ordinances, and rules, orders, requirements and regulations there under. Such Federal laws shall include, but not be limited to, the Fair Labor Standards Act of 1938 as amended.

**7. Title and Risk of Loss.** Title to, and risk of loss of, each product or part to be delivered hereunder shall, unless otherwise provided herein, pass from Seller to Buyer upon delivery of such product at the FOB point designated on the face of this order.

**8. Inspection and Testing.** (a) All material and work in progress shall be subject to reasonable inspections and test at times and places and when practicable during manufacture as Buyer may direct. If any inspection or test, whether preliminary or final, is made on Seller's premises, Seller shall furnish, without additional charge, all reasonable facilities and assistance for safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspections and tests shall be performed in such manner as will not unreasonably delay the work. Buyer shall have the right to charge to Seller any cost of inspection and test when articles are not ready at the scheduled inspection time, (b) Seller shall work within, and inspect to, tolerances and limitations specified on drawings and specifications covering the work and shall make such tests as specified in the drawing or test specifications, unless deviation there from is authorized in writing by Buyer, (c) All shipments shall be subject to final inspections by Buyer after receipt by Buyer at destination. If material supplied or work performed by Seller is found to be defective, Buyer shall promptly give notice to Seller of any defect and Buyer shall have the right to require prompt correction thereof by Seller, at Seller's sole risk and expense. If Seller fails to promptly repair or replace the defect, Buyer shall have the right to have the defect repaired or replaced and Seller shall pay Buyer all the costs and damages incurred by Buyer, (d) Buyer's inspection or failure to perform inspection shall not relieve Seller from any of its obligations under this order.

**9. Changes.** Buyer shall have the right, from time to time, by its written Change Notices, and without notice to Seller's surety or sureties, if any, to make changes or additions, within the scope of this order, in or to (i) the drawing, specifications, or instructions for the work, (ii) the quantity, or (iii) the time or method of delivery or shipment. Should any change so ordered cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, an equitable adjustment shall be made in the order price or time of performance or both. The parties shall memorialize their agreement as to any such change in writing. Seller shall, however as a condition precedent to any right to such adjustment, submit its written claim for such adjustment to Buyer within ten (10) days after its receipt of Buyer's Change Notice or after any other action of Buyer which Seller considers to constitute a change. Seller shall proceed with Buyer's Change Notices without interruption and without awaiting settlement of any such claim.

**10. Delivery, Delays.** The time or times of delivery specified in this order are of the essence of this order. Any delay will be excused only if (i) such delay is due to strike, fire, riot, act of God, act of public enemy or other unforeseeable cause beyond the reasonable control and without the fault or negligence of Seller and if (ii) Seller shall have notified Buyer in writing of the existence of such cause within three (3) days after the commencement of the delay, giving all pertinent information concerning such case. Failure by Seller to deliver within the time specified in this order shall give Buyer the right to cancel this order without any liability. In addition, Buyer shall be entitled to other rights and remedies which arise out of Seller's delay in delivery. Unless otherwise provided in this order, no delivery required hereunder shall be made more than fifteen (15) days prior to the scheduled delivery date, and Buyer shall have the right to return earlier delivery at Seller's risk and expense or to charge to Seller any additional costs sustained because of the same. Unless otherwise provided in this order, Buyer shall have the right to refuse shipment in excess of quantities specified in this order.

**11. Termination; Cancellation.** (a) Buyer shall have the right to terminate this order in whole or in part by written notice to Seller for Buyer's convenience. Buyer shall not be liable to Seller if the order is for Seller's standard products. If the order is for non-standard products, Buyer shall pay Seller (i) for products which have been completed and delivered in accordance with this order; (ii) the costs of materials on hand, work in process, and parts committed to this order and cannot be used generally in Seller's business. In no event, shall payments made by Buyer exceed the price of this order. (b) The preceding paragraph (a) shall not limit any legal rights of Buyer to cancel this order without any liability by reason of any default by Seller, and Buyer further reserves the right to cancel this order without further liability for articles not accepted by Buyer in the event seller commits an act of bankruptcy, files or has filed against it a petition under the Federal Bankruptcy Act, suffers any receivership or other similar petition to be filed for or against it, or make a general assignment for the benefit of its creditors.

**12. Warranty.** Seller expressly warrants that the products or services to be delivered or performed hereunder will comply with the description set forth or incorporated by reference herein, will be free of defects in workmanship or material, will be merchantable, and will be fit for such purposes as are expressed in, or reasonable inferable from, the specification, drawings, or other descriptions which are a part of this order. The warranty period is two (2) years from the date that the products or services are accepted by Buyer. Seller shall promptly replace or repair any defect at Seller's sole expenses and costs. For any replaced or repaired products or services, the warranty period shall start anew for the same period from the date at which it is put into operation following repair or replacement. If Seller fails to promptly repair or replace the defect or in the event of emergency, Buyer shall have the right to have the defect repaired or replaced by Buyer or a third party and Seller shall pay Buyer all the costs and damages incurred by Buyer.

**13. Liens.** Seller shall deliver the products which are the subject matter of this order to Buyer free and clear of all liens, claims and encumbrances.

**14. Patents.** Seller shall, at Seller's expense, defend any and all claim, suit or proceeding brought against Buyer, and/or its customers mediate and immediate, based upon the products purchased hereunder constituting a direct or a contributory infringement of any patents, trademarks, copyrights, and other intellectual properties. Seller shall indemnify and hold Buyer and its customers harmless against all claims, liabilities, damages, and costs (including reasonable attorney's fee) arising from such claim, suit or proceeding.

**15. Buyer-Furnished Property.** The following additional provisions shall, unless specifically otherwise agreed in writing, apply with respect to any and all tools, equipment, material or other property used in the manufacture or products for Buyer which, referred to herein as Buyer-Furnished. (a) Seller shall have the right

to use all Buyer-furnished property without payment of rent in the performance of this order or of work for Buyer buy shall not, without Buyer's written consent, use the same on any other work, (b) Title to all Buyer-furnished property shall at all times be and remain with Buyer, whether or not such property is attached to any real estate or other thing. Seller shall, upon request of Buyer and without additional charge, execute such financing statements, security agreements, or other instruments as may be necessary to make Buyer's title a matter of public record. Title to any such property which is procured or manufactured by seller shall be deemed to vest in Buyer upon the earlier of (i) acquisition or completion of manufacture by seller or (ii) payment for the same by Buyer. Seller shall keep all Buyer-furnished property separate from all other property and clearly marked to show Buyer's ownership and shall do all things necessary to preserve Buyer's title thereto, free and clear of all encumbrances. Seller shall, upon completion of its receipt and, if necessary, installation of all Buyer-furnished property, submit to Buyer an itemized inventory showing the description, location, and identifying marks of each item or group of similar items included among such property. Buyer shall have the right, at such reasonable times as it may choose, to enter Seller's premises and inspect any and all such property. Should Seller fail to perform the duties imposed upon it by this section (b) or should Buyer at any time have reason to believe that its title to, or right to the possession of any Buyer-furnished property is threatened, Buyer shall have the right in addition to any other remedies provided by law, to enter upon Seller's premises, and remove any or all such property, with or without the decree of order of any court. Upon completion, termination, or cancellation of this order, Seller shall, on the request of Buyer, properly pack any or all such property and ship the same, FOB Seller's plant, to such destination as may be designated by buyer at Buyer's expense (c) Seller shall at its own expense, perform all maintenance work, repairs, and replacements which may be necessary with respect to any Buyer-furnished property so that the same may remain suitable for the use contemplated hereby and may, at the time required by this order, be returned to Buyer in as good condition as when received, except for reasonable wear and tear and for any consumption of materials necessarily resulting from their use. Seller shall segregate and collect in one location all Buyer-furnished property which is not actually contained in the finished parts and shall dispose of same as buyer may direct, except that the value of chips and cuttings shall be taken into consideration by Seller in establishing its price they shall be used or disposed of as Seller may elect. Seller shall give Buyer prompt written notice of any Buyer-furnished property which has been supplied by Buyer to Seller and which, upon delivery to Seller, is found to be defective, and the correction or replacement of such defective property shall be accomplished at Buyer's expense. In such manner as Buyer may direct in writing. (d) The risk of or damage in any and all Buyer-furnished property shall be upon Seller from the time when the same is delivered to it, or, in the case of property procured or manufactured by Seller from the time when title to the same vests in Buyer until such property is returned to Buyer in the manner required hereunder. (e) Buyer shall not be liable for loss, damage, detention, or delay resulting from causes beyond its control, with respect to any Buyer-furnished property to be delivered by it to Seller, and Seller's acceptance of any such property upon delivery shall constitute a waiver of all claims for delays. (f) Seller shall assume and indemnify Buyer against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence of use of Buyer-furnished property, whether such damage, injury, or death be caused by defects in the property; negligence in use thereof, or otherwise.

**16. Occupational Safety and Health Act of 1970.** Seller warrants that any and all equipment and material delivered for or to Buyer or its designee and/or any and all work performed for Buyer on its premises or the premises of Buyer's customer under this order shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulations of any state or local government agency having jurisdiction in the location to which such equipment is to be shipped, or such work is to be performed, pursuant to this order. The foregoing provision shall not be deemed to limit any other duty of the Seller to comply with statutes, orders, rules, or regulations.

**17. Toxic Substances Control Act of 1976.** Seller warrants that each and every chemical substance delivered under this purchase order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator or the Environmental Protection Agency pursuant to Section 8(b) of the Toxic Substance Control Act. (Public Law 94-469).

**18. Subcontracts Under Government Contracts and Equal Employment Opportunity.** (a) When the products or services to be delivered or performed hereunder are for the purpose of enabling Buyer to perform a government contract or subcontract there under, Seller shall comply with all applicable provisions of the attached Appendix incorporated herein and made a part of this agreement. (b) All subcontractors, vendors and suppliers are hereby notified that it is the policy of TECO-Westinghouse Motor Company to provide equal employment opportunity and to adhere to federal, state, and local laws pertaining thereto. It is required that appropriate action be taken on the part of all TECO-Westinghouse Motor Company's subcontractors, vendors, and suppliers to insure adherence to such laws.

**19. Work on Buyer's or Buyer's Customer's Premises.** When Seller is required to send its employees or representatives onto Buyer's premises or Buyer's customer's premises during the performance of this order, Seller shall ensure that its employees and representatives participate in any site-specific safety training and comply with all site-specific rules and requirements. Seller shall be responsible for keeping the premises free and clear of all mechanics' liens or claims. Seller shall, at Seller's expenses, defend, indemnify, and hold harmless Buyer and Buyer's customers against and from any and all claims, suits, losses, damages, expenses, and liabilities (including reasonable attorney fees, court costs, and witness fees) arising out of, or in connection with Seller's performance which causes (i) any bodily injury, sickness, or death; (ii) damage to property.

**20. General.** This order shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflict of law provisions. The titles of the articles set forth above are for convenience only and shall not be applied to limit or restrict the meaning of the same.

**21. Authority.** Wherever the word "Buyer" appears in these Terms and Conditions with respect to authorization for such items as (i) assignment, subcontracting (II) substitutions, extras (III) changes, and (IV) termination, cancellation, the word is deemed to mean, and only mean, Buyer's Purchasing Department. No other person or department or Buyer is so authorized to act. Claims by Seller for adjustments, increases and increments to price or for added costs resulting from the forging items will not be allowed unless the said authorization shall have been duly granted in writing prior to implementation by Buyer's Purchasing Department.

**22. Venue.** Seller and Buyer irrevocably consent to the exclusive jurisdiction of the courts of the State of Texas located in Travis County or the United States District Court for the Western District of Texas in Austin, Texas for any dispute or claim arising out of or related to this purchase order and irrevocably waive, to the fullest extent permitted by law, any assertion of inconvenient or in appropriate forum or other objection respecting conflict of laws. The prevailing party in any action, suit or proceeding shall be entitled to recover reasonable attorneys' fees, witness fees, and court costs.

**23. Environmental Protection.** Seller represents and warrants that it shall perform all its obligations under this order in full compliance with any and all applicable executive orders, federal, state, municipal, and local environmental laws, regulations, rules, and ordinances. Such federal laws shall include, but not limited to, Clean Water Act (as amended), Clean Air Act (as amended), and Resource Conservation and Recovery Act (as amended). From time to time, at Buyer's request, Seller shall provide certificates to Buyer in a form and substance acceptable to Buyer, indicating Seller's compliance with this article.

**24. Indemnification.** Seller shall defend, indemnify, and hold harmless Buyer, its directors, officers, employees, agents, representatives, successor and assigns against and from any and all claims, suits, losses, damages, expenses, and liabilities (including reasonable attorney fees, court costs, and witness fees) arising out of, or in connection with this purchase order, due to any act or omission of Seller, its employees, agents, or subcontractors which contributes to (i) any bodily injury, sickness, disease, or death; (ii) damage or destruction to tangible or intangible property; or (iii) any violation of any law, statute, ordinance or regulation.

**25. Insurance.** Upon Buyer's request, Seller shall provide to Buyer an Insurance Certificate acceptable to Buyer.

**26. Limitation of Liability.** Notwithstanding anything to the contrary in the terms and conditions of this purchase order, in no event shall Buyer be liable in contract, tort, or otherwise for any special, consequential, incidental, indirect, punitive or speculative damages including but not limited to loss of profits or revenues, loss of business opportunities, loss of goodwill, interruption of business, or downtime costs. The total cumulative liability of Buyer arising from or related to this purchase order shall not exceed the price of this purchase order.