



**SOLIDSTATE CONTROLS**

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**TERMS AND CONDITIONS OF SALE FOR NUCLEAR FACILITIES.**

**THE FOLLOWING TERMS AND CONDITIONS, TOGETHER WITH ANY OTHER TERMS AND CONDITIONS SPECIFICALLY AGREED TO IN WRITING BY SELLER, SHALL APPLY TO ALL ORDERS (“Order(s)”) FROM, AND SALES OF PRODUCTS (“Products”) OR SERVICES (“Services”) TO BUYER. ANY ACCEPTANCE OF ANY ORDER ISSUED BY BUYER IS CONDITIONED UPON THESE TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY BUYER IN ANY DOCUMENT ARE OBJECTED TO AND SHALL NOT BE BINDING UPON SELLER. THE PROVISIONS OF THESE TERMS AND CONDITIONS MAY ONLY BE ALTERED BY A PERSON AUTHORIZED BY SELLER TO BIND SELLER TO ANY PROMISE OR UNDERSTANDING NOT EXPRESSED HEREIN.**

**Entire Agreement, Acceptance**

All quotations, proposals and similar communications from Seller shall be considered an invitation to contract; all orders shall be considered offers, and Seller's order acknowledgments shall be considered acceptances which shall result in a binding sales agreement containing these terms and conditions. This sales agreement is limited to the provisions contained or expressly incorporated herein and supersedes all previous communications. Any additional or different terms contained in Buyer's forms are hereby objected to and rejected. Buyer's receipt of any portion of the Goods shall constitute Buyer's assent to all terms and conditions contained herein.

**Quotations and Delivery**

Unless otherwise stated herein, Seller's quotation is effective for sixty (60) days from its date. Quoted lead times for engineering and equipment delivery are estimates. Shipping dates will be established at the time Buyer's order is accepted, consistent with Seller's then current shipping commitments. Shipping dates do not include turnaround time for Buyer's review and approval of drawings. Seller reserves the right to select the means of transportation and routing, but other details of shipment must be pursuant to Buyer's instructions. If this purchase order specifies witnessed Factory Acceptance Testing, then such testing will be on a non-interference basis. The Buyer's failure to inspect the goods on the day(s) specified by Seller will constitute a waiver of Buyer's rights for witnessing the in-factory testing of the equipment prior to shipment and may result in a witnessed testing cancellation charge. Seller will endeavor to provide tentative witnessed inspection dates to the Buyer no later than ten calendar days prior to the test date(s).

Seller does not have facilities for storage of the goods. Should Buyer not be able to accept physical delivery of the goods, Seller shall provide suitable local storage at a warehouse facility near its factory for the goods on a temporary basis. Buyer will be required to accept title to the goods upon Seller placing the goods into storage.

**Prices / Taxes**

Unless otherwise stipulated in the proposal, all prices are firm for the duration of the quote. Prices do not include sales, use, excise, privilege, value added or other taxes or assessments on the Goods or on any Services performed in connection therewith which are now or hereafter imposed or levied by any governmental entity. Buyer agrees to pay or to reimburse Seller for any such taxes.

## Payment

Payment in US dollars as outlined below will be required:

a) All orders ≤ \$100,000.00: (Net 30 days)

b) All orders > \$ 100,000.00; ≤ \$300,000.00: Payment Terms as follows will be required:

<u>Percentage Due Of Purchase Price</u>	<u>Milestone</u>
30% Progress Payment (payable upon receipt)	Upon Submission of Approval Drawings
70% Final Payment (net 30 days)	At Time of Shipment

c) All orders ≥ \$300,000.00: Payment Terms as follows will be required:

<u>Percentage Due Of Purchase Price</u>	<u>Milestone</u>
25% Progress Payment (payable upon receipt)	Upon Submission of Approval Drawings
25% Progress Payment (payable upon receipt)	Upon Release to Manufacturing
50% Final Payment (net 30 days)	At Time of Shipment

d) AMETEK does not accept cash retention. A standby Letter of Credit may be provided by the PNC Bank NA in lieu of cash retention.

e) If, in the Seller's judgment, the Buyer's financial condition no longer justifies the terms of payment herein specified, Seller may require adequate assurances (including payment in advance) from Buyer or may elect to cancel this order and recover its appropriate termination charges from Buyer.

f) AMETEK does not accept "Pay When Paid" payment terms. Any Purchase Order or Contract resulting from this proposal is a legally binding contract between AMETEK and the Buyer. Payments due from Buyer are not contingent upon Buyer's receipt of payment from any entities or affiliates.

g) Past due accounts will be subject to a monthly interest charge at the rate of one-and one-half percent (1½ %) or the maximum legal rate, whichever is less.

h) There are no pre-conditions for the down payment or for any progress payment other than the milestones noted above. In the event that release to manufacturing occurs more than one-hundred and twenty (120) days after award of the purchase order (either due to an extended delivery date or caused by delays which are no fault of the Seller) the 25% payment for release to manufacturing will be due at the 120 day point. Progress payment milestones will be self-certified by the Seller on the invoice

### Payment Terms International Orders:

Payment in US dollars shall be via irrevocable letter of credit advised through and payable at the Huntington National Bank, International Division, P.O. Box 1558, Columbus, Ohio 43260, U.S.A., Telex #245-475, S.W.I.F.T. #HUNTUS 33. Payment shall be upon Solidstate Controls, Inc., presentation of documents to the advising bank.

### Title and Risk of Loss

Unless otherwise provided for in our proposal and pricing, delivery (INCO) terms are FCA point of origin. Title to, and risk of loss for, the goods shall transfer to the Buyer at the FCA Delivery point (origin). All risk of loss or damage during transit shall pass to Buyer upon the goods being made available to the carrier, and Seller will not participate in the settlement of claims for loss or damage during shipment. If Buyer does not make timely payment(s), then Buyer will be responsible for all costs associated with perfecting Seller's security interest in the Goods.

### Warranties and Limitations on Warranties

(a) Seller expressly warrants that the Goods manufactured by it will (i) conform to the descriptions and specifications incorporated herein and (ii) be free of defects in material or workmanship for a period of 12 months from date of operation, or 18 months after date of shipment, whichever occurs first. There is an additional four (4) year warranty on certain transformers manufactured by Seller. Refer to AMETEK Solidstate

Controls' Manufacturer's warranty for a more detailed explanation of warranties. THESE ARE SELLER'S ONLY WARRANTIES. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.

(b) If Buyer notifies Seller, in writing and within the warranty period, that the Goods or any part thereof fail to comply with these warranties, then Seller will correct such nonconformity by repair or replacement, at Seller's option. If repairs are completed at Buyer's site, then Seller will provide replacement parts at no charge, but Buyer shall pay all labor charges at Seller's standard per diem field service rates plus travel and living expenses (portal to portal) of Seller's service personnel except unless the equipment was purchased with an enhanced warranty that covers travel and living expenses within the 48 contiguous U.S. states. Buyer shall also pay such charges where a service call would not have been necessary if Buyer had followed Seller's written instructions accompanying the Goods. In no event shall Seller be responsible for gaining access to the Goods or for disassembly or reassembly. Freight charges for warranty replacement items will be as provided in the original order. In lieu of repairing or replacing the non-conforming Goods or part, Seller shall have the right, at its sole option, to refund the purchase price.

(c) In certain situations, Seller's warranty may extend to products supplied by, but not manufactured by, Seller (e.g. batteries and battery racks). In all other cases, as an accommodation, Seller will pass on to Buyer whatever warranty Seller receives from its supplier of such products, but only to the extent allowed by such supplier. Refer to AMETEK Solidstate Controls' Manufacturer's Warranty for more detailed explanation of warranties.

(d) If Buyer, or any other person, without the prior written consent of Seller, repairs or modifies all or part of the Goods, or if the Goods are not stored, installed or used in accordance with Seller's instructions or standard industry practices, then this warranty shall be considered null and void.

#### **Limitation of Liability**

Seller's liability to Buyer, or anyone claiming through or on behalf of Buyer, with respect to any claim or loss arising out of this transaction or alleged to have resulted from an act or omission of Seller, whether negligent or otherwise, and whether in tort (including strict liability), contract, or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Goods or part thereof with respect to which such liability is claimed or, where appropriate and at the option of Seller, to the replacement of the Goods or part thereof. In no case will Seller be liable for any bodily injury, death, or property damage resulting from or in any way arising out of the Goods or their sale, use, or manufacture.

#### **No Consequential Damages**

IN NO CASE WILL SELLER BE LIABLE FOR ANY BODILY INJURY, DEATH, OR PROPERTY DAMAGE RESULTING FROM OR IN ANY WAY ARISING OUT OF THE GOODS OR THEIR SALE, USE, OR MANUFACTURE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THIS TRANSACTION. SUCH EXCLUDED DAMAGES INCLUDE LOSS OF PROFITS OR REVENUE, DIMINUTION OF VALUE, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, COST OF PURCHASE OR REPLACEMENT POWER OR TEMPORARY EQUIPMENT, OR LOSS OF USE OF EQUIPMENT OR POWER SYSTEM, LOSS OF USE OF PROPERTY OR CAPITAL, INTEREST OR ANY OTHER FINANCING COSTS, OR ANY OTHER FORM OF INDIRECT OR SPECIAL DAMAGES, AND WHETHER OR NOT THE RELEASED PARTY IS AWARE OF, OR HAS BEEN ADVISED OF, THE POSSIBILITY OF SUCH DAMAGES.

#### **Indemnification**

If this sale includes services to be performed on Buyer's premises, then Seller agrees to indemnify and save Buyer harmless against claims of third parties for physical damage to property and personal injury (including death) resulting directly and solely from the negligence of Seller's employees while providing services on Buyer's premises, but such indemnification shall not exceed the purchase price of the Goods. If requested by Buyer, then Seller shall provide evidence of public liability and worker's compensation insurance coverage.

#### **Patents**

If Buyer receives a claim that any Goods or part thereof manufactured by Seller infringes a United States patent, then Buyer will notify Seller promptly in writing and give Seller all necessary information and

assistance and the exclusive authority to evaluate, defend and settle such claim. Provided that Buyer has made all payments due hereunder, Seller, at its own expense and option, will then (a) settle or defend against such claim, or (b) procure for Buyer the right to use such product, or (c) replace or modify the product to avoid infringement, or (d) remove it and refund the purchase price less reasonable amount for depreciation. Provided timely notice has been given by Buyer, should any court of competent jurisdiction hold such product to constitute infringement and the use of such product is enjoined, then Seller will take, at its option, one or more of the actions described in (b), (c) or (d) above. With respect to any product or part thereof not manufactured by Seller, only the patent indemnity, if any, given by the manufacturer thereof will apply. The foregoing indemnity will not apply to any product made to the specification or design of Buyer. The rights and obligations of the parties with respect to patents are solely and exclusively as stated herein.

**Force Majeure**

Seller shall not be liable for failure to perform or for delay in performance due to any contingency beyond its reasonable control, including without limitation, fire, flood, strike or other labor difficulty, act of God, act of governmental authority, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, or inability to obtain suitable or sufficient labor, materials or manufacturing facilities from usual sources. In the event of delay of performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

**Returns**

Authorization and shipping instructions must be obtained from Seller prior to the return of any Goods and all authorized returns must include complete product identification and be shipped freight prepaid to Seller's plant. A restocking charge will be imposed by Seller to place the returned Goods in saleable condition.

**Delay, Suspension and Termination**

(a) If any Goods cannot be delivered when ready because of causes beyond Seller's control, then Seller may place the Goods in storage. In such event, (i) Seller's delivery obligation shall be deemed fulfilled and the title and risk of loss shall pass to Buyer; (ii) any amounts payable to Seller shall be payable upon presentation of Seller's invoice; and (iii) all expenses for preparation and placement in storage, demurrage, storage insurance (if placed) and handling shall be payable upon presentation of Seller's invoice.

(b) Any order held, delayed or rescheduled at Buyer's request may be subject to an equitable price increase. Unless agreed otherwise, the US Bureau of Labor's Producers Price Index (PPI Detailed Report online at <http://www.bls.gov/ppi>) for "All Other Miscellaneous Electrical Equipment and Component Manufacturing", NAICS 335999, shall be applied to 100% of the proposed prices (without segregation of labor or material). The date of the Purchase Order will be used to establish the applicable base date for calculating the upward adjustment in price. If rescheduled beyond a reasonable period of time, then Seller may consider the order terminated by Buyer. Shipments delayed more than ninety (90) days at one time or one-hundred and twenty (120) days in the aggregate may be considered as terminated for the convenience of the Buyer and the appropriate cancellation schedule may be applied.

(c) At any time, Buyer may terminate this order, in whole or in part, for convenience upon written notice to Seller. In either such termination, Seller shall be entitled to termination charges in whole or in part as follows (percentage due of purchase price):

<u>Milestone</u>	<u>Percent Cancellation Charges</u>
Prior to Release of Engineering	20%
During and Upon Completion of Engineering	40%
Fabrication Process	65%
Final Assembly	85%
Testing	100%

(d) Shipments may be suspended provided the Buyer provides written notice to the Seller no later than sixty (60) days prior to the shipment date. In the event the Buyer is unable to take delivery of the goods as scheduled, and so notifies the Seller less than sixty (60) days from the scheduled date of shipment or delivery, Seller will arrange in-transit storage at the Buyer's expense; however, passage of risk and title will occur when the goods are made available to the freight carrier under INCOTERMS 2010: FCA Origin.

## **General**

- a) Seller's acceptance/order acknowledgment shall be made only at Seller's headquarters in Columbus, Ohio. Any Purchase Orders and Contracts shall be governed by the laws of the State of Ohio.
- b) The rights and obligations of the Buyer and Seller hereunder shall be governed in all respects by the law of the State of Ohio, U.S.A. The exclusive forum for adjudication of any disputes shall be the federal or state courts of the State of Ohio, and Buyer/Seller hereby consent to personal jurisdiction and venue in such courts in any proceeding. The United Nations Convention on the International Sale of Goods are hereby excluded from inclusion in any purchase order / contracts, and shall not apply.
- c) These Terms and Conditions of Sale together with any other terms specifically agreed to in writing by Seller constitute the entire agreement between Buyer and Seller and supersede any prior or contemporaneous representations, agreements, proposals, warranties, or understandings, oral or written, express or implied. No waiver, modification, amendment, rescission or other change to these Terms and Conditions of Sale shall be binding unless specifically agreed to in writing by an authorized representative of Seller.
- d) The invalidity of any part hereof shall not affect the validity of the remainder. The failure of Seller to assert any right at any time hereunder shall not prevent Seller's subsequent assertion of the same or different rights.
- e) Buyer may not assign this contract without the prior written approval of the Seller.
- f) The drawing approval process assures that the Goods are designed in accordance with Buyer's specifications. It is incumbent on the Buyer to identify any errors or omissions at the time of initial drawing approval. If Buyer's specifications are silent or ambiguous, then Seller's design will be developed in accordance with good commercial and engineering practice. If Buyer changes its specifications after drawings have been prepared, then Seller will be reimbursed for reasonable charges and the shipping date may be adjusted to reflect such changes. Unless otherwise stated, if drawings have not been returned to Seller within thirty (30) days, then Seller may, at its discretion, proceed to manufacture the Goods in accordance with the drawings submitted to Buyer.
- g) Seller will provide a reasonable number of copies of drawings or other documents to Buyer for its use and for use by third parties required for the installation, operation, and maintenance of the Goods. If such documents bear Seller's legend that the data are proprietary, then no other disclosure, reproduction or other use shall be made without Seller's written permission.
- h) There shall be a minimum billing charge of \$250 plus transportation and taxes for any order.

## **Software/technical/proprietary information**

- 1) Buyer shall not acquire any rights to any software which may be delivered with Products, except as granted in Seller's standard software license. Any software license granted in connection with the Products shall be an interim license, which may be withdrawn, pending payment for Products in full.
- 2) The purchase of Products shall not include any right to supply of technical information such as drawings, design calculations, manuals or specifications.
- 3) Proprietary information, including drawings, documents, technical data, reports, software, designs, inventions and other technical information and general "Know-How" supplied by Seller in connection herewith (hereinafter called "Data"), shall remain Seller's sole property and shall be held in confidence by Buyer. Data shall not be reproduced, used or disclosed to others by Buyer without Seller's prior written consent. Upon completion of Order, Buyer shall promptly return all Data to Seller together with all copies or reprints thereof then in Buyer's possession or control, and Buyer shall thereafter make no future use, either directly or indirectly, of any Data or any information derived therefrom without Seller's prior written consent. The foregoing shall in no way obligate Seller to provide or supply Data.

**Statutory Requirements**

Seller reserves the right to make any changes in the general specifications of the Products which are required for the Products to conform to any statutory requirement.

**Witness Testing/Witness of Factory Acceptance Tests:**

FAT/Witness Testing is available for a fee of \$1,000.00 per day. Buyer is responsible for all travel and living costs. For safety reasons, no more than two Buyer’s representatives can be in Seller’s Production or Test facilities at the same time. All Buyer representatives shall be escorted by a Seller employee while on Seller’s premises.

Any FAT/Witness Testing is to be conducted on a non-interference basis. In addition, failure of Buyer or Buyer's representative to perform FAT/Witness Testing on the scheduled date may be considered a waiver of the Buyer's right to witness the FAT. In that case, SCI's right and ability to ship equipment per the delivery terms of the Purchase Order on the agreed upon date(s) shall not be impeded.

Any Inspector dispatched by Buyer shall have authorization to issue all appropriate shipping releases within 24 hours of completed FAT.

**Nuclear Application**

If Buyer or third parties use the Goods or any Service provided hereunder in connection with any activity or process involving nuclear fission or fusion, or involving any use or handling of any source, special nuclear or by-product material (all as defined in the US Atomic Energy Act of 1954, as amended), then these terms and conditions of sale shall be supplemented by Seller’s Nuclear Terms and Conditions, and Buyer shall promptly notify Seller by certified mail of such nuclear application. Seller will not be obligated to deliver the Goods or provide the Services until the indemnities, insurance overages, and waivers of liability, recourse and subrogation and other provisions of Seller’s Nuclear Terms and Conditions have been obtained or fulfilled, failing which Seller may rescind the sale without liability for damages of any nature.

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**SPECIAL CONDITIONS FOR THE SALE OF EQUIPMENT FOR USE IN A NUCLEAR FACILITY**

The following conditions apply to all sales of material, equipment and/or services by AMETEK Solidstate Controls (hereinafter referred to as “Seller”), which are to be used directly or indirectly in or with any nuclear facility as hereinafter defined.

**Nuclear Liability Protection**

- (a) The owner of the nuclear facility (hereinafter referred to as “Owner”) will obtain and maintain (1) an agreement of indemnification with the United States Nuclear Regulatory Commission as provided by Section 170 of the Atomic Energy Act of 1954, as amended, and (2) nuclear liability insurance from NELIA or MAELU, or both, in such form and such amount as will meet the financial protection requirements established pursuant to Section 170 of said Act.
- (b) The agreement of indemnification and nuclear liability insurance shall be in effect on or before commencement of operation of the nuclear facility or the first arrival of nuclear fuel at the site of the facility, whichever first occurs, and shall remain in effect during the period in which Owner owns and operates the facility.
- (c) In the event that the nuclear liability protection system contemplated by Section 170 of the Atomic Energy Act of 1954, as amended, is repealed or changed, Owner will obtain and maintain in effect, to the extent available and consistent with general industry practice, nuclear liability protection which will not impair the protection provided by such nuclear liability protection system to Seller.

**Property Damage**

Seller shall not have any liability for damage to any property of Owner located at the site of the nuclear facility caused by or arising out of a nuclear incident. Owner also waives any other claim for damage to Owner's property located at the site of the nuclear facility caused by or arising out of any defect in Seller’s equipment to the extent such damage is covered by Owner’s property damage insurance. Any insurance deductible shall be for Owner’s account.

**Consequential Damages**

Seller shall not have any liability for consequential damages arising out of delays or defects in Seller's equipment, including without limitation liability for loss of use, loss of profits or business interruption.

**Definitions**

- (a) "Nuclear facility" means any facility required to provide financial protection pursuant to Section 170 of the Atomic Energy Act of 1954, as amended.
- (b) "Nuclear incident" means any occurrence causing bodily injury, sickness, disease, or death, or loss of or damages to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct materials.
- (c) "Source, special nuclear, and byproduct materials" shall mean such materials as defined in the Atomic Energy Act of 1954, as amended.

**EXPORT CONTROLS; FCPA Compliance; ANTI-BOYCOTT**

A. Buyer shall not make any disposition of the Products, by way of transshipment, re-export, diversion or otherwise, except as applicable U.S. export laws and regulations may expressly permit, and other than in and to the ultimate country of destination specified on Order(s) or declared as the country of ultimate destination on Seller's invoices or in the End Use Statement that Buyer provides to Seller. Seller shall not be named as shipper or exporter of record or U.S. principal party-in-interest (USPPI) unless specifically agreed to in writing by Seller in which case, Buyer shall provide Seller with a copy of the documents filed by Buyer for Export clearance purposes. At Seller's request, Buyer shall supply end-use and end-user information to determine export license applicability. Failure of Buyer to comply with this section shall constitute a material default allowing Seller to cancel related Order(s) without liability.

B. Buyer warrants that it shall not violate or cause the Seller to violate the U.S. Foreign Corrupt Practices Act of 1977 (FCPA), as amended, the United Kingdom Bribery Act (UKBA) of 2010, as amended, or their respective implementing regulations in connection with Buyer's sale or distribution of the Products and/or Services, and that Buyer does not know or have reason to believe that any consultant, agent, representative or other person retained by Buyer in connection with the sale and/or distribution of Products/Services has violated, nor caused Seller to violate the FPCA and/or the UKBA. Where Buyer learns of or has reason to know of any violation of FCPA and/or UKBA in connection with the sale or distribution of Products/Services, Buyer shall immediately advise Seller.

C. Buyer further warrants that Buyer shall not violate or cause Seller to violate the U.S. Antiboycott Provisions of the U.S. Export Administration Regulations issued pursuant to the U.S. Export Administration Act of 1979, as amended, in connection with Buyer's purchase of Products/Services and that Buyer shall not request or require Seller to make statements or certifications against countries that are not subject to boycott by the U.S.