

RESOLUTION NO. 2020-150

A RESOLUTION AUTHORIZING THE PURCHASE OF TWO (2) REPLACEMENT AC UNITS FOR THE CITY'S NETWORK OPERATIONS CENTER FROM DVL GROUP, INC., BRISTOL, PA, IN THE AMOUNT NOT TO EXCEED \$241,750.00, PURSUANT TO A NATIONAL COOPERATIVE CONTRACT UNDER THE PEPPM TECHNOLOGY COOPERATIVE PURCHASING PROGRAM.

WHEREAS, there exists a need of Two (2) Replacement AC Units for the City's Network Operations Center; and

WHEREAS, the City of Vineland Information Systems has registered with PEPPM Technology Cooperative Purchasing Program, a program and service of the Central Susquehanna Intermediate Unit (CSIU); and

WHEREAS, PEPPM Technology Cooperative Purchasing Program, a National Cooperative Purchasing Program has acted as lead agency and awarded Contract #528897-286; and

WHEREAS, N.J.S.A. 52:34-6.2 permits the City of Vineland to purchase Two (2) Replacement AC Units for the City's Network Operations Center using the offered National Cooperative Contract without public bidding, subject to the submittal and acceptance of certain documentation by DVL Group, Inc. (a Vertiv Corporation reseller);

WHEREAS, the City of Vineland intends under PEPPM Technology Cooperative Purchasing Program, under Contract #528897-286, to purchase from DVL Group, Inc., Bristol, PA, Two (2) Replacement AC Units for the City's Network Operations Center, in an amount not to exceed \$241,750.00, as listed in the Quotation, dated February 24, 2020, made available through the said Cooperative Purchasing Program.

WHEREAS the Information Systems Director and the Qualified Purchasing Agent, with the concurrence of the Business Administrator, recommend the use of the National Cooperative Pricing through PEPPM Technology Cooperative Purchasing Program for this procurement;

WHEREAS, the City of Vineland Purchasing Agent has determined that the use of the offered National Cooperative Contract will result in cost savings after all factors, including charges for service, material and delivery have been considered and has verified that such equipment is not available through State Contract awarded by the Division of Purchase and Property in the New Jersey Department of the Treasury pursuant to N.J.S.A. 40A:11-12; and

WHEREAS, the availability of funds for said purchase to be awarded herein have been certified by the Chief Financial Officer; and

WHEREAS, the City of Vineland has certified that this meets the statute and regulations governing the award of said contracts;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF VINELAND, that the Purchasing Agent is authorized to prepare a purchase order to procure Two (2) Replacement AC Units for the City's Network Operations Center, for a price not to exceed \$241,750.00

BE IT FURTHER RESOLVED that the purchase order shall contain a requirement that "the vendor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request".

Adopted:

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President of Council

ATTEST:

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City Clerk

REQUEST FOR RESOLUTION  
FOR COOPERATIVE CONTRACT AWARDS  
UNDER 40A:11-12, N.J.A.C. 5:34-7.29 & LFN 2012-10  
(REQUIRED FOR PURCHASES OVER \$17,500.00)



3/5/2020  
(DATE)

1. Goods or Services (detailed description): VLD Municipal – CRAC Replacement Proj REV2  
Purchase of 2 Liebert PDX Air-Cooled System - per V. Terenik, Replacement of 2 AC Units  
for the City's N.O.C. web.
2. Amount to be Awarded: \$ 241,750.00

- Encumber Total Award  
 Encumber by Supplemental Release
3. Budgeted: By Ordinance No. 2019-25  
Or Grant: Title & Year \_\_\_\_\_

4. \*\*Account Number to be Charged: C-04-00-000-1925-78001  
5. Contract Period (if applicable): \_\_\_\_\_

6. Date to be Awarded: 3/24/2020

7. Recommended Vendor and Address: DVL Group, Inc.  
115 Sinclair Road Bristol, PA 19007

8. Justification for Vendor Recommendation:(attach add'l information for Council review)  
Proposal # Q02736352  
PEPPM


Type of Contract:  State  National  Regional  County

Vendor's Cooperative Contract # PEPPM

9. Evaluation Performed by: IS Staff

10. Approved by: \_\_\_\_\_

11. Attachments:  
 Awarding Proposal  
 Other: \_\_\_\_\_

• Send copies to: Purchasing Department  
Business Administration   
\*\*If more than one account #, provide break down

## Mercado Miguel

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**From:** Jared Lehman <jlehman@csiu.org>  
**Sent:** Tuesday, August 13, 2019 8:37 AM  
**To:** Mercado Miguel  
**Subject:** RE: Member List  
**Attachments:** 19PLPA\_Contract\_Vertiv\_Vertiv.pdf; 19PLPA\_Bid\_Documentation.pdf

Good morning Miguel,

DVL is a PEPPM reseller under the Vertiv contract, so I'm including that contract and bid documentation set. That should be everything you need.

Thanks!

### Jared D. Lehman

*Cooperative Purchasing Supervising Manager*  
Central Susquehanna Intermediate Unit  
90 Lawton Lane  
Milton, PA 17847  
PH: (570) 246-5963

**From:** Mercado Miguel <mmercado@vinelandcity.org>  
**Sent:** Monday, August 12, 2019 4:26 PM  
**To:** Jared Lehman <jlehman@csiu.org>  
**Subject:** RE: Member List

According to my IS Director the vendor is DVL Net.Com for some type of AC Unit.

Miguel

**From:** Jared Lehman <jlehman@csiu.org>  
**Sent:** Monday, August 12, 2019 1:08 PM  
**To:** Mercado Miguel <mmercado@vinelandcity.org>  
**Subject:** RE: Member List

Yes. If you register on our site, you can see everything. It's a per user (not per agency) registry, so you and anyone else in your agency can register to have full access. Go to [www.PEPPM.org](http://www.PEPPM.org), click on the "Registration" tab at the top, and register as a "BUYER". Once you click on the contract you are looking to use, there is a "Documentation" tab that has everything you'll need. Below is an example of what I'm talking about –



**BEYOND  
THE  
PRODUCT**

Philadelphia | Albuquerque | Denver | Harrisburg | Salt Lake City

115 Sinclair Rd.  
Bristol, PA 19007  
FAX: (215) 785-1530  
PH: 215.826.1159

<b>COMPANY:</b>	VINELAND MUNICIPAL	<b>PROPOSAL #:</b>	Q02736352
<b>ATTN:</b>	VICTOR TERENIK	<b>PAGES:</b>	4
<b>FAX:</b>		<b>DATE:</b>	Feb 24, 2020
<b>FROM:</b>	MATT MORABITO		
<b>PROJECT:</b>	VINELAND MUNICIPAL – CRAC REPLACEMENT PROJECT – REV2		

**Proposed Solution:**

- The existing cooling systems serving the data center is dated is having reality issues. These systems are also not completely redundant – when one goes offline the other can not keep up. The proposal is to replace with air cooled – to eliminate water as a means of heat rejection and increase the capacity to 8 tons of cooling. These units will operate in teamwork mode to share the load of the space and reduce energy usage. This will allow for additional capacity growth without the need for additional equipment in the future as well.

**Cooling Solution – Liebert PDX Floor Mounted Cooling System**

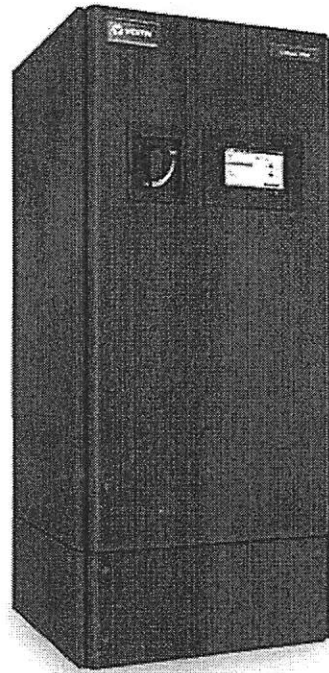
The Liebert PDX is highly configurable and available in a wide range of capacities.

The units feature variable speed EC fans that reduce motor energy usage up to 80%, compared to standard AC motors, and are more efficient than centrifugal blowers even when operating at 100% fan speed. The digital scroll compressor in the Liebert PDX uses R-410A refrigerant.

The Liebert PDX offers unique, floor-level air discharge that reduces the mixing of hot and cold air to improve efficiency. Downflow models provide front, left side and right side discharge and upflow models provide front and rear return options.

**Liebert PDX Product Page:**

<https://www.vertiv.com/en-ca/products-catalog/thermal-management/room-cooling/liebert-pdx-compact-dx-cooling-system-11-29kw/>



## Equipment:

### **Quantity (2) Liebert PDX Air-Cooled System**

- Configuration Number: PX029DA1A8H22801P0BFPS493
- Model Number: PX029DA1A8S493
- Nominal 31.0 kW, 105.9 kBtuh at approximately 75°F, 45% RH
- 460 Voltage, 3 Phase, 60 Hz

### **System Details:**

- Downflow with discharge into raise floor
- Liebert iCOM Control with High Definition Display
- iCOM based communication
  - BACnet IP (Ethernet Port)
  - SNMP (Ethernet Port)
- Variable speed EC plug fans
- Digital scroll, variable capacity compressor utilizing R-410A
- Crankcase Heater
- Thermal Expansion Valve
- Compressor Sound Jacket
- Evaporator Type: tilted- slab, copper tubes - aluminum fins with hydrophilic coating
- Two-Stage 12kW Electric Reheat.
- Infrared Humidifier
- 65,000 Amp, rms Short Circuit Current Rating
- Locking Disconnect Switch
- Dual-float condensate pump field-installed external to unit
- Filter Rating: MERV 8 per ASHRAE 52.2-2007
- Unit Color: RAL 7021 Black Gray Matte
- Supply Air Sensor
- Smoke Sensor
- High Temperature Sensor
- Temperature/Humidity Sensors internal for return air sensing
- One Remote Shut Down Contact
- Three Alarm Contacts
- 9 inch Floorstand
- LT410 Point Leak-Detection Sensor, quantity 1 per unit

### **Quantity (2) Liebert MC Air-Cooled Microchannel Condensers**

Configuration Number: MCL055E1AD0A0VU000000E314

- Model Number: MCL055E1ADE314
- Outdoor Design Ambient : 105°F
- Voltage: 460V/3ph/60Hz

The Liebert MC is an air-cooled condenser featuring an all aluminum microchannel coil and a variable speed EC motor on every fan. Constructed with an aluminum cabinet, the Liebert MC is a low-profile, direct-drive propeller fan-type air-cooled unit suitable for mounting outdoors. It provides for the heat rejection of one refrigeration circuit, matching heat rejection capacity varying with the outdoor ambient temperatures and compressor heat rejection requirements. The unit is quiet and corrosion resistant. All electrical connections and controls are enclosed in a factory mounted NEMA 3R electrical panel.

### **Liebert MC Condenser Details:**

- Microchannel aluminum coil
- Variable Speed EC Fans
- Premium electronic control board providing communication with iCOM using CANbus
- Short Circuit Current Rating of 65,000 Amps, rms
- R-410A factory set points and single refrigerant circuit
- Aluminum exterior panels and 18" aluminum legs

**Services Include:**

- Liebert 1 Year Prime Labor Warranty
  - Warranty Inspection Included
  - 2nd Thru 5th Year Compressor Extended Warranty
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**Installation Scope of Work****Mechanical Scope**

1. Mechanical Contractor (MC) shall receive Liebert PDXs evaporator and condenser.
2. MC shall remove existing units including indoor and outdoor pieces and dispose of properly.
3. MC shall provide all labor to mount indoor cooling system and outdoor condenser. Final indoor unit location to be approved by customer. This proposal assumes outdoor condensers are to be installed outside on the roof in roughly the same location as existing equipment.
4. MC shall include crane work to set new and remove existing outdoor equipment.
5. MC shall provide labor and coring machine to core pipe portals through walls.
6. MC shall provide sleepers large enough to support condensers.
7. MC shall provide labor and materials to pipe the refrigerant lines from outdoor condensers to the indoor PDX cooling units.
8. MC shall insulate refrigerant pipe and condensate line with Armaflex rubber insulation with added PVC jacket on piping exposed to weather.
9. MC shall install condensate pipe from the indoor units to closest termination location.
10. MC shall reconnect the humidifier lines.
11. Evacuate, test, and charge cooling systems with refrigerant.
12. Assist DVL Start-up technician to commission all systems.
13. Mechanical permitting and inspections.

**Electrical Scope**

1. EC shall provide three phase feeders at 460V to indoor evaporator and outdoor condenser.
2. Supply and install breakers for condensers and evaporator as needed.
3. Install WP GFI near condensers.
4. EC shall provide control wiring from indoor system to outdoor system.
5. Temporary power for cooling units.
6. Electrical permitting and inspection included.

**General Work**

1. Floor work modifications to be included for around new floor stand.
  2. 10 Tons of temporary cooling during duration of the project.
  3. Work areas to be cleaned daily.
  4. Trash to be removed throughout project and by the completion of the project.
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**DVL Professional Services:**

**Installation is for Two (2) Liebert cooling system.**

Our Services include the following activities.

1. Our Program Manager and his team will take personal ownership of all of your infrastructure challenges while offering innovative cost effective solutions. Our expertise in all facets of construction activities will allow you continued focus and considerably less distraction to your more important and complex business at hand.
2. DVL's Manager will meet initially with the owner and the design team to define the actual scope of work.
3. DVL Program Management will contract with and manage the Installing contractors.
4. DVL Program Management will provide schedules for all construction activities and update those schedules during construction. The end user will be kept apprised of all construction activities.

**Owner Responsibilities:**

1. Provide a single point of contact during construction.
2. Allow clear access to all areas of work.
3. Owner will be responsible to bypass fire suppression system (if installed) at the beginning of each work day and place back in service the system at the end of each day.

**Installation Terms and Conditions:**

1. All labor proposed in this document are per PEPPM contract.
2. We have not included engineering in our proposal. If required, this can be provided at additional cost.
3. No work is included for Fire Alarm, Sprinkler, and Clean Systems in the base contract.
4. Seismic restraints are not included.
5. Remediation of any/all existing building code issues is specifically excluded.
6. Work not specifically stated in the SOW is excluded.
7. Asbestos and other environmental remediation is excluded.
8. All work is figured at straight time during normal working hours. This proposal does not include Sunday work (double time).

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**Total Price Including Freight But NOT TAX** **\$241,750.00**

**Equipment Lead Time:** **6-7 Weeks (Subject to Change)**

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**Terms and Conditions**

- Payment terms are net 30 days pending credit approval.
- Quotation is valid for 45 days.
- Prices quoted do not include applicable sales tax
- DVL standard terms and conditions apply. Copy attached.
- Progress billing will be preformed for the project.
- Purchase orders should be made out to **DVL Group**.

**Clarifications**

- All services provided Monday through Friday, 8AM to 5PM. Services provided outside of this window or on DVL holidays are subject to additional fees.



Matthew Morabito  
Solution Sales Engineer  
DVL Group, Inc.  
115 Sinclair Road  
Bristol, PA 19007  
(T) 215.826.1159  
(M) 267.798.6109  
(E) [mmorabito@dvl.net](mailto:mmorabito@dvl.net)



## **DVL GROUP, INC. AFFILIATES - TERMS AND CONDITIONS OF SALE**

The Seller under these Terms and Conditions of Sale is DVL Group, Inc., or one of the following divisions: DVL Program Management, DVL, Strategic Account Services, or Total Support Systems, as set forth in the specific quotation (the "Quotation") of which these Terms and Conditions of Sale form a part.

The person or entity purchasing from Seller goods and equipment (collectively, the "Goods"), including software or firmware which is preloaded or to be loaded into Goods (the "Software"), is referred to herein as the "Buyer". Buyer agrees that by purchasing the Goods, as set forth in the Quotation, it also agrees to accept all of the Terms and Conditions of Sale set forth herein.

1. **ORDER ACCEPTANCE:** No order issued by Buyer to Seller shall be binding on Seller unless Seller manifests its acceptance of such order either in writing or by commencement of performance hereunder. Seller reserves the right, at its sole discretion, to decline orders. Seller's acceptance of Buyer's order shall constitute a binding agreement between Buyer and Seller pursuant to the terms of the applicable Quotation, and the Terms and Conditions of Sale set forth herein which shall accompany the Quotation, as the same may be modified in writing by the parties hereto. No changes, reservations, or varying terms or conditions stated by Buyer in its purchase order or other document, or in any oral direction, shall be binding upon Seller unless expressly agreed to in writing by Seller. Acceptance of Buyer's order is subject to Seller's review and acceptance of Buyer's credit status.

2. **ITEMS PURCHASED:** Goods provided to Buyer may include equipment and/or Software incorporated in or provided separately for use with the Goods. Software is provided subject to the software provider's, or the software manufacturer's, standard license terms, which reserve title and grant Buyer a non-exclusive, royalty free license solely for (a) Buyer's use with the Goods provided, and (b) Buyer's adaptation for use with the Goods provided.

3. **RETURNED GOODS:** Advance written permission to return rejected Goods must be obtained from Seller. Except for warranty returns, such Goods must be new, unused, of current manufacture and free of all liens or other claims. Goods must be shipped freight prepaid by Buyer to Seller, and shall be subject to any handling charges which may be imposed by Seller. Goods returned without the prior written permission of Seller will not be accepted by Seller. Seller reserves the right to inspect Goods prior to authorizing their return. If Seller finds returned Goods to be defective, or not to be the Goods that were ordered by Buyer, it either will replace such defective or non-conforming Goods, or issue a credit to Buyer for such Goods in an amount equal to the billing price or current price of the Goods, whichever is lower, from which will be deducted an inspection and repackaging charge, and any reconditioning or restocking charges. No credit or replacement of Goods will be permitted, however, if the alleged defective or non-conforming Goods have been in Buyer's possession for more than thirty (30) days.

4. **SHIPMENT/DELIVERY:** Buyer acknowledges that Seller's shipping dates are estimates and are subject to change by Seller. Unless otherwise agreed to in writing by Seller, delivery terms shall be F.O.B. Seller's shipping point. Seller and the manufacturer of the Goods reserve the right to make partial shipments. In addition, when Seller's supply of certain Goods is insufficient to meet the current order requirements of Buyer, or upon the occurrence of any of the circumstances described in Section 7 below, Seller reserves the right to keep available a supply of the Goods for its own use or to allocate it among various customers as it, in its sole discretion, deems appropriate, and in such event Seller shall not be required to ship all or any part of Buyer's order. Seller shall have no liability to Buyer for its failure to ship some or all of the Goods ordered by Buyer under such circumstances. Risk of loss or damage and responsibility to insure shall pass from Seller to Buyer upon delivery to a carrier for shipment to Buyer. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be

submitted by Buyer directly to the carrier. Shortages and/or damages must be acknowledged and signed for at the time of delivery. If Goods are held by Seller at Buyer's request, or due to Buyer's failure to supply shipping instructions, Seller may invoice Buyer for the full purchase price of the Goods and Buyer agrees to make payment. Goods held for Buyer by Seller, for whatever reason, are held at Buyer's risk and Buyer shall reimburse Seller for any insurance, storage or other costs incurred by Seller.

5. **PRICES:** Unless otherwise agreed in writing by Seller, prices for Goods are F.O.B. manufacturer's or Seller's shipping point (as applicable) with no discount. Prices quoted by Seller shall remain in effect for the period stated in Seller's Quotation or, if none stated, thirty (30) days after the date of same. If Seller does not receive, within such time period, an unconditional authorization from Buyer to ship Goods, Seller shall have the option to change the price for such Goods to that prevailing at the time of shipment. Prices and license fees do not include installation, freight, handling, hoisting, rigging, insurance or storage charges, unless otherwise agreed by Seller in writing. Prices and license fees also do not include taxes or duties imposed on the manufacture, sale, delivery or use of the Goods; such assessments are for Buyer's account and Seller will add such assessment to the price stated absent Seller's receipt of Buyer's proper exemption certificate.

6. **PAYMENT/SECURITY INTEREST:** Terms of payment are subject at all times to prior approval of Seller's credit department. In the absence of any special payment terms, payment is due in U.S. currency net thirty (30) days from the date of Seller's invoice, time being of the essence. Any payment not made when due shall be subject to an interest charge at the lesser of the rate of one and one-half percent (1 ½%) per month or the maximum rate permitted by law. Partial shipment of Goods will be invoiced and shall be payable in accordance with these terms. Buyer grants Seller a security interest in the Goods and products, proceeds and receivables therefrom and agrees to execute a financing statement confirming such interest upon Seller's request. Seller may exercise any applicable mechanics lien rights, or demand different terms of payment including, but not limited to, advance cash payment, whenever it appears to Seller that circumstances, including the financial condition of Buyer, require such measures. Buyer agrees to take all measures necessary to comply with any new payment terms imposed by Seller. If Buyer fails to comply with payment terms, Seller may elect to terminate this Agreement or suspend performance under this or other agreements with Buyer and: (a) with or without legal process and using such force as may be lawful and necessary, enter into or upon the premises where the Goods are located and take possession of them, (b) cancel all warranties herein, and/or (c) pursue any additional remedies provided by law. Buyer shall be liable to Seller for all expenses, including court costs and reasonable attorneys fees, relating to the collection of past due amounts.

7. **DELAYS:** Seller shall not be liable or responsible for costs, expenses or damages due to non-performance or a delay in performance where such non-performance or delay arises from a delay in approval or disapproval by Seller's credit department, or from one or more causes beyond its reasonable control, including, but not limited to, natural disasters, acts of government, power failure, fire, flood, acts of God, civil disorders, labor disputes, riots, acts of war, acts of terrorism, epidemics, or labor, material, or transportation shortages. Deliveries of Goods or other Seller performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer of the foregoing; but Buyer's and Seller's performance hereunder shall otherwise remain unaffected. If Seller determines that its ability to supply the total amount of Goods ordered, or to obtain material used in the manufacture of Goods, is hindered, limited or made impractical due to causes set forth in this paragraph, Seller may allocate its available supply of Goods or material among its various customers on such basis as Seller determines to be equitable without liability to Buyer for any failure of performance which may result therefrom.

8. **MODIFICATIONS/POSTPONEMENTS/CANCELLATIONS:** No order of Buyer may be modified, postponed, or cancelled, without the prior written consent of Seller. As a condition to consenting to any such modification, postponement or cancellation, Seller reserves the right to impose special charges for the additional costs it will incur by reason of such action.

9. **LIMITED WARRANTY:** At the time of Buyer's purchase of the Goods, it shall receive the manufacturer's standard warranty, if any. Such warranty shall be the only warranty applicable to the sale of Seller's Goods and its terms, conditions and limitations are expressly incorporated herein by reference. The manufacturer's warranty may be modified only in writing signed by a duly authorized representative of the manufacturer. Other than as may be provided under the manufacturer's warranty, Buyer assumes all responsibility for any loss, damage or injury to persons or property arising out of, connected with, or resulting from, the use of Goods, either alone or in combination with other goods whether supplied by Seller or otherwise. Buyer acknowledges that any technical advice furnished by Seller with respect to the use of the Goods is given without charge and Seller assumes no obligation or liability to Buyer for the advice given or results obtained; all such advice is given by Seller and accepted by Buyer at Buyer's risk.

**THE MANUFACTURER'S WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITATION OF WARRANTY APPLIES WHETHER OR NOT THE INTENDED PURPOSE OR USE OF THE GOODS BY BUYER HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE AND WHETHER OR NOT THE GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR BUYER'S INTENDED USE OR PURPOSE.**

The warranty obligations provided herein are conditioned upon timely receipt of all payments in accordance with the payment terms set forth in the Quotation and these Terms and Conditions. During the period any amounts are overdue from Buyer, there shall be no warranty obligations in effect. The warranty expiration date shall not be extended from the date Buyer pays any overdue amount. To the extent that Seller has relied upon any Buyer specifications, information, representations, or other data in the selection or design of Goods for Buyer, or the preparation of the Quotation, and conditions arise which render such specifications, representations, information or other data to be incorrect or invalid, Seller's warranty and other provisions of the Quotation or these Terms and Conditions that are affected by such conditions shall no longer remain effective.

10. **INFRINGEMENT:** Seller represents that to the best of its knowledge and belief, the Goods provided hereunder do not infringe upon any valid U.S. patent, trademark or copyright in existence on the date of shipment. Seller will defend at its expense any action brought against Buyer to the extent it is based on a claim the Goods supplied by Seller infringe a valid United States patent, trademark or copyright, except as provided below. Seller will pay those costs and damages finally awarded against Buyer in any such claim, but such defense and payments are conditioned upon the following:

- (a) Seller shall be notified promptly in writing by Buyer of the assertion of such a claim or the filing of suit, and Buyer will provide copies of all papers served upon it; (b) Seller shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; and (c) should the Goods or the operation thereof become or, in Seller's opinion be likely to become, the subject of a claim of infringement of a valid United States patent, trademark or copyright, Buyer shall permit Seller, at Seller's option and expense to: (i) procure for Buyer the right to continue using the Goods, (ii) replace or modify the Goods so they become noninfringing, (iii) grant Buyer a credit for such Goods, as depreciated, and accept return of same, or (iv) cancel future deliveries of Goods without liability to Buyer. Depreciation shall be calculated by Seller as an equal amount per year over the life of the Goods.

Seller shall have no liability to Buyer with respect to any claim of patent, trademark, copyright, or other infringement based upon:

- (aa) (i) Combination or utilization by Buyer of Goods furnished under the Quotation with any incompatible equipment or devices, (ii) the modification by Buyer of Goods furnished under the Quotation, or (iii) Seller's compliance with Buyer's design specifications. As to any claim arising

under this paragraph (aa), Buyer will defend, indemnify and hold harmless Seller from all costs, expenses, losses, damages and attorneys fees resulting therefrom.

In addition, Seller shall have no liability to Buyer with respect to any claim of patent, trademark, copyright, or other infringement if Buyer has not made full payment to Seller in accordance with the payment terms set forth in the Quotation and these Terms and Conditions. The foregoing states the entire liability of Seller with respect to infringement of patents, trademarks, copyrights and other proprietary information.

**11. LIMITATION OF LIABILITY/CONSEQUENTIAL DAMAGES: IN NO EVENT SHALL SELLER ASSUME ANY LIABILITY FOR (A) DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE GOODS OR (B) INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DATA, PROFIT, OR REVENUE, OR LOSS OR DAMAGE TO PROPERTY OR EQUIPMENT, THAT ARE INCURRED BY BUYER AS A RESULT OF SELLER'S NON-PERFORMANCE OR CANCELLATION OF ITS AGREEMENT TO FURNISH GOODS HEREUNDER, WHETHER ANY CLAIM IS BASED UPON A THEORY OF INFRINGEMENT, BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE.**

**12. LIMITATION OF REMEDY: SECTION 9 (LIMITED WARRANTY), SECTION 10 (PATENTS) AND SECTION 11 (LIMITATION OF LIABILITY/CONSEQUENTIAL DAMAGES) PROVIDE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTIES OR OTHER CLAIMS AGAINST SELLER IN CONNECTION WITH THE SALE OF THE GOODS.**

**13. CHANGES:** The manufacturer of the Goods reserves the right to make any changes in the model and design of the Goods and/or Software without obligation to alter similar Goods and/or Software previously sold. Buyer may, in writing, within the scope of the accepted order, request changes in the established specifications or delivery schedules. If the manufacturer agrees to such changes and these changes alter the amount due the manufacturer from Seller for the Goods or the time required for performance hereunder, the price of Goods ordered, any license fees, and/or the time for performance, shall be equitably adjusted.

**14. CANCELLATION:** This Agreement or any part of it is subject to cancellation by Seller if any of the conditions specified in the Quotation, or in these Terms and Conditions, is not met by Buyer or if Buyer becomes insolvent or bankrupt. In the event of cancellation for any such reasons, Seller is under no obligation to pay Buyer for any expenses, costs, claims or liabilities incurred or suffered by Buyer by reason of such cancellation, and Seller may retain any portion of the purchase price pre-paid by Buyer as liquidated damages. Seller retains all rights to any other remedies it may have against Buyer. Buyer may cancel orders herein only upon reasonable advance written notice to Seller and upon payment to Seller of Seller's cancellation charges, which include all costs and expenses incurred by Seller in the course of performance through the date of cancellation, and amounts adequate to cover any commitments made by Seller, losses suffered by Seller, and Seller's anticipated profit on the sale of the Goods.

**15. DRAWINGS/DOCUMENTATION:** Seller's prints or drawings (and the technology depicted) which are furnished to Buyer in connection with the sale of the Goods are the property of Seller and Seller retains all patents, copyrights, and other intellectual property rights including, without limitation, exclusive rights of use, license or sale. Buyer's possession of such prints or drawings does not grant Buyer any rights or license, express or implied therein and Buyer shall, upon Seller's request, return immediately all copies of such prints or drawings to Seller.

**16. EXPORT:** Each party hereby agrees to comply with all export laws and restrictions and regulations of the United States Department of Commerce or other domestic or foreign agency or authority. Neither party shall export or allow the export or re-export of Goods to be supplied hereunder

without obtaining any required license or authorization at time of shipment. Buyer agrees that Seller shall not be liable to Buyer if such license or authorization is unavailable. Buyer shall assume the risk and cost of obtaining any such licenses and authorizations.

17. **NUCLEAR**: If Goods supplied hereunder are to be used in nuclear applications, including without limitation, any power generation facility, Buyer shall fully defend, indemnify and hold harmless Seller pursuant to Seller's Special Nuclear Terms of Sale, a copy of which is available upon request.

18. **CONFIDENTIALITY**: Buyer acknowledges and agrees that in the course of ordering and receiving the Goods from Seller, Buyer may gain access to private or confidential information of Seller, including but not limited to, technical information, designs, processes, formulas, procedures, and customer information (collectively, the "Confidential Information"). Buyer agrees that (i) all Confidential Information shall remain the exclusive property of Seller, (ii) it shall maintain the confidentiality and secrecy of the Confidential Information, (iii) it shall limit disclosure, and share copies, of the Confidential Information only with those employees or agents who need access thereto, and neither Buyer nor such employees or agents shall disclose or share the confidential information with any other parties, and (iv) it shall return or destroy all copies of Confidential Information upon the request of Seller. In the event of any breach by Buyer of any of its obligations in this paragraph, Seller shall have the right, and is hereby granted the privilege, of obtaining injunctive relief and/or specific enforcement of Buyer's obligations hereunder in any court of competent jurisdiction (and Seller shall be entitled to reimbursement from Buyer for its court costs and legal fees in seeking such relief or enforcement).

19. **APPLICABLE LAW**: This Agreement shall be governed by and performance construed in accordance with the domestic laws and Uniform Commercial Code as adopted in the Commonwealth of Pennsylvania, without reference to its choice or conflict of laws or principles.

20. **SEVERABILITY**: If any section or part of this Agreement is or becomes illegal, unenforceable or invalid, then such part or section shall be stricken from this Agreement and shall not affect the remaining parts or sections which shall remain enforceable and valid.

21. **ASSIGNMENT/DELEGATION**: Buyer shall not assign any rights or delegate any duties pertaining to the sale of the Goods, whether arising under the Quotation, or these Terms and Conditions, without the prior written consent of Seller. Any assignment or delegation without such consent shall be void.

22. **MODIFICATIONS**: Any agreement which modifies, changes or supplements the Quotation, or these Terms and Conditions, shall only be valid if in writing and signed by a duly authorized officer of Seller. No Seller associate or representative (other than an officer) is authorized to alter the terms governing the sale of the Goods.

23. **FINAL AND COMPLETE AGREEMENT**: The terms and conditions of the Quotation, and these Terms and Conditions, represent the final and complete agreement between the parties with respect to the sale of the Goods, and supersede all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject matter.

24. **ARBITRATION**: All claims, disputes, or controversies arising out of or relating to a Quotation or these Terms and Conditions, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules then in effect. The parties agree to be bound by the decision or award of the arbitrator(s),

which shall be final, and the prevailing party may enter judgment pursuant to such decision or award in any court having jurisdiction thereof. The arbitration shall be held in \_\_\_\_\_, Pennsylvania unless another site is mutually agreed upon by the parties.