

Proposal



Kinsley Power Systems General Terms and Conditions

1.0 Summary. These General Terms & Conditions are between Kinsley Group, Inc. d/b/a Kinsley Power Systems ("Kinsley") having a mailing address of 14 Connecticut South Drive, East Granby, CT 06026 (fax number 860-844-6136) and the person, company, firm or business entity purchasing equipment, renting equipment and/or obtaining products or services from Kinsley ("Customer", "You" or "Your"). The purpose of these General Terms & Conditions is to set forth the general terms and conditions that will apply to all services performed by Kinsley for the Customer and all product sold by Kinsley to the Customer. Specific terms and conditions on which such services and products will be provided may be set forth in separate agreements (written proposals, quotations, etc.) signed and agreed to by Kinsley (each hereinafter referred to as a "Related Agreement"). The provisions of these General Terms & Conditions shall be incorporated into each of these Related Agreements and govern all the understandings and agreements between the parties unless otherwise expressly set forth in a Related Agreement. In the event of a specific conflict between the provisions of these General Terms & Conditions and the express provisions of any Related Agreement, the Related Agreement shall control, except for Section 3.0 below, "Limited Warranty Statement", which shall control over any Related Agreement, unless such Section 3.0 is specifically referenced and amended in writing and signed by authorized personnel of Kinsley. These General Terms and Conditions shall apply to each individual project, sale or transaction, provided that a default by Customer under the General Terms and Conditions or a Related Agreement with respect to one project, sale or transaction shall constitute a Customer default under all projects, sales and transactions with such Customer and its affiliates.

2.0 Freight and Payment Terms. Kinsley's freight terms are F.O.B. Factory/Origin. All charges are due and payable in accordance to our credit terms set forth on Kinsley's invoice. Down payments and/or progress payments may be required prior to order, release or shipment. Unless otherwise agreed to in writing, payments related to equipment purchases are due on Net, thirty (30) day terms from invoice date or prior to start-up, whichever comes first. No retainage is allowed. Payments related to rentals or service invoices are due on Net, thirty (30) day terms from invoice date. If the Purchaser delays delivery from the agreed upon date, payment terms shall take effect on the date Kinsley is prepared to make shipment. The failure of customer to make any payments required by General Terms and Conditions or under any Related Agreement shall be considered a material breach and event of default and, without limiting its remedies at law or under these General Terms and Conditions, shall entitle Kinsley to suspend or terminate the services or products provided to you under all Related Agreements, even if the Related Agreements are for different projects or locations.

2.1 Recoverable Costs & Expenses. All costs advanced and expenses incurred that are related to the services performed will be reimbursed to Kinsley. These may include, but not be limited to, airfare, hotel accommodations, tolls, business meals, parking, miscellaneous travel expenses, faxes, courier charges, express mailing, mileage round-trip from Kinsley's service location or shipping point, and all other out-of-pocket expenses.

2.2 Finance Charges, Collection Costs, Expenses, and Other Remedies. All bills not paid within agreed-upon terms shall be assessed a late charge of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the unpaid balance until paid in full. In the event that Kinsley incurs collection expenses or brings any lawsuit, arbitration or other proceeding to collect amounts owed, Kinsley shall be entitled to recover the costs and expenses (including but not limited to its filing fees, witness fees and reasonable legal fees) incurred in collecting such amounts. Kinsley reserves the right, where permitted by law, to charge up to a four percent (4%) surcharge, processing fee, or convenience fee for all payments made by credit card. Furthermore, if Kinsley is not paid in full within ninety (90) days of invoice date, Kinsley reserves the right to remove any rental equipment or partially paid equipment from customer site, storage, or any physical location where equipment resides and place the equipment back into Kinsley inventory for resale or further rent. Any proceeds from resale will be used first to reimburse Kinsley for any removal costs and other remedies or costs incurred due to the delinquency, removal, and resale.

2.3 Storage. If equipment ordered by Customer is not shipped after notification has been made to the Customer or its agent that it is ready for shipping, for any reason beyond Kinsley's control, including Customer's failure to give shipping instructions, Kinsley may store the equipment at the Customer's risk and expense. The Customer shall pay all handling, transportation, storage and insurance cost at the prevailing commercial rates.

2.4 Credit Approval, Sales. Shipments, deliveries and performance of work shall at all times be subject to the approval of Kinsley. Kinsley may at any time reject any purchase order, or decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Kinsley in its sole discretion.

2.5 Cancellation or Changes. Order cancellations without Kinsley's written consent, shall be subject to, in Kinsley's sole discretion, the following:

Generator sets: Standard product orders cancelled within 180 days of the most recently acknowledged ship date will be subject to a charge of 10% of invoice value plus a charge for any unique parts and engineering fees. Standard product orders cancelled within 90 days of the most recently acknowledged ship date will be subject to a charge of 20% of invoice value plus a 15% holding charge for sourced components value. Orders completed and ready for shipment are noncancellable. Estimated order cancellation fees will be offered upon request but are subject to change based on actual product, engineering fees, and timing of an order cancellation.

Electrical Controls: Standard Product Orders cancelled within five (5) weeks of the acknowledged ship date from the vendor or cancelled within three (3) weeks of the production start date will be subject to a charge of up to twenty percent (20%) of selling price plus a charge for unique parts. Orders completed and ready for shipment are non-cancellable.

Paralleling Switchgear or DPS: Switchgear and DPS products cancelled prior to submittal approval of the order will be subject to a charge for any unique parts already ordered and engineering fees. Once Switchgear and DPS orders are released for production, orders are non-cancellable.

ATS: Standard, Programmed or Closed Transition (30-1200A): Orders cancelled within 60 days of the most recently acknowledged ship date will be subject to a charge of 20% of invoice value plus a charge for any unique parts. Orders cancelled within 30 days of the most recently acknowledged ship date will be subject to a charge of 50% of invoice value plus a charge for any unique parts.

ATS: Standard, Programmed or Closed Transition (1600 to 4000A): Orders cancelled within 90 days of the most recently acknowledged ship date will be subject to a charge of 20% of invoice value plus a charge

for any unique parts. Orders cancelled within 45 days of the most recently acknowledged ship date will be subject to a charge of 50% of invoice value plus a charge for any unique parts.

ATS: Bypass Isolation – Open, Programmed or Closed Transition (150A to 4000A): Orders cancelled within 180 days of the most recently acknowledged ship date will be subject to a charge of 30% of invoice value plus a charge for any unique parts. Orders cancelled within 90 days of the most recently acknowledged ship date will be subject to a charge of 60% of invoice value plus a charge for any unique parts.

ATS: Service Entrance: Orders cancelled within 60 days of the most recently acknowledged ship date will be subject to a charge of 20% of invoice value plus a charge for any unique parts. Orders cancelled within 30 days of the most recently acknowledged ship date will be subject to a charge of 50% of invoice value plus a charge for any unique parts.

Engineered Specials:

A. Orders with engineered special and unique products cancelled in their entirety after receipt of order are subject to a charge of 10% of the invoice value if cancelled within 180 days of the most recently acknowledged ship date. Additional incurred charges may apply.

B. Removing engineered special and unique products from an order, even if part of a not yet acknowledged order, may be subject to a \$500 processing fee, engineering and vendor restocking fees, full net price of the engineered special and/or unique items that cannot be cancelled with the vendor.

C. Once the accepted order is released for production, engineered special and unique product orders are non-cancellable.

Standard Accessories and/or Standard Accessories Ordered Separately: Standard accessories cancelled or changed after order acknowledgement are subject to a charge of 15% of the value of the accessory or \$200 (whichever is greater) plus a charge for any unique parts and engineering fees.

Order changes without Kinsley Power Systems' written consent, shall be subject to, in Kinsley's sole discretion, the following:

Rescheduling Product Shipment Dates: Requests to extend the acknowledged ship date from the vendor will be considered on an individual basis. The extended date cannot be greater than three months following the original acknowledged ship date, and storage fees will be assessed. Requests for improved shipping dates will be considered on an individual basis subject to availability of material and manufacturing capacity.

Product Changes: Requests for factory modifications, on an individual basis, will be reviewed and may be possible if received thirty (90) calendar days prior to production start date. Product change requests to orders within the factory frozen schedule (factory will need to be contacted - frozen schedule varies based on generator, tank and enclosure) will be subject to a Five Hundred Dollar (\$1,000.00) fee in addition to any product or components deemed as unusable by the factory after the change has taken place. All other requests for modifications, including Switchgear and Engineering Specials that are in production at time of order acknowledgement, will be reviewed on an individual basis and will be subject to availability of material. Any product changes may affect the acknowledged shipping date and the acknowledged price. Product deletions will be subject to the conditions of the cancellation policy.

Storage Policy: Products not accepted at acknowledged ship date are subject to a two percent (2%) storage fee per month assessed at time of confirmed ship date. The base date for determination will be the distributor requested shipping date or the Kohler confirmed product availability date, whichever is latest.

Shipping Policy: A claim for a shortage or shipment error must be submitted to Kinsley within thirty (30) days of the product invoice date.

2.6 Return Merchandise: Electrical parts/components and special orders are not returnable. There will be a minimum of a twenty-five percent (25%) restocking charge on all other parts and equipment returns. All sales are final after ninety (90) days. Prior written authorization is required before returning any merchandise. All merchandise must be returned prepaid to Kinsley's designated outlet, unless otherwise instructed when the authorization is granted. Kinsley reserves the right to deny authorization for return of any items in its sole discretion.

Kinsley reserves the right to refuse unauthorized returns in its sole discretion.

All claims on returned goods must be made within thirty (30) days from shipment and accompanied by receipt on which original delivery was made.

In cases where Kinsley sells a product on an "exchange" basis, a "core charge" is payable by the Customer if an acceptable "core" is not returned to Kinsley, freight prepaid, within thirty (30) days after shipment of the exchange product. Kinsley reserves the right to determine if the "core" is "acceptable" (i.e.; reasonably and economically suitable for repair and resale).

2.7 Force Majeure. Kinsley shall not be liable in any way for any default or delay due to conditions or contingencies beyond its control, which prevents or interferes with Kinsley or its suppliers or subcontractors making delivery or performing services on the date specified, including but not limited to war, or restraints affecting shipping, delivery of materials or credit as a result of war or war restrictions, non-arrival of labor or failure to produce materials as a result of war or war restrictions, rationing of fuel, strikes, lockouts, fires, bombings, acts of terrorism, accidents, weather conditions, floods, droughts and any other condition or contingency affecting Kinsley, its suppliers, or subcontractors; and Kinsley shall have the right to cancel a contract for services or cancel a contract of sale or to extend the shipping date in the event of one or more of such conditions or contingencies. In the event of delayed or extended shipping dates due to the above causes, and the Customer changes shipping instructions, any additional shipping charges shall be paid by the Customer as a part of the purchase price.

2.8 Third Party Vendors. Kinsley may from time to time refer the Customer to third party vendors for specific products or services. These vendors are not Kinsley's subcontractors, so it is the Customer's responsibility to select and negotiate the terms and conditions of the Customer's business with them. Kinsley will not be responsible for their products or services.

2.9 Taxes. In addition to all other amounts payable under this Agreement or under a Related Agreement, the Customer shall pay all United States and foreign sales, use, value added, and other taxes and duties, of whatever nature, federal, state, provincial or otherwise (herein "taxes"), which are levied or imposed

The Energy Solutions Company

Proposal



by reason of these General Terms and Conditions or any of the services or products purchased from Kinsley. The Customer shall promptly pay Kinsley for any such Taxes paid by Kinsley on behalf of the Customer or which are required to be collected and paid by Kinsley. Kinsley may bill the Customer separately for such Taxes.

2.10 General. Any claims for shortages or deductions for erroneous charges must be made in writing within thirty (30) days after receipt of goods or services or shall be deemed waived.

All manufacturer's names, numbers, symbols and descriptions are used for reference purposes only, and it is not implied that any part listed is the product of these manufacturers.

All clerical errors on the part of Kinsley are subject to corrections.

Prices are subject to change without notice.

Unless otherwise stated, prices are FOB point of manufacture.

Delivery dates may be quoted by Kinsley. Such dates are estimates only and in no event shall such dates be construed as falling within the meaning of "time is of the essence".

When providing pricing for site services, Kinsley will adhere to prevailing wage requirements. Kinsley will make reasonable efforts to determine if prevailing wage rates are required, but Customer has the burden and responsibility to communicate any prevailing wage requirements to Kinsley (or intermediate contractor). If Kinsley's failure to pay prevailing wages is reasonably attributable to Customer's failure to provide prevailing wage information to Kinsley, including but not limited to wage schedules or rate sheets associated with the work described in this Agreement, Kinsley may seek appropriate damages and restitution from Customer, and may amend the contract price to reflect increases in wages and fringe benefits paid to Kinsley employees to the extent that these increases are necessary to comply with federal, state or local prevailing wage laws.

2.11 No Hire Clause. During the term of any Related Agreement under which Kinsley is providing products or services, and for a period of one (1) year thereafter, neither the Customer nor its affiliates shall: (a) employ or hire, or engage as a consultant or subcontractor, any employee or subcontractor of Kinsley or any of its affiliates, (b) solicit any employee or subcontractor of Kinsley or any of its affiliates to become an employee of, or consultant or subcontractor to Customer or any of its affiliates, or (c) recommend or suggest to any other person or entity that it so solicit, employ, hire, or engage any such employee or subcontractor. In the event of any breach of the foregoing provisions, Kinsley shall be entitled to be paid, on demand, as liquidated damages and not as penalty, an amount equal to the annualized base salary and other regular compensation being paid to such employee or subcontractor as of the date of the termination of his or her employment or contract with Kinsley or its affiliate. It is agreed that the amount of damages, which would be suffered because of a breach of the foregoing provisions of this Section, would be difficult to measure and that such payment amount constitutes reasonable liquidated damages for such a breach.

2.12 Governing Law and Jurisdiction. These General Terms & Conditions and each Related Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut, without regard to its conflict of law provisions. The United Nations Convention on the International Sale of Goods shall not apply to these General Terms and Conditions and conditions of any Related Agreement. All suits under this agreement shall be brought and filed in the State of Connecticut.

2.13 Assignment and Transfer. Except as otherwise provided in any Related Agreement, these General Terms and Conditions and any Related Agreement may not be assigned or transferred by Customer, and shall be binding upon and for the benefit of Kinsley and the Customer, as well as the Customer's and Kinsley's respective legal representatives, successors and assigns.

2.14 Invalid Provisions. These General Terms and Conditions and any Related Agreement shall be valid and enforceable to the fullest extent permitted by law. If any term, condition, or provision of these General Terms and Conditions or any Related Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, then such term, condition, or provision shall be curtailed and limited to the extent necessary to bring it within the legal requirements, and the remainder of these General Terms and Conditions, or Related Agreement, and the application of such term, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.15 Entire Agreement, Modification. These General Terms and Conditions and any Related Agreements constitute the entire agreement between Kinsley and the Customer with respect to the subject matter thereof, superseding all previous communications and negotiations, whether written or oral. No modification of these General Terms and Conditions or any Related Agreement shall be binding unless it is in writing and executed by authorized representatives of Kinsley and the Customer.

2.16 Notices. Any written notice or other written communication to a party under these General Terms & Conditions or any Related Agreement shall be delivered personally, sent by fax, or sent by express carrier for next business day delivery evidenced by a receipt, or by United States registered or certified mail, freight or postage prepaid. Notices shall be sent to a party's address or fax number set forth at the beginning of the agreement or purchase order in which these General Terms and Conditions are incorporated or such other address or fax number as such party may specify in writing in accordance with these notice provisions.

2.17 Waiver of Failure to Act. No failure or delay by Kinsley in exercising any right or remedy under these General Terms and Conditions or a Related Agreement shall be deemed to be a waiver. The waiver by Kinsley in any respect of any right provided for in these General Terms and Conditions or any Related Agreement shall not be deemed a waiver of any further right hereunder.

2.18 Third Party Beneficiaries. These General Terms and Conditions and any Related Agreement shall not be deemed to create any rights in any third parties (excepting only Kinsley's affiliates), including suppliers and customers of a party, or to create any obligations of a party to any such third parties.

2.19 Affiliate. As used in these General Terms and Conditions or in any Related Agreement, an "affiliate" of a party means a third party that directly or indirectly (by the ownership of voting securities, contract or otherwise) controls, is controlled by, or is under the common control with, such party.

2.20 Security Interest. Customer hereby grants Kinsley, and Kinsley will retain, a purchase money security interest and lien on any and all equipment, goods or merchandise sold hereunder wherever located, and all replacements or proceeds of the same, until the invoice for the applicable equipment,

goods or merchandise is paid in full, including any late charges and costs of collection. Customer consents to Kinsley's use of these General Terms and Conditions, as well as product invoices, as financing statements under the Uniform Commercial Code ("UCC") and to create additional financing statements for protecting this security interest, and appoints Kinsley as Customer's agent for any necessary signatures on such filings and hereby authorizes Kinsley, at Customer's expense, to take such action as may be necessary to perfect and protect Kinsley Power Systems' security interest, including the filing and/or recording of UCC financing statements, and grants Kinsley the right and power of attorney to execute Customer's name thereto. Customer agrees to pay or reimburse Kinsley for any searches, filings, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. In the event of a default by Customer of any of its payment obligations hereunder, Kinsley shall be entitled to any of the rights and remedies provided by law. Customer will not change its name, principal place of business, or state of incorporation without Kinsley's prior written consent, and Customer will notify Kinsley in writing of any change in the location of any other place of business prior to making such change, and of the acquisition of any new place of business prior to such acquisition. Customer shall at its expense protect and defend Kinsley's rights against all persons claiming against or through Customer at all times, keeping the equipment, goods or merchandise sold hereunder free from any other legal process or encumbrance whatsoever, including, but not limited to liens, attachments, levies and executions, and shall give Kinsley immediate written notice thereof and shall indemnify and hold Kinsley harmless from any loss caused thereby.

3.0 LIMITED WARRANTY STATEMENT Kinsley makes no express or implied warranties, including without limitation, implied warranties of merchantability and fitness for particular purpose, on equipment, parts or devices or any other goods or products sold or rented by Kinsley. The Customer's sole remedy is under the warranty of the manufacturer. At the Customer's request, Kinsley may furnish specific manufacturers' express limited warranty policies. The Customer accepts the goods or products sold "as is" and "with all faults" except only as provided by the warranty of the manufacturer of the goods or products sold.

Kinsley may provide technical information or advice to assist the Customer in the proper application and utilization of equipment or systems, in which case Kinsley disclaims all warranties, express or implied, including without limitation implied warranties of merchantability and fitness for a particular purpose, or compliance with governmental regulations.

SOLE LIMITED WARRANTY BY KINSLEY. Kinsley warrants that for ninety (90) days beginning on the date of invoice, service labor by Kinsley technicians shall be free from material defects in workmanship. This warranty does not cover damage due to external causes including accident, abuse, misuse, problems with electrical power, servicing not authorized or performed by Kinsley, usage not in accordance with product instructions, failure to perform required preventive maintenance, and problems caused by use of parts and components not supplied by Kinsley. This warranty does not cover replacement or repair of materials due to normal wear. Kinsley's responsibility is limited to repair or replacement at its designated facility, and the decision as to location of the repair work shall be made in the sole judgment of Kinsley.

IN NO EVENT SHALL KINSLEY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOSS OF REVENUE OR PROFITS, FEES OR FINES), EVEN IF KINSLEY HAS BEEN ADVISED OR MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY.

Kinsley's cumulative liability for all losses and damages under these General Terms and Conditions or under any of the Related Agreements (including, without limitation, those arising out of contract, tort (including negligence), strict liability, warranty, or other theory of liability) shall not exceed (a) in the case of any services provided or to be provided by Kinsley, the amount of the fees paid by Customer for such services under the applicable Related Agreement, and (b) in the case of any products or devices provided or to be provided by Kinsley, the amount of Kinsley's labor services paid by Customer and associated with the product sale.

Kinsley makes no warranties beyond those stated in this warranty statement. Furthermore, no personnel of Kinsley are authorized to make warranties of any nature, orally or otherwise.

4.0 Indemnification. Customer shall save harmless, indemnify, and at Kinsley's option, defend Kinsley, and Kinsley's owners, directors, officers, agents, representatives, affiliates and successors and assigns, from and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature arising or growing out of or in any way connected with Kinsley's selling, repairing, evaluating, starting up, testing or maintaining equipment or other items or providing other services or products to or for the benefit of Customer or its affiliates, unless it is determined by a court of competent jurisdiction, after expiration of applicable appeal rights, that such matters were directly caused by Kinsley's gross negligence or willful misconduct.

5.0 Waiver of Subrogation. Customer and all parties claiming to be related to customer hereby agree to release and discharge Kinsley from all claims and/or liabilities arising from or caused by any casualty or hazard which may arise out of or in connection with activities associated with Kinsley's work on equipment or premises at the request or direction of Customer except as specifically stated herein, and Customer agrees to waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof and further agree to evidence such waiver as may be required by Customers' insurance policies.

6.0 Acknowledgment. Customer acknowledges that it engages in the conduct of trade or commerce. Customer acknowledges that this transaction is in a business context and is not for personal services or for personal goods sold or delivered as a consumer.