

**MAJOR EQUIPMENT PURCHASE CONTRACT**

CONSUMERS ENERGY COMPANY  
ONE ENERGY PLAZA  
JACKSON, MI 49201  
("Buyer")

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
("Seller")

Date: \_\_\_\_\_, 20\_\_\_\_

Subject to the provisions of this Major Equipment Purchase Contract ("Contract"), \_\_\_\_\_ ("Seller") agrees to sell and deliver to Consumers Energy Company ("Buyer") and Buyer agrees to purchase and accept from Seller the equipment described herein ("Equipment"), together with incidental technical installation and start-up services as described in the Conformed Specification (defined below).

1. DESCRIPTION OF EQUIPMENT

The Equipment shall conform in all respects to the specifications set forth in the Conformed Specification dated \_\_\_\_\_, 20\_\_\_\_ ("Conformed Specification"). The Conformed Specification is hereby attached to and made a part of this Contract.

2. DELIVERY

Unless otherwise stated in the Conformed Specification, delivery of the Equipment shall be FOB \_\_\_\_\_, Michigan, ("Destination Site") and all Equipment deliveries shall be completed by \_\_\_\_\_, 20\_\_\_\_.

3. CONTRACT PRICE

The total Contract Lump Sum/Not to Exceed Price for the Equipment, and any services, if applicable, to be provided by Seller as described herein is: \_\_\_\_\_ dollars (\$\_\_\_\_\_) ("Price"). The Price is firm and will not be escalated.

4. TERMS OF PAYMENT

Unless otherwise defined in a payment schedule in the Conformed Specification, the terms of payment are as follows:

45 % of the total Contract Price shall be due and payable 45 days after delivery of all Equipment to the Destination Site and after Buyer's receipt of an invoice itemized to Buyer's reasonable satisfaction.

55 % of the total Contract Price shall be due and payable 45 days after the Buyer's written acceptance of the Equipment as defined in the Conformed Specification and Buyer's receipt of an invoice itemized to the Buyer's reasonable satisfaction.

5. CANCELLATION

Unless otherwise stated in the Conformed Specification, Buyer shall have the right to cancel this Contract or postpone delivery of the Equipment at any time upon giving notice in writing to the Seller.

6. WARRANTIES

- A. Seller warrants that the Equipment and services shall be of the kind and quality described in this Contract, and free of any defects in workmanship and material for a period of 24 months from and after the date of Buyer's written acceptance of the Equipment and services or such other time period defined in the Conformed Specification.
- B. Seller also warrants that the Equipment shall be free from defects in title. Such warranty of title shall continue without limitation as to time.

7. LIABILITY ARISING OUT OF WARRANTIES

- A. The following provisions apply to warranties, other than warranty of title, made by the Seller:
  - (1) If any failure to comply with the warranties appears within the warranty period and Buyer notifies Seller within a reasonable time after discovery of such failure, Seller shall be liable and have the obligation to remedy any such failure by furnishing and installing, at Seller's option, repaired or replacement parts (which herein shall be deemed to include adjustments, modifications or additions) necessary to meet the warranties. All transportation, supervision, labor and other costs of furnishing and installing the repaired or replacement parts and dismantling and removing the defective parts shall be borne by Seller.
  - (2) All of the provisions of this Contract shall apply to any repaired or replacement parts.
  - (3) Seller shall be as fully liable to the Buyer for the acts and omissions of Seller's subcontractors and suppliers as it is for the acts and omissions of persons directly employed by Seller.
- B. The following provisions apply to the warranty of title by Seller:

If any failure to comply with the warranty of title appears at any time hereafter, Seller shall be liable and shall have the obligation to defend the sale hereby made of the Equipment against all and every person or persons whomsoever and shall indemnify and save Buyer harmless from and against all losses, damages and liabilities of every kind and nature arising out of such failure to comply with the warranty.

8. INTELLECTUAL PROPERTY INFRINGEMENT

Seller shall settle or defend at its sole expense and shall pay any costs and damages awarded in any suits or proceedings brought against Buyer based on a claim that the use or sale of the Equipment, or any part thereof, furnished under this Contract (other than the Equipment or parts thereof that are Buyer's design) constitutes infringement of any patent or other intellectual property right (excepting infringement of combination and process patents incurred by Buyer's combining the Equipment with other equipment in a manner not contemplated by the parties). In case the

Equipment or any part thereof furnished under this Contract is held to constitute infringement and its use is enjoined in any suits or proceedings, Seller shall, at its sole expense, either procure for Buyer the right to continue using the Equipment or applicable part thereof, or replace the same with noninfringing Equipment that fully complies with this Contract (including without limitation all warranties herein), or modify it so it becomes noninfringing while continuing to fully comply with this Contract (including without limitation all warranties herein).

9. CONFIDENTIALITY

Seller acknowledges that it may, in the course of performing its obligations under this Contract, be exposed to or acquire information which is confidential or proprietary to Buyer. Seller hereby agrees to hold such information in strict confidence and not to disclose such information for any purpose whatsoever other than the performance of its obligations as contemplated by this Contract and to advise each of its employees, agents, contractors or subcontractors who may be exposed to such proprietary and confidential information of his or her obligation to keep such information confidential. To qualify for such treatment, all such information shall be clearly labeled as confidential and/or proprietary.

Seller's obligations under this Confidentiality clause shall not apply to information which:

- A. is or becomes publicly known through no fault of Seller;
- B. is already known to Seller;
- C. is developed by or for Seller independent of activities under this Contract; or
- D. Seller is required to disclose pursuant to law or judicial or administrative requirement or process.

Termination or expiration of this Contract shall not affect Seller's obligations with respect to confidential information and such obligations shall continue for a period of five (5) years from the date of termination or expiration.

10. INDEMNITY

To the extent permitted by law, Seller shall indemnify and hold harmless Buyer from and against all losses, liabilities, costs, expenses (including reasonable attorney fees), damages, judgments, settlements, and claims arising out of injuries, including death, sustained or claimed to be sustained by their respective employees or by any other person, also for property damage, including property of Buyer, Seller, or any other person sustained or claimed to be sustained, on account of, or as a result of the Equipment, work or operations of Seller (or its subcontractors) hereunder or by reason of any act or omission of Seller (or its subcontractors) in the performance of said work or operations. Without limiting the foregoing, Seller agrees to reimburse Buyer for any and all reasonable and necessary expenses incurred by Buyer in defending any suit or proceeding brought against Buyer for any of the above-named reasons.

11. TITLE AND RISK OF LOSS

Title to and risk of loss of the Equipment shall pass to Buyer upon delivery in undamaged condition and otherwise in full compliance with all requirements of this Contract at the Destination Site.

12. TAXES

- A. The Price specified herein includes all Federal, State or other governmental division taxes and assessments applicable in any way to or arising from the sale and delivery of the Equipment or the performance of any services hereunder, excepting Michigan State Sales or Use Taxes. Such Price also includes all contributions for unemployment compensation, health and welfare, old age benefits, or other purposes, now or hereafter effective during the term of this Contract and Buyer shall not be liable for any additional charges therefor.
- B. No Michigan Sales Tax or Michigan Use Tax shall be added to the Price. If the transaction is Michigan Sales/Use tax exempt, Buyer will notify the Seller the nature of the exemption. If the transaction is not Michigan Sales/Use exempt, Buyer shall provide Seller its direct pay permit number, and Buyer will pay the applicable Michigan Sales/Use tax directly to the State of Michigan pursuant to such direct pay permit. If Buyer claims an exemption from Michigan Sales/Use Tax but such exemption is later determined not to be applicable, then Buyer will also pay the applicable Michigan Sales/Use tax directly to the State of Michigan pursuant to Buyer's direct pay permit.

13. GENERAL

- A. Seller shall comply with all applicable Federal, State, and local laws, rules and regulations in the performance of all services hereunder. Seller warrants that no Federal, State or local laws, rules or regulations have been or will be violated in the manufacture or sale of the Equipment or the performance of any of Seller's services hereunder, if any. Any fines or penalties assessed upon Buyer, Seller, or both as a result of any failure to comply with the provisions of this paragraph shall be borne solely by Seller.
- B. No part of the technical services of installation or start-up services to be furnished by Seller hereunder, if applicable, shall be subcontracted by the Seller without the prior written consent of Buyer.
- C. This Contract, the Conformed Specification, and any attachments hereto or incorporated by reference herein shall be binding upon Seller when accepted by Buyer and shall constitute the entire contract concerning the Equipment and services to be furnished hereunder, if any. In the event of any conflict between the provisions of this Contract and said Conformed Specification, the provisions of the Conformed Specification shall control. This Contract shall not be modified except by mutual agreement in writing and shall not be assignable by Seller without the written consent of Buyer, but this Contract may be assigned by Buyer without the consent of Seller.
- D. This Contract shall be deemed to be a Michigan contract and shall be governed by and construed in accordance with the laws of the State of Michigan.

14. COUNTERPARTS AND ELECTRONIC DOCUMENTS

This Contract may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this Contract, including this Contract, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

15. ATTACHMENTS

The following documents are attached to and hereby made a part of this Contract (check all that apply):

- Contract Insurance Supplement Class A Contract (CSS Form 928)
- Contract Addendum Contractor's Requirements - Hazardous Chemicals (Form 417A)
- Personnel Risk Assessment for Unescorted Physical Access or Cyber Access and Contractor Security Compliance Statement
- Job Site Conditions for Technical and Consulting Services Rev 9407 FINAL

CONSUMERS ENERGY COMPANY \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Review and Approval		
Supply Chain		
Legal		

CONFORMED SPECIFICATIONS