

## **TERMS AND CONDITIONS FOR SPARE PARTS AND SERVICE**

### **1. Scope and Applicability**

These Terms and Conditions ("Spares and Service Terms") govern the sale by **Prima Power North America, Inc.** ("Seller") or **Prima Power Canada, Ltd.** ("Seller") and the purchase by Customer of spare or replacement parts, consumables, maintenance, repairs, field service, preventative maintenance, technical assistance service, corrective maintenance, and other post-delivery support (collectively, "Spares and Service") relating to any machinery, equipment, or industrial system ("Equipment").

The Spares and Service Terms shall govern upon the purchase or supply of any Spares and Service, whether Customer purchased Equipment from Seller or not.

Where applicable and if related to Equipment purchases from Seller, these Spares and Service Terms supplement and are incorporated by reference into Seller's standard Terms and Conditions Governing Sale ("Master Terms") applicable to the original Equipment purchase. In the event of any conflict, these Spares and Service Terms shall govern with respect to Spares and Service.

### **2. Ordering and Acceptance**

- (a) Customer may request Spares and Service by phone, email, or other written communication without submitting a purchase order.
- (b) All such requests are subject to Seller's acceptance and availability. Seller's acknowledgment, commencement of work, or shipment shall constitute acceptance.
- (c) Prices quoted by Seller are valid for thirty (30) days unless otherwise stated in writing.

### **3. Pricing and Payment**

- (a) Unless otherwise stated, prices for spare parts are EXW - Incoterms® 2020 Seller's facility, exclusive of freight, taxes, duties, and insurance.
- (b) Labor for field service, preventative maintenance, technical assistance service, and corrective maintenance shall be billed at Seller's then-current hourly rates, plus travel time, air fare travel cost, mileage, lodging, and per-diem expenses.
- (c) All payments shall be due net thirty (30) days from invoice date, unless otherwise agreed in writing. Overdue balances shall accrue interest at the rate of one and one-half percent (1.5%) per month. Customer agreed to pay all of Seller's costs of collection, including reasonable attorneys' fees and court costs.

### **4. Delivery and Title/Spare Parts**

- (a) Delivery dates for spare parts are estimates only. Seller shall not be liable for delays.
- (b) Title and risk of loss pass to Customer upon delivery to carrier at Seller's facility.
- (c) Seller may make partial shipments and invoice each separately.
- (d) Seller, in its reasonable discretion, may use regenerated or remanufactured spare parts on the Equipment.
- (e) Seller may supply spare parts as "warranty with return." If Customer uses spare parts, then the broken parts or parts replaced must be returned to Seller within fourteen (14) days from the final service call or intervention by Seller. If the spare part is not used as a replacement, then the



supplied spare part must be returned within fourteen (14) days from the final service call or intervention by Seller. Any failure to return the spare part not used as a replacement shall result in Seller sending an invoice for the spare part at its then-current listed value.

## 5. On-Site Service

For any on-site service, Customer shall (i) provide free, safe, and timely access to the Equipment, utilities, and facilities reasonably required by Seller; (ii) maintain proper safety conditions; and (iii) provide qualified personnel to operate the Equipment under Seller's direction. When providing technical assistance service, Customer shall ensure that the Equipment and working area in proximity to the Equipment is reserved exclusively for Seller and its personnel. If Customer rejects the use or incorporation of spare parts on the Equipment, then Seller shall provide corrective maintenance under its then-existing rates.

## 6. Limited Warranty

- (a) **Parts.** Seller warrants new and refurbished spare parts to be free from defects in material and workmanship for six (6) months from shipment, or the balance of the Equipment warranty period, whichever is shorter. *Provided, however,* any spare parts sold "as is" shall have no warranty period.
- (b) **Service.** Seller warrants service work, preventative maintenance, technical assistance service, and corrective maintenance to be performed in a workmanlike manner for thirty (30) days from completion.
- (c) Seller's sole obligation, and Customer's exclusive remedy, shall be, at Seller's option, repair or replacement of defective parts or re-performance of defective services. In no event shall Seller be liable for any indirect, incidental, consequential, special, or punitive damages, including but not limited to lost profits, loss of revenue, loss of production, loss of use, cost of capital, cost of substitute goods or equipment, downtime expenses, or claims against Customer by third parties, arising out of or relating to the Spares and Service or the supply, use, or inability to use spare parts, even if Customer has been advised of the possibility of such damages.
- (d) Field service for Equipment out of warranty and that cannot be fixed in Seller's good-faith judgment shall not constitute a defective service requiring re-performance. Seller shall use commercially reasonable efforts to explain to and demonstrate for Customer why the Equipment cannot be fixed. Rates shall apply as provided for in Section 3(b).
- (e) This warranty excludes normal wear items, consumables, misuse, improper maintenance, or repairs not performed by Seller.
- (f) This warranty will not apply if the Equipment is modified, altered, adjusted, or repaired in a manner not authorized by Seller's personnel.

## 7. Exclusions and Disclaimers

EXCEPT AS EXPRESSLY PROVIDED ABOVE, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS OR PRODUCTION DOWNTIME, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE.



## **8. Returns**

Other than as provided in Section 4(e), no spare parts may be returned without Seller's prior written authorization. Authorized returns are subject to inspection and a restocking charge of up to twenty-five percent (25%) of the invoiced price.

## **9. Termination**

Seller may suspend or cancel Spares and Service if Customer fails to make timely payment or otherwise breaches any obligation under these terms or (where applicable) the Master Terms.

## **10. Intellectual Property**

All designs, drawings, software, and technical information supplied by Seller remain Seller's property and are protected as confidential information. Nothing herein transfers any license or ownership rights except as necessary for Customer's use of the Equipment and associated Spares and Service.

## **11. Governing Law and Dispute Resolution**

The Spares and Service Terms shall be deemed to have been made in Arlington Heights, Cook County, Illinois. Its construction and validity shall be determined in accordance with the laws of the State of Illinois. Any court action which may be brought by either party pertaining to this Agreement shall be brought in Illinois. The parties' consent to personal jurisdiction and venue by state and federal courts in the State of Illinois for any action pertaining to the Spares and Service Terms by personal service of process within or without the State of Illinois.

## **12. Entire Agreement**

These Spares and Service Terms, together with the Master Terms (where applicable) and any written quotation or order acknowledgment issued by Seller, constitute the entire agreement governing Spares and Service and supersede all prior or contemporaneous communications.