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Quotation # 19DNS0083-5

**Project: PRUITT HEALTH PARKWOOD DEV CTR –
REV 3**

Date Issued: 10/10/22

Expiration: 11/10/22

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Standard Terms and Conditions – V3

1. **CONTRACT.** Unless otherwise stated, all sales transactions are expressly subject to these terms and conditions. Credit sales likewise are subject to credit approval. No understanding, promise or representation, and no waiver, alteration or modification of any of the provisions hereof shall be binding upon Yancey Bros. Co. (dba Yancey Power Systems – the “Company”) unless assented to expressly in writing by an authorized representative of Company. Buyer shall not rely on any statement or representation of any party (including, without limitation, any Company sales representative) that alters, adds to or differs from these terms and conditions, and no such statement or representation shall be recognized by or be binding upon Company. Any and all provisions of Buyer’s Purchase Order or other documents that add to or differ from these Terms and Conditions are EXPRESSLY rejected. No waiver of these Terms and Conditions or acceptance of others shall be construed from any failure of Company to raise objection.
2. **QUOTATIONS AND PUBLISHED PRICES.** Quotations automatically expire thirty (30) calendar days from the date issued unless otherwise stated in the Quotation and are subject to withdrawal by notice within that period. Company reserves the right unilaterally to extend such Quotation up to six (6) months from the date of issuance. Company’s price for equipment, unless otherwise specified, does not include an allowance for installation and/or final on-site adjustment. Prices shall be subject to adjustment to those in effect at time of shipment.
3. **TAXES.** Company’s prices do not include any applicable sale, use, excise or similar taxes; and the amount of any such tax which Company may be required to pay or collect will be added to each invoice unless Buyer has furnished Company with a valid tax exemption certificate acceptable to the taxing authorities. Where a buyer fails to furnish the required documentation, the previously unpaid sales, use, excise, or similar tax will be billed to the Buyer. If upon subsequent sales, use, excise or similar tax audit, an exemption certificate provided to Company by Buyer is, through no fault of Company, determined to be invalid, Company will attempt to acquire a valid exemption certificate, notarized affidavit of exempt use, or other necessary documentation from Buyer. If Buyer fails timely to furnish a valid exemption certificate, notarized affidavit, or other necessary documentation, the previously unpaid sales, use, excise or similar tax will be billed to Buyer.
4. **TERMS.** Except as otherwise provided herein, TERMS ARE CASH, NET THIRTY (30) DAYS, from date of invoice. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof), or maximum contract rate as permitted by law, and any payments will be applied first to service charges due. If Company deems that, by any reason of the financial condition of the Buyer or otherwise, the continuance of production or shipment on the terms specified herein are not justified, Company may require full or partial payment in advance. The terms provided herein supersede any customer or trade practice regarding service charges, time of payment or any other term of payment.
5. **DELIVERY.** Delivery dates indicated in the contract documents are approximate and are based on prompt receipt of all necessary information regarding the equipment covered by the contract. Company will use reasonable efforts to meet the indicated delivery dates, but cannot be held responsible for its failure to do so. Company shall not be liable for delays in delivery or in performance or failure to manufacture or deliver, due to: causes beyond its reasonable control; acts of God, acts of Buyer, acts of civil or military authority, priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, or delays in transportation; or inability on account of causes beyond its reasonable control to obtain the necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay. In the event of any delay caused by Buyer, Company will store and handle all items ordered at Buyer’s risk and will invoice Buyer for the unpaid portion of the contract price, plus storage, insurance and handling charges, on or after the date on which the equipment is ready for delivery, payable in full within thirty (30) days from invoice date.
6. **DELIVERY AND HANDLING CHARGES.** Unless otherwise specified, shipments are F.O.B. factory. Delivery and handling charges will be prepaid and billed as a separate item on the equipment invoice on the basis of Company’s current freight policies. Buyer may also specify and use a designated freight carrier. In the absence of such specification, goods will be shipped by the method and via the carrier chosen by Company.
7. **SHIPPING AND PACKING.** All material shall be carefully packed for shipment and Company will not be responsible for loss, delay or breakage after having received “in good order” receipts from the carrier. All claims for breakage, loss, delay and damage should be made to the carrier. Shipping weights and dimensions given in Company’s materials are as close to actual as predictable, but are not guaranteed. No claims will be allowed because of any discrepancy between actual weight or dimensions shipped and listed data.
8. **SUBSTITUTIONS.** Unless specifically restricted on a purchase order, Company reserves the right to substitute the latest superseding design and manufactured equivalent product where the interchangeability of the product is based on form, fit, and function, in place of the product offered.
9. **CHANGES.** Buyer may, with the express written consent of Company, make changes in the specifications for equipment or work covered by the contract. In such event, the contract price and delivery dates shall be equally adjusted. The Company shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes, and for work and materials required to effect such changes.
10. **NONCONFORMITY.** All equipment sold by Company is to be inspected before shipment, and should any of such equipment prove defective due to faults in manufacture, or fail to meet the written specifications accepted by Company, Buyer shall not return the goods, but shall notify Company immediately, stating full particulars in support of its claim, and Company will either replace the goods upon return of the defective or unsatisfactory material or shall adjust the matter fairly and promptly, but under no circumstances shall Seller be liable for consequential or other damages, losses or expenses in connection with or by reason of his use of or inability to use materials purchased for any purpose.
11. **CANCELLATION.** Undelivered parts of any order may be canceled by the Buyer only with the written approval of Company. If Buyer makes an assignment for the benefit of creditors, or in the event that the Company for any reason feels insecure about Buyer’s willingness or ability to perform, then Company shall have the right to cancel this sales transaction. In the event of any cancellation of this order by Buyer, Buyer shall pay to Company the reasonable costs and expenses (including engineering expenses and commitments to suppliers and subcontractors) incurred by Company prior to receipt of notice of such cancellation, plus Company’s usual rate of profit for similar work. In the event Company agrees to accept equipment for restocking, a minimum charge of twenty-five percent (25%), based on the sales price to Buyer of said equipment, will apply.
12. **SECURITY INTEREST.** Buyer agrees to pay for the equipment according to the Company’s payment terms and does hereby grant the Company a purchase money security interest in the equipment until such time as it is fully paid. Buyer hereby appoints Company as its Attorney-in-Fact and authorizes Company, at Buyer’s expense, to take such action as may be necessary to perfect and protect Company’s security interest, including the filing and/or recording of Uniform Commercial Code Financial Statements, and grants Company the right to execute Buyer’s name thereto. In the event of a default by Buyer, Company shall be entitled to any of the rights and remedies provided by law. Buyer hereby authorizes Company, at Buyer’s expense, to file or record any statement, memorandum or other instrument showing the interest of Company in the equipment, including Uniform Commercial Code Financing Statement, and grant the Company the right to execute Buyer’s name thereto. Buyer agrees to pay or reimburse Company for any searches, filings, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. Buyer shall at its expense protect and defend Company’s title against all persons claiming against or through Buyer, at all times keeping the equipment free from any legal process or encumbrance whatsoever, including, but not limited to liens, attachments, levies and executions, and shall give Company immediate written notice thereof and shall indemnify Company from any loss caused thereby.
13. **DEFAULT.** Upon default and placing of this instrument with an attorney for collection or repossession of the equipment, Buyer agrees to reimburse Company for its reasonable attorney’s fees and court costs incurred in connection therewith.
14. **BUYER ACCEPTANCE.** Any apparatus delivered hereunder shall be deemed to be fully accepted by Buyer unless Company receives written notice of rejection of any such apparatus within ten (10) days after the date of delivery to Buyer.
15. **WARRANTIES.** COMPANY MAKES NO REPRESENTATION, GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO QUALITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE, THAT EXTEND BEYOND THE DESCRIPTION OF EQUIPMENT, UNLESS REDUCED TO WRITING AND MADE A PART OF THIS CONTRACT. IN ADDITION, ALL EQUIPMENT SHALL BE WARRANTED SOLELY BY THE MANUFACTURER OF SAID EQUIPMENT PURSUANT TO THE TERMS OF THAT MANUFACTURER’S SUPPLIED WARRANTY.
16. **DISCLAIMER OF DAMAGES AND LIMITATION OF LIABILITY.** IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEPT DAMAGES ARISING OUT OF OR RESULTING FROM COMPANY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Such damages shall include but not be limited to loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down-time costs, increased construction costs or claims of Buyer’s customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment or lease of the equipment sold hereunder, Buyer shall secure for Company the protection afforded to it in the paragraph set forth immediately below. Company shall not be liable for any loss, claim, expense or damage caused by, contributed to, or arising out of the acts or omissions of Buyer or third parties (including carriers), whether for negligence or otherwise. In no event shall Company’s liability for any cause of action whatsoever exceed the cost of the item giving rise to the claim, whether based in contract, warranty, indemnity or tort (including negligence). Buyer agrees to defend and hold Company harmless from any claim or suit arising hereunder.
17. **REGULATORY LAWS AND/OR STANDARDS.** Company takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations which may affect its products, however, Company recognizes that its products are utilized in many regulated applications and that from time to time standards and regulations are in conflict with each other. Company makes no promise or representation that its product will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and Company. Company prices do not include the cost of any related inspections or permits or inspection fees.
18. **NO RESPONSIBILITY FOR GRATUITIOUS INFORMATION OR ASSISTANCE.** If Company provides Buyer with assistance or advice which concerns any parts, products, or services supplied hereunder or any system of equipment in which any such part, product or service may be installed and which advice is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Company to any liability whether based in contract, warranty, tort (including negligence) or otherwise.
19. **NONASSIGNMENT.** This order may not be assigned by Buyer, in whole or in part, without Company’s prior written consent.
20. **ENTIRE AGREEMENT AND AMENDMENT.** This Quotation constitutes the entire agreement between Company and Buyer with respect to the transactions hereunder and no representation, promise, or condition not set forth herein has been relied upon by Buyer or shall be binding upon either party hereto.
21. **DATA GOVERNANCE** Company may disclose information and data that you provide to our subsidiaries and affiliates, and to Caterpillar, Inc., contractors, service providers, and other third parties we use to support our business; for any other purpose disclosed by us when you provide information; or with your consent. We may also disclose information and data that you provide to comply with any court order, law or legal or regulatory process; to enforce or apply our terms of use and other agreements, including for billing and collection purposes; and if we believe disclosure is necessary or appropriate to protect the rights, property, or safety of Company, our customers, or others. If equipment supplied is equipped with a digital offering from Caterpillar Inc. that is enabled, data concerning this equipment, its condition, and its operation (including product location) may be transmitted directly to Caterpillar for use by Caterpillar, its affiliates, and each of their respective licensors, services providers, suppliers, subcontractors and distributors (including Company), to provide services to you that may include remote operation, maintenance, and updates of this machine, and as described in Caterpillar’s Telematics Data Privacy Statement, (available at https://www.cat.com/en_MX/support/operations/fleet-management-solutions/product-link/caterpillar-telematics-dataprivacystatement.html) and Data Governance Statement (available at <https://www.cat.com/data-governance-statement>). You hereby consent to use of any such data in accordance with the Telematics Data Privacy Statement and Data Governance Standard (as applicable) and grant all rights and licenses necessary for such use and for operation of the digital offering. If you wish to revoke this consent, you must do so in accordance with the Telematics Data Privacy Statement and Data Governance Standard [and also notify Yancey Bros. Co. by contacting David Hagewood, david_hagewood@yanceybros.com]. CATERPILLAR’S DIGITAL OFFERINGS ARE NOT PROVIDED BY YANCEY BROS. CO. AND YANCEY BROS. CO. SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING OUT OF OR IN CONNECTION WITH SUCH DIGITAL OFFERINGS. 3-14-22