

# VERTIV™ ENERGY SYSTEMS TERMS AND CONDITIONS OF SALE



Vertiv Energy Systems, Inc. is herein referred to as the “Seller” and the customer or person or entity purchasing goods and/or services (“Goods”) and/or licensing software and/or firmware which are preloaded, or to be loaded into Goods (“Software”) from Seller is referred to as the “Buyer.” These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller’s scope of work or invoice from Seller relevant to the sale and/or license of the Goods and licensing of Software and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods and/or license of Software by Seller to Buyer. Seller’s acceptance of Buyer’s purchase order is expressly conditional on Buyer’s assent to all of Seller’s terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer’s purchase order. Buyer’s acceptance of the Goods and/or Software will manifest Buyer’s assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

- 1. Prices.** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods and/or Software shall remain in effect for thirty (30) days after the date of Seller’s quotation provided an unconditional authorization from Buyer for the shipment of the Goods and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods and/or Software at the time of shipment. All prices and license fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, parts (“Parts”) that are required for the performance of services will be furnished at Seller’s then-prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.
- 2. Taxes.** Any current or future tax or governmental charge (or increase in same) affecting Seller’s costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, Parts and/or Software, shall be for Buyer’s account and shall be added to the price.
- 3. Terms of Payment.** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller’s invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer’s financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries of Goods and/or Software. If such cash payment or security is not provided, in addition to Seller’s other rights and remedies, Seller may discontinue deliveries. Buyer hereby grants Seller a security interest in all Goods and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods and/or Software are fully paid for in cash, and Buyer, upon Seller’s demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.
- 4. Shipment and Delivery.** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance date(s) acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods, Parts and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts and/or Software is outside of the United States, risk of loss and legal title to the Goods, Parts and/or Software shall transfer to Buyer immediately after the Goods, Parts and/or Software have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title shall pass from Seller to Buyer upon delivery to and receipt by carrier at Seller’s shipping point. All shipments are F.O.B. Seller’s shipping point. 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 or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller’s acceptance and adjustment in freight price. The transportation costs quoted by Seller may be changed by Seller without notice in order to reflect Seller’s prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.
- 5. Buyer’s Inspection.** Buyer shall inspect Goods and/or Software delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within 30 days after receipt of such Goods and/or Software shall be an unqualified acceptance of such Goods and/or Software. Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods and/or Software for compliance with Seller’s standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller’s plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller’s criteria for such procedures.

6. **Returned Goods.** Advance written permission to return Goods and/or Software must be obtained from Seller. Such Goods must be current, unused, catalogued Goods still in original packaging and must be shipped, transportation prepaid, to Seller. Returns made without proper written permission will not be accepted by Seller. If applicable, credit for such returned Goods will be at the billing price or current price, whichever is lower, from which will be deducted an inspection and repacking charge and the cost of any reconditioning. Seller reserves the right to inspect Goods prior to authorizing return.
7. **Limited Warranty.** Subject to the limitations of Section 8, Seller warrants that the Goods and/or Software sold by Seller will be free from defects in material and workmanship and meet Seller's published specifications at the time of shipment or performance under normal use and regular service and maintenance for a period of one (1) year from the date of shipment or performance by Seller, unless otherwise specified by Seller in writing. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) in the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes; and (iv) The refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of Parts and which are assignable. Goods and/or Software repaired or replaced during the applicable warranty period will be returned to Buyer at Seller's expense and will be covered by the foregoing warranties for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer. Except as specified above, Parts furnished hereunder are furnished AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. **THE WARRANTY SET FORTH IN THIS SECTION 7 AND THE WARRANTY SET FORTH IN SECTION 11, ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods and/or Software, either alone or in combination with other products/components.

8. **LIMITATION OF REMEDY AND LIABILITY. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 11) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 7.**

**SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

9. **Drawings.** Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.
10. **Software.** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

11. **Patents and Copyrights.** Subject to the limitations of the second paragraph of Section 8, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperates fully with Seller and permits Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability.
12. **Excuse of Performance.** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; viral outbreaks, disease, pandemic, widespread sickness, or epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts and/or Software is hindered, limited or made impracticable due to causes set forth above, Seller may allocate its available supply of the Goods, Parts and/or Software or such material (without obligation to acquire other supplies of any such Goods, Parts, Software or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.
13. **Cancellation.** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive. Orders for non-standard Goods and/or custom Goods are final and non-cancelable.
14. **Changes.** Buyer may request changes or additions to the Goods and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees and dates of delivery or performance. Seller reserves the right to change designs and specifications for the Goods, Parts and/or Software without prior notice to Buyer, except with respect to Goods and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods and/or Software manufactured prior to the date of such change.
15. **Nuclear/Medical.** GOODS, PARTS AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.
16. **Tooling.** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.
17. **Assignment.** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.
18. **Billable Services.** Additional charges will be billed to Buyer at Seller's then-prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement or other documents referenced herein or therein; b) any services performed at times other than Seller's normal service hours; c) if reasonable site and/or equipment access is denied the Seller's services representative; or d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer.
19. **Non-solicitation.** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods and/or Software are being provided to Buyer and for a period of one (1) year after the last provision of Goods and/or Software.
20. **Export/Import.** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts and/or Software may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts or Software in violation of such applicable laws, regulations, orders or requirements.
21. **Buyer Supplied Data.** To the extent that Seller has been provided by or on behalf of Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods and/or Software or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. **Data Collection and Use.** By using the Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, Buyer non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information (“Service Data”) that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer’s identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Software, Buyer agree to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries’ business purposes in accordance with applicable law. The rights and licenses granted herein to Seller service providers shall only be granted to the extent service providers are providing goods and services on Seller’s and its affiliates and subsidiaries behalf.
23. **General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller’s receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer’s assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the State of Ohio, without regard to its conflicts of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in a court of competent jurisdiction located in Franklin County in the State of Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

