

Argo Turboserve Corporation
Renewal Parts Terms and Conditions

These Terms and Conditions apply to the sale of Parts by Argo Turboserve Corp., hereinafter referred to as "ATC". The sale of Parts to the Customer is expressly conditioned upon assent to the terms and conditions contained or referenced to herein. Customer's acceptance of an ATC offer is expressly limited to these Terms and Conditions. ATC's acceptance of a Customer offer is expressly conditional on assent to any additional or different terms set forth in these Terms and Conditions. Any additional or different terms and conditions set forth in the Customer's purchase order or otherwise proposed by the Customer are expressly objected to and will not be binding upon ATC unless specifically assented to in writing by ATC's authorized representative for Parts.

I. Definition

"Parts" are new parts (replacement or spare) and factory repair work for parts, furnished by ATC for steam turbine generator sets, mechanical drive steam turbines, and main propulsion turbines.

II. Purchase Orders

Each Purchase Order shall include a statement of the following matters as agreed upon by the Customer and ATC in connection with the transaction:

- A. The quantity and type of Parts
- B. The purchase price
- C. Shipping schedule and instructions
- D. Other special provisions to which both parties expressly agree in writing.

III. Warranty

ATC warrants to the Customer that the Parts delivered hereunder will be free from defects in material, workmanship and title. The foregoing shall apply only to failures to meet said warranty (excluding any defects in title) which: (1) appear within one year from date of shipment, or (2) in the event GE by contract agrees to install the Parts, appear within one year after completion of installation or four years from the date of shipment by ATC, whichever first occurs. If any failure to meet said warranty appears within the applicable warranty period, on the condition that ATC be promptly notified in writing thereof, and provided that the Parts have been properly stored, maintained, installed, and used including conformance with applicable recommendations of ATC or GE, ATC will correct any such defect by either (at its option) repairing any defective Parts furnished hereunder, or making available F.O.B. point of shipment replacement Parts. The foregoing obligation however, is limited to the Parts supplied, and does not include any responsibility or obligation with respect to removal or replacement of systems, structures or other parts of the facility. Where a failure cannot be corrected by ATC's reasonable efforts, the parties will negotiate an equitable adjustment in price with respect to such Part. This Warranty shall not apply to any Part, or portion thereof, which is normally consumed in operation, or which has been altered or repaired other than by the manufacturer. Any Part, or portion thereof, which has a normal life inherently shorter than the warranty period, is warranted only for its normal life. In regard to Parts accepted for factory repair work, ATC will not be liable for its failure to discover or repair latent defects or defects inherent in the design of such Parts.

All Parts repaired or replaced under this warranty are warranted, subject to the terms of this Article III, for a period of one year from date of shipment or completion of repair, whichever occurs first, provided however, that in any event, all warranties (except title) shall expire not later than four (4) years from the first date of shipment of any Part under this contract.

The conditions of any test shall be mutually agreed upon in advance and ATC shall be notified of, any may be represented at, all tests that may be made. The above warranties (except as to title) shall not apply in the event that a defect appears in a Part particularly requested by the Customer contrary to the recommendations, current design specifications, and/or practices of ATC or the manufacturer. Notice of all warranty claims must be given by customer to ATC promptly, and in no event later than thirty (30) days after expiration of the warranty period established in this Article III for the particular Part involved.

The warranties as set forth in this Article III represent the exclusive remedies of the Customer for all claims based on failure of or defect in the Parts or incidental goods or services sold hereunder, whether the failure or defect arises before or during the warranty period, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. Except as set for in Article IV, "Patents", the foregoing warranties are exclusive and are in lieu of all other warranties whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

IV. Patents

A. Subject to the provisions of this Article, ATC warrants that the Parts sold hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, and contingent upon Customer not taking any position adverse to ATC in connection with such claim, ATC shall defend, or may settle, at its expense, any suit or proceeding against the Customer based on a claimed infringement which would result in a breach of this warranty, and ATC shall pay all damages and costs awarded therein against the Customer due to such breach. In case any Parts are in such suit held to constitute such an infringement and the use of the purpose intended of said Parts is enjoined, ATC shall, at its expense and option, either procure for the Customer the right to continue using said Parts, or replace same with noninfringing Parts, or modify same so they become noninfringing, or remove the Parts and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Customer. The foregoing states the entire liability of ATC for patent infringement.

B. The preceding Paragraph A shall not apply to any Parts specified by the Customer and not of OEM manufacture, modified by the Customer or manufactured to the Customer's design, or to the use of any Parts furnished hereunder in conjunction with any other goods or apparatus in a combination not furnished by ATC as a part of the transaction. As to any such Parts, or use in such combination, ATC assumes no liability whatsoever for patent infringement and the Customer will hold ATC harmless against any infringement claim arising therefrom.

V. Excusable Delays

A. ATC shall not be liable for delay due to: (1) causes beyond its reasonable control, or (2) acts of God, acts of the Customer, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (3) inability to obtain or delay in obtaining, due to causes beyond its reasonable control, suitable labor, materials, or facilities. In the event of any such delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay.

B. In the event ATC is delayed by acts of the Customer or by prerequisite work by other contractors or suppliers of the Customer, ATC shall be entitled to an equitable price adjustment in addition to the extension of the time of performance.

C. In the event that an Excusable Delay continues for more than one hundred and eighty (180) days, either party may terminate in accordance with the provisions of Article XII.

VI. Terms of Payment

A. The Customer shall make payment to ATC for the Parts and payments shall be made in cash, legal tender of the United States of America, without deduction or set-off. Applicable terms of payment are as follows:

1. For each Part with a price under \$450,000, payment in full within 30 days after shipment;
2. For each Part with a price of \$450,000 or more, alternate progress payment terms may apply as mutually agreed to by the parties.

B. Alternate Terms of Payment may apply for international purchase orders such as Letters of Credit or other terms as may be mutually agreed upon by the parties.

C. If the financial condition of the Customer at any time does not justify continued performance on the terms of payment previously agreed upon, ATC may require full or partial payment in advance or shall be entitled to terminate the contract and receive termination charges. In the event of bankruptcy or insolvency of the Customer or in the event any proceeding is brought against the Customer, voluntarily or involuntarily, under bankruptcy or any insolvency laws, ATC shall be entitled to terminate the contract at any time during the period allowed for filing claims against the estate and shall be entitled to payment for its termination charges.

D. **Return Policy:** Any claim for returns must be submitted in writing within 60 calendar days of shipment. If purchaser fails to ATC with the 60-day period, purchaser shall have irrevocably accepted the product "as is" and ATC has no further obligation to purchaser for this product. Returns must be preapproved, and an RMA number must be obtained prior to returning material. If approved, returns are subject to a minimum restocking fee of 25% and may be more, depending on ability to remarket.

VII. Changes

The Customer has the right to propose, for mutual agreement of the parties, changes in any Part to be furnished by ATC under this contract. Any difference in price, time, rights, and/or obligations (including without limitation ATC's warranty obligations) resulting from such changes must be mutually agreed upon in writing. ATC shall not be obligated to proceed with any change until such written agreement has been signed by both parties. All changes shall be executed pursuant to these Terms and Conditions.

VIII. Limitations of Liability

A. Except as provided in Article IV, "Patents", ATC's liability on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from the contract, or from the performance or breach thereof, shall in no case exceed the billing price of the particular Part which gives rise to the claim. Except as to warranty of title to any goods furnished, all such liability shall terminate upon expiration of the warranty period specified in the Article entitled "Warranty", provided, however, that Customer may enforce a claim of such liability by an action timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations and/or statute of repose, but in no event later than one (1) year after expiration of the warranty period.

B. In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall ATC its employees or suppliers, be liable for special, incidental, exemplary or consequential damages including but not limited to, loss of profits or revenue, loss of use of any property, cost of capital, costs in excess of estimates, cost of purchased power, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of the Customer for such damages. The Customer will indemnify ATC its employees and suppliers against any such claims from the Customer's customer. If the goods and services being provided by ATC relate to a contract between the Customer and a third party, or are furnished by the Customer to a third party, the Customer shall obtain from such third party a provision affording ATC and its suppliers the protection of this article VIII and Article XV.

C. In no event shall ATC be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of Customer's equipment, or caused by the use of goods or performance of services against the advice of ATC. If ACT furnishes the Customer with advice or assistance concerning any products or systems which is not required pursuant to the contract, the furnishing of such advice or assistance will not subject ATC to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

IX. Title

A. For each item of Parts furnished hereunder, title shall pass upon delivery, F.O.B. point of shipment.

B. The title and right of possession of equipment or parts of the Customer repaired or modified hereunder shall remain with the Customer, subject to any applicable lien rights of ATC. ATC shall bear risk of loss for such equipment or parts being repaired or modified hereunder while such equipment or parts are on ATC premises.

X. Shipment

The contract price excludes transportation charges. ATC shall prepay transportation charges and the Customer shall reimburse ATC for such charges within thirty (30) days of the Customer's receipt of ATC's invoice. All transportation charges shall be stated separately from other charges. If the Customer is unable to accept shipment in accordance with the schedule of the contract, the date when ATC is prepared to make such shipment shall be considered the date of shipment for purposes of the Terms of Payment and this Purchase Order. ATC shall have the right to deliver into storage all goods held as a result of the Customer's said inability and to receive payment therefor. Title and risk of loss shall pass to the Customer's account upon shipment hereunder.

XI. Sales and Similar Taxes

ATC's prices do not include sales, use, excise, value added or similar taxes. Consequently, in addition to the price specified, the amount of any present or future sales, use, excise, or other similar tax applicable paid by the Customer, or in lieu thereof, the Customer shall provide ATC with a tax-exemption certificate acceptable to the taxing authorities. Customer shall indemnify and hold ATC harmless from claims or liability for any such taxes.

XII. Termination

The Customer may terminate the Purchase Order only upon written notice. In the event of termination by the Customer (or ATC pursuant to Article V, Paragraph C), the Customer shall promptly make payment for all Parts shipped prior to the effective date of termination and the Customer shall pay reasonable and proper termination charges, including, but not limited to, all expenses associated with effecting termination.

XIII. Buyer's Inspection

Upon advance notice, ATC will exercise its best efforts to allow employees of Customer or representatives of Customer approved by ATC, to be admitted at reasonable times to manufacturer's shops, for the purpose of witnessing inspection of the Parts to be furnished and determining status of production.

Such access shall be limited to areas directly concerned with Customer's Parts and shall not include restricted areas where development work or work of a proprietary nature is being conducted. However, neither completion of production work nor shipment shall be delayed to accommodate the inspector.

XIV. Compliance With Laws

ATC's performance hereunder shall comply with applicable federal, state and local laws, rules and regulations except to the extent that they pertain to conditions wholly or partly within the control of the Customer or as otherwise provided in this Article. The prices set forth in the quotation, however, are based upon manufacturer's design, manufacture and delivery pursuant to its design criteria, manufacturing processes and procedures and quality assurance program, and applicable laws, rules and regulation, all as in effect on the date of the quotation.

Therefore, in the event that compliance requires any changes, including, but not limited to, changes in manufacturers design criteria, manufacturing processes and procedures and quality assurance program (except changes required by applicable federal laws or rules and regulations promulgated thereunder in effect and as interpreted on the date of the quotation), the price will be adjusted equitably to reflect the change. Any other provisions, including but not limited to schedule, which are affected by such change, will be modified as appropriate. Customer shall advise ATC of requirements affecting ATC's work to be performed hereunder resulting from the applicability of any state or local law, or rules or regulations promulgated thereunder, to the Customer's site. If the change is not possible, ATC will so notify the Customer and the Customer may terminate the Purchase Order in accordance with the termination clause, Article XII herein, or direct completion without change and assume responsibility for obtaining any necessary waivers.

Notwithstanding the foregoing paragraphs, no modification in price will be made as a result of any general change in the manufacturing facilities of manufacturer resulting from the imposition of any requirements by any federal, state or local government activity.

XV. Nuclear Application - Parts for Nuclear Steam Supplied Units

Parts sold hereunder are not intended for use, and shall not be used, in connection with nuclear installations or applications or applications using steam from a nuclear installation or applications using steam from a nuclear source of steam supply with ATC's written consent. The Customer warrants that it shall not use such Parts for such nuclear applications or activity, or permit others to use such Parts for such purposes, except in accordance with the following:

A. In each case, the Customer shall notify ATC of the intention for such nuclear application or activity at the time the order is placed, and secures written consent to such use, and Paragraphs B, C, D and E of this Article XV shall apply to nuclear applications or activity. In the event such Parts are used in or with a nuclear installation or activity without notification to ATC and its written consent thereto, ATC disclaims all responsibility or every kind including negligence and in addition, the Customer shall indemnify and hold ATC harmless for any liability or damage whatsoever arising out of use of such Parts in such a manner.

B. Nuclear Liability Insurance & Indemnity

1. For the nuclear installation or plant in which the Parts are used, the Customer will, without cost to ATC, obtain and maintain:
 - a. An agreement of indemnification as contemplated by Section 170 of the Atomic Energy Act of 1954, as amended; and
 - b. Nuclear liability insurance from ANI or MAELU, or both, in such form and in such amount as will meet the financial protection requirements of the NRC pursuant to Section 170 of the Atomic Energy Act of 1954, as amended.
2. The agreement of indemnification and nuclear liability insurance shall be in effect as of the date of shipment of the first nuclear fuel to the site and shall remain in effect until decommissioning of the plant.
3. In the event that the nuclear liability protection system contemplated by Section 170 of the Atomic Energy Act of 1954, as amended, is repealed, or is changed, the Customer will maintain in effect during the above period, to the extent available, liability protection through government indemnity, limitation of liability and/or liability insurance, which will not result in any material impairment of the protection ATC and its suppliers would have been afforded by the nuclear liability protection system presently in effect under the Atomic Energy Act of 1954, as amended, and this article.

C. Neither ATC nor its employees or suppliers, shall have any liability to the Customer or its insurers, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for any nuclear damage, injury or contamination to any property located at the site, and the Customer will

indemnify ATS, its employees and suppliers against any liability arising therefrom. As used in this Article XV "liability" means liability of any kind at any time whether in contract or tort, including negligence; "nuclear damage" means any loss, damage, or loss of use, which in whole or in part is caused by, arises out of, results from, or is in any way related, directly or indirectly, to the hazardous properties of source, special nuclear or by-product material, as those materials are defined in the Atomic Energy Act of 1954 as amended, applicable regulations thereunder or both. At ATC's request, the Customer will furnish any supplier with a statement of the protection available to the supplier.

D. Any of ATC's material or equipment which becomes radioactive at the work site, shall, at ATC's option, be purchased by the Customer. Any nuclear decontamination necessary for ATC's performance (including remedial warranty efforts) shall be performed by the Customer without cost to ATC.

E. **Transfer of Equipment**

1. The Customer will not transfer (except permanently to a non-nuclear facility or pursuant to the provisions of any applicable mortgage or trust indenture) any Parts furnished by ATC or any interest therein or any equipment upon which services have been performed by manufacturer without ATC's prior written approval, provided that such approval shall not be withheld if ATC and its suppliers are reasonable assured of limitation of and protection against liability following the proposed transfer equivalent to the protection afforded under this Article XV and other provisions of these Terms and Conditions. Transfer contrary to the provisions of this clause shall, in addition to any other legal or equitable rights of ATC, make the Customer the indemnitor of ATC and its suppliers to the same extent that ATC and its suppliers would have been protected had such transfer not taken place.

2. In the event of termination pursuant to these Terms and Conditions or cancellations, the above provisions relating to the transfer of Parts furnished by ATC shall remain applicable to Parts delivered and performed prior to termination or cancellation.

XVI. Proprietary Information

The furnishing of Parts by ATC may involve the use or furnishing of drawings, procedures, equipment, information, or the like, which ATC considers to be proprietary and confidential. At the time of furnishing ATC will expressly designate by label, stamp, or other written communication that the information or documentation furnished is confidential. Neither the Customer nor its employees shall disclose such confidential information of ATC to any party whatsoever and, except to the extent that such information or documentation is to be retained by the Customer pursuant to this contract, all copies of such confidential information will be returned to ATC upon request by ATC. The foregoing confidentiality restriction shall expire five (5) years from the date of ATC's disclosure of the information to the Customer. The confidentiality restriction shall not apply for each item of confidential information which appears in issued patents or publications, or is known or becomes generally known to the public through no fault of the Customer.

XVII. General

A. Any assignment of the Purchase Order, or any rights or duties hereunder, by either party without the prior written consent of the other party shall be void.

B. The provisions of this contract are for the benefit of the parties hereto and not for any other person except as specifically provided herein. The Customer represents that it is either the sole owner of the facility for which the Parts are to be provided hereunder or has the full right and authority to bind all the owners to the terms of this contract.

C. Any information, suggestions or ideas transmitted by the Customer to ATC are not to be regarded as secret or submitted in confidence.

D. Waiver by either party, on any one or more occasion(s) of any right under the contract shall not be deemed a waiver of such right for any other or future occasion, or a waiver of any other rights hereunder.

E. In performance of this contract, ATC shall comply with the Fair Labor Standards Act of 1938, as amended, laws related to nonsegregated facilities and equal employment opportunity (including the seven paragraphs appearing in Sec.202 of Executive Order 11246, as amended), and all applicable standards, rules, regulations, and orders issued pursuant to such state and federal laws.

F. The contract, and any amendment thereof, shall be governed by and construed according to the laws of the State of New Jersey, excluding its choice of law rules.

XVIII. Complete Agreement

These Terms and Conditions contain the entire and only agreement between the parties respecting terms and conditions. No modifications, amendment, rescission, waiver or other change of the contract will be binding on ATC unless assented to in writing by ATC's authorized representative. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on ATC. The invalidity, in whole or part, of any of the articles or paragraphs set forth in these Terms and Conditions will not affect the remainder of such article paragraph or any other article or paragraph of the contract.