

# Salient Selling Policy SPS-XR6

## SALIENT CONDITIONS OF SALE

*NOTE: The following Conditions of Sale are subject to change. All transactions for all products sold by Salient ("Seller") are subject to the latest published Conditions of Sale of Seller and to any Special Conditions of Sale which may be contained in applicable Seller quotations and acknowledgments.*

## GOVERNING PROVISIONS AND ACCEPTANCE:

All quotations are subject to these conditions of sale. Acceptance of an order by Seller shall be expressly conditioned on Purchaser's assent to these conditions. Purchaser's direction to proceed with engineering, manufacture or shipment by Seller shall be deemed evidence of this assent. No modified or other conditions will be applicable unless those conditions are so stated in Seller's proposal or are specifically agreed to in writing and signed by an authorized official of Seller. Failure to object to provisions contained in any Purchase Order or other communication from the Purchaser (including, without limitation, penalty clauses of any kind) shall not be construed as neither a waiver of these Conditions nor an acceptance of any other provisions. These terms are a complete statement of the parties' agreement and may only be modified in writing signed by both parties. These terms may not be modified by course of dealing, course of performance or usage of trade. These terms supersede all previous written or oral quotations, statements or agreements. Any terms or conditions added to the Purchaser's Purchase Order are null and void unless agreed upon in writing by both parties. The Purchaser agrees to these terms and conditions by executing a purchase order to Seller. Any contract for sale by and between the parties shall be governed by and construed according to the laws of the State of Colorado, North Carolina, Kentucky, Texas, and/or Delaware without regard to its rules on the conflict of laws. The Convention on the International Sale of Goods is expressly excluded.

## QUOTATIONS:

- 1) Written quotations shall be valid for no more than thirty (30) days from their date, unless otherwise stated in the quotation. All quotations are subject to change by Seller at any time upon notice to Purchaser. It is Purchaser's obligation to review the quotation carefully and to immediately advise Seller in writing of any differing interpretation Purchaser has so any necessary change can be made. Seller reserves the right to revise the quote at time of release. Failure by the Purchaser to revise the purchase order in ten (10) days may result in the order being cancelled by Seller requiring the minimum cancellation charges.
- 2) Features, functions, or functionality. No other features, functions, or functionality are included with the proposal unless specifically identified as a proposal item or within an attachment to the proposal.
- 3) Short circuit analysis. The proposal does not include a short circuit analysis unless specifically listed as a proposal item. The short circuit analysis would be purchased to verify that the quoted bus bracing and interrupting capacity is sufficient for the given application. Upon request, Seller could provide a short circuit analysis at a price to be determined. A system one-line coupled with a defined work scope (starting and ending points for the analysis) are required for proposal purposes. A typical short circuit analysis requires 2 to 4 weeks to complete. The 2-to-4-week lead-time includes 1 to 2 weeks to gather information coupled with 1 to 2 weeks to schedule and perform the analysis.
- 4) Coordination study. The proposal does not include a coordination study unless specifically listed as a proposal item. Seller could provide a coordination study at a price to be determined. A system one-line coupled with a defined work scope (starting and ending points for the study) are required for proposal purposes. A typical coordination study requires 4 to 6 weeks to complete. The 4-to-6-week lead-time includes 2 to 3 weeks to gather information coupled with 2 to 3 weeks to schedule and perform the study.
- 5) Field services. The proposal does not include field services for installation, installation supervision, start-up, start-up assistance, equipment demonstration, or owner training unless specifically listed as a proposal item.
- 6) Field testing. The proposal does not include field testing, such as acceptance testing, unless specifically listed as a proposal item.
- 7) Shipping charges. The proposal does not include shipping charges unless specifically listed as a proposal item. F.O.B. Point of origin.
- 8) Warranty. The proposal includes a standard equipment warranty unless specifically listed as a proposal item which includes the material cost for the repair and/or replacement of defective or malfunctioning product. The

warranty extends the lesser of 18 months from date of shipment or 12 months from start-up (energization). If there is an extended warranty the extended warranty policy will be attached with exceptions.

- 9) Expiration of pricing. The pricing for the proposal is valid for 30 days from the proposal issuance date unless specifically noted otherwise.
- 10) Proposal scope. The pricing for the proposal is per the bill of material and attached (if applicable) proposal items only.
- 11) Any additions, deletions, or revisions to the number or contents of the proposal items may impact pricing and/or lead-time.
- 12) Invoicing and terms of payment. The pricing for the proposal is based upon customer complete payment of Seller's invoice within 30 days of the invoice date. The invoice will be for all items in the quotation to which purchase order is issued at time of service completed per the payment schedule listed in this document unless otherwise specified. A 1% surcharge will be added to each invoice for every 15 days late.
- 13) Plans and specifications. The proposal does not reflect adherence to any project specific designs or specifications unless identified in the specific comments and clarifications.
- 14) Approval drawings. Unless there is a specified schedule in the proposal the customer may choose to review Seller's equipment drawings for approval, 3 copies of approval drawings will be transmitted (mailed or electronic) on or within 4 weeks from date of receipt and acceptance of the Customer's purchase order unless specifically noted otherwise. The approval drawings must be returned "approved", "approved as noted", or "no exceptions noted" prior to or at time of release. Should Customer notations on approval drawings impact pricing or lead-time, the Customer will be notified of same within 2 weeks from Seller's receipt thereof. Should the Customer's drawing review period exceed 4 weeks from date of Seller's transmittal to the Customer, equipment pricing and/or lead-time may be impacted.
- 15) Operation and maintenance manuals (O&M manuals). 3 copies of O&M manuals will be supplied unless specifically listed as a proposal item.
- 16) Factory test reports. 3 copies of certified reports of factory tests, if required, are supplied at the time of shipment unless specifically listed as a proposal item.
- 17) Final as-built drawings. 3 copies of final as-built drawings are electronically mailed within 10 business days from date of shipment/startup.
- 18) Equipment inspection. Purchaser is welcome to inspect the equipment at the factory prior to shipment for \$750.00 per day per product.
- 19) Factory witness testing. Purchaser is welcome to witness factory testing of equipment at the factory prior to shipment for \$2,000.00 per item. Please note that this adds approximately 5 business days to the lead-time of the product.

### **SUBSTITUTION:**

Seller may furnish suitable substitutes for material unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers, provided such substitutions do not adversely affect the technical soundness of the equipment. Seller assumes no liability for deviation from published dimensions and descriptive information not essential to proper performance of the product.

### **PRICING TERMS:**

Unless specifically noted otherwise, all Seller pricing is based upon net 30-day payment terms. Add 0.75% to quoted equipment or services pricing for 45-day payment terms.

Add 1.5% to quoted equipment or services pricing for net 60-day payment terms.

All prices are subject to change without notice. In the event of a net price change and unless otherwise agreed to in writing, prices for orders scheduled for immediate release shall be those in effect at the time of order entry. Prices for orders placed for future shipment without an agreed price and ship date will be billed at the pricing in effect as of the shipment date. All clerical errors are subject to correction.

### **PROGRESS PAYMENTS:**

Invoice 35% When Ordered

Invoice 45% When Released for Manufacture

Invoice 20% Upon Shipment

If progress payments are not received in the allotted payment terms the sell pricing may be changed by Seller to adjust for material fluctuations and market conditions.

## **TAXES:**

Unless specifically noted otherwise, all Seller pricing does not include taxes.

Applicable taxes will be added to all invoice amounts unless the Purchaser has a tax exemption certificate on file with Seller and transmits the order to Seller as tax exempt.

## **FREIGHT:**

- 1) Unless specifically noted otherwise, all Seller pricing does not include freight.
- 2) Freight will be prepaid and added to the invoice unless otherwise specified on the order and agreed to in writing.
- 3) Unless specifically noted otherwise, all Seller shipments are F.O.B point of shipment.
- 4) Add 2% to quoted equipment pricing for F.O.B. destination.

### **Term#1**

Option-1: Carrier is selected by Seller with Seller prepaying the freight and adding the freight charge to the Product Invoice or otherwise separately billing for the freight charge

Option-2: Carrier is selected by Purchaser with Seller prepaying the freight and adding the freight charge to the Product Invoice or otherwise separately billing for the freight charge.

Option-3: Carrier is selected by Purchaser with the carrier billing freight to the Purchaser or the Purchaser's third-party freight management company (if applicable). If this option is selected the Purchaser will be notified of the expected shipment date. The shipment must be picked up within 5 business days or the shipment will be shipped to a storage facility and all charges (including invoices) will be required to be paid in full prior to shipment to the Purchaser.

### **Term#2**

Pricing as quoted includes the Purchaser taking ownership of the freight at the time the carrier picks up the freight from Manufacturer's shipping location.

### **Term#3**

An F.O.B. destination option is available for most shipments with destinations in the continental United States.

When the F.O.B. destination option is purchased, the Purchaser is paying a premium to have the Seller retain ownership of the freight until the freight is delivered to the Purchaser's first ship to location.

### **Term#4**

When the F.O.B. destination option is purchased, and freight damage occurs, the Seller will remedy the shipping damage and handle the claim with the carrier provided the Purchaser meets the following obligations.

- o Purchaser shall have the responsibility of inspecting the equipment for apparent loss or damage immediately upon its arrival at the free delivery point.
- o In the event of apparent shipping loss or damage, Purchaser shall make written notation of the loss on the carrier's delivery receipt and, within 48 hours of delivery, shall notify Seller. Purchaser shall not remove product from the point of examination and shall retain the shipping container and packing material. Purchaser shall request the carrier to make an inspection and send Seller a copy of the carrier's inspection report.
- o In the event of concealed damage which occurred during transit and is discovered by the Purchaser after delivery, Purchaser shall report such damage immediately, but in no event later than 15 days after delivery, to the delivering carrier, and within 48 hours of discovery, shall notify Seller. If such notification is not made, Seller shall not be liable for loss or damage in transit.

### **Term#5**

The standard charge for the F.O.B. destination option is 2% of the price of the item being purchased and shipped.

The 2% F.O.B. destination charge is separate from the carrier's freight charge.

### **Term#6**

When F.O.B. destination is required, the purchase order must include a separate line item titled "F.O.B. destination" at a price equal to 2% of the price of the applicable equipment item(s).

## **CANCELLATION AND/OR CHANGES:**

Orders are subject to cancellation, partial cancellation or change only with the consent of the Seller and only upon such terms as the Seller may impose. Should Buyer terminate, cancel, or stop its order, in whole or in part without Seller's consent, such termination, cancellation, or stoppage shall constitute a breach by Buyer, for which Seller shall

be entitled to all damages of Seller related to such breach, including, without limitation, the amount of Seller's cancellation costs and damages, including expenditures on materials, labor, overhead, and payments to subcontractors, direct costs incurred by Seller in settling claims with subcontractors or suppliers, reasonable profits on the work performed including work in process on the terminated portion of the order prior to Seller's receipt of the Buyer's termination, cancellation, or stoppage notice, which amount shall be calculated at not less than Seller's profit margin on the entire project multiplied by the cost of the total work performed prior to Seller's receipt of the Buyer's termination. Prices are set on the basis of the total quantity ordered, even though shipment may be in stages. Cancellation of a portion of an order after an earlier portion has been shipped and invoiced will result in an adjustment to the purchase price and an additional charge to the Buyer. At a minimum the cancellation charges will be 35% of the purchase price after order entry or 80% of the purchase price if the order has been released. The minimum cancellation charges supersede all other calculations which will be the basis for the minimum cancellation charges.

### **INVOICING:**

All Seller invoices are mailed at the time each item is shipped to the customer requested ship to location. The Purchaser agrees to provide Seller compensation equal to 1.5% of the purchase price for any and all equipment and/or services which are not paid in full by the invoice due date. The purchaser also agrees to provide Seller additional compensation equal to 1.5% of the purchase price on any and all unpaid amounts for each 30-calendar day period thereafter. Seller reserves the right to request 100% payment prior to shipment which supersedes any payment terms.

### **STANDARD PRODUCT WARRANTY:**

Seller warrants equipment manufactured by it and sold through authorized sales channels to be free from defects in materials and workmanship for the lesser of eighteen (18) months from date of shipment or twelve (12) months from date of commission. If within such period any such equipment shall be proved to Seller's satisfaction to be non-conforming, such equipment shall be repaired or replaced at Seller's option.

This warranty shall not apply to:

- (a) equipment not manufactured by Seller.
- (b) equipment that has been repaired or altered by any person or entity other than Seller so as, in its judgment, to adversely affect the same.
- (c) equipment that has been subjected to negligence, accident, or damage by circumstances beyond Seller's control.
- (d) equipment which has been damaged through improper operation, maintenance, or storage.
- (e) equipment which has been subjected to other than normal use or service.

With respect to equipment not manufactured by Seller, the warranty obligations of Seller shall in all respects conform and be limited to the warranty actually extended to Seller by its supplier. Non-conforming products must be returned at the Purchaser's expense for evaluation unless this requirement is waived in writing. Replacement products may be new or reconditioned. The foregoing warranties cover replacement products only and do not cover reimbursement for labor, transportation, removal, installation, temporary power, or any other expenses that may be incurred in connection with repair or replacement.

### **FIELD SERVICE WARRANTY:**

Seller warrants that the Services performed by it hereunder will be performed in accordance with generally accepted industry standards. The Services, which do not so conform, shall be corrected by Seller upon notification in writing by the Buyer within one (1) year after completion of the Services unless otherwise agreed to in writing by no persons other than Seller's Business Unit Leader, CEO and/or President. Seller assumes no responsibility with respect to the suitability of the Buyer's, or its Customer's, equipment or with respect to any latent defects in equipment not supplied by Seller. This warranty does not cover damage to Buyer's, or its Customer's, equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. Buyer will, at its cost, provide Seller with unobstructed access to the defective Services, as well as adequate free working space in the immediate vicinity of the defective Services and such facilities and systems, including, without limitation, docks, cranes, and utility disconnects and connects, as may be necessary in order that Seller may perform its warranty obligations. The conducting of any tests shall be mutually agreed upon and Seller shall be notified of, and may be present at, all tests that may be made.

## **OPTIONAL WARRANTIES:**

Optional Warranties include Special Warranties and Warranty Extensions.

All Special Warranties must be executed through a separate Special Warranty Agreement. These Agreements are only valid if authorized and signed by Seller's Business Unit Leader. No persons other than Seller's Business Unit Leader can authorize a Special Warranty except the CEO and/or CFO.

Warranty Extensions beyond a 1-year or 2-year extension to the Standard Warranty, as detailed below, must be executed through a separate Warranty Extension Agreement. These Agreements are only valid if authorized and signed by Seller's Business Unit Leader. No persons other than Seller's Business Unit Leader can authorize a Warranty Extension beyond a 1-year or 2-year extension to the Standard Warranty except the CEO and/or CFO.

## **SPECIAL WARRANTY – IN AND OUT:**

If requested by the Purchaser and specifically accepted in writing by Seller, the standard warranty will be extended, for a negotiated price, to cover reimbursement of the direct costs of:

- a) Removal of non-conforming equipment or part thereof.
- b) Transporting equipment or parts to and from the place of repair.
- c) Off-loading of truck and reinstallation at the original site.

Such special warranty, which may be chosen to cover a period not exceeding that of the standard warranty (see above) selected, will not include the cost of providing temporary power or removing or replacing other apparatus or structures, or costs of transportation beyond a common carrier free delivery point in the continental United States. Further, the obligation of Seller for expenses and costs arising under this special warranty coverage will not exceed 50% of the net invoice price on the equipment being repaired. This warranty does not change or affect the allocation of risk or loss during shipment.

## **WARRANTY EXTENSIONS:**

The Purchaser can elect to purchase a 1-year or 2-year extension to the Standard Warranty for Seller's manufactured products.

The 1-year extension is available at 2% of the product purchase price.

The 2-year extension is available at 4% of the product purchase price.

The warranty extension must be purchased prior to product shipment and must be itemized separately on the Purchaser's contract or purchase order.

Warranty Extensions beyond a 1-year or 2-year extension to the Standard Warranty require Seller's Business Unit Leader authorization coupled with a fully executed Warranty Extension Agreement.

## **PREVENTATIVE MAINTENANCE AGREEMENTS:**

Seller does offer Preventative Maintenance (PM) Services on Seller's manufactured products which are installed in the U.S. If requested by the Purchaser, Seller will develop and forward a Preventative Maintenance (PM) Agreement for the Purchaser's consideration. Once terms have been agreed upon and a contract executed, Seller will begin providing PM Services as outlined in the PM Agreement. Seller's rendering of PM Services does not automatically extend any warranties except for any warranty extensions specifically detailed in the PM Agreement.

## **FORCE MAJEURE:**

Seller shall not be liable for any damages as a result of any delays due to any causes beyond Seller's control, including, without limitation, an act of God; act of Purchaser's or Seller's supplier; embargo or other governmental act; regulation or request; fire; accident; strike; slowdown; flood; fuel or energy shortage; pandemics; sabotage; war; riot; delay in transportation and inability to obtain necessary labor, materials or manufacturing facilities from usual sources. In the event of any such delay, the date of delivery shall be extended for a period of time reasonably necessary to overcome the effect of such delay including changes to the original agreed upon sell price.

## **LIQUIDATED DAMAGES:**

Contracts which include liquidated damage clauses for failure to meet shipping or job completion promises are not acceptable or binding on Seller, unless such clauses are specifically accepted in writing by no persons other than Seller's President, CEO and/or CFO.

**LIMITATIONS:**

These disclaimers and limitations of remedies apply to all warranties offered to Purchaser and to all Purchase Orders. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES (EXCEPT WARRANTIES OF TITLE), INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Except as may be expressly provided in an authorized writing by Seller, Seller shall not be subject to any other obligations or liabilities whatsoever, other than as stated above with respect to equipment sold or services rendered by Seller. Notwithstanding anything to the contrary herein contained Seller, ITS CONTRACTORS AND SUPPLIERS OF ANY TIER, SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR LOST TIME, LOST PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER.

The remedies of the Purchaser are exclusive and the total cumulative liability of Seller, its contractors and suppliers of any tier, with respect to this contract or anything done in connection therewith, such as the use of any product covered by or furnished under the contract, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the product, part, or service on which such liability is based.

LIMITATION OF LIABILITY. WITHOUT PREJUDICE TO ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, SELLER SHALL NOT HAVE ANY OBLIGATION OR LIABILITY, AND BUYER ACKNOWLEDGES THAT SELLER SHALL NOT HAVE ANY OBLIGATION OR LIABILITY WHATSOEVER, TO BUYER, OR TO ANY PERSON OR ENTITY CLAIMING BY, THROUGH, OR UNDER BUYER, WHETHER ARISING PURSUANT TO THE LIMITED WARRANTY, PURSUANT TO ANY AGREEMENT PERTAINING TO THE PRODUCTS, OR IN CONTRACT, IN INDEMNITY, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), IN PRODUCTS LIABILITY, IN STRICT LIABILITY, OR OTHERWISE, FOR ANY EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (EVEN THOUGH SUCH DAMAGES MAY BE FORESEEABLE) INCLUDING, BUT NOT LIMITED TO: LOSS OF PROFITS OR REVENUES; LOSS OF USE OF EQUIPMENT; COST OF CAPITAL; COST OF SUBSTITUTE EQUIPMENT, REPAIRS, OR FACILITIES; COST OF DOWNTIME; COST OF PURCHASED OR REPLACEMENT PRODUCTS OR PARTS; COST OF TRANSPORTATION; COST OF FREIGHT, INSPECTION, INSTALLATION, REMOVAL OR REINSTALLATION WITH RESPECT TO THE PRODUCTS; OR CLAIMS OF ANY CUSTOMERS OF BUYER FOR ANY SUCH DAMAGES.