

CITY OF OBERLIN, OHIO

ORDINANCE No. 18-05 AC CMS

AN ORDINANCE DETERMINING THAT A REAL AND PRESENT EMERGENCY EXISTS IN THE OBERLIN MUNICIPAL LIGHT AND POWER SYSTEM DEPARTMENT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SUNBELT TRANSFORMER TO RENT A 10 MVA TRANSFORMER FOR THE PLANT SUBSTATION AND DECLARING AN EMERGENCY

WHEREAS, the City owns, operates and maintains the Oberlin Municipal Light and Power System Department to supply light and power to the citizens of Oberlin; and

WHEREAS, one of three main substation transformers failed and the city is now being served by two 10 MVA transformers and providing reliable light and power services to the City is at risk if one of these two transformers fails; and

WHEREAS, the anticipated time for the rebuild and rewind of the failed transformer is eighteen weeks.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That under the provisions of Section 735.051 of the Ohio Revised Code it is hereby declared and determined that a real and present emergency exists in the Oberlin Municipal Light and Power System Department due to the failure of the main plant substation transformer and the Oberlin load is now dependent on two substations instead of three requiring immediate authority for the City Manager to enter into an agreement without advertisement or competitive bidding for the rental of a 10 MVA transformer to replace the failed main plant substation transformer.

SECTION 2. That subject to Law Director final approval, the City Manager is hereby authorized and directed to enter into a contract with Sunbelt Transformer to rent a 10 MVA transformer at a cost of \$22,000 per month until the rebuilt and rewound transformer is returned to the plant substation.

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to facilitate the timely rental of a 10 MVA transformer to replace the main plant substation transformer during the time it is being rebuilt and rewound so as to ensure the continuous supply


of light and power services to the citizens of Oberlin and shall take effect immediately upon passage.

PASSED: 1st Reading: February 5, 2018 (E)

2nd Reading: _____

3rd Reading: _____

ATTEST:


BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL


BRYAN L. BURGESS
PRESIDENT OF COUNCIL

POSTED: 02/06/2018

EFFECTIVE DATE: 02/05/2018



SUNBELT
transformer™

Blanket Rental Terms and Liability Agreement

This Blanket Rental Terms and Liability Agreement (Agreement) is between Sunbelt Transformer, Ltd (SBT) and City of Oberlin (Customer) and covers all rental transactions from Sunbelt Transformer (SBT) beginning with rental transactions effective 02/07/2018.

SBT's standard rental pay terms are DUE UPON RECEIPT OF INVOICE. The minimum rental charge for any individual unit is two (2) weeks. Thereafter, monthly rentals are billed on a month to month basis at the beginning of the rental period. The rental fee will begin upon shipment of rental unit(s) and will terminate upon return receipt of rented unit(s) at one of SBT's locations. Rental charged is NOT applicable to the purchase price of the rented unit(s) nor are any rentals prorated. Individual term of rental and rental charges are discrete to each rental as agreed between SBT and Customer

Customer agrees to purchase (prior to the shipment of any equipment under this Agreement) and maintain property insurance with a limit of the value of the equipment rented. Customer also agrees to obtain liability insurance as shall protect SBT from any and all claims which may arise out of or be in any manner connected with the use, misuse, installation, removal or storage of the equipment rented hereunder. Within 10 days of shipment, Customer agrees to provide a certificate of insurance which includes the following wording:

Sunbelt Transformer, Ltd and all subsidiaries are named "Additional Insured as Loss Payee" on Property, Automobile, General and Umbrella Liability policies. Such policies will not be canceled or nonrenewed without notice by the insurance company to Sunbelt Transformer, Ltd. Lessee's policies are Primary with respect to transformers rented from Sunbelt. Subrogation against Sunbelt Transformer, Ltd., its agents and employees is waived on all policies.

In addition to the rental amount and freight charges both to and from jobsite, Customer will be liable for damages to the rented equipment up to the purchase price (as indicated on the rental quote) for any/all damages to the rented property and for any and/all damages to persons or property of others in connection with the installation, use, misuse, removal or storage of the rented equipment. Customer also waives the right to make any claim against SBT for any loss of anticipatory profits, assumption of liability, or any other indirect, special, or consequential damages regardless of cause. Customer's responsibility for damages and release of claims against SBT includes any claims based in whole or in part on the negligence of SBT.

If more than two (2) hours are required to offload or load the transformer(s) at delivery/pickup site, then Customer shall also be liable for detention charges of \$85.00 USD per hour, or any part of an hour, after the first two hours.

SBT's standard rental warranty is in effect:

<http://portal.sunbeltusa.com/downloads/Rental%20Equipment%20Warranty.pdf>

By acknowledging this agreement, Customer understands and accepts all the terms and conditions of this agreement and agrees that this constitutes the entire agreement, superseding any terms or conditions provided by the Customer.

SBT and Customer will attempt to settle any claim or controversy arising under this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. ~~Any dispute which cannot be resolved through negotiation or mediation may be submitted to the state or federal courts appropriate for Bell County, Texas. SBT and Customer agree that the jurisdiction of said courts is appropriate and the parties submit to the exclusive jurisdiction of said courts. Texas' law governs this Agreement without consideration to that body of law referred to as "conflicts of laws".~~ JI- 2/7/18 **EA**

2-9-2018

CUSTOMER:

Acknowledged by: *Robert Keller* Date: 2/9/2018

Position/Title: City Manager

Customer Name: City of Oberlin

SUNBELT TRANSFORMER, LTD.

By: John Imbaratto Date: 02/07/18

Position/Title: Eastern Regional Rental Mgr

Name: *[Signature]*

APPROVED AS TO FORM

Date: 2/8/2018

[Signature]

Jon D. Clark, Oberlin City Law Director

**Sunbelt Transformer, Ltd. | Standard
Terms &
Conditions**

E. DELAYED DELIVERY. In the event shipment is delayed for any reason not within the control of SUNBELT, the price shall be increased 1.5% for each full month or fraction thereof that shipment is thereby delayed after a 90-day period from the date of order.

4. PAYMENT TERMS. The net amount due shall be paid in full within thirty (30) days of the invoice date. Amounts unpaid after the due date shall accrue interest of 1% per month. SUNBELT reserves the right to require payment in advance, a deposit or C.O.D. If partial shipments are made, payments shall become due in accordance with the designated terms upon submission of invoices.

5. TITLE AND DELIVERY. All domestic and international deliveries shall be FOB or Ex Works ("EXW") (Incoterms 2000) ("Delivery") Customer's ~~SUNBELT's location, or such other facility designated by SUNBELT. Such other facility may be designated as a domestic port for international~~ delivery. If delivered ("destined") to port, to a freight forwarder, ~~whether arranged by SUNBELT or by Customer, the freight forwarder will be defined as a representative of Sunbelt and not of Customer.~~ Risk of loss and title to all Equipment furnished by SUNBELT shall pass directly to Customer at Customer's ~~SUNBELT's~~ JI-2/7/18 RH 2/9/2018

RH 2/9/2018 location pursuant to the delivery terms in this paragraph 5.0. All Delivery dates are estimates and under no circumstances does SUNBELT guarantee date of Delivery. ~~SUNBELT shall not be responsible or liable for any damage or loss which occurs during transportation and/or shipment of the Equipment.~~ JI-2/7/18

6. EQUIPMENT DAMAGE OR LOSS. Should Customer rent Equipment from SUNBELT, the following provisions apply:

- (a) In the event that any of SUNBELT's Equipment is lost or damaged, Customer shall continue to pay rent on the Equipment until (1) the equipment is returned and Customer pays SUNBELT the full cost to repair the Equipment or (2) Customer pays SUNBELT the full replacement cost (i.e. the retail cost) of the Equipment.
- (b) Customer shall be responsible for any loss or damage to SUNBELT's Equipment, material or supplies, either transported by Customer or by conveyance arranged for by Customer.

7. EQUIPMENT RENTAL. In the case of rental Equipment, Customer shall be liable for the return of the Equipment to SUNBELT's warehouse in the same condition the Equipment was in at the time the Equipment was received by Customer, ordinary wear excepted. As specified by SUNBELT, certain Equipment shall be tarped when hauled to Customer's location and when returned to SUNBELT. If Customer fails to comply with this tarping requirement, SUNBELT reserves the right to charge Customer for any resulting damage.

8. CANCELLATION OR REVISIONS. Any order may be cancelled or revised by Customer only upon written approval by an authorized representative of SUNBELT, said approval to be in SUNBELT's sole discretion. Should SUNBELT approve cancellation or revision of an order, Customer shall pay the cancellation or revision charges specified in said approval. Cancellation or revision charges shall not exceed 15% of the order and will take into account expenses previously incurred, commitments made pursuant to or in reliance upon such order, whether or not such

Sunbelt Transformer, Ltd. | Standard Terms & Conditions

1. DEFINITIONS. As used in these Terms and Conditions (hereinafter, "Terms"), "SUNBELT" means Sunbelt Transformer, Ltd. Where appropriate, "SUNBELT" shall include employees, agents, and representatives of SUNBELT. SUNBELT and Customer may be referred to herein individually as "Party" or collectively as the "Parties".

2. TERMS OF SALE/RENTAL. Should Customer offer to purchase and/or rent any equipment ("Equipment") from SUNBELT, SUNBELT's acceptance of such offer is expressly conditioned upon Customer's assent to the terms and conditions set forth in these Terms. Any term, provision, or condition in conflict with, in addition to, or in modification of these Terms shall not be binding upon SUNBELT unless such term, provision, or condition is accepted in writing by an authorized officer of SUNBELT. SUNBELT's failure to object to any term or condition contained in any communication between the Parties shall not be deemed a waiver of any provision of these Terms. These Terms are not an acceptance of any offer of Customer to purchase and/or rent, and all offers or orders to purchase and/or rent made by Customer must be approved and accepted by SUNBELT. These Terms shall be applicable whether or not they are attached to, or enclosed with, any Equipment that is sold or rented. To hold an order by Customer, SUNBELT must first receive a valid, proper and complete Purchase Order ("PO"). SUNBELT reserves the right to sell or rent the Equipment to the first party to provide a valid, proper and complete PO. If Customer fails to timely provide SUNBELT with a valid, proper and complete PO, SUNBELT shall not be responsible or liable in any way for renting or selling the Equipment to a third party.

3. PRICES. Unless agreed to in writing by the Parties, prices quoted by SUNBELT are those current at the date of quotation and shall be subject to variation by SUNBELT. Prices quoted by SUNBELT shall expire thirty (30) days from the date of quotation unless SUNBELT receives a valid, proper and complete PO before the end of the thirty (30) day period. If a valid PO is received, the prices stated herein are firm, provided:

- A. The order is released, with complete engineering details for shipment within 90 calendar days from the date of order or at the Company's earliest convenience thereafter, or
- B. If drawings for approval are required, the drawings must be returned and approved within 30 calendar days of the original mailing date of the drawings by the Company with products covered by the drawings released for manufacture. Such release must call for shipment within 90 calendar days from the date of order or at the Company's earliest convenience thereafter. Drawing resubmittals, which are required for any reason other than to correct Company errors, will not extend the 30-day period for release.
- C. Prices are subject to change without notice to Customer. All prices are exclusive of any present or future sales, revenue, or excise tax, value added tax, turnover tax, import or export duty, or any other tax applicable to the manufacture and sale of any Equipment. Such taxes shall be paid by Customer.
- D. Prices quoted by SUNBELT include a 3% cash discount.

**Sunbelt Transformer, Ltd. | Standard
Terms &
Conditions**

commitments are legally binding on SUNBELT, and any other factors considered relevant by SUNBELT. In the event that SUNBELT does not approve cancellation or revision, Customer shall remain liable to SUNBELT for the full price of the Equipment ordered.

9. LIMITED WARRANTY. The only warranty applicable to any equipment rented or purchased is the express written warranty of SUNBELT set forth below which is applicable to such equipment.

A. Remanufactured/Reconditioned Liquid-Filled Transformer Substations 5000 kva and over, Remanufactured/Reconditioned or New Dry Type Transformer, Switchgear and Repaired Transformers (for only the repair work performed by SBT).

These types of transformers are warranted under the provisions of this warranty. For a period of **EIGHTEEN MONTHS** from the date of shipment or **ONE YEAR** from the date of energization, whichever occurs first, the equipment is guaranteed to operate in accordance with its nameplate when operated under normal load, usage, conditions and with proper care, installation and supervision.

Any mechanical or electrical parts proving defective under such normal operation and installation will be repaired or replaced at seller's option, by seller. Seller shall repair in the field all items for which field repair is feasible. Should the unit require repair at the seller's plant, seller shall arrange and pay freight to and from the customer's site anywhere in the continental U.S.

B. Remanufactured/Reconditioned Liquid-Filled Transformer Warranty Padmounts and Substations < 5000 kva

This type of transformer is warranted under the provisions of this warranty. For a period of **THIRTY MONTHS** from the date of shipment or **TWO YEARS** from the date of energization, whichever occurs first, the equipment is guaranteed to operate in accordance with its nameplate when operated under normal load, usage, conditions and with proper care, installation and supervision.

Any mechanical or electrical parts proving defective under such normal operation and installation will be repaired or replaced at seller's option, by seller. Seller shall repair in the field all items for which field repair is feasible. Should the unit require

**Sunbelt Transformer, Ltd. | Standard
Terms &
Conditions**

repair at the seller's plant, seller shall arrange and pay freight to and from the customer's site anywhere in the continental U.S.

C. Rental Equipment Warranty

The electrical equipment that you have rented is warranted under the provisions of this warranty. The equipment is guaranteed to operate in accordance with its nameplate when operated under normal load, usage, conditions and with proper care, installation and supervision. The lessor shall have no liability for damage resulting from improper installation or operation of the equipment, voltage surges, negligence of others, accidents, natural forces, and operations beyond rated capacities, or misuse.

Any mechanical or electrical parts proving defective under such normal operation and installation will be repaired or replaced at seller's option, by seller, F.O.B. seller's plants. In no event, however, shall seller's obligations in this warranty exceed, in amount, the rental cost of the electrical equipment. Seller's obligations under this warranty shall not, in any event, exceed the amount of the original purchase price of the equipment. In the event that the costs of the repair or replacement would exceed the rental cost, the seller's obligations under this warranty shall be satisfied by a return of the rental cost.

D. Switchgear Warranty

The Switchgear you have purchased is warranted under the provisions of this warranty. For a period of EIGHTEEN MONTHS from the date of shipment or ONE YEAR from the date of energization, whichever occurs first, the equipment is guaranteed to operate in accordance with its nameplate when operated under normal load, usage, conditions and with proper care, installation and supervision. The seller shall have no liability for damage resulting from improper installation or operation of the equipment, voltage surges, negligence of others, accidents, natural forces, and operations beyond rated capacities, or misuse.

Any mechanical or electrical parts proving defective under such normal operation and installation will be repaired or replaced at seller's option, by seller, F.O.B. seller's plants.

10. LIMITATIONS ON WARRANTIES. SUNBELT shall have no liability for damage resulting from improper installation or operation of the

Sunbelt Transformer, Ltd. | Standard Terms & Conditions

equipment, voltage surges, negligence of customers or others, accidents, natural forces, and operations beyond rated capacities, or misuse.

Under no circumstances is SUNBELT responsible for any in/out charges associated with the connection reconnection, disassembly or rigging of the unit being serviced under this warranty. SUNBELT's obligations under this warranty shall not, in any event, exceed the amount of the original purchase price of the equipment. In the event that the costs of the repair or replacement would exceed the original purchase price, SUNBELT's obligations under this warranty shall be satisfied by a return of the purchase price.

SUNBELT shall not be liable for special or consequential damages or for delay in performance of this warranty. SUNBELT shall not be responsible for repairs or replacement made by others without SUNBELT'S consent.

SUNBELT does not warrant that the equipment will meet or comply with the requirements of any safety code or regulation of any state, municipality, or other jurisdiction.

The equipment has been sold based upon purchaser's independent determination that it is appropriate for purchaser's intended application. The giving or failure to give any advice or recommendation by SUNBELT shall not constitute any warranty or impose any liability upon SUNBELT.

The warranties made herein shall be IN LIEU of any other warranty, expressed or implied, including but not limited to any IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Such implied WARRANTIES OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

SUNBELT's salespersons may have made oral statements about the equipment which has been sold. Such statements do not constitute warranties, shall not be relied upon by the purchaser, and are not part of the agreement for sale. The entire agreement for sale is embodied in this document and any documents attached to it and such documents constitute a final expression of the party's agreement, and are a complete and exclusive statement of the terms and conditions of the agreement. There are no antecedent or extrinsic representations, warranties or collateral provisions that are not intended to be discharged and nullified by this document.

~~11. INDEMNITY AND RELEASE. CUSTOMER AGREES TO INDEMNIFY SUNBELT AND ITS PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, PARTNERS, ASSIGNS, OFFICERS, AND EMPLOYEES AND HOLD THEM HARMLESS FROM ANY AND ALL CLAIMS AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING FROM CUSTOMER'S USE OF THE EQUIPMENT. BY USING SUNBELT'S EQUIPMENT, CUSTOMER HEREBY AGREES TO RELEASE SUNBELT AND ITS PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, OFFICERS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, DEMANDS, DEBTS, OBLIGATIONS, DAMAGES (ACTUAL OR CONSEQUENTIAL), COSTS, AND EXPENSES OF~~

J1-2/7/18

EH

2/7/18

**Sunbelt Transformer, Ltd. | Standard
Terms &
Conditions**

~~ANY KIND OR NATURE WHATSOEVER THAT CUSTOMER MAY HAVE ARISING OUT OF OR IN ANY WAY RELATED TO SUCH DISPUTES AND/OR TO THE EQUIPMENT.~~ JI-2/7/18

EH 2/9/2018

12. LIMITATION OF DAMAGES. Customer's maximum remedy for a breach of these Terms is the recovery by Customer of the rental value of the Rental Equipment provided, or to be provided, by SUNBELT (which is involved in the breach) or the return of the purchase price for equipment purchased from SUNBELT (which is involved in the breach). CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT IN NO EVENT IS CUSTOMER OR ANY THIRD PARTY ENTITLED TO THE RECOVERY OF INDIRECT, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE, OR OTHER DAMAGES. Such incidental or consequential damages include, but are not limited to, the cost of labor, rework charges, delay, lost profits, or loss of good will. Customer agrees and acknowledges that no special circumstances are present or contemplated by the Parties that would entitle Customer to consequential or special damages.

13. NO LICENSE. Unless expressly provided, nothing within these Terms shall be construed as conferring Customer a license to use any of SUNBELT's or any third party's intellectual property and proprietary rights.

14. INTELLECTUAL PROPERTY. Customer acknowledges and agrees that SUNBELT's Equipment is protected by copyright, trademark, patent, or other proprietary rights of SUNBELT, its parent companies, subsidiaries, and affiliates. Except as expressly provided to the contrary, Customer agrees not to modify or alter any of the intellectual property made available by SUNBELT in connection with the Equipment. Customer further agrees not to adapt, translate, modify, decompile, disassemble, or reverse engineer the Equipment or any software used in connection therewith.

15. MODIFICATIONS. The terms, conditions, and limitations set forth in these Terms may be modified, altered, or added to at any time by a subsequent written instrument signed by an authorized officer of SUNBELT.

16. NO ASSIGNMENT. Customer agrees not to assign or otherwise transfer its rights or obligations under these Terms without prior express written consent of SUNBELT. These Terms shall be binding on and inure to the benefit of the Parties to these Terms and their respective successors and permitted assigns.

17. FORCE MAJEURE. SUNBELT shall not be liable for any delay in providing the Equipment or any other failures in performance due to acts beyond its control. Such acts shall include, but are not limited to, acts of God, embargo, stoppage of labor, failure to secure materials or labor from usual sources of supply, riots, acts of war, fire, communication line failures, and acts of governmental or military authorities.

18. MEDIATION. In the event of any dispute with respect to these Terms or performance of the Parties hereunder which cannot be reasonably settled by the Parties, SUNBELT and Customer agree to submit the dispute to mediation prior to initiating any litigation.

19. GOVERNING LAW. The Parties agree that the Terms were entered into in ~~Texas~~ Ohio and the Terms are to be governed and construed in accordance with the laws of the state of ~~Texas~~ Ohio. JI-2/7/18

20. TERMS ARE BINDING AND CONTROLLING.

EH 2/9/2018

Customer voluntarily elects to be bound by all of the terms and provisions contained herein. These Terms are controlling and supersede any prior agreement(s) made between the Parties hereto related to the same subject matter.

21. SEVERABILITY. Every provision of these Terms is intended to be severable. If any term or provision is illegal, invalid, or unenforceable, for any reason whatsoever, such illegality, invalidity, or unenforceability shall not affect the validity of the remainder. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of these Terms provisions similar in terms as necessary to render such provision legal, valid, and enforceable.

22. NON-WAIVER. SUNBELT's failure to enforce any or all of these Terms shall not constitute a waiver of its rights with respect to the same or any subsequent breach.

23. RELATIONSHIP OF PARTIES. Customer acknowledges and agrees that nothing herein shall be construed to create a partnership, joint venture, agency, or employment relationship between the Parties.

~~**24. ATTORNEY'S FEES.** If any action or proceeding shall be commenced to enforce these Terms, or any right arising in connection with these Terms, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party, reasonable attorneys' fees, costs, and expenses incurred by such prevailing Party in connection with such action or proceeding.~~

J1-2/7/18

(210) 2/9/2018

25. ENTIRE AGREEMENT. These Terms state the entire agreement between the Parties and supersedes all prior proposals and understandings, whether oral or written and all other prior communications between the Parties relating to the subject matter of these Terms.

AV Jones
Robert Wilson