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# Optimus Steel Selling 2 GE 76MVA Surplus Transformers in Online Auction

Tender

5:00pm CDT on Tuesday 28th March 2023

Optimus Steel, LLC

100 Old Highway 90, West Vidor, Texas, United States, 77662

Asset Locations:

100 Old Highway 90, West Vidor, Texas, United States, 77662

Lot #	Description	Number of Bids	Notes
1	Refurbished GE Transformer 76MVA	5	
2	Refurbished GE Transformer 76MVA	5	

Inspection Information:

Schedule by appointment only.

By checking the I AGREE button below, I acknowledge the following: I agree to adhere to the terms and conditions of this SALE AGREEMENT in its Entirety. 1. Delivery. Unless otherwise specified herein, Optimus Steel shall tender delivery of the Goods at Optimus Steel Location. Buyer may (a) pick up the Goods at Optimus Steel's Location at Buyer's sole responsibility and expense; or (b) make arrangements at Buyer's sole responsibility and expense for a carrier to pick up the Goods at Optimus Steel's Location. 2. Hazardous Chemicals and Other Hazardous Materials. Buyer is warned and acknowledges that the Goods may contain hazardous chemicals or other hazardous materials which may be, or may become by chemical reaction or otherwise directly or indirectly, hazardous to life, health, or property by reason of toxicity, flammability, explosiveness or other similar or different reasons, during use, handling, cleaning, reconditioning, disposal, or at any other time after the Goods leave the possession and control of Optimus Steel. BUYER HEREBY WAIVES ANY AND ALL CLAIMS, CAUSES OF ACTION, OR OTHER RECOURSE OF ANY NATURE AGAINST Optimus Steel RESULTING FROM THE PRESENCE OF THE AFOREMENTIONED HAZARDOUS MATERIALS, INCLUDING BUT NOT LIMITED TO, ANY AND ALL LIABILITY DIRECTLY OR INDIRECTLY RESULTING FROM THE FAILURE OF Optimus Steel TO GIVE MORE SPECIFIC WARNING WITH RESPECT TO INDIVIDUAL GOODS OR FROM THE INADEQUACY OF ANY WARNING. 3. Inspection, Indemnity and Disclaimer of Warranties. Buyer acknowledges that its representative(s) have been given full opportunity to inspect the Goods and make itself aware of the condition of the Goods as of the date of this Agreement. Buyer has not relied upon any oral or written representations of Optimus Steel or any of its employees regarding the condition or any uses, which may be made of the Goods. BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD OPTIMUS STEEL HARMLESS, INCLUDING BUT NOT LIMITED TO ATTORNEY FEES, COSTS AND EXPENSES, AGAINST ANY LOSS, CLAIM, LIABILITY, DAMAGE, OR EXPENSE, ARISING FROM OR RELATING TO THE PERFORMANCE OF THIS AGREEMENT AND TO THE USE OR POSSESSION OF THE GOODS SUBSEQUENT TO THE EFFECTIVE DATE OF THIS AGREEMENT. THIS INDEMNITY SHALL SURVIVE CLOSING. THE GOODS ARE HEREBY SOLD, ASSIGNED, AND TRANSFERRED TO BUYER "AS IS" AND "WHERE IS" WITH ALL FAULTS AND WITHOUT ANY WARRANTY, GUARANTEE OR REPRESENTATION. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND THE IMPLIED WARRANTY OF MERCHANTABILITY ARE HEREBY DISCLAIMED. [Optimus Steel EXCLUDES ANY WARRANTIES OF TITLE AGAINST ENCUMBRANCES OR AGAINST INFRINGEMENT AS SET FORTH IN § 2-312 OF THE UNIFORM COMMERCIAL CODE.] 4. Title and Risk of Loss. Title of the Goods shall be transferred from Optimus Steel to the Buyer upon Buyer's payment for the Goods. For instances where Optimus Steel is not responsible for loading the Goods into the Buyer's transportation vehicle, all risk of loss and responsibility for insurance and other protection of the Goods from damages, theft, loss or destruction shall pass from OPTIMUS STEEL to Buyer upon (a) commencement of preparation for loading, if preparation is required; or (b) commencement of loading, if no preparation for loading is required. For instances where OPTIMUS STEEL is responsible for loading the Goods into the Buyer's transportation vehicle, all risk of loss and responsibility for insurance and other protection of the Goods from damages, theft, loss or destruction shall pass from OPTIMUS STEEL to Buyer upon departure from OPTIMUS STEEL's premises. 5. Failure to Perform. In the event that Buyer fails to make payment for the Goods as required herein, OPTIMUS STEEL may, but is not required to, elect and pursue any of the remedies available to OPTIMUS STEEL under the Texas Uniform Commercial Code. 6. Payment and Payment Terms. Payment shall be by cashiers, certified check or irrevocable wire transfer in U.S. Currency within ten (10) days of the Effective Date hereof, but in no event later than the time of delivery of the Goods. 7. Authority. The signatories executing this Agreement on behalf of OPTIMUS STEEL and OPTIMUS STEEL represent and warrant that they are authorized to enter into this Agreement and to bind their respective companies to all the terms and conditions of this Agreement. 8. Survival. Buyer's indemnity and other obligations under this Agreement shall survive consummation of the transaction contemplated herein, and shall survive expiration, termination or cancellation of the Agreement and any amendments thereto. 9. Assignment. This Agreement is neither assignable nor transferable by Buyer, in whole or in part except with the prior written approval of OPTIMUS STEEL. 10. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Texas, without regard to the conflicts of law rules of that State. Any action of law or equity or judicial proceedings instituted by a party for the enforcement of this Agreement shall be instituted only in State or Federal Courts of the State of Texas, in Austin, Texas. 11. Entire Agreement. This Agreement represents the entire agreement and understanding between OPTIMUS STEEL and Buyer with respect to the subject matter hereof and supersedes all other oral or written provisions. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT. 12. No Consequential Damages; Limitations of Liability. Unless otherwise specifically provided for in this Agreement, in no event shall OPTIMUS STEEL be liable under any provision of this Agreement for any indirect, consequential, special, punitive or incidental damages or costs of Buyer, whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and Buyer hereby waives, releases and discharges any and all indirect, consequential, special, punitive and incidental damages and costs. Consequential damages shall include, without limitation, loss of revenue, loss of profits, cost of capital, loss of business reputation and opportunity. In no event shall OPTIMUS STEEL's liability under this Agreement be greater than the Purchase Price. 13. Acceptance of Responsibility and Assumption of Liability by Buyer; Release of Liability of OPTIMUS STEEL. In exchange for providing Buyer with access and entry to and from the Location for the purpose of picking up the purchased Goods, Buyer: a. Accepts all responsibility and assumes all liability for any bodily injury, whether to Buyer, to OPTIMUS STEEL's employees, or to any third party, arising out of actions taken by Buyer, or any carrier or other individual or entity acting on Buyer's behalf, for purposes of picking up the Goods at Location; and b. Accepts all responsibility and assumes all liability for any property damage, whether to Buyer's property, OPTIMUS STEEL property or that of a third party, arising out of actions taken by Buyer, or any carrier or other individual or entity acting on Buyer's behalf, for purposes of picking up the Goods at Location; and c. Agrees not to sue or make a claim against OPTIMUS STEEL, its employees, its legal representatives or third-parties for injuries or damages sustained as a result of the provision of such access. d. Releases and discharges OPTIMUS STEEL, its employees, its legal representatives and third-parties from liability for injuries and damages arising out of the provision of access to Location for purposes of picking up the Goods, including any losses caused by the negligence or through strict liability of OPTIMUS STEEL, its employees, its legal representatives or third-parties. Buyer understands and agrees that this release of liability extends to and includes those situations where OPTIMUS STEEL has agreed to assist with the loading, or otherwise facilitate the pick up of the Goods by Buyer at Location. 14. Buyer's Insurance. Prior to entering Location, Buyer shall obtain the insurance required by this Agreement and all insurance that may be required under applicable laws, written by insurance companies with a rating of at least an "A- VIII" in the latest edition of A.M. Best. Unless otherwise indicated below, each insurance policy of Buyer shall be written on an occurrence basis. Prior to entering Location and upon renewal of any of policies required in Section 15, Buyer shall furnish to OPTIMUS STEEL a completed certificate of insurance coverage which references this Agreement number and evidences the required minimum insurance and

extensions as specified in Section 15. Buyer shall specifically provide thirty (30) days prior written notice to OPTIMUS STEEL of cancellation, termination, non-renewal, or any material change of any insurance policies. If Buyer fails to obtain and keep in force the insurance required hereunder, OPTIMUS STEEL may obtain and maintain the required insurance in the name of Buyer and the cost thereof shall be payable by Buyer to OPTIMUS STEEL on demand. Failure to maintain the insurance coverage required in Section 14, 15, 16 or 17 or failure to comply fully with any of the insurance provisions as may be necessary to carry out the terms and provisions of this Agreement shall be deemed to be a material breach of this Agreement. Insurance requirements in this Agreement are independent of, and in addition to, Buyer's liability under this agreement. Nothing in this Agreement shall be deemed to limit Buyer's liability under this Agreement to the limits of the insurance coverages required hereunder. Buyer shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance required hereby.

**15. Minimum Coverage.** Without limiting any of the liabilities or other obligations of Buyer or any of its agents and representatives under this Agreement, Buyer and its agents and representatives shall obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to OPTIMUS STEEL, until all the obligations under this Agreement are satisfied, at least the following minimum insurance, which shall be independent of, and in addition to, Buyer's liability under this agreement: (a) Worker's Compensation Insurance, to cover Buyer's obligations imposed by federal and state statutes pertaining to Buyer's employees' injuries sustained while engaged in the performance of any services and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee and policy limit for bodily injury by disease. Minimum Employer's Liability insurance can be satisfied through a combination of primary Employer's Liability and Excess Liability insurance policies. (b) Commercial General Liability Insurance, or the equivalent, with a minimum limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, One Million Dollars (\$1,000,000) each organization or person for personal and advertising injury, and Two Million Dollars (\$2,000,000) general aggregate. The insurance shall provide severability of interests or cross liability provisions permitting one insured to bring a claim against another insured, and shall be endorsed to include OPTIMUS STEEL and its Affiliates and their respective directors, officers, managers, representatives, agents and employees as additional insureds with respect to this Agreement. The insurance maintained by Buyer shall be primary with respect to the interest of OPTIMUS STEEL, and any other insurance or self-insurance maintained by OPTIMUS STEEL or its Affiliates is in excess and shall not contribute to Buyer's insurance in all instances regardless of any like insurance that OPTIMUS STEEL or any of its Affiliates may have. Minimum Commercial General Liability insurance can be satisfied through a combination of primary Commercial General Liability and Excess Liability insurance policies. (c) Business Automobile Liability Insurance, or the equivalent, with limit of not less than One Million Dollars (\$1,000,000) per accident with respect to any vehicles used pursuant to this Agreement. The insurance shall be endorsed to include OPTIMUS STEEL and its Affiliates and their respective directors, officers, managers, representatives, agents and employees as additional insureds. The insurance maintained by Buyer shall be primary with respect to the interest of OPTIMUS STEEL, and any other insurance or self-insurance maintained by OPTIMUS STEEL or its Affiliates is in excess and shall not contribute to Buyer's insurance policies in all instances regardless of any like insurance coverage that OPTIMUS STEEL or any of its Affiliates may have. Minimum Commercial Automobile Liability insurance can be satisfied through a combination of primary Commercial Automobile Liability and Excess Liability insurance policies. (d) Umbrella/Excess Liability Insurance liability coverage with minimum limits of liability of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) policy aggregate in excess of the primary Commercial General Liability, Commercial Automobile Liability, and Employer's Liability Insurance. Insurance coverages and limits required herein should not in any way limit the extent of Buyer's responsibilities and liabilities specified elsewhere in this Agreement or those specified by law. Such insurance shall be written as follow-form underlying with an insurance coverage form that provides coverage that is at least as broad as the primary insurance policies. The insurance maintained by Buyer shall be primary with respect to the interest of OPTIMUS STEEL, and any other insurance or self-insurance maintained by OPTIMUS STEEL or its Affiliates is in excess and shall not contribute to Buyer's insurance policies in all instances regardless of any like insurance coverage that OPTIMUS STEEL or any of its Affiliates may have. (e) Buyer's Pollution Liability Insurance, or the equivalent, with a minimum limit of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate. The insurance shall include coverage for pollution losses, including but not limited to bodily injury, property damage, and financial loss arising out of Buyer's operations and completed operations and for sudden and gradual pollution arising out of Buyer's performance under this Agreement. (f) Property Insurance providing coverage for property in which Buyer retains the risk of loss including their own equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned or leased by Buyer. If Buyer chooses to self-insure any of the property described under this Section, it is agreed that Buyer shall hold OPTIMUS STEEL and its Affiliates and their respective directors, officers, managers, representatives, agents and employees harmless for any loss or damage to that property.

**16. Waiver of Subrogation.** Buyer on behalf of its insurers hereby waives the right of any recovery or subrogation against OPTIMUS STEEL, its Affiliates and consultants, and their respective directors, officers, managers, representatives, agents and employees. All insurance policies in any way related to this Agreement and secured and maintained by Buyer shall include clauses stating each insurer waives all rights of recovery, by subrogation or otherwise, against OPTIMUS STEEL and its Affiliates and their respective directors, officers, managers, representatives, agents and employees.

**17. Agents and Representatives.** Buyer shall require that each of its agents and representatives comply with the insurance requirements set forth in Section 14, 15 and 16. Before permitting any of its agents or representatives onto Location, Buyer shall obtain a certificate of insurance from each such agent or representative evidencing that such agent or representative has obtained the required minimum insurance and has added OPTIMUS STEEL and its Affiliates and their respective directors, officers, managers, representatives, agents and employees, and Buyer, as additional insureds with respect to the Commercial General Liability and Commercial Automobile Liability insurance, and any other insurance required in Section 15 in which additional insured status is required for OPTIMUS STEEL and its Affiliates and their respective directors, officers, manager, representatives, agents and employees. All policies of agents and representatives shall include a waiver of any right of subrogation of the insurers thereunder against Buyer and OPTIMUS STEEL and its Affiliates and their respective directors, officers, managers, representatives, agents and employees.

**18. Binding Effect.** This Agreement and all provisions shall inure to the benefit of and be binding upon the parties, their successors and permitted assigns.

**19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. OPTIMUS STEEL and Buyer may retain a duplicate copy (e.g. electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

**20. Amendment(s) in Writing.** This Agreement may not be amended except by a writing signed by duly authorized representatives of the parties.

**21. Restrictions Regarding Specially Designated Nationals.** The Office of Foreign Assets Control ("OFAC") in the Department of Treasury ("Treasury") publishes and regularly updates an integrated and comprehensive list of designated parties referred to as Specially Designated Nationals ("SDNs") with whom U.S. persons are prohibited from conducting transactions or providing services, and whose assets are blocked. Buyer represents and warrants it has checked the SDN list and that neither Contractor, nor any of its employees or subcontractors involved in this transaction, is currently on that list.

## Payment Terms:

All payments must be made through the Aucto Payment Gateway (APG). Buyers have below options to send payments: - Wire Transfer - ACH - Automated Clearing House (US) - EFT - Electronic Funds Transfer (Canada) - Credit Card (ONLY available for sale orders less than 5000 USD or 5000 CAD) - Instructions will be available via APG to winners after a sale has concluded. Aucto will NOT accept Cash, Check, E-Check, Cashier's Check or Bank Drafts as payment options. Unless specified by the seller in the "Sale Terms", all payments are due within 24 hours of a sale order being delivered. Please submit tax exemption forms to [payments@aucto.com](mailto:payments@aucto.com) with your sale-order number in the subject line. Local tax laws may apply to Aucto Buyer's Premium (Aucto BP or ABP). In most situations, tax on Aucto BP is not subject to tax exemption.

## Removal Terms:

Winning Bidder must make payment within 48 hours and schedule a pickup date for their lot within 14 days of verified payment. If paid and not picked up within the timeframe agreed to by both parties, Optimus Steel has the right to cancel the Sale at which point Buyer will not receive a refund. ANY LOT THAT SAYS "CONTACT FOR QUOTE" WILL HAVE A REMOVAL COST. THESE COSTS WILL BE PROVIDED PRIOR TO THE SALE ENDING. PLEASE BID ACCORDINGLY AND UNDERSTAND THERE WILL BE A COST TO REMOVE ASSETS FROM THE FACILITY.

## Payment Instructions:

Payments will be made through the Aucto Payment Gateway. Paying via credit cards will only be available for orders under \$5000.