

## TERMS AND CONDITIONS

Our proposal and pricing is based on this submittal and all terms and conditions herein forming part of the resulting contract by inclusion. Precision Heavy Haul, Inc. herein referred to as "PHH". \_\_\_\_\_ herein referred to as "Customer or Owner".

This quote is based on the dimensions herein. Any variations may affect the price and/or ability to complete the job.

This proposal is based on receiving the required permits and approval from all state and local authorities for routing. This rate is quoted according to current regulations. Any changes in routing or these regulations may affect the rate.

This proposal includes one bridge analysis for the route. In the event that the initial bridge analysis fails, and additional analysis is required for a different trailer combination. The customer will be billed cost plus 15%. (option)

Based on the national average for the Rocky Mountain region, a fuel surcharge may apply in addition to quote if diesel cost is more than \$2.50 per gallon at time of move. This average is adjusted weekly, based on the price per gallon of fuel.

PHH will allow \_\_\_ hours loading time and \_\_\_ hours unloading time for each load. If either the loading or unloading time exceeds these parameters, Customer will be billed additional time at our regular hourly rates based on the weight of the load. (option)

We have quoted no stand-by hours in our proposal. However, we will allow two hours free to you for project delays controlled or caused by \_\_\_\_\_. The third hour will be charged to \_\_\_\_\_ at \$\_\_\_\_\_ per hour which includes crew and equipment costs. (option)

Any delays not caused by PHH will be billed in addition to the above price quote.

It is the responsibility of the customer to post any bonds required for this move on any city, county, or state highways or structures. This cost is not included in this estimate.

Our proposal and pricing excludes responsibility for liquidated or consequential damages which may be levied against this project.

CONFIDENTIALITY: Customer and contractor shall make reasonable efforts to guard the trade secrets of each other and treat all such knowledge as confidential.

Rigging schemes for loading and offloading will be completed by PHH following our general rigging policies and procedures. Policies and procedures are available upon customer request. Additional rigging schemes or engineering will be billed at cost plus 15%.

Activities related to this move will begin upon receipt by PHH of a verbal or written purchase order or other written authorization to proceed. This pricing is submitted under PHH Contract Authority MC 216287.

The Customer assumes full responsibility of the transformer once it is released to the railroad. (option)

This proposal is subject to project and route survey review upon award. Additional route surveys and cost may be required before ordering permits.

This proposal is based on PHH transport being able to pull up next to the transformer foundation for unloading.

Project load radius is \_\_\_\_\_, increased load weight and or radius could impede our ability to successfully complete the required work with this project. (option)

This proposal is contingent upon State/ States of \_\_\_\_\_ bridge approval due to the weight of the equipment. The Department of Engineers will review the routing. If we are awarded this contract, we will require at least \_\_\_\_\_ lead time to construct the proper trailer combination. Notification of award is needed within two weeks from bid closing date. (option)

**SITE ACCESS/PREPERATION/DAMAGE:** PHH assumes no responsibility for site preparation and/or site damage. Customer will provide reasonable access for equipment and a safe place to work which complies with Federal OSHA. Firm, level, all weather roadways, access roads and ramps, and work areas will be provided for cranes and transport equipment. A clear, level, and compacted area must be provided by the customer. The haul routes provided at the substation will be capable of supporting the loads imposed on it by our equipment.

**LIFTING LUGS FURNISHED BY OTHERS:** PHH assumes no liability or responsibility for the adequacy of the design or strength of any of the lifting lugs embedded or attached to any object to which we attach for rigging, handling, transporting, holding, or lifting whether or not it is furnished by Customer, Owner, manufacture, or others.

This proposal is based on the load being self-supporting for transport. (option)

PHH proposes to ship the \_\_\_\_\_above based on the customer assuming full responsibility for the engineering and structural integrity of the \_\_\_\_\_. PHH will not assume any responsibility for any cracking, chipping, warping or breaking of the bridges due to deflection or load securement during loading, transporting and offloading. (option)

**ADDITIONAL LABOR:** If the Customer provides laborers to assist in any capacity, they are to be qualified. PHH assumes no liability for damages resulting from death or injury to the persons supplied by the Customer. PHH is not an employer of these individuals and assumes no responsibility for wages or taxes of any type. PHH reserves the right to approve of said laborers qualification and the right to reject unsafe, unqualified, or unsupervised personnel.

ACCEPTANCE: This proposal and pricing estimated herein are valid for acceptance within \_\_\_\_\_ days and are subject to equipment and resource availability. Should the work be extended beyond the period quoted, PHH reserves the right to negotiate the equitable escalation clause.

WORKING CONDITIONS: This proposal is based upon one (1) mobilization to the jobsite and is based upon \_\_\_\_\_ days to complete the entire project. PHH is to have a continuous and uninterrupted work schedule with the exclusive use of all required work areas.

Delays not the direct responsibility of PHH at either end of the project will be billed separately and payable upon completion of each move. (option)

PHH will require \_\_\_\_\_ working days written advance notification to mobilize our equipment. (option)

This bid does not include any overtime, weekends, or holidays. (option)

This proposal is based on rough setting the transformer on the pad with alignment to within +/- 1/2". Pad layout to be provided to PHH by others. (option)

This proposal does not include the assembly of the transformer. The assembly and installation of accessories, bushings, radiators, etc. will be by others and shall not interrupt PHH'S operation. (option)

Price is based on all accessory items to be shipped by truck to site to arrive concurrently with the transformer and rigging crew. (option)

OBSTRUCTIONS: Overhead and underground obstructions and facilities will be removed or made safe by others. PHH will not be held responsible or liable for damages to underground structures, voids, or utilities, or for damage to concrete or asphalt not specifically identified in advance. Protection of identified underground items, concrete or asphalt must be agreed to by all parties, in advance in writing.

INSURANCE AND INDEMNIFICATION: Customer will indemnify PHH against loss or expense, including cost of defense, by reason of liability imposed by law for damages resulting from death or injury to person, destruction of property occurring during the performance of the work under any contract made on the bases of this proposal, except to the extent that such death, injury, or damage shall have been solely due to the negligent act or willful misconduct of PHH as agents or employees. PHH liability and cargo, including indemnification is hereby limited to the sum of \$3,000,000.00 and is additionally limited by specific conditions and sublimates of our insurance policies.

The Customer will purchase and maintain a broad form All Risk Builder's Risk insurance policy upon the entire project, including work in progress and completed work, for the full cost of repair or replacement. Said insurance will include coverage for project delays. The policy will be endorsed to name Precision Heavy Haul, Inc. (PHH) and its subcontractors as additional named insured.

The policy coverage will insure against loss from the perils of fire and extended coverage and will include "All Risk" coverage for physical loss or damage including at least theft, vandalism, malicious mischief, transit, collapse, flood and earthquake. In the event of a loss, the deductible and uninsured perils will be paid by the customer.

The Customer further agrees to hold PHH harmless from any claim related to loss of profits or delay, regardless of fault, and agrees to bear all risk of such loss or damage. Customer acknowledges that PHH is unable to insure against such a risk or loss, and that this agreement to hold PHH harmless is a material term to this contract.

PAYMENTS: All invoices are due and payable upon the completion of each move at the time load is delivered. (option)

Progress payments will be made to PHH. (option)

All invoices are due and payable within 30 days of completion. There shall be no retention unless agreed to in writing. (option)

Any unpaid balance shall bear interest from the due date until paid at the rate of 1-1/2% per month. (option)

Any unpaid balance shall bear interest from due date until paid in full, at the rate of eighteen percent (18%) per annum. (option)

In the event account is referred to collection, the Customer agrees to pay collection cost and attorney fees.

PHH specifically rejects delay clauses which contain "No pay for delay" language and will be paid for delays or standby other than force majeure causes. PHH also rejects any "Pay when paid" language.

In the event invoices are not paid when due, PHH reserves the right to stop work until payment is received. (option)

Customer agrees to standby charges that may accrue during this period.

LIQUIDATED AND CONSEQUENTIAL DAMAGES: PHH has made no contingency in either proposal or pricing for indirect, liquidated, or consequential damages, and will assume no responsibility for liability for either. References to said damages in contract documents are not acceptable or binding.

HAZARDOUS MATERIALS: The handling or transportation of any hazardous materials, or equipment, or containers containing hazardous materials, is specifically excluded from PHH scope of supply. These materials may include, but are not limited to the following: Asbestos, fuels, oils, explosives, and materials known to be cancer causing carcinogens. Workers Compensation claims resulting from the handling of such materials will not be excluded from subrogation by any waiver furnished by PHH.

The Customer will advise PHH in writing prior to the commencement of PHH work of the presence or suspected presence of hazardous materials, if any. A written resolution of the disposition of hazardous materials will be provided to PHH prior to the start of the work that is subject of this proposal.

**FORCE MAJEURE:** An unforeseeable event beyond the reasonable control of and not the fault of or caused by the negligence of the affected Party and which the affected Party is unable to overcome by the exercise of its reasonable diligence. Force Majeure includes the following to the extent they also meet the foregoing requirements: a restraint imposed by government, act of a public enemy, war, blockade, insurrection, riot, Act of God, epidemic, landslide, earthquake, fire, storm, lightning, flood, unscheduled plant outage or breakdown. Force Majeure events specifically exclude the following: (a) strikes and work stoppages, (b) economic hardship, and (c) changes in Applicable Law.

**GOVERNING LAW AND VENUE:** In any legal action which may result from a contract entered into on the basis of this proposal, the laws of the State of Arizona shall govern such action. Venue for legal actions, if any, will be Phoenix in Maricopa County, Arizona. PHH will entitle to actual attorney fees and cost of litigation to enforce the terms contained herein.

**SEVERABILITY:** If a court or regulatory agency having jurisdiction over the Parties determines that a condition of this Agreement, or any part thereof, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from the Agreement, and the remaining conditions, or parts, shall be unaffected and shall be enforced to the fullest extent allowed by Applicable Law. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of the Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

**ENTIRE AGREEMENT:** This Agreement represents the entire agreement and understanding between PHH and Customer with respect to the subject matter hereof and performance of the Services, and supersedes any prior understandings, representations or agreements, whether verbal or written, prior to execution of the Agreement. If any services were performed for Customer under verbal agreement or under a limited notice to proceed prior to the execution of this Agreement, then this Agreement shall apply thereto in the same manner as if made before such services were performed.

**WARRANTY LIMITATIONS:** Warranty of service provided is limited to acceptance upon completion.

**VENUE:** In any legal action which may result from a contract entered into on the basis of this proposal, the laws of the State of Arizona shall govern such action. Venue for legal actions, if any, will be Phoenix in Maricopa County, Arizona. PHH will entitle to actual attorney fees and cost of litigation to enforce the terms contained herein.