

**Date of Sale:**[illegible]

**ASSET RECOVERY & RECYCLING**  
Surplus Sales Form

**GENERAL TERMS AND CONDITIONS of SALE**

**Warranty Disclaimer:** DUKE ENERGY (“DUKE” ) MAKES NO REPRESENTATIONS, GUARANTEES OR WARRANTIES OF THE GOODS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY LAW OR OTHERWISE, INCLUDING THOSE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, CAPACITY, USEFULNESS, OR TRADE USAGE WHICH ARE EXPRESSLY DISCLAIMED. **THE GOODS ARE SOLD ON AN “AS IS,” WITH ALL FAULTS BASIS.**

**Limitation of Liability:** IN NO EVENT SHALL DUKE BE LIABLE FOR ANY LOSSES OR DAMAGES WHATSOEVER WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) UNDER ANY WARRANTY OR OTHERWISE ARISING OUT OF OR RELATING TO BUYER'S USE OF THE GOODS AND BUYER HEREBY RELEASES DUKE FROM ANY LIABILITY FOR ALL SUCH LOSSES AND DAMAGES. IN NO EVENT SHALL DUKE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER WHETHER BASED ON CONTRACT, TORT, (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY OR OTHERWISE ARISING OUT OF OR RELATING TO THE GOODS OR THIS AGREEMENT AND BUYER HEREBY RELEASES DUKE FROM ANY LIABILITY FOR ALL SUCH LOSSES AND DAMAGES. IN ANY EVENT, DUKE'S TOTAL CUMULATIVE LIABILITY FOR CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) UNDER ANY WARRANTY OR OTHERWISE ARISING OUT OF OR RELATING TO THE GOODS OR THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE AMOUNT OF THE PURCHASE PRICE FOR THE GOODS OUT OF WHICH THE LIABILITY ARISES, AND BUYER HEREBY RELEASES DUKE FROM ANY LIABILITY IN EXCESS OF SUCH AMOUNT.

**Indemnification:** Buyer shall indemnify, defend and hold Duke harmless from any and all losses, damages, injuries (including death), claims, suits, penalties, costs, expenses (including attorney's fees and costs of investigation and defense) and all other liabilities whatsoever, whether direct or indirect, arising out of or relating to Buyer's transportation, use, control, ownership, sale or transfer of the Goods, any actions or operations performed by the buyer and any fault or negligence of Buyer; provided, however, this section shall not apply to the extent any loss, damage, injury, claim, suit, penalty, cost, expense or liability arises out of Duke's sole negligence. Buyer agrees to remove all Duke Energy, Progress Energy, and/or FPC identifying decals, logos, etc. prior to use or resale.

**Force Majeure:** In no event shall Duke be liable or responsible for any loss, damage, or other consequence of any failure or delay in fulfilling any or all of Duke's obligations hereunder to the extent that such failure or delay is due to: acts of god or unusual weather conditions; fires; strikes or other labor disputes; loss of or damage to the Goods; delays in transportation; riots; thefts; accidents; equipment breakdowns; acts or failures to act by Buyer; acts or failures to act by the Government, its agencies or officers; or any other cause, existing or future, beyond Duke's reasonable control.

**Failure to Perform:** Any failure to perform on the part of the Buyer within the time stated will be just cause for cancellation of the award of sale by Duke. In such case the Goods may be resold. In the event payment has been made but the Goods have not been removed by the agreed upon date, Buyer agrees to pay Duke \$ 30.00 per day until the goods are removed. Payment of this charge in full shall be made prior to removal of the Goods.

**Site Access:** Buyer agrees that its employees and agents shall comply with Duke's policies, rules and regulations while at the site. Furthermore, Buyer agrees to comply with any directions given by Duke while at the site.

**Risk of Loss:** Title to and risk of loss of the Goods shall pass to the Buyer upon loading of the Goods by Duke onto the carrier at the site.