



## TERMS AND CONDITIONS OF SALES

The word "Seller" shall mean TPS INTERNATIONAL, INC. The word "Purchaser" shall mean the party to whom the accompanying quote is submitted or from whom a purchase order is accepted by Seller.

### 1) ACCEPTANCE

Unless otherwise specified, Seller's quote will become void unless accepted by Purchaser within fifteen (15) days of receipt. Purchaser's order must be signed and indicate acceptance of Seller's proposal, and can be accepted in writing only at Seller's place of business. The resulting contract shall in all respects be governed and interpreted according to the laws of the State of Wisconsin, U.S.A. After acceptance, Purchaser's right thereunder may not be sold or assigned to any other party without written consent by Seller. Any Terms or Conditions of Purchaser's order that are in any way in conflict, inconsistent or in addition to the Terms and Conditions set forth herein shall not be binding on Seller and shall in no way be considered applicable to the sale, unless expressly agreed to in writing by Seller. No changes to the proposal, quote, purchase order or these Terms and Conditions will be valid unless such changes are in writing and signed by both Seller and Purchaser.

### 2) PRICES

Unless otherwise specified in writing, prices quoted are F.O.B. Seller's facility in Sussex, WI.

### 3) TAXES

Purchaser agrees to pay any additional sales tax, other taxes or any form of surcharges levied on the transaction by local, state or federal governments that are not included in the quoted prices. Seller may include any additional taxes in a separate invoice, and Purchaser will reimburse the taxes upon receipt of the invoice.

### 4) TERMS OF PAYMENT

Unless otherwise specified in writing by Seller, Terms of Payment are Net 30 days from date of invoice. If payment of any amount owed Seller is not paid when due, Seller reserves the right (without limitation to its other rights) to suspend further performance or delivery until such time as payment in full is made. Purchaser agrees to pay a 2% per month service and late charge on all unpaid balances.

### 5) DELIVERY & TITLE

Delivery dates are not guaranteed, are approximate and are those available at the time of the proposal and/or quotation and are subject to revision at Seller's sole discretion (1) before Seller's acceptance of an order due to: (a) delay in receipt of Purchaser's signed order or final and complete specifications, or (b) Seller's previous acceptance of other orders whether from Purchaser or any other entity; (2) at any time due to causes beyond Seller's control, including but not limited to fire, strikes, war, riots and any restriction imposed by authority of any government; (3) changes in specifications/requirements upon which Seller's quotation was based; (4) untimely receipt of material from Purchaser, if applicable; and (5) engineering changes requested by Purchaser after entry of order. Seller shall be obligated to deliver goods to Purchaser's common carrier at the F.O.B. point and all risk of loss passes to Purchaser immediately upon delivery to the common carrier. Unless otherwise agreed in writing, Purchaser agrees to pay all transportation charges incurred after goods are delivered to the common carrier, including any and all inspection/unloading/set-up costs and other incidental expenses. Should Seller pay any of these expenses in advance, Seller shall be entitled to invoice for these costs and Purchaser shall pay this expense upon receipt of invoice. Title to the goods remains with Seller unless and until full payment is made. **In no event shall Seller be held liable for any damages (including consequential damages) or contingent expenses caused by delays in delivery.**

### 6) INSURANCE

Purchaser must obtain insurance if it wishes to protect from losses or damages to goods incurred during transportation after the F.O.B. point. Purchaser shall bear all risk of loss after the F.O.B. point. Purchaser shall hold Seller harmless for all losses or damages to the goods and parts incurred during transport after the F.O.B. point.

### 7) INSPECTION / ACCEPTANCE OF GOODS BY PURCHASER

(a) Duty to Inspect: The goods sold under this contract must be inspected by Purchaser immediately upon delivery at Purchaser's facility. Seller must be notified of apparent damage to crates immediately upon receipt and shall make damage notations on the delivery receipt. Other inspection for damage must take place within 5 days following delivery. Failure of Purchaser to inspect the goods within five (5) days after delivery constitutes a waiver of Purchaser's right to inspect the goods and shall be deemed equivalent to acceptance as defined in Article 2-206 of the UCC; (b) Notice of Defect: Purchaser must give written notice to Seller within fifteen (15) days after receipt of the goods of any claims for damages, errors or shortages in goods delivered. Failure to make such a claim within fifteen (15) days shall constitute irrevocable acceptance of the goods; and (c) Revocation of Acceptance: Once Purchaser has inspected the goods and/or has elected not to make any written notice of defect as required herein, any right to revoke acceptance expires at the close of (3) three business days.

### 8) LIMITED WARRANTY

The goods delivered hereunder are subject to the written limited warranty attached or is as warranted by the original manufacturer, assuming normal and proper usage by Purchaser only. Under this limited warranty, the exclusive remedy of Purchaser shall be the right to have, free of charge, a repair or replacement of any goods found to be defective within the warranty period. Such remedy shall be made, in the sole judgment of Seller, either by replacement or repair. Seller must be informed of the defects in writing in accordance with these Terms and Conditions and the goods returned, freight insured and prepaid by Purchaser. Purchaser represents that it will use competent personnel to set-up, operate and maintain its equipment, including the installation and use of the goods. Failure to do so shall result in the warranty being void. For the warranty to apply, Purchaser shall maintain preventative maintenance and normal maintenance logs and shall comply with all the applicable service and maintenance requirements provided for by the manufacturer

or in the product manual. **THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OTHER THAN THOSE SPECIFICALLY CONTAINED IN THIS PROVISION AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXCEPT THE LIMITED WARRANTY STATED IN THIS PROVISION.**

**9) CANCELLATIONS**

All work in progress to fill any order that is cancelled shall be paid in full by Purchaser on the basis of actual costs incurred and overhead expenses determined in accordance with good accounting practice, plus a reasonable restocking charge.

**10) RETURN OF GOODS OR PARTS**

Approval for return of goods, whether under warranty or otherwise, must be obtained from Seller in advance of shipment. All goods returned must include reference to all pertinent order, part, model and serial numbers, as well as details of the system from which the goods were removed, as applicable. Except for items under warranty, costs for placing goods returned for credit in a saleable or useable condition will be charged to Purchaser. Risk of loss during return shipment will be borne by Purchaser who agrees to have insurance to cover any loss or damage in return shipment. Goods or parts accepted for return, which are not covered by warranty, are subject to a minimum restocking charge, plus all transportation charges. Goods built to special specification or modified goods cannot be returned for credit. Electrical parts/components not covered under warranty are not returnable unless defective. All returns will be tested.

**11) PURCHASER'S INSOLVENCY**

If Seller discovers Purchaser to be insolvent, he may: (a) refuse to deliver any goods except in exchange for cash; (b) stop work; (c) stop delivery pursuant to Article 2-702 of the UCC; or (d) where Seller discovers that Purchaser has received goods on credit while insolvent, Seller may immediately reclaim the goods. This provision shall have no effect on Seller's right to require assurance under Section 2-609 of the UCC or Letter of Credit.

**12) SELLER'S REMEDIES AND DAMAGES**

If Purchaser refuses to accept without legal justification any delivery of goods or fails to make any payments when due under the contract or any other contract with Seller, the price of the goods shipped or to be shipped under the contract shall become immediately due and payable, and Seller shall have the right to withhold any further delivery until such payment in full has been made. In case of delay in acceptance, Seller shall have, in addition to other legal remedies, the right to warehouse the goods and Purchaser shall pay Seller charges as may accrue by reason of such delay. Seller may stop goods and/or parts in transit pursuant to Section 2-705 of the UCC.

Where Seller is entitled to damages under Section 2-703(e) of the UCC, the damages will, at Seller's option, either equal the difference between the market price and the purchase price or equal to the profit that Seller would have realized on this sale as described in Section 2-703(2) provided, however, that goods are returned to Seller. Seller, in addition to the above damages, may recover any incidental damages as described in Section 2-710 or available under applicable law. In the event of a breach by Purchaser, Seller is entitled to recover, incidental damages, including but not limited to: (a) salesmen's or other commission; (b) care and custody of the goods after Purchaser's breach (calculated at 1/2 of one percent for each day goods are kept); (c) if delivery is stopped while goods are in hands of a carrier, \$5,000 or five percent of the face value of the purchase order whichever is greater; (d) all transportation charges; and (e) any out-of-pocket expense actually incurred by Seller.

**13) LIMITATION OF SELLER'S LIABILITY**

IN NO EVENT, REGARDLESS OF THE BASIS OR CAUSE, SHALL SELLER BE LIABLE FOR: A) LATE DELIVERY OR OTHER PENALTY OF ANY DESCRIPTION; B) INDEMNIFICATION OF PURCHASER, PURCHASER'S CUSTOMERS OR OTHERS FOR COSTS, DAMAGES OR EXPENSES ARISING OUT OF OR RELATED TO THE GOODS; OR C) LOST PROFIT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES UNDER ANY CIRCUMSTANCE. SELLER'S MAXIMUM LIABILITY, INCLUDING DIRECT AND ALL OTHER AVAILABLE DAMAGES, SHALL NOT EXCEED THE PURCHASE ORDER PRICE. UNLESS A SHORTER TERM IS PROVIDED FOR UNDER APPLICABLE LAW, ANY ACTION AGAINST SELLER MUST BE BROUGHT NO LATER THAN EIGHTEEN(18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

**14) JURISDICTION**

All legal action commenced in connection with any transaction to which these Terms and Conditions apply or the delivery of any goods to Purchaser must be brought in the Circuit Court for Waukesha County, Wisconsin, which shall have exclusive jurisdiction over disputes arising out of this sale transaction.

**15) INTEGRATION CLAUSE**

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of the buy/sell agreement. No course of prior dealings between the parties shall be relevant to supplement or explain any term used in this agreement.

Rev. February, 2003