

STANDARD TERMS AND CONDITIONS OF SALE

1) APPLICABILITY

These Standard Terms and Conditions of Sale form part of each order or quotation for Total Meter Services Inc.'s goods or services. Any Contract made between Buyer and Total Meter Services Inc. is expressly conditioned on Buyer's assent to these terms and conditions and to Total Meter Services Inc.'s review and approval of Buyer's credit. No oral representation, warranty, collateral agreement, condition or term shall bind Total Meter Services Inc. unless expressed and acknowledged in writing by Total Meter Services Inc.

2) ORDER ACCEPTANCE

Orders shall not be deemed to have been accepted by Total Meter Services Inc. until acknowledged in writing whereupon these terms and conditions shall apply. Omission by Total Meter Services Inc. to object to any standard provision of Buyer's order shall not be construed as acceptance thereof or as waiver of these terms and conditions. It is the responsibility of the Buyer to identify contrary provisions of its own terms and conditions of purchase with these Standard Terms and Conditions of Sale.

3) CHANGE ORDERS

Any changes or revisions to Buyer's order after acceptance by Total Meter Services Inc. shall require Total Meter Services Inc.'s written acknowledgement and any additional costs as a result of such change or revision shall be borne by the Buyer. Total Meter Services Inc. shall have no obligation to proceed with such change order until there is written acknowledgement between Buyer and Total Meter Services Inc. to such change including change in price and delivery schedule.

4) WARRANTY

Total Meter Services Inc. warrants that the goods sold to Buyer will be free from defects in material and workmanship for a period of 12 months and installation or connection of related and/or supplied material (if any) for 3 months from date of delivery ("warranty period"). If, within the warranty period, Total Meter Services Inc. receives written notice promptly after the discovery of any defect in the material or workmanship in the goods warranted by Total Meter Services Inc. herein, Total Meter Services Inc. shall correct such defect, at Total Meter Services' option, either by

- a) making available (ExWorks Total Meter Services Inc., Toronto) repairs or replacement parts; or
- b) on site repair or replacement of any defective parts exclusive of mileage, transportation, sustenance or other reasonable expenses (including, without limitation, travel expenses and labour costs).

This warranty specifically excludes any supplied materials or equipment from the buyer to be installed on, or connected to the goods supplied by Total Meter Services Inc.

Except as otherwise expressly set herein, there are no other warranties, express or implied including the warranties of merchantability or fitness for a particular purpose. Liability of Total Meter Services Inc. under this warranty is conditioned upon the goods being handled, installed, used and maintained in accordance with industry standards, API standards or written or verbal instructions provided or approved in writing by Total Meter Services Inc. Total Meter Services Inc. makes no warranties which extend to damage to the goods due to deterioration or wear occasioned by (petro-)chemicals, abrasion, corrosion or erosion; improper installation, use, operation or maintenance, abnormal conditions of temperature or dirt, or operations of the goods above or below rated capacities or otherwise in any improper manner. The maximum liability of Total Meter Services Inc. is limited to the price paid for the goods or services and in no circumstances shall Total Meter Services Inc. become liable for any special, consequential or any other damages.

If goods are returned to Total Meter Services Inc. and completely reconditioned, this warranty shall apply thereto the same as for new goods but this warranty shall not apply to goods repaired or reconditioned other than by Total Meter Service Inc. Total Meter Services Inc.'s sole responsibility for defects in material and workmanship in the goods and Buyer's exclusive remedies hereunder shall be limited as herein provided and Buyer accepts this warranty in lieu of all other warranties or guarantees,

express or implied by trade, custom, common-law or statutory enactment, all of which are accepted by the Buyer to be inapplicable.

5) PAYMENT

Unless otherwise stipulated by Total Meter Services Inc. in writing, payment terms are net thirty days from date of invoice. Overdue balances shall bear interest at the rate of 2% per month (effective annual rate-24% per annum). Payment schedules (e.g. full, partial, deposits, holdbacks, etc.) included in the quotation by Total Meter Services Inc. may be invoiced separately. Deposit payments are due upon receipt. No work will be undertaken until deposits have been cleared by Total Meter Services Inc financial institution

6) STORAGE

Shipments delayed or held by Total Meter Services Inc. at the request of the Buyer (through no fault of Total Meter Services Inc.) shall be invoiced in full and become due and payable as though shipment were made. Total Meter Services Inc. may hold or store such goods for Buyer at the Buyer's risk and account. Buyer will pay any storage, handling and re-handling charges and continue to make payment according to the payment terms arranged with Total Meter Services Inc.

7) DELIVERY AND SHIPMENT

Delivery to carrier at point of shipment shall constitute delivery to Buyer and Buyer shall assume all risk for subsequent loss or damage. Any changes in freight charges shall be the responsibility of the Buyer. Total Meter Services Inc. shall not be responsible for any loss or damage during shipment and any such claim by Buyer shall be made directly on the carrier. Any claim by Buyer for shortage or incorrect goods must be submitted to Total Meter Services Inc. in writing within 30 days of Buyers receipt of shipment and failure to notify Total Meter Services Inc. accordingly shall be construed as Buyer's unqualified acceptance of delivery and waiver of any such claim. All delivery lead times and dates are Total Meter Services Inc.'s best estimates only and Total Meter Services Inc. shall not incur any liability arising from failure to deliver according to such estimates.

8) CANCELLATION:

All orders received and acknowledged by Total Meter Services Inc. on which there has been a commitment of capital or credit (including without limitation, deposits, payments in full, consumption of in stock material, goods or labour, financial charges, or any other measurable assumption of risk), for goods and materials, partial or full delivery, may not be cancelled by Buyer unless with Total Meter Services Inc.'s prior written authorization and only upon such terms as will indemnify and reimburse Total Meter Services Inc. for all loss or damage resulting therefrom including without limitation, Total Meter Service Inc.'s direct costs incurred, overhead, reasonable contract profit, costs and expenses to which Total Meter Services Inc. has become committed for fulfillment of the Buyer's order prior to cancellation.

9) SECURITY INTEREST

Total Meter Services Inc. reserves a security interest in all goods delivered hereunder until it receives full payment. If Buyer fails to make any payment when due, then in addition to all other remedies available to Total Meter Services Inc. either at law or otherwise, Total Meter Services Inc. may at its option terminate the contract or suspend the delivery of further goods to Buyer pending

- a) the cure of any such default by Buyer or
- b) receipt of cash for each such delivery made or to be made or
- c) the receipt of other security reasonably satisfactory to Total Meter Services Inc.

10) TAXES, DUTIES, TARIFFS, FEES, LICENSES, CHARGES

In addition to the price agreed to between Buyer and Total Meter Services Inc., Buyer shall pay any taxes, duty, tariffs, fees, licenses, charges, assessments, bond or levies, imposed by any governmental authority on the sale, import, export, delivery,

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installation, approval, use or other handling of the goods sold hereunder, unless indicated otherwise by Total Meter Services Inc.

11) FORCE MAJEURE

Total Meter Services Inc. shall not be responsible for any losses or damages to Buyer, or any third party, occasioned by delays in the performance or the nonperformance of any of Total Meter Services Inc.'s obligations or loss of or damage to any of the goods sold herein, when caused directly or indirectly by acts of God, substantial changes in general economic conditions, acts of government or military authority, casualty, riot, acts of Buyer, strikes or other labour difficulties, shortages of labour, equipment, supplies or transportation facilities, or any other cause beyond Total Meter Services Inc.'s control for whatever reason.

12) LIMITATION ON LIABILITY

Under no circumstances whatsoever shall Total Meter Services Inc. responsibility for any claims, damages, losses or liabilities arising out of or related to its performance or non-performance of buyer's order or related to the goods covered hereunder, including but not limited to any correction of defects in the goods under the warranty or any applicable performance guarantees exceed the lesser of the purchase price or \$2,000,000.00. Further, in no event shall Total Meter Services Inc. be liable for any special, indirect, incidental, consequential, or punitive damages of any character, including but not limited to loss of use of productive facilities or equipment, lost profits, property damages, personal injuries or lost production, whether suffered by Buyer or any third party, irrespective of whether claims or actions for such damages are based upon contract, warranty, negligence, strict liability or otherwise.

13) BLANKET ORDERS

Non-compliance with, cancellation, or substantial reduction of blanket order type agreements (including without limitation agreements including pro-rated fees and charges, the provision of goods, services, or materials in bulk) are subject to a restocking fee or percentage fee of total order price as set by Total Meter Services Inc.

14) CONTRACT INTERPRETATION

All contracts, schedules, agreements or amendments thereto shall only be binding upon the Buyer and Total Meter Services Inc. or either of them provided they shall be in writing and acknowledged by both parties and any construction or interpretation thereof shall be determined in accordance with the laws of the Province of Ontario, Canada.

15) INTELLECTUAL PROPERTY

TMS is a knowledge based company with a real and significant body of knowledge it lays claim to as its own Intellectual Property

TMS retains and reserves all rights to intellectual property used or created for the fulfillment of an order. Intellectual property includes, but is not limited to, designs, concepts, ideas, drawings, sketches, prototypes, calculations, notes, explanations, patents, trademarks, copyrights, software, computer programs, programmable code, ladder logic, computer instructions, displays, computer screen representations, electronic files, etc. Intellectual Property can also be described as an intangible asset valuable for application to future works with other parties.

In the event that TMS conceives of, discovers, invents or develops any new knowledge through modifications or improvements to any idea, process, design, program in fulfillment of an order, the Buyer waives all right and title (whether moral or legal) to such knowledge and agrees TMS can and will exercise a perpetual and exclusive right to enjoy and exploit such knowledge for any purpose and for any other person or entity, including without limitation TMS.

a) Designs, Drawings, Prototypes.

Intellectual Property includes products or services purchased that include, but are not limited to, designs, drawings, or prototypes are sold on a license to use basis. The buyer explicitly acknowledges that these products or services are not

"works for hire". Renditions of the designs, drawings, prototypes, etc. are provided in non-editable formats for use by the buyer. Buyer agrees not to remove TMS marks, disclaimers, notes etc. regarding ownership of the proprietary information contained within the product or service.

b) Automation

Intellectual Property also incorporates "Automation" products or services which include, but are not limited to, Software, Programmable Logic Controllers (PLC and SCADA) devices and programs, electrical relays, control panels, I/O devices, digital displays, designed and built to provide control or recording of machine related events.

c) Integration

Intellectual Property also incorporates "Integration" in both tangible and intangible representations. Integration is the connection of different technologies (whether mechanical, electrical, or electronic) with multiple functions into on or more operating systems. Generally, integration involves connecting devices to power sources to operate, to mechanical, electrical, or electronic pathways, circuits or loops to perform their function, and send and receive signals to control the power, function, and signals. Integrated TMS products require special performance agreements or contracts to explain special Terms and Conditions of Sale.

d) Software

Should the product(s) covered by these terms and conditions include TMS Intellectual Property as "Software" the buyer explicitly agrees to the following:

- i) "Software" means a compiled computer or processor program and computer database(s), including Software or firmware embedded in semiconductor chips created or utilized by TMS
- ii) "Source Code" means a computer program that is in a form that reveals the functional operation of the computer program to one skilled in the art
- iii) "End User" means Licensee, the entity licensed to use the Product.
- iv) "EULA" or "License Agreement" means an End User License Agreement
- v) "Software Product" or "Software Products" mean Software, and/or services and/or supporting documentation
- vi) "Escrow" is a third party service which stores operable versions of any TMS software license or source code in a secure storage facility for the purpose of re-installing or fixing the software to function properly (as specified in the EULA) under specific conditions. Specifically, software held in escrow cannot be accessed to improve or extend the functions of the software beyond the ELA specifications.

e) License(S) Granted

The purchase of a TMS product or service incorporating Intellectual Property is the purchase of a license to use the Intellectual Property.

- i) All TMS Intellectual Property offered for sale or lease is an offer to grant a single license to the Buyer (End User) to use a copy of same under the terms stated within these Terms and Conditions or the TMS6000 End User License Agreement.
- ii) Buyer is granted a non-exclusive, royalty-free, non-transferable license to use the Intellectual Property and any subsequent updates thereof, delivered under the End User License Agreement
- iii) This grant of license specifically excludes Source Code programs.

Third (3rd) Party Software licensing is governed by the proprietary licenses of each software application