



TMS INTERNATIONAL, LLC

TERMS AND CONDITIONS OF SALE

- 1. CONTRACT.** These terms and conditions, together with the terms set forth in the sales order (collectively, the "Terms"), (a) constitute the entire contract between TMS International, LLC (f/k/a Tube City IMS, LLC) ("Seller") and the Buyer named in the sales order ("Buyer") with respect to the transaction described in the sales order, regardless of whether Buyer has acknowledged acceptance of the sales order or these terms and conditions, and (b) expressly limit Buyer's acceptance to the Terms. If the sales order is construed as an acceptance or a confirmation acting as an acceptance, then Seller's acceptance is **EXPRESSLY CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING.** Further, if the sales order is construed as the offer, acceptance thereof is **EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND SELLER HEREBY EXPRESSLY OBJECTS TO ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS CONTAINED IN ANY WRITING FROM BUYER; NO SUCH ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS SHALL BE BINDING ON SELLER UNLESS AGREED TO IN WRITING BY SELLER.** Seller's acceptance of Buyer's purchase order or commencement of performance shall not constitute acceptance of any of Buyer's terms and conditions. In any event, Buyer's assent to the Terms shall be conclusively presumed from Buyer's (a) receipt of the sales order without written objection sent to Seller within ten (10) days after receipt of same, (b) instructing Seller to begin to procure, prepare and / or ship any of the material after receipt of the sales order, or (c) acceptance of all or any part of the material ordered. Any reference to the contract shall mean the application of the Terms to the specific order referenced in the order confirmation. Seller may reject any order from Buyer for any reason.
- 2. PRICE AND PAYMENT.** If an F.O.B. point is not otherwise specified in the sales confirmation, the price stated is F.O.B. origin point. Payment terms are as set forth in the sales order. If no payment terms are specified in the sales order or another agreement between Buyer and Seller, the net amount shall be payable within thirty (30) days after the date of Buyer's receipt of the material.
- 3. WARRANTIES AND REMEDIES.**

 - a. Warranties and Sole Remedy.** Seller makes no warranties with respect to the material sold hereunder except that (i) Seller holds and will pass marketable title to the material, and (ii) the material shall substantially conform to the commercial grade of material specified in the sales order (if specified). The **SOLE AND EXCLUSIVE REMEDY** on which Buyer may rely for a breach of these warranties shall be Seller's cure of the non-conformity or the replacement of the nonconforming material, in either case, as determined by Seller. The warranties under this Section 3(a) are provided only to Buyer and are nontransferable.
 - b. Disclaimer of Warranties.** Except as set forth in Section 3(a) of these terms and conditions, **SELLER MAKES NO WARRANTIES WITH RESPECT TO THE MATERIAL SOLD HEREUNDER. IN ALL OTHER RESPECTS, THE MATERIAL IS SOLD "AS IS."** SELLER DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES IMPLIED BY LAW, CUSTOM OF THE TRADE, COURSE OF DEALING, OR OTHERWISE. SELLER DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND INFRINGEMENT. Buyer acknowledges that it alone has determined the intended purpose and suitability of the material sold hereunder, and that any technical or other advice given by Seller is provided solely at Buyer's risk. Further, Buyer assumes all risk of use of the material for any purpose.
- 4. LIMITATIONS OF LIABILITY.** The following limitations of Seller's liability are acknowledged by the parties to be fair and reasonable and shall apply to any act or omission of Seller hereunder and to any breach by Seller of the contract; the parties acknowledge that these limitations are in addition to all other limitations set forth herein:

 - a.** Seller's total liability, in the aggregate, for all claims arising from or in connection with this contract shall be limited to the amount actually paid by Buyer to Seller for the specific material delivered under the contract as to which the liability arose. **IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR LOST PROFITS, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY,** including but not limited to, loss of use of the material, business interruption, damage to property, loss of or damage to goodwill, and claims of third parties.
 - b. Notice and Time of Claims.** Every claim from any cause, including but not limited to a claim for a remedy under the warranties contained herein, shall be deemed waived by Buyer, unless delivered in writing to Seller within ten (10) days from tender of delivery of the material to Buyer. The Buyer expressly waives all applicable statutes of limitations and agrees that any legal proceeding for any breach of this contract shall be waived unless filed within one (1) year after tender of delivery of the material to Buyer.
- 5. TIME FOR REJECTION.** If any of the material delivered shall appear not to conform to this contract, Buyer must (a) notify Seller in writing of its rejection within ten (10) days from constructive placement of the material, and (b) offer to Seller a reasonable opportunity to inspect such material before any of the material is used / consumed. If any of the material delivered does not conform to the contract, Seller's remedy shall be as set forth in Section 3(a) of these terms and conditions. In the event that Buyer does not comply with any of the provisions of this Section 5, Buyer's claim with respect to the allegedly non-conforming material shall be deemed to have been waived. Any handling of the material beyond what is necessary to conduct a reasonable inspection upon arrival (including any use, processing or commingling) shall be deemed to be acceptance of such material.

6. VARIATIONS. Weights and quantities shown hereon are estimated. Invoice weights may vary in accordance with permissible variations as are customary in the industry or as shown in Seller's published price lists.

7. BUYER INDEMNITY. Buyer will indemnify, defend and hold Seller harmless from and against any and all claims, demands, actions, costs, liabilities, losses and damages of any kind (including attorneys' fees), regardless of the theory of liability, incurred by or threatened against Seller in connection with Buyer's use or sale of the materials, the incorporation of the materials into any product by Buyer or any third party, or any other acts or omissions of Buyer related to the materials.

8. RESCHEDULING. Requests by Buyer for delivery rescheduling (either earlier or later) will be accommodated, if possible, at the sole discretion of Seller. If agreed to by Seller, a rescheduling request by Buyer that extends delivery sixty (60) days or more beyond the originally scheduled delivery date may result in a rescheduling charge equal to two percent (2%) of the total contract price for each thirty (30) day delay beyond such a sixty (60) day period, up to a maximum rescheduling delay of one hundred twenty (120) days beyond the originally scheduled delivery date. In any case where Seller does not agree to accommodate a rescheduling request, Seller may proceed to ship material to Buyer at full order value.

9. FORCE MAJEURE. Seller shall not be liable for any delay in performance, or nonperformance, due to any cause beyond the Seller's control, including but not limited to, fires, floods, or other forces of the elements, acts of God, strikes, or labor disputes, accidents to machinery, acts of sabotage, riots, precedence of priorities granted at the request or for the benefit, directly or indirectly, of any federal, state, or provincial government or any subdivision or agency thereof, pandemics, epidemics, delay in transportation caused by transportation facilities, restrictions imposed by federal, state, provincial or other governmental legislation or rules or regulations thereof, or a substantial increase in Seller's cost (each, an "FM Event"). For purposes of this contract, "a substantial increase in Seller's cost" shall be deemed to have occurred if Seller's performance hereunder would result in a loss to Seller on this sale, as computed under Seller's normal accounting procedures. Upon the occurrence of any FM Event, Seller may terminate this contract in whole or in part without liability for any delay in performance, or nonperformance hereunder; provided, however, that if Seller does not terminate this contract due to the occurrence of an FM Event, Seller and Buyer shall each take such actions that are commercially reasonable under the circumstances to overcome the FM Event and to proceed with the performance of its respective obligations hereunder, including without limitation Buyer's extension of the term of any letter of credit (or other instrument for payment of amounts due hereunder) opened by Buyer for the benefit of Seller or any of its affiliates in connection herewith.

10. TITLE AND RISK OF LOSS. Title shall pass to the Buyer as specified in the sales order. If the sales order does not specify transfer of title, title shall pass to the Buyer upon receipt of full payment by Seller. In instances where Buyer is responsible for the transport of the material, Buyer assumes all risk of loss to and damages from the material sold hereunder upon delivery thereof to the carrier. In instances where Seller is responsible for the transport of the material, Seller will procure cargo insurance and bear risk of loss until the goods are delivered to Buyer.

11. TAXES AND OTHER CHARGES. Buyer will pay, or reimburse Seller if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract (excluding taxes based on Seller's income), the material covered hereby, or the delivery or use thereof or upon any document of title or instrument used in connection with the transaction described herein, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder, in each case, including any interest and / or penalty thereon.

12. FREIGHT CHARGES. If the sale hereunder is other than F.O.B. origin point, Seller's confirmation is based upon the freight charges in effect when Seller accepts Buyer's order. In the event of an increase or decrease in applicable charges before the material is shipped, such a change in freight will be for Buyer's account.

13. ALLOCATIONS. In the event of a shortage of the material, Seller, in its own discretion, may allocate the material among its customers in such manner as it shall determine, without liability for any delay in the delivery of, or failure to deliver, the material sold hereunder.

14. DELIVERY DATE; DEMURRAGE CHARGES. Delivery dates are estimated only and are subject to change upon notice from Seller. ANY DEMURRAGE OR OTHER CHARGES DUE TO BUYER DELAYS SHALL BE CHARGED TO BUYER.

15. SERVICE CHARGE; COLLECTION COSTS; SET OFF; SUSPENSION OF DELIVERIES. At Seller's discretion, a service charge of one and one-half percent (1.5%) per month shall be applied to all invoices for which payment is not received by the applicable due date. If Buyer defaults in making payment of any amount due hereunder, Seller shall be entitled to recover from Buyer all costs of collection, including but not limited to, collection fees, attorney fees and court costs. Without prejudice to any other right or remedy it may have, Seller reserves the right to set off at any time any amount owing to it by Buyer against any amount payable by Seller to Buyer under this contract or any other contract between the parties. If any invoice is not paid when due, Seller may suspend delivery or other performance to Buyer with respect to any material under any or all orders without liability or penalty.

16. SECURITY INTEREST. Buyer hereby grants to Seller a security interest in the material sold hereunder (and all proceeds thereof) until Buyer has (a) paid the purchase price payable hereunder in full, plus accrued service charges and other amounts due hereunder, if any, and (b) fully performed all of Buyer's other obligations hereunder. Buyer hereby acknowledges and agrees that these terms and conditions shall constitute a security agreement under the Uniform Commercial Code in effect from time to time in the Commonwealth of Pennsylvania ("UCC") that may be enforced in any jurisdiction that Seller determines necessary or advisable to evidence, perfect, or act upon the security interest created hereby. Seller shall have all rights and remedies of a secured party under the UCC in the event of a breach or default by Buyer in any of its obligations hereunder. Buyer hereby appoints Seller as Buyer's agent and attorney-in-fact to execute and / or file such financing statements and other documents as Seller determines necessary or advisable to evidence, perfect, or act upon the security interest created hereby without further action of Buyer.

17. GOVERNMENTAL AUTHORIZATIONS. If the destination of any shipment made by Seller hereunder is outside of the United States, Seller will be responsible for the application, in its own name, for any required U.S.A. export license and Buyer will be responsible for timely obtaining and maintaining any required import license, exchange permit or any other governmental authorization required for the import of the materials by Seller and the remittance of payments to Seller. Seller and Buyer will each provide reasonable assistance to the other party in obtaining such export and import licenses. Seller will not be liable if authorization of any government is delayed, revoked, restricted or not renewed.

18. EXPORT CONTROLS. Buyer warrants that it is and will remain in compliance with all export and reexport requirements, including, but not limited to the Export Administration Act and Regulations, the Arms Export Control Act and regulations, and any orders and licenses issued thereunder (collectively the "Export Laws"). Buyer additionally warrants that it has not been, and is not currently, suspended, prohibited or impaired from exporting, reexporting, receiving, purchasing, or otherwise obtaining any product, commodity, or technical data regulated by any agency of the government of the U.S.A. In particular, Buyer hereby gives assurance that unless notice is given to and prior authorization is obtained as required by the Export Laws, Buyer will not knowingly reexport, directly or indirectly, the material shipped by Seller to Buyer or the direct product thereof to an Embargoed Destination or to a prohibited end user.

19. AMENDMENT; NON-WAIVER. The Terms may not be modified, altered or waived, either orally, by usage of trade, course of performance or course of dealing. Any change to, deviation from, or waiver of the Terms shall only be made pursuant to a writing signed by the party to be bound.

20. SEVERABILITY; ASSIGNABILITY; CONFLICT. If any term or provision of this contract is declared invalid, illegal or unenforceable in any jurisdiction, (a) the affected provision will be modified to conform to applicable law, if possible, or omitted, and (b) such invalidity, illegality or unenforceability shall not affect any other term or provision of this contract or invalidate or render unenforceable such term or provision in any other jurisdiction. No assignment of this contract shall be made without prior written consent of Seller. In the event of a conflict between the terms set forth in the sales order and these terms and conditions, the terms set forth in the sales order shall prevail.

21. DISCHARGE OF SELLER. If (a) Buyer (i) becomes insolvent, (ii) has a business failure, dissolves or is dissolved, (iii) enters (voluntarily or involuntarily) any bankruptcy or receivership proceeding, (iv) assigns assets for the benefit of its creditors, or (v) fails to maintain its account with Seller on a current basis, (b) at any time, Seller reasonably believes that Buyer may fail to perform any of its obligations under this contract for one of the foregoing reasons, or (c) Buyer has failed to substantially or timely perform its obligations under any other contract with Seller, then Seller may immediately cancel this contract without liability to Buyer.

22. JURISDICTION; APPLICABLE LAW. All disputes arising directly or indirectly hereunder or in connection herewith shall be resolved in a court of competent jurisdiction sitting in Pennsylvania. Buyer hereby (a) consents to the exclusive jurisdiction of the state and federal courts sitting in Pennsylvania, (b) appoints the Secretary of the Commonwealth of Pennsylvania as its agent for service of process, (c) agrees to appear in any such proceeding upon notice thereof, and (d) waives the right to assert that any action in any such court is in an improper venue or should be transferred to a more convenient forum. The losing party in any lawsuit shall pay its own and the prevailing party's attorney's fees, costs and expenses. If the prevailing party won on some but not all of the claims and counterclaims, the court may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the litigation. All questions arising hereunder, in connection herewith, or in connection with a quotation or any other document submitted in connection therewith shall be interpreted and resolved in accordance with the laws of the Commonwealth of Pennsylvania (including without limitation the UCC) without regard to its conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods.