

## **TERMS AND CONDITIONS**

***THE EQUIPMENT, MATERIALS AND SERVICES (HEREIN REFERRED TO AS THE "PRODUCTS") WHICH ARE SET FORTH IN THIS PUBLICATION WILL BE SOLD BY TECHNICAL DEVICES COMPANY (HEREIN REFERRED TO AS "SELLER") ONLY UPON THE FOLLOWING TERMS AND CONDITIONS OF SALE:***

### **APPLICABILITY**

None of the Standard Terms and Conditions of Sale herein set forth may be added to, modified, superseded or otherwise altered except by written instrument signed by an officer of Seller and delivered by Seller to Buyer. Each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions herein set forth, except as they may be added to, modified, superseded or otherwise altered as provided below, notwithstanding any terms and conditions that may be contained in any purchase order or other form of Buyer and notwithstanding Buyer's act of accepting or paying for the Products or similar act of Buyer.

Any typographical or clerical error herein is subject to correction by Seller.

The submission of a quotation by Seller in response to Buyer's request for a quotation does not constitute an expression of acceptance of any term or condition which may have been set forth in Buyer's request. Notwithstanding any prior quotations, correspondence, conversations, purchase orders or similar instruments relative to the Products, the terms and the conditions of sale set forth herein are the only terms and conditions applicable to the sale of the products, and the acceptance of a quotation issued by Seller is expressly limited to terms of such quotation. The transmittal of a purchase order pursuant to such quotation and the Standard Terms and Conditions of Sale as set forth therein if the purchase order agrees with such quotation with respect to the description of the Products to be furnished by Seller as shown on the face thereof and the purchase price to be charged therefor. Any additional or different terms or conditions of sale set forth in the purchase order or other communication from Buyer are objected to by Seller and shall be not effective or binding unless assented to in writing by an officer of Seller.

A sales confirmation or similar form issued by Seller pursuant to a Buyer's purchase order constitutes an expression of acceptance of such purchase order, but such expression of acceptance is expressly conditioned upon Buyer's assent to the Standard Terms and Conditions of Sale as herein set forth, which assent will be deemed to have been given unless notice to the contrary is received by Seller within ten days from the date of the sales confirmation date. Any additional or different terms and conditions of sale set forth in the purchase order or other communication from Buyer are objected to by Seller and shall not be effective or binding unless assented to in writing by an officer of Seller.

Where Seller does not issue either a quotation or a sales confirmation and ships products pursuant to Buyer's purchase order, such sale shall be subjected to Seller's Standard Terms and Conditions of Sale as set forth on Buyer's invoice and Buyer shall be deemed to have agreed thereto unless products are returned to Seller within ten days of date or invoiced, in which event such sale shall be canceled for all purposes. Any additional or different terms or conditions of sale set forth in the purchase order or other communication from Buyer are objected to by Seller and shall not be effective or binding unless assented to in writing by an officer of Seller.

### **PRICES AND TERMS OF PAYMENT**

Unless otherwise specified in this publication or on a Seller quotation, sales confirmation or invoice, the prices which are set forth on any such quotation, sales confirmation or invoice issued by Seller are prices Ex Works, F.O.B. Seller's Plant, Torrance, CA, as determined by Seller in accordance with Section III hereof, which are in effect on the date of issuance

and are subject to change without notice. Notwithstanding any price set forth on any of said documents issued by Seller, the invoice price will be the price Ex Works, F.O.B. Seller's Plant, Torrance, CA, in effect on the invoice date, or the date of completion if shipment is deferred on Buyer's instruction.

Prices set forth in any quotation or sales confirmation do not include sales, use, excise or other taxes, or import duties, documentation charges, freight transfer fees or similar costs or charges, unless specifically indicated thereon. Unless Buyer provides Seller with a tax exemption certificate acceptable to the applicable taxing authorities, an amount equal to any sales, use, excise or other tax which may be imposed upon the sale or use of the Products, as well as all of the other above-mentioned costs or charges, shall be added to the prices set forth on such quotation, sales confirmation or invoice.

Any amount unpaid at the end of thirty (30) days from the date of invoice shall bear interest at the maximum rate allowed under applicable law, plus reasonable attorney's fees and court costs if collected by an attorney or through court proceedings.

All payments shall be made to Seller at its principal office in Torrance, CA, in legal tender of the United States of America.

#### **TRANSPORTATION**

In the absence of specific routing instructions from Buyer, Seller shall have the right to select the date of shipment, type of carrier and the routing of shipment on behalf and for the account of Buyer.

Unless otherwise previously agreed in writing, all Products are shipped at Seller's option, either Ex Works, F.O.B. Seller's Plant in Torrance, CA, and acceptance of products by Buyer occurs upon delivery to carrier.

Buyer shall give written notice to Seller of any claim for shortage, error in shipment, or error in charges within thirty (30) days after receipt of Products or such claim shall be deemed waived.

Buyer agrees that Seller shall not be liable for damage or destruction of Buyer's Products occurring while such Products are in the possession of Seller, except where such damage or destruction arises from the sole gross negligence of Seller.

#### **DELIVERY DATES**

Quoted deliveries are approximate estimates determined at the time of quotation and are subject to revision at the time of order placement due to prior sale. Products listed in Seller's catalogue are not necessarily available for immediate delivery.

Delivery dates will be computed at the later of the time Seller receives the Buyer's order or the time Seller has the complete information necessary to process the Buyer's order.

Delivery dates are subject to changes caused by additions to or modifications of the original order agreed to by both Seller and Buyer.

Shipment of goods within ten business days of the scheduled shipment date shall constitute timely shipment by Seller.

Under no circumstances shall Seller or any affiliate have any liability whatsoever for loss of use or for any indirect or consequential damages as a result of delayed delivery.

Unless otherwise agreed in writing, Seller shall have the option of partial or complete shipment of Products.

## **RETURNS**

No Products will be accepted for repair or replacement without the prior written authorization of Seller with return merchandise authorization number (RMA).

Buyer may return for credit unused Products which Seller, in its sole judgment, determines to be in saleable condition. In the event of such return, Buyer agrees to pay, and Seller may withhold a restocking fee on such Products at the determination of Seller.

All returns shall be subject to inspection and repair, and all repairs shall be made at Buyer's expense, except for warranty repairs and other repairs, which Seller determines, are necessitated by damaged caused solely by the gross negligence of Seller.

Unless otherwise agreed, freight and handling charges on returns shall be at Buyer's expense.

Buyer shall be responsible for any loss or damage to Seller's equipment, materials or supplies, transported by Buyer or by any carrier or conveyance arranged for by Buyer.

## **WARRANTY**

Except as set forth herein, Seller warrants the Products, which are included on the face hereof to be free of defects in material and workmanship for a period of one year after the date of completion of manufacture. The above warranty does not apply to:

Any products which have been modified and/or subject to improper handling, storage, installation, operation or maintenance;

Any item which is a component part of the Products except to the extent to which such items are covered by the warranty, if any, of the original manufacturer thereof;

Any item which is a component part of the Products where Buyer furnishes such item to Seller;

The design on those jobs where Seller prepares shop drawings, tracing drawings or lists from designs furnished others;

Models or samples, which are furnished to Buyer as illustrations only of the general properties of Seller Products and workmanship and are not deemed guarantees of uniformity.

Replacement of parts shall be free of charge for one year from date of shipment, except for consumable and disposable items, which includes but is not limited to, lamps or light bulbs, filters, etc.

Product parts which have been repaired or replaced during the warranty period are themselves warranted only for the remaining unexpired portion of the original warranty or 90 days, whichever is longer. Product parts which have been repaired or replaced after the end of the product warranty are warranted for 90 days from date of shipment.

Labor shall be free of charge by Seller for one year from date of product shipment.

THERE IS NO IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR PURPOSE, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF EXCEPT AS SET FORTH IN THE SECTION ENTITLED "WARRANTY."

Seller's liability under its warranty is expressly limited to the repair or replacement, to its sole option, of Products, which prove to be defective within the warranty period. Seller's obligation to repair or replace defective Products constitutes agreed

and liquidated damages for any breach of warranty by Seller. Any claim by Buyer made pursuant to Seller's warranty shall be made in writing within ten (10) days after discovery of the defect with respect to which the claim is made. Seller shall have the right to inspect the Products claimed to be defective and shall have the right to determine the cause of such defect. All Products replaced or repaired by Seller under its warranty shall be replaced or repaired F.O.B. Seller's Plant, Torrance, CA or such other location as Seller may designate. Seller shall not be liable under any warranty or otherwise for incidental or consequential damages for injury to any person.

Use of the product ArmaKleen in TDC products will void the warranty on all wetted components.

### **Indemnity**

Buyer shall indemnify and hold Seller harmless from and against all claims and causes of action for damages and expenses of every kind and character (including costs of suit and reasonable attorney's fees) asserted against Seller, its agents, servants and employees, by any firm, person, corporation or other legal entity on account of injury to or death of any person or persons whomsoever, or for damage to or destruction of any personal or real property (including subsurface property or property rights), or on account of infringement or alleged infringement of any patent, design, copyright, or trade name or make arising out of, directly or indirectly, or in any manner connected with the Products or use of the Products listed on the face hereof, including all claims and causes of action resulting, either in whole or in part, from Seller's alleged breach or breach of implied or expressed warranty (except as specifically provided herein), or alleged breach or breach of doctrine of strict liability in tort of Seller or any other person, firm, corporation or legal entity for which Seller in law would otherwise be held liable.

### **RENTAL OF PRODUCTS AND LOST PRODUCTS**

Rental charges commence when the Products leave Seller's premises and continue until said Products are returned to the same premises. Buyer agrees to pay Seller additional charges for the purpose of restoring the Products to their conditions prior to rental.

When Seller must acquire special rental Products from other sources, Seller will, at its option, either pass on such rental charges to Buyer or else charge Buyer a percentage of the retail price for the first day and a percentage of the retail price for each day or portion of a day thereafter.

If Seller is unable to recover rental Product or Products used in servicing Buyer's operations, then Buyer agrees to pay Seller the regular retail price for such lost Products, the price to be determined in accordance with Section II above.

The provisions contained in other Sections of these Standard Terms and Conditions of Sale shall apply to rental Products, where appropriate.

### **CANCELLATION**

Buyer may cancel Firm Orders for goods only in accordance with the outlined charge schedule. These charges will apply from the date that the customer authorizes work to be stopped. TDC does not consider request for cancellation charges sufficient to stop activity.

#### **For Standard Equipment**

Within 10 Days of Ordered Received	30% of Firm Order
Prior to Shipment	40% of Firm Order

#### **For Custom Equipment/options**

Anytime Prior to Shipment	90% of Firm Order
---------------------------	-------------------

For Spare Parts

Within 30 days of shipping by TDC

25% of part cost

After 30 days of shipment by TDC

50% of part cost

#### **TERMINATION FOR INSOLVENCY**

In the event of the institution of any proceeding by or against Buyer in bankruptcy or insolvency, or the appointment of a receiver or trustee or an assignment for the benefit of creditors of Buyer, Seller may terminate this order.

#### **SECURITY INTEREST**

Seller reserves a purchase money security interest in all of the goods until the price provided for shall have been paid in full. Buyer agrees to execute any documents requested by Seller necessary to protect Seller's security interest.

#### **GOVERNING LAW**

These terms and conditions shall be governed by and construed in accordance with the internal laws of the State of California.

#### **OTHER TERMS AND CONDITIONS**

All orders accepted are subject to final review at Seller's principal office. Once accepted, Buyer cannot cancel orders without written approval from Seller. Acceptance of Buyer's cancellation will be predicated upon Buyer's payment of a cancellation charge to be determined by Seller based on schedule supplied in this packet.

Prices quoted include standard packaging only. Any special handling or packaging will be subject to additional charges.

Seller shall not be held responsible for any delivery or failure to make delivery for all or any part of the Products or non-performance of services, ordered or requested by Buyer as a result of federal, state or municipal action, statute, ordinance or regulation; strike or other labor dispute; riots, storm; flood, epidemic, fire damage to or destruction in whole or in part of product or the inability to perform services; lack of or inability to obtain raw materials, labor, oil, fuel or supplies; or any act of God or other cause, contingency or circumstances within or without the United States, not subject to Seller's control which prevents or hinders the manufacture or delivery of Products or the performance of the services.

Seller reserves the right to modify the design of any Products without obligations or previous notifications, and Seller is not obligated to so modify Products previously or subsequently sold.

Seller reserves the right to require Buyer to make periodic progress payments.

Any contract arising hereunder shall be construed in accordance with the laws of the State of California, and the rights and duties of the Buyer and Seller hereunder shall be determined by the laws of the State of California in the Courts of Los Angeles County.

Should any clause, sentence or part of these Standard Terms and Conditions of Sale be held invalid, such holding shall in no way affect the validity of the remainder, which shall remain in full effect. Failure to enforce any or all of the Standard Terms and Condition of Sales in a particular instance or instances shall not constitute a waiver or preclude subsequent enforcement thereof.

TDC shall not be liable for loss of use, or profits, or special, or consequential damages

**INSTALLATIONS**

Installation and training will occur on dates agreed to by buyer and seller. Buyer to provide a minimum of 14 days advance notice of a requested installation date. Normal installation and training rates are for installations in which a 14-Day advance notice was provided, and, the installation occurs between Tuesday and Thursday. Installations requested with short notice and installations which require weekend travel are, by default, subject to higher travel cost and may occur non-working business hours rates.

REV 4 2015