



TECHNOLOGY DYNAMICS INC. STANDARD TERMS AND CONDITIONS OF SALES – REVISED 8/6/00

1.(A) GENERAL: ANY SALE OF PRODUCTS BY TECHNOLOGY DYNAMICS INC. IS GOVERNED EXCLUSIVELY BY THESE STANDARD TERMS AND CONDITIONS OF SALES (HEREINAFTER CALLED "STANDARD TERMS") WHICH, UNLESS OTHERWISE AGREED BY SELLER IN WRITING, SHALL BE A PART OF THE SALES CONTRACT AND SHALL SUPERSEDE ANY INCONSISTENT TERMS ON BUYER'S PURCHASE ORDER OR SUBSEQUENT RELEASES FOR THIS PRODUCT.

1.(B) ALL ORDERS PLACED WITH SELLER MUST BE IN THE FORM OF A WRITTEN PURCHASE ORDER. A BINDING SALES CONTRACT WILL ONLY RESULT WHEN SELLER ACCEPTS BUYER'S ORDER AT SELLER'S OFFICE IN BERGENFIELD, NJ WHICH WILL IN ALL CASES BE UNDERSTOOD TO CONTAIN THESE CONDITIONS AND TERMS OF SALES.

1.(C) ANY MODIFICATION OR VARIATION OF THESE STANDARD TERMS MUST BE CONDITIONAL UPON THE WRITTEN APPROVAL OF SELLER.

2. UPDATING OF MODELS: SELLER RESERVES THE RIGHT TO CHANGE THE DESIGN AND/OR THE SPECIFICATIONS OF THE STANDARD PRODUCTS ALREADY ORDERED BY BUYER AND ACCEPTED BY SELLER, AND SELLER MAY SHIP THE MODIFIED PRODUCTS TO BUYER WITHOUT PRIOR NOTICE. SELLER ALSO RESERVES THE RIGHT TO DISCONTINUE THE MANUFACTURE OR SUPPLY OF ANY PARTICULAR PRODUCT WITHOUT PRIOR NOTICE TO BUYER.

3.(A) WARRANTY: SELLER WARRANTS TO BUYER THAT EACH PRODUCT SUPPLIED BY IT IS OF GOOD WORKMANSHIP AND FREE FROM ANY INHERENT MECHANICAL DEFECTS FOR ONE YEAR, PROVIDED THAT IT IS INSTALLED AND OPERATED IN ACCORDANCE WITH SELLER'S INSTRUCTIONS (AND SUBJECT ALWAYS TO SUCH INSTRUCTIONS), IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRIAL PRACTICES, AND FURTHER PROVIDED THAT THE PRODUCT IS USED UNDER NORMAL CONDITIONS FOR WHICH IT IS DESIGNED AND THAT IT RECEIVES DUE AND PROPER CARE, PROTECTION AND MAINTENANCE UNDER THE SUPERVISION OF COMPETENT PERSONNEL.

3.(B) THIS WARRANTY IS GOVERNED BY THE PROVISIONS OF THE APPLICABLE SELLER'S PUBLISHED WARRANTY CERTIFICATE, A COPY OF WHICH IS SHIPPED WITH THE PRODUCT.

3.(C) ALL OTHER GUARANTEES, WARRANTIES, CONDITIONS OF REPRESENTATIONS, EITHER EXPRESSED OR IMPLIED, WHETHER ARISING UNDER STATUTE, COMMON LAW, COMMERCIAL USAGE OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

3.(D) UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SELLER BE LIABLE TO ANY PERSON OR FIRM OR CORPORATION FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION OR OTHERWISE, AND WHETHER RESULTING IN LOST PROFITS, LOSS OF INTEREST IN MONEY BORROWED OR INVESTED, IMPAIRMENT OF GOODS, WORK STOPPAGE, OR OTHERWISE, IN ANY WAY ARISING OUT OF ANY TRANSACTIONS TO WHICH THESE STANDARD TERMS APPLY.

4. DRAWINGS: ALL ILLUSTRATIONS, DRAWINGS, ETC., ISSUED BY SELLER OR CONTAINED IN SELLER'S CATALOGUES, PRICE LISTS ADVERTISEMENTS OR ANY OTHER PUBLICATIONS MUST BE REGARDED BY SELLER AS STATED IN GOOD FAITH AS BEING APPROXIMATELY CORRECT BUT NO RESPONSIBILITY CAN BE ACCEPTED FOR THEIR ACCURACY.

5.(A) SHIPMENT, DELIVERY AND FORCE MAJEURE: SHIPMENT AND DELIVERY DATES ARE QUOTED IN GOOD FAITH AND ARE APPROXIMATE. DELAY IN DELIVERY OR SHIPMENT SHALL NOT GIVE BUYER THE RIGHT TO CANCEL ANY ORDER. SELLER SHALL NOT BE LIABLE TO PAY ANY PENALTY FOR DELAY OR FAILURE TO SHIP NOR SHALL BE BOUND BY ANY PROVISION FOR THE PAYMENT OF A PENALTY OF ANY NATURE UNLESS IT HAS EXPRESSLY CONSENTED TO SUCH PENALTY PROVISION IN WRITING.

5.(B) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES CAUSED BY DELAY OR FAILURE TO DELIVER OR SHIP DUE ESPECIALLY BUT NOT EXCLUSIVELY TO FORCE MAJEURE AND OTHER CAUSES BEYOND ITS REASONABLE CONTROL. THE TERM FORCE MAJEURE SHALL INCLUDE BUT NOT BE LIMITED TO WAR, BLOCKADE, CIVIL DISTURBANCES, STRIKES AND LOCKOUTS, LABOR SHORTAGES, FIRE AND OTHER CASUALTIES, ACCIDENTS, GOVERNMENTAL ACTS (INCLUDING REGULATION COVERING EXPORT AND IMPORT LICENSING AND CURRENCY EXCHANGE), MATERIAL SHORTAGES AND DELAYS IN OBTAINING MATERIALS EQUIPMENT OR TRANSPORTATION IN CASE OF NONDELIVERY OR FAILURE TO TIMELY DELIVERY. SELLER'S OBLIGATION SHALL BE LIMITED TO THE REFUND OF ANY ADVANCE PAYMENT, WHICH MAY THERETOFORE HAVE BEEN MADE BY BUYER.

6.(A) PRICES: UNLESS OTHERWISE PROVIDED ON THE FACE OF SELLER'S RELEVANT FORM OR SPECIFIED OTHERWISE IN WRITING BY SELLER, QUOTATIONS AND OFFERS BY SELLER ARE F.O.B. SELLER'S MANUFACTURING PLANT OR WAREHOUSE AND ARE FIRM AS TO THE PRICE FOR THIRTY (30) DAYS FROM THE DATE THE QUOTATIONS OR OFFERS WHICH ARE SENT BY SELLER. AFTER THE EXPIRATION OF THE INITIAL THIRTY (30) DAY PERIOD, THE APPLICABLE PRICES ARE THOSE IN EFFECT AT THE TIME OF ORDER. ANY REFERENCE TO F.O.B. OR OTHER DELIVERY TERMS SHALL, UNLESS OTHERWISE PROVIDED HEREIN, HAVE THE SAME MEANING AS THAT ASCRIBED BY THE INTERNATIONAL CHAMBER OF COMMERCE IN ITS CURRENT EDITION OF INCO TERMS.

6.(B) ERRORS AND OMISSIONS, WHETHER OBVIOUS OR NOT, IN ANY ELEMENT OF A QUOTATION ARE SUBJECT TO CORRECTION BY SELLER.

7.(A) TERMS OF PAYMENT: PAYMENT SHALL BE MADE AT NET TEN (10) DAYS FROM THE DATE OF SHIPMENT AND IN USD. THE FAILURE BY BUYER TO PAY AT THE AGREED TIME AND PLACE AFTER 65 DAYS CONSTITUTES A WAIVER OF ALL HIS RIGHTS UNDER THE CONTRACT INCLUDING PRODUCT WARRANTY. WHEN AN ACCOUNT BECOMES DUE, ACCORDING TO ITS TERMS, INTEREST AT THE RATE OF 18% PER YEAR WILL BE CHARGED AND ACCRUED TO THE OUTSTANDING INVOICE(S) UNTIL PAID.

7.(B) ALL PRODUCTS SOLD BY SELLER ARE SHIPPED F.O.B. ITS MANUFACTURING PLANT OR WAREHOUSE.

7.(C) ALL TAXES, FEES, COSTS AND OTHER CHARGES CONNECTED WITH SHIPMENT, TRANSPORTATION, INSURANCE AND IMPORTATION OF THE PRODUCTS, ARE THE RESPONSIBILITY OF BUYER, AND, IF PAID BY SELLER, SUCH EXPENSES MAY BE RECOVERED BY SELLER FROM BUYER.

8. RISK OF LOSS: UNLESS EXPRESSLY PROVIDED FOR ON A BASIS INDEPENDENT OF THAT SET FORTH ABOVE FOR PASSAGE OF TITLE, RISK OF LOSS OR DAMAGE TO THE PRODUCTS SHALL PASS FROM SELLER TO BUYER UPON DELIVERY THEREOF TO BUYER OR HIS REPRESENTATIVE OR TO A CARRIER FOR SHIPMENT TO BUYER, AS THE CASE MAY BE, F.O.B. AT SELLER'S MANUFACTURING PLANT OR WAREHOUSE. WE STRONGLY SUGGEST THAT ALL SHIPMENT BE INSURED FOR FULL VALUE. IN THE EVENT OF ANY INSURANCE CLAIM, ALL INVOICES MUST BE PAID IN FULL BEFORE ANY INSURANCE CLAIM CAN BE PROCESSED.

9. ENTIRE AGREEMENT: THE TERMS AND CONDITIONS SET FORTH HEREIN CONSTITUTE THE FINAL, COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES AS TO THE SUBJECT MATTER THEREOF. THIS AGREEMENT MAY NOT BE AMENDED EXCEPT IN WRITING AND SIGNED BY THE AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.

10.(A) CANCELLATION CHARGES: IF BUYER REFUSES DELIVERY OF MUTUALLY AGREED UPON SCHEDULED PRODUCTS, ESPECIALLY IF SPECIFICALLY CUSTOMIZED FOR HIS USAGE, BUYER SHALL INCUR CANCELLATION CHARGES AS INVOICED BY SELLER AT SELLER'S OPTION AS FOLLOWS:

- (1) THE FULL AGREED PRICE FOR THE PRODUCTS COMPLETED; OR LOSS OF PROFITS.
- (2) SELLER'S FULL COST PLUS OVERHEAD, PLUS 25% FOR ALL PRODUCTS ACTUALLY IN PROCESS OR SCHEDULED FOR COMPLETION LESS THAN 30 DAYS AFTER THE DATE SELLER RECEIVES NOTICE OF BUYER'S REFUSAL; OR
- (3) SELLER'S FULL COST PLUS 25% FOR ANY RAW MATERIALS OR SUPPLIES PURCHASED OR CONTRACTED FOR BY SELLER OR BUYER'S ORDER AS OF THE DATE SELLER RECEIVES NOTICE OF BUYER'S REFUSAL.

10.(B) MODIFIED STANDARD PRODUCTS OR CUSTOM PRODUCTS ARE NOT SUBJECT TO CANCELLATION.

11. GOVERNING LAW: VALIDITY AND INTERPRETATION OF ALL DOCUMENTS RELATING TO THIS SALE AND RIGHTS AND DUTIES OF THE PARTIES HERETO, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY, USA.

12.(A) MISCELLANEOUS: ALL PROVISIONS OF THIS CONTRACT ARE ESSENTIALLY INTEGRAL AND CORRELATED, THEREFORE, FAILURE ON THE PART OF BUYER TO FULFILL ANY OF HIS OBLIGATIONS UNDER THIS CONTRACT SHALL CONSTITUTE A DEFAULT OF THE CONTRACT AND BUYER SHALL BE LIABLE AS A DEFAULTER.

12.(B) FAILURE ON THE PART OF SELLER TO ENFORCE ANY OF THE RIGHTS DERIVED FROM THIS CONTRACT SHALL NEVER BE CONSTRUED AS A WAIVER OF ANY OF ITS RIGHTS.

12.(C) DECLARATION OF NULLITY OF ONE OR MORE OF THE CLAUSES ON THIS CONTRACT BY ANY LEGAL AUTHORITY SHALL NOT AFFECT THE VALIDITY OF THE OTHER CLAUSES, WHICH FOR THIS PURPOSE ARE CONSIDERED SEVERABLE.

13. ATTORNEYS' FEES: IF PURCHASER FAILS TO PAY ANY AMOUNTS DUE HEREUNDER OR OTHERWISE BREACHES THIS PROPOSAL FOR CONTRACT AND THE COMPANY HAS TO ENFORCE ITS RIGHTS HEREUNDER, WHETHER OR NOT THROUGH LITIGATION, THE COMPANY SHALL BE ENTITLED TO BE REIMBURSED BY PURCHASER FOR ALL COSTS AND EXPENSES INCURRED RELATING TO THE COLLECTION OR BREACH, INCLUDING ALL ATTORNEYS' FEES.