

The following are the terms and conditions ("Terms and Conditions") for the sale of products ("Products") and services ("Services") by TrackPoint Systems, LLC ("TPS") to TPS's customers (individually a "Customer" and collectively, "Customers").

1. ACCEPTANCE AND CANCELLATION OF ORDERS

All orders are subject to acceptance in writing by TPS or a duly authorized agent of TPS. Any written acknowledgement of receipt of an order shall not, in and of itself, constitute such acceptance.

Customer orders accepted by TPS may be cancelled by Customer upon written consent of TPS provided such order is not "NC/NR" or "Non-Cancelable/Non-Returnable", "Non-Standard Products" or governed by a Purchase Agreement Letter. TPS may accept or reject such cancellation requests in its sole discretion. Non-Standard Products are defined as Products that are custom engineered or designed orders for non-standard products, products not customarily in stock, or orders for value-added products. Non-Standard Product orders are non-cancelable and non-refundable.

In the event of cancellation or other withdrawal of an order for any reason, and without limiting any other remedy which TPS may have as a result of such cancellation or other withdrawal, reasonable cancellation or restocking charges shall include all expenses incurred and commitments made by TPS, and shall be paid by Customer to TPS.

Customer requests to reschedule are subject to acceptance by TPS in its sole discretion. Orders may not be canceled or rescheduled after the order has been submitted by TPS to the shipment carrier. TPS reserves the right to allocate sales and limit quantities of selected Products among its customers in its sole discretion.

Product specifications and availability are subject to change without prior notice.

1.1 Returns

Customer must notify TPS within ninety (90) days from date of shipment of any defective product (see Section 7 for limited warranty information). If TPS agrees to accept a return, return freight charges must be prepaid by Customer. TPS will not accept COD shipments. Customer must contact a sales representative for a Return Materials Authorization Number and addressing instructions prior to returning product. The foregoing provisions regarding Product returns do not apply to "NC/NR", "Non-Cancelable/Non-Returnable" or "Non-Standard Products" which are non-returnable (see Section 1).

1.2 Counterfeit Product Prevention Clause

Only Products originally shipped from TPS or from a supplier at TPS's direction (drop-ship) may be returned to TPS. All other Products will be promptly quarantined and disposed of or returned to the Customer. All Product returns should be in the original packaging (manufacturer or TPS), in unused condition (except for warranty claims for defective Products pursuant to Section 7).

2. PRICES

Orders are billed at the prices in effect at the time of Product shipment. Prices will be as specified by TPS and will be applicable for the period specified in TPS's quote. If no period is specified, quoted prices will be applicable for thirty (30) days. Prices are subject to increase in the event of an increase in TPS's costs or other circumstances beyond TPS's reasonable control.

Monthly charges for the Services shall begin to accrue thirty (30) days following the date of shipment of the corresponding Products from TPS to Customer. Unless otherwise specified in the accepted order form, invoices shall be provided on a monthly basis for monthly Services charges in advance of the month in which such charges shall accrue. For partial months, the monthly charges for the Services will be prorated. TPS shall invoice Customer in arrears for any extraordinary or one-time charges. Unless otherwise specified in the order form accepted by TPS, payment shall be due ten (10) days from the date of each Services invoice. Services roaming charges shall apply with respect to Products that report outside the area of primary coverage for such Products at rates provided by TPS.

If Customer does not purchase the quantity upon which quantity prices are based, Customer will pay the non-discounted price for the quantity actually purchased and/or a cancellation or restocking fee.

3. TERMS OF PAYMENT

All payments must be made in the currency billed on the original invoice.

3.1 Terms of Payment

Customer agrees to pay the entire net amount of each invoice from TPS pursuant to the terms of each invoice, without offset or deduction.

Orders are subject to credit approval by TPS, which may in its sole discretion at any time change the terms of Customer's credit, require payment in cash, bank wire transfer/EFT or by official bank check, and/or require payment of any or all amounts due or to become due for Customer's order before shipment of any or all of the Products. Customer agrees to submit such financial information as TPS may reasonably require for determination of credit terms and/or continuation of credit terms.

If TPS reasonably believes that the Customer's ability to make payments may be impaired or if Customer fails to pay any invoice when due, TPS may suspend delivery of any order or any remaining balance thereof, until such payment is made or cancel any order or any remaining balance thereof. Customer will remain liable to pay for any Products already shipped and all Non-Standard Products ordered by Customer.

Checks are accepted subject to collection and the date of collection will be deemed the date of payment. Any check received from Customer may be applied by TPS against any obligation owing by Customer to TPS under this or any other contract, regardless of any statement appearing on or referring to such check, without discharging Customer's liability for any additional amounts owing by Customer to TPS. The acceptance by TPS of such check will not constitute a waiver of TPS's right to pursue the collection of any remaining balance.

Customers can alternatively wire the funds to our bank. For this option, after the order is placed TPS will e-mail a Proforma invoice which includes bank information, the merchandise total, shipping charges and a \$25 (USD) wire transfer/ EFT fee. Orders will be cancelled after twenty (20) business days if funds have not been received. Customer is responsible for duties and taxes.

Invoices not paid when due will bear interest to date of payment at the annual rate of eighteen (18%) percent or such lower rate as may be the maximum permitted by law. If Customer fails to make payment when due, TPS may pursue any legal or equitable remedies, in which event TPS will be entitled to reimbursement of costs for collection and reasonable attorneys' fees. There is a \$25 (USD) service charge on all returned checks.

4. SALES TAX

4.1 U.S. Shipments

As required by law TPS will collect Federal, State and/or Local sale, use, excise, and other taxes that apply to a Customer's shipment. These taxes are in addition to the purchase price of the Products subject to an order.

Unless otherwise specified, prices are exclusive of taxes, impositions and other charges, including sales, use, excise, value-added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, bank fees, consular fees, and document fees.

Customer is responsible for remitting the correct tax unless customer is tax exempt and TPS has a valid signed tax exemption certificate on file.

4.2 International Shipments

All applicable VAT, PST, HST, and/or GST charges along with brokerage fees will be the responsibility of the Customer and due at the time of delivery.

5. DELIVERY AND TITLE

All shipments by TPS are F.O.B. TPS's facility and the amount of all transportation charges will be paid to TPS by the Customer in addition to the purchase price of the Products. Subject to TPS's right of stoppage in transit, delivery of the Products to the carrier will constitute delivery to Customer and title and risk of loss will pass to Customer.

TPS will make reasonable efforts to initiate shipment and schedule delivery as close as possible to Customer's requested delivery date(s). Customer acknowledges that delivery dates provided by TPS are estimates only and that TPS will not be liable for failure to deliver on such dates. TPS will not be liable for any damages attributable to any such delivery delays. Selection of the carrier and delivery route will be made by TPS unless specifically designated by Customer.

TPS reserves the right to make Product deliveries in installments. Delay in delivery of one installment will not entitle Customer to cancel any other installment(s). Delivery of any installment of Products within thirty (30) days after the date requested will constitute a timely delivery. Delivery of a quantity that varies from the quantity specified shall not relieve Customer of the obligation to accept delivery and pay for the Products delivered.

6. SERVICES

TPS Services provide access to asset tracking data generated by Products known as Tr/IPS™ devices ("Remote Devices") in remote locations through its webCONNECT™ customer portal ("Customer Portal"). The Customer Portal is comprised of the Device Server, which communicates with Remote Devices in remote locations, the webCONNECT™ web application and any external backend data integrations which might exist for a particular customer configuration. The Customer Portal provides web based access to the Remote Devices asset tracking applications.

6.1 Access to Services

Subject to these Terms and Conditions and during the term set forth herein or in the applicable order form accepted by TPS, TPS shall provide Customer with access to the Services with respect to any Products TPS has shipped to Customer and with respect to which Customer is current in the payment of applicable service charges under Section 2. TPS may assign Customer a unique password and user ID to access the Customer Portal. Customer will take reasonable steps to prevent the unauthorized use and disclosure of any password and user ID. Customer shall immediately, upon discovery, notify TPS of any unauthorized use of any password and user ID assigned to it and take any steps within its control to prevent any further unauthorized use. The act of a person or an automated process or system on behalf of Customer shall be attributable to Customer (an "Attributable Act"). Customer is responsible for Attributable Acts or for any other use of or access to the Customer Portal by any person or entity gaining access to the Customer Portal through the use of a password and user ID issued by TPS. In addition to any remedies available hereunder or pursuant to applicable law, TPS may, at any time, temporarily limit or suspend in whole or in part Customer's access to the Customer Portal if Customer is in breach of these Terms and Conditions.

6.2 Procedures and Technical Protocols

TPS will specify to Customer procedures according to which Customer may establish and obtain access to, and use of, the features and functions of the Services, including provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable Customer to obtain access to the features and functions of the Services via the Internet, WAN or other dedicated point-to-point connection (as agreed pursuant to the accepted order form).

6.3 Responsibility for Hosting of Services

As between TPS and the Customer, TPS will bear responsibility, at its own expense, for hosting and operation of hardware and software necessary to provide the Services through TPS's proprietary website, provided that Customer will be responsible for procuring and/or operating computer systems, software and telecommunications services meeting such minimum technical requirements as TPS may specify, as necessary for Customer to obtain access to the Services as hosted by TPS.

6.4 Data Retention

Customer acknowledges and understands that the Services will generate data regarding the positioning and tracking of specific Customer assets ("Data"). During the term of each accepted order form with regard to the Services, TPS will make such Data available to Customer through online access to the Services for a period of twelve (12) months from date that the relevant Data is generated. Thereafter TPS will archive and retain such Data for the shorter of thirty-six (36) months or the remainder of the term of these Terms and Conditions as it applies to the Services (after which time TPS may delete such Data) and, upon Customer's request, will retrieve and make available such Data, provided that Customer pays TPS's then-standard, applicable rates for such retrieval services.

6.5 Service Levels; Limitations on Services; Additional Terms

Subject to the other provisions of this Section 6.5, the Customer Portal will be available at least ninety-nine and five-tenths percent (99.5%) of the time, as measured by TPS on a monthly basis, excluding periods of scheduled maintenance and Emergency Preemption (as defined below). The Customer Portal shall be considered available if accessible by a user outside the Customer Portal firewall. Any inability of Customer or any third party to access the SOC due to any telecommunications problem or any other technical problem outside of TPS's direct control shall not affect the calculation of availability. The SOC is available through the "Customer Login" portion of TPS's proprietary website.

6.6 Performance Targets

The actual coverage and performance of the Services may vary due to terrain, weather, signal strength, customer equipment, and other factors outside of TPS's control. Clarity and reception may be diminished by obstructions such as buildings and foliage. Customer bears sole responsibility for maintaining and replacing batteries required by the Products, and shall use only batteries provided by TPS or batteries that comply with technical standards specified by TPS for use with such Products. Customer acknowledges that performance of Products will degrade if depleted batteries are not replaced. As a result, TPS can make no guarantee of coverage or availability. However, when operating within normal parameters and excluding periods of scheduled maintenance and Emergency Preemption, the Customer should experience the Services to meet the following performance objectives:

- (a) Regularly Scheduled Reports – At least ninety-nine percent (99%) of repeating scheduled reports from the Remote Devices successfully transmitted, received, processed, and delivered to Customer, as measured by TPS on a monthly basis.
- (b) Pinging – The Remote Devices shall respond to a ping request for data and/or position according to the scheduled response parameters with a success rate of at least ninety-nine percent (99%), as measured by TPS on a monthly basis.

6.7 Emergency Preemption

The Services may be preempted, interrupted or suspended due to certain conditions or reasons beyond TPS's control, including (i) maintenance requirements or emergency conditions experienced by TPS; (ii) to protect TPS's personnel, facilities or services, or otherwise ("Emergency Preemption"). TPS shall not be liable or responsible for any such preempted, interrupted or suspended Services due to Emergency Preemption. In the event of Emergency Preemption, TPS shall notify Customer as soon as reasonably practicable and shall restore Services as quickly as reasonably practicable thereafter.

6.8 Scheduled Maintenance

The use of the Services may be interrupted due to scheduled maintenance by TPS or its service providers. TPS shall normally restrict its scheduled maintenance periods to between the hours of 12:00 AM and 7:00 AM Central Time on Sunday of each week, although TPS reserves the right to schedule maintenance during other times. In the event of unplanned outages, TPS shall notify Customer as soon as reasonably possible and shall restore service as quickly as reasonably practicable thereafter.

6.9 Term and Termination of Services

Unless earlier terminated in accordance herewith, the term of these Terms and Conditions for the provision of the Services with respect to any Products shall be for a period of sixty (60) months, commencing on the first day of the second calendar month following shipment of such Products. Without incurring liability, TPS may terminate the Services immediately in the event TPS's agreement with its underlying service provider/reseller is terminated for any reason, provided that TPS shall be under a continuing obligation during the term that the Services are to be provided to use commercially reasonable efforts to promptly provide replacement services substantially similar to the Services. Services charges shall be suspended during the period that Services are not provided in accordance with this Section 6.9.

6.10 Renewals

With respect to Services only, these Terms and Conditions, and each order form accepted by TPS, shall automatically renew upon the expiration of the initial term with respect to such Services, for consecutive terms of sixty (60) months unless either party provides written notice of termination to the other party not less than sixty (60) days prior to the end of the term then in effect, provided that TPS shall have the option to modify the rates and prices during any renewal term by notifying Customer of such new rates and prices at least ninety (90) days prior to any such modification.

7. LIMITED WARRANTY

Subject to the limitations set forth herein, TPS's Standard Warranty for the Products remains in effect for one (1) year from the date of shipment of the Products to the Customer. Should the Products be defective within this one-year period, TPS will repair or replace them within a reasonable time using components or replacements that are new, or equivalent to new in accordance with industry standards and practice. The Customer shall allow TPS reasonable access to the applicable vehicle to assess and implement such Product repairs or replacements, if required. Corrective action taken by TPS shall be the Customer's sole and exclusive remedy and shall be in lieu of any other remedy available to the Customer at law or in equity. Under no circumstances shall TPS be liable or responsible to the Customer or any third party for the loss of use of any vehicle during this one-year warranty period. This warranty shall be null and void and of no effect if the failure or defect of the Products or any part thereof is due or attributable to or results from any accident, modification or misuse by the Customer or any third party. The remedy set forth above is the Customer's sole and exclusive remedy, and TPS's only obligation, for any defective Products or any breach of warranty hereunder whether in contract, tort, strict liability or otherwise.

This limited warranty may not be modified or expanded except in a writing signed by one of TPS's executive officers. Any extension to the period of the Warranty Services shall be subject to quotation by TPS that, if accepted by the Customer, shall be confirmed in writing and detailed on TPS's Proposal Summary Form.

TPS does not provide a warranty or guarantee protection for:

- Damage caused by incorrect installation, use, modification or repair by any unauthorized 3rd party or by the Customer or its representative.
- Misuse or abuse to any element of the Products, system or components thereof.
- Damage caused by Customer negligence, misconduct or any party or other external force.
- Damage caused by the connection of the Products to any other 3rd party products or software specified or provided by the Customer.
- Damage to or loss of Customer property notwithstanding any Product malfunction, defect or failure.
- Theft or loss of Customer property.

Subject to the limitations set forth in Section 6.5, TPS warrants that the Services shall operate as generally described in Section 6.5 when utilized strictly in accordance with TPS's instructions and operational procedures. In addition, TPS warrants that the Customer Portal and Remote Devices availability with respect to the Services shall meet the service levels set forth in Section 6.5 and performance targets set forth in Section 6.6. In the event that the duration of service unavailability exceeds the limits permitted under Sections 6.5 and 6.6, TPS may grant Customer a credit for additional future service ("Services Credit") in accordance with the terms set forth below. The granting of such Services Credit constitutes Customer's sole and exclusive remedy, and TPS's sole liability, for failure of the Services to perform as warranted or any defects therein. TPS will monitor its performance of the Services and may generate and use aggregate statistical Data, including statistics as to uptime, coverage and general performance of the Services; provided that such Data does not disclose any of Customer's confidential information. This Services warranty is conditioned on proper installation and normal use by Customer of all Products.

Where the Services remain unavailable, or available, but is modified, restricted, or impaired so as to materially and adversely affect the Services, for a period of twenty-four (24) hours or more, TPS may, but is not obligated to, extend a Services Credit at its discretion, based on the nature, extent, and duration of such modifications, restrictions, or impairments; provided that no Services Credit shall be due for instances where the Services are preempted, interrupted, suspended, modified or restricted as described in Section 6.7 or by acts of force majeure (as set forth in Section 12 below).

THE WARRANTIES CONTAINED IN THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. EXCEPT FOR THE WARRANTIES CONTAINED IN THIS SECTION 7, TPS MAKES NO WARRANTY OR GUARANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR USE AND WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND ANY SUCH WARRANTIES ARE HEREBY DISCLAIMED AND EXPRESSLY EXCLUDED.

This warranty does not cover damage occurring in shipment or installation, or damage or Product failures resulting from improper maintenance, use of components or other components that are not original equipment manufacturer (OEM) specification, unauthorized alterations, modifications or repairs (including without limitation any modification or replacement of parts or accessories), environmental conditions, failure to comply with TPS's recommendations on use or maintenance, accident, misuse, abuse, sabotage, neglect, mishandling, misapplication, faulty installation or normal wear and tear, or damage or product failure caused by or attributable to acts of God or nature or other factors beyond TPS's control. This warranty does not cover the cost of removing the defective Product or installing a replacement Product.

8. RoHS COMPLIANCE AND LEAD-FREE POLICY

TPS defines the term "RoHS" as supplier declared compliance to all restricted hazardous substance regulations under the ELV, WEEE or RoHS EU directives, regulations or laws. TPS defines the term "Lead Free" as pertaining to any product that has been declared by a supplier or manufacturer to be "Lead Free".

TPS policy is to identify and offer products to the Customer as RoHS Compliant or Lead Free, only after specific requirements have been met. TPS performs no testing of product for RoHS Compliance and relies solely on the manufacturer of the product for identification of RoHS Compliance and for absence of lead. Furthermore, TPS makes no warranty, certification or declaration of compliance concerning said products and accepts no liability for any hazardous substances contained therein.

Products are advertised or offered as RoHS Compliant or Lead-Free only after sufficient evidence is received from the component manufacturer; and any inventory, either in a bin or on order, has been determined to be RoHS compliant and/or Lead Free. Any relevant evidence will be filed and maintained for at least three (3) years from the date of receipt. All statements by TPS of RoHS compliance are based on supplier or manufacturer documentation.

8.1 WEEE POLICY

TPS is not registered as a "producer" in the European Union, and does not provide a WEEE recycling program within the EU.

8.2 PRODUCT COUNTRY OF ORIGIN

TPS maintains Country of Origin information on all products in its inventory. This information is based on manufacturer-provided information according to US Treasury, US Customs Regulations. Our manufacturers do not provide TPS with the country of origin of each raw material or subcomponent that is incorporated into the Manufacturer's final product. Data is available upon request.

9. LIMITATION OF LIABILITIES

IN NO EVENT WILL TPS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE OR ECONOMIC LOSS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM LOSS OF PROFIT OR REVENUE, RECALL COSTS, CLAIMS FOR SERVICE INTERRUPTIONS OR FAILURE TO SUPPLY DOWNTIME, TESTING, INSTALLATION OR REMOVAL COSTS, COSTS OF SUBSTITUTE PRODUCTS, PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR LEGAL EXPENSES. CUSTOMER'S RECOVERY FROM TPS FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE GOODS, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER TPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER SHALL INDEMNIFY, DEFEND, REIMBURSE AND HOLD TPS HARMLESS FROM ANY CLAIMS BROUGHT BY ANY PARTY REGARDING PRODUCTS SUPPLIED BY TPS AND INCORPORATED INTO THE CUSTOMER'S PRODUCTS OR SERVICES. CUSTOMER SHALL FURTHER INDEMNIFY, DEFEND, REIMBURSE AND HOLD TPS HARMLESS FOR ANY DAMAGES OR CLAIMS ARISING FROM OR ATTRIBUTABLE TO ANY IMPROPER PRODUCT ALTERATION, REPAIR OR MAINTENANCE AND ANY USE CONTRARY TO APPLICABLE LAW OR ANY USE OTHER THAN THE PURPOSE FOR WHICH THE PRODUCT WAS DESIGNED OR ANY OTHER MISUSE.

TPS'S LIABILITY FOR ANY DEFECTIVE PRODUCT SHALL NOT IN ANY EVENT EXCEED THE PURCHASE PRICE PAID FOR SUCH PRODUCT.

10. PRODUCT SAFETY NOTICE AND RESTRICTIONS

Products are intended for industrial use only. Products are traceable to the manufacturer's level only. Any reference to military specifications in our catalog or on our website is for reference only and does not modify these Terms and Conditions. TPS does not participate in any product safety engineering, product safety review or product safety testing.

Compliance with local, state and federal laws, codes or regulations relating to environmental, public and user safety, training, Product use, maintenance and transportation is the sole responsibility of Customer. TPS does not assume any responsibility or obligation of Customer for the safety of the workplace or vehicle where the Product is used, whether that responsibility or those obligations are imposed by law, regulation or judicial decision, and TPS makes no warranty or representation with respect thereto.

Products sold by TPS are not designed, intended or authorized for use in life support, life sustaining, human implantable, nuclear facilities, flight control systems, or other applications in which the failure of such Products could result in personal injury, loss of life or catastrophic property damage. This includes, but is not limited to, Class III medical devices as defined by the US Food and Drug Administration (FDA) and Federal Aviation Administration (FAA) or other airworthiness applications. If Customer uses or sells the Products for use in any such applications: (1) Customer acknowledges that such use or sale is at Customer's sole risk; (2) Customer acknowledges and agrees that TPS and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from any such use; and (3) **CUSTOMER AGREES TO INDEMNIFY, DEFEND, REIMBURSE AND HOLD TPS AND THE MANUFACTURER OF THE PRODUCTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES AND LIABILITIES ARISING OUT OF OR IN CONNECTION WITH ANY SUCH USE OR SALE.**

11. INTELLECTUAL PROPERTY AND LICENSE

TPS shall indemnify and defend the Customer from all reasonable costs and liabilities arising from any claim that the Customer's use of the Products or services infringes any third party intellectual property rights. The

Customer must promptly notify TPS in writing of any such claim or action, and TPS will have the authority to control the defense. TPS may, in its sole discretion, obtain any necessary license, recall and exchange or modify Products or refund the Customer for any purchase price paid for the Products, less pro rata usage cost. No refund shall be made for services already paid for, and outstanding payment for Products (less depreciation) and services received by the Customer up to the time of withdrawal of the Products shall be payable within thirty (30) days.

Subject to the terms and conditions of this Agreement, TPS hereby grants Customer a non-exclusive, non-transferable limited right, license in the territory where the Customer is located as follows:

- To install and use the Products, consistent with any additional use limitations specified or referenced in the Customer's order form and solely for Customer's use; and
- To download, print, copy and use any documentation as reasonably necessary for its internal, in-house use related to the rights granted under subsection (a) above.

TPS reserves all rights not expressly granted herein. Except as otherwise permitted herein, Customer may not copy, modify, adapt, or create derivative works of the Products. Except as otherwise permitted herein, in no event shall Customer (i) use, or permit any third party to use, the Products for time-sharing, rental, or service bureau purposes, or (ii) decompile, disassemble, reverse assemble, or otherwise reverse engineer the Products, or permit any third party to decompile, reverse assemble, or reverse engineer the Products.

12. FORCE MAJEURE

TPS will not be liable for delays in delivery or for failure to perform its obligations due to causes beyond its reasonable control including, but not limited to, product allocations, material shortages, labor disputes, transportation delays, unforeseen circumstances, acts of God, acts or omissions of other parties, acts or omissions of civil or military authorities, Government priorities, fires, strikes, floods, severe weather conditions, computer interruptions, terrorism, epidemics, quarantine restrictions, riots or war. TPS's time for delivery or performance will be extended by the period of such delay or TPS may, at its option, cancel any order or remaining part thereof, without liability by giving notice to Customer.

13. EXPORT CONTROL

TPS is committed to compliance with all U.S. Export Regulations and Laws. TPS will not sell or ship to countries embargoed by the U.S. Treasury Office of Foreign Asset Control (OFAC). TPS will not sell or ship to individuals or organizations identified by the U.S. Treasury as Specially Designated Nationals and Blocked Persons. TPS will not sell or ship products prohibited under Export Administration Regulations to individuals or organizations identified by the U.S. Department of Commerce, Bureau of Industry and Security (BIS). TPS will not seek export licenses pursuant to Export Administration Regulations. TPS participates in BIS Export Enforcement and OFAC transaction reporting.

Furthermore, TPS prohibits the re-export, brokering or transshipment of its products to any individual, organization or country prohibited by the OFAC or BIS. The sale, resale or other disposition of Products, and any related technology or documentation, are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Customer agrees to comply with all such laws, regulations and orders. Customer further acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Customer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

CUSTOMER AGREES TO INDEMNIFY, DEFEND, REIMBURSE AND HOLD TPS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES AND LIABILITIES ARISING OUT OF OR IN CONNECTION WITH ANY CUSTOMER VIOLATION OF U.S. EXPORT REGULATIONS AND LAWS OR OTHER APPLICABLE LAWS AND REGULATIONS.

13.1 EXPORT CLASSIFICATION DISCLAIMER

Any use made of TPS classifications, whether it be ECCNs or any variation of Harmonized Tariff codes, is without recourse to TPS and at the user's risk. Export classifications are subject to change. If you export or re-export, your company, as the exporter of record, is responsible for determining the correct classification of any item at the time of export. Any export classification by TPS is for TPS's internal use only and shall not be construed as a representation or warranty regarding the proper export classification nor relied upon to make licensing determinations.

14. GENERAL

These Terms and Conditions may not be amended, modified or cancelled without TPS's written agreement. Accordingly, goods furnished and services rendered by TPS are sold only on the terms and conditions stated herein. The sale of Products hereunder will be governed by these Terms and Conditions, notwithstanding contrary or additional terms and conditions in any order purchase order, planning schedule, acknowledgment, confirmation or any other form or document issued by either party affecting the purchase and/or sale of Products.

TPS's performance of any contract is expressly made conditional on Customer's agreement and acceptance of these Terms and Conditions, unless otherwise specifically agreed upon in writing by TPS. In the absence of such agreement, commencement of performance and/or delivery shall be for Customer's convenience only and shall not be deemed or construed to be acceptance of Customer's terms and conditions. If a contract is not previously formed by mutual agreement in writing, acceptance by Customer of any goods or services shall be deemed acceptance by Customer of the terms and conditions stated herein.

All Customer orders shall be governed by these Terms and Conditions. Any additional or different terms attached to or incorporated into any Customer order will be disregarded and will not be binding or enforceable. Each Customer order will be governed exclusively by these Terms and Conditions and the face of the Customer order. In the event of a conflict between these Terms and Conditions and the face of a Customer order, these Terms and Conditions shall be controlling and any different or additional terms incorporated in or attached to a Customer order shall have no binding effect.

No rights, duties, agreements or obligations hereunder, may be assigned or transferred by operation of law, merger or otherwise, without the prior written consent of TPS. The obligations, rights, terms and conditions hereof will be binding on the parties hereto and their respective successors and assignees. The waiver or breach of any term, condition or covenant hereof, or default under any provision hereof, will not be deemed to constitute a waiver of any other term, condition, or covenant contained herein, or of any subsequent breach or default of any kind or nature. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction, or affecting the validity or enforceability of such provision in any other jurisdiction. The Terms and Conditions will be governed by and construed in accordance with the laws of the State of Tennessee and the applicable laws of the United States.