

# TERMS & CONDITIONS

THOMAS & BETTS POWER SOLUTIONS, LLC  
STANDARD TERMS AND CONDITIONS  
OF SALE (DOMESTIC USE)

1. **ACCEPTANCE:** THE TERMS AND CONDITIONS OF THIS ACKNOWLEDGMENT APPLY TO ALL QUOTATIONS MADE AND SUBSEQUENT ORDERS ACCEPTED BY THOMAS & BETTS POWER SOLUTIONS, LLC (“TNBPS”). NO ORDER FOR TNBPS’S PRODUCT OR SERVICES SHALL BE BINDING UPON TNBPS UNTIL ACCEPTED IN WRITING BY AN AUTHORIZED OFFICIAL OF TNBPS OR BY SHIPMENT OR OTHER PERFORMANCE OF SUCH ORDER. ANY ORDER SHALL BE SUBJECT TO THESE TERMS AND CONDITIONS, WHICH SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND ACCEPTANCE SHALL BE EXPRESSLY CONDITIONED ON ASSENT TO SUCH TERMS AND CONDITIONS BY BUYER, WHICH ASSENT SHALL BE DEEMED GIVEN UNLESS BUYER SHALL EXPRESSLY NOTIFY TNBPS TO THE CONTRARY WITHIN FIVE (5) DAYS AFTER RECEIPT OF ANY ACKNOWLEDGMENT OF ORDER. NO UNDERSTANDINGS OR AGREEMENTS WHICH DIFFER FROM, MODIFY OR ADD TO THESE TERMS AND CONDITIONS AND NO ADDITIONS, DELETIONS OR MODIFICATIONS PROPOSED BY BUYER IN ITS PRINTED FORMS OR OTHERWISE SHALL BIND TNBPS REGARDLESS OF WHETHER SUCH UNDERSTANDINGS, AGREEMENTS, ADDITIONS, DELETIONS OR MODIFICATIONS WOULD MATERIALLY ALTER THE TERMS HEREOF. NO ADDITIONS TO OR MODIFICATIONS OF ANY OF THE TERMS AND CONDITIONS HEREOF SHALL BE EFFECTIVE UNLESS MADE IN WRITING AND SIGNED BY BOTH PARTIES.

All purchase orders or contracts must be approved and accepted by TNBPS. Stenographic and clerical errors are subject to correction.

TNBPS’s Quotation and any resulting order/contract shall be governed by and construed in accordance with the laws of the State of Ohio.

2. **PRICES:** All prices are F.O.B. TNBPS facility. Prices are subject to change without notice at any time prior to acceptance of Buyer’s order by TNBPS. Prices are firm upon acceptance of Buyer’s order and issuance of TNBPS’s acknowledgment form; provided, however, that prices for goods or services having a scheduled delivery date more than twelve months after the date of order acceptance are subject to escalation at a rate not to exceed 1% per month for each month beyond such twelve month period.
3. **PAYMENT TERMS:** Unless otherwise specified herein, payment terms are cash net 30 days. Amounts past due are subject to a service charge of 1.5% per month or maximum contract rate permitted by law on the unpaid balance. If in the judgment of TNBPS, the financial conditions of Buyer at the time after TNBPS is in receipt of acknowledgment of this order and commences manufacturing the subject matter hereunder does not justify the terms of payment specified or whenever any other reasonable ground for insecurity occurs with respect to due performance by Buyer, then TNBPS may require upon due written notice to Buyer, full or partial payment in advance. If within the period of such notice, Buyer fails or refuses to agree to such accelerated terms of payment, TNBPS may, at its option, without prejudice to other lawful remedies, treat such failure or refusal as a repudiation of that portion of the order which has not been fully performed or may declare the whole contract price due and payable, or may defer delivery or cancel the order. Any pro-rata payments required hereunder shall be made as shipments are made.

4. **DELIVERY:** Shipping dates given by TNBPS are approximate and are based on prompt receipt of all necessary information regarding the order. TNBPS will use its best efforts to meet the scheduled date shown on this acknowledgment, but cannot be held responsible for its failure to do so for caused beyond its reasonable control and in no event shall it be liable for any loss or damage resulting from its failure to deliver within the time specified herein. In the event of any delay requested by Buyer or any delay caused by lack of necessary information or shipping instructions, TNBPS will store all items ordered at Buyer's risk and expense, and will invoice Buyer for the full contract price of the product on or after the date on which the same are ready for delivery plus a fee of One Hundred Dollars (\$100.00) per day per product. If manufacture is delayed by Buyer, payment shall be made based on the percentage of completion and the contract price.

Method and route of shipment will be at the discretion of TNBPS unless Buyer shall specify otherwise, any additional expense of the method or route of shipment specified by Buyer shall be borne by Buyer. Delivery of product to a carrier at TNBPS's facility or other shipping point shall constitute delivery to Buyer and, regardless of freight payment, title and all risk of loss or damage in transit shall pass to Buyer at that time.

Great care is taken in packing TNBPS's product. Unless otherwise specified, packing is for normal domestic shipment in enclosed vehicle and/or storage site. TNBPS cannot be held responsible for damage after having received "in good order" receipts from the transportation company. All claims for loss and damage must be made by Buyer to the carrier.

Claims for shortages or other errors must be made in writing to TNBPS within thirty (30) days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

The Buyer is responsible for providing a "SHIP TO" address at least 40 hours prior to shipment. Delay in providing this information may cause a delay in delivery.

5. **TAXES:** Prices do not include state or local sales, use, excise, or any import or export duty unless otherwise stated on the face of this form. The Buyer is responsible to pay and/or report all of the above referenced taxes.
6. **CHANGES:** Buyer may, within a reasonable time after placing the order and prior to shipment thereof, direct changes within the general scope of the order, in any of the following areas: (i) method of shipment, place of delivery or packing or (ii) quantities or delivery schedules. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the order, an equitable adjustment shall be made and the order modified in writing accordingly.

TNBPS reserves the right at any time to make changes in design or additions or improvements in its product without liability or obligation to install such change, addition, or improvement in any product manufactured prior thereto.

7. **WARRANTY:** TNBPS agrees, subject to the terms of this limited warranty, to correct any defects in materials or workmanship in any product covered by this limited warranty which occurs during normal use and is reported to TNBPS in writing during the period of one (1) year from the date such product is first placed in service, or one and one-half (1-1/2) years from the date of its shipment by TNBPS.

TNBPS's obligation hereunder shall be to provide, on an exchange basis, the part or parts necessary to correct any defect covered by this warranty. TNBPS will pay normal surface transportation charges for delivery of replacement parts to the product location, but shall not be liable for any other expenses, including the cost of returning any part to be replaced to TNBPS for exchange. If, in the opinion of TNBPS, it is not practical to correct the defect by an exchange of parts, TNBPS will provide a service engineer to correct the defect at no cost except for transportation and living expenses directly related to the repair, provided the covered product is located within the continental U.S.A., except for Alaska.

If, upon the inspection of any product to which this warranty applies, TNBPS determines that a claimed defect was not due to its workmanship or materials, TNBPS will proceed to repair and service the product at Buyer's expense and approval. This warranty shall be null and void upon service, repair or replacement of any product or any modification performed by anyone other than an authorized TNBPS service representative, or under the direction of TNBPS's Technical Support Department. Buyer's remedies under this limited warranty are exclusive of all others.

TNBPS's warranty obligation with respect to all components, equipment and accessories which is integrated into a TNBPS product, such as batteries or special transformers, regulators or rectifiers, shall be limited to those express written warranties made to TNBPS by the manufacturer, which TNBPS hereby assigns and transfers to Buyer.

THE FOREGOING WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER WITH RESPECT TO PRODUCT OR SERVICES SOLD HEREUNDER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY: IN NO EVENT SHALL TNBPS BE LIABLE AND BUYER WAIVES ALL CLAIMS AGAINST TNBPS FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, WHETHER OR NOT BASED UPON TNBPS'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION ARISING, DIRECTLY OR INDIRECTLY, IN RESPECT TO THE PRODUCT OR SERVICES COVERED HEREUNDER, OR THE USE OR FAILURE THEREOF, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PRODUCTION OR INJURY TO PERSONS OR PROPERTY. IN ANY EVENT, TNBPS'S MAXIMUM LIABILITY SHALL NOT EXCEED THE CONTRACT PRICE OF THE PRODUCT FURNISHED BY TNBPS HEREUNDER.
  
9. PATENT INDEMNIFICATION: TNBPS shall defend any suit or proceeding brought against Buyer so far as the same is based on a claim that any product or TNBPS's design furnished hereunder or any part thereof, constitutes an infringement of any United States patents, if notified promptly in writing and given authority, information and assistance (at TNBPS's expense) for the sole defense and settlement of the same and if such alleged infringement is not the result of a design or other special requirement specified by Buyer or the result of the application or use to which such product is put by Buyer or others. TNBPS will pay all damages and costs awarded in such suit or proceeding against Buyer. If the products sold hereunder are delivered to or for the use or benefit of the United States Government under a government contract or subcontract, nothing herein stated shall obligate TNBPS to indemnify the Buyer or the Government in any amount or to any extent in excess of that expressly provided for in such Government contract or subcontract. In case such product or part thereof are in such suit held to infringe any such patent and the use thereof is enjoined, TNBPS shall, at its expense and option, either (a) obtain for Buyer the right to use continue using such product or part thereof, (b) replace the same with non-infringing product, or (c) modify the same so that it becomes non-infringing, or (d) remove said product and refund the purchase price, less applicable depreciation, and the transportation and installation cost thereof. The foregoing states the entire liability of TNBPS to Buyer for patent infringement.
  
10. CANCELLATION: Any purchase order or contract, which may arise pursuant to this acknowledgment, may be canceled by the Buyer only upon written notice to TNBPS. Non-refundable deposits are forfeited by Buyer on all cancellations. The cancellation liability schedule for canceled orders is as follows:

<u>Cancellation Period</u>	Liability Percentage of Order Price
<u>More than 5 weeks prior to shipment</u>	30 percent
<u>Between 5 and 2 weeks prior to shipment</u>	75 percent
<u>Less than 2 weeks prior to shipment</u>	100 percent

TNBPS may cancel an order if Buyer becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Buyer under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

Neither the rights nor the obligations of Buyer under an order are assignable or transferable in whole or in part without the prior written consent of TNBPS.

11. PROPRIETARY INFORMATION: TNBPS and Buyer shall endeavor in good faith to keep confidential and disclose to no one without the consent of the disclosing party, any information furnished to TNBPS by Buyer or to Buyer by TNBPS in written or graphic form and marked with a written legend identifying such information as “confidential”; provided, however, that the foregoing obligations shall not apply to information which is described in any printed publications or patent, or is publicly known, or which was disclosed to the receiving party by a third party under no obligation of confidentiality.
12. DRAWINGS. Prices, schedules and shipping dates are contingent on timely acceptance of preliminary approval drawings. TNBPS will provide preliminary approval drawings within two (2) weeks after receipt of order, specifying the basic parameters (not otherwise already covered in the sales order contract) needed by Buyer for site and installation design. Subsequent thereto, when the product design process is underway (some weeks prior to the scheduled ship date), TNBPS will provide final one-line and outline drawings. Wiring diagrams, manuals and other job specific documentation are not provided sooner than with final document submittal. Approval by Buyer of the preliminary drawings constitutes acceptance of site-critical product parameters; the final one-line and outline drawings are informational only and are not subject to Buyer initiated changes. Such changes, if requested after receipt of final one-lines and outlines, may impact price and delivery and will be handled in accordance with the change clause.
13. SYSTEM START-UP. If system start-up is included in the negotiated unit price, it will include site time for site inspection and start-up of the Product. System start-up includes the cost of a technician for one day (or as indicated on the order) on-site at Buyer’s facility during normal business hours, Monday through Friday, 8:00 AM - 5:00 PM.

Unit Start-Up DOES NOT include site test load banks, off-loading, set-in-place and interconnection hardware.

Technician time in addition to what is provided as part of the standard start-up, can be purchased from TNBPS at the standard domestic field service per-diem rate schedule, plus expenses. A Fifty percent (50%) premium will be added for any technician work to be performed outside of the standard Monday through Friday hours stated above and a One Hundred percent (100%) premium will be added for weekend or holiday work. Please call the Field Service Department as soon as possible to schedule additional technician time and for a check of the then current rates for such services.

To schedule start-up service, please contact the TNBPS Field Service Department two (2) weeks in advance of the date needed at 1-800-TNBPS (1-800-292-3739).

14. WITNESS TEST. TNBPS has established a standardized Witness Test that allows Buyer to view key elements of performance for a purchased Product. The standard price for a four-hour Witness Test is \$1,000.00 per Product unit and is conducted in accordance with the appropriate Appendix Standard Test. Additional time or equipment is available and priced separately. See Appendix “A” for Static Switch Test standards and Appendix “B” for UPS test standards, as supplements to these Terms and Conditions, as applicable. Witness Test dates are firmly established and scheduled only after final testing has taken place in manufacturing. Shipment after Witness Testing normally occurs within forty eight (48) hours.

Other testing beyond the standard Witness Test will be mutually agreed upon by TNBPS and Buyer and an additional charge will be required based on test complexity and time required to set-up and conduct such test.

Terms and Conditions continued

- 15. EXPEDITES. TNBPS does not grant free access to its facilities or sub-vendor facilities. On-site Expedite requests will be considered on an “as requested” basis. In any case, requests must be submitted to the TNBPS Customer Service Representative in writing at least seven (7) business days prior to the requested visit.
- 16. REWORK CHARGES AND BACK CHARGES. No allowances shall be made to Buyer nor shall Buyer be allowed to take an offset against any order amount owed to TNBPS for any transportation, labor charges or parts, adjustments or repairs, or any other work performed by Buyer, unless such charges are authorized in advance by TNBPS.
- 17. FORCE MAJEURE: TNBPS shall not be liable for delay in any performance or for failure to render any performance, and any such delay or failure shall for all purposes be excused, when such delay or failure is caused by governmental regulation, fire, flood, wind, strike, labor disputes, accident, embargo, riot, act of God, or any other cause or causes, whether of like or different nature, beyond the reasonable control of TNBPS. Buyer shall bear any costs incidental to Buyer’s delay or failure in acceptance of Product or any other performance.
- 18. ARBITRATION: Any controversy or claim arising out of or relating to this contract/order or breach thereof will be finally settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction over the controversy or claim. Arbitration proceedings shall occur in the county of residence of TNBPS in the State of Ohio.
- 19. STATUTE OF LIMITATIONS: Any action resulting from the breach on the part of TNBPS as to Product or services manufactured and/or delivered hereunder must be commenced within one year after the cause of action has accrued.

Equal employment Opportunity/Affirmative Action Employer M/F/H/V

CUSTOMER

THOMAS & BETTS  
POWER SOLUTIONS, LLC.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Company

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



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