

## VIII. STATEMENT OF TERMS AND CONDITIONS

### 1) ACCEPTANCE OF TERMS:

By submitting a purchase order or accepting a price quotation of Thomas & Betts Power Solutions, LLC d/b/a JT Packard ("JT Packard") for the products or services described therein, Customer accepts and is bound to these standard terms and conditions. No additional or differing terms or conditions proposed or delivered by Customer, whether proposed or delivered verbally, through writing, electronic communication, facsimile, or any other means, shall retroactively alter JT Packard's price quotation, service agreement or these terms and conditions in any way. This Agreement, including all of its terms and conditions, may only be amended in a writing signed by both parties.

### 2) INSTALLATION - CUSTOMER'S RESPONSIBILITIES:

To assure a smooth installation and cutover, the Customer shall:

- a) Provide a dedicated electrical circuit in the location of the common equipment.
- b) Provide for suitable equipment placement, as recommended by JT Packard Representative.
- c) Permit or arrange for access to the Ship-To location for JT Packard's maintenance personnel.
- d) Provide suitable environmental conditions for the Equipment; Temperature: 65-75F, Relative Humidity: 40%-60% (Non-Condensing). Conditions which exceed these parameters may nullify the warranty provided herein.
- e) Contact companies providing any auxiliary equipment that may interface with the Equipment (if any).
- f) Obtain any legal permits as may be required.
- g) Arrange for electrical installation by a licensed electrical contractor.

### 3) WARRANTIES AND LIMITATIONS ON WARRANTIES:

- a) Warranty for 3-Phase UPS Equipment shall commence upon completion of JT Packard start-up or 30 days after shipment, whichever is sooner. Warranty for all other equipment shall commence upon shipment from JT Packard.
  - b) JT Packard warrants that, except for Equipment sold "As Is," the Equipment will be free from defects in material and workmanship for the period described in the equipment description (the "Warranty Period"), and that JT Packard will repair the Equipment when and as necessary to satisfy this warranty with all expenses incident to such repair to be borne by JT Packard. Expressly excluded from JT Packard's obligations are any damages to or failure of the Equipment caused by other than latent defects in the design or manufacture of the Equipment and reasonable wear and tear resulting from normal use. Conditions not covered by this warranty include, but are not limited to, misuse, negligence, accident, theft or unexplained loss, abuse, connection to direct current, fire, flood, wind, lightning or other electrical surge, acts of God or public enemy, or improper wiring, installation, repair or alteration by anyone other than JT Packard. Failure of the Customer to use the Equipment according to the instructions provided by JT Packard shall void the warranty provided herein. Customer agrees to immediately notify JT Packard of any difficulties in the operation of the Equipment, and first notice shall be to JT Packard as opposed to any other party. All of JT Packard's warranty liability, in all events, will cease and terminate at the end of the Warranty Period, unless a separate warranty is agreed to in writing between JT Packard and Customer in a separate document.
  - c) During the Warranty Period, JT Packard shall respond to the requests to perform repair and maintenance service in connection with any malfunction of the Equipment, (hereinafter "Regular Service") within one (1) working day of the receipt of notice from Customer requesting such service.
  - d) THE ABOVE WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE TRANSACTION DESCRIBED IN THIS AGREEMENT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.
  - e) If the start-up will be performed by a JT Packard Field Engineer, an expediting fee may apply if the start-up is performed within two weeks. Additional fees may apply for re-scheduling or excess on-site time due to customer delays.
- 4) **LIMITATION / DISCLAIMER OF LIABILITY:** JT PACKARD SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS, OR EXPENSE (INCLUDING, BUT NOT LIMITED TO LOSS OF USE, REVENUE, DATA, OR PROFIT), DIRECTLY OR INDIRECTLY ARISING FROM THE CUSTOMER'S USE OF, OR INABILITY TO USE, THE EQUIPMENT EITHER SEPARATELY OR IN COMBINATION WITH OTHER EQUIPMENT, OR FOR PERSONAL INJURY OR LOSS OR DESTRUCTION OF OTHER PROPERTY, OR FROM ANY OTHER CAUSE. Customer hereby assumes and will bear the entire risk of direct and consequential loss or damage to Equipment or any part thereof from the date of delivery to the Ship-To location. Customer will pay any Municipal, County, State or Federal sales, excise or other taxes which may be levied upon the sales, transfer of ownership or installation of the Equipment, or levied or assessed against the Equipment or the ownership or use thereof. Customer shall indemnify JT Packard against and hold JT Packard harmless from any and all claims, actions, suits, proceeds, costs, expenses, damages and liabilities, including attorney's fees, claimed by any person, organization, association, or otherwise arising out of, or relating to the Equipment, use, possession, operation and/or condition, thereof, arising out of any event on or after the date of delivery of the Equipment to the Ship-To location.
- 5) **PAYMENT AND SHIPPING TERMS:** Customer to provide 20% of the total purchase price as down payment upon initial purchase order, with product held for 5 business days. If Customer fails to submit the down payment within 5 business days, JT Packard may at its discretion, declare the contract null and void. Remaining balance shall be invoiced upon shipment with payment terms of Net 30 days from the date of invoice. Delivery expected in 4-6 weeks after receipt of order and/or receipt of deposit, subject to availability. The price of Equipment in this proposal does not include Taxes or Shipping & Handling charges unless specified as separate line items. Prices for the Equipment are FOB Origin Prepaid and Add. Applicable Taxes and Shipping & Handling charges will be added to the related invoices. Project pricing is based upon full and clear access to the final equipment location upon arrival. This proposal remains valid for thirty (30) days. This proposal does not include costs for electrical installation unless specified as a separate line item. If start-up is included in your project, JT Packard requires a ten (10) day notification for scheduling.
- 6) **INSURANCE:** JT Packard maintains insurance coverage and limits as it deems necessary. Upon Customer's request, JT Packard (a) shall provide Customer with a Certificate of Liability Insurance, and (b) shall provide Customer with thirty (30) days advance notice of any cancellation or material change in coverage. JT Packard shall name Customer as additional insured when required by Customer. When applicable, JT Packard shall also name, any other beneficiary (i.e. building owners and/or property managers) as their interests may appear, as additional insured, but only when required by Customer, and only to the extent as being named an additional insured to this Agreement. If the Customer requires coverage or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the Customer.
- 7) **ADDITIONAL INSTALLATION AND CONSTRUCTION CHARGES:** JT Packard has estimated the cost of the Equipment and in some cases, the cost of installation of the Equipment based upon a reasonable review and "Inspection of the Ship-To" location. However, should installation of the Equipment require additional material, labor or construction, either: (i) not originally estimated because of hidden or unknown conditions, or (ii) which Customer may request or desire, or that may be necessary to accommodate the Equipment or move or change any existing equipment, cable or both, Customer agrees to pay all the additional charges associated with the required material and work. JT Packard will make reasonable efforts to notify Customer if additional installation or related charges will be incurred, however, because the information may not be known by JT Packard until the actual installation is underway, lack of notification of Customer by JT Packard shall not alter Customer's obligation and agreement to pay all such additional charges. Additionally, Customer hereby agrees to pay any additional installation or related charges incurred by JT Packard which are related to any delay or stoppage of work caused by the Customer.
- 8) **TRAINING:** JT Packard will provide initial instruction and training (as may be reasonably necessary) in the operation of the Equipment to personnel and employees of the Customer (which Customer requests be trained) at the time of the installation or start-up of the Equipment. Any subsequent training or instruction which Customer may desire will be charged to Customer at JT Packard's then prevailing rate for similar services in the same area.
- 9) **CANCELLATION OF AGREEMENT:** If Customer cancels this Agreement prior to JT Packard's shipment of the Equipment, refuses to permit JT Packard to install the Equipment, or notifies JT Packard after the execution of this Agreement of its refusal to accept such installation, Customer hereby agrees to pay JT Packard, a "Cancellation Fee" equal to all of the actual costs related to this Agreement incurred by JT Packard through the date of cancellation (including, but not limited to, restocking fees in the amount of twenty percent (20%) of the contract amount, freight charges, employee labor charges and any materials or equipment special ordered for Customer which cannot be returned) plus twenty-five percent (25%) of such amount.



- 10) **SECURITY INTEREST:** The sale or other disposition of any of the Equipment prior to payment of the entire Purchase Price is prohibited. JT Packard shall be permitted to file appropriate UCC financing statements in order to preserve its interest in the Equipment until the purchase price is paid in full.
- 11) **MORE THAN ONE PARTY AS CUSTOMER:** If more than one (1) party is named as Customer in this Agreement, the liability of each shall be joint and several.
- 12) **MISCELLANEOUS:**
  - a) **GOVERNING LAW AND VENUE-**This Agreement shall be governed by, and construed in accordance, with the law of the State of Wisconsin, and the venue of any court action initiated pursuant to this Agreement shall be the Circuit Court of Dane County, Wisconsin.
  - b) **LEGAL COST-**If JT Packard is the prevailing party in any legal proceedings instituted by JT Packard for the enforcement of the terms and provisions of this Agreement, JT Packard shall be reimbursed by Customer for all of its reasonable costs, expenses and attorneys fees.
  - c) **PARTIAL INVALIDITY-**The terms and provisions of this Agreement shall be deemed separable. If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to person(s) or circumstance(s) other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be enforceable to the fullest extent permitted by law.
  - d) **NOTICES-** All notices will be effective when received by the other party. E-mail is an acceptable method of giving notice if received by the person identified above.
  - e) **PURCHASE ORDERS-** Notwithstanding terms and conditions contained in the Customer's purchase order, the terms and conditions of this Agreement shall prevail.
  - f) **LATE PAYMENT-** Late payments shall be subject to a late payment charge of 1.5% per month (18% per year) on any outstanding and delinquent balance.
  - g) **ENTIRE AGREEMENT:** THE TERMS OF THIS AGREEMENT REPRESENT THE COMPLETE AND ENTIRE AGREEMENT BETWEEN JT PACKARD AND CUSTOMER WITH RESPECT TO THE TRANSACTION DESCRIBED HEREIN. NO VERBAL REPRESENTATION OF ANY SALESPERSON, AGENT, OFFICER OR EMPLOYEE OF JT PACKARD SHALL OPERATE TO VARY THE WRITTEN TERMS HEREOF.
  - h) **WAIVER-** A waiver of the strict performance of any term of this Agreement by JT Packard shall not be deemed waiver of any other provision of this Agreement.
  - i) **Currency-**All quoted prices are in US dollars.

Revised 01/29/2010