



V. Service Agreement Terms & 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 and/or services described therein, Customer accepts and agrees to be bound by these standard terms and conditions. No additional or differing terms or conditions proposed or delivered by Customer shall operate to alter or supplement JT Packard's price quotation, service agreement or these terms and conditions in any way.
2. **Maintenance Agreement:** JT Packard agrees to maintain the equipment listed on the Schedule of Equipment (the "Equipment"), according to the terms of this Service Agreement (referred to herein as the "Agreement").
3. **Term of Agreement:** This Agreement shall commence (the "Commencement Date") on the later of: the "Agreement Effective Date" set forth above, or the date on which JT Packard receives a fully signed copy of this Agreement. For full service contracts, emergency coverage is not guaranteed until payment is received.
4. **Payment Terms:** The service contract fee to be paid by Customer shall be the amount set forth on the Schedule of Equipment. JT Packard will invoice annually in advance for all Full Service (FS) Agreements, For Preventative Maintenance (PM) Only Agreements and any Time & Material (T&M) related services, JT Packard will invoice after each PM is completed or the T&M service is completed. For Battery Removal and Replacement (BRR) Projects, JT Packard shall invoice upon shipment of the Batteries. Payment terms are Net 30 days from date of JT Packard's invoice. For Schedules of Equipment with a combination of both FS and PM only Equipment, payment terms relating to FS plans shall apply. Unless otherwise agreed to in writing by both parties, all replacement parts, including batteries, shall be shipped FOB Origin, Freight Pre-paid by JT Packard and added to the invoice and Customer agrees to pay the shipping & handling charges, regardless if Customer has itemized the shipping and handling charges on any Customer issued purchase order. Additional charges apply for contracts billed with extended payment terms. Late payments shall be subject to a late payment charge of 1.5% per month (18% per year) on any outstanding and delinquent balance. Customer will pay any Municipal, County, State or Federal sales, excise or other taxes which may be levied upon the service or materials provided pursuant to this Agreement, and shall be responsible all additional costs associated with Customer required union labor or transportation. All payments due are payable to JT Packard in U.S. currency.
5. **Maintenance:** During the term of this Agreement, JT Packard shall, in accordance with service levels purchased, furnish all necessary service, parts and materials to maintain the Equipment in good working condition and repair. All JT Packard supplied parts shall comply with the Equipment manufacturer's published standards and/or specifications, and shall be the same as or equivalent to parts presently used and/or recommended by the OEM. JT Packard reserves the right to use refurbished circuit boards and assemblies that are commonly used in the industry. The parties agree that this is a contract for services and is not subject to any Uniform Commercial Code. Customer hereby grants JT Packard reasonable access to the Service Location(s) at which the Equipment is located for the performance of these services. JT Packard shall not be responsible for damages to or errors in any Equipment for which Customer has authorized service, operation, and/or modification by a party other than JT Packard. In the event of such an occurrence, and upon Customer's request, JT Packard will inspect such Equipment and invoice separate of any Full Service related Agreement(s) for costs incurred to return such Equipment to industry standards, in accordance with JT Packard's then current time and materials rates.
6. **Preventative Maintenance Visits:** Should the Customer cancel a confirmed PM visit with less than two(2) business day's notice prior to the scheduled service date, Customer shall be charged for any expenses incurred (including but not limited to, associated travel expenses and field engineer time). If JT Packard is unable to complete a PM visit due to Customer's failure or inability to schedule the PM visit within ninety (90) days of the original proposed scheduled service date, JT Packard's obligations with respect to that PM visit shall be considered to have been fulfilled and no refund for such visit shall be due. Customer shall be responsible for all expenses incurred by JT Packard due to any delay or stoppage of work caused by the Customer, and shall be responsible for all costs associated with JT Packard's use of union labor when required by Customer.
7. **Additional Work:** During the term of this Agreement, Customer may request that JT Packard perform services or provide materials, which are not set forth in this Agreement or included in the prices stated herein ("Additional Work"). JT Packard hereby agrees to perform such Additional Work, provided that Customer has provided the scope or definition of such Additional Work and has authorized, in writing, the compensation payable to JT Packard for the performance of the Additional Work. The performance of any and all such Additional Work shall be subject to and governed solely by the terms of this Agreement
8. **Warranties: JT Packard warrants the Services as follows:**
 - Warranty - Full Service (FS) Agreements:** In the case of any Full Service Agreement plan, the Services are warranted to be free from defects in labor and parts during the term of the FS Agreement. JT Packard's liability under this warranty is limited to re-performance and replacement of any defective labor or parts. This warranty is JT Packard's sole warranty with respect to the Services and is in lieu of all other warranties, expressed or implied, including warranties of merchantability and fitness for a particular use or purpose, which are specifically disclaimed.
 - Warranty - PM Only Agreements & T&M Services:** Services are warranted to be free from defects in labor for a period of thirty (30) days from the date of performance and defects in parts for a period of ninety (90) days from the date of installation. Liability under this warranty is limited to re-performance and replacement of any defective labor or parts. This warranty is JT Packard's sole warranty with respect to the Services and is in lieu of all other warranties, expressed or implied, including warranties of merchantability and fitness for a particular use or purpose, which are specifically disclaimed.
9. **Discontinuance of Parts:** With respect to Equipment no longer supported by the manufacturer, Equipment greater than 7 years of age and any Equipment for which parts are not available through customary sourcing channels, JT Packard will continue to source replacement parts to the best of its ability. Should replacement parts for such Equipment not be available, JT Packard will notify Customer of such unavailability; and, where applicable, provide Customer a pro-rata credit for the balance of the Agreement for any un-repaired Equipment for which parts coverage is included in this Agreement.
10. **Termination of Agreement:** Either party shall have the right to terminate this Agreement in whole or in part at any time and for any reason, upon thirty (30) days' prior written notice of the party's intent to terminate, which notice shall specify the date of termination. If JT Packard terminates this Agreement, JT Packard shall refund to the Customer a prorated amount of any prepaid Maintenance Charge, less any amounts which are owed to JT Packard by Customer. If Customer terminates this Agreement, Customer shall not be entitled to any refund of amounts previously paid.
11. **Pre-Existing Conditions:** If JT Packard determines that the Equipment has not been maintained in accordance with the manufacturer's recommendations and/or has a pre-existing condition for which additional maintenance will be required in order to bring the Equipment within normal operating standards, JT Packard will notify Customer of such determination and, upon Customer's authorization to proceed, JT Packard will perform the additional necessary maintenance and charge the costs thereof to Customer at JT Packard's then current time and materials rates.
12. **Limitation on Equipment and Services Covered by this Agreement:** In the case of any Full Service Agreement, JT Packard's obligations hereunder, cover only the Equipment listed on the Schedule of Equipment (which may be amended from time to time upon written agreement of JT Packard and Customer). This



Agreement only covers labor and materials for repairs due to ordinary wear and tear, other than battery and capacitor replacements, which will be priced separately. This Agreement does not cover damages caused by misuse, negligence, accident, theft or unexplained loss, abuse, fire, flood, wind, lightning or other electrical surge, tornado, sandstorm, hail, explosion, earthquake, smoke, vandalism, terrorism, acts of God or public enemy, or improper wiring, installation, repair or alteration by anyone other than JT Packard. Operation of any Equipment in a manner that is not in compliance with the Equipment manufacturers' recommended operating conditions or specifications, or exceeding the Equipment's original design limits shall constitute misuse. Examples include, but are not limited to, UPS overloads, phase-imbalanced conditions (more than 20%), and overloads caused by leading power factor loads. In the case of any such event, JTP will notify Customer and may at its sole option either a) terminate the Equipment subject of the FS Agreement effective upon notice thereof or, with Customer's authorization to proceed, will bring the Equipment back up to properly maintained standards in accordance with JT Packard's then current time and material rates.

13. Indemnification/Limitation of Liability: JT Packard agrees to defend and indemnify Customer for and hold Customer harmless from any and all claims for bodily injury and damage to property to the extent that such claims arise out of or are caused by the negligence or willful misconduct of JT Packard in the performance of this Agreement. IN NO EVENT SHALL JT PACKARD BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOSS, OR EXPENSE (INCLUDING, BUT NOT LIMITED TO LOSS OF USE, REVENUE, DATA, OR PROFIT).

14. Insurance: JT Packard agrees to maintain at its expense during the term of this Agreement policies of commercial general liability insurance (to include contractual liability and products/completed operations liability) and automobile liability insurance, each with policy limits of not less than \$2,000,000 per occurrence and \$5,000,000 in the annual aggregate, and policies of workers compensation insurance with such limits of coverage as are required by law.

15. Relationship of the Parties: JT Packard is performing Services under this Agreement only as an independent contractor. Nothing contained herein or otherwise implied by the relationship between the parties shall be deemed to constitute any joint venture, partnership, agency, co-employer or relationship between the parties other than that of an independent contractor.

16. Assignment: Customer may transfer or assign its rights or obligations under this Agreement only upon providing written notice thereof to JT Packard.

17. Failure of Customer to Make Timely Payment: If Customer fails to pay JT Packard any amounts due pursuant to the terms of this Agreement within the time period required herein, in addition to all other rights and remedies available in this Agreement and under applicable law, JT Packard may, in its sole discretion, withhold Services until such time as Customer's account is paid in full or immediately terminate this Agreement without further liability to Customer.

18. Governing Law: This Agreement and the relationship of the parties hereunder shall be governed by, and construed in accordance, with the laws of the State of Wisconsin.

19. Legal Costs: In the event that litigation should be instituted to enforce the terms of this Agreement, the party prevailing in such litigation shall be entitled to recover from the other party, in addition to all other damages to which it may be entitled, its reasonable attorney's fees and cost incurred in connection with such litigation.

20. Partial Invalidity: The terms of this Agreement shall be deemed separable. If any 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.

21. Purchase Orders and Other Documents/Entire Agreement: This Agreement and the Terms and Conditions stated herein constitute the final and complete agreement between JT Packard and Customer regarding the subject matter hereof and shall exclusively control the relationship of the parties in connection with the performance of the Services. Any additional or different terms contained in any purchase order, acknowledgment, notice to proceed, statement of work or any other document shall be of no effect between the parties. This Agreement may only be modified by a separate written agreement signed by both parties hereto and specifically referencing the parties' intent to modify this Agreement

22. Waiver: The failure of either party to enforce, at any time or for any period of time, any provisions of this Agreement shall not be construed as a waiver of such provision or of the right of such party thereafter to enforce such provision.

23. If Customer purchases a battery replacement project under the Additional Work provision contained herein, the following additional terms and conditions shall apply:

1. **Cancellation of BRR Project:** If Customer cancels a BRR related Project prior to JT Packard's shipment of the batteries, refuses to permit JT Packard to install the batteries, or notifies JT Packard after Customer's authorization to proceed, 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 BRR Project 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 Project price, freight charges, employee labor charges and any materials or Equipment special ordered for Customer which cannot be returned).
2. **Additional Installation and Construction Charges:** JT Packard has estimated the cost of the batteries and the cost of installation of the batteries based upon a reasonable review and inspection of the Ship To location. If installation of the batteries will require additional material, labor or construction: (i) not originally estimated because of hidden or unknown conditions; (ii) necessary to accommodate the batteries or move or change any existing Equipment or cable; or (iii) at Customer's request, 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 to pay all such additional charges.
3. **Warranty – Battery Removal and Replacements (BRR) Agreements:** Warranty will vary as the manufacturer dictates; therefore warranties and Warranty Period, dependant on the battery type, will be outlined as per each JT Packard proposal in a project-specific manner. The Warranty Period shall commence upon the date of installation. During the Warranty Period, JT Packard will repair or replace any battery that has malfunctioned, other than as a result of casualty or product misuse. Installation service shall be warranted against defects in labor for a period of thirty (30) days from the date of installation. Freight charges associated with replacing a warranted battery are not covered under this Agreement and will be charged accordingly. Any labor associated with repair or replacement of a warranted battery beyond the thirty (30) day period stated herein, is not covered under this Agreement and shall be charged accordingly.
4. **Installation-Customer Responsibilities:** To assure a smooth installation the Customer shall:



- a. Permit or arrange for access to the Ship To location for JT Packard's installation and maintenance personnel.
- b. Provide suitable environmental conditions for the batteries; Temperature: 65-75F, Relative Humidity: 40%-60% (Non-Condensing). Conditions which exceed these parameters will void the warranty.
- c. Obtain all required permits.

JT Packard is an Equal Employment Opportunity / Affirmative Action Employer M/F/H/V.

Revised 5/09/2011