



TDK-LAMBDA AMERICAS INC. (TLA) TERMS AND CONDITIONS

- 1. GENERAL:** Orders are accepted by TDK-Lambda Americas Inc. (herein referred to as "TLA") subject to these terms and conditions. Purchaser's order is accepted only on the express understanding and condition that any terms or conditions of sale specified by Purchaser on a purchase order, purchase contract, order form or otherwise which are in conflict with, inconsistent with, or in addition to the terms and conditions of sales contained herein, shall not be binding upon TLA unless expressly accepted in writing by TLA. TLA's acceptance of Purchaser's order will create a complete and binding contract between Purchaser and TLA, on the terms set forth herein and in TLA's written form of acceptance which will supersede all prior communications. Such contract cannot be modified or cancelled without the express consent of both parties.
- 2. SHIPMENT:** All shipping dates are approximate. TLA shall attempt to comply with but will not guarantee shipping date and loading and routing instructions. TLA reserves the right to allow or prorate shipments against all orders, whenever, in its judgment, such pro ration is necessary. In the event of any default by Purchaser, TLA may decline to make further shipments without in any way affecting its rights. If, despite any default by Purchaser, TLA elects to continue to make shipment, its action shall not constitute a waiver of any default by Purchaser or in any way affect TLA's legal remedies for any such default.
- 3. TITLE AND DELIVERY:** All sales are made Exworks Origin (Incoterms 2000). Unless otherwise agreed to in writing by TLA, Purchaser shall pay all freight, cartage, handling, and installation charges. Title and risk of loss or damage shall pass from TLA to Purchaser upon TLA's placing the material purchased hereunder into the possession of the carrier, such carrier acting as Purchaser's agent. All claims for damage must be filed with the carrier.
- 4. PRICES:** Irrespective of any prices quoted by TLA or listed on Purchaser's order, an order is accepted only at the prices shown on the face of the TLA Acknowledgement.
- 5. TERMS AND METHODS OF PAYMENT:** Invoices are payable at the address set forth on the face hereof or as otherwise specified on the invoice. Exchange charges or charges for returned checks will be charged to Purchaser's account. Terms of payment are subject to change by TLA at any time and from time to time. The amount of credit extended by TLA to Purchaser may be changed and such credit may be withdrawn by TLA at any time. TLA reserves the right to require Cash with Order (in whole or in part), C.O.D. or Letter of Credit with all costs of collection (plus 18% interest on Drafts not paid at maturity) for the account of Purchaser. In the event of the bankruptcy or insolvency of Purchaser or in the event any proceeding is brought by or against Purchaser under any bankruptcy or insolvency laws, TLA shall be entitled to (i) stop in transit or divert to itself any shipment in transit and (ii) cancel any order then outstanding in addition to any other remedies under law, receive reimbursement for its cancellation charges. Each shipment shall be considered a separate independent transaction, and payment therefor shall be made accordingly. If for any reason Purchaser is not prepared to accept delivery of goods, TLA may store the goods at Purchaser's expense and risk and such storage shall constitute shipment and delivery to the Purchaser.
- 6. TAXES:** All prices are quoted and all orders are accepted exclusive of federal, state and local excise, sales, use and similar taxes. Accordingly, in addition to the prices specified on the face hereof, the amount of all excise, sales, use or similar taxes applicable to the sales hereunder shall be paid by Purchaser unless Purchaser shall provide TLA with a tax exemption certificate acceptable to TLA and the appropriate taxing authorities. Taxes will appear as separate additional terms on the invoice unless prior to shipment TLA receives the appropriate tax exemption certificate.
- 7. FORCE MAJEURE:** TLA shall not be liable for delivery delays, failure to deliver or failure to otherwise perform occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, parts, materials, labor or transportation, fires, storms, floods, earthquakes, explosions, accidents, or other acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, car shortage, orders given priority by any public authority or any other cause beyond the control of TLA.
- 8. PATENTS:** TLA does not warrant the Purchaser shall be free from any rightful claim of third persons for patent infringement. Purchaser shall indemnify, defend and hold TLA harmless against all expenses, damages, costs or losses (including reasonable attorney's fees) arising or resulting from any claim, action, suit or proceeding brought for infringement of patents or trademarks or for unfair competition by reason of (a) Purchaser's manufacture or sale of goods incorporating TLA products (b) goods made to Purchaser's specifications (c) Purchaser's manufacturing or other process utilizing any product, furnished hereunder or (d) any non infringing product furnished hereunder when modified by Purchaser or combined by Purchaser with products not supplied by TLA. Sales of products, or any parts thereof, hereunder confers on Purchaser no license or other right in any patent, trademark, trade secret, or copyright now held by or which may in the future be obtained by TLA.
- 9. RETURNED GOODS ORDERED IN ERROR:** Upon factory authorization and placement and acceptance of a corrected order form standard TLA product which Purchaser has ordered in error may be returned to TLA, transportation charges prepaid. All such returned products must be new, unused, in the original carton, and in Purchaser's possession no longer than 30 days. Purchaser shall pay to TLA a restocking charge in an amount equal to the greatest of 25% of the purchase price or \$25. Assemblies, accessories, power supplies with built-in options, non-standard or obsolete power supplies and any material modified or built to Purchaser specification may not be so returned.
- 10. NUCLEAR MATERIAL:** Purchaser shall indemnify, defend and hold TLA harmless against any expenses, damages, costs or losses (including reasonable attorney's fees) arising out of or in connection with the use of nuclear material (including source material, special nuclear material and by-product material, as such terms are defined in the Atomic Energy Act of 1954 or in any law amendatory thereto) by Purchaser or its customers whether alleged to be due, in whole or in part, to the negligence or fault of TLA.
- 11. ASSIGNMENT:** Purchaser shall not assign this order or any interest herein or any rights hereunder without the prior written consent of TLA.
- 12. APPLICABLE LAW:** The contract created hereby shall be interpreted and construed under the laws of the State of California. Any suit arising hereunder shall be brought in the courts of the State of California, County of San Diego.
- 13. PRODUCT DISCONTINUANCE: DESIGN AND SPECIFICATION CHANGES:** TLA reserves the right to discontinue products without notice and to make modifications in design and specification of products without notice or incurring any obligation to make such modifications to products previously sold.
- 14. COMPLIANCE WITH EXPORT REGULATIONS:** Products purchased hereunder may be subject to export regulations of the U.S. Department of commerce or the International Traffic in Arms Regulations of the U.S. State Department. For all orders to be delivered by TLA to an address within the United States, Purchaser shall have sole responsibility for compliance with such regulations.
- 15. WARRANTY:** TLA warrants that, for the Applicable Warranty Period, Products shall be free from defects in material and workmanship. As used herein, the Applicable Warranty Period shall be the period indicated for the relevant Product in the TLA catalog or data sheet which is current at the date of sale by TLA or an authorized distributor to the original end-user purchaser. The Applicable Warranty Period shall commence on the date of shipment to the end user. The sole obligation of TLA under this limited warranty shall be to repair or replace, at TLA's option, defective Products returned to TLA within the Applicable Warranty Period. Certain Products may be sold with a Limited Lifetime Warranty. Only Products that are expressly designated and sold by TLA as covered by the Limited Lifetime Warranty will be so covered. Such Products will have an extended warranty that is defined as the period ending five (5) years after TLA discontinues manufacturing the product (as determined by TLA), but the warranty period shall be at least ten (10) years from the date of sale by TLA or an authorized distributor to the original end-user. Excluded from this Limited Lifetime Warranty are fans, blowers or other air moving devices or assemblies forming part of the covered Products. The Limited Lifetime Warranty applies only to the original end-user purchaser and is not transferable. Neither TLA's standard warranty nor the Limited Lifetime Warranty shall apply to any Product that has been modified or misused, or repaired by Purchaser, other end-user, or by any third party. TLA shall, at its sole discretion, determine whether Products have so been modified, misused, or repaired. The warranties do not cover any damage caused by the Purchaser, other end user or any third party. The warranties do not cover upgrades to the current product revision level. Warranty repairs require notification to and authorization of TLA prior to returning Products. All returned goods must have a return material authorization (RMA) number marked on the cartons. This number should be marked on a minimum of 2 sides of the carton. All goods must be shipped to TLA prepaid. TLA shall pay freight costs for returning to Purchaser repaired or replaced Products determined by TLA to be within the provisions of the warranty. In all other cases, costs of repair or refurbishment and freight costs shall be billed to the Purchaser. **TDK-LAMBDA AMERICAS INC. (TLA) EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR ANY PARTICULAR PURPOSE. TLA DISCLAIMS AND EXCLUDES ALL LIABILITY, INCLUDING FOR NEGLIGENCE OF TLA OR ITS EMPLOYEES, FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER TLA HAD NOTICE THEREOF.**