

## TERMS AND CONDITIONS OF SALE

**1: AGREEMENT:** By this agreement, seller agrees to sell to buyer, and Buyer agrees to purchase from seller all his rights, title, and interest to all materials specifically listed and described hereon for the prices shown. This is a legal binding contract. If you have any question concerning this contract, you should consult an attorney before signing it.

**2: DEFINATION:** BUYER – The person or entity purchasing the material  
SELLER – T&D Surplus, Inc.

**3: CHANGES - ASSIGNMENTS:** This agreement shall be deemed to constitute the buyer an independent contractor. The terms of this agreement shall not be changed, superseded, or supplemented, except in writing, signed by the parties hereto. Any assignments or delegation of the Buyer's rights or obligations under this Agreement shall be void without the Seller's prior written consent.

**4: TAXES:** Price does not include any taxes which may now or hereafter be applicable to, measured by, or imposed upon, or with respect to transaction, property, its sale, its value, or its use, or any service performed in connection therewith. Buyer agrees to pay or reimburse any such taxes, which seller is required to pay.

**5: PAYMENT:** Payment shall be by certified check, cashier check, bank draft, wire or postal or express money order PAYABLE to TDSURPLUS, INC. Payment must be made within FIVE (5) calendar days after notification of Seller's acceptance of Buyer's bid/price. T&D Surplus, Inc. may require advance payment to firm up the commitment. This advance payment will be escrowed and applied toward the last payment. Payment shall be made in full before shipment, pickup by Buyer or commencement of dismantling or other work (whichever occurs first) for all items purchased by Buyer unless otherwise specified. If Buyer fails to make payments, Seller reserve the right to sell or otherwise dispose of such property, cancel the advance payments and recover any loss or other extra expense to the defaulting Buyer, including attorney and collection fees incurred by Seller arising from buyer default. Payment must be mailed or delivered to:

T&D Surplus, Inc.  
P.O. Box 121  
Baldwinsville, NY 13027

**6: TITLE AND RISK OF LOSS:** Title to items herein sold shall pass from seller to Buyer upon delivery to Buyer or Buyer's carrier at shipping point. Risk of loss to the material shall pass to Buyer when the Material is loaded onto the Buyer's carrier's vehicle, unless stated otherwise. Buyer shall be required to comply with jobsite work rules, where applicable. Buyer shall, at his own expense, remove the material within (10) days after notification of Seller of the Buyer's bid and payment. A material Safety data Sheet (MSDS) is available upon the request of the higher bidder.

**7: DISCLAIMER OF WARRANTEE:** Buyer takes material "as is" and "where is" with Seller SPECIFICALLY DISCLAIMING ANY EXPRESS WARRANTY, ANY IMPLIED WARRANTEE OF MERCHANTABILITY OF GOODS, AND ANY IMPLIED WARRANTY OF FITNESS OF GOODS FOR ANY PURPOSE and further, Buyer takes material with knowledge that it might have been used for a period of time.

**8: INDEMNITY:** Buyer also acknowledge and declares intent to be legally bound hereby to indemnity, save harmless and defend Seller, Seller's agents, and their employees, agents and representatives from all claims, losses, liabilities, and expenses including, but not limited to, all attorney fees arising out of bodily injury, death, or damage to property occurring in connection with any act or omission (negligent or otherwise) of Buyer, his agents, employees, representatives, or subcontractors, unless due to the sole negligence of the Seller, Seller's agents, and their employees, agents and representatives.

**9: ENTIRE AGREEMENT:** Buyer and Seller agree that there are no understandings, agreements, representations, expressed or implied, other than those expressed herein, and this agreement supersedes any prior understandings, agreements or representation and constitute the entire agreement between the parties. By signing below or accepting the Material, buyer acknowledges and accepts all the terms and conditions contained in this agreement.

**10: TERMINATION:** The Seller upon written notice of three days may terminate this agreement at any time. Failure of Buyer at any time strictly comply with any terms of this agreement, including payment or prompt pickup at schedule time by Buyer's authorized personnel, shall be deemed a breach; and Seller thereon shall be entitled to cancel this agreement immediately and recover any losses or other expenses related to their agreement including advance payments. The buyer also acknowledges that T&D Surplus, Inc. may have attained material or in a process of attaining it from other sources to resell. It is buyer's understanding that it will not get direct to influence the principal source by ANY MEANS and ANY TIME even after the termination of the agreement. T&D Surplus shall retain its contractual rights (including, but not limited to, recovery of its entire project principal amount at the selling price, cancellation of advance payments, administrative expense, and/or other damages incurred.)

**11: LIMITATION OF LIABILITY:** The Seller shall not be liable for any incidental or consequential damages whatsoever, including without limitation, loss of use, loss of profits, loss of revenues, or liability to third parties. This limitation applies even if such liability arises out of tort (including negligence), warrantee, contract or strict liability.

**12: INSURANCE:** From the commencement of agreement through completion, Buyer shall provide and maintain, at its own expense, insurance policies, issued by reputable insurance companies with an A.M. Best rating of at least B+, which meet or exceed the requirement listed herein:

1: Workers Compensation and Employers Liability Insurance as required by the state of New York, Michigan.

2: Comprehensive General Liability, covering all operations to be performed under this agreement, with minimum per occurrence limit of \$1,000,000 for Bodily Injury and \$1,000,000 for Property Damage. Coverage shall include Contractual Liability and shall include all Sellers as additional insures.

3: Automobile Liability, covering all owned, non-owned and hired vehicles used in connection with the work or service to be performed under this agreement with minimum per occurrence limit of \$1,000,000 for Bodily Injury and Property Damage.

Buyer shall provide Seller with a certificate of Insurance – evidencing the required coverage’s, at or before the effective date of this agreement. Such certificate, and any renewals or extensions thereof, shall state that Buyer shall provide Seller (10) day’s written notice before the policies in question shall be diminished or canceled.

**13: SUBCONTRACTS:** The seller shall have the right to reject any subcontractor. The buyer shall be fully responsible for acts and omissions of all subcontractors, and other persons performing any part of the work for Buyer.

**14: SEVERABILITY:** To the extent that any provision of this agreement shall be invalid, unlawful or unenforceable, it shall be severed from this agreement without affecting the remaining provisions of the agreement.

**15: LAWS AND PERMITS:** This agreement is deemed to be a New York State Contract and shall be interpreted in accordance with the laws of the State of New York, and it is agreed that the venue of any action shall be in Onondaga County, in New York State. Buyer shall give all notices and comply with all applicable federal, state and local laws, ordinance, rules, regulations, codes, permit, licenses, authorizations, orders of any governmental body, agency, authority, or court having jurisdiction over any aspect of the Material, or requirements hereunder in connection with performance under this agreement.

**16: CODE OF BUSINESS CONDUCT:** T&D Surplus, Inc.’s policy is to establish, maintain and enforce the highest standards of integrity and fairness in all business dealings of the Company. Adherence to high ethical standards is essential to assure that T&D Surplus, Inc business is conducted in accordance with its obligations to the public. No favoritism will be allowed in contract awards.

Purchaser’s Signature	
Company Name	
Date	
Project	Electric KWH Meters

**THIS SIGNED TERMS AND CONDITIONS FORM MUST BE RETURNED BEFORE RELEASE OF SHIPMENT.  
T & D SURPLUS, INC.**