

# Terms and Conditions

## 1. INTERPRETATION:

In these terms and conditions unless the context otherwise requires:

- (a) 'T.E.A.' means T.E.A. Transmissions Pty. Ltd.;
- (b) 'The Customer' means the person (including his successors and assigns) acquiring goods from T.E.A.;
- (c) 'goods' means all goods supplied by T.E.A. to the customer;
- (d) 'supply' when used as a verb includes supply (including resupply) by way of sale;
- (e) 'person' includes corporation, firm and unincorporated association;
- (f) 'corporation' includes person, firm and unincorporated association;
- (g) any gender imports the other genders;
- (h) the singular includes the plural and vice versa.

Clause headings used herein are for convenience only and shall be disregarded in construing these terms and conditions.

## 2. OFFER AND ACCEPTANCE:

- 2.1 These terms and conditions shall apply to the supply of goods by T.E.A. to the Customer where:
  - (a) the Customer places an order for the goods which either contains no terms and conditions of supply or contains terms and conditions identical to those contained herein; and
  - (b) T.E.A. accepts such order.
- 2.2 No contract for the supply of goods shall exist between T.E.A. and the Customer except upon these terms and conditions. Any order placed by the Customer for goods embodying terms inconsistent with these terms and conditions of supply shall be incapable of acceptance by T.E.A. Where the Customer places an order for goods which contain terms and conditions of variance with these, any subsequent delivery of the ordered goods to the Customer shall be construed as a counter offer to supply them on the terms and conditions contained herein. Such counter offer shall be deemed to be accepted by the Customer be acceptance of the goods when delivered.
- 2.3 T.E.A. reserves the right to accept in whole or in part any order by the Customer or to decline any such order. Any order or part order not accepted is deemed cancelled.
- 2.4 The giving of a quotation by T.E.A. shall be construed as an invitation to the Customer to make an offer based on such quotation. Such an order shall not create a contract between the Customer and T.E.A.
- 2.5 All telephone orders should be confirmed in writing by the customer.
- 2.6 Unless otherwise stated in a quotation, if the Customer does not place an order based on the quotation within thirty (30) days after the date of the quotation, the quotation shall be deemed to have been withdrawn by T.E.A.
- 2.7 Every order, or alteration to an order, requires the written confirmation of T.E.A. to be effective in law.

## 3. PRICES:

- 3.1 Unless otherwise agreed by T.E.A. in writing, the price for goods shall be that ruling at the date of delivery thereof, notwithstanding that delivery may be delayed by agreement or otherwise.
- 3.2 Subject to clause 3.1 prices shall be subject to alteration by T.E.A. without notice to the Customer.
- 3.3 Except as otherwise stated in writing by T.E.A. prices shall be exclusive of sales tax and delivery charges.
- 3.4 Where a price is stated in writing by T.E.A. to be inclusive of sales tax, any increase in sales tax between the date the price is stated and the date of delivery of goods which are the subject of the sales tax, shall be for the account of the Customer.

## 4. PAYMENT:

- 4.1 When the Customer opens an account with T.E.A. the Customer may be required to nominate referees or guarantors prior to credit trading being approved.
- 4.2 A minimum invoice charge may apply to the supply of goods on credit.
- 4.3 Unless otherwise agreed by T.E.A. payment for goods shall be made directly to T.E.A. only, and not to any representatives, agents, carriers or sub-contractors.
- 4.4 If the customer fails to comply with T.E.A.'s terms of payment, T.E.A. may forthwith discontinue supply of further goods to the Customer, and T.E.A. may without notice charge interest at the prime rate prevailing at the date of delivery of the goods.
- 4.5 Notwithstanding anything contained in Clause 4.4, T.E.A. may, at the time of any particular delivery of goods, require payment therefore in advance of delivery.

## 5. DELIVERY AND RETURN OF GOODS:

- 5.1 The customer shall bear all delivery charges for delivery of goods to the Customer's premises and all risks shall pass to the Customer at the time of dispatch. If the goods are ready for dispatch but the taking of delivery is delayed for reasons for which T.E.A. is not responsible, the risk passes to the Customer at the time that the Customer receives notification that the goods are ready for dispatch.
- 5.2 Where, in order to deliver or collect goods, T.E.A. or its carrier enters upon the Customer's premises, the Customer shall provide full and safe access to T.E.A. or its carrier and shall be liable for, and indemnify T.E.A. against the cost of all loss, damage to property and injury to persons, occurring directly as a result of the failure by the Customer to ensure the said full and safe access.
- 5.3 The customer shall be responsible for providing adequate labour and/or materials-handling equipment for the loading and unloading of goods at its premises.
- 5.4 There shall be no return of defective goods to T.E.A. unless the Customer notifies T.E.A. within seven(7) days of the Customer's receipt of such goods. Any claims after this period for return or compensation in respect of such defective goods are expressly excluded.
- 5.5 Where T.E.A. agrees to collect goods from the Customer's premises, the Customer shall ensure that such goods are all available for collection at an easily accessible central point and that they are ready for loading at the time T.E.A. arrives to collect them.
- 5.6 Where the Customer returns goods to T.E.A. other than by T.E.A.'s vehicles, T.E.A. shall be informed in advance of the details of such returns, including details of goods and the date and method of return thereof. The Customer shall label goods with the name and address of the Customer.
- 5.7 Whenever goods are returned to T.E.A., the Customer shall ensure that they are returned in a safe condition, both from the point of view of risk to persons handling them and in their vicinity and from the point of view of the risk of damage to the goods themselves.
- 5.8 Where goods are transported by T.E.A. to the Customer's premises, delivery shall be deemed to take place at the moment that the goods pass over the side of the vehicle on or in which they were transported to the Customer's premises.
- 5.9 In the event that goods are returned to T.E.A. there shall be no refund of the costs of the packing material and labour used to pack such goods when delivered to the Customer and T.E.A. shall not be liable for any packing costs incurred in the return of the goods to T.E.A.
- 5.10 Delivery dates proposed by T.E.A. shall not be binding on T.E.A.. T.E.A. shall not be liable for any errors or omissions in delivery of goods by any carrier or sub-contractor. In such event the Customer has no right of withdrawal from the contract.

## 6. PASSING OF TITLE AND RISK:

- 6.1 All property and title of goods sold by T.E.A. to the Customer, together with all risks in respect

of such goods, shall pass to the Customer upon delivery of the goods, subject to T.E.A.'s right to reclaim ownership of any goods supplied until any outstanding monies whatsoever owed by the Customer to T.E.A. have been paid in full.

- 6.2 In the event of attachment, seizure or restraint, by any party, of goods supplied by T.E.A. to the Customer, the Customer agrees to inform T.E.A. immediately upon the occurrence of such event. Any such attachment, seizure or restraint shall not affect T.E.A.'s title to goods nor rights herein. Any goods delivered to the Customer shall not be used as security nor encumbered in any manner.

## 7. DRAWINGS AND SPECIFICATIONS:

- 7.1 All technical information (including drawings, specifications, catalogues, illustrations and particulars of dimensions and weight) supplied by T.E.A. to the Customer is approximate only and shall not be binding by T.E.A.
- 7.2 All technical information supplied by T.E.A. to the Customer shall be treated by the Customer as confidential and the Customer shall not communicate such information to third persons without the written consent of T.E.A. No such information or materials shall be reproduced nor given to third parties. T.E.A. reserves the right to make alterations to the design, dimensions and weights of its goods.
- 7.3 Catalogues, photographs, samples and price lists remain the property of T.E.A. and shall be returned on demand.

## 8. FORCE MAJEURE:

If the performance or observance by T.E.A. of its obligations (or any of them) is prevented, restricted or interfered with by reason of any cause or causes beyond the reasonable control of T.E.A., T.E.A. shall, upon prompt notice of such cause or causes being given to the Customer, be excused from such performance or observance to the extent of such prevention, restriction or interference, provided that T.E.A. shall use its best efforts to avoid or remove the cause or causes of non-performance and observance.

## 9. LIABILITY:

- 9.1 The Trade Practices Act 1974 (Commonwealth) as amended and similar States and Territories legislation relating to the supply of goods protects consumers' interest by ensuring that consumers are entitled in certain situations to the benefits of various conditions, warranties, guarantees, rights and remedies (including warranties as to merchantability and fitness for purpose) associated with the supply of goods.
- 9.2 A consumer should seek legal advice as to the nature and extent of these protected interests. In some circumstances the supplier of goods may legally stipulate that the said conditions, warranties, guarantees, rights and remedies are limited or entirely excluded.
- 9.3 The warranties set out in Clause 9.2 shall be additional to any non-excludable warranties to which the Customer may be entitled pursuant to any statute.
- 9.4 Subject to Clause 9.3, T.E.A. gives the following warranties to the Customer:
  - (A) Insofar as they are manufactured or imported by T.E.A. goods will upon delivery be of merchantable quality and reasonably fit for the purpose or purposes for which they are supplied by T.E.A.;
  - (B) T.E.A. will repair or, at its option, replace those goods which upon examination are found by T.E.A. to be defective in workmanship and/or materials.
- 9.5 In its application to goods, the warranty in Clause 9.2:
  - (A) is conditional upon the Customer notifying T.E.A. in writing of its claim within seven (7) days of becoming aware of the basis thereof, and at its own expense returning the goods which are the subject of the claim to T.E.A., and
  - (B) does not apply to:
    - (I) components not of T.E.A. manufacturer, which are contained in the goods, and
    - (II) obsolete goods sold at auction, second-hand goods and prototype goods.
- 9.6 T.E.A. hereby declares that to the extent permitted by law, it hereby limits its liability in respect of the supply of goods which are not of a kind ordinarily acquired for personal, domestic or household use or consumption to anyone or more of the following (the choice of which shall be at the option of T.E.A.):
  - (A) the replacement of the goods or the supply of equivalent goods;
  - (B) the repair of the goods;
  - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (D) the payment of the cost of having the goods repaired.
- 9.7 Except as provided in Clause 9.2 to 9.4 above, to the extent permitted by statute, T.E.A. hereby excludes all liability for any loss, damage, death or injury of any kind whatsoever occasioned to the Customer and/or any third parties in respect of the supply of goods including direct, indirect, consequential or incidental loss, damage or injury of any kind. The Customer indemnifies and keeps indemnified T.E.A. against any loss, damage, claim, cost or demand sustained or made against T.E.A. by any person arising out of the supply of goods herein.
- 9.8 T.E.A. accepts no liability for loss of or damage to drawings, models, samples, etc. sent to us by the Customer.

## 10. GOVERNING LAW AND JURISDICTION:

These terms and conditions and the contract evidenced thereby shall be governed by and construed in accordance with the laws from time to time of the State or Territory in which delivery of the goods takes place and T.E.A. and the Customer hereby submit to the jurisdiction of the Courts of the said State or Territory.

## 11. LIENS:

In addition to any lien to which T.E.A. may be entitled by statute or the common law, T.E.A. shall in the event of the Customer's Insolvency, bankruptcy or winding up, be thereupon entitled to a general lien on all property whatsoever owned by the Customer and in the possession of T.E.A. at the time, such lien to cover the unpaid price of any goods supplied by T.E.A. to the Customer.

## 12. WAIVERS:

Failure by T.E.A. to insist on strict performance by the Customer of any terms and conditions contained herein shall not be taken to be a waiver of any rights of T.E.A. in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion.

## 13. LICENSES AND PERMITS:

It shall be the responsibility of the Customer to obtain, in relation to all goods supplied by T.E.A. to the customer, all licenses and permits needed under any relevant statute, ordinance or related rule or regulation.

## 14. NOTICES:

Notices to T.E.A. shall be hand-delivered or transmitted by pre-paid registered post to the address of T.E.A. No notice to T.E.A. shall be taken to have been given until it is actually received by T.E.A.