

TRU-TEST CONDITIONS OF SALE

1. DEFINITION

In these conditions ["The Conditions"]

- a) "TTL" means—Tru-Test Limited.
- b) "The Buyer" means any person, organisation, firm or company ordering the Goods or Services from TTL.
- c) "The Goods" means any substance, article or produce [or any part thereof] sold by TTL to the Buyer pursuant to order, whether alone or with other substances, articles, manufacture or products.
- d) "The Quotation" means the TTL written Quotation for the supply of goods or the provisions of services.
- e) "The Services" means the work to be performed by TTL as agreed in writing between the parties.
- f) "Data Services" means access to services, applications and databases, including receipt of automated alerts from either a TTL controlled server or through a TTL online, Web-based platform hosted either by TTL or a third party hosting facility designated by TTL and provided as a service, or any other
- g) "The Subscriber" means the person who registers to use the Data Service.

2. QUOTATION

The Quotation is made on the condition that the following conditions except as added to or varied in writing and signed on behalf of TTL shall apply to the sale of any Goods or Services described within:

- a) No contract between TTL and the Buyer will come into existence unless TTL either accepts in writing the Buyer's order or delivers the Goods (the subject matter of the sale) to the Buyer. Delivery shall be deemed to be in accordance with these Conditions of Sale.
- b) Every Quotation is to be treated as an estimate only and subject to withdrawal, correction or alteration at any time by TTL until the contract comes into existence in accordance with clause 2[a].
- c) No variation or waiver or addition to the Quotation or contract, if one later comes into being, shall be binding unless expressly agreed and confirmed in writing by TTL.
- d) TTL shall not be deemed to accept such other conditions nor to waive any of these conditions by failing to object to provisions contained in any purchase order or other communication from the Buyer.
- e) In respect to the Sale of Goods, the Quotation is made subject to the Goods and/or the materials or components thereof being obtainable and being available to TTL. Where TTL has to obtain the Goods or any material or component, part or parts thereof from overseas sources the delivery period herein stated commences from the date of receipt of the necessary imported Goods. TTL shall not be held responsible to the Buyer for loss or damages or otherwise if any import licence is not granted for the import of the necessary imported Goods.

3. PRICE FLUCTUATIONS

The quoted price is based on the cost to TTL principals, subcontractors and/or workshops plus all outgoings, costs (including costs of materials and labour), freight, charges, expenses, currency exchange rates, and conditions ruling at the date of the Quotation. If between that date and the date of delivery to the Buyer or commencement of the Service variation should occur (either by rise or fall) then the quoted price shall be amended to provide for such variations.

4. GOODS AND SERVICES TAX AND CUSTOMS DUTY

Goods and Services Tax and Custom Duty and any other local or central Government payments or levies incurred are not included in the quoted price (unless specifically referred to) and where payable the amount thereof shall be borne by and charged to the Buyer.

5. PAYMENT

Unless specifically referred to in the Quotation or acceptance of order, the terms of payment for the Goods or Services shall be:

- a) All payments shall be made on the 20th day of the month immediately following invoice, notwithstanding any dispute or claim for recoveries which may arise. Such payments shall be made without prejudice to any recoveries the Buyer or TTL may seek by way of legal right or remedy, including, but not limited to:
 - i) If you do not make any payment when due, in addition to any other remedies, we may recover from you any costs, expenses or disbursements incurred by us in recovering money from you, including without limitation, debt collection agency fees and legal fees.
 - ii) TTL may (without prejudice to any of its other rights) recover or resell the Goods to the third parties.
 - iii) TTL may discontinue provision of the Goods or Services.
- b) In the event payment is not made by or on the due date, for whatever reason, the Buyer shall pay to TTL a penalty payment of 0.07% per calendar day on the value of the full outstanding amount for each day the payment is not made after the due dates as stated herein or such other due dates as specifically referred to in the Quotation.
- c) No bonds, retentions or liquidated damages shall be applicable unless specifically referred to in the Quotation or acceptance of order.

6. DEFAULT IN PAYMENT

Should default be made by the Buyer in paying any sum due under any contract as and when it becomes due or in the event of any of the acts specified in clause 10(c) occurring or should the Buyer be in breach in any respect of any contract entered into TTL shall have the right with or without notice at the discretion of TTL either to suspend all further deliveries or provision of Services or further Services until the default be made good or to determine any contract then subsisting so far as any further Goods remain to be delivered or Services to be performed or completed in such case the provisions of clause 7(e)(i) and 7(e)(ii) shall apply provided that those provisions shall be without prejudice to any additional claim or right which TTL may otherwise make or exercise in relation to the default by the Buyer.

7. DELIVERY OF GOODS AND PROVISION OF SERVICES

- a) Delivery to a carrier or to any person, organisation, firm or company on the Buyer's behalf shall constitute delivery to the Buyer provided that Section 34(2) of the Sale of Goods Act 1908 is excluded.
- b) Any time or date named by TTL for dispatch or delivery of goods is given and intended as an estimate only and shall not be deemed to be of the essence of the contract.
- c) The Buyer shall, at the request of TTL, supply TTL with details necessary to allow TTL to make delivery and shall accept delivery whenever TTL proffers delivery. If the Buyer fails to give such details or shall otherwise cause or request a delay in the delivery of the Goods the Buyer shall pay as part of the price all storage, transportation and other relevant costs incurred as a result thereof.
- d) TTL reserves the right to make delivery by instalments unless otherwise expressly stipulated and these conditions shall apply (mutatis mutandis) to each instalment delivery.
- e) In the event that TTL is prevented, hindered or delayed from performing all or any of its obligations under this contract due to acts of God, war, riots, insurrection, local or central Government regulations, legal restrictions, embargoes, strikes, labour disputes, shortages of material, fire, flood, tempest or any other cause beyond the control of TTL then TTL shall be entitled to postpone delivery of the goods, or the provision of the services, until a reasonable time after such cause shall cease provided that if such cause continues for a period in excess of 120 days (or twice the length of the delivery period or commencement date of the services (as the case may be) originally quoted (whichever shall be the greater) the Buyer or TTL shall be entitled, upon giving written notice to the other, to cancel the contract in respect of all or any part of the Goods then remaining undelivered, or Services unperformed the following provisions shall apply:
 - i) The Buyer shall pay TTL in accordance with the terms of this contract for all the Goods which have been delivered or Services performed and the provisions of this contract shall (mutatis mutandis) apply to such Goods or Services.
 - ii) The Buyer shall immediately upon demand being made by TTL pay TTL the cost of materials and labour and all other costs incurred by TTL in relation to undelivered Goods or unperformed Services which TTL has ordered or in respect of which TTL has done work for the purposes of this contract.
- f) TTL shall not be liable for any non-performance or delay arising out of any of the circumstances specified in clause 7(e).

8. DAMAGED, LOST OR DEFECTIVE GOODS

- a) The risk in each of the Goods shall pass to the Buyer when TTL advises the Buyer that the manufacture of those Goods has been completed and they are available for delivery.
- b) Notwithstanding the provisions of clause 8(a) whereby its Quotation or letter of acceptance TTL agrees to deliver the Goods to premises designated in such Quotation or letter the risk in each of the Goods shall pass to the Buyer upon completion of the delivery of those Goods to the agreed location.
- c) When the risk in any of the Goods has passed to the Buyer in accordance with the provisions of clause 8(a) or 8(b) TTL shall not thereafter be liable for any damage sustained by those Goods while being stored (whether or not by TTL), in transit or being installed whether or not by TTL in terms of clause 9 as the case may be.
- d) The Buyer is responsible for the immediate examination of the Goods upon delivery for any defects or failure to conform to the contract.
- e) Where any of the Goods are defective or fail to conform to the contract the Buyer may reject the same provided the Buyer notifies TTL in writing within seven (7) days of the delivery of the Goods the Buyer's intention to reject the same.
- f) If the Buyer fails to give notice of rejection in accordance with the provisions of clause 8(e) or deals with the Goods in a manner inconsistent with TTL's ownership thereof the Buyer shall be deemed to have accepted the Goods for all purposes of the contract.
- g) If any of the Goods are properly rejected by the Buyer, the Buyer shall promptly afford TTL an opportunity of examining the Goods and cooperate in making any necessary arrangements for the return of the Goods to TTL. The risk in any of the Goods rejected shall continue to remain with the Buyer until such time as TTL or its agent takes possession thereof.
- h) Goods represented by the Buyer to be defective or not to conform to the contract and returned to and accepted by TTL as such will be replaced as originally ordered if required and practicable or will be credited at the net invoice value at the sole discretion of TTL and the Buyer shall not have any other claim against TTL for any work done by the Buyer, transport costs, consequential damages or expenses, loss of profit on or any claim arising through resale or any other loss, damage, or expense to the Buyer howsoever occurring.

9. INSTALLATION AND COMMISSIONING

- a) Unless specifically requested and agreed in writing installation and/or commissioning are deemed not to be required from TTL.
- b) When requested by the Buyer and agreed in writing by TTL installation and/or commissioning will be provided by TTL.

c) Where TTL is to install and/or commission Goods the Buyer shall provide for TTL's officers, employees or agents suitable site access, and facilities for carrying out the work. Cost of installation and/or commissioning unless specifically provided for in the Quotation is a chargeable extra. The Buyer will provide all services (water, power, etc.) required for commissioning purposes. The Buyer shall also have the site prepared so that installation may be effected by TTL without delay. TTL shall not be liable for loss or damage due to delays on the part of other contractors and/or subcontractors whether engaged by the Buyer or TTL.

d) In the event of the site not being prepared for installation or the above-mentioned essential services or substances not being available when TTL wishes to install the Goods the Buyer will meet TTL's reasonable costs and expenses occasioned by the delay in installation. Erection All Risks policy to cover claims arising during installation and commissioning of the Goods is the responsibility of the Buyer.

10. TITLE TO GOODS

Upon completion of the manufacture of the Goods title in the Goods shall vest in TTL and, until all monies owing to TTL by the Buyer have been paid ownership of the Goods shall remain with TTL (and regardless of any dispute or right of the Buyer to withhold payment) which reserves the right to dispose of the Goods. If there has been delivery of Goods to the Buyer and TTL shall remain unpaid then until the date of payment the Buyer shall store the Goods in such a way as to clearly identify them as the property of TTL. If the Goods, whether by mixing or processing or otherwise become a constituent of new objects, whether separable therefore or otherwise, the ownership of such new objects shall be transferred to TTL with effect from the commencement of the process of conversion of the Goods into such new objects and same shall be stored in such a way as to clearly identify them as the property of TTL until such payment has been made. If Goods, whether in their original state or mixed or processed or otherwise, are sold by the Buyer or damaged or destroyed whilst in the custody of the Buyer prior to full payment to TTL being made, the proceeds of sale or of the insurance monies (as the case may be) shall be deemed to be received by the Buyer in trust for TTL and the amount due to TTL in respect of such Goods shall without prejudice to any other claim or right of TTL against the Buyer be paid to TTL forthwith after receipt by the Buyer.

a) If payment is made by cheque or bank draft ownership of the Goods shall remain with TTL until such cheque or bank draft has been cleared through the banking system and the proceeds have been credited to TTL.

b) Until payment has been received by TTL in accordance with this contract for all monies owing to TTL by the Buyer the Buyer may as agent of TTL dispose of any of the Goods provided:

- i) The same are sold in the ordinary course of the Buyer's business to its customers by way of bona fide sale at full market value; and
- ii) The proceeds of any such sale are kept in a separate account on behalf of TTL; and
- iii) The provision of subclause (c) below do not apply.

c) In the event of the Buyer:

- i) Becoming insolvent or being unable to pay its debts (within the meaning of Section 261 of the Companies Amendment Act 1993 or Section 287 of the Companies Act 1993); or
- ii) Compounding with its creditors, or
- iii) Being wound up (whether voluntarily or compulsory), placed into Administration; or
- iv) Having a receiver of all or any of its assets appointed;
- v) The Buyer shall not dispose of any of the Goods.

d) Until ownership of the Goods has passed to the Buyer the Buyer shall not create or grant or be capable of creating or granting any lien or charge over the Goods or permit or be capable of permitting any other person, organisation, firm, or company to claim any lien or charge over the Goods.

e) If payment for the Goods is overdue in whole or in part TTL may (without prejudice to any of its other rights) recover or resell to third parties the Goods or any item of them and for this purpose exercise its rights under subclause (f) below. Payment shall become due immediately upon the happening of any acts as specified in subclause (c) above.

f) The Buyer hereby irrevocably gives TTL licence by its officers, employees or agents with or without vehicles and machinery to enter upon and if necessary break into any real property or building occupied by the Buyer where the Goods may be or may be supposed to be and as agent of the Buyer to enter upon any other real property or building which the Buyer might enter upon and where the Goods may be or may be supposed to be and to search for and take possession of the Goods and remove them without being in any way liable to the Buyer or anyone claiming under the Buyer for so doing. TTL is under no obligation to give any notice of its intention to exercise its right contained in this subclause.

g) The parties acknowledge that TTL is for the purposes of this contract a fiduciary and that a fiduciary relationship exists as between TTL and the Buyer.

h) The buyer hereby grants to TTL a security interest in the Goods and any future Goods supplied and any proceeds thereof until all amounts required to be paid to TTL have been paid in full. The Buyer agrees to provide any further information and to enter into any further documentation required to enable the perfection of TTL's security interest pursuant to the Personal Property Securities Act 1999 ('PPSA'). The parties hereby contract out of Part 9 of the PPSA so that the rights and obligations contained in sections 114, 125, 129, 132, 133 and 134 of that Part do not apply between the parties and the Buyer waives its rights under section 148 to receive any financing statement of financing change statement from TTL.

i) The provisions of this clause shall apply notwithstanding that the risk in the Goods has passed to the Buyer in accordance with the provisions of clause 8.

11. THE SERVICES

a) TTL shall carry out and complete the Services in accordance with the terms and conditions of this Agreement and shall provide and perform the Services professionally, competently and in a timely, ethical and efficient manner and with all due care, skill and diligence.

b) TTL shall deliver to the Buyer such reports (whether in writing or verbally as the Buyer may require) and provide the Buyer with such information in relation to the Services, as the Buyer may reasonably require.

c) TTL shall give all necessary priority to the timely and efficient performance of the Services.

12. WARRANTIES

Whilst every effort is made to ensure sound materials, good workmanship and execution of orders in accordance herewith all conditions, guarantees or warranties including guarantees or warranties as to quality or description of the Goods or their like to wear or their use under any conditions whether known or made known to TTL or not and whether expressed or implied by statute or common law are hereby excluded.

EXCEPT that TTL undertakes to make good any defects or faults due to defective material or workmanship appearing in the Goods within twelve (12) months of the date of delivery of the Goods or in cases where TTL undertakes to install the Goods appearing within twelve (12) months of the date of completion of installation, TTL shall not be liable for depreciation due to normal wear and tear or faults due to misuse or accident and consequential loss, damage or wastage howsoever accruing or arising.

The remedy obligations of TTL referred to above (limited in the manner therein referred to) shall not apply:

- a) Should the Goods alleged to be so defective or faulty have become defective or faulty through incorrect handling of it, incorrect installation of it or incorrect operational procedures or use, by any party other than TTL.
- b) To any attachment or alteration to the Goods not designed by or manufactured or installed by TTL or to any defect or faults in the Goods as a result of any such attachment or alteration.

13. TTL'S SPECIFICATIONS

All descriptions, specifications, drawings and dimensions submitted by TTL are to be deemed approximate only and descriptions and illustrations in TTL's brochures, illustrations, drawings, catalogues, price lists, manuals and other advertising matter are for the Buyer's general information only and shall not form part of this contract and shall not be used in connection with or in support of or as the basis of any claim against TTL. Drawings, illustrations and specifications shall remain the property of TTL and must not be communicated to a third party without TTL's previous written consent. TTL reserves the right to change technical data without prior notice.

14. DESIGN CHANGES

- a) TTL reserves the right to effect design changes as technical developments may require without prior notice and where such design changes are made to supply the Buyer with Goods to the original or revised specification at the discretion of TTL.
- b) TTL reserves the right to update or upgrade devices (hardware or software) supplied by TTL and installed on a property that is under the control of the Buyer, by any means. (Such updates or upgrades may, for instance, be required to implement or enhance functionality, to resolve intellectual property issues or to comply with regulations, and may require access to the property to undertake the update or upgrade.)

15. SCOPE OF DATA SERVICES

The scope of the Data Service is provided with the supplied invoice.

Use of the Data Service may be subject to limitations, including but not limited to monthly transaction volumes and the number of calls. Any such limitations will be advised.

16. USER LICENSE

- a) This Data Service can only be utilised by the person or Buyer who registers to use the Service (the Subscriber), and, where the context permits, includes any entity on whose behalf that person registers to use the Data Service.
- b) This Data Service may be subject to limitations for the Subscriber, including but not limited to size of the entity, number of stock units, number of employees or number of locations. Any such limitations will be advised.
- c) The Subscriber grants permission to TTL to host the information and share it with approved TTL service agents where required in order to carry out Services and provide advice when requested to by the Subscriber.

17. DISCLAIMER

TTL, its agents, employees and contractors:

- a) make no representations, express or implied, as to the accuracy of the information and data (Data);
- b) accept no liability for any use of the said information and data or reliance placed on it;
- c) make no representations, either expressed or implied, as to the suitability of the said information and data for any particular purpose;
- d) make no warranties that the said information and data is free of infection by computer viruses or other contamination;
- e) make no warranties that the service will be uninterrupted, timely or that messages and data will not be lost due to technical issues, acts of God or other events beyond reasonable control.

18. LIABILITY

a) The liability of TTL is limited to the matters specified in these conditions or otherwise in the contract of sale and TTL shall not in any circumstances (save as herein provided) be liable for any injury, loss or damage consequential or otherwise occasioned to the Buyer or to any third party having right of recourse or relief against the Buyer including without prejudice to the foregoing generality loss or damage occasioned by failure or delay in delivery or installation unless wholly attributable to the fault of TTL provided always that TTL's total liability under the contract of sale arising from whatever cause

- b) TTL, its agents, employees and contractors are not liable for:
 - i) any failure or delay to provide information or perform operations as requested;

- ii) any consequential loss or damage suffered as a result of using the information, data, services or Data Services supplied by TTL;
- iii) any loss of Subscriber data.

19. PURCHASER'S IDEMNITY

- a) Where the Goods or any item of them are manufactured, processed, marked or packed or otherwise dealt with to the Buyer's specification the Buyer warrants that such manufacture, processing, marking, packing or other dealings with the Goods will not involve the infringement of any patent, rights, trademarks or registered designs or any other rights of third parties and hereby agrees to indemnify and to keep indemnified TTL against all claims, damages, liabilities, costs and expenses which TTL may suffer or incur by reason of any such infringement or alleged infringement.
- b) The Subscriber agrees to fully indemnify TTL, its agents, employees and other contractors against all actions, proceedings, losses, liabilities, damages, demands, costs and expenses suffered or incurred arising out of any breach of this Contract.

20. CONFIDENTIALITY AND PRIVACY

- a) Data and information about the Subscriber, your clients, third parties, instruments and supporting documentation (if applicable) will remain confidential and will not be disclosed to any third parties unless required to do so by law.
- b) The Parties will treat as confidential any information that comes into their possession in the performance of this Contract, whether such information relates to the business, sales, marketing, or technical operations of the Parties, or the clientele of the Parties.
- c) Subscriber Data and information about equipment performance may be used by TTL or approved TTL service agents in order to perform Services and provide Advice from time to time as agreed between the Parties.
- d) The TTL privacy statement can be viewed at <http://group.tru-test.com/en/privacy-statement>

21. AGGREGATED DATA USE

Notwithstanding Sections 18.b.ii, 20.a, 20.b or 20.c, You agree that TTL may process the Data and information to create and compile anonymised, aggregated datasets and/or statistics about TTL products or Services in order to: (a) maintain and improve the performance and integrity of TTL products or Services, (b) understand which TTL products or Services are most commonly deployed and preferred by customers and how customers interact with TTL products or Services, (c) identify the types of TTL Services that may require additional maintenance or support, and (d) comply with all regulatory, legislative and/or contractual requirements, provided in each case that such aggregated datasets and statistics will not enable You or any living individual to be identified.

22. INTELLECTUAL PROPERTY

Title to, and all Intellectual Property Rights in the Services and any documentation relating to the Services and Data Services remain the property of TTL (or its licensors).

23. CONSUMER GUARANTEES

You warrant and represent that the Subscriber is acquiring the right to access and use the Data Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Data Services.

24. TERMINATION

- a) Either party may terminate this Contract for any reason before the Expiry Date by the giving of one month's notice in writing.
- b) TTL may terminate this Contract immediately if the Subscriber has breached this Contract in any material way.
- c) The Subscriber must pay reasonable expenses incurred by the Contractor while providing the Services up to the point of notification of termination.

25. GOVERNING LAW

This contract is entered into in New Zealand. TTL and the Buyer agree that the construction, interpretation and validity of this contract shall be governed solely by New Zealand law.

26. DISPUTES

- a) If any dispute arises between the parties in relation to this Contract, the parties will endeavour to expeditiously resolve the dispute in good faith by using the services of a mutually appointed mediator.
- b) If the dispute remains unresolved, or a mediator cannot be agreed upon, the dispute must be dealt with in accordance with the Arbitration Act 1996, or any legislation replacing that Act.

27. MISCELLANEOUS

No variation of this Contract will be effective unless mutually agreed and in writing.

For the purposes of section 4 of the Contracts (Privity) Act 1982, the parties acknowledge that this Contract is not intended to create any obligation enforceable at the suit of any person who is not party to this Contract.