

# Terms and Conditions of Sale

## 1. General

(a) In this Agreement, unless the context otherwise requires:  
**Agreement** means this agreement together with TE's quotation and credit approval and/or guarantee provided by the Customer to TE.  
**Credit Arrangement** means the credit terms available to Customer pursuant to an application by Customer for the provision of Goods on credit submitted to TE using TE's standard credit application form and accepted in writing by TE (referred to as the Confidential Credit Application and Agreement);

**Customer** means the party to whom TE has agreed to supply Goods pursuant to the Agreement;

**Goods** means the goods and/or services agreed to be supplied by TE and purchased by Customer pursuant to the Agreement;

**GST** means the tax payable under the *Goods and Services Tax Act 1985* or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in New Zealand and any regulation made under that Act;

**Guarantee** means the guarantee document provided by Customer or Customer's directors, shareholders or principals to TE to guarantee the performance of the Agreement by Customer;

**Proprietary Information** means any and all information and intellectual property relating to the Goods or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trade marks and copyright in such information and intellectual property;

**Purchase Order** means the written purchase order by Customer to TE for the supply of the Goods;

**TE** means Tyco Electronics NZ Limited.

**TE Group** means that group of companies that has as its ultimate parent TE Connectivity Ltd.

(b) This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.

## 2. Quotations and Purchase Orders

(a) Subject to the paragraph (b) below, and unless TE has withdrawn its quotation, the Customer may make an order under that quotation for a period of 30 days from the date of issue or as otherwise specified in the quotation. Prices given in any quotation by TE are applicable to that quotation only, and will not apply in any other instances. A quotation from TE is not an offer to sell.

(b) In order to purchase the Goods, Customer must place with TE a Purchase Order setting out an order number, TE's quotation number (if applicable), full description of the Goods to be purchased, the delivery date, delivery point and any other information required by TE. The Purchase Order may be accepted or rejected by TE at TE's sole discretion.

(c) A contract shall be formed by and upon TE accepting from Customer a Purchase Order pursuant to the clause immediately above and each contract shall be governed by the Agreement.

(d) Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind TE, notwithstanding any statement by Customer in its Purchase Order that its terms and conditions prevail over the Agreement.

(e) Where the Goods to be supplied contain raw materials, the price and availability of which is unpredictable (eg PVC, copper, steel), and there is a lack of available such raw material either to enable TE to supply the Goods or to supply the Goods at the price stated in the Purchase Order, TE may, at its sole option:

(i) expend additional time to make reasonable efforts to attempt to locate raw material, and if raw material cannot be located, serve notice of immediate termination of the Purchase Order under the Agreement; or

(ii) endeavour to reach agreement with Customer on an increase in the purchase price for the Goods, and if agreement cannot be reached, serve notice of immediate termination of the Purchase Order under the Agreement; or

(iii) serve notice of immediate termination of the Purchase Order under the Agreement.

In neither case shall TE have any liability to Customer as a result of such termination, but Customer shall pay to TE the purchase price of Goods actually supplied or to be supplied under the Purchase Order

under the Agreement.

## 3. Payment of Purchase Price

(a) Unless otherwise agreed in writing, TE accepts Purchase Orders subject to the condition that Customer agrees to pay the purchase price appearing on TE's price list for those Goods current as at the date that TE accepts the Purchase Order.

(b) A copy of TE's price list for the Goods is available on request. All prices on TE's price list are subject to alteration without notice.

(c) The total purchase price, unless otherwise stated in the Purchase Order, includes GST but does not include any delivery charges, packaging, freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which may be added to the purchase price or otherwise will be paid by Customer or reimbursed by Customer to TE, as TE may elect.

(d) The Customer shall pay the amount set out in the invoice issued by TE in accordance with the payment terms set out in the Customer's credit approval (as may be amended by TE in writing from time to time in its sole discretion), or in the absence of specified payment terms within 30 days of the date of the invoice.

(e) If the Customer fails to pay the full amount on the due date TE may charge, and the Customer must pay, interest calculated daily on any monies which are overdue at the rate of 4% per annum over the Westpac Indicator Lending Rate as quoted from time to time. Any payment subsequently voided by any statutory entitlement shall be deemed to the extent of such voidance not to have been made.

(f) Customer must not set off any money owing or alleged to be owing by TE against money due by Customer to TE.

(g) Customer acknowledges that TE is a member of the TE Group. Customer agrees that TE and/or any other TE Group company is entitled to exercise a right of set off to the extent Customer is indebted to TE or to any TE Group company against any monies due by TE to Customer or any TE Group company on this or any other account.

## 4. Cancellation of Orders

Customer may not alter or cancel a Purchase Order without TE's prior written consent. If TE agrees to alter or cancel the Purchase Order, Customer will indemnify TE against any loss, damage and expense incurred by TE in relation to the alteration or cancellation of that Purchase Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by TE in the execution or part execution of the Goods and including compensation payable to any of TE's suppliers and loss of profit.

## 5. Return of Goods and Credits

(a) Customer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause immediately below.

(b) Customer may reject any Goods that are wrongly supplied or oversupplied by notifying TE of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. TE may dispute any such claim.

(c) Goods referred to in the clause immediately above may be returned to TE for credit if all of the following is complied with:

(i) the Goods are returned to TE's premises by prior arrangement and with TE's written approval within 7 days of delivery, at no cost to TE, unless delivered as the result of an administrative error by TE, in which case TE will bear the cost of return;

(ii) the Goods are accompanied by a dispatch note stating TE's original invoice number and reason for return; and

(iii) the Goods are returned in an unsoiled, undamaged and resaleable condition in their original packing.

(d) Customer must not return any Goods to TE unless it has complied with the two clauses immediately above and has done all things necessary to permit TE to examine the Goods to TE's satisfaction within that period.

## 6. Delivery and Storage

(a) All quoted delivery or consignment dates are estimates only. TE is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.

(b) TE is deemed to have delivered the Goods when the Goods are made available to Customer for physical collection by or on behalf of Customer at Customer's nominated delivery point (**Delivery**). Any unloading or loading shall be Customer's responsibility, unless TE

otherwise agrees in writing.

(c) TE may deliver the Goods by instalments (where, in TE's opinion, this is reasonable) and issue interim invoices to Customer.

(d) Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle TE to withhold or delay delivery of any remaining Goods ordered.

(e) If Customer is unable to collect the Goods at Customer's nominated delivery point on the delivery day, TE may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, whether at its premises or elsewhere, and Customer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage. Notwithstanding Customer's inability to collect the Goods, Delivery is deemed to have occurred.

## 7. Title and Risk

(a) Title to the Goods shall remain with TE until all monies owing by Customer to TE have been paid in full (whether such monies are payable under a specific contract or on any other account).

(b) Without limiting paragraph (a) above, the Customer acknowledges and agrees to the following:

(i) This Agreement creates and/or provides for an interest or interests in favour of TE in the Goods supplied by TE under this Agreement which will constitute a security interest in the Goods and the proceeds of sale of such Goods under the Personal Property Securities Act 1999 (PPSA).

(ii) Customer will, upon request by TE, enter into a security agreement, in a form provided by TE, pursuant to which TE will maintain a first priority (or such other priority as TE agrees in writing) security interest in the Goods and the proceeds of such Goods. The Customer shall act immediately in this regard when requested by TE and at the Customer's own cost.

(iii) To the fullest extent permitted by law, the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to the interests created or provided for by, or perfected in the manner contemplated by, this Agreement.

(c) Until such time as Customer has paid in full all monies owing to TE, Customer shall:

(i) store the Goods separately and mark them so that they are clearly and easily identifiable as TE's property and, if Supplier requests, inform TE of the location of the Goods;

(ii) hold the Goods as bailee for TE, subject to Customer's right to deal with the Goods in the ordinary course of Customer's business (**Bailment**);

(iii) indemnify TE against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by TE.

(d) If:

(i) a payment is not made in accordance with the Agreement;

(ii) Customer commits any other breach of the Agreement;

(iii) Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent,

then TE may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:

(i) terminate the Agreement and the Bailment;

(ii) suspend some or all its obligations to Customer under the Agreement; and/or

(iii) enter upon any premises owned or occupied by Customer where TE reasonably believes the Goods may be stored and repossess the Goods without being liable for any damages caused.

(e) If Customer sells the Goods before payment in full to TE, or uses the Goods in a manufacturing or construction process of its own or some third party, Customer holds the proceeds on trust for TE in respect of those Goods, and must keep such proceeds in a separate account until the liability to TE is discharged and must immediately pay that amount to TE.

(f) The risk in the Goods passes to Customer at the time of Delivery.

## 8. Insurance

Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to Customer until the time that title to the Goods passes to Customer. Customer holds the proceeds of that insurance on trust for TE up to the amount it owes TE in respect of those Goods, and must keep such proceeds in a separate account until the liability to TE is discharged and must immediately pay that amount to TE.

## 9. Warranty and Limitation of Liability

(a) TE makes no warranties or representations to Customer, and all warranties implied by law are excluded.

(b) TE warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 1 calendar year from the Delivery (**Warranty Period**). This warranty does not cover costs of recovery of the Goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to perform required preventative maintenance or normal wear and tear.

(c) During the Warranty Period, to the extent permitted by law, Customer's sole remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as TE may elect) any such defective Goods at TE's expense. The replacement or repaired Goods shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days, whichever is the greater.

(d) For equipment forming part of the Goods, which equipment is not manufactured by TE, the original manufacturer's warranty will apply. TE's liability for such equipment shall not exceed the liability of the manufacturer.

(e) In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of TE for a breach of any condition or warranty implied by law is limited at TE's option to the repair the Goods or supply replacement Goods.

(f) TE's liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.

(g) Customer acknowledges and agrees that, to the extent permitted by law, TE has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.

(h) All guarantees, warranties and conditions expressed or implied by statute, law or otherwise, including without limitation, any guarantees, warranties or conditions relating to the quality, merchantability or fitness for purpose of the Goods are excluded to the fullest permitted by law. The Customer acknowledges and agrees that to the extent it is acquiring the Goods under this Agreement for the purposes of a business, as defined in the Consumer Guarantees Act 1993, the Consumer Guarantees Act 1993 shall not apply to this Agreement.

(i) TE's total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

## 10. Proprietary Information

(a) Customer acknowledges that all Proprietary Information and all right, title and interest therein are the sole property of or licensed by TE and Customer shall gain no right, title or interest in the Proprietary Information whatsoever. Customer specifically acknowledges TE's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.

(b) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, clone or reverse engineer the Goods, or copy, modify or decompile any of TE's documentation relating to the Goods.

## 11. Export/Re-Export/Resale

(a) The Goods supplied are intended for use only in New Zealand, unless TE otherwise agrees. If Customer exports or re-exports the Goods, it is Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.

(b) Customer acknowledges that the Goods purchased by Customer may not be sold, leased or otherwise transferred to or utilised by a terrorist organisation, a party listed on the (US) Denied Persons List or by an end-user engaged in activities related to weapons of mass destruction, including but not limited to activities related to design, development, production or use of nuclear materials, nuclear facilities or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons.

(c) If the Purchaser resells the Goods, it shall not, in connection with their resale, pay or offer to pay, money or any thing of value to any government official, entity or organization, any political party, any candidate for public office, or their employees or relatives, for the

purpose of influencing purchasing decisions or for any other improper purpose.

(d) TE and Customer agree to fully comply with all applicable import, export, antiboycott, and sanctions laws and regulations, including but not limited to those of the United States, the European Union, and other relevant countries' laws ("Trade Laws"). Customer warrants that it, its parent(s), subsidiary(ies), or affiliate(s), is NOT designated on any government's sanctions or restricted parties lists and shall immediately notify TE if it, its parent(s), subsidiary(ies) or affiliate(s) is added to any government's sanctions or restricted parties lists. Customer will not directly or indirectly sell, export, reexport, release, purchase or otherwise transfer TE Products for or to any prohibited or restricted end-use, end-user, end-destination (including Belarus, Cuba, Iran, North Korea, Russia, and Syria) or in violation of applicable Trade Laws. Customer shall immediately inform TE if it becomes aware of a violation of applicable Trade Laws or within two weeks of TE's request for information on compliance with Trade Laws in relation to TE's Products contemplated in this Agreement. TE reserves the right to cancel an order(s) or terminate this Agreement if TE, at its sole discretion, has reason to believe that the transaction(s) related to this Agreement would violate, or have violated, applicable Trade Laws or if Trade Laws implemented after the date of this Agreement would prohibit or significantly limit execution of this Agreement. t

## **12. Miscellaneous**

- (a) The fact that TE fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. TE must agree in writing to any waiver.
- (b) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- (c) TE shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond TE's reasonable control and not as a consequence of TE's negligence.

(d) Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

(e) The Agreement is governed by and must be interpreted in accordance with the laws of the New Zealand. Customer unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

(f) Where there is more than one Customer then the liability of each shall be joint and several.

(g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to TE.

(h) Customer shall not assign this Agreement without TE's prior written consent. Any change in the shareholding or effective control of the Customer shall constitute an assignment for the purposes of this clause and shall require TE's prior written consent to be effective.