

## Trakblaze Pty Ltd - Terms & Conditions of Sale

### 1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 The below applies to the sale of goods and or supply of services by Trakblaze Pty Ltd (herein referred to as - **TB**) to the customer to the entire exclusion of any other terms or conditions which may be preferred by the customer (including the customer's order) which are/in any way in conflict or inconsistent with the below and might otherwise have applied if it were not for this clause.

### 2. TERMS OF PAYMENT

- 2.1 Unless otherwise agreed:
- 2.1.1 Payment for goods or services must be made in full prior to dispatch unless otherwise stated in writing.
- 2.2 **TB** may, at its option:
- 2.2.1 Require payment in part or in full in advance of delivery of the goods or provision of services;
- 2.2.2 Suspend delivery of goods or the provision of services if payment is not received by the due date;
- 2.2.3 Require a deposit and progressive payments for goods or services as predetermined in quotation correspondence;
- 2.2.4 Require (if requested) an irrevocable letter of credit (LC) from a reputable bank within 7 days from placement of purchase order by the customer.
- 2.3 Should the customer cancel its purchase order the deposit paid will be forfeited to **TB**.
- 2.3.1 Additional costs incurred by **TB** over and above the forfeited deposit amount up to the date of purchase order cancellation shall also be borne by the customer.
- 2.4 If goods are to be dispatched by instalment, the customer must pay to **TB** all monies owing for or on account of each instalment prior to the goods being dispatched.
- 2.5 The customer will not be entitled to cancel or otherwise avoid accepting and paying for goods awaiting dispatch or dispatched by instalment.
- 2.6 **TB** shall not be bound by any conditions attaching to the buyer's order or acceptance of the quotation, unless such conditions are accepted by **TB** in writing. If the customer accepts the quotation by delivery of an order form or document which stipulates or purports to impose conditions, Such conditions shall not be applicable to the contract resulting from the quotation without such written acceptance.
- 2.7 Payment by way of Credit Card may incur an additional surcharge, this will be determined at the time of the transaction.

### 3. DELIVERY OF GOODS

- 3.1 The customer is liable for all shipping and handling charges in connection with the delivery of goods.
- 3.2 Unless the customer engages its own freight carrier:
- 3.2.1 The customer engages **TB** as its agent for the purpose of arranging delivery of goods to the customer by **TB** preferred carrier;
- 3.2.2 The customer must pay the applicable transportation fee to **TB** prior to shipment; and
- 3.3 Goods will be delivered to the customer's place of business, or as otherwise notified to **TB** at the time of order.
- 3.4 **TB** will not be liable for any failure to deliver goods if the failure arises as a consequence of fire, embargo strike, inability to secure materials or labour, or any other circumstances beyond the control of **TB**.
- 3.5 **TB** will use its best endeavours to dispatch goods by the agreed date (if any) but will not be liable for any loss or damage arising directly or indirectly from delay, whether the delay is caused by **TB** or otherwise.
- 3.6 The customer will provide reasonable means of access to and from the place of delivery and any necessary equipment and labour to facilitate the efficient delivery and unloading of goods.

### 4. DUTIES AND TAXES

- 4.1 All duties, taxes, imposts, fees or charges of any governmental, statutory or regulatory body applicable to the order or the supply of goods or services by **TB**, including any GST, will be borne by the customer and added to the price of the goods or the services. The customer indemnifies **TB** in respect of any claims for such items.

### 5. INTEREST ON OVERDUE AMOUNTS

- 5.1 If **TB** is not paid for any goods or services on the due date specified in a contract:
- 5.2 All outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to 3% in excess of the interest rate charged by the reserve bank of Australia on overdraft accounts of up to AUD100,000.00 calculated daily; and
- 5.3 **TB** may recover the price of goods or services together with all interest from the customer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim the customer may have against **TB** for anything or matter related to goods or services.

### 6. SAMPLE GOODS

- 6.1 Any sample of goods inspected by the customer is inspected solely to enable the customer to judge for itself the quality of the goods and does not constitute a sale by sample under the contract. The customer takes the goods at its own risk as to their corresponding with the sample, or as to their quality, condition or sufficiency for any purpose.

## 7. INSTALLATION OF GOODS

- 7.1 If the customer requires **TB** to install any goods, the customer must notify **TB** within 30 days of receiving the goods that;
  - 7.1.1 It has received the goods;
  - 7.1.2 The customer's premises are ready and fit for their installation; and
  - 7.1.3 That it requires **TB** to install the goods.
- 7.2 The customer will, at its own expense and in accordance with the directions of **TB**, prepare its premises to enable **TB** to install the goods. The preparation of the premises will include but will not be limited to:
  - 7.2.1 The procurement of all necessary labour, lifting gear, supporting steel work, electricity and other facilities required to effect the installation.
  - 7.2.2 The hire and transportation of test and calibration equipment where necessary;
  - 7.2.3 The provision of all fixed runs of electrical wiring connecting the goods to mains power;
  - 7.2.4 The repair or reconditioning of any existing machinery, plant or equipment which may be used in conjunction with the goods; and
  - 7.2.5 The obtaining of all necessary permits and licenses required by all relevant authorities, agencies and local state or commonwealth government departments or bodies.
- 7.3 **TB** takes no responsibility for the condition of any existing machinery, plant or equipment which may be used in conjunction with any goods, and any effect that such machinery, plant or equipment may have on the goods.

## 8. GOODS AT RISK OF CUSTOMER

- 8.1 Any goods which cannot be delivered by reason of the customer's default under this contract will be stored and handled by **TB** at the customer's risk. The customer will pay or reimburse to **TB** the amount of any storage, insurance or handling costs in relation to those goods on demand.

## 9. TITLE TO GOODS

- 9.1 Until all the purchase price for all goods and any other accounts owed by the customer to **TB** ("monies owing") are paid in full:
- 9.2 Goods are merely entrusted to the customer as fiduciary and **TB** remains the legal and beneficial owner of the goods with full power to resell and regain possession of the goods if the customer defaults in payment of any monies owing;
- 9.2 The customer must store the goods in a separate section of its premises, in such a way as to indicate that the goods are not the property of the customer, but remain the property of **TB**;
- 9.3 The customer must not remove any markings, tags or labels from the goods which may indicate that the goods are and remain the property of **TB**, to the extent that the goods may be used in connection with any business conducted by the customer, the customer must advise any potential customer, purchaser or other third party in writing that the goods are the property of **TB**; and
- 9.4 If the customer defaults in payment of any monies owing, or if the customer becomes insolvent, **TB** may, without notice to the customer, enter upon the customer's premises and/or any other premises at which the goods are situated for the purpose of recovering possession of the goods. If the goods have been sold or utilised by the customer or mixed with or built into any other products or disposed of or stored in such a manner as to render the goods unrecoverable or unidentifiable with the orders placed by the customer, the purchase price for the goods, together with any interest payable under a contract, may be recovered from the customer as a liquidated debt in a court or tribunal of competent jurisdiction.

## 10. PROCEEDS FROM ON-SALE OF GOODS

- 10.1 If, before the purchase price for goods has been paid in full, the customer must receive any proceeds from the sale of goods on trust for **TB** to be applied in payment of the purchase price, and those proceeds must be kept separate and dealt with separately by the customer at all times until the purchase price has been paid in full.

## 11. TRANSPORT AND STORAGE COSTS ETC

- 11.1 The customer must pay or reimburse to **TB** on demand all costs, including but not limited to transportation costs, storage costs and costs of resale incurred in relation to goods by **TB** as a result of it exercising any of its rights under a contract in the event of default by the customer.

## 12. VARIATION AND CANCELLATION OF ORDERS

- 12.1 The customer must give written notice to **TB** of any variation to the specifications of goods required by the customer for which an order has already been placed. In these circumstances, **TB** reserves the right to adjust the price for goods and anticipated delivery date accordingly.
- 12.2 No order may be cancelled except with **TB** written consent and on terms which will indemnify **TB** against all losses, damages or expenses suffered or incurred by **TB** as a result of that cancellation.
- 12.3 The minimum cancellation charge shall be 30% fee of the contract price for all products. All customised or out sourced products are not returnable.

## 13. RETURN OF GOODS

- 13.1 **TB** will not be under any duty to accept goods returned by the customer and will do so only on terms to be agreed in writing in each individual case.

- 13.2 The customer will be responsible for immediate examination of the goods after arrival at the place of delivery and **TB** shall except as may by law or otherwise be required not be liable for any claim for which it would be otherwise liable in respect of damaged goods including goods damaged in the course of transit unless particulars of such claim are notified to the seller in writing within three working days (3) after arrival of the goods at the place of delivery.
- 13.3 The customer shall be deemed to have accepted the goods to be of the description, quality and quantity ordered unless particulars of any claim are notified to **TB** in writing within seventy two (72) hours after arrival of goods at the place of delivery.
- 13.4 **TB** will not accept return of goods unless such return is authorised by **TB**.
- 13.4.1 A re-stocking fee will be charged to the buyer.
- 13.5 Products purchased, manufactured, machined or specific cut to size buyer's specifications, are not returnable.

#### 14. GOODS WARRANTY

- 14.1 **TB** warrants that goods will be free from defects in manufacturing and materials for a period of one year from either the arrival of goods at destination port or within Australia only, the arrival of goods at site ("goods warranty period").
- 14.2 For the remainder of the goods warranty period, or in the case of goods exported to the customer in a territory outside Australia, **TB** will rectify any defect and supply any replacement parts and labour free of charge, subject to the customer's agreement to pay the cost for supply of test and calibration equipment, accommodation (minimum 3.5 star intl. Standard), living and travel expenses of **TB** technician.

#### 15. SOFTWARE WARRANTY

- 15.1 If within 7 days of delivery the customer gives written notice to **TB** specifying a material and substantial defect in the software or material and substantial failure in the software to operate in accordance with the specifications provided by **TB** and agreed to by the customer at the time of supply **TB** must, at its option, either:
- 15.1 Attempt to correct the defect or failure;
- 15.2 Replace the software

#### 16. WARRANTY - NON TB PRODUCTS

- 16.1 The above warranties do not apply to goods manufactured by a party other than **TB**.
- 16.2 The customer's rights in respect of any defect in relation to these products must be determined according to the terms of any warranty offered by the manufacturer.

#### 17. SERVICES REPAIR WARRANTY

- 17.1 **TB** warrants that services performed in connection with the repair of any goods will be carried out in a proper and workmanlike manner. **TB** will, at its own cost, remedy any defect in the services if the customer gives **TB** written notice of the defect within 30 days from the date the services were provided.
- 17.2 **TB** warrants that any parts sold separately in conjunction with services performed in connection with the repair of any goods will be free from any defect in manufacturing and materials. **TB** will, at its own cost, rectify the defect and supply any replacement parts if the customer gives **TB** written notice of the defect within 90 days from the day of invoice.

#### 18. WARRANTIES EXCLUDED

- 18.1 To the extent permitted by law and except as provided for in a contract, no warranty, condition, description or representation on the part of **TB** is given or implied or has been given or is to be implied from anything said or written in the negotiations between the parties or their representatives, and any statutory or other warranty, condition, description or representation, express or implied as to the state, quality or fitness of goods or services is expressly excluded.
- 18.2 The customer acknowledges that it has satisfied itself that goods and services meet the customer's requirements, and as to the benefit to be derived by the customer's acquisition of those goods or services, **TB** makes no representation or warranty that goods or services will meet any requirements of the customer.
- 18.3 **TB** takes no responsibility for any gratuitous assistance or advice provided to the customer in connection with the supply and/or installation of goods or services.
- 18.4 Any warranty in relation to any defect concerning goods which are specified in a contract will not apply and is expressly excluded if the defect is due to or caused by:
- 18.4.1 On the misapplication, abuse or (except where goods are installed by **TB**) improper installation of goods;
- 18.4.2 Abnormal or extreme temperatures outside the operating range of goods, abnormal power source, or power disturbance;
- 18.4.3 Other abnormal conditions including the presence of dirt, water or corrosive materials;
- 18.4.4 The use or operation of goods above the rated capacity of goods or in any other improper or unsuitable manner;
- 18.4.5 Tampering with goods, other than by **TB**; or
- 18.4.6 Unauthorised modification of goods, other than by **TB**; or
- 18.4.7 The unauthorised use of goods in conjunction or interfaced with other equipment or software not supplied by **TB**;
- 18.4.8 Damage during transportation of goods without fault on the part of **TB**;
- 18.4.9 The customers failure to ensure proper storage, operation, scheduled servicing and maintenance of goods.

#### 19. USE OF SOFTWARE

- 19.1 The customer acknowledges that the software may be subject to copyright and if so, will be marked accordingly.
- 19.2 **TB** grants to the customer a limited non-exclusive licence to use the software to the extent necessary for the proper use of goods in relation to which the software is supplied and for no other purpose.

- 19.3 The customer acknowledges that the content of the software may be confidential information of **TB**, and if so, will be marked accordingly ("confidential information"). Unless the confidential information is or becomes public knowledge (other than by reason of the customer's default), the customer must keep confidential all confidential information and must not disclose the confidential information to any third party.
- 19.4 If the customer breaches any term of this clause the customer must return the software and any copies of the software immediately to **TB** upon demand.

## 20. INDEMNITY

- 20.1 The customer indemnifies **TB** on a continuing and full indemnity basis against any liability, loss, expense (including legal costs) or demand for or arising from:
- 20.2 Any false, misleading, or deceptive representation or statement made by the customer in respect of goods or services to any person; or
- 20.3 Any breach of contract by the customer.
- 20.4 Any incident or accident resulting in death or injury as a result of failing to adhere to **TB** product user guidelines and or service maintenance schedules.

## 21. INTELLECTUAL PROPERTY CLAIMS

- 21.1 The customer will fully co-operate with **TB**, at the customer's sole expense, in such procedures as may be necessary to protect the copyright, patent, trademark or other intellectual property rights in relation to goods supplied by **TB** under a contract, and, on **TB** request, must execute documents evidencing **TB** ownership of such intellectual property rights.
- 21.2 The customer must promptly notify **TB** of any assertion that the manufacture, supply or use of any goods infringes the intellectual property rights of any third party and will consult with **TB** to determine the course of action to be followed in respect of the assertion. **TB** does not undertake, but will nevertheless be entitled, to defend any suit brought by, or infringement of any intellectual property rights of, any third party.

## 22. QUOTED PRICES

- 22.1 Quoted prices expire 30 days from the date of publication and may be withdrawn or varied by **TB** at any time. **TB** reserves the right to extend the period of quotation for a period not exceeding 6 months from the date of publication. Prices quoted in publications of **TB** do not constitute unconditional offers to sell, and are subject to change without notice.
- 22.2 Unless stated to the contrary, any price for goods quoted by **TB**:
- 22.2.1 Includes packaging in accordance with recognised standards, but the customer must bear the cost of any special packing requested or required by the customer, or deemed necessary by **TB**; and
- 22.2.2 Does not include any allowance for installation and/or final on-site adjustment, unless otherwise stated.

## 23. NO MERGER

- 23.1 The continued operation of these terms and conditions shall not be affected by any repudiation or other termination of any contract or transaction relating to the goods or services between **TB** and the customer.

## 24. NO WAIVER

- 24.1 The failure of **TB** to enforce the provisions of a contract or to exercise any rights expressed in a contract is not to be regarded as a waiver of such provisions or rights and does not affect the enforcement of the contract.
- 24.2 The exercise by **TB** of any of its rights under a contract does not preclude or prejudice **TB** from exercising the same or any other right it may have irrespective of any previous action taken by **TB**.

## 25. APPLICABLE LAW

- 25.1 A contract for the sale of goods or services shall be governed by the laws of the state of Victoria and the parties submit to the exclusive jurisdiction of the courts of that state.

*If you do not fully understand the above terms and conditions, Trakblaze Pty Ltd strongly recommends you seek legal advice as your company will be required to send a signed copy of this back to Trakblaze Pty Ltd prior to our acceptance of your purchase order.*

**For and on behalf of Trakblaze Pty Ltd**

**For and on behalf of the Buyer**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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