

## GENERAL TERMS & CONDITIONS OF TRADE

These Terms and Conditions of Trade apply to all of TekMark Australia Pty Ltd ("TekMark") quotations and sale of goods contracts. Any order placed with TekMark constitutes an agreement by the Buyer to be bound by these Terms and Conditions of Trade. Any additional or different terms stipulated or stated in any communication from the Buyer to TekMark are hereby objected to and will not bind TekMark unless TekMark agree in writing. No representative or agent of TekMark is authorised to give any guarantee, warranty or representation in addition to or contrary to these Terms and Conditions of Trade. Nothing in these Terms and Conditions of Trade shall be read or applied to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

### 1. PRICES AND PRICE VARIATIONS

- (a) Prices are expressed in Australian dollars unless clearly specified otherwise.
- (b) All prices quoted are subject to change at any time without prior notice. Unless agreed otherwise in writing by way of a formal quotation, the prices charged will always be those ruling at the date of despatch of the Goods and will be in accordance with manufacturers' price schedules current at that time.
- (c) TekMark shall be entitled to adjust the price quoted for Goods from time to time and the Buyer shall pay any such adjusted price arising from:
  - i. variations to TekMark's costs of acquiring the Goods, directly or indirectly, resulting from changes in freight and transport costs, insurance, customs duties, tariff classifications, taxes or variations in currency exchange rates.
  - ii. delays in delivery or installation of all or any of the Goods as the result of instructions or lack of instructions from the Buyer, the Buyer's failure or inability to fulfill its obligations under the terms of the contract or any action or inaction by the Buyer or other circumstances beyond the control of TekMark.
  - iii. any correction of errors or omissions on the part of TekMark or any of its employees or representatives.

### 2. EXCHANGE RATE VARIATIONS

Variation in the exchange rate between time of quotation and delivery shall be dealt with as follows:

- (a) At the direction of the Buyer, TekMark shall select an exchange rate ("Nominated Exchange Rate") at the Buyer's cost.
  - (b) The Buyer accepts the exchange rate applicable at the time of invoicing. The Buyer shall indemnify TekMark for any extra cost incurred by TekMark if the exchange rate at the time of delivery is less favourable than the Nominated Exchange Rate. A credit adjustment will be made in favour of the Buyer if the exchange rate at the time of delivery is more favourable than the Nominated Exchange Rate.
- If the Buyer has not given any instruction or direction in accordance with clause 2(a) then the provisions set out in clause 2(b) shall apply.

### 3. GOODS AND SERVICES TAX

All Purchase Price quoted by TekMark are net, exclusive of Goods and Services Tax. The Buyer shall pay the Goods and Services Tax in addition to the Purchase Price.

### 4. PAYMENT

- (a) Approved Account Holders:
    - i. Orders within approved credit terms - Full payment within 30 days of the invoice date.
    - ii. Orders in excess of approved credit terms - A deposit of 20% is required with the order. The balance 80% is to be paid within 30 days of the invoice date.
  - (b) Non Account Holders: Cash payment in full is required before shipment or collection of goods. A cash deposit of 20% at the time of making of the order is required for non-stock items ordered on behalf of the Buyer. The balance 80% is to be paid before delivery.
  - (c) TekMark reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered to.
  - (d) The Buyer agrees to indemnify TekMark for all expenses, costs or disbursements incurred by TekMark in recovering any monies owing under these Terms and Conditions of Trade by the Buyer including debt collection agency and solicitor costs (on a full indemnity basis).
- ### 5. DELIVERY
- (a) TekMark shall deliver the Goods to the address stated on the order or such other address notified by the Buyer and agreed to by TekMark in writing.
  - (b) TekMark shall deliver the Goods using such carrier or other form of transport TekMark considers appropriate. The Buyer shall be responsible for the cost of delivery in addition to the Purchase Price of the Goods.
  - (c) Where the Buyer specifies the carrier and means of transport, TekMark shall deliver the Goods in the manner specified by the Buyer. The costs of such delivery shall be in addition to the Purchase Price of the Goods. TekMark is not liable for any loss or damage or deterioration of the Goods once the Goods are delivered to the specified carrier.
  - (d) TekMark is not liable for any part delivery or delay in delivery of the Goods caused by events occurring beyond TekMark's control. TekMark is not responsible for any loss or damage or delay directly or indirectly arising from such partial or delayed delivery.
  - (e) The Buyer shall pay on demand all costs, expenses and losses incurred by TekMark resulting from:
    - i. failure by the Buyer to collect or accept delivery of the Goods as and when agreed to; or
    - ii. delay or interruption in the installation of the Goods caused by or contributed to by any act or omission on the part of the Buyer.

### 6. RISK OF LOSS OR DAMAGE

The risk of any loss or damage to or deterioration of the Goods shall pass to the Buyer when TekMark's obligations for delivery are completed in accordance with clause 5.

### 7. TITLE TO GOODS

- (a) The Buyer agrees that the property and title to any Goods supplied by TekMark shall remain in TekMark until the Buyer's full payment of the Purchase Price of the Goods and any other monies owing to TekMark pursuant to these Terms and Conditions of Trade.
- (b) Pending the Buyer's payment in full of the Purchase Price and any other monies owing under these Terms and Conditions of Trade:
  - i. the Buyer shall hold the Goods as bailee for and on behalf of TekMark;
  - ii. the Buyer shall retain the Goods upon its premises and shall keep them readily identifiable as the property of TekMark;
  - iii. the Buyer shall not attempt to deal with, part with possession of, dispose of or allow any person to have or acquire any security interest in the Goods, without prior written permission of TekMark.
- (c) In the event that the Buyer defaults in payment of the Purchase Price and any other monies owing under clause 4, TekMark and its employees or agents shall have the right to enter upon the Buyer's premises or other premises where the Goods are known to be stored to retake possession of the Goods without liability for trespass or any resulting damage. For this purpose the Buyer shall grant all reasonable access rights

- and TekMark shall be entitled to do all things necessary and lawful to secure possession of the Goods. Upon repossession of any of the Goods, TekMark shall thereafter be entitled at its discretion to resell the Goods to a third party in which case the Buyer shall have no right to make any claim against TekMark for breach of contract or otherwise.
- (d) If the Buyer sells or otherwise disposes of the Goods prior to making full payment of the Purchase Price and any other monies owing under these Terms and Conditions of Trade, the Buyer shall hold such part of the proceeds of any such sale representing the Purchase Price and any other monies owing under this agreement in a separate identifiable account as the beneficial property of TekMark and shall pay such amount to TekMark upon demand.

### 8. ORDER CANCELLATION

Orders for goods being indented by TekMark specifically to meet a Buyer's order cannot be cancelled without prior consent in writing from TekMark and any approved cancellations shall be on terms which will indemnify TekMark against all losses including a cancellation fee of 20% of the price originally agreed to by the Buyer. The Buyer acknowledges and agrees that the cancellation fee represents a genuine pre-estimate of the liquidated damages likely to be suffered by TekMark as a result of the Buyer's cancellation of the Goods.

### 9. RETURN OF GOODS

- (a) Goods indented by TekMark specifically to meet a Buyer's order cannot be returned for credit.
- (b) Goods supplied from or normally held in stock may be returned for credit or any other purpose only with TekMark's prior written agreement and provided:
  - i. the returned Goods have not been tampered with or are not in new condition;
  - ii. the Goods are returned within 14 days of delivery unless the return is in consequence of TekMark's error.
- (c) Where the Goods are returned to TekMark because of TekMark's error, they shall be returned using TekMark's nominated carrier and at TekMark's expense. Where the Goods are returned for reasons other than TekMark's error, the Buyer shall be responsible for all return freight costs.
- (d) A restocking fee equal to 20% of the invoiced value of the Goods being returned shall apply to Goods returned for any reason other than TekMark's error. The Buyer acknowledges and agrees that the restocking fee represents a genuine pre-estimate of the liquidated damages likely to be suffered by TekMark as a result of the Buyer returning the Goods.

### 10. WARRANTY

- (a) All Goods supplied, except software or where stated otherwise, are guaranteed to be free from defective materials and workmanship for a period of twelve months from the date of delivery. This Warranty does not extend to products that have been subjected to tampering, misuse, unauthorised modification, neglect, improper installation or used in violation of instructions supplied with the Goods. Goods modified without the prior approval of and in accordance with the instructions of the manufacturer or where the serial number has been removed, defaced or changed shall also not be covered by this Warranty.
- (b) TekMark may at its discretion repair, replace or refund the Purchase Price of any returned Goods proved to TekMark's satisfaction to be faulty provided the claim is made by the Buyer within twelve months of the date of delivery of the Goods.
- (c) Any claim under this Warranty must be made to TekMark in writing. The Goods to which the claim relates to must be returned to TekMark within the twelve month period suitably packed and freight paid. TekMark shall pay all surface only freight charges associated with return of repaired or replacement Goods to the Buyer. Where the Goods are found not to be covered by this Warranty they may, at the Buyer's option, be repaired and returned to the Buyer with the Buyer being responsible for the normal repair costs and return freight charges.
- (d) The Buyer agrees that in relation to software products supplied by TekMark, TekMark does not make any warranty or representation that the intellectual contents are free from errors.
- (e) This Warranty does not include or extend to, and no liability is accepted in relation to, consequential damage, injury or loss of revenue arising from defective items, whether such a claim arises in contract or not.

### 11. EXPORT

Buyers are responsible at their expense for obtaining licences and otherwise complying with export regulations in force in this country and the country for which the Goods may be destined. Products and technology sourced from the U.S.A. must not be exported without prior approval from the U.S.A. Export authorities.

### 12. LIABILITY

- (a) Products offered for sale by TekMark may be protected by registered intellectual property rights including patents. The Buyer must use its best endeavours to prevent infringement of these intellectual property rights.
- (b) TekMark shall not be liable for any loss of revenue or consequential loss or damage arising from the following circumstances or any other circumstances or cause not specifically mentioned with the sole exception of circumstances specifically agreed to in a turnkey contract:
  - i. Delivery delays beyond the estimated delivery date;
  - ii. Incompatibility of the equipment supplied by TekMark with another equipment which the Buyer wishes to use in conjunction with that supplied by TekMark;
  - iii. Death or injury to person or property damage arising from the use of equipment supplied by TekMark; or
  - iv. Any breach of contract or tort or negligence or failure of any kind on the part of TekMark or TekMark's employees.
- (c) TekMark's quotations are based on TekMark's understanding and interpretation of the Buyer's requirements. It is TekMark's belief that all Goods quoted meet the requirements presented to TekMark by the Buyer unless specifically noted otherwise. Verification of the suitability of the Goods offered, equipment configurations, quantities, and correct installation remain the responsibility of the Buyer.

### 13. CONFIDENTIALITY

TekMark's quotations and prices are confidential and proprietary. Prices apply only to the quotation upon which they appear and are not to be disclosed to parties other than the Buyer.