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TRANSTEK

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Test, Measurement, Calibration & Control Solutions

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TERMS & CONDITIONS OF SALE

1. DEFINITIONS

In these Terms:

-Buyer means any person, body corporate or entity which purchases or orders the Goods from the Seller.

-Goods means all goods described in any invoice issued by the Seller to the Buyer and supplied, or to be supplied, by the Seller to the Buyer.

-Seller means Transtek Pty. Ltd. ABN 61 085 191 859.

-“These Terms” means these terms and conditions for the supply of the Goods by the Seller to the Buyer as amended or varied in within by the Seller.

2. FORMATION AND SCOPE OF CONTRACT

2.1 A Contract for the sale of the Goods by the Seller to the Buyer will be formed upon the acceptance by the Seller of an order (which need not be communicated to the Buyer to be effective) for the Goods by the Buyer.

2.2 The Buyer acknowledges that it will be bound by these Terms .

2.3 Upon the formation of the contract these Terms constitute the entire agreement between the Buyer and the Seller for the supply of the Goods and in the event of any inconsistency between these Terms and any other terms which may have accompanied the order, these Terms prevail to the extent of such inconsistency except in so far as these Terms are expressly varied by the Seller in writing.

2.4 These Terms and the current price list issued from time to time by the Seller supersede all terms and conditions of sale and price lists previously issued by the Seller

2.5 Any quotation by the Seller is not and shall not be construed as an offer capable of acceptance by the Buyer.

3. PRICE AND PAYMENT

3.1 The Seller will invoice the Buyer upon delivery of the Goods.

3.2 The Buyer must pay the purchase price for the Goods stated in the invoice.

3.3 If no alternate time or manner of payment is stipulated in the invoice the Buyer must pay the purchase price for the goods within 30 days from the date of invoice. If the purchase price for Goods is not paid in full by the due date, interest will accrue from day to day on the purchase price at the rate of 2% above the Westpac Indicator Lending rate which may be capitalised by the Seller at Monthly intervals and is payable on demand.

3.4 Payment must be made in Australian currency, without set-off, counterclaim or deduction to the Seller at its premises as stated in the invoice.

3.5 Any sales excise, value added or other tax, imposts or duty must be paid by the Buyer and the Buyer must not deduct any tax, imposts or duty from the price payable to the Seller and duty will normally be included in the invoiced prices.

3.6 If the Buyer is entitled to an exemption from sales tax the Buyer must quote its sales tax number or execute a conditional certificate of exemption and it will not be required to pay sales tax. The Seller is not obliged to inquire as to whether the buyer is entitled to claim such exemption. However, should the commissioner for sales tax subsequently determine that the Buyer has claimed an exemption from sales tax to which it is not entitled; the buyer agrees that it will fully indemnify the Seller for any sales tax and penalties payable on the transaction.

4. DELIVERY

4.1 The Goods shall be delivered to the Buyer at the premises of the Seller

4.2 If the Buyers order requests delivery of the Goods to a particular destination and the Seller agrees to deliver to that destination the Seller will, as agent for the Buyer arrange for the delivery of the Goods to the Buyer at that destination at the cost of the Buyer.

4.3 The Seller may, at its option, deliver the Goods by instalments in which case each instalment will be deemed to be the subject of a separate contract governed by these Terms for which the Buyer must separately pay.

4.4 Any time or date of delivery specified by the Seller is an estimate only as to when the Goods may be available for delivery and the Seller will not be liable in any way for failure or delay to deliver or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Goods irrespective of whether such failure or delay is negligent or within the Sellers control or otherwise. The Buyer must accept and pay for the Goods if and when tendered, notwithstanding any such failure or delay to deliver within the stated time, unless the Seller has given a guarantee in writing providing a stipulated penalty as liquidated damages for such failure to deliver within a stated time and the Buyer has suffered loss by the failure to deliver within that time.

4.5 The Buyer agrees to accept delivery of the Goods during normal business hours or at such other times as agreed between the Buyer and Seller.

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- 4.6 The Seller reserves the right to withhold deliveries if:
- (a) the Seller in its sole discretion considers that the financial condition of the Buyer so warrants and that such action is advisable to protect the Sellers interests; or
 - (b) the terms of payment for any Goods are not strictly adhered to by the Buyer.

5. TITLE AND RISK

- 5.1 The Buyer assumes all risk of loss and damage to the Goods upon the earlier delivery of the Goods by the Seller in accordance with clause 4.1 or delivery of the Goods by the Seller to a carrier pursuant to clause 4.2 of dispatch of the invoice relating to the Goods.
- 5.2 Notwithstanding any other provision of these Terms or that the Buyer has possession of the Goods title to the Goods remains with the Seller and no legal or equitable interest or property in the Goods whatsoever will pass to the Buyer until the full amount due for the Goods has been paid until property passes the Buyer must
- (a) refrain from selling or encumbering the Goods.
 - (b) hold the Goods as bailee for the Seller.
 - (c) store, mark and keep appropriate records for the Goods so that they can at all times be identified and distinguished as the property of the Seller and in particular must refrain from mixing the Goods with any goods owned by the Buyer or any other person;
 - (d) hold any money received by the Buyer on account of the Goods in trust for the Seller in a separate bank account identified as the Sellers account and will hold that money on trust for the Seller until the full amount due for the Goods has been paid; and
 - (e) permit the Seller at any time before property passes. Including without limitation, if:
 - (i) the Buyer defaults under these Terms;
 - (ii) the Buyer becomes insolvent, commits an act of bankruptcy, or being a company, suffers the appointment of a receiver, a receiver and manager or an administrator.
 - (iii) a mortgagee takes possession of the Buyers assets or business'
 - (iv) an application is made to appoint a liquidator or to have the Buyer wound up;
 - (v) the Buyer is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors to repossess and use or sell all or any of the Goods without prejudice to any other rights of the Seller and so terminate the Buyers right to use them and for that purpose the Buyer is hereby deemed to have granted to the Seller and its officers and agents an irrevocable right and license to enter with or without force at anytime the premises of the Buyer or any other premises where the Buyer has transferred the Goods.
- 5.3 The Buyer indemnifies the Seller against any claim, action, damage, loss, liability, cost, charge, expense outgoing or payment which the Seller suffers, incurs or is liable for in respect of the Sellers exercise of its rights under this clause 5

6. BUYERS REPRESENTATIONS AND ACKNOWLEDGEMENTS

The Buyer acknowledges that:

- 6.1 descriptions and specifications set out in the Sellers price list are given for identification purposes only and are not descriptive of the quality of the Goods and to the extent permitted by law the Seller has not given any undertaking (written or oral) or made any statement as to the quality of, or fitness for any purpose, of the Goods.
- 6.2 It is the Buyers responsibility to inform the seller in writing of all requirements the Buyer has, including requirements consequent upon legislation and regulations relating to the end use of the Goods in the country or state of intended use including all statutory or other like requirements relating to the marking, labelling and/or packaging of products. Any failure by the Buyer to inform the Seller in writing of any such requirements will not entitle the buyer to refuse to accept the Goods or pay the purchase price nor will the Seller be liable in any way whatsoever if the Goods fail to comply with any such requirements not disclosed in writing by the Buyer to the Seller prior to the formation of the contract governed by these terms and the Buyer will indemnify the Seller in full against any loss or damage suffered by the Seller however arising out of any failure to comply.
- 6.3 Unless any particular purpose for which the Buyer is acquiring the Goods is stated in writing prior to the formation of the contract governed by these Term, the Buyer warrants it has not advised the Seller of any particular purpose.

7. LIABILITIES

- 7.1 To the extent permitted by law all statutory and other implied conditions, warranties and other provisions relating to the Goods or their delivery being provisions that might otherwise form part of the contract governed by these terms are excluded. The liability of the Seller pursuant to any provision of relevant legislation of Australia or any State or Territory or pursuant to any other potential liability whether arising from negligence or not, including any consequential loss which the Buyer may sustain or incur will be limited to one of the following at the election of the Seller:

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- (a) replacement of the goods or supply of equivalent goods
- (b) repair of the goods
- (c) payment of the cost of replacing the Goods or acquiring equivalent goods, or;
- (d) payment of the cost of having the goods repaired.

7.2 To the extent permitted by law, the Seller will not be liable for any claim whatsoever in respect of the Goods unless made in writing

7.3 Except as expressly provided in these Terms, the Seller will not be liable to the Buyer, its employees, agents or contractors for any direct, indirect, incidental or consequential damages of any nature whatsoever caused (whether based in tort or contract or otherwise) including any damage to property owned by the Buyer or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the Goods, or their delivery, or the performance of the contract for the sale of the Goods upon these terms.

7.4 Where the Seller elects to replace Goods the Seller will credit the cost of the Goods being replaced and will replace them as soon as possible with other of the same or equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original goods were subject

8. LIMITED WARRANTY

The Seller warrants the Goods to be free from defects in workmanship and material under normal use and service for a period of one year from date of delivery. Liability under this warranty is limited to repair or replacement F.O.T. premises of the Seller of any Goods which prove to be defective within that time or repayment of the purchase price at the option of the seller provided the Goods have been returned, transportation prepaid within one year from date of purchase. All technical advice, recommendations and services in respect of the Goods are based on technical data and information which the Seller believes to be reliable and which are intended for use by persons having skill in and knowledge of the business at their own discretion. In no case is the Seller liable beyond repair or replacement of the Goods F.O T. premises of the Seller or the full purchase price. To the extent permitted by law this warranty is in lieu of and excludes all other representations made by advertisements or by agents and except as expressly provided in these Terms all other warranties both expressed and implied in respect of the Goods.

9. TERMINATION

Without prejudice to any of its other rights, powers or remedies, the Seller may cancel any order for the delivery of Goods and terminate any Contract governed by these Terms if:

- (a) any payment due by the Buyer to the Seller is not made within the specified time
- (b) the Buyer defaults under any of its obligations under these Terms.
- (c) the Buyer becomes insolvent, commits an act of bankruptcy, or being a company, a receiver or receiver and manager or administrator is appointed, a mortgagee goes into possession of the Buyers assets or business, an application is made to appoint a liquidator or to have the company wound up is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors, in which case the seller will be released from all liability under the contract.

10. GOVERNING LAW

These Terms shall be governed by and interpreted in accordance with the laws of Western Australia.

11. NOTICES

Any notice from one party to the other will be in writing and delivered personally or sent by pre-paid post or transmitted by facsimile to that party's address or facsimile number as set out in the invoice or order form or otherwise noted by that party. If mailed the notice will be deemed delivered on the expiration of two business days after posting and if faxed on confirmation of despatch if transmitted on a working day, or if not, then at 9.00 am on the next working day.

12. WAIVER OR ALTERATION

No waiver or alteration of these Terms will be binding upon the Seller unless a duly authorised officer of the Seller agrees in writing.