

Terms and Conditions of Sale and Delivery of tesa tape Australia Pty Ltd

1. Scope

The following Trading Terms & Conditions (hereinafter: "Terms ") apply to the supply of Goods by tesa Tape Australia Pty Ltd ACN 095 484 290 (hereinafter: "tesa") to a Buyer from time to time. Any supply of Goods by tesa to the Buyer made after the date of acceptance of these Terms is a supply pursuant to the master supply agreement constituted by these Terms and the relevant order accepted by tesa (**Agreement**) and any such supply does not give rise to a new separate agreement.

2. Interpretation

In these Terms unless the contrary appears:

Business Day means a day, not being a Saturday, Sunday or public holiday on which banks are open for general business in New South Wales.

Buyer means the person to or for whom the Goods are to be supplied by tesa.

Consequential Loss means loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; and any other loss suffered by a party as a result of a breach of the Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Goods means the goods supplied or to be supplied to the Buyer by tesa and includes any services, as applicable, supplied or to be supplied by tesa to the Buyer from time to time.

GST means:

(a) the same as in the GST Law;

(b) any amounts imposed as additional tax, penalty tax, fine, interest or other charge payable in respect of GST as defined in paragraph (a).

GST Law means *A New Tax System (Goods and Goods Tax) Act 1999* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

3. Offer and Conclusion of Contract

3.1 Offers by tesa are non-binding and are only to be understood as a request for the delivery of an order. A contract shall not be concluded until tesa has provided a written confirmation of order, and the contract is defined solely by the content of the confirmation of order and/or these Terms. Oral agreements and/or commitments require written confirmation by tesa to become valid.

3.2 Confirmations of order by tesa that deviate in material content from the original order are deemed to have been accepted if they have not been contradicted within three working days upon the receipt of the confirmation of order by Buyer.

3.3 Confirmation of an order by tesa is then to be an acceptance of these Terms by tesa and the Buyer and these Terms will override any conditions contained in the Buyer's order or any other document issued by the Buyer.

4. Delivery Periods and Dates

4.1 Any delivery dates and delivery periods stated in orders of the Buyer are only binding if they have been confirmed by tesa in writing or in text form and Buyer has informed tesa of or provided tesa with all of the information, specifications of quality, approved plans, documents, permissions and approvals required for the execution of delivery in good time and paid any negotiated advance payments in accordance with the agreed terms. Negotiated periods commence upon the date of the confirmation of contract or the declaration of acceptance, as the case may be. In the event of additional or expanded order placed thereafter, the periods shall be extended accordingly.

4.2 Events which are unforeseeable, unavoidable and outside of the area of influence of tesa and for which tesa is not responsible (such as acts of God, war, acts of terrorism, epidemics, natural disasters, strikes, lockouts, occupations of factories and facilities, government measures, shortages of energy, materials or raw materials, damage caused by fire and explosion, transportation and operational problems, sovereign acts (whether lawful or unlawful) or similar events, shall release tesa for their duration from its duty to make timely delivery of goods or services. The negotiated period shall be extended by the duration of the incident; Buyer shall be informed in an appropriate manner of the occurrence and end of the disruption. tesa is not obliged to procure replacement goods from third parties.

Where the end of the problem is not foreseeable or the problem continues for more than two months, each party is entitled to rescind the contract with respect to the scope of delivery affected by the problem.

4.3 tesa's delivery obligations for delivery of those Goods for which tesa procures raw materials and supplier parts from suppliers, delivery is subject to the timely and correct delivery by such suppliers to tesa.

4.4 Where deliveries by tesa are delayed, Buyer is only entitled to rescind the contract if tesa is responsible for the delay and has allowed a reasonable deadline for delivery set by Buyer to have passed.

4.5 If Buyer is in default of acceptance or in breach or other actions of cooperation incumbent upon him, tesa is entitled – irrespective of its other rights – to store the Goods at the risk and expense of Buyer or – in case of a breach of obligation – to rescind the contract.

4.6 tesa may make partial delivery, provided (i) the partial delivery can be used by the Buyer within the scope of the contractual purpose, (ii) the delivery of the remaining ordered Goods is secured and (iii) the Buyer does not incur any considerable additional effort or costs.

4.7 Insofar as tesa bears the delivery costs pursuant to clause 5 of these Terms of Sale, tesa is not obliged to make delivery of the Goods by air freight or a comparable accelerated means of transport.

5. Minimum Order Value and Volume, Shipping, Packaging, Passage of Risk

5.1 The minimum buyer order values (after application of any discount) is \$500.00. This condition will be waived in the case of back orders. Any individual order item will only be supplied in multiples of full, unbroken carton lots.

5.2 The Goods shall be shipped respectively handed over in the normal tesa packaging.

5.3 Except as provided otherwise in these Terms, tesa will pre-pay freight and insurance by a carrier of its choice, so that goods are delivered free-into-store. Export arrangements are to be negotiated separately.

5.4 If the buyer requires the use of a carrier or a delivery method other than nominated by tesa, then the freight and insurance is to be arranged by the buyer when advised by the sales office that the goods are ready for dispatch.

5.5 A minimum order value of \$500 and handling fee of \$60.00 apply to special delivery requests. Requests under \$500.00 will be by special agreement only.

5.6 A drop ship service can be provided by agreement on request. A minimum order value of \$1,000 for each such drop ship service will apply. A drop ship service will only be available within the metropolitan area of the buyer's territorial area. In all other circumstances, the buyer will incur an additional charge to cover all costs. Each drop shipment request will be treated as a separate order and priced accordingly.

6. Prices, Terms of Payment

6.1 All contracts are based on the prices and rates of discount applicable on the date of the acceptance of order, provided no other agreement has been made by the parties.

6.2 All tesa prices are denominated in AUD and are subject to GST which will be shown separately on the tax invoice provided by tesa.

6.3 tesa is entitled to issue partial invoices for partial deliveries within the meaning of clause 4.6.

6.4 Each invoice is due for payment without deductions or set-off within 14 days of the date of invoice, provided nothing to the contrary has been separately negotiated at the time of buyer account set-up or after that. Default shall occur automatically upon failure to pay upon expiration of this deadline.

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Payments by Buyer shall only be deemed to have been made once tesa has received this payment.

6.5 If Buyer is in default of payment, tesa is entitled to demand interest at a rate of 1.5% per month, and to suspend further deliveries to the Buyer until payment is made.

6.6 If tesa, after conclusion of the contract, becomes aware of the risk of a lack of ability to make payment on the part of Buyer, tesa shall be entitled to execute outstanding deliveries only against prepayment or another payment guarantee. If the prepayments or other payment guarantees are not provided even upon the expiration of a reasonable period of grace, tesa may cease deliveries until the prepayments or the payment bonds are provided or may rescind individual or all affected contracts in full or in part. In such case tesa shall remain entitled to assert further rights

7. Non-Standard Sizes (Special Cuts)

7.1 Buyer special requests will be considered and, if approved may be subject to further contract documentation including a scope of work to be signed off by both parties and can incur additional charges.

7.2 Enquiries regarding the availability, pricing and delivery lead time for non-standard sizes should be addressed to the tesa sales office. Pricing and discount may differ from standard items. Orders for non-standard sizes must utilise full web widths of coated material. A minimum order value of \$500.00 per item, after discount, applies for non-standard sizes.

7.3 tesa reserves the right to supply an additional +/-10% of the order quantity as a manufacturing leeway which shall be included in the order quantity for the purposes of calculating the price payable by the buyer.

8. Returned Goods

8.1 Subject to the *Competition and Consumer Act 2010 (Cth)* and any replacement or similar legislation or regulation for the protection of consumers in Australia, no returns for any reason will be accepted without prior authorisation from tesa. A tesa customer service officer will advise buyer on the procedure to be followed when returning Goods, after authorisation has been granted. The office can be contacted on 1800 226 851 or (02) 9830 3929.

8.2 In case of errors made by tesa when processing an order, Goods are returnable provided that:

- The Goods are in saleable condition (to be determined by tesa).
- The error is advised to tesa within 10 days of receipt of Goods.
- The tesa invoice number is quoted.

A credit for full invoice value will be raised and tesa will pay return transportation charges by our nominated carrier.

8.3 In case of errors made by the Buyer when ordering, the following requirements must be met before Goods can be returned.

- The Goods must be in a saleable condition (to be determined by tesa in its sole discretion)
- The error must be advised to tesa within 10 days of receipt of Goods.
- The tesa invoice number must be quoted.
- The Goods must be in full carton quantities and standard with respect to length, width and product type. Non-standard Goods will not be accepted for return. These include: Indent products, die-cuts.
- The Goods must not have been re-slit, printed, laminated or further processed in any way.

8.4 A credit will be raised for the invoice value less a 20% handling charge. Transportation to tesa's Eastern Creek premises is to be arranged and paid for by the buyer. Any return of Goods other than to Eastern Creek is to be discussed with tesa and authorized separately. A minimum handling charge of \$60 will apply.

8.5 Claims for damage in transit must be notified within 10 days of receipt of Goods, quoting the tesa invoice number. tesa must inspect the Goods claimed as damaged in transit prior to approval for return. Tesa will also request the signed POD to confirm the Goods were signed for damaged on receipt at the buyer's site, prior to any return approval being provided. Claims for Goods lost in transit must be notified within 10 days of invoice date, quoting tesa invoice number.

8.6 To the extent permitted by law, claims in respect of defective Goods must be notified within 3 months of receipt of Goods. Only Goods which are shown to be defective by inspection in the tesa laboratories will be credited.

9. Retention of Title

9.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with tesa until payment in full for the Goods and all sums due and owing by the Buyer to tesa on any account has been made. Until the date of payment:

- the Buyer has the right to sell the Goods in the ordinary course of business
- The Goods are always at the risk of the Buyer.

9.2 The Buyer is deemed to be in default immediately upon the happening of any of the following events:

- if any payment to tesa is not made promptly before the due date for payment;
- if the Buyer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any payment payable to tesa is dishonored;

9.3 In the event of a default by the Buyer, then without prejudice to any other rights tesa may have at law or under these Terms:

- tesa or its agents may without notice to the Buyer enter the Buyer's premises or any premises under the control of the Buyer for the purposes of recovering the Goods.
- tesa may recover and keep or resell the Goods;
- if the Goods cannot be distinguished from similar Goods which the Buyer has or claims to have paid for in full, tesa may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of tesa and the Buyer may be ascertained. tesa must promptly return to the Buyer any Goods the property of the Buyer and tesa is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Buyer's business howsoever arising from the seizure of the Goods.
- In the event that the Buyer uses the Goods in some manufacturing or construction process of its own or some third party, then the Buyer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for tesa. Such part will be an amount equal in dollar terms to the amount owing by the Buyer to tesa at the time of the receipt of such proceeds. The Buyer will pay tesa such funds held in trust upon the demand of tesa.

9.4 Separately the Buyer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favor of tesa

10. Personal Property Securities

10.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

10.2 tesa and the Buyer acknowledge that these Terms constitute a Security Agreement and entitle tesa to claim:

- a Purchase Money Security Interest ("PMSI") in favor of tesa over the Collateral supplied or to be supplied to the Buyer as Grantor pursuant to these Terms; and
- a security interest over the proceeds of sale of the Collateral referred to in 10.2(i) as original collateral.

10.3 The Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Buyer pursuant to these Terms.

10.4 The Proceeds of sale of the Collateral referred to in clause 10.2(ii) falls within the PPSA classification of "Account".

10.5 tesa and the Buyer acknowledge that tesa, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to the Buyer pursuant to these Terms and in the relevant Proceeds.

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10.6 To the extent permissible at law, the Buyer:

- (i) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer to tesa.
- (ii) agrees to indemnify tesa on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
 - a. registration or amendment or discharge of any Financing Statement registered by or on behalf of tesa; and
 - b. enforcement or attempted enforcement of any Security Interest granted to tesa by the Buyer;

10.7 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;

10.8 agrees to waive its right to do any of the following under the PPSA:

- (i) receive notice of removal of an Accession under section 95;
- (ii) receive notice of an intention to seize Collateral under section 123;
- (iii) object to the purchase of the Collateral by the Secured Party under section 129;
- (iv) receive notice of disposal of Collateral under section 130;
- (v) receive a Statement of Account if there is no disposal under section 132(4);
- (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- (vii) receive notice of retention of Collateral under section 135;
- (viii) redeem the Collateral under section 142; and
- (ix) reinstate the Security Agreement under section 143.

10.9 All payments received from the Buyer must be applied in accordance with section 14(6)(c) of the PPSA.

11. Recommended Consumer Prices

11.1 Prices shown on the any tesa price list are recommended retail prices only. There is no obligation on the part of the Buyer to comply with these recommendations.

12. Limitation of Liability

12.1 tesa's liability is limited, to the extent permissible by law and at tesa's option, to:

- (a) in relation to the Goods:
 - (i) the replacement of the products or the supply of equivalent products;
 - (ii) the repair of the products;
 - (iii) the payment of the cost of replacing the products or of acquiring equivalent products; or
 - (iv) the payment of the cost of having the products repaired;
- (b) where the Goods are services:
 - (i) the supply of service again; or
 - (ii) the payment of the cost of having the services supplied again.

12.2 To the extent permitted at law, all other warranties whether implied or otherwise are excluded and tesa is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Buyer for:

- (i) any increased costs or expenses;
- (ii) any loss of profit, revenue, business, contracts or anticipated savings;
- (iii) any loss or expense resulting from a claim by a third party; or
- (iv) any special, indirect or Consequential Loss or damage of any nature whatsoever caused by tesa's failure to complete or delay in completing the order to deliver the Goods.

13. Indemnity Obligation of Buyer

If Buyer resells the Goods, he shall indemnify tesa within their internal relationship for product liability claims or other claims by third parties, provided he is responsible for the defect or loss giving rise to the liability.

14. Defects in Title and Proprietary Rights

14.1 tesa is not aware of any finally adjudicated claims of third parties which would prevent a use of the Goods in accordance with the defined intention and terms of contract.

14.2 If Buyer nevertheless infringes the industrial property rights or copyrights of third parties ("**Property Rights**") which are to be recognised as legally valid through the use of the Goods in accordance with the provisions and the contract, tesa shall procure the right to further use for Buyer at its own expense or modify the Goods in a manner which is reasonable for Buyer in such a way that the infringement of Property Rights no longer exists. If this is not possible at economically reasonable conditions or within a reasonable period of time, Buyer and tesa shall each be entitled to withdraw from the contract.

14.3 Buyer is obliged to inform tesa without undue delay if claims are made against Buyer by third parties due to the use of the Goods in accordance with the defined intention and terms of contract based on the infringement of Property Rights or if third parties have addressed inquiries of Buyer's entitlement to Buyer. The same applies if Buyer otherwise become aware that the use of the Goods in accordance with the defined intention and terms of contract may possibly infringe the rights of third parties. In these cases, tesa shall be entitled to terminate the existing delivery contracts for cause. tesa shall also be entitled to terminate the delivery contracts for cause if tesa is in danger of infringing the rights of third parties itself by executing the delivery contracts.

14.4 In the event of an intervention by a third party against Buyer within the meaning of clause 14.3, tesa shall support Buyer to the best of its ability in the defence of such claims in relation to the third party. This shall require that Buyer has not delivered any statements to third parties to the detriment of tesa.

15. Goods Supplied to special order

To the extent that Goods are supplied to the special order of the Buyer:

15.1 Buyer warrants that the supply by tesa of such Goods will not infringe any patent, copyright, or other intellectual property rights of any other person; and

15.2 Buyer agrees to indemnify tesa against any liability tesa incurs (including legal costs and expenses) in the event of any claim being made that our supply of those Goods infringes any patent, copyright, or other intellectual property rights of any other person.

16. Test procedures of the Buyer

Costs for any test procedures of the Buyer or Buyer's customer shall only be compensated by tesa with prior and explicit approval of tesa.

17. General Provisions, Code of Conduct

17.1 Neither party excludes or limits the application of any statute (including but not limited to the Competition and Consumer Act 2010 (Cth) (CCA) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.

17.2 Buyer authorises tesa to collect, retain and use any information about you Buyer the purpose of assessing Buyer's creditworthiness, or enforcing any rights. tesa may share Buyer's information with other agencies for these purposes. If Buyer is a natural person, Buyer has the right to access and correct information about itself.

17.3 Buyer may not assign his claims against tesa - except for pecuniary claims - to third parties without written consent of tesa. Buyer must not assign, subcontract or transfer any part of its rights or obligations under these Terms (including undergoing an effective change in management or control of Buyer) without the prior written consent of tesa. tesa may assign any rights or obligations without the approval of Buyer as well as subcontract any obligations to third parties.

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- 17.4 Changes and amendments to contractual agreements between tesa and Buyer and/or these Terms and any side agreements shall require written form. This shall also apply for the modification of this written form requirement.
- 17.5 In order to comply with the written form required in these Terms , telecommunication transmission, in particular by fax or e-mail, is sufficient.
- 17.6 If a provision of the contractual agreements between tesa and Buyer and/or these Terms are fully or partially void or invalid, this shall not affect the validity of the remaining provisions. The parties undertake in this case to replace the void or invalid provision by a valid one that comes closest to the commercial intention of the void or invalid provision.
- 17.7 Place of performance for all reciprocal claims is the registered office of tesa.
- 17.8 These Terms of Sale are to be construed and governed by the laws of New South Wales Australia and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 17.9 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 17.10 The Buyer undertakes to comply with the basic principle of the tesa Code of Conduct. This can be found at: [Code of Conduct](#) (Available on tesa.com).

Please note: The quality of the tesa® products is tested on a continuous basis at the highest possible level and is thus subject to strict controls. All information and recommendations are given by us to our best knowledge based on our practical experience. Nevertheless, tesa does not assume any express or implied warranty for the suitability of a tesa® product for certain purposes that have not been expressly agreed between tesa and Buyer in writing. For this reason, Buyer is himself responsible for the decision on whether a tesa® product is suitable for a certain purpose and for Buyer's type of use, provided the product complies with the properties, features and performance characteristics that have been specifically agreed. Should you require assistance in this regard, our technical staff would be happy to advise you.