

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

1. Scope

The following Terms and Conditions of Sale and Delivery (hereinafter: **"Terms of Sale"**) apply exclusively for the entire current and future legal relationship between Tesa Tape Australia Pty. Ltd, being a registered overseas company (no.3258347) in New Zealand, and its related companies (as that term is defined in the Companies Act 1993), and its agents, successors and assigns (hereinafter: **"tesa"**) and Buyer concerning the sale of movable goods (**"Goods"**). Upon placing an order by Buyer, but no later than upon the acceptance of the delivery of the Goods, Buyer acknowledges the sole binding application of these Terms of Sale. Should Buyer use conflicting, deviating or amending terms and conditions, their application in relation to tesa is excluded even if they have not been expressly contradicted by tesa.

2. Offer and Conclusion of Contract

2.1 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 of Sale. Oral agreements and/or commitments require written confirmation by tesa to become valid.

2.2 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. Delivery Periods and Dates

3.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 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.

3.6 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.

3.7 Insofar as tesa bears the delivery costs pursuant to clause 4 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.

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

4.1 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.

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

4.3 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.

4.4 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.

4.5 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.

4.6 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.

5. Prices, Terms of Payment

5.1 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.

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

5.3 tesa is entitled to issue partial invoices for partial deliveries within the meaning of clause 3.6.

5.4 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.

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

5.5 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.

5.6 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.

6. Non-Standard Sizes (Special Cuts)

6.1 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.

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6.2 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.

6.3 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.

7. Returned Goods

7.1 Subject to the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and any replacement or similar legislation or regulation for the protection of consumers in New Zealand (together, "Consumer Law"), 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 0800 837 269.

7.2 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.

7.3 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.

7.4 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.

7.5 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 buyers 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.

7.6 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.

8. Retention of Title

8.1 The Goods shall remain in the ownership of tesa until the full payment of any and all claims of tesa under the business relationship with Buyer has been made.

8.2 In the case of a current account, the reserved title shall be deemed to secure tesa's claim to the outstanding balance.

8.3 Buyer is only permitted to sell the Goods subject to the retention of title / security interest ("**Reserved Products**") within the normal course of business transactions. Buyer hereby assigns to tesa its accounts receivable and claims under the resale of the Goods, and tesa hereby accepts such assignment. Buyer is authorized to collect in trust the assigned accounts receivable and claims for tesa in its own name, subject to withdrawal of such authorization.

tesa may withdraw the authorization and the entitlement to resell the Goods if Buyer is in default of major obligations such as payment to tesa; in the event of a withdrawal of authorization, tesa is entitled to collect the claims itself. Buyer is not entitled to pledge the Reserved Products or to transfer title as security or otherwise make disposals that would threaten tesa's ownership.

In the event Buyer sells the Reserved Products following processing or alteration or upon connection or commixture with other goods or otherwise together with other goods, the assignment of accounts receivable and claim shall be deemed to only apply in the amount of the portion equivalent to the price agreed to between tesa and Buyer plus a security margin of 10% of such price.

8.4 Buyer shall provide tesa at all times with all requested information on the Reserved Products or on the accounts receivable and claims that have been assigned to tesa hereunder. Interventions or claims by third parties on the Reserved Products must be reported to tesa by Buyer immediately upon delivery of the necessary documents. Buyer shall inform the third party or parties at the same time of the tesa's retention of title. The costs of the defence against such interventions and claims shall be borne by Buyer.

8.5 Buyer is obliged to label the Reserved Products separately as the property of tesa to the extent possible for the duration of the retention of title and to handle them with care.

8.6 If the realisable value of the security exceeds the overall claims of tesa to be secured by more than 10%, Buyer is entitled to demand a release to such extent.

8.7 Should Buyer be in default of major obligations in relation to tesa such as payment obligations, notwithstanding other rights, tesa may rescind the contract in accordance with the statutory provisions. If tesa rescinds the contract, tesa is entitled to repossess the Reserved Products and otherwise enforce its security interest. In the event of a claim for the surrender of the Reserved Products, Buyer shall immediately grant tesa or an authorized representative of tesa access to the Reserved Products and surrender them.

9. Personal Property Securities

9.1 For the purposes of this clause 9, "PPSA" means the *Personal Property Securities Act 1999 (NZ)* as amended. The PPSA applies to these Terms of Sale.

9.2 For the purposes of the PPSA:

- terms used in this clause 9 that are defined in the PPSA have the same meaning as in the PPSA;
- any agreement between tesa and Buyer incorporating these Terms of Sale is a security agreement and tesa has a Purchase Money Security Interest in (i) the Goods supplied by tesa to the Buyer; and (ii) the proceeds of the Goods (if any);
- the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time; and
- the Buyer must do whatever is necessary in order to give a valid security interest over the Goods and their proceeds which is able to be registered by tesa on the Personal Property Securities Register

9.3 The security interest arising under this clause 9 attaches to the Goods when the Goods are collected or dispatched from tesa's premises and not at any later time and continues notwithstanding the Goods may be commingled or become accessions.

9.4 Tesa and the Buyer agree, to the maximum extent permitted by law, to contract out of and nothing in the provisions of sections 114(1)(a), 133, and 134 of the PPSA will apply to these Terms.

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9.5 To the extent permitted by the PPSA, the Buyer waives the Buyer's right to:

- i. receive a statement of account under section 116 of the PPSA;
- ii. object to any proposal by tesa to retain collateral under section 120(2) of the PPSA;
- iii. object to any proposal by tesa to retain any Personal Property under section 121 of the PPSA;
- iv. not have Goods damaged when tesa removes an accession under section 125 of the PPSA;
- v. refuse permission to remove an accession under section 127 of the PPSA;
- vi. receive notice of the removal of an accession under section 129 of the PPSA;
- vii. apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA; or
- viii. receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms of Sale.

9.6 The Buyer must immediately upon tesa's request do all things and execute all documents necessary to give effect to and perfect the security interest created under these Terms of Sale.

9.7 tesa may allocate amounts received from the Buyer in any manner tesa determines, including in any manner required to preserve any Purchase Money Security Interest it has in the Goods.

10. Recommended Consumer Prices

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

11. Limitation of Liability

11.1 Nothing in these Terms of Sale will restrict, negate, modify or limit any of your rights under Consumer Law where you are not acquiring the Goods for the purpose of a business or in trade.

11.2 To the extent that tesa's liability is not otherwise limited or excluded, and to the maximum extent permitted by law, our aggregate liability to you whether in tort, contract, at law (including for a misrepresentation) or otherwise for any loss damage or injury in relation to the Goods is limited to the price actually paid by you for the relevant Goods. In such case we may, at our option, elect to:

- i. provide a refund; or
- ii. repair the Goods; or
- iii. replace the Goods.

11.3 Despite anything else contained in these Terms of Sale and to the maximum extent permitted by law in relation to any supply of Goods in New Zealand:

- i. you confirm to tesa that you are "in trade" and agree with tesa that
 - a. sections 9, 12A, and 13 of the Fair Trading Act 1986; and
 - b. the provisions of the Consumer Guarantees Act 1993;

will not apply to the agreement between us and that it is fair and reasonable to exclude their application;

- ii. the parties agree and acknowledge that the provisions of Part 3 of the Contract and Commercial Law Act 2017 will not apply;

iii. to the fullest extent permissible by law, all warranties, conditions or other terms implied by law are excluded unless these Terms of Sale expressly provide or the parties agree otherwise in writing; and

iv. for the purposes of this clause you acknowledge that you had a reasonable opportunity to review these Terms of Sale, discuss them with us, and receive advice from your legal advisor, if you wished to do so.

11.4 To the maximum extent permitted by law, we will not be liable to you under or in connection with these Terms of Sale for any indirect or consequential loss or loss of profits, whether suffered or incurred by you or another person or entity and whether in contract or tort (including negligence).

12. 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.

13. Defects in Title and Proprietary Rights

13.1 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.

13.2 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.

13.3 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.

13.4 In the event of an intervention by a third party against Buyer within the meaning of clause 13.3, 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.

14. Goods Supplied to special order

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

14.1 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

14.2 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.

15. 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.

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16. General Provisions, Code of Conduct

- 16.1 Buyer authorises tesa to collect, retain and use any information about Buyer for 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.
- 16.2 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.
- 16.3 Changes and amendments to contractual agreements between tesa and Buyer and/or these Terms of Sale and any side agreements shall require written form. This shall also apply for the modification of this written form requirement.
- 16.4 In order to comply with the written form required in these Terms of Sale, telecommunication transmission, in particular by fax or e-mail, is sufficient.
- 16.5 If a provision of the contractual agreements between tesa and Buyer and/or these Terms of Sale 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.
- 16.6 Place of performance for all reciprocal claims is the registered office of tesa.
- 16.7 These Terms of Sale are to be construed and governed by the laws of New Zealand and the exclusive jurisdiction of the courts of New Zealand.
- 16.8 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.