



# TCS-BI

## Terms and Conditions of Sale

### 1 DEFINITIONS

In these terms and conditions, unless the context otherwise requires:-

1.1 "GST" means Goods and Services Tax or other tax that is substituted or replaces the GST tax.

1.2 "the Supplier" means TCS Group including (TCS Instruments, TCS for Surveys, TCS Products and TCS People Counting).

1.3 "the Customer" means the person or persons, company or business entity as described on the face of the Supplier's invoice.

1.4 "the Goods" means the goods or products including hardware, software, and consumables sold by the Seller to the Customer as described on the face of the Supplier's invoice or otherwise.

1.5 "the Seller" means the Supplier.

1.6 "the Services" means any services provided by the Supplier to the Customer.

1.7 "Quote" means any quote that remains valid for 30 days from the date of transmittal of the quotation to the Customer.

1.8 "Project" means Goods and Services to be provided by the Supplier to the Customer which have a significant value (ie. greater than \$5,000) and are provided over a period of greater than 5 business days. Goods and Services to be provided by the Supplier to the Customer are deemed to be a Project at the sole discretion of the Supplier.

1.9 "Account Customers" means the Customers that have an approved account on credit limit;

1.10 "Non-account Customers" means the Customers that do not have an account (ie. credit line) with TCS. These are typically new customers and customers that transact via cash sale.

1.11 "Agreement" means the contract comprised of the Invoice supplied by the Supplier and these terms and conditions as varied in accordance with the Agreement.

1.12 "PPSA" means the Personal Property Securities Act (Cth) 2009

1.13 "PPSR" means the Person Property Securities Register established under the PPSA.

### 2 GENERAL

The only contractual terms which are binding on the Supplier are those set out in this Agreement.

### 3 QUOTATIONS

Any quotation provided is an invitation to treat only and not an obligation to sell or offer. In the event of any counter offer by the Customer, or any conflict between any Quote or counter offer and this Agreement, this Agreement shall prevail.

### 4 PRICE

4.1 The price charged for the Goods and Services to be provided to the Customer are set out on the Supplier's invoice. The Supplier reserves the right to vary any price quoted either orally or in writing. Any Quote given on price is an estimate only.

4.2 The price excludes GST unless specified.

### 5. TERMS OF PAYMENT

5.1 In general, the Customer shall pay in full to the Supplier using the agreed payment method for the supply of Goods and Services rendered as invoiced by the Supplier.

5.2 The Supplier reserves the right to grant credit terms to approved Customers upon such terms and conditions in its absolute discretion. Continued provision, cancellation and changes in provision of credit by the Supplier to the Customer from time to time shall be in the absolute discretion of the Supplier.

5.3 For the supply of Goods only:

a) Account Customers will pay the full invoice amount within 30 days of invoice transmittal date; and

b) Non-account Customers will pay the full amount by the agreed payment method on order receipt before the Goods are released and shipped.

5.4 For all orders for the Goods and Services which are deemed to be a Project, unless otherwise previously agreed, the Supplier will:

a) Invoice the Account Customer a Project Initiation Fee equal to 10% of the value of the Project at the time of order receipt payable within 30 days from invoice transmittal date;

b) Invoice the Non-account Customer 50% of the value of the Project at the time of order receipt payable prior to project commencement.





5.5 For all orders for the Goods and Services which are deemed to be a Project, the Supplier, unless otherwise agreed between the Supplier and Customer, will invoice the Customer progress payment requests monthly or at another previously agreed frequency.

5.6 Should the Customer delay or default in respect of any payment due, the Supplier shall have the right to charge interest on all sums owed for payment to the Supplier at the rate of 15% per annum.

5.7 All costs, including but not limited to transportation costs, storage costs and costs of resale incurred by the Seller as a result of it exercising any of its rights hereunder in the event of default by the Customer, shall be borne by the Customer.

5.8 Payment by the Customer can be made by the Supplier's accepted payment methods:

- a) Electronic Funds Transfer;
- b) Visa & Master Credit Cards.

## **6 RESERVATION OF TITLE FOR GOODS**

6.1 Until payment is received of all monies owed to the Supplier from the Customer legal and beneficial ownership of any and all Goods supplied to the Customer from the Supplier remains with the Supplier. The goods are merely entrusted to the Customer as fiduciary. Until payment of all debts owed as aforesaid the Customer may sell the Goods in the ordinary course of business as the Supplier's fiduciary and agent (but the Customer shall not hold itself out as such), and may for the purpose of such sale part with possession of the Goods. The Supplier has full power to regain possession and resell any and all of the Goods supplied irrespective of part payment thereof.

6.2 The Supplier can exercise its rights in the event of a breach of a term or condition of this Agreement or in the case of an event of the Customer's default in payment of any of the purchase price payable of any of the Goods supplied. The power to regain possession and resell the goods applies notwithstanding that payment may have been made for the purpose of settlement of specifically designated claims.

6.3 Until payment in full of the purchase price, the Customer shall 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 the Supplier.

6.4 The Customer shall not remove any markings, tags or labels from the Goods which may indicate that the Goods are and remain the property of the Supplier. To the extent that the Goods may be used in connection with any business conducted by the Customer, the Customer shall advise in writing any potential customer, purchaser or other third party that the Goods are the property of the Supplier;

6.5 If the Customer defaults in payment of the purchase price, or if the Customer becomes insolvent, the Seller and/or its duly authorised servants or agents may at any time thereafter, without notice to the Customer, enter upon the Customer's premises and/or premises at which the Goods are situated for the purpose of recovering possession of the same, provided that, in the event that Goods shall 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 irrecoverable or unidentified with the orders placed by the Customer, the cost of the Goods shall forthwith be a debt due by the Customer and recoverable by an action in law;

6.6 If the Customer receives any proceeds from the sale of the Goods from any other party, the Customer received those proceeds on trust for the Supplier to be applied in payment of the purchase price for the Goods and such proceeds shall be kept separate and dealt with separately by the Customer at all times until the proceeds have been duly paid to the Supplier;

6.7 In connection with the Supplier's rights and remedies pursuant to these conditions and any other rights or remedies which may accrue to the Supplier, the Customer appoints the Supplier as its attorney to do all things, execute all documents and otherwise act in place of the Customer for the purposes of giving effect to these conditions, and without limiting the foregoing, to recover possession of the Goods and to recover the proceeds of the sale of the Goods which may at any time be received or receivable by the Customer;

6.8 The continued operation of these terms and conditions shall not be affected by any repudiation or other termination of any contractor transaction relating to the Goods between the Seller and the Customer.



## **7 QUALITY OR DESCRIPTION OF GOODS AND SERVICES**

7.1 The Customer shall inspect the Goods immediately on delivery and, with fourteen (14) days of delivery, give notice to the Supplier of any defect or allegation that the Goods or Services are not in accordance with the Contract. If the Customer fails to give such notice within that time, the Goods and Services shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to accept and pay for the same, accordingly;

7.2 Notwithstanding that any sample of the Goods or Services has been exhibited to and inspected by the Customer, it is agreed that such sample was so exhibited and inspected solely to enable the Customer to judge for himself of the quality of the Goods or Services and, not so as to constitute a sale by sample under the Contract. The Customer shall take the Goods or Services at his own risk as to their corresponding with the sample, or as to their quality, condition or sufficiency for any purpose;

## **8 DELIVERY**

8.1 The Goods shall be delivered to the Customer's address or as otherwise notified to the Supplier at the time of order.

8.2 From the time of dispatch from the Seller's premises and until delivery, the risk of any loss or damage to or deterioration of the Goods for whatever cause arising shall be borne by the Customer unless the Supplier arranges delivery or is otherwise agreed by the Supplier and Customer.

## **9 LIABILITY OF SUPPLIER**

9.1 To the extent permitted by law, no warranty, condition, description or representation on the part of the Seller 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 the Goods is hereby expressly excluded. Nothing herein shall derogate from or exclude any warranties or conditions necessarily implied by any statute or other applicable law;

9.2 In the event that this Contract constitutes a supply of goods or services to a consumer as defined in the Trade Practices Act 1974, as amended, or relevant similar State or Territory legislation ("the Acts"), nothing contained in this Contract excludes restricts or modifies any condition, warranty or other obligation in relation to this Contract and the Goods and Services which, pursuant to the Acts, or any of them, is applicable or is conferred on the Customer where to do so is unlawful, in which event the Seller's sole liability for breach of any such condition, warranty or other obligation, including any consequential loss or damage which the customer may sustain or incur, shall be limited (except to the extent specifically set forth herein) to:-

- the replacement of the Goods or Services; or
- the supply of equivalent goods or services; or
- payment of the cost of replacing the Goods or Services or acquiring equivalent goods; or
- the repair of the Goods or payment of the cost of having the Goods repaired, as the Supplier may select.

9.3 The Seller will not be liable for any failure to deliver the Goods or Services if the failure arises as a consequence of fire, embargo and strike, inability to secure materials or labour, or any other circumstances beyond the control of the Seller.

## **10 WARRANTY**

10.1 Notwithstanding anything herein, the Supplier agrees to provide to the Customer the longer of a twelve month warranty or warranty as specified by the original manufacturer of the Goods to repair or replace the Goods for faulty workmanship, design or materials, or to make a refund for the Goods (at the discretion of the Supplier).

10.2 Warranties given exclude claims for or damage resulting from inclement weather, fire, explosion, act of God or other like cause; unauthorised alterations, additions or tampering with the Goods, loose plugs or leads not hardwired; other events beyond control of the Seller; and use beyond specification or design.

## **11 RETURNS**

11.1 Returns for credit will only be accepted within 7 days from date of invoice and credit of the Goods will be at the sole discretion of the Supplier. Credit for goods returned after this period is at the Supplier's discretion and if accepted, may incur a restocking fee.



11.2 Returned goods will only be accepted if the goods are in a saleable condition as well as in original packing and with all product documentation and a copy of the Supplier's invoice included. Goods must be returned at the Customer's expense and prior to return a "Return Authorisation" number must be obtained from Customer Service and this number should be clearly marked on the package.

11.3 All goods specifically manufactured or ordered for the Customer will not be returnable except due to defect unless otherwise agreed to in writing.

## 12 DISPUTES

12.1 The Customer must immediately check all documentation, and any disputes in relation to those documents must be communicated to the Supplier in writing within 30 days of the date of invoice. In the event that no communication is received from the Customer within that 30 day period, the invoiced charges are deemed to be accepted by the Customer.

12.2 If a dispute arises relating to the sale of the Goods (except in regard to payments due to the Supplier), the parties agree to negotiate to settle the dispute before litigation.

## 13 PRIVACY

We use personal information as supplied by you to process and deliver your order, for marketing and to access your credit worthiness.

## 14 GOVERNING LAW

Supplier and Customer agree that their dealings are governed by the laws of the state of New South Wales, and the parties submit to the jurisdiction of the courts of that State.

## 15 PERSONAL PROPERTY SECURITIES ACT (CTH) 2009

15.1 The terms "financing statement", "financing change statement", "security agreement", and "security interest" have the meanings given to them by the PPSA.

15.2 The Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods that have previously been supplied and that will be supplied in the future to them.

15.3 The Customer must (a) promptly sign

any further documents and provide any further information (complete, accurate and up to date in all aspects) which the Supplier may reasonably require to register a financing statement or financing change statement in relation to a security interest on the PPSR, register any other document required to be registered by the PPSA; or correct a defect in a statement referred to in this clause 15.3;

(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any security interest;

(c) not register or permit to be registered a financing change statement in respect of a security interest without the Supplier's prior consent;

(d) not register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the Supplier's prior consent;

(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

15.4 The Parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

15.5 The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3) (d) and 132(4) of the PPSA and as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

15.6 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

15.7 The Customer must unconditionally ratify any actions taken by the Supplier under this clause 15.

15.8 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.