



Thomson Environmental Systems Pty. Ltd. Standard Terms and Conditions of Sale **Rev 1**

1. General

The following terms and conditions of sale apply to any sale of goods and/or services by Thomson Environmental Systems Pty Ltd, hereinafter call TES, notwithstanding the method of acceptance by the Purchaser and notwithstanding any language to the contrary in the Purchaser's invoice or purchase order or acceptance document of Purchaser.

In the absence of written acceptance of these terms and conditions of sale by the Purchaser, Purchaser's acceptance of any goods and/or services covered by the order shall constitute acceptance of these terms and conditions of sale, which shall constitute the entire contract between TES and the Purchaser except as hereinafter provided. No waiver, alterations, or modification of these terms and conditions of sale shall be binding upon TES unless made in writing and signed by a duly authorised representative of TES. Any attempt to strike out or alter these terms and conditions herein shall be deemed as a rejection of the offer contained herein and a new offer by the Purchaser must be expressly accepted by TES in writing and signed by a duly authorised representative of TES.

Any terms and conditions of the Purchaser's order which are in any way inconsistent with or in addition to the terms and conditions set forth herein are hereby expressly rejected, notwithstanding any acceptance of the Purchaser's order and shall not be binding on TES unless, and only to the extent, that such inconsistent or additional terms and conditions are expressly accepted by TES in writing, signed by a duly authorised representative of TES. The acceptance of any deposit made with an order, nor the cashing of any cheque or instrument therefore, nor the holding of such a deposit by TES shall be deemed as acceptance of an order. If TES does not accept Purchaser's order any deposit received by TES with such an order will be promptly refunded. Upon TES's acceptance and official acknowledgement of Purchaser's order the terms set forth shall constitute an Agreement of the parties and shall supersede all previous quotations or agreements. If any Purchaser has any objections thereto the same must be raised in writing within three (3) days after receipt of such acknowledgement. Quotations may be withdrawn by TES unless accepted by the Purchaser within thirty (30) days from date of quotation unless otherwise specified.

Rights and obligations of the parties shall be governed in all respects by the laws of the state of New South Wales.

2. Health, Safety and Environment

The goods and/or services offered by TES are offered according to and within the HSE policies of TES. Should the Purchaser's demands be beyond TES policies the procedure and/or equipment is to be provided by the Purchaser.

3. Prices

Purchaser's order shall be accepted by TES subject to final credit approval. All quoted prices are cash prices, F.O.B. stated shipping point, unless specified otherwise, and include domestic packaging. Transportation shall be by the usual means and at the Purchaser's expense. Such charges for transportation shall be in addition to the quoted prices. In the event that the delivery date is scheduled or postponed, at the request of the Purchaser, to be more than 3 months after the date of TES's acceptance, TES, at its option, may adjust the price to that which is in effect at the time of shipment. Notice of any such changes in price will be given in writing to the Purchaser before shipment. TES reserves the right to adjust for exchange rate variations. Prices are also subject to correction for error.

4. Taxes

Prices do not include local, state or federal taxes. Consequently in addition to the prices specified herein, the amount of any present or future sales tax, or similar tax applicable to the sale of such goods by the purchaser

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shall be paid by the Purchaser or in lieu thereof the Purchaser shall provide TES with a tax exemption certificate acceptable to the taxing authorities.

5. Shipment

Unless otherwise specified in writing, delivery shall be made F.O.B. stated shipping point, and any reference in these terms and conditions to "delivery" shall refer to such delivery. Except for obligations stated under "Warranty", TES's responsibility ceases upon delivery to the carrier at the stated shipping point, and risk of loss, damage, injury or destruction to any of the goods shall pass to the Purchaser upon such delivery to the carrier. In the event of loss, damage, injury or destruction after such delivery to the carrier, the Purchaser must make his claim against the carrier, not against TES. In no event shall any loss, injury or destruction operate in any manner to release the Purchaser from the obligation to make payments these terms and conditions. Unless otherwise agreed in writing, TES reserves the right to make partial shipments and to submit invoices for partial shipments.

6. Claims and returned Goods

No goods shall be returned to TES without TES's permission in writing having first been obtained, unless such goods have been provided on loan, consignment or rental. Such returns shall be made, if at all, only under the terms and conditions specified in writing by TES. All returns are subject to a handling charge. Even after authorisation for return of goods for credit, TES reserves the right to adjust its offer in accordance with the condition of the goods on arrival in TES's warehouse. Credit for returned merchandise shall be issued by TES only to the original purchaser of the goods and not to subsequent owners of the goods. Claims by the Purchaser shall in no way release it from its obligation to pay for the goods provided herein. Such claims shall be dealt with as a separate transaction.

In the event goods which have been supplied to the Purchaser on loan, consignment or rental are returned to TES, as above provided, TES may assess additional charges to cover the cost of refurbishing such goods depending on the condition same are received in TES's warehouse.

7. Changes and Cancellation

Orders accepted by TES are not subject to change or cancellation by the Purchaser except with TES's written consent. If written consent is provided by TES it is offered on the basis that TES will be reimbursed for any associated costs. TES shall have the right to change construction and / or design of its goods without notice to the Purchaser if, in the judgement of TES, such a change does not alter the general function of the goods.

8. Delivery and / or Service Dates

Delivery and / or service performance schedules are based on conditions at the time of acceptance. TES will make every effort to complete shipment and / or perform services as indicated but assumes no responsibility or liability for loss or damage direct or consequential, by reason of delay or inability to ship or service. In the event of delay or inability to ship or service caused by Acts of God, fire, floods, war, embargoes, labour disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any Government act, regulation or request, shortage of labour, materials or manufacturing facilities, or any other cause or causes beyond TES's reasonable control, TES may extend delivery and / or service schedules or may, at its option, cancel the order in full or in part without liability other than to return any deposit or prepayment which is unearned by reason of the cancellation.

Should the delivery be delayed by the Purchaser, TES reserves the right to charge the Purchaser for any storage costs, shifts in exchange rate costs, delay claim costs or any other cost associated with the delay.

Any variations to the agreement/scope of works will constitute an extension of time without penalty to TES. Any associated costs with extension of time will be borne by the Purchaser.

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9. Installation

- a) Unless otherwise expressed stipulated, all equipment shall be installed by and at the expense of the Purchaser,
- b) The Purchaser is obligated to install the equipment according to TES, or the manufacturers, recommended procedures and within the specified operating limitations or the equipment warranty herein provided shall be voided.
- c) The Purchaser shall have full responsibility for insuring that the equipment and installation satisfy all governing codes and regulations concerning the specific installation.

10. Equipment Service and Commissioning

TES has no responsibility to provide equipment start-up service or commissioning unless specifically contracted for in writing. When such service has been contracted or when such service is provided in the written agreement for the sale of the equipment the following conditions shall apply:

- a) the Purchaser must have installation sufficiently complete so that the equipment can be operated normally in the intended application on the scheduled service or commissioning date
- b) The Purchaser must provide safe, easy access to the equipment, adequate supporting plant personnel and generally expedite any repairs, modifications, or tasks necessary for the TES representative to complete the assigned responsibility in a timely manner. This shall include the resolution of any problems or disputes arising from Labour Union contract complications.
- c) The Purchaser shall complete any TES required forms before TES attends site.
- d) If in the opinion of TES the above conditions are not satisfied, TES shall have the option to charge the Purchaser for time expended by its representative while waiting for or assisting in the completion of any tasks implicit in the above conditions. If more than one trip to Purchaser's site is required to complete the specified service and/or commissioning, such trip(s) shall be paid for by the Purchaser.
- e) TES shall have the right to determine when and if the specified service or commissioning has been performed satisfactorily.

11. Title

Except as otherwise agreed to in writing title to the goods or any part thereof shall pass from TES as soon as all payments due therein have been fully made in cash. The goods shall be and remain personal or movable property, notwithstanding their mode of attachment to realty or other property. If default is made in any of the payments herein, Purchaser agrees that TES may retain all payments which have been made on account of the purchase price and TES shall be entitled to the immediate possession of the goods and shall be free to enter the premises where the goods may be located and remove such goods or TES's property, without prejudice to TES's right to recover any other expenses or damaged TES may suffer by reason of such non-payment.

12. Liability

Purchaser recognises the inherent risk of the use of the goods, services, products and components sold hereunder. Recognising the inherent risks above referred to, the limit of TES's liability for the sale of such goods, services, products and components, whether such liability exists as a result of warranty (expressed or implied), negligence on the part of TES, design defect, error or omission or any other cause shall not exceed the total costs of the goods, services, products or components sold hereunder. Such limit of liability shall include, but not by way of limitation, injury or damage to property, injury death or damage to persons, cost of defence of such claims, resulting from the manufacture, repair, handling, installation, service, possession, use, operation of dismantling of such goods, services, products or components. Notwithstanding anything contained hereinabove TES's liability to Purchaser under the terms of warranty, hereinafter set forth, shall not in any case exceed the cost of correcting defects in such goods, products or components. In no event shall TES's liability extend beyond the applicable warranty period hereinafter referred to.

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13. Assignment

The Purchaser may not assign this order or any interest therein or any rights herein without written consent of TES except that engineering consulting and / or construction firms purchasing such equipment and / or services may transfer their rights and title to their contractor provided that the relationship between the Purchaser and contractor is identified in writing or on the original purchase order.

14. Warranty

Except as provided herein, there are no warranties which extend beyond the terms hereof

- a) The goods and/or services sold or manufactured by TES hereunder are warranted to be free from defects in material and faulty workmanship and are warranted to be of the kind and quality described in TES specifications which are current and applicable at the time of the purchase for a period of twelve (12) months from the date of the shipment of such goods to Purchaser. Or in the case of project works the warranty will start from and endure for the date and times set down by TES.
- b) Provisions respecting warranty
 - 1) Purchaser shall make a written report of any defects in the goods and/or services covered by this warranty to TES within ten (10) days after the discovery of such a defect. Failure of Purchaser to so notify TES as herein provided shall cause this warranty to be null and void.
 - 2) The warranty shall include the correction of any defects and the repair of any defective part which is returned to TES by the Purchaser, (freight paid by the purchaser). TES, at its option may make available at Purchaser plant (via lowest freight rate), a repaired or replacement part to be exchanged for the defective part which must be returned by Purchaser to TES (freight paid by the purchaser). TES shall have the option to repair the defective equipment at the Purchaser site in which case the Purchaser will be appropriately notified by TES.
 - 3) TES makes no warranty on goods and components manufactured by others, except for such warranty as are made by the original manufacturers therefore which TES hereby passes to the purchaser.
 - 4) If the goods sold hereunder are altered or repaired by any person, firm or corporation not authorised or approved by TES, then this warranty shall be null and void.
 - 5) This warranty shall only apply to goods unused at time of sale.
 - 6) The warranty period shall not be extended by repairs made to the goods or by replacement deliveries.
 - 7) The foregoing warranty is exclusive and in lieu of all other warranty whether written, oral or implied.
- c) In no event shall this warranty apply to any of the following:
 - 1) Breakage of glassware or components containing glass or other fragile materials.
 - 2) Normally consumed materials
 - 3) Damage resulting for improper or negligent installation, use, operation or maintenance of the goods sold hereunder.
 - 4) Merchantability or fitness for a particular purpose.

15. Patents

TES does not represent that the goods sold hereunder do not infringe upon the rights of others under patents, trademarks or otherwise, and does not assume any liability with respect to any claims thereof. In the event that any such claim shall be made the Purchaser agrees to immediately notify TES. If some or all of the goods sold hereunder are made by TES pursuant to drawings or specification furnished by Purchaser it is expressed agreed that if such goods infringe or contribute to the infringement of any rights of third parties under patents, trademarks, or otherwise, the Purchaser shall assume all responsibility with respect to such infringement or alleged infringement and shall indemnify and hold TES harmless against all suits, actions, judgements, decrees, damages, costs and expenses including reasonable attorney's fees incurred by TES on account of such infringement or alleged infringement.

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16. Radioactive Materials

If the goods described herein contain radioactive materials, the distribution or sale which is regulated by the Atomic Energy Act of 1946 or amendments thereto or any other applicable law of a state, Federal or local government authority the Purchaser assumes full responsibility for the transfer, use and possession of such material and for obtaining authorisation or supplying evidence of compliance with applicable laws and regulations.

17. Terms of Payment

Unless otherwise agreed in writing terms are net thirty (30) days from date of invoice with no discount allowed for earlier payment. Invoice shall be issued upon shipment. In the case of agreed progress payments TES will forward a payment schedule. Past due invoices are subject to a monthly service charge at a maximum rate from time to time permitted by law. TES may require full or partial payment in advance. Should any special terms of payment provide for either full or partial payment upon installation or completion of installation or thereafter, and the installation is delayed for any reason for which TES is not responsible, the equipment shall be deemed installed upon delivery if no other terms are agreed upon.

18. Exceptions

Goods and / or services sold by TES to original equipment manufacturers for inclusion in their systems shall be subject to terms and conditions specified in that sale. Similarly used equipment, consignments, conditional sales, rentals, and contract service agreements shall be subject to additional terms and conditions as may be stipulated in writing for those terms.

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