



# TRADECORE

## INTERNATIONAL LTD

Company Registration No: 09435889

### **Terms & Conditions of Business for the Supply of Goods and/or Services**

#### **BASIS OF CONTRACT**

All Purchase Orders submitted by Customers for Equipment and/or Services of TIL are subject to these terms and conditions including all additional terms and conditions presented on or accompanying a TIL Quotation or TIL Order Acknowledgment and/or other documents issued by TIL. The Purchase Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these terms and conditions. TIL specifically rejects and Customer disclaims all printed provisions in Customer's printed Purchase Orders including associated forms and/or documents. These terms and conditions, together with the TIL Order Acknowledgment shall constitute the entire agreement between TIL and Customer with respect to any Customer Purchase Order and the Equipments and/or Services provided hereunder. These terms and conditions supersede any prior or contemporaneous agreements or representations written or oral. Any amendment of these terms and conditions must be in writing and signed by TIL to be binding on TIL.

#### **DEFINITIONS AND INTERPRETATION**

Within this document definitions are defined as follows:

"TIL" means Tradecore International Ltd and/or its designated affiliates.

"Customer" means the company, partnership, firm, business, individual or other entity who places a Purchase Order for Equipment and/or Services which is accepted by TIL.

"Delivery" means the place and date delivery defined by the current INCOTERM specified on TIL's Quotation, Order Acknowledgment or other documents.

"Equipment" means the Products offered for sale to Customer at time of sale.

"OEM" is defined as the Original Equipment Manufacturer of the base product or any licensed or approved component manufacturer.

"Order Acknowledgment" means a document provided by TIL acknowledging the receipt of Customer's Purchase Order and TIL's agreement to supply the Equipment and/or Services stated therein under the terms and conditions stated herein.

"Product" means equipment of TIL design and manufacture, or other manufacturer's equipment offered for sale by TIL to Customer.

"Purchase Order" means Customer's document for the acquisition of Equipment and/or Services from TIL, exclusive of all printed terms and conditions contained thereon.

"Quotation" means TIL's conditional offer of sale for Services and/or Equipment.

"Services" means various types of services as provided by TIL to the Customer in accordance with the agreed specification covering items such as shipping, insurance, training, site engineering and installation. Services are not Equipment. Additional fees apply for Services

"Shipment Date" means the provisional date on which TIL has scheduled shipment of Equipment to Customer.

"Force Majeure" means an event beyond reasonable control of TIL including but not limited to strikes, lock-outs, industrial disputes, failure of utility service or transport network, act of God, war, riot, civil unrest, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant machinery, fire, flood, storm or default of supplier subcontractors.

## **1. QUOTATIONS AND ACCEPTANCE OF PURCHASE ORDERS**

Written Quotations, signed by an Authorised TIL Signatory/Company Director are the only acceptable offers to contract from TIL to any customer. No verbal undertaking by any TIL employee will be considered as binding on the company. Any technical specification or manufacturer's literature issued by TIL in support of a quotation is for the customer to assess and acknowledge the suitability of the equipment offered. Notwithstanding any description provided by TIL in the Quotation, the manufacturer's description shall prevail. The customer's Purchase Order shall only be deemed to be accepted when TIL issues written acceptance by way of an Order Acknowledgment, to supply the Equipment and/or Services identified in Customer's Purchase Order under the terms and conditions herein. No Customer Purchase Order will be binding upon TIL until TIL issues a written Order Acknowledgment.

## **2. PURCHASE ORDER AMENDMENTS**

The Customer may not change or amend its Purchase Order without written consent from TIL. Any revision in drawings, designs, specifications, services, shipment completion dates or Purchase Order termination requested by Customer can only be made in writing and may result in additional cost to Customer. Any additional cost to Customer will be at TIL's standard rates in effect at the time of Customer's request. TIL's action to Customer's request shall commence only upon the issuance of a new Purchase Order or written amendment to an existing Purchase Order authorizing the applicable charge.

## **3. PRICE OF EQUIPMENT AND/OR SERVICES**

The price for Equipment and Services are based on TIL's Quotation, Statement of Work or proposal. A Quotation, Statement of Work or proposal is valid for the period of days from date of issue as mentioned in our pro-forma quotation. Errors or omissions in price are subject to correction by TIL.

### **3.1 PRICES AND ADJUSTMENTS**

TIL reserves the right to increase the price of the equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the equipment to TIL that is due to:

- (i) any factor beyond the control of TIL (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of equipment ordered, or the equipment specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the equipment or failure of the Customer to give the TIL adequate or accurate information or instructions in respect of the equipment.

The price of Services may subsequently be adjusted to reasonably reflect the adverse cost impact to TIL of:

- (i) Customer changes or delays which are outside of the scope of Services;
- (ii) legal/regulatory changes which occur after the issuance of the Quotation and/or Statement of Work for the particular Services in question; and
- (iii) the failure of Customer to perform its obligations.

TIL will provide a written notice and reason for an adjustment to the price within a reasonable period of time after TIL becomes aware of an event under which TIL intends to request an adjustment. The parties will then determine, in a commercially reasonable manner, the price adjustment that is appropriate. Pending such agreement, TIL will continue to perform the Services specified in the Purchase Order for five (5) business days or such other greater time that may be agreed to in writing by TIL, unless:

- (a) Customer has fails to pay amounts due to TIL when due; or
- (b) An event specifically identified in the Quotation and/or Statement of Work permitting suspension or termination of the Services occurs; or
- (c) Customer is otherwise in breach.

In the event an adjustment to the price has not been made within the aforementioned five (5) business days, TIL shall have the right to terminate this Purchase Order, in whole or in part and in addition to any other remedy available to TIL, Customer shall make immediate payment to TIL on account of all Equipments delivered and/or Services rendered.

## **4. SCHEDULE FOR PERFORMANCE OF SERVICES**

TIL will perform the Services in accordance with the schedule stated in the Quotation and/or Statement of Work .

## **5. PACKAGING, SHIPMENT AND SERVIC DELIVERY DATES**

All Products shall be suitably packed for shipment. TIL may charge for packing and/or packaging including special documentation to comply with Customer requirements. Shipment or Delivery Date for Equipment or date for performance of Service is estimated by TIL but is not guaranteed TIL. Delivery of the equipment shall take place at the location set out in the Order Acknowledgement. Acceptance of any change to the delivery location requested by the

Customer shall be at the TIL's sole discretion and the Customer shall be liable for any additional expenses incurred by the TIL as a result of such change.

## **6. DELAYS CAUSED BY THIRD PARTY CONTRACTORS**

Customer, regardless of the circumstances, will not hold TIL liable for any liabilities, penalties, or charges of any nature due to the late performance of any Service date. TIL assumes no liability for any direct or liquidated damages during shipment or delivery of Equipment. Equipment may be tendered in partial shipments at TIL's discretion.

In the event of shipment delay requested by Customer or a delay caused by lack of shipping instructions, TIL will store all Equipment covered thereby at Customer's risk and expense. TIL will invoice the Customer at the full price for the Equipment including an additional storage fee.

## **7. TITLE, RISK OF LOSS AND INSURANCE**

Risks of loss, damage and insurance responsibilities for the products or equipment pass from TIL to Customer according to latest version of INCOTERMS specified on the Quotation and/or Order Acknowledgement. Title of ownership for the products or equipment remains with TIL and shall only pass to Customer at the date of full payment of the price of such products or equipment as specified in the Order Acknowledgment.

## **8. ACCEPTANCE OR REJECTION OF EQUIPMENT/SERVICES**

After the Delivery of the Equipment, or the performance of Services, Customer will inspect the Equipment/Services for conformity to the Purchase Order, Statement of Work or Quotation (as the case may be) within a period of five (5) business days or as agreed in writing. Acceptance of Equipment/Services by Customer shall automatically occur after five business days unless TIL is advised otherwise in writing upon Customer's commercial use of the Equipment/Services. If any Equipment or Service does not substantially conform to the applicable Purchase Order, Statement of Work or Quotation (as the case may be) Customer shall notify TIL in writing of the non-conformance, and for Equipment, obtain an authorization for return, and return such Equipment to TIL for correction or completion as required. With respect to Services, TIL shall, at no additional charge (if determined by TIL to be TIL's fault), take prompt action to correct such unsatisfactory Services.

## **9. PAYMENT TERMS**

Customer's payment obligations are stated on TIL's invoices. Invoices for Services will be rendered in accordance with an established milestone schedule or upon completion of any Services. Late charges of five percent (5 %) or the maximum permitted by law, whichever is less, per month on outstanding balances may be charged. All amounts due shall be payable in the currency of TIL's Quotation unless otherwise specifically agreed upon in TIL's Order Acknowledgement. If, in TIL's judgment, Customer's financial condition does not justify continuation of the existing payment terms, TIL may:

1. require full or partial payment of Customer's account;
2. require payment in advance of Equipment shipment;
3. require payment in advance for performance of any Services;
4. change Customer's credit terms; or
5. any combination of the above.

## **10. PRODUCT AND SERVICES WARRANTY**

TIL warrants that all equipment supplied by TIL shall be new, of current manufacture and shall carry the manufacturers' standard warranty unless specific exception is made in writing. Customer must promptly notify TIL of any claimed defect in the Product and/or Services. TIL or its agent may inspect the Product or workmanship on Customer's premises. Any Product returned to TIL under warranty must be shipped prepaid by Customer.

## **11. PRODUCT AND SERVICES WARRANTY LIMITATIONS**

TIL's entire liability and Customer's exclusive remedy whether in contract, tort or otherwise, for any claim related to or arising out of breach of the warranty covering Product or Services shall be as determined by the manufacturer whose decision in all matters of warranty, will be final. TIL does not warrant that the operation of the Product will be uninterrupted or error-free. Similarly, TIL does not warrant that the functions of the Product will meet Customer's requirements or that the Product will operate in combination with other products selected by Customer for its use. TIL assumes no liability with respect to:

- (a) defects caused by modification, repair, installation, operation or maintenance except as described in TIL's documentation;
- (b) negligent or other improper use of the Product.
- (c) Lack of insurance – either compulsory or customary – cover for customers' shipped orders

No agent, distributor, or representative is authorized to make any warranties on behalf of TIL or to assume for TIL any other liability in connection with any Product or Services.

With respect of all purchases of products, equipment and/or services from TIL by customer, the above warranty replaces all other warranties, express or implied, and all other obligations of TIL, including any warranties of merchantability and fitness for a particular purpose. All other warranties are disclaimed and excluded by TIL.

## **12. RETURNS**

Equipment may not be returned to TIL without prior authorization. Customer must contact TIL to obtain an authorization number and return the Equipment to the location designated by TIL with all transportation charges paid by Customer. TIL may charge Customer certain fees for Equipment returned to TIL. Any Equipment returned to TIL without proper authorization will be returned to Customer at Customer expense.

## **13. DISCLAIMER OF LIABILITY**

TIL will not be liable for injuries or damages to persons or property resulting from any cause whatsoever, with the exception of bodily injuries, death or tangible property damage caused by the wilful misconduct or gross negligence of TIL. This limitation applies to all equipment, products and/or services performed during and after the warranty period.

In no event shall TIL be liable for any damages resulting from loss of data, loss of use or loss of revenue or profit and TIL further disclaims any and all liability for indirect, incidental, special, consequential or other similar damages. If any remedy hereunder fails of its essential purpose, or in any other event, TIL's aggregate liability hereunder shall not exceed either the depreciated value of the affected equipment, products and/or services, or the actual price paid to TIL such equipment, products and/or services, whichever is less. This clause 13 shall survive termination of the Contract.

## **14. ASSIGNMENT**

TIL may assign its rights and obligations by giving Customer written notice thereof but without being obligated to obtain Customer's consent prior thereto. In the event if an assignment, TIL shall be discharged of any liability pursuant to those Purchase Orders which have been assigned or delegated.

Customer may not assign its rights nor delegate its obligations under any or all of its Purchase Orders unless TIL's written consent is obtained prior thereto and any such assignment or delegation without such consent shall be void.

## **15. COMPLIANCE WITH APPLICABLE LAWS**

The Customer will comply with all applicable laws affecting the purchase and use of Equipment. The Customer agrees to maintain all registrations with governmental agencies, commercial registries, chambers of commerce, or other offices which may be required under law in order to properly conduct commercial business. The customer is responsible for informing TIL of any specific regulation or law applicable in the country of destination which may affect anything in the execution of the Purchase Order.

## **16. CONFIDENTIAL INFORMATION**

Customer will not disclose to any person or entity any information or data fixed in a tangible medium and marked as the confidential or proprietary information (hereinafter referred to as "Confidential Information") of TIL, or if provided orally, confirmed in writing to be confidential or proprietary by TIL. Notwithstanding the provisions herein, if Customer receives Confidential Information it shall treat such Confidential Information as confidential, prohibit recopying and use such Confidential Information only in connection with fulfilling its obligations under Customer's Purchase Order. Customer will return all Confidential Information to TIL upon completion of such obligations for its use, or upon the request of TIL. Customer recognizes and agrees that the unauthorized use or disclosure of the Confidential Information would cause irreparable injury to TIL for which it would have no adequate remedy at law, and that any actual or contemplated breach of this clause will entitle TIL to obtain immediate injunctive relief prohibiting such breach, in addition to any other rights and remedies available to it. The obligations herein contained will expressly survive the final payment of any/or all Customer Purchase Orders.

## **17. SEVERABILITY**

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

## **18. FORCE MAJEURE**

TIL reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Equipment ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to TIL to terminate the Contract.

## **19. GOVERNING LANGUAGE**

The parties hereby confirm that they have agreed that all written documents between them be prepared in the English language only and such language shall be the governing language.

## **20. GOVERNING LAW**

The contract created by the issuance of an Order Acknowledgment shall be construed, interpreted and applied in accordance with the internal laws (but not the law of conflicts) of the jurisdiction in which is located the main office of the TIL affiliate which is authorized to issue the Order Acknowledgment and any applicable law of that jurisdiction and the United Kingdom. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the sale of Equipments hereunder. Customer hereby irrevocably consents to the exclusive personal jurisdiction of the Laws of the United Kingdom. If Customer institutes any legal proceeding in any other court, it shall assume all of TIL's costs in connection therewith, including reasonable legal fees. Registered or certified mail of any legal process shall constitute lawful and valid service of process in any such proceeding, suit or controversy.

## **21. SURVIVAL OF TERMS**

The termination or cancellation of any Customer Purchase Order or any relationship created hereunder between the parties or the delivery of Equipment or performance of Services under Customer's Purchase Order shall not affect each party's obligations and rights under these terms and conditions, which by their nature, survive, notwithstanding such termination, cancellation, delivery or performance.

## **22. TAXES**

TIL is not responsible for any taxes, tariffs or duties imposed by the country of the importer.

## **23. CANCELLATION FOR DEFAULT**

TIL may, upon written notice to Customer, cancel any and/or all Customer Purchase Orders effective immediately if:

1. Customer makes an assignment for the benefit of creditors;
2. Is unable to pay its debts as they become due;
3. Files a voluntary petition in bankruptcy;
4. Is adjudicated to be a bankrupt or an insolvent debtor;
5. Files a petition seeking for itself any reorganization; or consents to or acquiesces in the appointment of a trustee, receiver or liquidator;
6. Any proceeding seeking involuntary reorganization, or similar relief is filed against Customer which is not dismissed within one (1) month after filing, or if any trustee, receiver or liquidator of Customer or any substantial part of its business assets, or properties is appointed without TIL's consent or acquiescence and such appointment is not vacated within one (1) month after such appointment;
7. Customer ceases doing business as a going concern or it or its shareholders take any action looking to its dissolution or liquidation; or
8. Fails to perform any Equipment obligations and such failure is not remedied within fifteen (15) calendar days after notice has been given Customer.
9. Customer fails to pay for any Purchase Order in accordance with the invoice payment terms;
10. Any change occurs in the direct or indirect ownership of Customer if, in TIL's opinion, such change may be detrimental to TIL's interest hereunder;
11. Any cancellation pursuant to this clause will be in addition to and will not be exclusive of or prejudicial to any other rights or remedies at law or in equity available to TIL.

## **25. WAIVER**

Failure or delay by TIL in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by TIL of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.