

## General Terms and Conditions valid from 1<sup>st</sup> June 2021

### General

1. These General Terms and Conditions apply to all transactions between Tridonic Australia Pty Ltd (ABN 40 099 708 175), (hereinafter “Seller”) and its business partners and customers (hereinafter “Buyer”) (together, the “Parties”), for deliveries of goods and (as applicable, analogously) for the provision of services (hereinafter “services”). All offers made by the Seller are based upon these General Terms and Conditions.
2. Should any of the provisions in these General Terms and Conditions directly contradict those contained in the Seller’s offer or order confirmation, the provisions of the Seller’s offer and order confirmation shall apply. In this event, and subject to point 3, only those provisions of these General Terms and Conditions, or parts thereof, that are not in direct conflict with the provisions of the Seller’s offer or order confirmation shall remain valid.
3. The Buyer expressly acknowledges that the Seller rejects all provisions deviating from those conditions contained in points 1 and 2 that are included in an order or other commercial documents of the Buyer. Unless explicitly agreed to by the Seller in writing, the Seller does not agree to any terms and conditions of the Buyer including where the Seller does not explicitly contradict those provisions or where those terms and conditions would otherwise be deemed to apply to the Seller (e.g. by the Seller providing goods or services to the Buyer).
4. These General Terms and Conditions shall apply – unless and until a newer version of the General Terms and Conditions are provided to the Buyer or are otherwise applied to the transaction – as the framework agreement for all transactions with the Buyer. Should any of these individual General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.
5. The Seller provides goods, products and services to commercial customers and public authorities only, not however to consumers.

### Offer

6. Offers by the Seller are non-binding.
7. Offer, implementation and project documentation may not be reproduced or made accessible to third parties without the Seller’s consent. These may be reclaimed and are to be returned to the Seller should the order be placed elsewhere.

### Conclusion of agreement

8. An agreement is considered formed as soon as the Seller has sent a written order confirmation to the Buyer or has dispatched a delivery upon receipt of the order.
9. Information contained in catalogues, brochures and the like, as well as other written or verbal statements by or on behalf of the Buyer (“Extra Information”), are only relevant if explicitly included in the order confirmation. The Buyer confirms and warrants to the Seller for each order or transaction that it has not relied on any Extra Information in deciding to place the order or proceed with the transaction.
10. Subsequent amendments and additions to the agreement or additional agreements are valid only when confirmed by the Buyer and Seller in writing. The Seller may at any time correct clerical mistakes and/or calculation errors in offers, order confirmations or invoices, and such corrections will be deemed to be included in the agreement.

### Prices

11. Unless otherwise noted, prices apply CPT, however, excluding GST, and are binding only up to the delivery date specified in the order confirmation. The Buyer is responsible for all fees, taxes or other charges arising from deliveries, and, if the Buyer has requested express shipment, the costs of such express shipment.
12. Unless otherwise agreed, prices are free into store Adelaide, Brisbane, Melbourne and Sydney for each order above \$300 excluding GST. A charge of \$25.00 excluding GST will be applied to orders below \$300.
13. In the case of service and/or repair engagements (e.g. planning, commissioning and/or reviewing installations, training), Seller will provide a quote to Buyer for approval, including any surcharges under clause 22 or 23, and if approved, those services shall be performed and invoiced to the Buyer on the quoted basis of expenses

incurred plus any additional travel and transportation costs actually incurred by Seller. This approach also applies to services and additional services the necessity of which becomes apparent only during performance of the engagement and which involve a material change to the expenses as quoted and approved. Otherwise, such additional services will be charged on a time and materials basis, based on Tridonic's then current hourly rates.

## **Transfer of risk**

14. Use and risk are transferred to the Buyer upon the goods being delivered to the first carrier who will deliver to the premises or warehouse of the Buyer regardless of the effect of any written pricing terms agreed to for the delivery. This also applies when the delivery forms part of an assembly or if the transportation is performed or organised and implemented by the Seller.
15. The place of performance for services is the location where the service is performed. The risk of a service or agreed to partial service are transferred to the Buyer upon performance.

## **Delivery / services**

16. The Seller's delivery obligations are controlled solely by the Seller's written order confirmation.
17. Without a written agreement to the contrary, a specified delivery date (e.g. as contained in the order confirmation) serves only as an indication for the Buyer and is not binding.
18. The Buyer shall obtain all necessary permits from governmental agencies or other third parties. Should these permits not be obtained on time, the delivery period is extended accordingly. The delivery period is also extended in the event that the Buyer has not made any scheduled payment that is due and payable.
19. Where the Buyer and Seller have agreed that goods will be delivered in a number of deliveries, or agreed to a delivery on demand arrangement up to an agreed ordered amount, the Seller will provide and invoice on the basis of the goods as delivered (subject to clause 21), except that if delivery on demand is agreed, if the Buyer orders a quantity of goods, but the Buyer has not demanded the full quantity of the ordered goods 1 year after placement of the order, the Seller may ship and invoice the remaining quantity of the goods at that time.
20. Insofar as no specific written arrangements have been made, the Seller shall choose the method and nature of shipment. In particular, there is no obligation to select the most cost effective mode of shipment.
21. Deliveries are made only in full packaging units. If smaller units are ordered, the Seller reserves the right to charge a minimum quantity/volume surcharge as set out in the Seller's then current price list. The packaging, also for partial and/or advance deliveries, conforms to standard commercial practice. Without limitation to the foregoing, a Broken Carton Surcharge will be applied to orders of either LED Drivers or Fluorescent Ballasts, equal to \$5.00 (excluding GST) per carton.
22. The nature and extent of the services to be provided by the Seller is described in the respective order confirmation. The Buyer shall facilitate the performance of the services and in all cases shall make available a competent person and all required equipment (e.g. ladders, scaffolds, work cage). The Buyer shall provide replacement parts (e.g. light sources, control units, lighting, lamps etc.) at its own expense; alternatively these may be provided and charged for by the Seller.
23. Unless agreed otherwise, services are performed on workdays (meaning Monday to Friday, excluding public holidays in Victoria) between 08.00 and 17.00 via a third party provider. If the Buyer requests services outside working hours, the Seller reserves the right to charge a premium surcharge of
  - 50 % surcharge on Seller's normal hourly rate for services performed on Saturdays or outside working hours on work days
  - 100 % surcharge on Seller's normal hourly rate for services performed on Sundays and public holidays.
24. The Buyer is obliged to promptly inform the Seller of all material circumstances regarding the plant and/or performance of services in question before the Seller provides the Buyer with a quote for the requested services. and, at the request of the Seller, the Buyer shall withdraw from operation either the whole or part of the plant for the duration of the service provision. Promptly after the request, and in any event before the performance of the service, the Buyer is obliged to inform the Seller in writing of any safety precautions or compliance with any safety standards required in performing the service. Relevant training required by the Seller's personnel is undertaken at the Buyer's expense. The Seller is entitled to separately charge the Buyer for

any resulting additional efforts relating to such training or compliance with safety precautions or standards and will include such amount in the quote for the requested services if notified in advance.

25. Where unforeseeable circumstances arise or where the circumstances are independent of the intent of the Parties, for example all cases of force majeure, that impede compliance with a delivery date agreed in writing, such delays shall extend the delivery date under exclusion of all legal claims the Buyer could otherwise assert for the duration of these circumstances; included herein are, for example, official interventions and prohibitions, transport and customs delays, transport damage, energy and raw materials shortages, labour disputes, and default on the part of essential or difficult to replace subcontractors. These aforementioned circumstances also entitle an extension of the delivery period if they affect the Seller's suppliers.

## **Payment**

26. Unless other written payment conditions have been agreed, each delivery and/or service is payable upon receipt of an invoice. In the event of partial invoices the partial payment is also due upon receipt of an invoice.
27. Payments are to be made without deductions in the agreed currency. Any acceptance of cheques or bank transfers is possible only on account of payment. All resulting interest and charges are borne by the Buyer.
28. The Buyer is not entitled to withhold or offset payments as a result of warranty claims or any other claims.
29. If the Buyer is in arrears regarding an agreed payment or for other services, the Seller may, without prejudicing other rights:
- (1) Delay fulfilment of its own obligations until payment has been effected, and/or
  - (2) Demand payment of all outstanding receivables and demand interest arrears in the amount of the BBSY rate then quoted plus 3% per annum plus GST from the due date. In the event of default all granted discounts and bonuses are forfeited. The Seller is entitled to invoice pre-trial costs, in particular reminder fees and legal expenses.
30. In the event of the Buyer's account falling into arrears, or the Seller considers that there is a reasonable risk that the Buyer is or may become insolvent or that there is a lack of credit worthiness or risk of credit unworthiness on the part of the Buyer, where goods or services have not been paid in advance, the Seller is entitled to cancel outstanding orders, withhold delivery and/or performance or to demand securities.
31. In the event of late payment, the Buyer is liable for any exchange currency losses incurred by the Seller between the original due date and the actual date of payment.

## **Retention of title and security**

32. The Seller retains full title and ownership to all goods delivered by it until full payment of invoice amounts plus interest and expenses. In order to secure the payment of the invoiced amounts, the Buyer assigns all its claims and proceeds from the resale of such goods even where these have been processed, transformed or combined, to the Seller as collateral security and agrees to make the corresponding entries in its accounts or invoices. The Seller accepts this assignment. Upon request, the Buyer shall inform the Seller of the assigned claims and the debtors, and make available all required information and material for collection of the debt as well as notifying third-party debtors of the assignment. In the event of seizure or other claims the Buyer is obliged to advise the Seller's property rights and to inform the Seller immediately.
33. The Seller is obliged to release securities to the extent that their realisable value exceeds the claims due to the Seller by more than 10%, whereby the Seller reserves the right to determine which goods or claims are released.
34. If retention of title pursuant to the law in the location of the goods is not valid, a security corresponding to retention of title is deemed agreed. In addition, the Parties agree that each agreement for provision of goods formed between them that incorporate these General Terms and Conditions will constitute a Security Agreement. If the cooperation of the Buyer is required, upon the request of the Seller it is obliged to undertake all reasonable measures at its own expense to establish, and preserve such rights, including anything required by the Seller to enable it to register its Security Interests with the priority that the Seller requires. The Buyer

must pay the Seller all costs incurred by the Seller in preparing, lodging, establishing, registering and enforcing any Security Interest granted under such a Security Agreement.

35. Unless the context requires otherwise, terms and expressions used in this clauses 35 to 39 have the meanings given to them in the Personal Property Securities Act 2009 (Cth) (PPS Act).
36. The Security Interests arising under this each Security Agreement attach to the goods provided or supplied to the Buyer when the Buyer obtains possession or control of that Personal Property and the Parties confirm that they have not agreed that any such Security Interest attaches at any later time.
37. All enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests referred to in these General Terms and Conditions, except the following provisions of the PPS Act:
  - (a) section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Buyer;
  - (b) subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - (c) section 130 (notice of disposal), to the extent that it requires the Seller to give the Buyer a notice;
  - (d) subsection 132(3)(d) (contents of statement of account after disposal);
  - (e) subsection 132(4) (statement of account if no disposal);
  - (f) section 135 (notice of retention);
  - (g) section 142 (redemption of collateral); and
  - (h) section 143 (reinstatement of security agreement).
38. The Seller does not need to give the Buyer any notice under the PPS Act (including a notice of a verification statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.
39. The parties agree that neither party will disclose to an “interested person” (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. Neither party will authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

## **Warranty**

40. In accordance with the following provisions, the Seller is obliged to rectify any defect impairing functionality in any goods that exists at the time of delivery that are caused by faults in construction, materials or workmanship. The Seller warrants that any services performed by or on behalf of the Seller will be performed with reasonable skill and care. These warranties are offered in addition to any warranties or guarantees required by law which cannot be excluded or amended by agreement.
41. The contractual warranty period for defects undetectable at time of delivery (“latent defect”) is 24 months from the date of transfer of risk and these must be reported without delay, and in any event within 14 days, upon discovery by the Buyer. Defects detectable upon delivery (“delivery defect”) must be reported in writing within a period of 14 days of delivery. The contractual warranty period for latent defects begins at the time of delivery (transfer of risk) and is neither extended nor interrupted by remedial activities, or replacement of any part or good. The calculation of the warranty period and reporting dates also applies to partial deliveries. Even if a defect is reported, this does not entitle the withholding of invoice amounts or parts thereof. The Buyer must prove that the defect (whether a latent defect or a delivery defect) existed in the good at the time of delivery.
42. In the event of a defect subject to a warranty obligation in accordance with this contractual “warranty” section, the Seller may, at its discretion, repair the defective good or part at the place of performance or have it sent for repair or to replace (exchange) it or to award the Buyer a price reduction. Invoices from the Buyer for repairs by third parties shall not be recognised.
43. All ancillary expenses incurred by either Party in connection with rectifying defects (such as assembly and disassembly, transport, disposal, travel and travel time expenses) are borne by the Buyer. For warranty work carried out at the Buyer’s premises, the necessary assistance, hoisting gear, scaffolding and sundry materials etc. are to be supplied at the Buyer’s cost.
44. If the Seller produces a good on the basis of design specifications, drawings or other information provided by the Buyer, the Seller’s liability is limited to the implementation of these instructions.
45. The Buyer shall only be entitled to bring a claim against the Seller for breach of contractual warranty where the defect is identified within the contractual warranty period provided in clause 41, and where the Buyer issues legal proceedings against the Seller within the period of twenty four (24) months commencing on the date on

which the defect is identified, which time period is not extended by any repair, or replacement or other remedy offered or accepted by the Buyer in relation to that defect, or any defect in the repair or replacement of the good.

46. The Seller shall accept returns only after giving its prior written consent.

47. The assignment of warranty claims and/or damages claims and similar matters is not permitted.

## **Damages and liability limitations**

48. Subject to clause 53, the Seller's total liability, whether arising in contract, indemnity, tort (including negligence), breach of statutory duty (to the extent it can be limited by law) or otherwise— insofar as this is legally permissible – for any order is limited to only to an amount of no more than one half of the value of the order.

49. The Seller is not liable, whether in contract, indemnity, tort (including negligence), breach of statutory duty (to the extent that liability can be excluded) or otherwise for compensation for purely financial losses, lost profit, anticipated profits, interest losses, lost opportunity, revenue, business, goodwill, anticipated savings, loss arising from business interruption, increase in operating costs, losses from claims by third parties – whether direct or indirect damages - consequential damages or (criminal) damages incurred or suffered by the Buyer or any other person arising out of or in connection with any order.

50. The Seller is not liable for, and the Buyer must not make any claim under or in connection with item 48 – insofar as is legally permissible (and subject to clauses 41 and 45 in relation to claims for breach of contractual warranty) – after 6 months from the date the Buyer first becomes aware of any loss or damage. That claim must be made in writing and the Buyer must include all relevant details (including the amount) then known of the claim, the events, matters or circumstances giving rise to the claim.

51. The Buyer acknowledges and agrees that subject to clause 53 its sole remedy in connection with the supply of any goods, products or services provided under these General Terms and Conditions is as set out herein, and that the Buyer must not make or issue any claim, demand, legal proceeding or cause of action whatsoever against the Seller except as permitted herein.

52. Except as expressly provided herein and to the extent permitted by law, the Buyer expressly waives all rights to warranty, express or implied, as to description, productiveness, or any other matter concerning the goods, products or services.

53. To the extent that any applicable legislation implies into these General Terms and Conditions or imposes on the Seller any condition, warranty or guarantee (including any consumer guarantees under Schedule 2 (Australian Consumer Law) of the Competition and Consumer Act 2010 (Cth) (ACL)) that cannot lawfully be excluded by agreement, in the event of any breach of such condition, warranty or guarantee by the Seller, the Seller's liability is limited to:

(1) in the case of goods, the replacement of the goods, the supply of equivalent goods, or payment of the cost of replacing the goods or of acquiring equivalent goods; and

(2) in the case of services, supplying the services again, or payment of the cost of having the services supplied again.

54. Clauses 40 to 51 do not apply in respect of goods or services to the extent that:

(1) the Buyer is a Consumer (being a person defined as such for the purposes of the consumer guarantee regime in the ACL) in respect of the order under which the goods or services were supplied; and

(2) such clauses have the effect of excluding, restricting or modifying the Seller's liability under the ACL in a manner prohibited by the ACL.

55. Nothing in this agreement is intended to exclude, restrict or modify rights which the Buyer may have under common law, legislation (including the ACL) or otherwise ("Relevant Laws") which may not be excluded, restricted or modified by agreement. If any provision of this agreement is invalid under any Relevant Laws, that provision is enforceable to the extent that it is not invalid, whether it is in severable terms or not.

## **Withdrawal from agreement or cancellation of orders**

56. In the event of the Buyer's account falling into arrears, or if the Seller considers that there is a reasonable risk that the Buyer is or may become insolvent or that there is a lack of credit worthiness or risk of credit unworthiness on the part of the Buyer, in addition to the Seller's rights under clause 29, the Seller may cancel any order or not deliver ordered goods or services and may notify the Buyer that no further orders will be

accepted and this agreement is terminated. Where the Buyer has paid in advance for goods or services that have been ordered, but not delivered, and the Seller terminates this agreement, the Seller will refund such amount, after deducting any amount then properly due to be paid by the Buyer to the Seller for goods or services actually delivered.

57. The Seller shall not be liable for any failure or delay in performance under this Agreement due to causes outside its reasonable control, including but not limited to acts of God, acts of civil or military authority, epidemics or pandemics, fires, floods, earthquakes, tsunamis, hurricanes, riots, wars, sabotage, labour shortage or disputes or governmental actions (Force Majeure Event). If a Force Majeure Event occurs which prevents or delays the Seller in complying with this agreement:
- (1) it will give the Buyer written notice and use reasonable efforts to mitigate the effects of the Force Majeure Event, and the Seller's relevant obligations are suspended during the period for which the Force Majeure Event continues; and
  - (2) provided that such suspension continues for a period longer than two months, the Buyer or the Seller may terminate this agreement by 14 days' notice in writing.

### **Industrial property rights and copyrights**

58. The Buyer shall indemnify the Seller for all infringements of property rights where goods have been manufactured by the Seller of the basis of design specifications, drawings, models or other specifications provided by the Buyer.
59. Production documents, such as plans, drawings and other technical documents as well as samples, catalogues, brochures, illustrations and the like remain the property of the Seller and are subject to applicable laws governing reproduction, imitation, competition etc.

### **Compliance with export control regulations**

60. In the event of transfer of goods supplied by the Seller (e.g. hard and/or software and/or technology including related documentation, independent of the manner of provision) or of services provided by the Seller (including all technical support) to third parties wherever located, the Buyer shall comply with all applicable national and international (re)export control regulations. To the extent applicable, the Buyer must observe any (re)export control regulations of Australia, the European Union and the United States of America.
61. To the extent required for export control checks, the Buyer shall supply the Seller immediately upon request with all information pertaining to the final recipient, destination and intended use of the goods or services provided by the Seller as well as any export control restrictions. The Buyer shall fully indemnify the Seller against all claims by public authorities or other third parties for non-observance of the above export control regulations and is obliged to indemnify the Seller for all expenses and damages incurred in this regard, unless the Buyer is not responsible for the breach of duty. This does not constitute a reversal of the burden of proof.
62. Performance of the agreement on the part of the Seller is subject to the condition that no limitations based on national or international foreign trade regulations, as well as embargos and/or other sanctions prevent or limit its performance.

### **Applicable law and legal venue**

63. This agreement is governed by and is to be construed in accordance with the laws of Victoria. Any dispute, controversy or claim arising out of, relating to or in connection with this agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Melbourne, Australia. The language of the arbitration shall be English.

### **Additional conditions for agreements concluded on the internet**

64. The Buyer obtains access to the Seller's ePortal ([portal.tridonic.com](http://portal.tridonic.com)) when it enters a legitimate username and password (hereinafter "login data") supplied by the Seller. The Buyer is obliged to change the password immediately upon receipt, as well as periodically thereafter and to protect it from unauthorised access. The Seller shall assign, within reasonable limits, each person authorised by the Buyer with individual login data. Login data assigned to the Buyer by the Seller may not be disclosed under any circumstances and the Buyer is obliged to immediately notify the Seller of any significant changes regarding access permission for authorised

persons. The Buyer is responsible for the consequences of non-observance of this provision by it or by its organs, employees, assistants and agents.

65. Whoever legitimises itself with the login data of the Buyer is considered by the Seller to be authorised to carry out all possible ePortal transactions on behalf of the Buyer irrespective of whether this person is actually the Buyer or its representative. The Buyer accepts that all transactions made in the Seller's ePortal using its login data are binding.
66. Processing of all agreements concluded in the ePortal as well as all related information is carried out in part by automated email. The Buyer is responsible for ensuring its registered email address is valid and the receipt of emails is assured.
67. The ePortal may be unavailable from time to time, including due to maintenance, system failure or reasons beyond the Seller's control. The Buyer acknowledges and agrees that there are inherent risks in transacting via the internet beyond the Seller's control. To the maximum extent permitted by law, the Seller disclaims all representations, guarantees or warranties including in relation to completeness, accuracy, reliability or availability of the ePortal, that the ePortal will be free from errors, viruses or other harmful components and is not liable for loss or damage (including loss of profits or other indirect or consequential loss) however caused, whether in contract, tort including negligence, statute or otherwise arising in connection with the ePortal. However, nothing is intended to exclude, restrict or modify rights which the Buyer may have under any law, including the Australian Consumer Law, which may not be excluded, restricted or modified by agreement, in which case any liability arising from failure to comply with a consumer guarantee in respect of any goods or services is limited to the re supply of the goods or services, or payment of the cost of doing so, at the Seller's election.
68. The Buyer acknowledges that use of the ePortal abroad may infringe upon foreign laws, for example, by use of the ePortal encryption process. The Seller assumes no responsibility or liability in this regard.
69. Representations of the Seller's goods in the ePortal are non-binding and do not represent a binding offer for the conclusion of an agreement. Orders placed in the ePortal are a binding offer of the Buyer to the Seller. The Seller's automatically generated order confirmation is intended for information purposes only and does not result in the conclusion of an agreement. Receipt of the Buyer's purchase offer is confirmed separately in writing by the Seller (e.g. by email) upon execution of the order (order confirmation) or by dispatch of the goods (dispatch confirmation).