
TERMS AND CONDITIONS OF SALE

1. Definitions

"Contract" means the agreement entered into between the Customer and TSA in accordance with Clause 2.1.

"Customer" means the person placing the Order with TSA.

"Damages" means any direct, indirect, special, consequential, physical, economic or other costs, expenses or other claims for compensation (without limitation and including loss of revenue, profit, contract or goodwill), arising howsoever from the use of, or the inability to use, the Goods and Services.

"Delivery Date" means the date specified in the Order or agreed to by the Customer and TSA.

"Delivery Point" means the location or locations agreed to by the Customer and TSA where the Goods and Services will be delivered.

"Force Majeure" means events beyond reasonable control including, but not limited to, acts of G-d, wars, riots, strikes, lock-outs, trade disputes, labour disturbances, accidents, storms, fires, plagues and floods.

"Goods" means all goods described in the Order issued by the Customer to TSA and supplied, or to be supplied, by TSA to the Customer.

"Goods and Services" unless the context requires otherwise means either Goods or Services, or both.

"GST" means Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 or any amending legislation.

"Order" means any written purchase order, or other written instructions, from the Customer in which the Customer seeks to acquire Goods and Services from TSA.

"Progress Payment" means a non-refundable amount together with any applicable GST, as payment for staged delivery of Goods and Services.

"Services" means all services described in the Order issued by the Customer to TSA and supplied, or to be supplied, by TSA to the Customer or any other services which TSA has agreed, in writing, to provide to the Customer in relation to the Goods.

"Terms and Conditions of Sale" means the terms and conditions set out in this document together with any additions and/or variations agreed to in writing by the Customer and a duly authorised representative of TSA.

"TSA" means Training Systems Australia Pty Ltd atf Pullman Learning Group (ABN 25 154 228 630), trading as "Training Systems Australia", "Pullman Learning Group" and/or "Pullman Academic".

"Warranty Period" means the period of 12 months (unless otherwise stated or unless Clause 7.4 applies) commencing on the date that the Goods are delivered to the Delivery Point.

2. Orders, Contract and Customer Acknowledgement

2.1. A contract for the supply of Goods and Services by TSA to the Customer will be formed between TSA and the Customer upon the Customer placing an Order for Goods and Services with TSA and the Order being accepted by TSA. That contract shall be governed by these Terms and Conditions of Sale. Unless the parties expressly agree in writing otherwise that they will do so, prior or previous dealings, discussions and correspondence shall not vary or negate these Terms and Conditions of Sale in any respect.

2.2. The Customer agrees that TSA shall not be bound by any terms or conditions contained in the Customer's terms and conditions of purchase (if any) or any other document issued by the Customer and that these Terms and Conditions of Sale will, in all circumstances, prevail over such documentation.

2.3. TSA reserves the right to correct any errors or omissions in any documentation issued to the Customer. TSA will notify the Customer and provide replacement documents in such instances.

3. Price, Progress Payments and Payment Terms

3.1. The price for the Goods and Services is set out in the attached quote, invoice or in any other written form agreed between the parties in writing. The amount of any applicable GST will be disclosed on the tax invoice(s) issued in relation to the Order. The Customer agrees to pay the tax-inclusive price, as invoiced.

3.2. Following receipt of an Order, TSA will issue an invoice to the Customer for an initial Progress Payment. The Customer agrees to pay this invoice, in full, within seven (7) days of its dispatch.

3.3. TSA may agree with a Customer additional Progress Payment invoices depending on the structure of the delivery of Goods and Services. In such circumstances, the Customer agrees to pay these invoices, in full, within seven (7) days from their dispatch.

3.4. Unless TSA's documentation to the Customer specifies that full payment for the Goods and Services must be received by TSA prior to shipment of the Goods to the Customer, at or following the time the Goods have been delivered to the Delivery Point, TSA will issue an invoice to the Customer for the total tax-inclusive price of the Order, less amounts previously paid for the Order. The Customer agrees to process and pay this invoice immediately following delivery of the Goods, in full and without set-off, on receipt of the invoice.

3.5. Invoices will be issued in electronic format only to the Customer's nominated Accounts Payable email address (if supplied) or to the email address of the Customer's point of contact for the Order.

3.6. All payments must be made in Australian currency.

3.7. The Customer acknowledges and agrees that if it fails to make full payment within the timeframes above, the outstanding amount(s) become a debt that is immediately due and payable, without need for demand to be issued and that TSA may i) charge interest (computed daily, compounded monthly at the base overdraft index rate prescribed by Commonwealth Bank of Australia on the invoice date) on the debt; ii) retake possession of the Goods; iii) recover all reasonable costs associated with lodging any documentation to note TSA's interest in the Goods; iv) recover all reasonable costs associated with retaking possession and/or collecting the debt from the Customer; v) recover all reasonable costs, including losses, incurred in re-selling the Goods.

4. Delivery

4.1. The price for the Goods and Services referred to in Clause 3.1 includes the cost of delivering the Goods to the Delivery Point. Any change to the Delivery Point after the Order is submitted by the Customer may incur additional charges.

4.2. While TSA will endeavour to ensure that the Goods are delivered to the Delivery Point on (or prior to, with the consent of the Customer) the Delivery Date, TSA shall not be liable for any delays in doing so. Delay in delivering Goods and Services does not entitle either party to repudiate any agreement, or the Contract.

4.3. If the Customer requests a deferment of the Delivery Date initially agreed between the Customer and TSA, the Customer will be liable for all costs associated with the deferment (including, but not limited to transport, storage and insurance costs).

4.4. The Customer will make all suitable arrangements to allow access for TSA or its representative to the Delivery Point, its premises and to any other areas that TSA may reasonably require access, to allow for the Goods to be delivered and for TSA to carry out its obligations under the Contract.

4.5. The Customer, upon taking delivery of the Goods, shall immediately examine the Goods. Within seven (7) days of the Goods being delivered the Customer is to give written notice to TSA of any defects with the Goods. If notice is not given during this time, the Goods shall be deemed to have been delivered in good order and condition and accepted by the Customer.

5. Title & Risk

5.1. Risk in the Goods passes to the Customer at the earlier of the time the Goods are delivered to i) the Delivery Point, notwithstanding that training, installation or other Services may yet to have been provided; or ii) the Customer's custody, including the Customer's carrier or forwarder. The Customer, at its cost, must keep the Goods insured against all usual and common risks, from the time of delivery until the time the Goods are paid for in full.

5.2. Property and title to the Goods does not pass from TSA to the Customer until all monies owed to TSA by the Customer have been paid in full. The Customer acknowledges that an interest in the Goods may need to be registered by TSA in the event that payment for the Goods is not made promptly per Clause 3.

6. Insurance

- 6.1. TSA will maintain public liability insurance cover for itself at all times for an amount not less than \$10 million.
- 6.2. If employees or authorised representatives of TSA attend a Customer's premises to install or apply the Goods or perform the Services, the Customer will ensure appropriate policies and procedures are in place and followed (for example, occupational health and safety policies and risk assessments) to mitigate exposure to workplace risks.

7. Warranties & Liabilities

- 7.1. TSA warrants that it has the skill, competence and expertise to supply the Goods and Services to the Customer.
- 7.2. The Customer warrants and acknowledges that it can properly and safely use the Goods and will ensure that appropriate safety measures are implemented prior to operating the Goods and followed at all times, to levels that are adequate for the nature of the Goods. If the Customer has any queries or concerns in this regard, it should contact the TSA Technical Support Team prior to operating the Goods.
- 7.3. TSA warrants the Goods are provided with a limited manufacturer warranty for the Warranty Period that warrants the Goods will, with normal use and service for goods of that nature, be free from faulty parts, manufacture and workmanship.
- 7.4. In respect of Goods with a price less than \$40,000 our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You (the Customer) are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You (the Customer) are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure (as those terms are defined in the Australian Consumer Law).
- 7.5. In the event that a defect arises during the Warranty Period, TSA will, at its option and cost, repair or replace the defective part with new or reconditioned parts. Faulty Goods will need to be returned to the TSA offices in Melbourne for repair unless otherwise agreed between the parties and all replaced parts or Goods will become the property of TSA. The warranty only applies where a defect has arisen, wholly or substantially, as a result of faulty manufacture, parts or labour.
- 7.6. To make a warranty claim, the Customer should contact TSA's Technical Support Team to report the defect within seven (7) days of the defect being initially identified. The Customer should immediately cease using the affected Goods on identification of the defect.
- 7.7. The Customer agrees that should the need arise, it will provide (or arrange for the provision) to the TSA technical team, all necessary assistance required, including but not limited to, remote computer access and troubleshooting, to assist in diagnosing, identifying or, if reasonable, repairing the defect.
- 7.8. The warranty covers parts and labour only (unless otherwise stated) and only extends to the Customer and cannot be transferred or assigned. Specifically, the warranty does not cover replacement of consumables, the cost of transit and insuring the Goods to or from TSA for inspection and/or repair, or to the extent permissible at law, any losses, consequential or otherwise, caused by the Goods being defective.
- 7.9. The warranty does not apply where damage is caused or contributed to by other factors, including (where applicable), but not limited to; normal wear and tear; abuse or misuse; mishandling; accident or failure to follow operating instructions; leaking batteries or power surges; Force Majeure; exposure to liquid or infiltration of foreign particles; opening, servicing, (re)installation or modification of the Goods other than by TSA or an authorised representative; or shipment or other transit of the Goods.
- 7.10. In the event that a defect is identified as being caused by an aspect other than faulty manufacture, parts or labour (i.e. it is an issue not claimable under warranty), TSA may charge the Customer for its reasonable time and costs incurred in diagnosing and/or fixing the defect(s).
- 7.11. To the extent permitted by law; TSA limits its liability, at its option, to repairing or replacing the defective Goods and any liability for breach of contract does not extend beyond the value of the defective goods; and TSA will not be held liable for any Damages whatsoever that arise from use or fault of the Goods and Services.

8. Support

- 8.1. For the first 60 days from the date the Goods are delivered to the Delivery Point, TSA will provide remote support (via online, phone, email or fax only) at no charge, to assist the Customer with installation or maintenance queries, if any, relating to the Goods and Services.
- 8.2. Following the initial 60 day period, future maintenance and support queries (that are not covered by warranty) will be charged to the Customer with reference to the TSA hourly service rate applicable at the time (plus parts and travel costs). Alternatively, TSA offers a range of extended service programs. Information regarding these programs is available from TSA.

9. Cancellation, Waiver & Variation

- 9.1. The Customer may not, without TSA's written consent, cancel an Order once it has been accepted by TSA. If cancellation is accepted by TSA, the Customer will be liable for all of TSA's costs associated with the Order to the time cancellation is accepted.
- 9.2. For a variation of the Terms and Conditions of Sale applicable to an Order to be valid, the variations must be agreed to in writing by the Customer and TSA.
- 9.3. Any failure by TSA to insist on strict compliance with any of the Terms and Conditions of Sale, or any delay by TSA in exercising its rights under the Terms and Conditions of Sale, will not constitute a variation or waiver of any provision of the Terms and Conditions of Sale or of any right available to TSA.
- 9.4. TSA may terminate this Contract by notice in writing to the Customer if the Customer breaches these Terms and Conditions of Sale and does not or cannot remedy such breach within 30 days of notification by TSA, makes an assignment for the benefit of creditors, becomes insolvent or unable to pay its debts as they mature, proceedings are commenced by or against the Customer for the winding up or voluntary administration of the Customer, or a receiver or receiver and manager is appointed to the Customer's assets, or if the Customer commits any act of bankruptcy, enters into liquidation or provisional liquidation.

10. Force Majeure

- 10.1. TSA will not be liable for any failure to perform, or delay in performing, its obligations under the Terms and Conditions of Sale if that failure or delay is due to anything beyond our control.

11. Governing Law

- 11.1. This document is governed by and to be construed in accordance with the laws of the State of Victoria, Australia, and the Customer irrevocably submits to the exclusive jurisdiction of the Courts of that State.

12. Confidentiality

- 12.1. The Customer and TSA agree to keep information in relation to the Contract (including payment terms) confidential. Confidential information may only be disclosed i) with the written consent of the other party; ii) for the purpose of carrying out obligations under the Contract, or iii) if required by law.

13. Assignment

- 13.1. The Customer may not assign the Contract without the written consent of TSA.

14. General

- 14.1. In the event any section, or portion of a section, of these Terms and Conditions of Sale are deemed unlawful or unenforceable, that section or portion of a section shall be stricken from the Terms and Conditions of Sale, and the remaining terms shall continue in full force and effect.
- 14.2. Any notices served in relation to the Terms and Conditions of Sale are to be served in writing to i) the Customer at the offices of the primary contact dealing with TSA; ii) TSA at its Melbourne offices.