

## **Trical Limited Terms & Conditions of Sale**

**Definitions** 'Trical' means Trical Limited (NZBN: 9429035332572). 'Buyer' means the person or company placing an order with TRICAL for the purchase of Goods.

'Conditions' or 'these Conditions' means the Terms & Conditions of Sale outlined in this document.

'Consumer' means a "consumer" as that term is defined in section 2 of the Consumer Guarantees Act 1993.

'Goods' means all goods, merchandise and services offered to or supplied by TRICAL to Buyer.

'Intellectual Property Rights' means any intellectual property right, including but not limited to:

- a) patents, copyright (including rights in software), designs, trade marks, trade secrets and know-how, database, domain name, and any right to have any confidential information kept confidential; and all similar property rights anywhere in the world in each case whether registered or not and including any application for registration; and
- b) any licence or other application or right to use, or grant the use of or apply for registration of, any of the rights referred to in paragraph (a).

'Written' means any information which can be printed on any material, including information data stored in a computer or any information retrieval system or any form of information stored by any technical means.

'MOQ' means minimum order quantity.

'MOV' means minimum order value. 'Representatives' means the employees, contractors, directors or trustees of a Buyer (as applicable).

'Standard' means an applicable standard or specification for particular Goods which is published by Trical or mandatory under applicable law or both.

### **1) Alteration of Conditions**

- a) These Conditions shall apply to all orders for Goods placed by the Buyer with TRICAL to the exclusion of all other terms or conditions and shall prevail over all other terms, conditions or representations.
- b) No other terms or representations will apply to any sale of Goods by TRICAL to the Buyer, including and without limitation, any terms contained on the Buyer's purchase order.
- c) These Conditions may only be varied in writing, signed by both parties.

### **2) Acceptance of Orders and Quotations**

- a) Each Buyer's order must be in writing and will be binding on TRICAL only if TRICAL gives written acknowledgement of its acceptance on these terms and conditions (Order Confirmation).
- b) Despite clause 2(a), if Goods are supplied by TRICAL without an Order Confirmation, TRICAL's conduct in accepting and fulfilling an Order will be deemed to constitute the Order Confirmation and TRICAL's invoice will constitute evidence of the Order Confirmation.
- c) TRICAL reserves the right to accept, or to decline, in whole or part, any order and any order or part order not accepted is deemed cancelled.
- d) A quotation made by TRICAL is not to be construed as an offer to sell, and TRICAL reserves the right to accept or reject in whole or in part any order derived via the quotation process.

If TRICAL accepts an order placed by intangible (including electronic and verbal) means the Buyer hereby releases TRICAL from any loss or damage the Buyer may suffer due to errors or omissions arising from the transmission (or failure of transmission) of the order.

### **3) Cancellation of Orders**

- a) Once lodged with TRICAL, an order may only be varied or cancelled with the written consent of TRICAL.

- b) If the Buyer cancels an order without prior consent, the Buyer must indemnify TRICAL for any loss or damage TRICAL suffers as a result. Without limiting its other rights, where the Goods are not listed in TRICAL's current New Zealand price list a cancellation fee of 100% of the net invoice value will apply.
- c) Orders for non-standard Goods, or Goods made to special request may not be cancelled.

### **4) Customer Specific Orders**

- a) Where the Buyer orders Goods that are to be specially made for the Buyer and where the Goods are non-catalogue or indent Goods, the Buyer shall accept:
  - i) that if any agreed commissioning or acceptance procedure has been determined by TRICAL to be successfully completed, the Buyer shall not make any claim against TRICAL that the supply of the order does not meet the Buyer's requirements with regard to the completion of the order.
  - ii) that if the designs and specifications for the Goods have been provided by the Buyer, the Buyer agrees that liability for the Goods will remain with the Buyer and the Buyer will pay Trical in full for the Goods and will not hold Trical responsible for any loss, including (without limitation), any economic or consequential loss that may be incurred by the Buyer as a result of the Goods produced from incorrect or mistaken designs, specifications or instructions provided by the Buyer.

### **5) Order MOQ, Multiples and MOV**

- a) All orders must be for a minimum quantity or multiples thereof as stipulated by TRICAL.
- b) An MOV of \$100 applies to all orders (net of discounts & taxes). For orders that do not meet the MOV threshold, a handling charge of \$10.00 will be added to the invoice. Notwithstanding the foregoing, Goods placed on back order will be delivered when available free of the handling charge.

### **6) Prices & Quotations**

- a) All published prices are exclusive of GST, which will be added to the invoice at the time of sale.
- b) TRICAL publishes price lists which shall determine pricing at the point of order, or will confirm the price of goods in a written quotation and any written quotation will, while it is valid, apply in place of the published price list subject to the other provisions of this clause 6 of the Conditions.
- c) It is the Buyer's responsibility to ensure that the TRICAL quotation number is clearly indicated on any order based on a quote, so as to avoid invoicing errors and to enable any credit or claim to be processed.
- d) No credit will be issued and no claim accepted should the TRICAL quotation number be missing from the order
- e) Unless otherwise expressly stated in writing in the quotation, quoted prices will be valid for 3 months from date of quotation.
- f) All pricing, whether price list or quotation is subject to variation at the discretion of TRICAL due to increases in material costs, exchange rate fluctuations or changes in taxation or duties.

### **7) Freight**

- a) Unless otherwise agreed between TRICAL and the Buyer in writing, all prices quoted by TRICAL for the supply of Goods to the Buyer are exclusive of any freight or carrier charges.

### **8) Governing Law & Submission to Jurisdiction**

These Conditions and any contract incorporating them shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

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### **9) Terms of Payment**

- a) The extension of credit to the Buyer and the terms upon which it is provided remain at all times at the absolute discretion of TRICAL.
- b) Unless TRICAL agrees to extend credit to the Buyer, all payment for Goods shall be made in full and without deduction, counterclaim or set-off by the 20th of the month following the date of invoice.
- c) Receipt of any cheque or other bill of exchange shall not comprise payment until the same has been honoured or cleared. Part payment will not compromise TRICAL rights to recover the balance owing, nor will it constitute satisfaction and/or transfer of title of the Goods.
- d) Without limiting clause 9(a) (above) TRICAL retains the right to withdraw credit facilities at any time for reasons of non-payment, or if the Buyer is placed in liquidation, voluntary administration or otherwise.
- e) Notwithstanding anything contained in these Conditions, all payments, whether due for payment or not, shall become immediately due to TRICAL in the event that:
  - i) the Buyer fails to comply with any of these Conditions or any other contract with TRICAL;
  - ii) the Buyer commits an act of bankruptcy;
  - iii) the Buyer enters into an arrangement or composition with its creditors;
  - iv) if the Buyer is a company:
    - (1) the Buyer does anything that would make it liable to be put into liquidation;
    - (2) a resolution is passed or an application is made for the liquidation of the Buyer;
    - (3) a receiver or statutory manager, or a person in a similar position, is appointed over all or part of the Buyer's assets and undertakings; or
    - (4) an act of insolvency is committed.

### **10) Late Payments**

- a) TRICAL may, at its discretion, charge the Buyer interest on late payments based on the bank commercial overdraft rate charged by TRICAL's principal bank, plus 2%, from the date when such payment fell due, until paid, notwithstanding any agreement for extension of time for payment.
- b) Where payments are overdue, or where TRICAL reasonably considers that the Buyer will not be able to pay its debts to TRICAL as they fall due, TRICAL may at its option either cancel uncompleted contracts or orders forthwith or suspend delivery of Goods yet to be delivered, without prejudice to any other remedy that TRICAL may have.

### **11) Invoice Claims & Disputes**

- a) The Buyer shall notify TRICAL in writing within seven (7) days of the date of receipt of Goods of any objection or discrepancy (excluding shortages in quantities mentioned in clause 14.c) as to the invoice. In the event that no written objection is received by TRICAL within seven (7) days of the date of receipt of the Goods, the invoice shall be conclusive evidence between the Buyer and TRICAL, and the Buyer waives any rights of objection or query with respect to such invoice

### **12) Specification and discontinuance**

- a) TRICAL reserves the right to:
  - i) discontinue Goods;
  - ii) substitute comparable Goods; and
  - iii) modify the design, specification and Standards (other than mandatory Standards) applicable to any of its Goods.
- b) The specifications and description of Goods are subject to change without notice and TRICAL will not be required to supply superseded or discontinued Goods, nor will it be liable for any loss or damage suffered by the Buyer as a result of any change to the specifications or description of the Goods.

### **13) Delays & Non-Delivery**

- a) The date for delivery (if any) is the estimated and tentative date for delivery only and TRICAL shall be under no liability for any loss or damage howsoever arising if the Goods are not delivered by that date.

### **14) Point of Delivery & Passing of Risk**

- a) Where Goods are conveyed by TRICAL's nominated carrier, passing of risk will be on delivery at the Buyer's nominated address
- b) Where Goods are conveyed by the Buyer's nominated carrier, risk shall pass (and delivery shall be deemed to have been made) upon collection of the Goods from TRICAL
- c) All deliveries shall be deemed to have been delivered without shortage in quantity unless the Buyer gives TRICAL notice of such shortage within twenty four (24) hours after delivery of the Goods to the Buyer
- d) Where Goods are conveyed by TRICAL's nominated carrier, TRICAL will accept no liability for damage to Goods in transit not notified in writing to it and to the carrier concerned within twenty four (24) hours after delivery and TRICAL's liability, if any, shall be limited to repair or replacement of the Goods within a reasonable period of time
- e) The Buyer must ensure that it is ready and capable to accept delivery of the Goods on the delivery date. If the Goods are unable to be promptly discharged or delivered, the Buyer is liable to compensate TRICAL fully for any cost incurred by TRICAL as a result of any delay encountered.

### **15) Title**

- a) Until TRICAL has received payment in full for the Goods:
  - i) title in the Goods remains with TRICAL and the Buyer will hold the Goods as bailee for TRICAL;
  - ii) TRICAL may at any time terminate any contract relating to the Goods and the bailment without notice to the Buyer and may thereupon take possession of the Goods;
  - iii) upon demand by TRICAL, the Buyer shall deliver up forthwith the Goods to TRICAL (or as TRICAL directs) and, if the Buyer fails to do so, the Buyer irrevocably authorises TRICAL by its servants or agents to enter any premises owned, leased or otherwise occupied by the Buyer or its agent for the purpose of taking possession of the Goods (and, in the event that any Goods are wholly or partially attached to or incorporated in any other goods, sever or disconnect the Goods from those other goods) and authorises The Buyer must at all times ensure that TRICAL can access third party premises for the purposes of retaking possession of any Goods that are located at those premises. The cost of retaking possession of the Goods as set out in this clause shall constitute additional charges payable by the Buyer to TRICAL;
  - iv) the Buyer shall store the Goods in a manner that clearly enables them to be identified as the property of TRICAL
  - v) the Buyer must not pledge or in any way charge or encumber the Goods by way of security for the indebtedness of the Buyer or any other person;
  - vi) if the Goods are sold by the Buyer, the Buyer acknowledges that such sale is by the Buyer as bailee for and on behalf of TRICAL and agrees to hold the proceeds of sale as a fiduciary on trust for TRICAL in a separate account until payment in full to TRICAL for the Goods, and TRICAL is entitled to receive forthwith upon demand from such proceeds, payment of the total purchase price outstanding to TRICAL; and the proceeds of a sub-sale (to the extent of the amount of the total purchase price outstanding to TRICAL) shall be held by the Buyer as a fiduciary on trust for TRICAL even if the Buyer fails to keep such proceeds in a separate account.

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### **16) Warranties – Exclusions & Limitations**

- a) TRICAL warrants that each of the Goods and its components directly supplied by TRICAL will conform to the applicable manufacturer's specifications for a period of one year from the date of delivery, unless otherwise specified.
- b) If there is a material defect, and the Buyer notifies TRICAL of the material defect and within that period, TRICAL will use its best efforts to repair or replace the defective component. TRICAL's total obligation under the warranty is limited at its option to the replacement or repair of the Goods (or their defective components), or payment of the cost of replacement or repair or a credit to the invoice value of the product.
- c) The warranty given in clause 16(a) will not apply:
  - i) to the extent the Goods are damaged after risk passes to the Buyer in accordance with clause 14;
  - ii) to the extent the Goods have been subjected to abnormal use (including excessive vibration, short circuiting, excessive voltage, interrupted or uneven power supply and negligent operation);
  - iii) to the extent any Goods have been repaired, altered or replaced by anyone other than TRICAL or its authorised representatives;
  - iv) to the extent defects or damage to any Goods are attributable to their installation or assembly by any third party;
  - v) to defects or damage arising from normal wear and tear; and
  - vi) to any components of the Goods which are not manufactured or supplied by TRICAL or any one of its related bodies corporate.
- d) The Buyer shall return, freight prepaid, to TRICAL any Goods and components on which a warranty claim exists and shall permit TRICAL to make tests on site in relation to such Goods or components.
- e) TRICAL acknowledges that certain legislation in New Zealand, including the Consumer Guarantees Act 1993 (CGA) and Fair Trading Act 1986 (FTA), provides Consumers with guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the CGA or the FTA) which cannot lawfully be excluded, restricted or modified.
- f) These Conditions do not exclude or limit the application of any provision of any statute where to do so would:
  - i) contravene that statute; or
  - ii) cause any part of this clause to be void.
- g) Except for clause 16(a) (above), to the extent permitted by law, TRICAL excludes all, conditions and warranties, descriptions, representations and guarantees, expressed or implied by statute, general law or custom except any implied condition or warranty or guarantee the exclusion of which would cause this clause to be void.
- h) The Buyer warrants and represents that they are acquiring the Goods for resupply in trade, consuming the Goods in the course of production or manufacture, or in the repair or treatment of other goods of fixtures on land.
- i) The Buyer warrants and represents that they are in trade and the Goods are supplied and acquired in trade or for business purposes, and to the extent permitted by law:
  - i) the implied conditions and warranties set out in Part 3 of the Contract and Commercial Law Act 2017 or implied by law, trade or custom will not apply and are excluded from these Conditions;
  - ii) the Buyer and TRICAL acknowledges and agrees for the purposes of section 43 of the CGA and section 5D of the FTA the Goods are being supplied and acquired in trade, the parties are in trade, the Buyer and TRICAL are contracting out of the provisions of the CGA and sections 9, 12A, 13 and 14(1) of the FTA and it is fair and reasonable that they are bound by this clause.
- iii) the Buyer may not claim any of the remedies set out in the CGA from TRICAL or from any contractor to TRICAL or manufacturer of the Goods or from any manufacturer of any components or parts in the Goods;
- iv) warranties, representations, conditions and agreements in respect of the Goods are those which are contained in these Conditions;
- v) the Buyer shall use its best endeavours to minimise loss and damage arising from any alleged defect in the Goods; and
- vi) neither TRICAL, its employees, agents nor contractors will be liable to the Buyer, its employees, agents or contractors for any economic, indirect or consequential loss or damage including loss of profit, howsoever caused. This exclusion applies whether the economic, indirect or consequential loss or loss of profit is incurred by the Buyer or a third party.
- j) The Buyer warrants that if it purchased any Goods from TRICAL for resupply as, or incorporates any Goods into, goods ordinarily acquired for personal household or domestic use ("Consumer Goods") it will supply the Consumer Goods on the following conditions:
  - i) if it supplies the Consumer Goods for resupply by its customer it will ensure that its terms and conditions of supply require its customer and each person in the distribution chain to include in its supply agreements or conditions of sale obligations requiring its customer to exclude liability for any claims under the CGA & FTA, but only where the end user/consumer is in trade and acquires the Consumer Goods in trade or for business purposes;
  - ii) if it supplies the Consumer Goods directly to an end user/consumer it will do so using terms and conditions of supply which exclude liability for any claims under the CGA & FTA, but only where the end user/consumer is in trade and acquires the Consumer Goods in trade or for business purposes.
- k) The Buyer agrees to fully indemnify TRICAL against any costs, losses, damages or liabilities arising directly or indirectly as a result of or in any way in connection with:
  - i) any failure by the Buyer, its customers or any person in the distribution chain to properly contract out of liability to trade or business end users/consumers under the CGA & FTA;
  - ii) the Buyer's breach of any term of these Conditions; and
  - iii) all third party claims made against TRICAL by any person relating to the handling and use of the Goods arising out of any representations, acts or omissions of the Buyer; and
  - iv) any breach by the Buyer of any statute, regulation, order or law to which it is subject or with which it is required to comply.
- l) Subject to clauses 16(f) and 16(g), TRICAL total liability to the Buyer, in tort, under statute or for breach of any express provision of a contract is limited to the lesser of:
  - i) the price of the Goods supplied under that contract in respect of which the breach occurred; and
  - ii) the cost of supplying those Goods again.
- m) Without limiting clause 16(k) (above), TRICAL will not, in any circumstances be liable for any economic, indirect or consequential loss or damage suffered by the Buyer, including loss of profit, howsoever caused. This clause applies whether the economic, indirect, consequential loss or loss of profit is incurred by the Buyer or a third party.

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### **17) Return of Goods**

- a) No Goods shall be returned without the prior consent in writing of TRICAL and in conformity with all TRICAL Goods return policies & procedures. Where Goods are returned without such consent, they will not be accepted and will be returned to the Buyer at the Buyer's expense

### **18) Method of Return**

- a) Unless otherwise agreed in writing by TRICAL, all returns must be made freight prepaid at the Buyer's expense and at the Buyer's risk pending final inspection by TRICAL
- b) The Goods must be properly and adequately sent in their original and specific packaging materials (Goods fully secured), and suitable for immediate resale
- c) All returned Goods must be accompanied by a completed TRICAL RMA document. Intention to return Goods must be notified to TRICAL within seven (7) days of delivery to Buyer and return must be to TRICAL warehouse in Auckland within 14 (fourteen) days of date of delivery by the Buyer.

### **19) Re-stocking & Handling Charges**

- a) Unless otherwise agreed, Goods returned will be subject to a restocking and handling fee of 20% of the original net invoice price of the Goods.

### **20) Non-Returnable Goods**

- a) Without limiting clause 17 (above), none of the following shall be accepted for return under any circumstances:
  - i) Goods which are custom made or per the Buyer's specifications or non-standard Goods, or made by special orders;
  - ii) Goods which are not in their original shape, form or condition;
  - iii) Goods damaged by abnormal use, or faulty maintenance, or when Goods have not been used or maintained according to manufacturer or TRICAL instructions or specifications;
  - iv) Goods expressly sold on a non-return basis (for example, non stock items in New Zealand);
  - v) Goods damaged during installation or fitting process; and
  - vi) Goods containing lead acid batteries as a backup power source

### **21) Intellectual Property**

- a) All Intellectual Property Rights in the Goods sold to the Buyer and any related material or information remains the property of TRICAL, its related bodies corporate and licensees (if any).
- b) TRICAL gives no rights to the Buyer to use or to exploit or otherwise deal in any of intellectual property without its prior express written consent.

### **22) Collection and use of Personal Information**

- a) TRICAL may collect and hold personal information from the Buyer in accordance with the Privacy Act 1993 and TRICAL's privacy policy for marketing, product development, account administration and credit purposes.
- b) By supplying an email addresses to TRICAL, the Buyer and its Representatives are deemed to have consented to receiving marketing material from Trical relevant to the Buyer's business from time to time. The Buyer or its Representatives may elect to unsubscribe from those emails.
- c) The Buyer and its Representatives irrevocably authorise TRICAL to use and disclose their personal information to:
  - i) its related entities, including in New Zealand, France and any other countries where TRICAL or its related entities have a presence or engages third parties;
  - ii) any person the Buyer or its Representative names as a credit referee;

- iii) any person to assist credit approval, debt collecting, direct marketing activities and management of any credit facility granted to the Buyer; or
  - iv) any person for the purpose of securing TRICAL's interest in any Goods including registering TRICAL's security interest on the PPSR.
- d) A failure by the Buyer or its Representative to supply the required personal information for these purposes entitles TRICAL to withdraw or refuse credit to the Buyer and to repossess any unpaid Goods in the possession of the Buyer. Under the provisions of the Privacy Act 1993, the Buyer and its Representatives may request access to and correction of their personal information in writing TRICAL to the attention of the Country Manager.
  - e) If the buyer provides TRICAL with any personal information about a third party (such as a guarantor under a trade credit application) or authorises TRICAL to collect that information, the Buyer confirms that it is authorised by the individual concerned to provide their personal information to TRICAL and/or authorise collection of information about them in accordance with TRICAL's privacy policy and that it has informed the individual of their rights to access and request correction of their personal information.
  - f) The Buyer must notify TRICAL of any change in circumstances that may affect the accuracy of the information provided by the Buyer to TRICAL.

### **23) Personal Property Securities Act 1999 ("PPSA")**

- a) In this section 0:
  - i) where the Goods supplied are inventory of the Buyer, then all references to Goods shall, in respect of those Goods, be read as references to inventory for so long as they are held as inventory; and
  - ii) where the Goods supplied are not inventory of the Buyer, then all references to Goods shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whether called) prepared by TRICAL and relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by TRICAL, incorporated in, and form part of these Conditions.
- b) Without limiting the provisions of these Conditions, the Buyer and TRICAL acknowledge and agree as follows:
  - i) these Conditions create a security interest in the Goods and any proceeds of sale thereof in favour of TRICAL for the payment of the purchase price of the Goods and for all other indebtedness of the Buyer to TRICAL on any account (**Security Interest**);
  - ii) they confirm that the Goods constitute collateral until payment in full has been made to TRICAL for the Goods and the Security Interest has been released by TRICAL;
  - iii) the provisions of these Conditions create in favour of TRICAL a security interest in respect of each item supplied by TRICAL and all present and after acquired property being Goods supplied by TRICAL to the Buyer
  - iv) TRICAL may forthwith register a financing statement in respect of the Security Interest or otherwise perfect the Security Interest as permitted by the law in any relevant jurisdiction
- c) The Buyer acknowledges that the PPSA will apply to all Goods supplied in New Zealand to the Buyer and agrees:
  - i) to promptly do all things necessary and sign all documents and provide all information which TRICAL may reasonably require to enable TRICAL to perfect and maintain the perfection of its Security Interest; and
  - ii) if so required by TRICAL, to indemnify TRICAL for any costs incurred by TRICAL under this clause;

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- iii) not to change its name without first notifying TRICAL in writing of its intention to change its name at least 10 business days prior to doing so;
  - iv) that TRICAL may exercise any power to take possession of and/or to sell any Goods over which TRICAL has a security interest even if TRICAL does not have priority over other secured parties having a security interest in the same Goods, and the preceding provisions of this clause shall not limit or abrogate sections 109 and 111 of the PPSA to the extent that they are inconsistent with this clause;
  - v) TRICAL need not give the Buyer any notice of its intention to sell any Goods under section 109 of the PPSA,
- d) To the extent permitted by law, the Buyer and TRICAL contract out of Part 9 of the PPSA in that:
- i) the rights and obligations contained in sections 114(1)(a), 116, 120(2), 125, 126, 127, 129, 133 and 134 of the PPSA do not apply between the Buyer and TRICAL; and
  - ii) the Buyer waives its rights contained in sections 121 and 131 of the PPSA and the right to receive any financing statement or financing change statement from TRICAL pursuant to section 148 of the PPSA.
- e) The Buyer agrees that the Security Interest has the same priority in relation to all amounts owing by the Buyer from time to time.

### **24) Termination**

- a) TRICAL has the right to terminate these Conditions and any contract for the sale and purchase of any Goods entered into pursuant to these Conditions at any time, with immediate effect, without prior notice and without compensation if a Termination Event occurs. In this section, a **Termination Event** means an event where:
- i) the Goods are seized by a third party;
  - ii) an event occurs or information becomes known to TRICAL, which in TRICAL's opinion, might materially affect the Buyer's creditworthiness, the value of the Goods the subject of the Security Interest, or the Buyer's ability or willingness to comply with its obligations under these Conditions or any other agreement with TRICAL.
  - iii) in case of breach by the Buyer of one or more of the obligations arising from these Conditions or any other agreement with TRICAL where such breach (if capable of being remedied) has not been remedied within 7 calendar days following a written notice by TRICAL;
  - iv) if the Buyer enters into any composition or similar general arrangement (formal or informal) with its creditors or is or threatens to be unable to pay its debts, is subject to a procedure of judicial reorganisation or bankruptcy, has a receiver or administrator appointed in respect of its undertaking, assets or income or any part thereof, has passed a resolution for its liquidation, or a request is filed or an order is made by any court for its liquidation or for its administration; or
  - v) if the Buyer ceases to trade.
- b) If a Termination Event occurs:
- i) TRICAL may suspend or terminate any agreement for the supply of Goods;
  - ii) the amount owing under any agreements for the supply of Goods shall immediately become due and payable notwithstanding that the due date may not have arisen;
  - iii) TRICAL may enforce the Security Interest; and
  - iv) TRICAL may (without the consent of the Buyer) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Conditions and otherwise to exercise all rights and powers conferred on a receiver by law; and
  - v) TRICAL reserves the right to claim compensation for all costs, interests and damages incurred by Trical.

- vi) the Buyer, either directly, indirectly or through an agent, shall be liable to TRICAL for damages including expenses and cost of collections, in addition to any other rights or remedies that TRICAL shall have herein or under law

### **25) General Terms:**

- a) In the event that the Buyer instructs TRICAL to debit its account with a paying agent and to send invoices to be paid by a paying agent acting on behalf of the Buyer, the same terms and conditions shall be applicable to the paying agent, unless otherwise agreed in writing by TRICAL, the Buyer and the paying agent. The appointment of a paying agent or any agent does not affect in any event TRICAL's rights or remedies it has herein or under law
- b) TRICAL's obligation to perform will be suspended for the duration of any delay arising out of anything outside TRICAL's control, including but not limited to, fire, storm, flood, earthquake, accident, war, labour dispute, materials or labour shortage, failure or delay in transportation and act or omission of the Buyer or any third person
- c) TRICAL's failure to insist upon strict performance of any of the terms herein shall not be deemed a waiver of any rights or remedies that TRICAL may have, and shall not be deemed a waiver of any subsequent breach or default in their terms, conditions, and covenants herein contained
- d) Any clause or part of a clause of these Conditions which is invalid or unenforceable for whatever reason is severed, to the extent not inconsistent with that invalid clause, the remaining provisions shall remain in full force and effect
- e) The Buyer is not entitled to assign, transfer or otherwise dispose of any of its rights or obligations under these Conditions to anyone else without TRICAL's prior written consent.
- f) Unless otherwise agreed between the parties in writing, all notices given hereunder shall be served in writing (including via fax or email) to the registered offices of the Buyer and/or TRICAL, attention to a member of the senior management team.
- g) Headings are for convenience only and shall not be used in construing and interpreting these Conditions
- h) These Conditions supersede all previous agreements, understandings and negotiations between the parties and any previously published terms and conditions

### **26) Exports and Embargoes**

This section applies where the Buyer undertakes export, re-export or resale of the Goods or where our commercial arrangement is not restricted solely to the New Zealand market (Exports).

- a) The Buyer warrants and undertakes to TRICAL:
  - i) The Buyer shall comply with all the (re-) export control regulations of New Zealand, Australia, France, the EU and the USA and those of any other applicable jurisdiction and it shall obtain all necessary licences, shipping documents and authorisations required under such legislation in respect of such Exports.
  - ii) The Buyer shall not export or re-export the Goods to a country that is subject to embargo or sanction without having obtained all necessary authorisations from New Zealand, Australian, French, European or American authorities, the United Nations or any other country or organisation that imposes such restrictions.
  - iii) The Buyer shall not supply the Goods to parties, organisations or entities subject to embargoes, sanctions or other restrictions imposed by New Zealand, Australia, France, the EU, the USA, the United Nations or by any other country, or to parties, organisations or entities if there is reason to believe that they fail to fully comply with all applicable national or international regulations, sanctions and embargoes.

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- iv) The Goods are not intended to be used in connection with any sectors or use that is banned or subject to restrictions under any laws or regulations, unless all required authorisation by the relevant bodies have been obtained.
  - v) All transfer and receipt of funds by the Buyer comply with all national and international regulations.
  - vi) To enable authorities or TRICAL to conduct compliance audits, the Buyer upon request by TRICAL, shall promptly provide TRICAL with all relevant licences and authorisations, information as to the identity of the customer to whom the Goods are supplied, the destination and intended use of the Goods and the financial institutions or entities used to collect and issue payments.
  - vii) The Buyer shall notify TRICAL if the Buyer suspects that any person the Buyer has supplied the Goods to may not be complying with any embargo, sanction or export control regulation.
  - viii) The buyer shall indemnify and hold harmless TRICAL from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Buyer with any of the above undertakings or breach of any relevant export control regulations or sanction or embargo.
- b) The Buyer's compliance with all the above undertakings is a condition of TRICAL continuing to supply the Goods to the Buyer and TRICAL has the right to suspend such supply and terminate any agreement where we have a reasonable belief that the above undertakings are not being complied with or if any obligation under any agreement would constitute a breach of any national or international regulations or any embargo or sanction and TRICAL shall have no liability to the Buyer or any third party by way of damages or otherwise in respect of such suspension or termination.

applied mutatis mutandis to those statutory obligations, be valid in that jurisdiction

### **27) Online Apps**

Where an online app is used in conjunction with Trical goods supplied under these terms and conditions:

- a) The app will be licensed separately under the licence agreement accompanying that app but to the extent Trical has any liability in relation to the use of the app in connection with the goods, such liability shall be limited in accordance with these terms and conditions, including without limitation in relation to any liability of Trical under the Consumer Guarantees Act 1993, Fair Trading Act 1986, or otherwise.
- b) Trical warrants that it has used its best endeavours to ensure that the functionality provided by the app is as publicly represented by that app and/or by Trical but otherwise, to the maximum extent permitted by law, disclaims all liability for such representations.

Where an app advises that it collects personal data, any consent you provide to the collection of that data is taken to be a consent for the collection and use of that data by Trical under the Privacy Act. You also consent to that data being stored in the jurisdiction(s) stipulated by the app.

### **28) Other Jurisdictions:**

Where these terms and conditions of sale are being relied upon or apply in a jurisdiction other than New Zealand, all references to:

- a) the Consumer Guarantees Act 1993;
- b) the Fair Trading Act 1986;
- c) the Privacy Act 1993; and
- d) the Personal Property Security Act 1999

shall be deemed replaced by the equivalent statutory instruments in that jurisdiction or that otherwise applies, and all mandatory statutory obligations in that jurisdiction shall apply subject to any limitations or exceptions set out in these terms and conditions that would, if