

## TERMS & CONDITIONS OF SALE - 2019

### 1. Definitions

In this document:

**Basic Order Terms** means the following information to be included in an Order: (i) the Products and Software ordered and quantities, (ii) Tekron part numbers, (iii) prices, and (iv) delivery term - Standard, Priority or Early Bird - and delivery instructions;

**Order** means an order placed by you for the purchase of Products;

**Product** means any of Tekron's precision timing products and solutions;

**Software** means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, and includes the related documentation, provided by Tekron. Software includes Product firmware, software locally installed on your systems and software accessed through the Internet or other remote means (such as websites, portals, software-as-a-service, and cloud-based solutions);

**Tekron** means Tekron Limited or Tekron International Limited;

**Terms** means these terms and conditions;

**Warranty Period** means the relevant period specified in clause 7.1(a), (b) or (c).

### 2. General

- 2.1 Subject to any other written agreement you, the customer ("**you**") have with Tekron, Tekron's sale of Products and provision of Software are governed by these Terms. Every Order is subject to and incorporates these Terms. Any contrary provision in your order or other documentation has no effect.
- 2.2 These Terms and any other applicable agreements with Tekron constitute the entire agreement between you and Tekron for your acquisition and use of Products and Software.
- 2.3 Orders are accepted only when confirmed by Tekron in writing. Orders cannot be cancelled for any reason without Tekron's prior written consent.
- 2.4 These Terms include the Basic Order Terms.
- 2.5 All Software is licensed and title to the Software remains with Tekron or its licensors. Tekron grants you a personal, non-exclusive, revocable, non-assignable right to access and use the Software solely to enable you to use the Product.

### 3. Delivery

- 3.1 Tekron will use commercially reasonable efforts to meet your requested delivery date but will not be liable for late or delayed delivery. Late delivery will not entitle you to cancel an Order. Your Order must state required delivery lead-time - (Standard- 6 weeks), (Priority-3 weeks) or (Early bird – greater than 7 weeks) and delivery instructions.
- 3.2 Title and risk of loss or damage to Products pass to you when Tekron delivers the Products to the shipping carrier. Tekron will deliver the Products freight prepaid, provided that you pay or reimburse Tekron for all carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges **or** in accordance with the provisions of INCOTERMS that apply to the shipment of your Products, as stated on Tekron's acceptance of your Order. Tekron has the right to make partial deliveries. Software, if separate from the Products, may be delivered electronically.

### 4. Acceptance, Inspection, Notice of Non-conformance

- 4.1 Your acceptance of Products occurs on delivery of the Products under clause 3.2. Your acceptance of Software occurs when the Software is activated or otherwise made available for your access or use, whichever is earlier. You must inspect the condition of the packaging and the Products on receipt and

indicate any evident damage to the carrier on the delivery note, have the carrier's agent sign the document and, within two days of receipt of the damaged or non-conforming Products, send all documents by e-mail or fax to Tekron's facility from which shipment took place, together with the carrier's references. You must make concealed Product damage claims to the carrier directly and you must also provide Tekron with a copy of any the claim within 10 days of receipt of the affected Products. If you retain the Product without giving notice as aforesaid, you will have waived your right to reject the Product.

- 4.2** If you cancel an accepted Order within 21 days prior to shipment or reject conforming Products received under an accepted Order, Tekron may claim reasonable compensation for restocking and other expenses actually incurred.

## **5. Product Returns**

All Product returns are subject to Tekron's prior written consent and must comply with Tekron's product return procedures then in effect. Before returning a Product, you must contact Tekron directly to obtain a Return Material Authorisation number. You must return Products to Tekron in their original or equivalent packaging, and you are responsible for risk of loss, as well as shipping costs back to Tekron. Products not eligible for return will be sent back to you, freight collect.

## **6. Pricing, Payment, Taxes**

- 6.1** Payment terms are net 30 days from Tekron's invoice date. You must make payment in the currency indicated on the invoice. Tekron may offset payments against prior debt balances in your account.
- 6.2** Tekron may review your credit and change your payment terms, and may at any time demand advance payment, security (including a confirmed, irrevocable letter of credit acceptable to Tekron) or a guarantee.
- 6.3** Tekron may charge interest on all overdue sums owing to Tekron at 2% per month (or the highest legal limit if lower than 2%), calculated from the due date to the date of actual payment.
- 6.4** You are liable for any costs incurred by Tekron if you change or cancel any Order, and for all costs of collecting overdue amounts (including legal fees).
- 6.5** Unless stated otherwise in the provisions of INCOTERMS that apply to the shipment of your Products, Tekron's prices do not include sales taxes, Value Added Tax, export or import charges, transport or insurance charges, customs duty or similar charges, all of which are your responsibility. Unless you provide Tekron with an exemption certificate valid in your jurisdiction, you must pay Tekron all such taxes and charges relating to the sale or delivery of the Products.
- 6.6** All payments must be for the total amount due on the invoice. All local and intermediary bank charges must be paid by the customer. Tekron International Limited reserves the right to recover these charges should they be charged to Tekron International Limited.

## **7. Limited Warranty**

- 7.1** Subject to any restrictions in the warranty statement included with the Products or software, Tekron warrants that:
- (a) subject to paragraph (b), the Products conform to Tekron's specifications and will be free from defects in material and workmanship for 10 years from date of delivery,
  - (b) the IRIG-B Analyzer will be free from defects in material and workmanship for 12 months from date of delivery
  - (c) the Software will substantially conform to its functional specifications and documentation provided by Tekron for 90 days.
- 7.2** The foregoing limited warranty only applies if and to the extent that:

- (a) the Product or Software is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with Tekron's applicable documentation and specifications, and
- (b) the Product or Software is not modified or misused.

This limited warranty does not apply to, and Tekron is not responsible for, defects or performance problems resulting from: (i) the combination or use of the Product or Software with hardware or software products, information, data, systems, interfaces or devices not made, supplied or specified by Tekron; (ii) operating the Product or Software other than in accordance with Tekron's standard specifications; (iii) the unauthorised installation, modification, repair or use of the Product or Software; (iv) damage caused by accident, lightning, water immersion or spray or exposure to other environmental conditions for which the Product or Software is not intended; (v) normal wear and tear on consumable parts; or (vi) cosmetic damage. Tekron does not warrant the results obtained from use of the Product or Software.

- 7.3** Tekron does not give any warranties in respect of items that do not carry the TEKRON brand and instead will only pass on to you the benefit of the actual manufacturer's warranty.
- 7.4** Where Products are equipped with satellite or wireless technology, Tekron is not responsible for the availability or failure of third party wireless networks, telecommunications networks, satellite positioning systems or the Internet.
- 7.5** THE FOREGOING WARRANTY TERMS ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON TEKRON'S PART ARISING IN CONNECTION WITH TEKRON'S PRODUCTS AND SOFTWARE AND STATE TEKRON'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDIES RELATING TO THEM. EXCEPT AS EXPRESSLY STATED IN THESE TERMS, THE PRODUCTS AND SOFTWARE ARE PROVIDED "AS-IS" AND WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND. AS THE PRODUCTS ARE SOLD FOR THE PURPOSES OF A BUSINESS, THE NZ CONSUMER GUARANTEES ACT DOES NOT APPLY. ADDITIONALLY, TEKRON MAKES NO EXPRESS OR IMPLIED WARRANTY THAT THE SOFTWARE IS SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, ERROR-FREE, OR FREE OF VIRUSES, MALWARE OR PROGRAM LIMITATIONS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY OR FULLY APPLY TO YOU. IF YOU ARE A RESELLER, YOU WILL NOT GIVE YOUR CUSTOMERS ANY WARRANTY OR REPRESENTATION OTHER THAN THE WARRANTY ACCOMPANYING THE PRODUCTS AND SOFTWARE.

## **8. Warranty Procedures**

- 8.1** If a Product fails during the Warranty Period for reasons covered by Tekron's limited warranty and you notify Tekron of such failure during the Warranty Period, Tekron will at its option repair or replace the non-conforming Product with new, equivalent to new, or reconditioned parts or Product or refund the Product purchase price you paid (excluding separate costs of installation, if any) on your return of the Product in accordance with clause 5. Any repaired or replaced Product will be warranted for 90 days or the remainder of the original warranty period, whichever is longer. Tekron may arrange for fulfilment of Tekron's warranty obligations through a Tekron affiliate, reseller or distributor.
- 8.2** Tekron may refuse warranty services if the Product or Software date of purchase cannot be proven, if a claim is made outside the Warranty Period or if a claim is excluded under clause 7.2. Following examination of your claim, Tekron will notify you of warranty status and the repair cost of any out-of-warranty Product. At such time you must issue a valid purchase order to cover the cost of the non-warranted Product repair and return freight, or authorise return shipment of the Product at your expense as-is.
- 8.3** Tekron is not responsible for any modification or damage to, or loss of any programs, data, or other information stored on any media or any part of any Product, or for the consequence of such damage or loss, (such as business loss in the event of system, program or data failure). You are solely responsible for backing up data and removing all features, parts, alterations, and attachments not covered by warranty before returning the Product to Tekron for service or seeking Software support.

Any Product or Software sent to Tekron for support may be returned configured as originally provided to you by Tekron.

## 9. Limitation of Liability

**TEKRON'S ENTIRE LIABILITY FOR ALL CLAIMS ARISING IN CONNECTION WITH THESE TERMS IS LIMITED TO THE AMOUNTS YOU ACTUALLY PAID TO TEKRON. NEITHER TEKRON NOR ITS SUPPLIERS ARE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE DAMAGES OR OTHER DAMAGES, OR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCTS OR SOFTWARE OR ANY ASSOCIATED EQUIPMENT, COSTS OF COVER, DOWNTIME AND USER TIME OR FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITIONS, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY RELATED TO THE PRODUCTS OR SOFTWARE. EXCEPT TO THE EXTENT PROHIBITED BY LAW, ALL IMPLIED WARRANTIES AS TO QUALITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED. YOU AND TEKRON AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR TEKRON'S SALE OF PRODUCTS TO YOU, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR SPECIFIED OTHER DAMAGES, OR ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY, OR MAY NOT FULLY APPLY TO YOU.**

## 10. Intellectual Property

Tekron owns all intellectual property rights to documents and materials, calculations, drawings, models, plans, tools, technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Products and Software and any accompanying documentation or information derived from the foregoing. You will take reasonable precautions to prevent unauthorized access and use of the Software and documentation by third parties. Unless otherwise expressly permitted by law, you will not, nor allow any third party to copy, decompile, disassemble or reverse-engineer the Products or Software, or attempt to do so. You are prohibited from, and will prevent any third party from, removing, covering or altering any of Tekron's patent, copyright or trademark notices placed on, embedded in or displayed by the Products or Software or their packaging and related materials. Tekron reserves all rights in the Products and Software not specifically granted to you under these Terms.

## 11. Export Control

You may not use or export the Products or Software except as authorised by the laws of the jurisdiction in which they were obtained. In particular the Products and Software may not be exported in violation of export laws, including if applicable export into any NZ or US-embargoed countries or to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Department of Commerce Denied Person's List or Entity List. Products on the New Zealand Ministry of Foreign Affairs and Trade Strategic Goods List March 2013 require export approval. You represent that you are not located in any country or on any list where the provision of Products or Software to you would violate applicable NZ law. You must not use or enable use of them for any purposes prohibited by applicable law or export any Product or Software with knowledge that it will be used in the design, development, production or use of chemical, biological, nuclear or ballistic weapons. Laws and regulations change frequently. It is your responsibility to know the law pertaining to export/import procedures in the country of destination of the Product and Software. You will indemnify Tekron against any liability (including attorneys' fees) arising out of your failure to comply with this paragraph.

## 12. Default

Tekron may by written notice cancel or suspend an accepted Order and refuse additional Orders if you: (i) breach your obligations under these Terms, (ii) cease carrying on business, enter into any bankruptcy, insolvency, receivership or like proceeding, or (iii) assign any assets for the benefit of creditors.

## 13. Privacy Act 1993

Tekron may collect, retain, and use personal information about you for the purpose of:

- (a) assessing your creditworthiness;
- (b) disclosing to a third party information for the purpose of recovering amounts payable by you and providing credit references;
- (c) marketing Tekron goods and services.

You, if an individual, have a right of access to your information held by Tekron. You may request correction of that information and require the request to be stored with that information. Tekron may charge reasonable costs for providing access to that information.

## 14. Miscellaneous provisions

- 14.1 The official language of these Terms is English.
- 14.2 No waiver, modification, or addition to these Terms, or any assignment of your rights or obligations under them is binding on Tekron unless accepted in writing by Tekron.
- 14.3 The invalidity of any provision of these Terms does not affect the validity of the rest of these Terms.
- 14.4 Neither party will be liable for non-performance (except for payment obligations) due to causes beyond its reasonable control, provided that such party promptly notifies the other in writing of such occurrence and makes its best efforts to eliminate the effect thereof.
- 14.5 Any notice or other communication given by either party to the other regarding these Terms will be deemed given and served when personally delivered, delivered by reputable international courier requiring signature for receipt, or five business days after mailing (postage prepaid), addressed to the party at its notice address. Either party may change its notice address by written notice to the other. Your notice address will be the address appearing on the accepted Order. Tekron's notice address is: Tekron International Limited, L1, 47 The Esplanade, Lower Hutt 5012, New Zealand.
- 14.6 If the Products are furnished as component products on an OEM basis, or for import, resale or distribution to third parties, then you agree that you are deemed the "producer" of those Products under any laws, or regulations providing for the marking, collection, recycling, take-back, and/or disposal of electrical and electronic equipment ("WEEE Regulations") in any jurisdiction whatsoever, (e.g., national laws implementing EU Directive 2012/19 on waste electrical and electronic equipment, recast), and are solely responsible for complying with all applicable WEEE Regulations in connection with those Products and all associated costs.
- 14.7 These Terms are governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.