



T E S T D Y N A M I C S

TEST DYNAMICS (PTY) LTD

TERMS AND CONDITIONS OF SALE

Customer and Test Dynamics (Pty) Ltd ("Test Dynamics") agree that all purchases and sales of Test Dynamics' hardware and software products and provision of services ("the Products") are made under these terms and conditions. TEST DYNAMICS SHALL NOT BE BOUND BY ANY TERMS THAT MAY APPEAR ON THE CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENTATION, UNLESS SUCH DOCUMENTATION IS SIGNED BY A DULY AUTHORISED REPRESENTATIVE OF TEST DYNAMICS. Customer's placement of an order to purchase the Products shall constitute acceptance of these terms and conditions.

1. PRICES AND PAYMENT

- 1.1 Quotations are valid for fourteen (14) days from date of issue, unless otherwise agreed in writing.
- 1.2 Customer's acceptance of Test Dynamic's quotation or Customer's placement of an order shall constitute a binding agreement of sale.
- 1.3 Customer shall pay Test Dynamic's invoice in full prior to or upon delivery by electronic funds transfer, unless Test Dynamics approves Customer for credit terms. If Test Dynamics approves Customer's credit application, payment shall be due no later than 7 days from the date of Test Dynamics' invoice.
- 1.4 All sums not paid when due shall accrue interest at 15% per annum, compounded monthly, from the due date for payment on the unpaid balance until paid in full.
- 1.5 In the event of any order for several units, each unit(s) will be invoiced when shipped, unless otherwise agreed in writing.
- 1.6 Notwithstanding that the Products have been delivered to Customer and risk in the Products has passed to Customer, ownership of the Products shall remain vested in Test Dynamics until the Products have been paid for in full.
- 1.7 Product prices are exclusive of value added tax.

2. ORDERS

- 2.1 All orders are subject to acceptance by Test Dynamics.
- 2.2 Test Dynamics' acceptance of Customer's order will result in the creation of a binding agreement of sale.



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- 2.3 Changes to orders & shall not be binding upon nor be put into effect by Test Dynamics unless confirmed in writing by Test Dynamics' appropriate representative.
- 2.4 Customer warrants that all information/specifications that it provides to Test Dynamics in connection with the use and application of the Products is correct. If the Products do not work as expected due to Customer providing Test Dynamics with incorrect information/specifications, Test Dynamics shall not be responsible for incorrect data or performance and, if Customer requires the Products to be enhanced or replaced so as to perform correctly, Customer must pay Test Dynamics' normal prices for such replacement/enhancement.

3. DELIVERY

- 3.1 Customer must collect the Products from Test Dynamics' premises within 3 days after Test Dynamics has notified Customer that they are ready for collection, unless Test Dynamics has agreed in writing to a different arrangement for delivery.
- 3.2 All risk in and to the Products shall pass to Customer on the date that Customer collects the Products (or they are delivered to Customer in the event of Test Dynamics having agreed to a different arrangement for delivery) or on the third day after Test Dynamics has notified Customer that the Products are ready for collection, whichever date occurs earlier.
- 3.3 The Products are imported and shipment dates are scheduled after Test Dynamics has accepted Customer's order and received all necessary documents.
- 3.4 Delivery dates are estimates only. Test Dynamics shall not be responsible for any penalties or damages of any nature as a result of delivery later than the estimated delivery date and Customer shall not be entitled to cancel any order due to delivery later than the estimated delivery date.
- 3.5 Claims for shipment shortages shall be deemed waived unless presented to Test Dynamics in writing within seven (7) days after the Products have been collected by or delivered to Customer.

4. LIMITED WARRANTY

- 4.1 The Products carry their manufacturers' warranty, which is usually for one (1) year from the date the Products are collected by or delivered to the Customer ("the Delivery Date").
- 4.2 All software Products are licensed to Customer under the terms of the appropriate license. For a period of ninety (90) days from the Delivery Date, Test Dynamics software



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Products (when properly installed on Test Dynamics hardware Products) (a) will perform substantially in accordance with the accompanying written materials, and (b) the medium on which the software product is recorded will be free from defects in materials and workmanship under normal use and service. Any replacement of a licensed software product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

- 4.3 Customer must obtain a Return Material Authorization number from Test Dynamics before returning any Products under warranty to Test Dynamics.
- 4.4 Customer shall pay expenses for shipment of repaired or replacement Products to and from Test Dynamics. After examining and testing a returned product, if Test Dynamics concludes that a returned product is not defective, Customer will be notified, the product returned at Customer's expense, and a charge made for examination and testing.
- 4.5 This Limited Warranty is void if failure of the Products has resulted from accident, abuse, misapplication, improper calibration by Customer, Customer supplied third party software not intended for use with the applicable Test Dynamics software, utilization of an improper hardware or software key or unauthorized maintenance or repair.

5. CUSTOMER REMEDIES

- 5.1 Test Dynamics' sole obligation (and Customer's sole remedy) with respect to the foregoing Limited Warranty shall be to, at its option, return the price paid or repair or replace any defective Products, provided that Test Dynamics receives written notice of such defects during the applicable warranty period.
- 5.2 Customer may not bring an action to enforce its remedies under the foregoing Limited Warranty more than one (1) year after the accrual of such cause of action.

6. RETURN/CANCELLATION/CHANGE POLICY

- 6.1 Customer may not return unwanted Products to Test Dynamics unless Test Dynamics agrees thereto in writing.
- 6.2 If Test Dynamics agrees that Customer may return unwanted Products, Customer shall pay Test Dynamics a fifteen percent (15%) handling and restocking charge on any unwanted

7. NO OTHER WARRANTIES

- 7.1 EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE PRODUCTS ARE SUPPLIED "AS IS"



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(“VOETSTOOTS”) WITHOUT WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED ARE MADE WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING.

7.2 Test Dynamics DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE PRODUCTS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE AND DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. NI EXPRESSLY DISCLAIMS ANY WARRANTIES NOT STATED HEREIN.

8. LIMITATION OF LIABILITY

8.1 To the maximum extent permitted by applicable law, in no event shall Test Dynamics and its licensors and suppliers (including its and their directors, officers, employees, and agents) be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, exemplary, or consequential damages, expenses, lost profits, lost savings, business interruption, lost business information, or any other damages arising out of the use or inability to use the Products, even if Test Dynamics or its licensors, distributors, and suppliers has been advised of the possibility of such damages. Customer acknowledges that the applicable purchase price or license fee for the Products reflects this allocation of risk.

8.2 In no event shall Test Dynamics' liability for bodily injury, death, or property damage exceed the greater of ZAR 150,000 or fees paid for the specific product that caused such damage.

9. WARNING

9.1 TEST DYNAMICS PRODUCTS ARE NOT DESIGNED WITH COMPONENTS AND TESTING FOR A LEVEL OF RELIABILITY SUITABLE FOR USE IN OR IN CONNECTION WITH SURGICAL IMPLANTS OR AS CRITICAL COMPONENTS IN ANY LIFE SUPPORT SYSTEMS WHOSE FAILURE TO PERFORM MAY REASONABLY BE EXPECTED TO CAUSE INJURY TO A HUMAN.

9.2 IN ANY APPLICATION, INCLUDING THE ABOVE, RELIABILITY OF OPERATION OF THE SOFTWARE PRODUCTS CAN BE IMPAIRED BY ADVERSE FACTORS, INCLUDING BUT NOT LIMITED TO FLUCTUATIONS IN ELECTRICAL POWER SUPPLY, COMPUTER HARDWARE MALFUNCTIONS, COMPUTER OPERATING SYSTEM SOFTWARE FITNESS, FITNESS OF COMPILERS AND DEVELOPMENT SOFTWARE USED TO DEVELOP AN APPLICATION, INSTALLATION ERRORS, SOFTWARE AND HARDWARE COMPATIBILITY PROBLEMS, MALFUNCTIONS OR FAILURES OF ELECTRONIC MONITORING OR CONTROL DEVICES,



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TRANSIENT FAILURES OF ELECTRONIC SYSTEMS (HARDWARE AND/OR SOFTWARE), UNANTICIPATED USES OR MISUSES, OR ERRORS ON THE PART OF THE USER OR APPLICATIONS DESIGNER (ADVERSE FACTORS SUCH AS THESE ARE HEREAFTER COLLECTIVELY TERMED "SYSTEM FAILURES").

9.3 ANY APPLICATION WHERE A SYSTEM FAILURE WOULD CREATE A RISK OF HARM TO PROPERTY OR PERSONS (INCLUDING THE RISK OF BODILY INJURY AND DEATH) SHOULD NOT BE RELIANT SOLELY UPON ONE FORM OF ELECTRONIC SYSTEM DUE TO THE RISK OF SYSTEM FAILURE. TO AVOID DAMAGE, INJURY, OR DEATH, THE USER OR APPLICATION DESIGNER MUST TAKE REASONABLY PRUDENT STEPS TO PROTECT AGAINST SYSTEM FAILURES, INCLUDING BUT NOT LIMITED TO BACK-UP OR SHUT DOWN MECHANISMS.

9.4 THE USER OR APPLICATION DESIGNER IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF TEST DYNAMICS PRODUCTS WHENEVER TEST DYNAMICS PRODUCTS ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING, WITHOUT LIMITATION, THE APPROPRIATE DESIGN, PROCESS AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION.

10. FORCE MAJEURE

10.1 Test Dynamics shall be excused for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to fire, flood, earthquake and other natural disasters, acts of governments, interruptions of transportation or inability to obtain necessary labor or materials.

10.2 Test Dynamics' estimated shipping schedule shall be extended by a period of time equal to the time lost because of any excusable delay.

10.3 In the event Test Dynamics is unable to perform in whole or in part because of any excusable failure to perform, Test Dynamics may cancel orders without liability to Customer.

11. LIMITED INDEMNITY AGAINST INFRINGEMENT

11.1 If the Products are held to be infringing any third party's intellectual property rights and the use thereof is interdicted, Test Dynamics shall, at its option, either:

11.1.1 procure for the Customer the right to use the Products;

11.1.2 replace the Products with others which do not constitute infringement; or

11.1.3 remove the infringing Products and refund the payment(s) made therefore by

Customer.

11.2 The foregoing states the Customer's sole remedy for, and Test Dynamics's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Products provided hereunder.

11.3 THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.

12. GENERAL PROVISIONS

12.1.1 Customer acknowledges that it has read these Terms and Conditions, understands them and agrees to be bound by them. No other terms and conditions shall apply between the parties unless reduced to writing and signed by both of them.

12.1.2 These terms and conditions shall apply to every individual sale and purchase between the Parties, whether or not a copy of these terms and conditions are included in the sale documentation in respect of any individual sale and purchase.

12.1.3 No failure or delay on the part of Test Dynamics in exercising any right power or privilege hereunder will constitute or be deemed to be a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any other or farther exercise thereof or the exercise of any other right, power or privilege. A waiver of any provision of this agreement shall not be construed as a waiver or modification of any other term hereof, and shall be binding only in the specific instance and for the purpose given.

12.1.4 These terms and conditions and every purchase and sale between Customer and Test Dynamics shall be governed by the laws of the Republic of South Africa.

12.1.5 Customer consents to the jurisdiction of the magistrates' court or the regional court in any legal proceedings that Test Dynamics may institute in order to collect any money that is overdue for payment by Customer, notwithstanding that the amount owing may exceed the jurisdiction of the magistrates' or regional court.

12.1.6 If Test Dynamics institutes legal proceedings against Customer for the recovery of money that is overdue for payment, Customer will be liable to pay all legal costs incurred by Test Dynamics Test on the scale as between attorney and own client, including pre-litigation costs, tracing charges and collection commission.

13. DISPUTE RESOLUTION



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- 13.1 In the event of any dispute or difference arising between the parties hereto relating to or arising out of these terms and conditions, including the implementation, execution, interpretation, rectification, termination or cancellation of these terms and conditions, the parties shall forthwith meet to attempt to settle such dispute or difference.
- 13.2 If the parties cannot resolve their dispute by negotiation within fourteen (14) days, they agree to refer it to mediation by a mediator to be agreed upon between them or, failing agreement within seven (7) days, appointed by the South African Association of Mediators.
- 13.3 If the mediation is unsuccessful, Test Dynamics shall have the election to refer it to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") or to institute action in the appropriate court.
- 13.4 If Test Dynamics elects to refer the dispute to arbitration:
- 13.4.1 The arbitrator shall be an attorney or advocate of at least 15 years' standing agreed upon between the parties or, failing agreement within 7 (seven) days, appointed by AFSA.
- 13.4.2 The arbitration shall be held within the area of jurisdiction of the Greater Johannesburg Metropolitan Municipality.
- 13.4.3 Any party to the arbitration may appeal the decision of the arbitrator within a period of twenty (20) days after the arbitrator's award has been handed down by giving written notice to that effect to the other party or parties to the arbitration. The appeal shall be dealt with in accordance with the rules of the Foundation by a panel of three (3) arbitrators appointed by the Foundation.
- 13.4.4 The decision of the arbitrator shall be final and binding on the parties to the arbitration after the expiry of the period of twenty (20) working days from the date of the arbitrator's ruling if no appeal has been lodged by any party.
- 13.4.5 An award which becomes final and binding in terms of this 12.4.5 may be made an order of court at the instance of any party to the arbitration.
- 13.4.6 Nothing herein contained shall be deemed to prevent or prohibit either party from applying to the appropriate Court for urgent relief.
- 13.4.7 The parties undertake to keep the arbitration, including the subject matter of and evidence heard during the arbitration, confidential and not to disclose same to any other entity save for the purpose of any Court proceedings.



T E S T D Y N A M I C S

Signed on behalf of Customer

Name: _____

Designation: _____

Date: _____