

# Terms and Conditions of Sale and Delivery of tesa Tapes India Private Limited

(May 2021)

## 1. Scope

The following Terms and Conditions of Sale and Delivery (hereinafter: "Terms of Sale") apply exclusively for the entire current and future legal relationship between tesa tapes India Private Limited (hereinafter: "tesa") and Buyer concerning the sale of movable goods ("Goods"). Upon placing an order by Buyer, but no later than upon the acceptance of the delivery of the Goods, Buyer acknowledges the sole binding application of these Terms of Sale. Should Buyer use conflicting, deviating or amending terms and conditions, their application in relation to tesa is excluded even if they have not been expressly contradicted by tesa. Thus, these terms of Sale shall prevail over any other terms and conditions, agreement to the extent that the same is contrary to the terms and conditions contained herein in relation to sale of Goods, unless specifically approved by Tesa in writing.

## 2. Offer and Conclusion of Contract

- Offers by tesa are non-binding and are only to be understood as a request for the delivery of an order. A contract shall not be concluded until tesa has provided a written confirmation of order, and the contract is defined solely by the content of the confirmation of order and/or these Terms of Sale.
- Confirmations of order by tesa that deviate in material content from the original order are deemed to have been accepted if they have not been contradicted within three working days upon the receipt of the confirmation of order by Buyer.

## 3. Delivery Periods and Dates

- Any delivery dates and delivery periods stated in orders of the Buyer are only binding if they have been confirmed by tesa in writing or in text form and Buyer has informed tesa of or provided tesa with all of the information, specifications of quality, approved plans, documents, permissions and approvals required for the execution of delivery in good time and paid any negotiated advance payments in accordance with the agreed terms. Negotiated periods commence upon the date of the confirmation of contract or the declaration of acceptance, as the case may be. In the event of additional or expanded order placed thereafter, the periods shall be extended accordingly.
- Events which are unforeseeable, unavoidable and outside the control and influence of tesa and for which tesa is not responsible [such as acts of God, war, acts of terrorism, epidemics, natural disasters, strikes, lockouts, occupations of factories and facilities, government measures, shortages of energy, materials or raw materials, damage caused by fire and explosion, transportation and operational problems, sovereign acts (whether lawful or unlawful) or similar events], shall release tesa for that specific duration from its duty to make timely delivery of Goods or services. The negotiated period shall be extended by the duration of the incident; Buyer shall be informed in an appropriate manner of the occurrence and end of the disruption. tesa is not obliged to procure replacement goods from third parties. Where the end of the problem is not foreseeable, or the problem continues for more than two months from the date of its occurrence, each party is entitled to rescind the contract with respect to the scope of delivery affected by the problem without giving effect to any right for compensation..
- tesa's delivery obligations in relation to Goods for which tesa procures raw materials and supplier parts from suppliers shall always be subject to the timely and correct delivery by such suppliers to tesa.
- Subject to Clause 3.3 above, where deliveries by tesa are delayed, Buyer is only entitled to rescind the contract if tesa is responsible for the delay and a reasonable deadline for delivery set by Buyer to have passed.
- If Buyer is in default of acceptance or in breach or other actions of cooperation incumbent upon him, tesa is entitled – irrespective of its other legal and equitable rights – to store the Goods at the risk and expense of Buyer or – in case of a breach of obligation - to rescind the contract.
- tesa may make partial delivery, provided (i) the partial delivery can be used by the Buyer within the scope of the contractual purpose, (ii) the

delivery of the remaining ordered Goods is secured and (iii) the Buyer does not incur any considerable additional effort or costs.

- Insofar as tesa bears the delivery costs pursuant to clause 4 of these Terms of Sale, tesa is not obliged to make delivery of the Goods by air freight or a comparable accelerated means of transport.

## 4. Minimum Order Value and Volume, Shipping, Packaging, Passage of Risk

- tesa does not accept orders below a minimum order value of INR one thousand only . Upon compliance with this minimum value of order and acceptance pursuant to clause 2.1 or 2.2, tesa shall bear the reasonable freight and shipping costs. Should Buyer not comply with this minimum value of order and should the order nevertheless be accepted by tesa in justified exceptions and should the Goods be delivered, Buyer will be charged with the actually occurred, proportionate share of the freight/shipping costs, subject to minimum applicable [INR one only ]. The minimum volume of order per delivery number is one package unit; orders for smaller volumes shall not be accepted even where the minimum value of order is met.
- The buyer accepts and acknowledges that the Goods shall be shipped respectively and handed over in the normal tesa packaging.
- The risk of accidental loss and accidental deterioration shall pass to Buyer upon the transfer of possession of the Goods to the shipping company or – in case of self-collection – upon handing over to the Buyer. If transfer of possession or shipment is delayed on grounds for which Buyer is responsible, risk shall pass to Buyer on the date of the notification of the availability of the Goods for shipment.
- Technical advice with regard to Goods and their applications is given to the best of tesa's knowledge. Any advice and information with respect to suitability and application of the Goods shall not, however, create any liability of tesa and shall not relieve the Buyer from undertaking its own investigation and tests.

## 5. Prices, Terms of Payment

- All contracts are based on the prices and rates of discount applicable on the date of the acceptance of order, provided no other agreement has been made by the parties.
- All tesa prices are denominated in Indian National Rupees (INR) and are exclusive of applicable Goods and Service Tax (GST)

Provided nothing to the contrary is agreed between tesa and Buyer, any statutory increase or fresh levy of taxes affecting the goods shall be borne by the Buyer. Such taxes shall be invoiced in the relevant amount provided by law and are payable accordingly.

- In the event of the Buyer failing to provide the correct particulars, such as address / location, GSTIN, etc., the Buyer shall indemnify the Seller any loss incurred by the Seller towards tax, interest, penalty and fine on account of such failure. Buyer undertakes to fulfill all the requisite conditions to be compliant under GST, including timely filing of periodic returns, to ensure that entire input tax credit pertaining to supplies of Goods by the tesa is availed by the Buyer on a timely basis. In case the Buyer fails to comply with all the requisite conditions under GST law for availment of input tax credit on supplies of Goods made by tesa, tesa shall not be responsible for reimbursing or compensating such input tax credit loss to the Buyer. The Buyer shall not avail of or utilize any input tax credit unless full payment against the respective sale is made by the Buyer to tesa.

The Buyer shall forthwith notify tesa about discrepancies, if any, in tesa's invoice within 5 days from the date of receipt of such invoice. Failing the same, it shall be considered as unconditional & absolute acceptance of tesa's invoice by the Buyer. Consequently, the Buyer shall have no claim against tesa and tesa shall not entertain any request or intimation on any alleged discrepancy on invoice including any loss of tax credit that may have to be incurred by the Buyer.

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5.4 In a case where the Buyer is required to deduct withholding tax ('TDS') under application section of Income tax Act, 1961, the Buyer agrees that it will notify tesa of such deduction and provide the details of such TDS deducted in the manner prescribed by tesa and within the prescribed statutory time limits. The Buyer also agrees to issue necessary certificates covering such TDS deductions to tesa within the prescribed timelines. In case of any loss of credit to tesa for such TDS amount deducted by the Buyer, tesa reserves its right to recover such lost amounts from the Buyer.

5.5 tesa is entitled to issue partial invoices for partial deliveries within the meaning of clause 3.6.

5.6 Each invoice is due for payment without deductions within 14 days of receipt by Buyer, provided nothing to the contrary is determined in tesa's confirmation of order. Default shall occur automatically upon failure to pay upon expiration of this deadline. Payments by Buyer shall only be deemed to have been made once tesa has received this payment.

5.7 If Buyer is in default of payment, tesa is entitled to demand penal interests at the rate of 18% p.a. from the date of failure to make the payment till the date of its actual payment. This right shall be in addition to other legal and equitable rights that tesa shall have under the applicable laws.

5.8 The Buyer shall only be entitled to set off counterclaims or withhold payments due to such claims if his counterclaims are undisputed or have been declared final and absolute or result from the same contract under which the relevant delivery was made.

5.9 If tesa, after conclusion of the contract, becomes aware of the risk of a lack of ability to make payment on the part of Buyer, tesa shall be entitled to execute outstanding deliveries only against prepayment or upon due receipt of payment/bank guarantee. If the prepayments or other payment guarantees are not provided even upon the expiration of a reasonable period of grace, tesa may cease deliveries until the prepayments or the payment bonds are provided or may rescind individual or all affected contracts in full or in part. In such a case, tesa shall not be held liable for any violation of any contract or these Terms of Sales and it shall remain entitled to assert further rights.

## 6. Retention of Title

6.1 The Goods shall remain in the ownership of tesa until the full payment of any and all claims of tesa under the business relationship with Buyer has been made and realised.

6.2 In the case of a current account, the reserved title shall be deemed to secure tesa's claim to the outstanding balance.

6.3 Buyer is only permitted to sell the Goods subject to the retention of title ("**Reserved Products**") within the normal course of business transactions. Buyer hereby assigns its claims under the resale of the Goods to tesa, and tesa hereby accepts such assignment. Buyer is authorized to collect in trust the assigned claims for tesa in its own name, subject to withdrawal of such authorization. tesa may withdraw the authorization and the entitlement to resell the Goods if Buyer is in default of major obligations such as payment to tesa. In the event of a withdrawal of authorization, tesa is entitled to collect the claims itself. Buyer is not entitled to pledge the Reserved Products or to transfer title as security or otherwise make disposals that would threaten tesa's ownership over the Reserved Products. In the event Buyer sells the Reserved Products following processing or alteration or upon connection or commixture with other goods or otherwise together with other goods, the assignment of claim shall be deemed to only apply in the amount of the portion equivalent to the price agreed to between tesa and Buyer plus a security margin of 10 % of such price.

6.4 Buyer shall provide tesa at all times with all requested information on the Reserved Products or on the claims that have been assigned to tesa hereunder. Interventions or claims by third parties on the Reserved Products must be reported to tesa by Buyer immediately upon delivery of the necessary claims/documents. Buyer shall inform the third party or parties at the same time of the tesa's retention of title

immediately. The costs of the defence against such interventions and claims shall be borne by Buyer only.

6.5 If the Goods delivered by tesa are combined or blended with material owned by Buyer, which has to be considered the main material, it is deemed to be agreed that Buyer transfers to tesa the joint title to such main material in the proportion of the invoice value of the Goods delivered by tesa to the invoice value (or, if the invoice value cannot be determined to the market value) of the main material.

6.6 Buyer is obliged to label the Reserved Products separately as the property of tesa to the extent possible for the duration of the retention of title and to handle them with care. Further, the Buyer shall ensure that tesa retains its title on such Reserved Products irrespective of any voluntary or governmental action (liquidation, winding-up, etc.) being initiated by/against the Buyer.

6.7 Furthermore, at the request of tesa, Buyer shall identify on the packaging tesa's title to the goods and shall notify its customers of the assignment of the claims to Seller.

6.8 Should the value of the securities exceed tesa's claim by more than 10%, tesa waives securities to this extent.

6.9 Should Buyer be in default of major obligations in relation to tesa such as payment obligations, notwithstanding other rights, tesa may rescind the contract in accordance with the statutory provisions. If tesa rescinds the contract, tesa is entitled to repossess the Reserved Products or the Goods for which no payment has been received or realized. In the event of a claim for the surrender of such goods, Buyer shall immediately grant tesa or an authorized representative of tesa access to the goods and surrender them.

## 7. Quality, Rights of Buyer in Case of Defects, Obligation to Inspect and Complain

7.1 The agreed quality of the Goods is measured solely by the specific agreements on properties, features and performance characteristics of the Goods made in writing between the parties which are set down in writing in the standard tesa product descriptions or product designations ("**Quality Agreement**"), insofar as a Quality Agreement does not expressly refer to non-binding contents (e.g. average figures).

tesa shall not assume any warranty for the suitability of its Goods for a certain purpose of application intended by Buyer. Buyer alone is responsible for the decision whether Goods complying with the Quality Agreement are suitable for a certain purpose and for the nature of their use.

7.2 In the event of production of Goods in accordance with the quality descriptions, plans, sketches, drawings, etc. drafted and released by the Buyer (hereinafter: "**Quality Specifications**"), quality shall be measured solely in accordance with these released Quality Specifications, unless otherwise agreed in writing. Characteristics of the Goods which are based on the Quality Specifications released by Buyer do not constitute a material defect, so that Buyer is not entitled to any warranty claims against tesa in this respect. In particular, Buyer is solely responsible for the accuracy and feasibility of all of the Quality Specifications and supplements thereto drafted, delivered to tesa and released by Buyer.

7.3 Information in catalogues, price lists and other informational material provided to Buyer by tesa, as well as product-descriptive information, are not to be understood in any event as guarantees for a particular quality or durability of the Goods; such guarantees of quality or durability must be expressly agreed in writing.

7.4 Normal commercial discrepancies in volume and weight within the range of up to 10 % from the order volume are permitted. Normal commercial discrepancies in quality/properties caused by the Goods are also permitted.

7.5 The Goods are to be inspected by Buyer immediately after their delivery to Buyer, insofar as this is feasible in the normal course of business. Buyer shall notify the carrier and tesa of any externally visible loss or damage to the Goods upon delivery. Other obvious

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defects of the Goods which would have been recognisable in an immediate inspection shall be deemed to have been approved by Buyer if tesa does not receive a written notice of defects stating the invoice or order number within seven days of delivery of the Goods.

Subject to Clause 7.10 below, Goods which have a hidden defect shall be deemed to be approved if tesa does not receive a written notice of defects from Buyer within seven days after the time at which the defect became apparent.

- 7.6 In the case of each notice of a defect, tesa shall be entitled to a right to inspect and test the Goods in question. Buyer shall grant tesa the necessary time and opportunity to do so. tesa may also demand of Buyer that he send the Goods in question to tesa at tesa's expense.
- 7.7 tesa shall remedy defects at its option by a removal of the defect or by an alternative delivery of a defect-free item (jointly referred to as "Supplementary Performance").
- 7.8 The costs of transport, travel, labour and materials necessary for the purpose of Supplementary Performance shall be borne by tesa. Where the notice of a defect proves to be unjustified and Buyer disregarded the corresponding indications when submitting the notice of defects in an intentional or grossly negligent manner, Buyer shall be obliged to compensate tesa for all of the costs and damages incurred in this context (for instance, travel and shipping costs).
- 7.9 In a case where the Supplementary Performance also fails or the defect in Goods is not cured or tesa refuses to undertake any Supplementary Performance, tesa at its sole discretion may either (i) rescind the contract (ii) perform the Supplementary Performance again or (iii) reimburse Buyer the purchase price of the Goods (or issue a credit note) or (iv) provide for a pro rata portion on the value of the Goods (as mutually decided), as the case may be.
- 7.10 The limited period for Buyer's rights due to defects of the Goods shall be three months as of handing over the Goods to Buyer. Within this period, tesa shall also be liable for damage claims by Buyer due to injury to life, body or health culpably caused by tesa or its vicarious agents as well as for other damage caused by gross negligence and intent, subject to an order passed by a competent court of law.

## 8. Compliance, Liability and Damages

- 8.1 tesa's liability for breaches of major contractual duties or "cardinal duties" caused by slight negligence is limited in amount to the damage foreseeable and typical to the contract upon the conclusion of contract. Notwithstanding anything contained in these Terms of Sales or any other contract, the liability of tesa towards any damages shall be restricted to the amount actually received by tesa from the Buyer.
- 8.2 tesa is not liable for a slightly negligent breach of its obligations under the contract other than those stated in clause 8.1.
- 8.3 Otherwise, the statutory claims by Buyer to damages are not affected; in particular, tesa is liable for intent and gross negligence in accordance with the statutory provisions.
- 8.5 Buyer is obliged to provide tesa with evidence of any damage so claimed by it under the contract or these Terms of Sale. Unless such documentary evidence is not produced, no liability shall arise on account of tesa. Unless otherwise agreed on any varied terms and condition in accordance with Clause 1 of these Terms of Sales, any other damages or compensation shall not apply to tesa. tesa shall not be held responsible for any indirect or consequential losses arising out of or in connection with the usage of Goods.
- 8.6 The Buyer represents, warrants and undertakes to comply with all applicable laws, orders, notifications, policies, rules and regulations relating to or in any way relevant to the purchase, delivery, transport, storage and use of the Goods delivered by tesa. Buyer shall not sell, supply or deliver, directly or indirectly, the Goods to any party or destination that, at the material time, is declared an embargoed or a restricted party by the United Nations or relevant export control laws.
- 8.7 Buyer expressly assumes the risk of and agrees, to the fullest extent permitted by applicable law, to indemnify, defend and hold tesa harmless from and against all claims for patent infringement by reason of Buyer's processing, use, admixture, reaction, sale or disposition of

the Goods, whether used singly or in combination with other products or materials.

## 9. Indemnity Obligation of Buyer

If Buyer resells the Goods, he shall indemnify tesa within their internal relationship for product liability claims or other claims by third parties, provided the Buyer is responsible for the (material) defect giving rise to the liability.

## 10. Defects in Title and Proprietary Rights

- 10.1 tesa is not aware of any finally adjudicated claims of third parties which would prevent a use of the Goods in accordance with the defined intention and terms of contract.
- 10.2 If Buyer nevertheless infringes the industrial property rights or copyrights of third parties ("Property Rights") which are to be recognised as legally valid through the use of the Goods in accordance with the provisions and the contract, tesa shall procure the right to further use for Buyer at its own expense or modify the Goods in a manner which is reasonable for Buyer in such a way that the infringement of Property Rights no longer exists. If this is not possible at economically reasonable conditions or within a reasonable period of time, Buyer and tesa shall each be entitled to withdraw from the contract and both the Parties shall mutually decide over the course of further action in relation to the Goods and payment made under the contract and these Terms of Sale.

In addition, tesa shall indemnify the Buyer - within the limits of Clause 8 of these Terms of Sale - from undisputed or legally established claims of third parties.

- 10.3 Buyer is obliged to inform tesa without undue delay if claims are made against Buyer by third parties due to the use of the Goods in accordance with the defined intention and terms of contract based on the infringement of Property Rights or if third parties have addressed inquiries of Buyer's entitlement to the Goods. The same applies if Buyer otherwise become aware that the use of the Goods in accordance with the defined intention and terms of contract may possibly infringe the rights of third parties. In these cases, tesa shall be entitled to terminate the existing delivery contracts for cause. tesa shall also be entitled to terminate the delivery contracts for cause if tesa is in danger of infringing the rights of third parties itself by executing the delivery contracts.
- 10.4 In the event of an intervention by a third party against Buyer within the meaning of clause 10.3, tesa shall support Buyer to the best of its ability in the defence of such claims in relation to the third party. This shall require that Buyer has not delivered any statements to third parties to the detriment of tesa. Further, the Buyer shall at all times be liable to, indemnify, defend and hold harmless tesa its directors, employees, personnel, sub-contractors and agents, and its affiliates against any and all losses incurred by it, as a result of, arising from, or in connection with or relating to *inter alia* a breach of applicable laws by the Buyer or due to its fraudulent, willful misconduct and negligent act.

## 11. Test procedures of the Buyer

Costs for any test procedures of the Buyer or Buyer's customer shall only be compensated by tesa with prior and explicit approval of tesa.

## 12. General Provisions, Code of Conduct

- 12.1 Buyer may not assign his claims against tesa - except for pecuniary claims - to third parties without written consent of tesa.
- 12.2 Changes and amendments to contractual agreements between tesa and Buyer and/or these Terms of Sale and any side agreements shall require written approval and confirmation.
- 12.3 In order to comply with the written form required in these Terms of Sale, telecommunication transmission, in particular by fax or e-mail, is sufficient.
- 12.4 If a provision of the contractual agreements between tesa and Buyer and/or these Terms of Sale are fully or partially void or

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invalid, this shall not affect the validity of the remaining provisions. The parties undertake in this case to replace the void or invalid provision by a valid one that comes closest to the commercial intention of the void or invalid provision.

12.5 Place of performance for all reciprocal claims is the registered office of tesa.

12.6 These Terms of Sales shall be governed by and construed in accordance with the laws of India without giving effect to conflict of laws principles. The Buyer and tesa submit themselves to the exclusive jurisdiction of the Courts of competent jurisdiction at Chennai, Tamil Nadu. However, tesa may at its sole discretion pursue any action against the Buyer in any other competent courts.

12.7 In the event that the Buyer(i) commits a breach of any obligation hereunder; and /or (ii) becomes insolvent, is adjudged bankrupt or goes into receivership or liquidation or any petition is presented against

the Buyer for bankruptcy or liquidation, tesa is entitled without prejudice to its other rights, to immediately suspend or terminate the relevant contract. Termination of the contract shall not affect or prejudice the accrued rights of action or remedies of tesa against the Buyer. Upon early termination, all amounts accrued or owing by Buyer (irrespective of whether fallen due for payment) shall become due and payable immediately.

12.8 The Buyer undertakes to comply with the basic principle of the tesa Code of Conduct. This can be found at: Code of Conduct (Available on tesa.com).

**Please note:** The quality of the tesa® products is tested on a continuous basis at the highest possible level and is thus subject to strict controls. All information and recommendations are given by us to our best knowledge based on our practical experience. Nevertheless, tesa does not assume any express or implied warranty for the suitability of a tesa® product for certain purposes that have not been expressly agreed between tesa and Buyer in writing. For this reason, Buyer is himself responsible for the decision on whether a tesa® product is suitable for a certain purpose and for Buyer's type of use, provided the product complies with the properties, features and performance characteristics that have been specifically agreed. Should you require assistance in this regard, our technical staff would be happy to advise you.