

# Tait New Zealand Terms and Conditions of Sale

The sale of all Goods and Services by **Tait Communications (NZ) Limited** (hereafter called Tait) is governed by the following terms and conditions:

## 1. APPLICATION OF TERMS AND CONDITIONS:

These Terms and Conditions shall apply to the sale or quotation of all systems, Goods and Services provided by Tait unless otherwise agreed in writing by the General Manager of Tait or delegated authority.

## 2. ACCEPTANCE OF TERMS AND CONDITIONS:

These Terms and Conditions apply generally and exclusively to the supply of Tait systems, Goods and Services and shall be deemed to be included in documentation such as Orders and Invoices. Requests for delivery of systems, Goods and Services either verbally or in writing by the Client shall be deemed to represent acceptance of these Terms and Conditions and accordingly the Contract between Tait and the Client shall be deemed to be complete and binding.

## 3. TERMS OF TRADE (INCLUDING GOODS AND SERVICES TAX):

These Terms and Conditions and price for Tait systems, Goods and Services shall be as specified on any Tait Invoice or relevant document. Unless otherwise specified the following shall apply:

- 3.1 All Goods will be shipped Free on Board (FOB) from the Tait Distribution Centre by the carrier of Tait's choice unless a specific carrier is nominated by the Client.
- 3.2 Prices quoted will be the tax exclusive price due to the discount structure that Tait employs and the fact that all Tait systems, Goods and Services will attract the Goods and Services Tax. Any applicable Goods and Services Tax will be shown at the bottom of the invoice/quote totalling to the tax inclusive price of the systems, Goods and Services supplied.
- 3.3 The Client shall pay the whole of the price including all applicable taxes without deduction within forty-five (45) days of the date of Tait's invoice where the Client has received approval from Tait following completion of Tait's standard Credit Account Application. In all other cases the Terms of Trade shall be payment prior to shipment from Tait's Distribution Centre.
- 3.4 Tait reserves the right to vary existing Terms of Trade as it considers appropriate effective immediately.
- 3.5 The minimum invoice value applicable to all purchases shall be twenty dollars (\$20.00).

## 4. DEFAULT OF PAYMENT:

Should the Client default in the payment of any part of the price by the due date, Tait may, without prejudice, to any other rights it may have:

- 4.1 Charge interest of 2.0 per centum (2%) per month on all monies not paid in accordance with Clause 3.3.
- 4.2 Demand immediate payment of any other amounts outstanding between the Client and Tait.
- 4.3 Suspend delivery of any and all systems, Goods and Services including goods returned for repair to the Client until receipt of all monies outstanding.
- 4.4 Retake possession of goods which have remained the property of Tait by virtue of Clause 5.
- 4.5 Charge the Client for all costs of collection and legal fees incurred by Tait in recovering amounts payable hereunder.

## 5. PROPERTY IN GOODS:

- 5.1 Risk in any Goods supplied by Tait to a Client shall pass when such Goods are delivered to the Client or into custody on the Client's behalf but ownership in property (both legal and equitable) in such systems or Goods is retained by Tait, until full payment is made for such systems and Goods and/or for all Goods supplied to the Client.
- 5.2 The Client acknowledges these Terms and Conditions create a security interest in favour of Tait in systems and Goods supplied by Tait to the Client which have not been paid for in full, as security for payment of all monies payable from time to time to Tait by the Client and for the performance of all the Client's other obligations from time to time to Tait.
- 5.3 The Client agrees to do anything including signing and delivering any documents Tait reasonably requires to ensure Tait has a perfected security interest and (if applicable) a purchase money security interest in Goods supplied. 5.4 Nothing in sections 114(1)(a), 133 or 134 of the Personal Property Securities Act ("PPSA") applies to these Terms and Conditions. The rights of the Debtor (the "Client") in sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA do not apply to the security interest created by these Terms and Conditions. The Client

waives its right under s 148 of the PPSA to receive a verification statement.

5.5 The Client shall supply Tait, within two (2) days of a written request by Tait, with copies of all security interests registered over the Client's personal property, and the Client authorizes Tait to request information from any secured party relating to any security interest which is held in any personal property which is or has been in the control of the Client.

## 6. SEPARABLE PARTS OF A PROJECT:

Where a Project can be broken up into separable parts, then it is possible for these



separable parts to be handed over to the Client on an individual basis. In this case, once the Client takes possession of any part of a Project, then that part will be deemed to have commenced the warranty phase of the Project. Notwithstanding the requirement for Tait to complete some finishing of works the separable part will be deemed to have reached final completion and payment from the Client will be required accordingly. Any additional work required to provide separate parts of a Project, beyond that required for the Contract, to meet a Client's requirement will be for the Client's account.

## 7. SITE ACCESS:

All pricing for Project Work is based on ready access to the required Project Sites by Tait, unless specifically detailed otherwise in the Contract documents. Unavailability of access to the Project Sites will be reasonable grounds for Tait to both extend the Contract completion timetable, and recover any additional costs and expenses incurred from the Client.

If access to the required Project Sites is not obtainable, then the Client is responsible for any additional costs incurred in developing alternate sites including any subsequently necessary changes to project design.

## 8. INTERFERENCE:

While every effort will be made by Tait to minimise any radio interference experienced on a site, any additional costs incurred by Tait in investigating and eliminating interference problems will be for the Client's account. This additional work could include, but is not limited to, coordination with the frequency allocation authority or on-site work to discover the source of any interference. Any additional work carried out by Tait due to interference problems, including, but not limited to, reprogramming of radio equipment, provision of additional filtering, rearrangement of antennae, will be for the Client's account.

## 9. LICENCES:

Unless agreed by the Parties, Tait will not be liable for obtaining Frequency Licences on behalf of any Client. In the instance of an executed Contract between the Parties, where Tait has agreed to apply for Frequency Licences, and there is any delay in obtaining such Frequency Licences, such delay will be a valid cause for extension of any milestone or of the Project Completion Date. In addition, equipment delivery lead times will be quoted from allocation of the Frequency Licences. Any additional costs incurred by Tait, caused by the required frequencies not being available, will be for the Client's account.

## 10. CLIENT INITIATED CHANGES:

Once a Contract is awarded, then any Client initiated changes are subject to quotation by Tait, which may result in changes to both the cost of the Project and completion time. Any such changes may affect the Contract Payment Terms and schedule.

## 11. CLIENT SPECIFIED EQUIPMENT:

Where the Client specifies certain items of equipment (Third Party Equipment) to be included in a Project, then the risk relating to the Third Party Equipment remains with the Client and Tait offers no warranty in regard to such Third Party Equipment. Where the inclusion of the Third Party Equipment impacts either the time to complete, or the costs associated with the Project, this will be for the Client's account and at Client's risk. Any training required on Third Party Equipment by Tait, in order to meet their Project obligations, will be for the Client's account.

## 12. SOFTWARE:

12.1 If any Software is provided by Tait (as a distributor or licensor) to the Client, the Client agrees to be bound by the terms of the licence associated with such Software, regardless of whether the Software is already installed on a Tait system or Goods, or provided by a compact disk, or downloaded from the Tait website. Use of the Software constitutes the Client's acceptance of the terms of the licence associated with such Software.

12.2 Software and Intellectual Property Rights (IPR) in the Goods shall at all times remain the exclusive property of Tait or its suppliers. All IPR arising under these Terms and Conditions, including without limitation, IPR arising from the supply of the Goods (except to the extent that they comprise or incorporate IPR supplied by the Client) shall vest in and be owned by Tait or its

suppliers absolutely, and the Client shall acquire no right, title or interest therein.

12.3 Third Party Software and software associated with Third Party Equipment may be subject to separate terms and restrictions, and if so, these separate terms and restrictions shall be notified to the Client, in writing, or contained in any "box" or "on-screen" license supplied with such Third Party Equipment (copies available on request), and the Client shall be obliged to comply with these separate terms and restrictions.

12.4 Subject to Clause 12.2, and in consideration of the Client paying the relevant fees hereunder, Tait shall grant to the Client, or

procure the grant to the Client of a worldwide, non-exclusive, non-assignable, non-transferable license to use the Software (in executable form only) and the Goods for the installation, configuration and use of the Software, for normal business purposes. 12.5 The licence to use the Software is restricted to use in connection with the Equipment to which it relates, or for the purpose identified in, and subject to any restrictions contained in an Order, or User Documentation (including without limitation, restrictions on the numbers of users, channels or copies), and in

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accordance with the provisions of this Clause 12.

12.6 The Client shall be entitled to grant a sub-license to any person installing, configuring or using the Goods, subject to the Terms and Conditions of the license granted to the Client under this Clause 12.

12.7 If the Software licensed (or sub-licensed) under these Terms and Conditions, contains or is derived from Open Source Software, then the Terms and Conditions governing the use of such Open Source Software can be found in the Open Source Software Licenses of the copyright owner, but not in these set of Terms and Conditions. If there is a conflict between these Terms and Conditions and the Terms and Conditions of the any applicable Open Source Software Licenses, then the Terms and Conditions of the Open Source Software Licenses will take precedence. For information about Open Source Components contained in Goods and the related Open Source licenses, see:

<http://support.taitradio.com/go/opensource>

12.8 The Client may make copies of any Software for reasonable back-up purposes and, upon request, shall advise Tait of the location of any Software and its back-up copies.

12.9 Subject to clause 12.8, the Client shall have no right to copy, adapt, reverse engineer, decompile, disassemble, lease, sell, assign, modify or create derivative works of any Software (in whole or in part), except: (i) as specifically permitted by law; or (ii) with Tait's prior written consent. The restrictions in these license conditions are made for the benefit of Tait and its suppliers, and may be enforced by such suppliers to the extent that they relate to any software and IPR supplied by such suppliers.

12.10 The license granted under clause 12.4, and any sub-license granted under clause 12.6 shall be without limit of time, however in the event that the Client, or any sub-licensee, fail to comply with these Terms and Conditions, the license, or any sub-license, will terminate automatically, by written notice from Tait. The Client shall, upon such termination, and at Tait's direction, immediately return to Tait the software and any back-up copies, or destroy the software and any back-up copies, and procure that sub-licensees do the same, and certify in writing to Tait that this has been done.

12.11 The Client represents and warrants that it has the necessary rights or licences to provide any Client materials, Client information or system access to Tait as may be required under these Terms and Conditions.

12.13 Software provided by Tait to the Client shall be provided, subject to compliance with any Licence Agreement to be executed by the Client for nonexclusive use of the Software.

12.14 The license shall terminate automatically, without notice from Tait, in the event that the Client fails to comply with the provisions of these Terms and Conditions.

### 13. CONTINGENCY SUM:

Where identified in the Project pricing, the contingency sum will be used to provide the following where necessary – additional filtering to eliminate interference, additional work related to Site Access and any other factors that could not be reasonably foreseen prior to commencement of the works.

### 14. CONFIDENTIALITY:

The Client and its employees and agents shall maintain strict confidentiality and secrecy concerning Tait's business, systems, Goods and Services. In particular, the Client shall not divulge any confidential information to any person. All correspondence between Tait and the Client is deemed to be confidential.

### 15. WARRANTY:

15.1 Upon receipt, Goods exhibiting defects in materials or workmanship may be returned by the Client to Tait for credit or replacement in accordance with the Tait Returns Policy. No claim for shortage, out-of-box failure, or damage in respect to Goods delivered, will be considered, unless notice is received in writing by Tait within seven (7) days from the earlier of the date of receipt of the Goods by the Client, or by a third party on the Client's behalf.

15.2 Tait provides an express limited warranty to the Client with respect to the Goods. To the maximum extent permitted by law, any and all implied warranties with respect to Goods or parts sold by Tait, including but not limited to implied warranties of merchantability, fitness for a particular purpose or noninfringement, are hereby excluded.

15.3 Tait warrants all parts of every new Tait branded Goods to be free from defects in materials or workmanship, as hereinafter provided, for two (2) years from the date of delivery excluding all accessories and batteries which are covered for one (1) year.

15.4 Tait will, at its option, repair or replace any Goods covered by this warranty, which becomes defective, malfunctions or otherwise fails to conform with this warranty under normal use and services, during the term of this warranty, at no charge for parts or labour.

15.5 The Client acknowledges that any software supplied cannot be tested in every possible permutation and accordingly Tait does not warrant that software supplied will be free of all defects, or that its use will be uninterrupted, or error free, or that software will interoperate with other software, unless stated otherwise in the agreed product specification.

15.6 Any Goods replaced shall become the property of Tait. In the event that it is not commercially feasible to dispatch repaired, or replacement, or substitute Goods within a reasonable time (being not less than thirty (30) days from the defect being logged with the Service Desk and if applicable, receipt by Tait of the relevant Goods), and Tait is unable to provide the Client with an alternative reasonably acceptable solution, Tait shall at the Client's request, accept the return of the Goods not useable in consequence of the warranted defect and refund to the Client that part of the price attributable to the same.

15.7 Tait shall not be liable for a breach of the warranty to the extent that:

- a) the defect arises and/or is exacerbated as a result of misuse, neglect (including without limitation, failure to notify Tait of the failure within a reasonable time), alteration, mishandling, attempted repair, maintenance or unauthorized manipulation by any person other than Tait authorized personnel; or
- b) the defect arises because the Client failed to follow Tait's instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice; or
- c) the Client alters or repairs such Goods without the prior written consent of Tait; or
- d) the serial number on Goods has been defaced or removed.

15.8 Where Goods are submitted for warranty services, but are found to be ineligible for service, Tait may, at its option, provide an estimated quotation for the repair which the Client may accept. The repair will be completed by Tait upon receipt of payment.

15.9 Repaired and replacement Goods provided pursuant to the provisions of this clause shall have the benefit of a warranty in the terms of this clause for the remainder of the Warranty Period for the

original Goods or three (3) months from provision of the repair or replacement, whichever is longer.

15.10 Subject to clause 11 relating to Third Party Equipment, the Client shall only be entitled to such warranty or other benefit as Tait has received from the manufacturer or licensor and is able to pass on. Except as provided in this clause, no warranty (whether express, statutory or implied) is given to the Client by Tait or any licensor of Tait in respect of the whole or any part of a Third Party Equipment, and such suppliers and licensors disclaim all such warranties including, without limitation, any warranties of merchantability, noninfringement or fitness for a particular purpose.

15.11 Any work carried out by Tait at the Client's request which is not required to satisfy Tait's warranty obligations under this clause shall be charged as additional services. Tait shall be entitled to dispose of any Goods that have been sent to Tait for repairs or upgrades which remain uncollected and in respect of which the Client has incurred charges that remain overdue for more than sixty (60) days.

15.12 The Goods are not designed, tested, manufactured or intended for operation or use in relation to any (i) on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; (ii) potentially explosive environments (unless intrinsically safe Goods are specifically ordered, supplied and used in accordance with the supplied instructions); (iii) design, construction, operation or maintenance of any nuclear facility; or (iv) any inherently dangerous, lifeendangering or life-support applications. If the Client (or the Client's users) uses the Goods for any such use, then such use is at the Client's (or the Client's user's) own risk, without any recourse against or with respect to Tait, and the Client shall indemnify and hold Tait and its third party licensors harmless from any claims for loss, cost, damage, expense or liability arising out of or in connection with any such use and performance.

15.12 Tait will use all reasonable endeavours to support Tait Goods and make available spare parts, components and subassemblies for a period of seven (7) years from the last date of shipment of the Goods ex-factory.

#### 16. COMMISSIONING:

Where the Client desires to be present at commissioning, Tait will make reasonable efforts to meet any Client required schedule. However, the Client will not impose unreasonable schedule requirements on Tait. Any rescheduling required due to the Client's inability to attend, may result in additional cost to the Client's account.

#### 17. HANDOVER:

Once a system supplied by Tait is in operation by the Client, or Tait advises of system completion, the system shall be deemed to be handed over to the Client. Handover shall be the date at which the warranty/maintenance period commences for any parts of the system for which the warranty period has not already started and the date at which final completion invoices can be issued.

#### 18. GOODS RETURNED FOR CREDIT:

Return of Goods will not be accepted without prior consent.

i) All Goods returned shall be in their original packaging and should not be soiled, obsolete or damaged.

ii) A fee will be charged for Goods returned that require refurbishment, fabrication or repackaging.

#### 19. WAIVER:

No forbearance or other indulgence granted to the Client shall in any way discharge the Client from any of the Client's obligations under these terms and Conditions, or otherwise affect any such obligation.

#### 20. CONSUMER GUARANTEES ACT (CGA):

The Client acknowledges that all Goods and Services supplied by Tait to the Client are acquired by the Client for the purpose of resupply in trade and the provisions of the Consumer Guarantees Act 1993 (as amended and varied from time to time) are expressly contracted out of to the extent permitted by law.

#### 21. SOLE AGREEMENT:

These Terms and Conditions shall constitute the sole agreement between the parties to the total exclusion of all others, except as agreed to by the parties in writing. All implied terms, conditions or warranties herein, or in the business

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relationship between Tait and the Client shall be expressly voided and excluded, other than those implied by statute.

#### 22. COMPLIANCE WITH TERMS AND CONDITIONS:

The Client shall ensure compliance with these Terms and Conditions by all of its principals, servants, agents and representatives.

#### 23. RESPONSIBILITIES:

Tait shall not be responsible for any promises, conditions, warranties or representations made by its representatives, employees or agents unless provided by Tait in writing.

#### 24. GOVERNING LAW AND RESOLUTION OF DISPUTES:

These Terms and Conditions and all matters governing the business relationship and the Client shall be construed in accordance with the laws of New Zealand and both parties submit to the exclusive jurisdiction of the Courts of New Zealand to decide any dispute under these terms and conditions.

#### 25. ASSIGNMENT:

Neither party may assign their rights or obligations applicable to these Terms and Conditions or the contract between the parties without the written consent of the other party. Such consent shall not be unreasonably withheld or delayed.

#### 26. WEATHER:

While every effort will be made to arrange required site visits to correspond with reasonable weather it must be understood that weather is outside the control of Tait. As a consequence weather factors that prohibit required access to, or work on, site will be reasonable cause for extension in the time to complete the project.

#### 27. FORCE MAJEURE:

Tait shall not be liable for delay in delivery, nor for any failure to perform this agreement, or for loss or damage to the Products directly or indirectly caused by any Act of God, fire, theft, riot, war, embargo, strikes, earthquake, shortages of labour, delays in import, confiscation or other action of any government or any other occurrence (whether or not of a similar nature to those specified) beyond the control of Tait. Tait agrees to make and the Client agrees to accept delivery whenever such causes of delay have been remedied making delivery possible.

Under no circumstances shall either party be liable for consequential damages.

#### 28. SPECIFICATIONS:

Tait reserves the right to modify specifications of Products provided that the modification does not materially affect performance. Tait will use its best efforts to ensure that products are accurately described in company publications.

However, no direct or consequential responsibility can be assumed by Tait as a result of any inaccuracy or error.

#### 29. LIMITATION OF LIABILITY

29.1 The Client warrants that it has not relied on any representation made by Tait or upon any catalogs or publicity material produced by Tait which has not been stated expressly in these Terms and Conditions and no statement made or agreed to and no liability undertaken orally shall be binding upon Tait unless confirmed by Tait in writing.

29.2 UNLESS OTHERWISE PROVIDED BY APPLICABLE LAW, TAIT'S LIABILITY, IF ANY, FOR ANY ALLEGEDLY DEFECTIVE PRODUCT, PART OR SOFTWARE SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCT, PART OR SOFTWARE,

AT TAIT'S OPTION, AND THE LIABILITY OF TAIT, IF ANY, FOR DAMAGES RELATING TO DEFECTIVE PRODUCT, PART OR SOFTWARE SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE ITEM IN QUESTION.

29.3 Neither Party's liability for any of the following is excluded or limited by these terms:- (i) fraud or other criminal act; (ii) fraudulent misrepresentation; (iv) breach of any confidentiality obligations; and (iii) for anything else in relation to which, under the law governing these terms, liability cannot be excluded or limited.

29.4 Subject to clause 29.3, neither Tait, nor any supplier or licensor of Tait, nor the Client shall be liable under or in relation to this Agreement (whether the liability arises for breach of contract, negligence, under an indemnity, obligation to refund, under any other theory of law or for any other reason) for any: (i) loss of profits; (ii) loss of turnover; (iii) loss of or damage to goodwill or reputation; (iv) loss of, or loss of the use of, any software or data; (v) losses or liabilities in relation to any other contract; or (vii) indirect, special or consequential loss or damage. For the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

29.5 Subject to clauses 29.3 and 29.4, the total liability of Tait in connection with these Terms and Conditions or any order subject to these Terms and Conditions (whether the liability arises from breach of contract, warranty, negligence, under an indemnity, obligation to refund, under any other theory of law or for any other

reason) shall be limited to the direct damages recoverable under law but not to exceed the total amount paid or payable by the Client for the Products, Software or Services with respect to which the liability arises.

29.6 The Client agrees that it shall take reasonable precautions (relative to the importance to the Client of the Products concerned), including without limitation backing up software and data at reasonable intervals, implementing back-up systems or redundancy and maintaining suitable numbers of spare units at suitable locations (at a minimum to Tait recommended spares levels). Subject to clause 29.3, Tait shall have no liability for any losses suffered by the Client to the extent that the loss concerned would have been prevented by the taking of such reasonable precautions.

29.7 Notwithstanding anything in these terms Tait will not be liable for any claim for damages or losses malfunctions or failures caused by the following : (a) the Client's failure to comply with reasonable directions of Tait with respect to operation of the Products, (b) computer programs not supplied by Tait, (c) Modification, revision, variation, translation or alteration of the Products not authorised by Tait, (d) incorrect use of the Products, (e) incorrect or unreliable information supplied to Tait by the Client or persons under the control of the Client, (f) improper installation of the Products by the Client, (g) malicious or reckless abuse of Products by users.

### 30. INTRINSICALLY SAFE PRODUCT SALES

30.1 If the contract is for the purchase of Intrinsicly Safe (IS) Products (both IS radios and IS accessories) the following terms shall apply:

- a. Tait Intrinsicly Safe portable radios are certified to the standards and ratings specified in the relevant IS Certificate as held by the Certification Body.
- b. The Client confirms that the IS rating of the ordered IS Product is appropriate for the conditions of use required by the Client. The Client further confirms that the functional requirements for the IS Products have been agreed with Tait and are as set out in the specification, statement of work or other agreed requirements document. Where no specification, statement of work or agreed requirements are specified then the Client acknowledges that the standard Tait product specification applies.

- c. Tait shall not be held liable for any loss or damage resulting from the incorrect use or servicing of Intrinsicly Safe Products. An Intrinsicly Safe Product must be serviced in accordance with Tait repair policy and at Tait authorised facilities in order to maintain its IS rating.
- d. If the Client is acquiring the IS Product under this contract for resale and is not the end user, the Client shall maintain accurate records of all Tait IS product sales made including product serial numbers and end user details. In the event that Tait identifies a safety critical defect the Client shall make such information available to Tait immediately upon request.

### 31. EXPORT

31.1 The Client acknowledges that the systems, Goods and Services sold or licensed under the Contract may be subject to export controls under the laws of the United States, Canada, New Zealand, European Union and any other relevant jurisdiction. The Client agrees to fully comply with all relevant export laws and regulations of the United States, Canada, New Zealand, European Union and any other relevant jurisdiction and shall indemnify and hold Tait harmless from and against any loss, damage, or liability arising out of the Client's failure to comply with this Clause 31.1.

31.2 If export or import restrictions are imposed or export or import licenses are cancelled, withdrawn or not renewed, then the Client shall pay for all the systems, Goods and Services already delivered and payments already made may be used by Tait in respect of claims, or demands made, or losses incurred under or in connection with the Contract.

31.3 If the Client is not the end user of the systems and Goods, the Client shall provide to Tait the name of such end user and the country of use for the systems and Goods and shall ensure that the end user complies with the provisions of this Clause 31.

### 32. LOCATION BASED SERVICES

To provide location-based services on Tait products, Tait may collect and use precise location data, including real-time geographic location of your Tait device. This location data is collected anonymously in a form that does not personally identify you and is used by Tait to provide and improve location-based products and services.