

# Eddyfi Africa Pty Ltd (formerly Silverwing Africa Pty Ltd) – General Sales Terms and Conditions

Your attention is drawn in particular to the provisions of clause 10, 12 and 13

1. **SELLER:** The seller shall be Eddyfi Africa Pty Ltd, a company duly registered according to the laws of the Republic of South Africa under registration number 2009/014597/07 ("EDDYFI"). "Products" refers to Eddyfi, Inuktun, M2M, Silverwing, Teletest and/or TSC brand products.
2. **VALIDITY:** Unless otherwise specified on the EDDYFI quotation, all quotations are firm for ninety (90) days from the date of the quotation. The Order shall only be deemed to be accepted upon the issuance of a written order acknowledgement (OA) by EDDYFI.
3. **PRICES, TAXES AND DUTIES:** All prices are effective only as set forth in an EDDYFI quotation according to the schedule in that quotation. Orders not placed in accordance with the EDDYFI quotation (e.g. late order or requesting expedited delivery) may be accepted or may be subject to re-quotation and imposition of expedite fees, as determined by EDDYFI. All prices are subject to change without notice and are subject to correction of clerical errors.

All payments shall be made without any deduction for or on account of any taxes, charges, fees and withholdings of any nature, unless if required by law. In such a case, Buyer will pay EDDYFI the additional amounts necessary to ensure receipt by EDDYFI of the full amount which would have been received but for the deduction.

4. **PAYMENT:** Except as otherwise agreed to by EDDYFI in writing, and upon approved credit, invoices will be issued as of the date of shipment and shall become due and payable in the lawful currency specified in the quotation thirty (30) days after the issuance thereof. All invoiced amounts unpaid and outstanding will be subject to a charge of one and one half percent (1½%) per month (18% per annum) or up to the maximum allowed by applicable law from the date due.
5. **DELIVERY, TITLE, AND RISK OF LOSS:** Unless otherwise specified on the EDDYFI quotation, delivery is FCA (Manufacturing Site). EDDYFI will ship goods at the request and cost of the Buyer and in the absence of specific Buyer instructions, goods will be shipped via the carrier EDDYFI deems most practical. In any case, delivery and risk of loss is in accordance with INCOTERMS 2010. Title to EDDYFI products shall pass to the Buyer upon full payment of the invoice(s). No claim for error in shipment will be considered unless made within ten (10) days of the Buyer's receipt of goods.
6. **CANCELLATION:** Subject to the rights afforded a consumer in terms of the provisions of the Consumer Protection Act, no order may be cancelled by the Buyer, in whole or in part, without EDDYFI prior written consent. Any approved cancellation is subject to assessment of a cancellation fee as determined by EDDYFI. EDDYFI may cancel the order without liability if in its reasonable opinion the Buyer becomes insolvent or unable to pay its debts as they fall due (commercial insolvency as envisaged in terms of the Insolvency Act).
7. **RETURNS AND RESTOCKING FEE:** Except as provided for under the Limited Product Warranty set out below and the relevant provisions of the Consumer Protection Act if applicable, EDDYFI does not allow for return and restocking of products. However, if EDDYFI approves a return, returns are subject to a return/restocking fee as determined by EDDYFI. Special designs and non-catalog items may not be returned. All returned product shall be sent to EDDYFI freight prepaid by the Buyer in packaging appropriate to prevent damage in transit.
8. **ALTERATION:** EDDYFI reserves the right to alter component designs without notice provided this has no material effect on the functionality of the goods..
9. **INTELLECTUAL PROPERTY:** All intellectual property rights (including, without limitation, patents, trademarks, registered designs and any rights to apply for same, copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and existing at any time in Products or arising out of or relating to the design or manufacture of Products or the provision of services shall belong to and remain vested in EDDYFI.

10. **LIMITED PRODUCT WARRANTY:** Except as otherwise agreed to by EDDYFI in writing, Products such as instruments, mechanical products, spare parts, probes and cables are warranted, to the original Buyer only, for use solely by the Buyer or direct affiliate, against defects in material and workmanship for a period of twelve (12) months from the date of Delivery. Probes and cables are considered consumables and require periodic replacement due to wear. EDDYFI does not warrant the service life of probes or cables. EDDYFI does not warrant any Products against defects caused by misuse, abnormal operating conditions, alterations or damage caused by events beyond the control of EDDYFI shall not be liable for product defects caused by or resulting from any inaccuracies in any drawing, description or specification supplied by the Buyer.

Upon the Buyers written request during the warranty period, EDDYFI, will either repair or replace defective products within a reasonable time. The original term of warranty applies, without extension, for repaired or replacement products. All defective merchandise shall be sent to EDDYFI freight prepaid by the Buyer in packaging appropriate to prevent damage in transit. The Limited Product Warranty does not apply to periodic calibration or minor maintenance as described in Products operating manuals.

All Buyer paid repairs performed by EDDYFI are warranted against defects in materials and workmanship for 90 days from the completion of repair. Upon the Buyer's written notice of defect within the 90 day period, EDDYFI will replace the defective part(s) and/or re-perform the service. This warranty is limited to failures in areas directly related to the repair performed. After a warranty repair, the "current" calibration is validated but a new calibration is not provided free of charge.

EDDYFI does not warrant any non-Eddyfi/Inuktun/M2M/Silverwing/Teletest/TSC brand products.

11. **SOFTWARE:** Eddyfi, Inuktun, M2M, Silverwing, Teletest or TSC softwares are subject to specific Software License Agreement. The software is not sold but granted under a non-exclusive and restrictive license. The software must be used with the software-enabled hardware or software key supplied by EDDYFI.
12. **LIMITED SERVICE WARRANTY:** EDDYFI agrees to perform service for the Buyer on the expressed condition that EDDYFI's sole obligation will be that the service will be performed in a professional and competent manner and will be of the kind and quality described in the EDDYFI quotation.

EDDYFI does not warrant the fitness, suitability or condition of the Buyer's equipment upon which EDDYFI services are performed. If there is a specific problem with the quality of the service performed, the Buyer shall inform EDDYFI in writing and, if feasible, the service will be re-performed at no additional charge. In the event that corrective services are performed by EDDYFI, the Buyer must provide adequate access to the equipment to allow EDDYFI to perform these services. Any additional costs incurred to provide access to the equipment will be the responsibility of the Buyer. If re-performance of the service is not feasible, EDDYFI and the Buyer shall negotiate in good faith to arrive at an equitable settlement.

**REGARDLESS OF WHETHER UNDER CONTRACT OR DELICT, NEGLIGENCE, OR ANY OTHER LEGAL THEORY, THE LIMITED PRODUCT AND SERVICES WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. THE LIMITED PRODUCT WARRANTY AND THE LIMITED SERVICE WARRANTY ARE THE SOLE LIABILITY OF EDDYFI WITH REGARD TO ITS PRODUCTS AND SERVICES.**

13. **LIMITATION OF LIABILITY:** EDDYFI's total liability for any and all losses and damages arising out of any and all causes whatsoever including, without limitation, defects in the goods, services, software, documentation, or sitework supplied under this quotation, shall in no event exceed the purchase price of the applicable item(s). In no case shall EDDYFI be liable for any special, incidental or consequential damages based upon breach of warranty, breach of contract, delict, negligence, direct liability or any other legal theory. Excluded damages include but are not limited to; loss of profit, loss of savings or revenue, loss of use of the product or any associated equipment, downtime, the claims of third parties, including the Buyer, damage to property or injury to personnel.

14. **CONSUMER PROTECTION ACT:** If the Consumer Protection Act No. 68 of 2008 (as amended from time to time) ("CPA") is applicable to: (a) the relevant transaction (or a portion thereof) between the Buyer and the supplier pursuant to this Agreement (the "Relevant Transaction"); and (b) certain clauses in this Agreement, then such clauses shall be read and interpreted as being subject to the relevant provisions of CPA. If the CPA is not applicable to certain clauses in this Agreement then such clause shall not be read as being subject to the CPA.

If the Buyer is not the final consumer of the goods supplied to it in terms of this Agreement then the Buyer hereby indemnifies the supplier against any claims made by the final consumer of the goods against the supplier in relation to the CPA on the basis that the Buyer shall pay the supplier one Rand for each one Rand's worth of loss or damage suffered or incurred by the supplier pursuant to any aforesaid claim made by the final consumer against the supplier. The supplier's rights of indemnification as aforesaid are not limited or adversely affected regardless of whether: (a) the possibility of such loss or damage suffered or incurred by the supplier was disclosed to the Buyer; (b) any special circumstances applying to the supplier were contemplated, or should reasonably have been foreseen by the supplier and the consumer; and/or (c) the supplier and the Buyer contemplated, or should reasonably have foreseen, such losses or damages.

15. **COMPLIANCE WITH LAW AND EXPORT CONTROL REGULATIONS:** The Buyer agrees to take no action which will cause EDDYFI to be in violation of any law. Such laws shall include but not be limited to the Canadian, United Kingdom, EU, US, RSA or United Arab Emirates Export Control Regulations or equivalent. Diversions, use, export, re-export contrary to the law is prohibited. The products may not be exported or re-exported to countries or to entities and persons that are ineligible under the Canadian, United Kingdom, EU, US, RSA or United Arab Emirates Export Control Regulations or equivalent to receive commodities, technology and/or software. Buyers that intend to resell or pass the goods to a third party, must declare all End User information to EDDYFI. It is the responsibility of Buyer to understand the seriousness of exporting Products without proper licenses or authorizations.
16. **APPLICABLE LAW:** All transactions shall be governed in all respects by, and shall be construed according to, the laws of the Republic of South Africa;

The Customer agrees and consents in terms of Section 45 of the Magistrate's Court Act ("the MCA") to the jurisdiction of the Magistrate's Court having jurisdiction in respect of the Buyer or the claim in terms of Section 28 of the MCA in respect of any proceedings or claims or action being instituted against the Buyer by EDDYFI in terms hereof or otherwise, notwithstanding that the amount of such claim may exceed the jurisdiction of such Magistrate's Court, provided that EDDYFI may in its discretion be entitled to bring such proceedings in any other court of competent jurisdiction, the Buyer agreeing and submitting itself to the jurisdiction of the Western Cape Division of the High Court of South Africa, Cape Town or any other division of the High Court of South Africa chosen by EDDYFI in the event of EDDYFI exercising its rights in terms hereof.

17. **FORCE MAJEURE:** EDDYFI shall not be liable for any delay or failure to ship goods or provide services if such delay or failure is caused by circumstance beyond EDDYFI control, including but not limited to labor dispute, strike, embargo, war, riot, insurrection, civil commotion, fire, flood, accident, storm or any act of God, failure of supplies or transportation, governmental action or other causes beyond EDDYFI reasonable control.
18. **CONFLICTING TERMS:** In the case of conflict between the terms or conditions of the Buyer's order and the EDDYFI terms and conditions herein, EDDYFI terms and conditions shall apply.

**ALL SALES ARE MADE PURSUANT TO THESE TERMS AND CONDITIONS AND ANY TERMS IN THE QUOTATION DOCUMENT. ALL ORDERS ARE RECEIVED WITH THE UNDERSTANDING THAT THEY ARE PLACED UNDER THESE TERMS AND CONDITIONS.**

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