

## TLA Limited

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### Terms of Trade

Last updated: 26/02/2019

### Definitions Section

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#### 1. Definitions

- 1.1 In these Conditions, unless the context requires otherwise:
- (a) **Buyer** means the person who buys or agrees to buy the Products from TLA.
  - (b) **Conditions** means these terms of trade and any special terms and conditions agreed in writing by TLA.
  - (c) **Delivery Date** means the date specified by TLA when the Products are to be delivered.
  - (d) **EULA** means TLA's end user licence agreement for Software, a copy of which is available at the websites or on request.
  - (e) **Order** means a request (either verbal or in writing) by the Buyer to purchase Products
  - (f) **Price** means the price for the Products, excluding carriage, packing, insurance and GST.
  - (g) **Products** means the products which the Buyer agrees to buy or licence from TLA, including any Software.
  - (h) **Product Warranty** means any TLA or third-party manufacturer warranty provided with the Products or otherwise expressly confirmed by TLA in writing.
  - (i) **Software** means any software supplied by TLA.
  - (j) **TLA** means the **TLA Limited (New Zealand registered company; company number 5705278)** and includes its subsidiaries and related companies.
  - (k) **Websites** means our websites located at the url <http://tla.net.nz>, <https://talkingmimes.com>, and <https://talkingmimesmustdie.com>

### Acceptance of Conditions

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#### 2. Conditions Applicable

- 2.1 These Conditions apply to all Orders, to the exclusion of all other terms and conditions, including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All Orders are deemed to be an offer by the Buyer to purchase Products and each Order constitutes a separate contract governed by these Conditions.
- 2.3 Acceptance of delivery of the Products is conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 No variation to these Conditions (including to any special terms and conditions agreed between the parties) will apply unless agreed in writing by TLA.

## Basis of Sale

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### 3. Intellectual Property

- 3.1 The specifications and design of the Products (including the intellectual property rights in any Software and any other intellectual property rights in the Products) are the property of TLA or their respective owners or licensors.

### 4. Sale by Description

- 4.1 TLA will supply the Products in accordance with the description contained in TLA's websites or other promotional materials.
- 4.2 TLA or its suppliers may, from time to time, make changes in the specification of the Products which are required to comply with any applicable safety or statutory requirements, or which do not materially affect the quality or fitness for purpose of the Products.
- 4.3 Any contractual description of the Products by TLA relates to the identity of the Products, but only if it relates to central characteristics of the Products or any substantial ingredient in their identity.

### 5. Software Licence

- 5.1 The Buyer acknowledges that, on installation of any Software, the Buyer or the end user of the Software will be required to accept the EULA.

### Price and Payment

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#### 6. Price and payment

- 6.1 The Price will be the price stipulated in TLA's published price list or the websites, current at the Date of Delivery.
- 6.2 Unless otherwise agreed in writing, TLA will not be required to deliver the Products until the Buyer has paid for them (plus GST and any additional charges) and time of payment will be of the essence.
- 6.3 The Buyer may not withhold payment of any invoice or other amount by reason of any right of set off or counterclaim which the Buyer may have, or allege to have, or for any reason whatever.

#### 7. Method of payment

- 7.1 The Price may be paid by cash, direct payment to TLA's bank account or electronically to TLA's PayPal account ([intel@tla.net.nz](mailto:intel@tla.net.nz)).

### Delivery

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#### 8. Delivery of Products

- 8.1 Delivery of the Products (other than Software) will be made to the Buyer's address on the Delivery Date. The Products may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Buyer. The Buyer will make all arrangements to take delivery of the Products whenever they are tendered for delivery.
- 8.2 Software may be made available for download or by email.
- 8.3 The Buyer must notify to TLA any loss or damage to the Products within two days of receipt and must hold the Products for inspection to enable a claim to be made on the carrier. The Buyer must immediately notify TLA

if the Products are not received within 10 days of the date of the invoice.

- 8.4 The Buyer must properly obtain all necessary import licences, clearances and other consents necessary for the purchase of the Products. **TLA** will promptly, upon request, supply all documents reasonably required by the Buyer for this purpose.
- 8.5 **TLA** will not be liable to the Buyer for late delivery or short delivery of the Products.
- 8.6 The Buyer will be deemed to have accepted the Products 48 hours after delivery to the Buyer.
- 8.7 After acceptance, the Buyer will not be entitled to reject any Products which are not in accordance with the Order.
- 8.8 When the Buyer accepts, or has been deemed to have accepted any Products, then **TLA** will, except as set out in clause 12, have no liability whatever to the Buyer in respect of those Products.
- 8.9 **TLA** may deliver the Products by separate instalments. Each separate instalment must be invoiced and paid for in accordance with these Conditions (or **TLA** may raise a separate invoice and require payment for each instalment).
- 8.10 If the Buyer fails or refuses to take delivery or to pay for any one or more instalments of the Products on the due dates **TLA** may (at the sole option of **TLA**):
- (a) Without notice to suspend further deliveries of the Products pending payment by the Buyer; and/or
  - (b) To treat the Order as repudiated by the Buyer.

## 9. Exclusion Clause for Delay in Delivery

- 9.1 **TLA** will not be liable for any loss or damage whether due to failure by **TLA** to deliver the Products (or any of them) promptly or at all.
- 9.2 No delay by **TLA** will relieve the Buyer should be bound to accept delivery and to pay for the Products in full, provided the delivery is tendered at any time within 1 month of the delivery date.

## Termination of the Agreement

### 10. Termination of supply

- 10.1 If:
- (a) the Buyer fails to make payment of the Price;
  - (b) the Buyer commits any other breach of these Conditions;
  - (c) any distress or execution is levied upon any of the Buyer's property;
  - (d) the Buyer offers to make any arrangement with its creditors;
  - (e) any bankruptcy petition is presented against the Buyer;
  - (f) the Buyer is unable to pay its debts as they fall due;
  - (g) where the Buyer is a company, any resolution or petition to wind up the Buyer (other than for the purposes of amalgamation or reconstruction without insolvency) is passed or presented;

- (h) a receiver, administrator, administrative receiver, or manager is appointed over the whole or any part of the Buyer's business or assets; or
- (i) the Buyer suffers any similar proceedings under foreign law,

then:

- (j) all sums outstanding in respect of any Orders shall become payable immediately; and
- (k) in addition, **TLA** may, in its absolute discretion, and without prejudice to any other rights it may have:
  - (i) suspend all future supply of Products to the Buyer; and/or
  - (ii) terminate all Orders without liability on its part; and/or
  - (iii) charge interest at the rate of 19.95% per annum on all sums outstanding;
  - (iv) collect any sums owing, in which case the Buyer will be liable for any collection costs incurred on a solicitor / own client basis;
  - (v) exercise any of its rights under clause 11.

- 10.2 **TLA** will be entitled to a general lien on all Products of the Buyer in **TLA**'s possession (including Products of the Buyer which have been paid for) for the unpaid price of all Products sold to the Buyer by **TLA** under any Order.

## 11. Retention of Title and Personal Property Securities Act 1999 (PPSA)

- 11.1 Products are at the Buyer's risk from delivery.
- 11.2 Despite delivery having been made, property in the Products does not pass from **TLA** until:
- (a) the Buyer has paid the Price plus GST in full; and
  - (b) all other sums whatever due from the Buyer to **TLA** are paid in full.
- 11.3 Where a security interest is created under the PPSA, the Buyer agrees that the security interest in the Products extends to the Proceeds (as defined in s16 PPSA) and acknowledges that the security interest will continue until **TLA** gives the Buyer a final release.
- 11.4 **TLA** may at its sole discretion and in such manner as it determines allocate payments made by the Buyer to outstanding amounts due in relation to any Products supplied by it.
- 11.5 Until property passes, the Buyer agrees that it:
- (a) will keep the Products insured to their full insurable value against loss or damage in **TLA**'s name as unpaid vendor;
  - (b) holds the Products as bailee for, and in a fiduciary relationship with, **TLA**;
  - (c) will keep the Products separate and readily identifiable while the Products are in its possession or control; and
  - (d) will not do or omit to do, or allow to be done, anything which could adversely affect the Products or **TLA**'s security interest.
- 11.6 If the Buyer defaults under these Conditions or under any other payment obligation to **TLA** :

- (a) Each security interest created in favour of **TLA** will become immediately enforceable.
  - (b) **TLA** may, at any time, by notice to the Buyer declare all or any part of the moneys owing to it to be due and payable immediately, upon demand or at a later date as it may specify.
  - (c) **TLA** may:
    - (i) enter the Buyer's premises where the Products are stored to take possession of and either sell or retain the Products;
    - (ii) pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realisation of, the Products.
    - (iii) appoint a receiver in respect of any Products (without the Buyer's consent) and any receiver is authorised to do anything referred to in these Conditions and otherwise to exercise all rights and powers conferred on a receiver by law.
- 11.7 **TLA** will not be liable for any damage caused to the Buyer or the Buyer's premises in exercising its rights under this clause.
- 11.8 The Buyer must pay all of **TLA**'s costs, losses and other liabilities (including legal expenses on a solicitor-client basis) incurred by it in connection with the exercise, or attempted exercise, of any right arising under this clause or the PPSA.
- 11.9 Nothing expressed in the other provisions of this clause limits or otherwise adversely affects **TLA**'s rights under the PPSA.
- 11.10 The Buyer waives its rights under sections 114(1)(a); 116; 120(2); 121; 125; 129; 131; 133 and 134 of the PPSA and any rights to receive a copy of the Verification Statement or a Financing Statement or Financing Change Statement relating to the Security Interest.
- 11.11 The Buyer must give written notice to **TLA** immediately in writing upon any change of name or any change in management or control. In the event of any change in management or control the Buyer agrees to make further credit support available to **TLA** if requested.
- 11.12 If requested by **TLA**, the Buyer must promptly do all things (including signing any document) and provide all information necessary to enable **TLA** to perfect and maintain the perfection of any and each security interest granted to **TLA** by the Buyer (including by registration of a Financing Statement).

## Guarantees and Liability

### 12. Guarantees

- 12.1 Where the Products are of a kind commonly acquired for personal, domestic or household use or consumption and the Consumer Guarantees Act 1993 applies to an Order;
- (a) If any of the Products fail to comply with any guarantee in the Consumer Guarantees Act, **TLA** will repair or replace those Products.
  - (b) Without excluding **TLA**'s obligations under the Consumer Guarantees Act 1993, the Buyer acknowledges that **TLA** does not provide

any express guarantees (as defined in that Act) other than those set out in the Product Warranty.

- 12.2 If the Buyer acquires or holds itself out as acquiring the Products for a business purpose, the Buyer agrees that the Consumer Guarantees Act 1993 does not apply.
- 12.3 The following terms apply where the Consumer Guarantees Act 1993 does not apply to an Order:
- (a) Defective Products or Products which do not comply with an Order or the Product Warranty may, at **TLA**'s discretion, be repaired or replaced, or the price refunded.
  - (b) Except as otherwise set out in the Product Warranty, any right which the Buyer may have to reject non-confirming or defective Products will only be effective if:
    - (i) the Buyer notifies **TLA** in writing within 48 hours following delivery and **TLA** is given the opportunity to inspect the Products, and the Products are returned un-used, re-saleable and/or in the condition the Buyer received them; and
    - (ii) the Buyer is not in default in relation to any amount owing.
  - (c) **TLA** accepts no liability for any claim by the Buyer, or any other person including, without limitation, any claim relating to or arising from:
    - (i) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for purpose, tolerance to any conditions, merchant ability or otherwise, whether expressed or implied by law, trade, custom or otherwise, or
    - (ii) Any representation, warranties, conditions or agreements made by any agent or representative which are not expressed confirmed by **TLA** in writing, or in relation to any services forming part of the supply of the Products which have been performed by any third party, and the Buyer agrees to indemnify **TLA** against any such claim.
  - (d) Nothing in these Conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by that Act and these terms are to be modified to the extent necessary to give effect to that intention.

### 13. Exclusion of Liability

13.1 To the maximum extent permitted by law:

- (a) **TLA** will be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by **TLA** of these Conditions.
- (b) Under no circumstances will the liability of **TLA** exceed the Price.

## General

### 14. Force majeure

- 14.1 Neither party will be liable for any default due to any event beyond the reasonable control of either party;

## 15. Notices

- 15.1 Any notice under, or in connection with these Conditions, must be in writing and must be served by first class post or by hand on a party, sent by recorded delivery or email at or to the trading address of the party last known.
- 15.2 In the absence of evidence of earlier receipt, any notice will be deemed to be duly served;
- (a) If delivered personally when left at the address;
  - (b) If so by recorded delivery three days after posting; and
  - (c) If sent by email, when received.

## 16. Privacy

- 16.1 **TLA** may request and collect personal information about the Buyer to evaluate whether to agree to accept any Order. The failure to provide the information requested by **TLA** may result in the Order being declined or an Order subsequently being terminated by **TLA**.
- 16.2 The Buyer has rights of access to personal information so collected, subject to the provisions of the Privacy Act 1993.
- 16.3 The Buyer agrees that its personal information may be used by **TLA** to advise the Buyer of **TLA**'s other Products and services.
- 16.4 The Buyer authorises the disclosure of personal information held by any other party to **TLA** regarding any previous sale agreements entered into by the Buyer and/or any information in relation to the financial position of the Buyer.
- 16.5 The Buyer agrees that **TLA** may release to other parties information regarding any Order in order to enforce these Conditions.

## 17. Dispute resolution

- 17.1 If any dispute or difference arises between the parties as to the meaning of these Conditions, or any matter or thing arising out of or connected with these Conditions, then the parties must attempt to settle that difference by negotiation.
- 17.2 Where negotiation is unsuccessful then the dispute will be referred to mediation with the mediator being agreed by the parties or in the absence of agreement being appointed by LEADR. The costs of mediation will be borne equally by the parties.

## 18. Law of Contract

- 18.1 This contract will be governed by the laws of New Zealand and the parties irrevocably accept the jurisdiction of the New Zealand Courts.