

# Tri-Tech Forensics, Inc. dba Rescue Essentials

## TERMS AND CONDITIONS OF SALE

**1. Contract.** These terms and conditions will apply to all sales of products by Tri-Tech Forensics, Inc. dba Rescue Essentials (TTF) to Buyer, including those referred to in this Order Confirmation and all future orders. TTF's acceptance of Buyer's purchase order is expressly limited to the terms and conditions contained herein and any provisions of Buyer's purchase order which are consistent with the terms and conditions contained herein. Any and all other terms and conditions proposed by Buyer in any fashion, including, without limitation, any provisions regarding the indemnification of, or assumption of liability to, Buyer, are objected to and rejected by TTF, unless they have been accepted in writing by an authorized representative of TTF and specifically refer to the proposed terms and conditions. Acceptance of products from TTF by Buyer shall be deemed to be an acceptance of these terms and conditions. Notwithstanding the foregoing, if at the time of Buyer's purchase of products there is in effect a supply or purchasing agreement between TTF and either Buyer or a group purchasing organization or integrated dealer network of which Buyer is a member, any of these terms and conditions which are inconsistent with the provisions of such supply or purchasing agreement shall be ineffective and the terms of the supply or purchasing agreement shall control.

**2. Shipping.** Products will be shipped as specified in this Order Confirmation FOB Origin. Shipping charges will be prepaid and added to the invoice unless collect shipment is requested by buyer. Shipment of products is subject to availability of TTF's inventory and no particular shipment or delivery date is guaranteed. TTF reserves the right to fill orders with one or more shipments.

**3. Force Majeure.** TTF shall not be responsible nor liable to Buyer for any failure to perform its obligations to Buyer as a result of any strikes, work stoppages or labor unrest, earthquakes, fires, floods, storms or other natural disasters, shortages of materials or supplies or availability of goods or inventory, acts of war, terrorism, crimes, unrest or violence, shipping or other transportation delays or restraints, acts, laws, rules or regulations of any governmental or legal authority, or any other cause or circumstance beyond TTF's reasonable control.

**4. Payment Terms.** Except as otherwise specified in this Order Confirmation or TTF's invoice to Buyer, the terms of payment for each order of Buyer shall be net cash (US Dollars) in thirty (30) days from date of invoice.

**5. Taxes.** Any sales, use or excise taxes or other charges or levies which TTF is required to pay or collect under any applicable law, ordinance, rule or regulation (domestic or foreign), upon or with respect to the sale, shipping, delivery, storage or use of the products purchased by Buyer, shall be for the account of Buyer and Buyer agrees to pay the amount thereof to TTF, as invoiced or upon request.

**6. Product Warranty.** TTF warrants that its products sold to Buyer pursuant hereto, other than products which have been reconditioned or repaired for Buyer, will be free from defects in workmanship and materials from their date of shipment until (i) their expiration date, if they have an expiration date, or (ii) one (1) year thereafter, if they do not have an expiration date, provided they are not used in any application or manner not specified or recommended by TTF in their Instructions For Use or otherwise misused or abused. TTF makes no warranty whatsoever with respect to reconditioned or repaired products. TTF's sole liability and obligation to Buyer in the event of a breach of the foregoing warranty shall be to replace the defective product or products or, in its discretion, to provide a credit in the amount of the purchase price thereof. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TTF NEITHER MAKES, NOR SHALL HAVE ANY LIABILITY UNDER, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR AN INTENDED USE OR PURPOSE. NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE BY ANY REPRESENTATIVE, AGENT OR EMPLOYEE OF TTF WHICH IS NOT SPECIFICALLY SET FORTH HEREIN SHALL BE BINDING UPON TTF. All claims for breach of the foregoing express warranty shall be made by Buyer (and no other party) in writing within thirty (30) days after discovery of the defect. The claim shall include a returned goods authorization number which may be obtained from TTF prior to assertion of the claim. In addition, the claim shall be accompanied by the return of the defective product or products to TTF, when possible. Any claim not made in compliance herewith shall be deemed to have been waived.

**7. LIMITATION OF LIABILITY.** IN NO EVENT SHALL TTF BE LIABLE TO BUYER WITH RESPECT TO ANY SALES OF PRODUCTS, WHETHER UNDER THEORIES OF CONTRACT, TORT, INDEMNITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOST PROFITS OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF TTF HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

**8. Product Returns.** Nonconforming Products. Products shipped to Buyer which do not conform to Buyer's order may be returned to TTF within thirty (30) days of shipment for replacement or reimbursement or credit in the amount of their purchase price plus shipping costs and taxes, provided that they are accompanied by a returned goods authorization number. Products for which a warranty claim is validly made under Section 6 hereof shall be returned as specified in Section 6. Conforming Products. All conforming products (which are products other than nonconforming products as specified above, defective products returned under the provisions of Section 6, or recalled products) may be returned only with the prior approval of an authorized representative of TTF, as evidenced by the issuance of a returned goods authorization number by TTF. TTF will not under any circumstances accept the return of conforming products which: (i) are not returned within thirty (30) days of shipment, (ii) are custom products made to Buyer's specifications, (iii) are damaged (other than goods which were received by Buyer in damaged condition under circumstances in which TTF is responsible for the damage), (iv) have a remaining shelf life of less than twelve (12) months, or (v) comprise less than a full case of products. If TTF accepts the return of conforming products, TTF reserves the right to charge, and Buyer agrees to pay, a restocking charge in an amount not in excess of twenty-five percent (25%) of the returned products' purchase price.

**9. Product Recalls.** If any products shipped to and held by Buyer are or become subject to a recall mandated by the United States Food and Drug Administration, Buyer shall promptly return them to TTF and TTF will either replace them with comparable products not subject to recall or provide a reimbursement or credit to Buyer in the amount of their purchase price.

**10. Adequate Assurance/Suspension of Orders.** TTF may, at any time or times, suspend performance of any order to Buyer or require payment in cash, security or other adequate assurance satisfactory to TTF when, in TTF's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

**11. Assignment.** Buyer shall not assign its rights nor delegate its duties with respect to any purchase order for TTF's products and/or its agreement with TTF without the prior written consent of TTF. Any such actual or attempted assignment without TTF's prior written consent shall entitle TTF to cancel all outstanding orders upon notice to Buyer.

**12. Governing Law.** These terms and conditions and the agreement between TTF and Buyer shall in all respects be governed by, and the parties respective rights and obligations enforced under, the laws of the State of Delaware, without reference to its choice of law provisions.

**13. Miscellaneous.** The terms and conditions of this Order Confirmation and the provisions of Buyer's purchase order which are consistent herewith constitute the entire agreement between TTF and Buyer with respect to the sale of TTF's products to Buyer. No amendment or modification hereof shall have any force and effect unless in writing and signed by the duly authorized representative of TTF and Buyer. No waiver by TTF of any provision hereof or any breach of any provision hereof by Buyer will be deemed to be a continuing waiver of any such provision or a waiver of any subsequent breach by Buyer. If any provision hereof is deemed invalid or unenforceable in any jurisdiction, it shall not render invalid or unenforceable the remaining provisions hereof or affect the validity or enforceability of any of the provisions hereof in any other jurisdiction. The headings contained in these terms and conditions are for convenience of reference only and shall not have any effect on the interpretation or enforceability of the parties' agreement.