

uvex xact-fit test Terms and Conditions

1. Applicability

- (a) These terms and conditions (**Terms**) govern the sale of the uvex xact-fit test (**Goods**) and associated Services by UVEX Safety Australia Limited Partnership ABN 56 417 194 966 (**Seller** or **UVEX**) to the buyer who purchases, accesses or uses the Goods and Services (**Buyer**).
- (b) By accessing or attempting to access the Goods or Services, or calibrating the Goods, Buyer agrees to be bound by these Terms.
- (c) These Terms comprise the entire agreement between the parties for these Goods and Services and supersede all prior agreements (**Agreement**).
- (d) If a Buyer submits a purchase order directly to UVEX for the Goods, the purchase order forms part of the Agreement. The Terms prevail to the extent of any inconsistency between the Terms and a purchase order.
- (e) No Buyer's terms and conditions of purchase apply to or form part of this Agreement.

2. Supply of Goods

- (a) The Seller must provide the Goods to Buyer in accordance with the terms of this Agreement.
- (b) Prior to use of the Goods and Services, Buyer agrees to follow UVEX's instructions regarding the set up and calibration of the Goods. Buyer acknowledges that the Goods may not work as intended without calibration (and recalibration every 12-month period) and could lead to inaccurate fit-test results.
- (c) The Goods must comply with applicable industry standards in Australia and New Zealand.

3. Delivery of Goods

- (a) The Seller agrees to deliver the Goods as agreed by the parties, or if applicable, within a reasonable time after the receipt of Buyer's purchase order. Seller is not responsible or liable for any delays, loss, or damage in transit.
- (b) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether shipment is in whole or partial fulfillment of Buyer's order.
- (c) Where the Buyer has purchased the Goods directly from UVEX, Seller will deliver the Goods to Buyer's specified location (Delivery Point) unless otherwise agreed in writing by the parties. Buyer must take delivery of the Goods within five days of receiving

written notice from the Seller about the delivery. Buyer is responsible for all loading costs at the Delivery Point and must promptly unload and release all transportation equipment to prevent additional expenses for the Seller.

- (d) If the Buyer fails to accept delivery on the agreed date or if the Seller is unable to deliver due to insufficient instructions, documents, licenses, or authorizations from the Buyer:
 - (i) risk of loss to the Goods shall pass to Buyer;
 - (ii) the Goods are deemed to have been delivered; and
 - (iii) Seller, at its discretion, store the Goods until Buyer picks them up, with the Buyer liable for all related costs and expenses including storage and insurance.
- (e) The Buyer agrees to:
 - (i) provide necessary instructions, documents, licenses, or authorisations to enable smooth and timely delivery by the Seller;
 - (ii) accept timely delivery of Goods, promptly unload and release transportation equipment; and
 - (iii) bear any associated costs if failure to accept delivery occurs.

4. Non-Delivery of Goods

- (a) The quantity of Goods dispatched from the Seller's place of business, as recorded by the Seller, is considered the final quantity received by the Buyer upon delivery. The Buyer must provide conclusive evidence if there is a dispute regarding the quantity.
- (b) Seller is not responsible for non-delivery of Goods unless the Buyer gives written notice of the non-delivery within five days from the expected delivery date.
- (c) In the event of non-delivery, the Seller's liability is limited to either replacing the Goods within a reasonable time or adjusting the invoice to reflect the actual quantity delivered.
- (d) Buyer acknowledges that the remedies set out in this section are Buyer's only remedies for any non-delivery of Goods.

5. Goods Title and Risk of Loss

Title and risk of loss transfer to the Buyer upon delivery of the Goods at the Delivery Point. The Buyer grants the Seller a lien and security interest in the Goods as collateral security for the purchase price.

6. Inspection, Rejection of Nonconforming Goods

- (a) Buyer must inspect the Goods upon receipt within a specified Inspection Period.

- (b) If Nonconforming Goods are identified during the Inspection Period, Buyer must notify Seller in writing within 5 business days, providing necessary evidence. Nonconforming Goods are defined as product shipped differently from the purchase order or with incorrect labelling or packaging.
- (c) Buyer's exclusive remedies for Nonconforming Goods are either replacement with conforming Goods or a credit/refund of the Price, along with reasonable shipping expenses. Buyer must ship Nonconforming Goods to Seller at its own expense. Except for the remedies provided, there is no right for the Buyer to return Goods purchased under this Agreement to the Seller.

7. Provision of Services

- (a) The Seller will provide the Services, including its fit-test software as a service, storage of fit-test results in a database for Buyer retrieval for test record and report generation, and mandatory annual calibration service.
- (b) The Seller will make reasonable efforts to meet the agreed-upon performance dates for providing the Services, however, Buyer agrees these dates are estimates only.
- (c) Seller may change the Services without the consent of Buyer provided that such changes do not materially affect the nature, scope, fees or estimated performance dates agreed by the parties in writing.
- (d) Seller reserves the right to make necessary changes to the Services and Seller Materials for quality, competitiveness, compliance, or efficiency, including required software updates.
- (e) Seller may engage third parties (Subcontractors) at its discretion to provide the Services.

8. Services License

- (a) Seller grants Buyer and Buyer's Authorised Users a non-exclusive, non-transferable right to access and use the Services and the Documentation for internal use during the Agreement Term. Continued use of the Goods requires the Buyer to renew its license annually in order to access and use the Services.
- (b) Seller will provide Buyer with Services Access Credentials within a reasonable time following the Buyer's acceptance of the Goods.
- (c) Seller has and will retain sole control over the operation, provision, maintenance, and management of the Seller Materials, and Buyer retains sole control over the operation, maintenance, and management of Buyer Systems, including access to and use of Seller Materials.
- (d) Seller maintains all rights, title, and interest in Intellectual Property Rights related to the Services, Seller Materials, and Third-Party Materials.

- (e) Seller may suspend, terminate, or deny access to the Services without liability under specific conditions, including legal demands or Buyer's non-compliance with the Agreement.

9. Service Use Restrictions

- (a) When accessing or using the Services and Seller Materials, Buyer, Authorised Users and anyone under Buyer's authority must not:

- (i) use the Services software in a manner that is in violation of any third party rights of privacy or Intellectual Property Rights;
- (ii) copy, modify, create derivative works of the Services or Seller Materials;
- (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Seller Materials to any person or entity;
- (iv) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Seller Materials;
- (v) bypass or breach any security device or protection used by the Services or Seller Materials or access or use the Services or Seller Materials. Access or use is allowed only through valid Access Credentials of Authorised Users;
- (vi) input, upload, transmit, or provide any information or materials that are unlawful or injurious (including materials containing Harmful Code);
- (vii) damage, destroy, disrupt, disable, impair, or interfere with the Services, Seller Systems, or Seller's provision of services to any third party;
- (viii) remove, delete, alter, or obscure any trademarks, Documentation, warranties, disclaimers, or intellectual property notices from the Services or Seller Materials;
- (ix) access or use the Services or Seller Materials in a way that infringes, misappropriates, or violates any Intellectual Property Right or other rights of third parties. This also includes compliance with applicable laws;
- (x) use the Services or Seller Materials for competitive analysis, development of competing software or products, or any purpose that harms Seller's interests; or
- (xi) access or use the Services or Seller Materials beyond the scope of the authorization granted under this Agreement.

- (b) With respect to the Services, Buyer shall:

- (i) cooperate with Seller's reasonable requests regarding initial set up of Goods, and ongoing annual calibration of the Goods;
- (ii) respond promptly to any Seller request to provide direction, information, approvals, authorisations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement;
- (iii) provide information as Seller may request to carry out the Services in a timely manner and ensure that information is complete and accurate; and
- (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the Services commence.

10. Intellectual Property Rights

- (a) Seller owns all rights, titles, and interests, including Intellectual Property Rights, in the Seller Materials. For Third-Party Materials, the respective third-party sellers maintain ownership. Buyer has no rights except as expressly outlined in this Agreement. Buyer unconditionally assigns to Seller all rights, titles, and interests in the Resultant Data, including related Intellectual Property Rights.
- (b) Buyer exclusively owns all rights, titles, and interests, including Intellectual Property Rights, in all Buyer Data. Buyer grants irrevocable rights and permissions related to Buyer Data, as necessary for Seller, its Subcontractors, and Seller Personnel, to enforce this Agreement and fulfill their respective rights and obligations under this Agreement.

11. Data Backup

The Services do not replace the need for Buyer to maintain regular data backups or redundant data archives. Seller has no obligation or liability for any loss, alteration, destruction, damage, corruption, or recovery of Buyer data.

12. Security

- (a) Seller will use commercially reasonable security measures for the Services.
- (b) Buyer is solely responsible for:
 - (i) All Buyer Data, including its content and use.
 - (ii) Information, instructions, and materials provided in connection with the Services.
 - (iii) Buyer's information technology infrastructure (Buyer Systems).
 - (iv) Security and use of Access Credentials.

- (v) All access and use of Services and Seller Materials through Buyer Systems or Access Credentials, with or without Buyer's knowledge or consent.
- (c) Buyer must implement necessary controls and procedures to:
 - (i) Securely administer Access Credentials.
 - (ii) Protect against unauthorised access to the Services.
 - (iii) Control the content and use of Buyer Data during Processing by the Services.

13. Price

- (a) Where the Buyer has purchased the Goods directly from UVEX, Buyer will buy Goods and Services from Seller at the Price agreed in the accepted purchase order. If there is no relevant purchase order, or the agreed purchase order doesn't specify the price, Buyer will buy at the rate in Seller's current price list when Seller accepts the purchase order.
- (b) Prices exclude GST and other taxes imposed by any governmental authority. Buyer is responsible for these charges, except for taxes on Seller's income, property, or assets. If GST applies, Buyer agrees to pay an additional amount equal to the GST on the supply.

14. Payment Terms

- (a) Where the Buyer has purchased the Goods directly from UVEX, the Buyer must pay all invoiced amounts upon receiving Seller's invoice. Payments should be in Australian dollars in accordance with Seller's tax invoice terms.
- (b) Late payments accrue interest at a rate of 1.5% per month, compounded monthly. Buyer covers costs, including attorneys' fees, for collecting late payments. Seller can suspend delivery or stop Goods in transit for overdue payments.
- (c) Buyer cannot withhold payment due to any claim or dispute with Seller, whether regarding breach, bankruptcy, or other matters.

15. Limited Warranty

- (a) Provided the Buyer has complied with the Seller's set up and calibration requirements, Seller warrants the Goods to be free from defects in materials and workmanship for one (1) year under normal conditions of use and service. Seller will replace or repair (at our discretion) defective instruments at no charge, excluding batteries, abuse, misuse, alterations, physical damage, or instruments previously repaired by a party other than Seller.
- (b) The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also

entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

- (c) This warranty states Seller's total obligation in place of any other warranties, express or implied. Nothing in these terms is intended to exclude, restrict or modify the application of any applicable laws in Australia or New Zealand that cannot be excluded, restricted or modified by agreement between us. Seller makes no other warranties or conditions, express or implied by law, course of dealing, course of performance, usage of trade, or otherwise, including, but not limited to, any implied warranty or condition of merchantability, or fitness for a particular purpose. This warranty does not include any liability or obligation directly resulting from any defective instrument or product or any associated damages, injuries, or property loss, including loss of use or measurement data.

16. Limitation of Liability

- (a) In no event shall Seller be liable to Buyer or any third party for any loss of use, revenue or profit, business interruptions, or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence), or other legal or equitable theory, regardless of whether such damages were foreseeable and whether or not Seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- (b) UVEX accepts no liability for any failures, losses or unreliable fit-test results arising from or related to the Buyer's failure to comply with this Agreement.
- (c) In no event shall Seller's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the total of the amounts paid to Seller for the Goods and Services sold hereunder.
- (d) Seller takes no responsibility and shall bear no liability for use or misuse of Personal Information. All responsibility for such data resides with the Buyer and/or employer using the Goods and Services.
- (e) The limitation of liability set forth out in section 16(b) of these Terms shall not apply to:
 - (i) liability resulting from Seller's gross negligence or willful misconduct; or
 - (ii) death or bodily injury resulting from Seller's acts or omissions.

17. Buyer's Acts or Omissions

- (a) If Seller's performance of any its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred

by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

- (b) If Seller's performance is hindered by any act or omission of the Buyer, Seller is not in breach of its obligations and is not liable for costs incurred by the Buyer due to such prevention or delay.

18. Buyer Obligations

- (a) Buyer agrees to schedule and facilitate UVEX to carry out ongoing annual calibration of the Goods.
- (b) Buyer must maintain and operate Buyer Systems in line with the Documentation, provide Seller Personnel access when necessary, and cooperate to facilitate Seller's rights and obligations. Seller is not liable for delays or failures caused by Buyer's failure to meet obligations.
- (c) Buyer must take prompt corrective action and notify Seller if prohibited activities are detected, ensuring the cessation of unauthorised access and erasure of data gained unlawfully.

19. Compliance with Law

- (a) Buyer must comply with all laws, regulations, and ordinances, maintaining necessary licenses and permissions. Buyer is responsible for complying with export and import laws and assumes all responsibility for shipments requiring government import clearance.

20. Buyer's Warranties; Data Privacy and Security

- (a) Buyer represents, warrants, and covenants to Seller that Buyer owns or otherwise has and will have the necessary rights and consents in and relating to the Buyer Data so that, as received by Seller and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Law including privacy law, Intellectual Property Rights, or other rights of any third party.
- (b) Buyer is responsible for complying with all privacy and security-related Laws and regulations applicable to the collection, storage, use, import and export of all Buyer Data (Personal Information, Sensitive Information or otherwise) generated by the Goods and Services. Buyer will implement all necessary administrative, physical and technical safeguards it determines are necessary to ensure the integrity, confidentiality and security of such data against both internal (e.g. access by unauthorised personnel, misuse of data) and external threats (e.g. hacking).
- (c) Buyer represents and warrants that it will not transfer any Personal Information or Sensitive Information (including end users of the Goods) to Seller in the course of using the Goods or Services. In its use of the Services, Buyer is responsible for ensuring its security settings do not allow Seller to view or access any Buyer Personal Information or Sensitive Information. Notwithstanding the foregoing, Buyer and Seller

acknowledge that Buyer may give Seller access to Personal Information if necessary to facilitate Seller's customer service efforts regarding the Services. Buyer and Seller agree that any such access to Personal Information shall be solely for the purpose of furthering customer service efforts and, once such customer service efforts have ended, Buyer will take any necessary action to revoke Seller's access to such information.

21. Termination; Return or Destruction of Data

- (a) In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer:
 - (i) fails to pay any amount when due under this Agreement;
 - (ii) commits a material breach of this Agreement; or
 - (iii) becomes insolvent or commences or has commenced against it proceedings relating to bankruptcy.
- (b) Seller has a right to terminate this Agreement, or to terminate or suspend access to the Goods or Services, if the Buyer fails to comply with UVEX's initial or ongoing calibration requirements.
- (c) Buyer has the right to obtain a copy of the Buyer Data upon written request within 60 days of the termination of this Agreement or the termination of Buyer's use of the Services. Following 60 days after of the termination of this Agreement or the termination of Buyer's use of the Services, Seller has the right to destroy all Buyer Data in its possession or custody. If Buyer fails to timely exercise such right to request the return of Buyer Data within the 60-day period, Seller shall have no liability for destroying such Buyer Data after the applicable 60-day period has expired.

22. Waiver

No waiver by Seller is effective unless in writing. No failure to exercise a right constitutes a waiver. Each right, power, or privilege can be exercised independently.

23. Confidential Information

During the Term, either party may have access to the other party's Confidential Information. Both parties must do everything reasonably necessary to keep Confidential Information of the other party a secret and confidential and must not disclose or allow any written or electronically recorded Confidential Information to be copied other than for the purposes of this Agreement. Neither party will use any Confidential Information it acquires from the other party for any purpose other than exercising its rights and performing its obligations under this agreement.

24. Force Majeure

Neither party is liable for a failure or delay due to uncontrollable events (Force Majeure). The affected party must notify the other within five days, stating the

expected duration. The impacted party should minimise effects and resume obligations as soon as possible. If the delay lasts 30 consecutive days post-notice, the other party can terminate the Agreement after 30 days' written notice.

25. Assignment

Buyer cannot assign rights or delegate obligations without Seller's written consent. Any unauthorised assignment or delegation is void and doesn't release Buyer from its obligations.

26. Relationship of the Parties

The parties are independent contractors. The Agreement doesn't create agency, partnership, joint venture, employment, or fiduciary relationships between them. Neither party can contract for or bind the other.

27. No Third-Party Beneficiaries

The Agreement benefits only the parties involved, their successors, and assigns. No other person or entity gains legal or equitable rights under these Terms.

28. Governing Law, Jurisdiction

Disputes related to the Agreement are governed by the laws of New South Wales, Australia. Legal actions must be brought in New South Wales, Australia. Parties submit to the exclusive jurisdiction of the courts there.

29. Notices

Written notices must be delivered personally, via courier, or certified/registered mail. Effective upon receipt, complying with specified requirements. Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section.

30. Severability

If any part of the Agreement is invalid in one jurisdiction, it won't affect the rest or render it unenforceable elsewhere.

31. Survival

Certain provisions, like Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, survive beyond termination or expiration.

32. Amendment and Modification

Changes to these Terms require a written agreement signed by authorised representatives of both parties.

33. Definitions

The following definitions apply to this Agreement.

Access Credentials means any credentials (including username, identification number, password, security keys) to verify and grant access and use the Services.

Authorised Users means Buyer's employees, consultants, contractors, and agents authorised by Buyer to access and use the Services purchased under this Agreement.

Buyer Data means information collected from Buyer or Authorised Users via the Services. Excludes Resultant Data and information showing access or use.

Confidential Information means all information disclosed by a party (Disclosing Party) to the other party (Receiving Party), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

Documentation means manuals, instructions, or materials provided by Seller, explaining Service functionality, features, or requirements.

GST means the applicable goods and services tax in the relevant jurisdiction.

Harmful Code means any malicious computer code intending harm, excluding Seller Disabling Devices.

Intellectual Property Rights means any registered and unregistered rights related to patents, copyrights, trademarks, trade secrets, or other intellectual property laws globally.

Law means any legal requirement from government authorities, including statutes, ordinances, regulations, or court judgments.

Personal Information means personal information as defined in the applicable privacy or data protection legislation.

Processing / Processed means operations performed by the SaaS Services on data, including collection, storage, retrieval, and other actions.

Resultant Data means aggregate, anonymized data from Buyer's Service use, providing statistical and performance insights.

Seller Disabling means technology used by Seller to automatically disable access to the Services.



Seller Materials means Services, Documentation, and Seller Systems, including information, data, and content related to the Services.

Seller Personnel means all individuals involved in performing Services for Seller or any Subcontractor.

Seller Systems means the information technology infrastructure used by Seller in performing the Services, including computers, software, hardware, databases.

Sensitive Information means sensitive information as defined in the applicable privacy or data protection legislation.

Services means the services offered to the Buyer in connection with the Goods, including the use of the fit-test software as a service, associated data storage service, and annual calibration support.

Term of the agreement means the agreed period specified by the parties in the purchase order. Where there is no applicable purchase order, the Term is 12 months unless agreed otherwise by the parties in writing.

Third-Party Materials means materials not owned by Seller, such as software, documents, or content related to the Services.