

KELCO ENGINEERING PTY LTD

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GENERAL TERMS & CONDITIONS OF SALE

1.0 SCOPE

- 1.1 These terms and conditions of sale apply to all contracts of sale entered into by Kelco Engineering Pty Ltd ("Seller"), unless amended in writing and signed by an officer of the Seller. By acceptance of deliveries made in pursuance of any purchase order placed upon Seller, failure to object to any terms or conditions contained in any communication from Buyer shall not be deemed a waiver of these terms and conditions.
- 1.2 Notwithstanding the foregoing, however, typographical errors are subject to revision and correction.
- 1.3 Seller requires all orders to be in writing and in such case Seller shall not have any liability until Buyer has placed a written order in terms acceptable to the Seller.

2.0 PAYMENT TERMS

- 2.1 All invoices for account holding customers are net and are due and payable thirty (30) days from End of Month unless otherwise stated. Non account holding customers are required to pre-pay. Seller may terminate account holding arrangements at any time by notice.
- 2.2 Each consignment shall be considered a separate and independent transaction and payment shall be made accordingly.

3.0 PRICES

- 3.1 All offers are firm for a period of thirty (30) days from the date thereof, unless otherwise stated in writing, after that time they are subject to confirmation by Seller in writing.
- 3.2 All sales are ex-store point of consignment. Property in goods passes to Buyer when the goods in the consignment have been paid for. Freight cost and risk of loss in transit are the responsibility of the Buyer.
- 3.3 All prices of imported goods are based on the F.O.B. price of Seller's supplier and the rates of exchange, freight insurance and customs or primage duty ruling at the date of quotation. The prices quoted may be varied as a result of any change in the said rates.
- 3.4 All published price lists are subject to review at any time and can be changed without notice.

4.0 TRANSPORT

Unless otherwise stated by Buyer, the Seller will make transport arrangements and cost will be added to buyers invoice. No Free Into Store Applies.

5.0 GOODS & SERVICES TAX

All published prices are exclusive of GST which, will be added to the invoice unless Buyer provides Seller with a proper tax exemption certificate.

6.0 DELIVERY TIME

- 6.1 All quoted delivery or consignment dates are estimates only given without engagement.
- 6.2 Delay in consignment of any part of an order shall not relieve Buyer of its obligation to accept and pay for the remainder of the order.
- 6.3 Except as provided in 11.0 – “Termination by Seller”, Seller will not be liable to pay damages or compensation for any injury or loss sustained by Buyer:
 1. In the event of a delay in consignment for delivery of goods, or
 2. In the event of non-delivery.
- 6.4 If the delivery of goods is subject to release by Buyer, the agreed prices set forth in an order shall not apply if the quantity is released in accordance with the release requirements of that order, or when no release requirements are specified, if the full quantity is supplied within twelve (12) months of the date of order. If a lesser amount is so released or so scheduled for consignment, Seller's standard prices, for the actual quantity consigned, in effect at the time of order, or at Seller's option at time of consignment shall apply.
- 6.5 Goods offered ex-stock by Seller are subject to prior sale.
- 6.6 In the event of any happening beyond Seller's reasonable control in consequence of which Seller cannot effect consignment by the time or times quoted or specified, Seller shall be entitled to consign part only of an order, suspend consignment or extend the time for consignment, for the period during which such cause for delay operates, or may cancel the order and in the event of such suspension, extension or cancellation, Seller shall not be liable for damages.

7.0 ACCEPTANCE

- 7.1 Buyer shall accept or reject goods included in each consignment within seven (7) days from receipt. If Buyer fails to notify Seller in writing of its rejection and the reasons therefore, within such time period, Buyer will be deemed to have accepted such consignment.
- 7.2 In the event lost acceptance procedures have been agreed to in writing, goods rejected by Buyer on that basis will be returned only on Seller's prior written authorisation.
- 7.3 Returns for any reason cannot be made:
 1. Without prior written authorisation from Seller; in the form of a completed Return Goods Authorisation (RGA);
 2. Unless accompanied by delivery docket and invoice showing Seller's authorisation in writing.
- 7.4 Seller will apply a handling charge (currently AU\$50.00) to any unauthorised return and will re-consign to Buyer, freight collect.

8.0 TOOLING

- 8.1 Unless separately stated in the order, no right to any mask, special tools patterns, dies, jigs, drawings, test equipment, systems, programs etc. Is included in the purchase price to Buyer.
- 8.2 Seller shall not be liable for any ordinary wear and tear to Buyer furnished tools.
- 8.3 If any tools owned by Buyer are in Seller's premises such tools shall be entirely at Buyer's risk.

9.0 WARRANTY

- 9.1 Seller warrants that the goods whilst they remain in the possession of the Buyer, will under proper use, be free from defects solely due to faulty workmanship and materials during a period of twelve (12) months from consignment, to the extent that upon authorised return to Seller freight prepaid during that period of any part of the goods covered by this warranty, Seller will if it finds such part(s) to be so defective, at its opinion repair such part or supply replacement part provided that:
1. The goods or any part are not without Seller's consent altered, repaired or subjected to any technical attention by any person other than the Seller's authorised representatives.
 2. The above terms may, at Seller's opinion, be varied or replaced by specific warranty conditions issued in respect of particular products.
 3. The Warranty does not cover damage due to normal wear and tear, improper installation, misuse or neglect or where goods have been subjected to operating or environmental conditions in excess of maximum values in the applicable specification.
- 9.2 Except as herein provided, all conditions and warranties in respect of the goods, expressed or implied, statutory or otherwise are hereby excluded. Under no circumstances shall Seller be liable to pay compensation for any injury, loss or damage sustained by Buyer however arising.

10.0 PATENTS

Buyer shall hold Seller harmless against any expenses, damage, cost or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs, specifications or instructions.

11.0 TERMINATION BY SELLER

- 11.1 Orders may be terminated in whole or in part on written notice to Buyer because of Seller's failure to deliver goods after a reasonable period in accordance with the terms hereof, in any circumstances in which paragraph 6.5 does not apply. In such event, Buyer is at its sole remedy, shall be compensated as follows:
1. The difference between the re-procurement unit price actually paid by Buyer less the unit price of the purchase order, but in no event to exceed ten percent (10%) of the unit price of the purchase order multiplied by:
 2. The lesser of:
 - a. The number of units unconditionally released by Buyer has not consigned, or
 - b. The number of units actually re-procured by Buyer during the thirty (30) day period following the effective date of termination.
- 11.2 Seller shall not be liable for incidental or consequential damages.
- 11.3 In any event, Seller shall be entitled to payment for all products consigned up to the effective date of termination.
- 11.4 Termination by Buyer for default, which may entitle the Buyer to re-procurement costs hereunder, shall be effective only upon Seller failure to correct such faults within a reasonable period of time, but not less than forty-five (45) days after receipt by Seller of written notice specifying that default.

12.0 CANCELLATION BY BUYER

- 12.1 Except as provided in this clause 12, no order may be cancelled by Buyer.
- 12.2 Buyer may terminate an order for its convenience only to the extent the products were ordered for Buyer's performance of a specific agreement with another and such agreement is terminated for the others convenience. In such event, products in possession or control of the Seller specifically for Buyer's order shall be deemed to be delivered to Buyer.
- 12.3 The quantity of goods delivered and deemed delivered shall be paid for by Buyer at a unit price equal to Seller's standard list price for such quantity or, if no such price exists, then a comparable price for equivalent products. In such a case, the contracted or negotiated price no longer applies.
- 12.4 Buyer shall pay for non-standard goods, which are in the work-in-process inventory, at a price based on the percentage of completion of such inventory applied to the order price for finished goods. In addition, Buyer shall promptly pay to Seller:
1. Costs of settling and paying claims arising out of the termination of work under Seller's sub-contractors or orders relating to costs; and
 2. Reasonable costs of settlement, including accounting, legal and clerical costs; and
 3. Twenty percent (20%) of the total purchase price for the goods ordered as direct and indirect costs of production administration and reasonable profit.
- 12.5 No application for cancellation under this clause will be considered unless made by Buyer in writing to Seller.

13.0 GOVERNING LAWS

The validity, performance and construction of the contract between Seller and Buyer shall be governed in all respects by the laws of the state of New South Wales and the Commonwealth of Australia.

14.0 CONSUMER PURCHASES

Nothing in these terms and conditions of sale shall affect the rights of a Buyer who acquires goods as a consumer within the meaning of the Trade Practices Act, or of any other law of the Commonwealth, or any State or Territory; provided that where the purchaser is a consumer within the meaning of the said Act and the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then Seller's liability for a breach of condition or warranty implied by the said Act (other than a condition or warranty implied by Section 69) shall be limited to the repair of goods, or at Seller's option, the replacement of the goods or the supply of equivalent goods.

15.0 VIENNA SALES CONVENTION

The United Nations Convention on Contracts for the International Sale of Goods (known as the *Vienna Sales Convention 1980*) does not apply.