

Eco-Kinetics Propriety Limited
TERMS AND CONDITIONS OF SALE AND SUPPLY

1. DEFINITIONS

1.1 In these terms and conditions:

"Company" means eco-Kinetics Propriety Limited ABN 56123950256 whose registered office is at Unit 11, 8-12 Gateway Court, Coomera, Queensland 4209.

"Conditions" means these terms and conditions of sale and supply as amended by the Company from time to time.

"Confirmation" means the Company's written acceptance of an Order.

"Customer" means a person who has placed an Order with the Company or requested a Quotation from the Company.

"Customer Supplied Goods" means any goods of the Customer delivered by the Customer to the Company for the purposes of repair or any other service to be provided by the Company, as well as any fixtures, tools and other tooling items of the Customer delivered to the Company in relation to any Order.

"Customer Specifications" means any specifications or requirements of the Customer as to the description, design, materials and dimensions of any Goods.

"Goods" means any goods requested by the Customer in an Order.

"GST" means the tax payable on Taxable Supplies under GST Legislation.

"GST Legislation" means the A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

"Order" means any written order placed by a person for supply of goods or services by the Company.

"person" includes a corporation.

"Quotation" means a quotation given in writing by the Company to any person.

"Services" means any services requested by the Customer in an Order and includes any services in connection with Customer Supplied Goods.

"Taxable Supplies" has the meaning given to that term in the GST Legislation.

"Warranty" means the warranty provided by the Company to the Customer in accordance with clause 11.1.

1.2 Subject to sub-clause 11.3, these Conditions

constitute the terms and conditions upon which the Company will supply Goods or Services to the Customer and take precedence over any terms and conditions that may be contained in any Order, Quotation or in any other document. Any variation of these Conditions must be in writing and signed by the Company and the Customer.

2. QUOTATIONS

2.1 Subject to sub-clause 2.2, all Quotations will be valid for 60 days from the date specified in the Quotation and shall not have any force or effect upon expiration.

2.2 Any Quotation made or given by the Company may be withdrawn or varied by the Company at any time prior to the acceptance by the Company of an Order in accordance with clause 3.

2.3 Subject to clause 4, the Company is not bound by any price specified in a Quotation.

2.4 Any completion or delivery dates specified in any Quotation are estimates only. The Company is not bound by any completion or delivery dates specified in a Quotation and shall not be liable to the Customer for any loss or damage whatsoever and howsoever arising directly or indirectly from any failure by the Company to deliver Goods or perform Services on or before any quoted date. The Customer must accept and pay for Goods and Services tendered notwithstanding any failure by the Company to deliver by any quoted date.

3. ORDERS

3.1 An Order shall not bind the Company unless and until the Company accepts that Order by issuing a Confirmation or by commencing to supply Goods or perform Services.

3.2 Any Order accepted by the Company in accordance with sub-clause 3.1 may only be cancelled, varied or suspended by the Customer with the written consent of the Company and the Customer undertakes to reimburse and indemnify the Company on demand for any costs, charges or other expenses incurred by the Company in preparing for and fulfilling the Order to the date of the cancellation, variation or suspension including an amount equal to 50% of the net profits to the Company had the order not been so cancelled, varied or suspended.

3.2 In the event that the Company provides Services at the Customer's premises (or premises specified by a Customer), the Customer will:

- (a) provide (at its cost) any necessary equipment and services ; and
- (b) ensure the conditions under which the Services are to be performed) are satisfactory (failing which the Company can charge a reasonable increase in the price of the Services; and
- (c) indemnify the Company in respect of any liability arising in connection with the Company's performance of the Services at such premises.

4. PRICE

4.1 If an Order is accepted by the Company in accordance with sub-clause 3.1, subject to any price increases pursuant to sub-clause 4.2 and unless otherwise expressly agreed in writing by the Company and the Customer prior to delivery of the Goods or completion of the Services:

- (a) where the Order is for Goods or Services which are the subject of a valid Quotation pursuant to clause 2, the price of those Goods or Services shall be the price stated in the Quotation in respect of those Goods or Services; and
- (b) where the Order is for Goods or Services which are not the subject of a valid Quotation pursuant to clause 2, the price of those Goods or Services shall be the price charged by the Company as at the date of delivery of the Goods or completion of the Services.

4.2 Unless already included within the price of any Goods or Services, the Company reserves the right to add to the price of any Goods or Services:

- (a) any additional cost incurred by the Company as a result of a variation to Customer Specifications or the specifications or quantities contained in any Order;
- (b) any amount which the Company is required to pay on account of any duties (including excise and stamp duty) or any taxes or charges which may be established or levied by any government or governmental authority (whether Commonwealth, State or foreign) thereupon or on any part thereof or in connection therewith including all [GST (payable on a Taxable Supply in accordance with GST Legislation).
- (c) any costs in accordance with sub-clause 5.1; and
- (d) Any amount that reflects any relevant increase in exchange rates, the costs of labour, materials and other overheads, delivery costs and other like costs.

4.3 Unless otherwise agreed by the Company and the Customer in writing, a reference to a price in any Quotation, Order or Confirmation is a reference to a price in Australian dollars.

5. DELIVERY OF GOODS

5.1 Where agreed between the Company and the Customer, the Company will arrange for the delivery of the Goods to the premises specified for delivery in the Confirmation (or to such other premises as are agreed between the parties) and the Company shall charge to the Customer the cost of freight, insurance and all other costs connected with delivery of the Goods. Unless agreed as aforesaid, the Customer shall be responsible for and shall bear the cost of collecting the Goods from the Company. If the Goods are not collected within a specified period after notification by the Company that the Goods are ready for collection, the Goods shall be deemed to have been delivered to the Customer and the Customer must pay all storage costs incurred by the Company for the period that the Goods are stored.

5.2 The Company reserves the right to deliver the Goods in installments and if delivery is made by installments, the Customer shall not be entitled to terminate or cancel the contract comprising the Order and the Company's acceptance of the Order in accordance with sub-clause 3.1 or to compensation for any loss or damage whatsoever and howsoever directly or indirectly arising in connection with failure by the Company to deliver any installments on or before the quoted date or at all.

5.3 The Company reserves the right to sub-contract the delivery of the Goods.

5.4 If a delivery or completion date is specified by the Company in a Confirmation, the Company will use its reasonable endeavors to ensure that the Goods are delivered or the Services are completed on or before that date. Unless otherwise agreed by the Company and the Customer in writing, the Company shall not be liable to the Customer for any loss or damage howsoever arising directly or indirectly from any failure by the Company to deliver Goods or perform Services on or before any quoted date [or at all] and the Customer shall not be entitled to cancel the contract comprising the Order and the Company's acceptance of the Order in accordance with sub-clause 3.1 by reason of any such failure by the Company.

5.5 The quantities of Goods listed on the Company's invoice shall be conclusive evidence of the quantities of Goods delivered by the Company and received by the Customer unless the Company receives written advice from the Customer of any purported shortfall within 7 days of delivery of the Goods.

5.6 Unless otherwise agreed in writing by the Company and the Customer and to the extent permitted by law, no claim will be made by the Customer in respect of any shortfall in delivery of Goods by the Company for an amount that

exceeds the invoiced unit price of the Goods in respect of which the claim is made. If any excess of up to 10% of Goods ordered are delivered by the Company, the Customer shall accept such excess quantities and make payment to the Company for such excess quantities at the price payable for the Goods in accordance with sub-clause 4.1.

- 5.7 Where an Order requires transportation to the Company of any Customer Supplied Goods, then unless otherwise agreed, the Customer will be responsible for (and bear the cost of) such transportation.

6. PAYMENT TERMS

- 6.1 The Company reserves the right to require the Customer to pay all or part of the price of the Goods or Services upon placing the Order.
- 6.2 Unless otherwise agreed in writing between the Company and the Customer, the Company will invoice the Customer for the price of the Goods or Services and the Customer must pay the price of the Goods or Services in full 14 days from the day on which the invoice is dated.

7. DESCRIPTION AND SPECIFICATIONS

- 7.1 The descriptions, illustrations and other material contained in any product catalogue, price list, brochure, leaflet, advertisement or other material provided by or on behalf of the Company shall not form part of these Conditions or any Order, Confirmation or contract between the Company and the Customer for the supply of Goods or Services and shall not amount to any representation or warranty (whether collateral thereto or otherwise), nor shall the use of such material constitute a contract of sale by description except where the Company has specified the relevant Goods or Services in the Confirmation as so described or illustrated. All Goods and Services supplied by the Company shall be in conformity with the Company's standard commercial specifications at the time of supply, subject to the Company's right without notice to incorporate such minor modifications thereto as it thinks fit or any modifications of whatever nature necessary to comply with any relevant law.
- 7.2 Any Customer Specifications must be delivered in writing to the Company prior to the acceptance by the Company of any Order in accordance with clause 3. Any variation by the Customer to Customer Specifications must be accepted by the Company in writing.
- 7.3 The Customer's written acceptance of any off-tool sample of Goods produced by the Company and delivered to the Customer shall be sufficient evidence that any Customer Specifications in connection with those Goods have been met.

- 7.4 If the Company supplies any Goods or Services in accordance with Customer Specifications or using any Customer Supplied Goods, the Customer shall indemnify the Company from and against all actions, suits, claims, proceedings, accounts, demands, judgments, costs and expenses (including legal costs and expenses) and any liability whatsoever, including but not limited to that arising from actions, suits, claims, proceedings, accounts, demands, judgments, costs and expenses in connection with:

- (a) any infringement of the industrial or intellectual property rights of any third party; or
- (b) any defect in or unsuitability of such Goods or Customer Supplied Goods in respect of which such Services were provided by the Company,

which the Company may suffer or incur directly or indirectly in relation to the Company's compliance with any such Customer Specifications.

8. PROPERTY AND RISK

- 8.1 Risk in any Goods supplied by the Company to the Customer shall pass to the Customer upon:

- (a) delivery of the Goods to the Customer in accordance with clause 5; or
- (b) collection of the Goods by the Customer or its agent;

and the Company shall not be liable for any loss or damage to the Goods arising after delivery (actual or deemed) or collection as aforesaid.

- 8.2 Risk in any Customer Supplied Goods shall remain with the Customer at all times, notwithstanding delivery of possession of such Customer Supplied Goods to the Company for the purpose of the performance of Services. The Company shall not be liable for any loss, damage or injury occurring to any Customer Supplied Goods unless such loss, damage or injury results directly from the negligence of the Company. Any claim for such loss, damage or injury shall not exceed the lesser of the cost of restoring the Customer Supplied Goods to their condition at the time of delivery to the Company or the cost of replacement of the Customer Supplied Goods. The Customer shall effect and maintain such policy or policies of insurance as are necessary to ensure full cover for any damage to or loss of Customer Supplied Goods whilst in the Company's custody.
- 8.3 No property in any Customer Supplied Goods shall pass to the Company.
- 8.4 Unless supplied by the Customer or manufactured or obtained at the sole cost of the Customer, all tooling (which expression shall include patterns, dies, moulds and other

tooling) shall remain the property of the Company at all times.

- 8.5 Property in all Goods shall not pass to the Customer until payment in full for the Goods has been received by the Company.
- 8.6 Until full payment for all Goods has been received by the Company:
- (a) the relationship between the Company and the Customer shall be fiduciary and the Customer shall hold such Goods as bailee;
 - (b) the Customer shall, at its own cost and expense, hold and store the Goods separately in a manner that clearly identifies such Goods as the property of the Company;
- 8.7 The Customer shall at its own cost and expense effect and maintain such policy or policies of insurance, in the names of both the Company and the Customer, and shall pay when due all premiums therefore as are necessary to ensure full cover for any damage to or loss of all Goods supplied by the Company, until such time as property in the Goods has passed to the Customer pursuant to sub-clause 8.5;
- 8.8 If the Customer fails to make full payment for any Goods supplied hereunder, the Company shall be entitled to possession of those Goods and may recover and sell the same and may retain so much of the proceeds of sale as is equal to the amount owing by the Customer to the Company in respect of those Goods. The Customer shall immediately upon the Company's written demand place any such Goods in its possession at the disposal of the Company.
- 8.9 In addition to any other rights which the Company may have under these Conditions or at law, the Customer gives the Company, its agents and employees leave and license, upon reasonable notice, to enter on and into any premises occupied by the Customer to inspect, search for or remove any Goods in which title remains vested in the Company.
- 8.10 If Goods in which title remains vested in the Company are sold by the Customer:
- (a) the Customer shall hold so much of the proceeds of such sale received by the Customer as equals the unpaid purchase price of the Goods in a separate account on trust for the Company, specifically identifying the Goods to which such proceeds relate; and
 - (b) the Company may trace the proceeds of such sales in accordance with equitable principles.
- 8.11 If Goods in which property remains vested in the Company are incorporated into any new products and such new products are sold by

the Customer:

- (a) the Customer shall hold so much of the proceeds of such sale received by the Customer as equals the purchase price of the original Goods in a separate account on trust for the Company, specifically identifying the Goods to which such proceeds relate; and
 - (b) the Company may trace the proceeds of such sales in accordance with equitable principles.
- 8.12 Without prejudice to any other rights or powers that the Company may have at law or in equity, the Company shall have a lien over any Customer Supplied Goods in its possession in respect of payment for Services rendered by the Company in relation to those Customer Supplied Goods.
- 9. INTELLECTUAL PROPERTY**
- 9.1 The purchase of the Goods does not confer on the Customer any licence or right under copyright, patent, design or trade mark or any other intellectual property right which is the property of the Company and the Customer agrees not to infringe those intellectual property rights or challenge the validity thereof.
- 9.2 All design details, drawings and technical handbooks and specifications and other data supplied by or made available to the Customer by the Company with or without charge are subject to copyright and strictly confidential. The Customer must not:
- (a) communicate any details of any drawings or technical specifications to any third party without the prior written consent of the Company; or
 - (b) make any copies of or use the drawings or technical specifications for any purpose other than expressly authorised by the Company in writing.
- 9.3 The Customer shall indemnify and keep indemnified the Company against any loss or damage sustained by the Company resulting from a breach by the Customer of its obligations pursuant to Clause 9.
- 10. DEFAULT**
- 10.1 In the event that the Customer fails to make any payment when due in accordance with sub-clause 6.2, then, without prejudice to any other rights which the Company may have in accordance with these Conditions or otherwise:
- (a) interest shall accrue on the amount of the overdue payment at a rate equal to 2% per annum over and above the overdraft rate charged to the Company by its principal bank from time to time, calculated from the

date payment was due, until payment in full is received by the Company;

- (b) any and all payments to the Company which are not yet due shall immediately become due and payable by the Customer; and
- (c) the Customer shall be liable to the Company for any costs or damage incurred by the Company as a result of the Customer's default, including any legal and other costs associated with recovering any moneys owed by the Customer to the Company.

10.2 Without prejudice to any of the Company's other rights:

- (a) if being an individual, the Customer shall die or have a receiver appointed over his or her assets;
- (b) if being a company, the Customer is or becomes an externally administered body corporate (within the meaning of the Corporations Law) or a controller (within the meaning of the Corporations Law) enters into possession or takes control of all or any of the Customer's assets or undertaking or if the Customer is or becomes insolvent (within the meaning of the Corporations Law) or ceases or threatens to cease carrying on business;
- (c) if the Customer compounds with or negotiates for any composition with its creditors or permits any judgment against it to remain unsatisfied for 7 days;
- (d) if any distress, execution or similar legal proceeding shall be levied upon the Customer,

the Company may at its option, without liability or notice, require payment in cash before supplying Goods or Services to that Customer, or may withhold further deliveries to that Customer and cancel all or any outstanding Orders placed by that Customer.

10.3 Upon termination of the Order or suspension of deliveries, the Company may recover and resell the Goods and the Customer hereby grants to the Company the rights referred to in clause 8.9

11. WARRANTY

11.1 The Company warrants to the Customer that any Goods purchased will be free from defects in material and workmanship for 12 months (or for another period if so expressly stated in the sales agreement) from the date of delivery (actual or deemed) of the Goods to or collection by the Customer, subject to sub-clause 11.2 and to the following conditions:

- (a) the Warranty shall only apply in circumstances where the Goods have been used under normal conditions or such

special conditions acknowledged by the Company in writing; and

(b) the Warranty shall not apply in the following circumstances:

- (i) where the defect in the Goods was caused or contributed to by a failure to follow any instructions or recommendations of the Company published from time to time in connection with the use of the Goods;
- (ii) where the defect in the Goods was caused or contributed to by any handling or installation of the Goods or otherwise by a person other than an employee of the Company;
- (iii) where the Warranty is claimed by a subsequent purchaser of the Goods;
- (iv) where the defect has been disclosed as a feature or limitation of the Goods in any literature published by the Company; or
- (v) where, as at the date of notification of the defect to the Company, the type of the alleged defective Goods no longer forms part of the Company's standard stock range and the person complaining of the defect does not agree to the supply of a replacement which is as close a type match as is possible from the Company's then prevailing stock range.

11.2 The Warranty is not assignable and subject to Clause 11.3, applies only to Goods:

- (a) which have been installed, maintained, used and protected in any manner recommended by the Company, as at the relevant time of such installation, maintenance, use or protection, in its literature published from time to time concerning the Goods, a copy of which may be obtained free of charge at the point of purchase or by writing to the Company at the address set out above; and
- (b) where the Company has been notified in writing of the defect:

- (i) prior to return of the relevant Goods to the Company: and
- (ii) within seven (7) days of the first person to become aware of the defect becoming so aware.

11.3 Where any applicable legislation implies any term, condition or warranty into the relationship between the Company and the Customer or into these Conditions or a contract of sale between the Company and the Customer in relation to the sale or supply of Goods or Services, or otherwise gives the Customer a particular remedy against the Company, and

that legislation or any legislation avoids or prohibits provisions excluding or modifying the application of, or exercise of, or liability under, such term, condition, warranty or remedy, then that term, condition, warranty or remedy shall be deemed to be included in these Conditions, or, as the case may be, apply to that relationship. However, the Company's liability for any breach of such term, condition or warranty or under such remedy shall be limited, at the Company's option, in any one or more of the ways permitted by that legislation including, where so permitted:

- (a) if the breach relates to any Goods, to:
 - (i) the replacement of those Goods or the supply of equivalent Goods;
 - (ii) the repair of those Goods;
 - (iii) the payment of the cost of replacing those Goods or acquiring equivalent Goods; or
 - (iv) the payment of the cost of having those Goods repaired; and
- (b) if the breach relates to any Services, to:
 - (ii) the supplying of those Services again; or
 - (iii) the payment of the cost of having those Services supplied again.

11.4 Except as expressly provided in sub-clauses 11.1 and 11.3, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating in any way to any Goods supplied or Services performed by the Company are excluded. Without limiting the generality of the preceding sentence, the Company will not be under any other liability in respect of any loss or damage (including consequential loss or damage) however caused (whether by negligence of the Company or any person or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of any Goods or Services supplied by the Company.

11.5 (a) Any claims by the Customer for credit, other than claims in respect of return of Goods, will not be valid unless made in writing prior to end of the payment period referred to in clause 6. Claims by the Customer for credit in respect of Goods which are defective in accordance with these Conditions must first have prior written approval of the Company's authorised representative and will not be valid unless made within seven days of delivery of the Goods and the Goods the subject of such claim(s) promptly are returned to Company with a signed Return

of Goods Authority on carrier(s) and to warehouse(s) nominated by the Company.

- (b) The Company is under no obligation to accept claims for Goods returned which have been used, damaged or altered in any way. All Goods must be returned in their original packaging.

12. SCHEDULED REQUIREMENTS

12.1 When components are required to be delivered against a schedule then the Company requires a minimum firm three (3) month requirements, which cannot be cancelled without prior written agreement and a minimum additional two (2) month outlook for material and tooling requirements.

12.2 Any schedule changes by the Customer must be agreed to in writing by the Company.

13. QUALITY CONTROL

The Company or its manufacturer shall maintain a quality control system conforming to either Australian Standard AS9002 – 1994 or an equivalent standard and will, on request, advise the Customer which standard shall be achieved.

14. PACKAGING/LABELLING

The Company will comply with applicable weight and packaging legislation and Australian packaging standards. Additional packaging costs will be borne by the Customer, unless expressly agreed otherwise by the Company.

15. CONTAINERS

Containers (which expression shall include but shall not be limited to stillages, formers and pallets) in or on which Goods or Customer's Goods are delivered remain the property of the Company at all times. The deposit paid by the Customer to the Company in relation to any such container will be refunded to the Customer upon the return of the container in good order and condition (as determined by the Company in its discretion). The deposit in respect of containers which are returned otherwise than in good order and condition shall only be refunded in part, having regard to the condition of the containers returned. Containers will be deemed not to have been returned by the Customer until received into the Company's stores.

16. TOOLING

16.1 The Company shall not be responsible for any loss, damage or injury occurring to any tooling (which expression shall include patterns, dies, moulds and other tooling) supplied by the Customer or manufactured or obtained by the

Company on behalf of the Customer unless such loss, damage or injury results directly from the negligence of the Company. Any claim for such loss, damage or injury shall not exceed the cost of restoring the relevant tooling to good order and condition or replacement of the tooling, whichever may be the less expensive. The Customer shall insure such tooling against all risks whilst in the Company's custody.

These Conditions shall be governed by and construed in accordance with the laws in force in Queensland, Australia.

Declaration

Company Name:

.....

Date:

Name and Position:

Signed:

.....

The Customer by signing this Agreement hereby agrees to be bound by the Terms and Conditions of Supply as detailed herein and agrees that this Agreement prevails over any terms and conditions of purchase that may be incorporated in any purchase order submitted by the Customer (unless such terms and conditions are agreed to in writing by the Company and signed by the Company's authorised representative) in the event of an inconsistency.

16.2 All tooling manufactured or obtained by the Company on behalf of the Customer shall be so manufactured or obtained at the sole cost of the Customer who shall reimburse the Company upon written demand. The Company shall use its best endeavors to maintain all such tooling in good order and condition unless the Company in its discretion determines that the effective working life of the tooling has expired in which case the Company shall notify the Customer accordingly. The Company may dispose of such tooling as it sees fit after the expiration of three (3) months' written notice to the Customer of its intention to do so if, during such period, the Customer fails to claim possession of the tooling.

16.3 The Company shall at the Customer's cost and risk return to the Customer any tooling supplied by the Customer on completion of the contract for which the tooling was supplied or as otherwise directed by the Customer. The Customer shall reimburse that cost to the Company upon written demand.

16.4 The Customer shall not be entitled to claim possession of any tooling under sub-clauses 16.2 or 16.3 above until the Company has received in full from the Customer payment of:

- (i) the unpaid price of any Goods sold or any Services supplied by the Company to the Customer under these Conditions any other arrangement, understanding or contract between the Company and the Customer; and
- (ii) any moneys owing by the Customer to the Company in relation to such tooling (together the "Owed Amounts"),

and in addition to any right of lien or other rights to which the Company may by law or pursuant to these Conditions be entitled, the Company shall have a general lien over all such tooling in the Company's possession for the Owed Amounts.

17. INTERNATIONAL SALES

The Company and the Customer agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Conditions or the supply of Goods by the Company to the Customer.

18. GOVERNING LAW