

Sherpa Nominees Pty Ltd (ACN 120 401 121) as trustee for The Everest Unit Trust Trading as

K2 ENGINEERING SUPPLIES AUSTRALIA

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Standard Terms and Conditions:

General:

These terms and conditions of sale shall apply to the exclusion of all others, including any terms and conditions of the customer (whether on customer's order form or otherwise). No goods will be supplied by K2 ENGINEERING SUPPLIES AUSTRALIA © (hereinafter referred to as "The Company") on any terms or conditions other than those set out herein; and by taking delivery of goods, the customer shall be deemed to agree that these terms and conditions shall apply to the exclusion of all others.

Payment:

Payment terms are thirty (30) days from the end of the month unless other terms have been agreed in writing by The Company. The Company reserves the right to stipulate other terms at its sole discretion. The customer hereby waives any cross-claim against any payment due.

Retention of Title:

All goods supplied to the customer shall thereby be sold to the customer, however all goods sold shall remain vested in The Company until The Company has received payment in full from the customer of all amounts owing. The Company shall have the right to repossess goods at any time in respect of which payment is overdue, and to enter the premises of the customer for such purpose without liability or prejudice to the pursuit of any other legal remedy available to The Company.

Description and Specification:

Whilst every effort is made to ensure accuracy; the description, illustrations and material contained in any catalogue price lists, brochures, leaflets or other descriptive matter represent the general nature of the items described therein, but do not form part of any order, contract or amount to any representation or warranty. The customer warrants that any of the goods manufactured, constructed or supplied by The Company which are based upon designs, drawings or specifications supplied to The Company by or on behalf of the customer shall not infringe any letters patent, registered designs or any other intellectual property rights. The customer shall indemnify and keep indemnified The Company, its servants and agents against any action, loss, costs, claims or damages that may be brought against or suffered by The Company, its servants or agents for any breach of this warranty. The Company does not warrant or guarantee, and it shall not be a term of any agreement between the customer and The Company, that any goods manufactured, constructed or supplied by The Company which are based in whole or in part upon any designs, drawings or specifications supplied to The Company by or on behalf of the customer will achieve any standard of performance or any capacity whatsoever.

Claims:

The customer will be deemed to have accepted goods as being in accordance with its order unless it notifies The Company in writing within seven (7) days of receipt of goods to the contrary. Where goods supplied by The Company are proved – to the reasonable satisfaction of The Company – to be defective through faulty materials or workmanship, and where such goods are returned to The Company within fourteen (14) days of receipt thereof by the customer, The Company will at its option either replace the item or credit the customer of the purchase price thereof. Returns of allegedly defective goods will not be accepted without prior authorisation of The Company.

Warranty:

All warranties and conditions, whether express or implied and whether statutory or otherwise, as to goods supplied by The Company and as to quality, fitness or suitability for any purpose or otherwise, are hereby excluded, except to the extent of any non-excludable warranty, condition or liability of The Company provided for by the Trade Practises Act or any other relevant and applicable State and/or Federal Legislation, and to the extent to which any such warranty, condition or liability of The Company for breach of the warranty, condition or liability (apart from any warranty, condition or liability implied to any one or more of the following as determined by The Company in its absolute discretion) is hereby limited to:

- i) In the case of goods, any one or more of the following:
 - a) The replacement of the goods or the supply of equivalent goods
 - b) The repair of the goods
 - c) The payment of the cost of replacing the goods or of acquiring equivalent goods
 - d) The payment of the cost of having the goods repaired
- ii) In the case of services:
 - a) The supplying of the services again
 - b) The payment of the cost of having the services supplied again

No servant, agent or contractor of The Company has any authority to alter any items or conditions of above paragraphs under **Claims** or **Warranty**.

Loss or Damage:

Save as herein expressly provided The Company shall not be liable for any loss or damage direct or consequential, whether in contract tort or otherwise, and whether caused or arising out of or through negligence of The Company, its servants, agents or otherwise, of whatsoever nature or to whomsoever caused or arising out of or through the use of any of the goods supplied by it. The customer shall indemnify The Company against all claims made against The Company by any third party in respect thereof.

Exclusions:

Any conditions introduced by the customer (insofar as they differ from these conditions) shall not apply to the order and the order shall be deemed to have been placed without them unless written agreement has been given by The Company modifying these conditions. The return of the customer's standard order acknowledgement form does not constitute a written agreement to the modification of these conditions of The Company.

Service:

Any service or advice which may be offered by The Company, its servants or agents to users of its goods is rendered all in good faith, though the company shall not be liable for any loss or damage arising there from whether such loss or damage arises from the negligence of The Company, its servants, agents or otherwise.

Waiver:

Failure by The Company to insist upon strict performance of any term or condition shall not be deemed a waiver; thereof any rights The Company may have shall not, and nor shall any express waiver, be deemed a waiver of any subsequent breach of any term or condition.

Default by the Customer:

If the customer makes default in payment, commits an act of bankruptcy, has a receiver appointed to all or any part of its assets or undertakings, calls a meeting for the purposes of or goes into liquidation or has a winding up petition presented against it, The Company may at its option:

1. Require payment in cash before delivery notwithstanding the terms of payment specified herein or agreed to terminate an order or suspend further deliveries and recover and resell the goods, and the customer hereby grants to The Company a licence for access to the customer's premises for the purpose of such recovery and to examine the goods, and such action shall be without prejudice to any other rights it may have.
2. In the event that recovery action is required, any costs incurred by The Company will be passed on and become the responsibility of the customer. This includes, but is not limited to, any legal fees incurred by The Company.

Change of Customer Ownership:

The customer agrees to indemnify The Company against any loss incurred be it due to any change in ownership of the customer, unless written advice of such is received by The Company prior to the first delivery of any goods after the change of ownership.

Cancellation:

The Company will not accept any cancellation and/or variation to any order placed except with the express written approval of The Company and on terms under which The Company will be indemnified against any losses resulting there from.

Notices:

All notices and other communications provided for or permitted hereunder shall be sent by certified or registered mail with postage pre-paid, hand delivery, facsimile transmission or Email to the address of that party stated in the contract to which this document relates, or to such other address or persons as either party may specify by notice in writing to the other. All such notices or communications shall be deemed to have been duly given or made in relation to the relevant means of communication:

In the normal course of post after being deposited the mail with postage pre-paid:

1. When delivered by hand
2. If sent by facsimile transmission when transmitted
3. If emailed when sent
4. Where a notice is sent by telex or facsimile transmission any such notice shall only be deemed to have been given when received in the manner aforesaid during normal business hours or at the commencement of business of the next business day of the recipient

Legal Construction:

These conditions and the contract to which this document relates shall in all respects be constructed and operated in accordance with the law of the State of Western Australia.

Signed: _____ Position: _____

Name (please print): _____ Date: _____