

## Website Terms of Use

These terms and conditions (**Website Terms of Use**) regulate the business relationship between you – a user of the website [www.k2esa.com.au](http://www.k2esa.com.au) (website for **K2 Engineering Supplies Australia**) – and Sherpa Nominees Pty Ltd trading as K2 Engineering Supplies Australia (“**K2**”, “**we**”, “**us**”, “**our**”).

### 1. Terms and Conditions

#### 1.1 Website Visitor

These Website Terms of Use and our Privacy Policy apply:

- (a) so far as the context allows, to you as a visitor to the K2 Website; and
- (b) if you are a buyer or prospective buyer of our goods.

#### 1.2 Purchase of Goods

If you are a buyer or prospective buyer of our goods, you agree to be bound by:

- (a) these Website Terms of Use;
- (b) the Order Terms, as set out in paragraph 3;
- (c) the K2 Terms & Conditions; and
- (d) our Privacy Policy.

The K2 Terms & Conditions are those terms and conditions which concern the supply of goods and services from K2, in addition to the Order Terms. The K2 Terms & Conditions will be provided to you at such time as you make a credit application with K2 or when K2 supplies goods to you. They are also available to be viewed under “Resources” on the K2 Website.

### 2. Use of Website

#### 2.1 Use of Website

- (a) The K2 Website may contain links to other websites (“Linked Sites”). The Linked Sites are not under the control of K2 and K2 is not responsible for the contents of any Linked Site, including; without limitation to, any link contained within a Linked Site, or any changes or updates to a Linked Site.
- (b) As a condition of your use of the K2 Website, you warrant to K2 that you will not use the K2 Website for any purpose that is unlawful or prohibited by the Website Terms of Use.
- (c) You may not use the K2 Website in any manner which could damage, disable, overburden, or impair the K2 Website, or interfere with any other party’s use and enjoyment of the K2 Website. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the K2 Website.
- (d) All information, advice or other data on the K2 Website is provided as general information only and should not be relied upon.

(e) Without limitation to your rights under the Australian Consumer Law, you acknowledge that K2 provides this service and the K2 Website “AS IS” and that K2 is not making and has not made any warranty or representation as to the goods or services suitability for any particular purpose other than the mandatory statutory warranties.

(f) If you are dissatisfied with any portion of the K2 Website, or with any of the Website Terms of Use, your sole and exclusive remedy is to discontinue using the K2 Website.

## 2.2 Security of Website

Unfortunately, no data transmission over the Internet can be guaranteed as totally secure. Whilst K2 strives to protect such information, K2 does not warrant and cannot ensure the security of any information which you transmit to us. Accordingly, any information which you transmit to us via the K2 Website is transmitted at your own risk.

## 3. Order Terms

### 3.1 Agreement

(a) The entire Agreement between you and K2 for the purchase of goods by you from the K2 Website is:

(1) these Website Terms of Use;

(2) these Order Terms;

(3) the K2 Terms & Conditions; and

(4) the Privacy Policy.

(b) The Agreement exists between you and K2 once K2 receives and accepts an order via the K2 Website. No obligation to sell or supply the goods will arise until the order is received and accepted by K2.

(c) Each order may be accepted by K2 in its absolute discretion.

(d) Each order is a separate agreement with K2.

(e) By submitting your order:

(1) you agree to purchase the products specified in your order for the price specified in your order on these Order Terms and K2's Terms & Conditions; and

(2) you acknowledge that you have read, understood and agreed to these Order Terms and K2's Terms & Conditions.

(f) The order constitutes an offer by you to purchase the goods in accordance with these Website Terms of Use and K2 Terms & Conditions. You must ensure that the terms of the order are complete and accurate.

(g) The order shall only be deemed to be accepted when K2 issues a written acceptance of the order.

(h) You confirm that all the details that you have provided in completing your order are true and correct.

(i) K2 reserves the right not to process your order for any reason, including, but not limited to, if:

(1) it has not received payment for your order;

(2) your credit limit has been reached on your account;

(3) your order does not meet the minimum order requirements set by K2 from time to time.

(j) Once you submit your order it cannot be changed or cancelled unless otherwise agreed to by K2.

## 3.2 Delivery

- (a) K2 will deliver the goods to the location set out in the order, or such other location as the parties may agree, at any time after K2 notifies you that the goods will be delivered.
- (b) You will be responsible for any delivery charges (as may be applicable) in addition to prices stated by K2 for the goods, and these charges may vary depending on the place of delivery and the quantity of goods ordered. All prices are exclusive of GST, except where otherwise indicated.
- (c) K2 reserves the right not to deliver the goods to you for any reason, including, but not limited to, if it considers that the place you designate for delivery is outside the delivery areas K2 or its service operates to make deliveries.
- (d) Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. K2 will not be liable for any delay in delivery of the goods whatsoever. If K2 is unable to deliver the products within the time frame indicated, we will use our best endeavours to contact you to make other arrangements.
- (e) Risk in the products shall pass to you as soon as delivery has been affected.

## 3.3 Liability of K2 Engineering Supplies Australia and Refunds

- (a) The goods and services 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 for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the products replaced if the products fail to be of acceptable quality.
- (b) The goods will not be of acceptable quality if such goods:
  - (1) are not fit for all the purposes for which goods of that kind are commonly supplied;
  - (2) are not acceptable in appearance and finish;
  - (3) have defects;
  - (4) are unsafe; or
  - (5) are not durable.
- (c) Without limitation to your rights under the Australian Consumer Law, you acknowledge that:
  - (1) K2 has not made any representations or warranties in relation to the goods, your order or the K2 Website;
  - (2) it is your responsibility to satisfy yourself in relation to the price, quality or otherwise of the goods prior to delivery by K2;
  - (3) K2 shall not be liable for any loss or damage to the goods or any loss or damage caused, directly or indirectly, in relation to the goods, your order or the K2 Website.
  - (d) K2 does not give any warranty nor accept any liability in relation to performance or non-performance of its obligations under these Order Terms and K2's Terms & Conditions except to the extent, if any, required by law or specifically provided for in these Order Terms and K2's Terms & Conditions.
  - (e) K2's liability for any breach of any implied warranty or consumer guarantee is limited to re-supplying the goods, the subject of your order, or refunding the costs of the goods or services (at its sole discretion).
  - (f) All limitations of liability under these Order Terms and K2's Terms & Conditions shall apply for the benefit of the employees and agents of K2 to the same extent as they apply for the benefit of K2 against you or anyone claiming through or under you.
  - (g) To the maximum extent permitted by applicable law, in no event shall K2 be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including; without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the K2 Website, with the delay or inability to use the K2 Website or related services, the provision of or failure to provide

services, or for any information, goods, service and related graphics obtained through the K2 Website, or otherwise arising out of the use of the K2 Website; whether based on contract, tort, negligence, strict liability or otherwise, even if K2 has been advised of the possibility of damages.

### **3.4 Change in Order Terms**

If we make any changes to the Order Terms and the K2 Terms & Conditions, we will place a notice on the K2 Website and will also endeavour to make you aware of the change(s) (by email or through your online account). If you do not agree to the changes in the Order Terms then you can terminate the agreement by giving written notice to us.

## **4. Indemnity**

You agree to indemnify K2 against any claim or demand – including reasonable legal fees – made by any third party due to or arising in any way out of your use of the K2 Website, or the infringement by you, or by any other person using your computer, of any intellectual property or other right of any person.

## **5. Intellectual Property Rights**

You acknowledge that:

- (a) K2 or its related corporations own or are licensed to use all Intellectual Property Rights in the K2 Website (including, but not limited to, any images, photographs or text which appears on the K2 Website). You agree that you will not make any representations to the contrary, and that you will not use or copy the K2 Website in any manner that is inconsistent with the rights of the owner or licensee of such Intellectual Property Rights. For the purposes of these Website Terms of Use, Intellectual Property Rights shall mean all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
- (b) any trade marks or logos which appear on the K2 Website are owned by or licensed to K2 or its related corporations, and that you must not do anything to prejudice the rights of the trade mark owner or licensee to such trade marks or logos.

## **6. Privacy**

### **6.1 Personal Information and Consent**

- (a) By completing your order and setting up an account via the K2 Website, you will have provided personal information to K2.
- (b) If you have selected that you agree to receive promotional material, you consent to receiving any material that K2 sends to you as a result of submitting your order.
- (c) If at any time you do not wish to receive any further material from K2, you may unsubscribe by simply removing yourself from the MailChimp subscriber list (options available at the footer of promotional emails).
- (d) You will comply with the terms of our privacy policy, which can be found under 'Resources' on the K2 Website, and you consent to the terms of that privacy policy.

### **6.2 Linked Sites**

K2 is not responsible for the privacy practices of sites linked to it via hyperlinks, banner advertising or other means. Please take care at all times to check the privacy policy of the site you are visiting.

## **7. Termination**

K2 reserves the right, in its sole discretion, to terminate your access to the K2 Website and the related services or any portion thereof at any time, without notice.

## **8. General**

### **8.1 Governing Law and Jurisdiction**

These Website Terms of Use are governed by the laws in force in Western Australia. You agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.

### **8.2 Severability**

If anything in this document is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction then it is severed for that jurisdiction and the rest of this document remains in full force and effect in all other jurisdictions.

## **9. Consent**

### **9.1 Your consent**

By using the K2 Website or submitting an order you are agreeing to these Website Terms of Use.

### **9.2 Change in Website Terms of Use**

We reserve the right to modify our Website Terms of Use as required. We will post such changes on the K2 Website, after which, your continued use of the K2 Website shall be deemed to be your agreement to the modified terms.