

KROHNE Australia & KROHNE New Zealand (KANZ)

TERMS & CONDITIONS OF SALE OR PURCHASE

1. GENERAL

1.1 Interpretation & Definitions

In these Conditions:

"Consumer Law" means:

- (i) in the case of Australia, the Competition and Consumer Act 2010 (Cth) and the Australian Consumer law contained in that Act; and
- (ii) in the case of New Zealand, the Consumer Guarantees Act 1993.

"Contract Price" means the price payable to Company by Purchaser for the Goods and/or Services

"Company" means:

- (i) in the case of Australia, KROHNE Australia Pty Ltd (ABN 78 079 700 066)
- (ii) in the case of New Zealand, KROHNE New Zealand Limited (NZBN 9429041169230)

"GST" has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law.

"GST Law" means:

- (i) in the case of Australia, A New System (Goods and Services Tax) Act 1999 (Cth); and
- (ii) in the case of New Zealand, the Goods and Services Tax Act 1985.

"Order" means the order for the goods specified by purchaser, if any.

"Purchaser" shall mean Buyer ("Buyer" means the person, firm, company, or corporation by whom the order is given)

"Seller" means the seller of the goods and/or services specified if the Company is buyer.

"Services" means the services described in Seller's Quotation or Purchase Order, while the word "Goods" shall be read, where the context permits, as meaning the services which the Seller has contracted to provide.

"The Goods" shall mean all the goods (including any Software and Documentation), to be supplied under the Contract.

These Terms, together with (a) any Quotation the subject of an accepted Order, and (b) an accepted Order, constitute the entire contract between the Company and a Purchaser ('Agreement'). and shall take precedence over any terms and conditions issued by the Purchaser at any time. No additions or qualifications to these conditions shall be valid unless they have been issued by the Company as a formal order amendment signed by the Company's relevant authorized staff. To the extent of an inconsistency between these Terms and an accepted Order, these Terms shall prevail.

1.2 Application

PURCHASE CONDITIONS apply if a purchase by the Company is described overleaf. SALE CONDITIONS apply if a sale or quotation by the Company is described overleaf.

1.3 IMPORTANT NOTICE: Consumer Law

THE PURCHASER'S ATTENTION IS DRAWN TO STATUTORY PROVISIONS WHICH MAY APPLY TO THIS CONTRACT. Any rights, remedies, liabilities, conditions, warranties, standards or specifications which apply to or in respect of any contract arising between the Company and the Purchaser under or by virtue of the Consumer Law or any other enactment of Australia or of any State or Territory or New Zealand thereof affecting such contract and which cannot be excluded from such contract are deemed to apply to such contract notwithstanding any inconsistency with these terms.

1.4 Law of Contract

These Terms shall be construed according to:

- (i) in the case of Australia, the laws of New South Wales, Australia; and
 - (ii) in the case of New Zealand, the laws of New Zealand;
- and all disputes arising as and between the Company and a Purchaser, whether arising from the supply (or intended supply) of Goods and/or Services by the Company to the Purchaser, or otherwise, shall be determined by the Courts in that State & country (as relevant).

1.5 These Conditions to prevail

These Conditions apply to the exclusion of and in substitution for all and any terms and/or conditions offered by Seller or Purchaser. No changes to this document shall be binding on the Company unless accepted in writing by the Company.

1.6 Code of Conduct & Business Ethics

The Purchaser hereby warrants that he will not, directly or indirectly, and it has no knowledge that other persons connected with its business will, directly or indirectly, make any payment, gift or other commitment to any person including without limitation directors and employees of the Company or any other party in a manner contrary to applicable laws, policies or standards of conduct, for the purposes of obtaining or facilitating the Purchaser's activities under this Contract.

2. PURCHASE CONDITIONS

2.1 Firm price and delivery

The Order is placed on a firm price basis at the price(s) listed overleaf and includes delivery and off-loading of the Goods by or on behalf of the Seller to the destination stated herein, unless otherwise stated.

2.2 Warranties

The Goods shall be fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Seller by or on behalf of the Company, be of merchantable quality, be free from defects in material and workmanship and conform to any specifications, performance characteristics, sample or description furnished by or on behalf of THE COMPANY to the Seller. Goods shall carry any applicable manufacturer's warranty which shall pass on to any purchaser from the Company without liability to the Company. Any in-progress inspection by the Company's employees will not affect this requirement.

2.3 Inspection and return

Signed delivery dockets do not mean acceptance by the Company of the contents of packages. The Company will notify the Seller of any defects appearing, and hold goods so found to be defective for the Seller's instructions and at Seller's risk for a period not exceeding 60 days. If Seller's instructions are not received within such period the Company may return the defective goods to the Seller's premises at the Seller's expense and risk and any expense incurred by the Company in such return will be payable forthwith by the Seller and may be offset by moneys yet to be paid

2.4 Royalties

Seller shall not make any claim for royalties or other compensation by reason of any use, re-sale or other application of the Goods.

2.5 Patent rights

Seller agrees to indemnify, defend, protect and hold harmless the Company its successors, assigns, customers and the users of the Company's products from and against any claim arising by reason of the use of the Goods including all claims for actual or alleged infringement of any Letters Patent, Trade Marks, Copyright, Design, Confidential Information or similar protection. If Seller makes a representation that Goods ordered are protected by a patent and any such patent is invalid the Company may cancel this Order and any contract arising therefrom and recover any money paid to the Seller hereunder.

2.6 Designs and specifications to be retained in confidence

Any Goods or work made or done according to the Company's design or specification or developed for the Company at our direction, or any designs or specifications supplied by or copies thereof, shall be held by Seller on the Company's behalf and kept strictly confidential.

2.7 Packing standard and costs

No charge will be made by Seller or its agents or suppliers to the Company for wrapping, packing, cartons or crating unless authority for such charge is expressly incorporated in this Order. All Goods shall be suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with carrier's requirements.

2.8 Cancellations

The Company reserves the right to cancel this Order if all Goods hereby ordered are not delivered to its premises (or as specified) on or before the delivery date specified in the Order and the Seller shall have no claim whatsoever against the Company and in such eventuality. Seller shall, in addition to any other liability, pay the costs of removing any Goods (or other item) which may have been delivered from the Company's premises.

2.9 Risk

Goods are at the Seller's risk until delivered to the destination stated in this Order.

3. SALE CONDITIONS

3.1 IMPORTANT NOTICE: ADVICE AND REPRESENTATIONS

ALL PURCHASES FROM THE COMPANY ARE MADE BY THE PURCHASER ON THE BASIS OF THE EXERCISE OF INDEPENDENT JUDGEMENT BY THE PURCHASER AND NOT IN RELIANCE UPON ANY STATEMENT MADE OR ADVICE GIVEN BY THE COMPANY. THE PURCHASER ACKNOWLEDGES AND AGREES THAT IT HAS MADE ITS OWN INQUIRIES REGARDING THE CHARACTERISTICS AND SUITABILITY OF THE GOODS AND THAT IT PURCHASES THE GOODS ON THE CONDITION THAT IT DOES NOT RELY UPON ANY ADVICE OR RECOMMENDATION MADE BY THE COMPANY.

3.2 Validity of Quotations

A quotation issued by the Company may be withdrawn by the Company at any time and the Company reserves the right to refuse any order based on a quotation at any time. Unless withdrawn, a quotation expires after the period stated on the quotation or, if no period is stated, after thirty days.

3.3 Packing

All Company products will be supplied in standard Company product packaging or any packaging the Company deems suitable. The cost of any additional packing used in relation to the Goods shall be at Purchaser's expense, even if the cost is omitted from any quotation.

3.4 Shortage

Purchaser waives any claim for shortage of any Goods delivered if a claim in respect thereof has not been lodged with the Company within seven (7) days from the date of receipt of Goods by the Purchaser.

3.5 Descriptions, etc.

- 3.5.1 All specifications, drawings, and particulars of weights and dimensions submitted to the Company are approximate only and any deviation shall not be taken to breach any contract of supply with the Company or form grounds for any claim against the Company. If the Company's price is calculated on estimates of quantities required and there are any adjustments in estimates by the Company, the price shall be adjusted up or down on a unit rate basis accordingly.
- 3.5.2 The description of the Goods appearing overleaf shall prevail over all other descriptions. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the terms of this contract for sale of the Goods.

3.6 Performance

Any performance figures given by the Company are estimates only, subject to recognised tolerances and the Company shall be under no liability for damages for failure by the Seller or any other person to attain such figures.

3.7 Product Warranties

- 3.7.1 The Company expressly guarantees the Goods for a period of 12 calendar months computed from the date of startup or 18 months after passing the risk (delivery), whichever comes first.
- 3.7.2 Repair / Replacement of any defective parts in the Goods shall be limited to the cost of repairing the part or the cost of the replacement part and provided also that the part or parts are returned to the Company's factory by the Purchaser carriage paid. Where the Company is supplying services, the guarantee period shall be 6 calendar months from date of completion of the services.
- 3.7.3 The Company shall be under no liability under the above guarantee or for any other warranty, condition or guarantee, if the total price for the Goods has not been paid by the due date for payment.

3.8 Transit and Delivery

- 3.8.1 By default delivery offered will be FCA ex-works the Company, Ingleburn NSW warehouse, unless otherwise stated and quoted at the time of offer
- 3.8.2 If the Purchaser elects to have the Company deliver the Goods, then the Purchaser authorizes the Company to deliver goods to the place nominated and leave the Goods at the place whether any person is present to accept delivery. The Company shall not be liable on any basis whatsoever for loss suffered by the Purchaser after the Goods are loaded for delivery to the Purchaser.
- 3.8.3 The Company shall not be obliged to obtain a signed receipt from any person at the place nominated by the Purchaser for delivery, but if a signed receipt is obtained from someone believed by the Company to be authorized by the Purchaser to sign, then such signed receipt shall be conclusive evidence of delivery.
- 3.8.4 Where the Purchaser contracts the Company to deliver the Goods, the Purchaser shall pay to the Company delivery charges in accordance with the Company's current rates, as at the date of dispatch.
- 3.8.5 The Company is not responsible for any loss or damage to Goods in transit. Delivery times made known to Purchaser are estimates only and the Company shall not be liable for any loss resulting from late delivery, non-delivery and/or any loss, damage or delay occasioned to Purchaser or its customers.

3.9 Limitation of Liability

- 3.9.1 Subject to clause 1.3 above:
- (a) If Goods are manufactured by the Company, liability is limited to making good any defects by repairing the same or at the Company's option by replacement, within a period not exceeding twelve calendar months after the Goods have been dispatched provided that:-
- (i) defects have arisen solely from faulty materials or workmanship;
 - (ii) the Goods have not received maltreatment, inattention or interference;
 - (iii) accessories of any kind used by the Purchaser are manufactured by or approved by the Company; and
 - (iv) the defective parts are promptly returned free of costs to the Company.

- (b) If Goods are not manufactured by the Company, the guarantee of the manufacturer, if any, thereof shall be accepted by the Purchaser and is the only guarantee given to Purchaser in respect of the Goods.
- (c) Except as provided herein, all express and implied warranties and conditions under statute or general law as to description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and the Company shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of contract or negligence or in any way whatsoever.
- (d) All express and implied warranties and conditions under statute or general law as to description, quality, suitability or fitness of any advice or recommendation given by or on behalf of the Company for any purpose is hereby expressly excluded and the Company shall not be liable for any injury, loss or damage or for consequential loss or damage of any kind whatsoever arising whether in contract or negligence or in any other way whatsoever.

3.10 Prices

All prices quoted by the Company are net, exclusive of sales tax (GST) and delivery charges, as at the date of the quotation and based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of wages, cost of materials and other charges affecting the cost of production ruling at that time and any alterations thereto either before or during the currency of any contract shall be to the Purchaser's account.

3.11 Payment

- 3.11.1 The purchase price of Goods shall be paid 30 days net of invoice date following the delivery of the Goods unless other terms are stated
- 3.11.2 Payment is due on or prior to delivery unless the Company has agreed in writing to provide the Customer with credit in which case payment is due in accordance with the payment date in the invoice.
- 3.11.3 The Company can vary the terms of any credit it provides to the Customer at any time. If the Company considers the credit worthiness of the Customer is unsatisfactory then it can require security for payment, in addition to that already provided for in this Contract before it supplies any more Goods to the Customer.
- 3.11.4 The Company may impose a credit limit at its discretion and alter the credit limit without notice. Where the credit limit is exceeded, the Company can refuse to supply Goods to the Customer.
- 3.11.5 The Customer cannot withhold payment or make any deductions from any amount owing by the Customer without the Company's prior consent.
- 3.11.6 Payment terms and credit limits are subject to credit approval, which shall be determined periodically, at the sole and absolute discretion of Company.

The purchase price of Goods shall be paid 30 days net of invoice date following the delivery of the Goods unless other terms are stated herein.

3.13 Rights in Relation to Goods

- 3.13.1 Until all amounts owed by the Purchaser to the Company on any account whatever are paid in full to the Company (whether such sums have become due for payment), the Company reserves:
 - (a) legal ownership of the Goods,
 - (b) a right to enter the Purchaser's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage to retake possession of the Goods; and
 - (c) a right to keep or resell any Goods repossessed pursuant to (b) above.
- 3.13.2 While property in the Goods remains with the Company, the Purchaser shall hold the Goods on a fiduciary basis only and as bailees only for the Company. The Purchaser shall store Goods separately from its own Goods in good condition and marked in such a way that they are clearly identifiable as property of the Company and shall insure the Goods to their full value against all risks to the reasonable satisfaction of the Company.
- 3.13.3 If the Goods are sold, or products manufactured using the Goods are sold, by the purchaser, the Purchaser shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of the Company and shall pay such amount to the Company upon request.
- 3.13.4 Notwithstanding sub-clauses 3.12.1 and 3.12.2 the Company shall be entitled to maintain an action against the Purchaser for the purchase price upon delivery.

3.14 Risk

Except where the Company stores Goods for the Purchaser in accordance with condition 3.15, risk in the Goods passes to the Purchaser upon the Goods leaving the Company's premises. Where the Company stores Goods for the Purchaser under condition 3.15, risk in the Goods passes to the Purchaser from the first date on which the Company charges for storage under condition 3.15. Any property, other than the Goods belonging to the Purchaser under the Company's custody or control or belonging to the Company under the Purchaser's custody or control, shall be at Purchaser's risk.

3.15 Storage

The Company may make a reasonable charge for storage if delivery instructions in relation to Goods are not provided by the Purchaser within 14 days of a request by the Company.

3.16 Returned Goods

- 3.16.1 The Company shall not be under any obligation to accept goods returned by the Purchaser and will do so only on terms to be agreed in writing.
- 3.16.2 Purchaser shall not return any Goods to the Company without a Return Materials Authority number (RMA) authorized by the Company. The Company may require the client to provide photo evidence of the equipment requested to be returned to support cases A to D as below in advance

Restocking Fee:

- A. Return of an item held as stock by KANZ, unused still in the original packing – Restocking Fee 20% of item sale price
- B. Return of an item held as stock by KANZ, unused in non-original packing – Restocking Fee 40% of item sale price.
- C. Return of a "standard" non-stocked item, unused still in the original packing – Restocking Fee 60% of item sale price.
- D. Return of a "standard" non-stocked item, unused in non-original packing – Restocking Fee 80% of item sale price.
- E. The Company do not accept the return of any goods or any item of a non-standard construction, i.e. bespoke or special design and construction based on customer requirements
- 3.16.3 Freight for the return of goods is to be paid by the Purchaser unless special conditions apply. Any loss or damage to Goods being returned to the Company is the responsibility of the Purchaser.

3.17 Goods and Services Tax

GST if and when applicable is an extra charge for a Purchaser's account. If not applicable, a GST exemption certificate must be signed by the Purchaser and accompany the Purchaser's official order.

3.18 Order Cancellation

No order by Purchaser on the Company may be cancelled unless the Company consents in writing and the Purchaser indemnifies the Company against, and pays in full, all fees and charges as outlined below:

Cancellation of Purchase Order:

- A. Written cancellation by Purchaser within 48 hours of purchase order receipt – Cancellation Fee 0%
- B. Written cancellation by Purchaser within 1 week of purchase order receipt – Cancellation Fee 30% of purchase order value.
- C. Written cancellation by Purchaser after our receipt of factory OA – Cancellation Fee 50% of purchase order value.
- D. Written cancellation by Purchaser after factory dispatch of goods – Cancellation Fee 75% of purchase order value.

Signed:

Dated: