



Terms and Conditions of Trade

All goods and services are supplied on the terms and conditions set out herein and no addition or variation to these terms and conditions will have any effect unless expressly agreed in writing by KPD Pty Limited.

1. Quotations

- a) Unless previously withdrawn, a quotation is valid for 90 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted by KPD Pty Limited.
- b) KPD Pty Limited shall not be bound by any condition attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by KPD Pty Limited in writing, the Buyer acknowledges that such conditions are expressly negated.
- c) Cancellation of an order can be made only with KPD Pty Limited consent and upon terms that will compensate KPD PTY Limited against loss.
- d) Orders are subject to approval of KPD PTY Limited Credit Department and the Seller may at any time alter or suspend credit, refuse shipment or cancel unfilled orders, when in KPD PTY Limited opinion the financial conditions of the Customer, or the status of the Customer's account, warrant it.
- e) Change orders requested by the Customer shall not be effective unless accepted in writing by KPD PTY Limited. The Customer shall be liable for any costs, expenses, and liabilities incurred by KPD Pty Limited in connection with any such change order.

2. Price

- a) Quoted prices do not include GST.
- b) Quoted prices do not include cost of delivery or fuel surcharge, unless specified.
- c) Notwithstanding Clause
 - 1(a), KPD Pty Limited:
 - i) shall be entitled to vary the quoted price for the goods and services at any time prior to delivery if the cost to KPD Pty Limited of performing the contract is increased by reason of delivery of the goods and services outside normal working hours at the request of the Customer or to an address other than that originally specified by the Customer.
 - ii) shall be entitled to vary the quoted price for imported goods at any time prior to delivery if the currency used to quote has shifted by more than 2.5% between the date quoted and the date of invoice.
 - iii) reserves the right to apply prices ruling at the time of delivery.

3. Terms of Payment

- a) Where the Customer has a credit account with KPD Pty Limited, the invoice or progress claim amount for the goods and services must be paid in full within thirty (30) days from the end of the month during which the goods and services were invoiced or claimed.
- b) Where the Customer does not have a credit account, a 30% deposit will be required prior to commencing the work. A credit application will need to be completed and if successful the Customer will be granted a 30 day account and will benefit from the payment terms set out in clause 3.a).
- c) The Customer is not entitled to withhold payment or make any deduction from the quoted price of the goods and services in respect of any set off or counterclaim without any prior written agreement with KPD Pty Limited.
- d) If the Customer fails to pay for any instalment of the goods, KPD Pty Limited may in its absolute discretion, but without prejudice to any other remedy it may have, postpone the fulfilment of its obligations under this order and under any other order with this Customer until such payment is made and charge to the Customer any extra expense incurred thereby

4. Property in the Goods

a) Notwithstanding delivery of the goods to the Customer, property in the goods will not pass to the Customer until the Customer has paid to KPD Pty Limited all sums owing by the Customer to KPD Pty Limited under the order.

5. Risk

Risk will pass to the Customer on delivery of the goods notwithstanding that ownership remains with KPD Pty Limited until payment is made in full.

6. Delivery

a) Unless otherwise agreed in writing, the time of delivery is calculated from the date of the Order.

Although every effort is made by KPD Pty Limited to keep the delivery date promised, KPD Pty Limited assumes no liability for any loss or damages occasioned by delays in delivery.

b) If KPD Pty Limited is prevented (directly or indirectly) from delivering the goods or any of them by reason of any act of God or strikes, lockouts, trade disputes, fire, breakdown, interruption of transport, governmental action or any other cause whatsoever (whether or not of the like nature to those specified herein) outside its control KPD Pty Limited will be under no liability whatsoever to the Customer and will be entitled at its option either to terminate the Order or to extend the time of its performance.

7. Cancellation or Suspension of Orders

Except where the Customer has a statutory right of termination, orders accepted by KPD Pty Limited may not be cancelled either wholly or in part without the consent in writing of KPD Pty Limited.

8. Liability

a) KPD Pty Limited makes no warranties, either express or otherwise, under this Agreement except to the extent that the goods supplied are covered by the manufacturer's warranty. KPD Pty Limited will pass on to the Customer the benefit of the manufacturer's warranty. The warranty will not extend to cover any goods that were delivered by KPD Pty Limited to the Customer outside of the previous 12 months and does not cover damages or defects due to outside action, lack of care, overload, unsuitable lubricant, natural wear, incorrect choice of product, faulty fitting or other circumstances beyond the KPD Pty Limited control.

b) Upon discovery of any defect in the goods supplied by KPD Pty Limited, the Customer shall immediately and without delay notify KPD Pty Limited in writing. The Customer shall not carry out any remedial work without first obtaining the written consent of KPD Pty Limited to do so.

c) To the extent permitted by statute, the liability, if any, shall be at KPD Pty Limited option and limited to:

- i) the replacement of the goods or resupply of the goods by KPD Pty Limited; or
- ii) the repair of the goods

d) Any service or advice which may be offered by KPD Pty Limited, its servants or agents to the Customer or its agents, is rendered in good faith and KPD Pty Limited shall not be liable for any loss or damage arising there from.

e) For the avoidance of doubt, KPD Pty Limited will be under no liability whatsoever to the Customer for any loss, injury or damage (including consequential loss, injury or damage) suffered or caused as a result of or arising out of any act or omission (whether negligent or otherwise) by KPD Pty Limited, its servants or agents or any other person in any way related to or arising out of the Order by KPD Pty Limited.

10. Intellectual Property

All copyright, design right and other intellectual property in any design, specification, process, method of working or other information relating to the Goods (other than that provided by the Customer to KPD Pty Limited) shall vest for all time in KPD Pty Limited. KPD Pty Limited only grants to the Customer an irrevocable licence to use the Goods.

11. Paramountcy

These General Terms and Conditions of Quotation and Sale shall constitute the entire agreement between KPD Pty Limited and the Customer and no terms, conditions, obligations or other provisions of any nature not contained in these General Terms and Conditions of Quotation and Sale shall be of any effect, unless set out in a specific contract signed by KPD Pty Limited and the customer. For the avoidance of doubt, these General Terms and Conditions of Quotation and Sale shall apply in all circumstances, including where the Customer validly accept this quotation or where the Customer and KPD Pty Limited otherwise proceed with carrying out work under the Order, whether or not the Customer, at any time and by any means, purports to impose its own terms and conditions.

12. Governing Law of Contract

These General Terms and Conditions of Quotation and Sale are governed by, and are to be construed in accordance with, the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.