

## **TERMS AND CONDITIONS OF SALE of KERR SCIENTIFIC INSTRUMENTS LIMITED**

### **Acceptance of Orders**

1. We, Kerr Scientific Instruments Limited, (hereinafter called "**the Company**") will supply you, the Customer, (hereinafter called "**the Buyer**"), with goods and/or services (hereinafter called the "**Products**") on these Terms and Conditions only, unless alternative Terms and Conditions have been agreed in writing between the Company and the Buyer (hereinafter called "**the Parties**").
2. The Company will not be bound by any representations that the Company may make unless such representations are in writing.

### **Price**

3. The price of the Products:
  - 3.1 Will be the Company's current prices at the date of delivery unless the Company has separately issued a written quotation to the customer, covering supply of such Products;
  - 3.2 Will always exclude GST and delivery costs from the Company to the customer unless otherwise stated by quotation and/or invoice;
  - 3.3 May be increased if the Company incurs higher freight, insurance, import charges or foreign exchange costs due to circumstances beyond the Company's control after the order is placed or if the Company incurs extra costs because the Buyer did not provide the Company with sufficient information or licences by the time that the Company required same.
4. When the Company has quoted a firm price and no period of effectiveness is given, the price will apply for a maximum of 30 days from the date of the quote.

### **Payment**

5. The Buyer must pay the Company by the 20th of the month following the date of the Company's invoice (or such other date or dates that may be agreed in writing). If such payment/s is/are not made by such due date/s, the Company will be entitled to:
  - 5.1 Defer supplying the Buyer with any more Products; and/or
  - 5.2 Charge the Buyer interest on the amount owing to the Company at the rate of 5% above the Company's commercial Bank overdraft interest rate applying at the time payment was due; and/or
  - 5.3 Treat the contract as having been cancelled by the Buyer.

### **Title and Risk**

6. The Products are at the Buyer's risk as soon as they have been delivered to the Buyer at the place designated for delivery on the Company's invoice;
7. Unless the Company's invoice for the relevant supply includes a charge for extending insurance to a future time or place, the Products shall be at the sole risk of the Buyer as from the time of delivery to the Buyer and the Products shall be deemed to have been delivered to the Buyer as soon as they leave the possession of the Company or its servants, or the service has been completed (whichever the case may be).
8. The Company remains the owner of the Products it has supplied to the Buyer until the Buyer has fully paid the Company all of the amounts that are owed to the Company for all the Products the Company has supplied to the buyer; the Company will still own the Products even if the Buyer has repackaged them; if the Buyer mixes the Products with other material, the

Company will own a share of the mixture that equals the proportion that the cost of the Company's Products bears to the total cost of materials comprising the mixture;

9. While the Company remains the owner of the Products:

9.1 the Buyer will always keep the Products clearly identified as the Company's property;

9.2 the Buyer may sell the Products only if the Buyer keeps enough of the sale proceeds to pay the Company for the Products in a separate bank account in trust for the Company;

9.5 the Buyer licences the Company to enter any of the Buyer's premises during normal business hours to repossess the Products. The Buyer cannot revoke this licence.

9.6 the Company's rights to sue the Buyer for the invoiced price plus attendant costs, if the Buyer does not pay the Company on time, remain in force. The Company has no obligation to accept returned Products instead of being paid for them. The Company has no obligation to do anything to limit any loss the Company might suffer if the Buyer does not pay the Company on time.

#### **Personal Property Securities Act 1999 ("PPSA")**

10. The Buyer grants to the Company a security interest in all Products supplied to the Buyer by the Company, including the proceeds and accessions of such Products, to firstly secure payment of the purchase price of the Products and secondly to secure payment of all outstanding debts and obligations of the Buyer to the Company from time to time. The Buyer agrees to execute any documents, provide all relevant information and cooperate fully with the Company to ensure that the Company has a perfected security interest in the Products and, if applicable, a purchase money security interest.

11. The Buyer is required to pay the Company's costs of any discharge or amendment of any Financing Statement.

12. Within two business days of a written request by the Company to the Buyer, the Buyer agrees to supply the Company with copies of all documents granting security interests registered over the Buyer's personal property. The Buyer authorises the Company as its agent to request any information from any secured party relating to any security interest which is held in any personal property which is or has been in the Buyer's possession or control.

13. The Buyer must immediately notify the Company in writing of any change in its legal or trading name or any other material identifying characteristics of the Buyer.

14. Nothing in sections 114(1) (a), 133, and 134 of the PPSA shall apply to this contract. The Buyer waives its rights pursuant to sections 121, 125, 129, 131 and 132 and Part 9 generally of the PPSA and its rights to receive any verification statement relating to security interests in Products purchased from the Company.

#### **Delivery and Force Majeure**

15. If the Buyer has specified a delivery date, the Company will try and deliver the Products to the Buyer by that date. However:

14.1 the Company will be entitled to deliver the Products to the Buyer after the agreed delivery date or cancel the contract without being liable to the Buyer in any way if the delay in delivery is in respect of causes outside the Company's control;

14.2 the Company may deliver the Products to the Buyer by instalments in any quantities or at any times, and each delivery will be a separate contract independent from the other deliveries.

16. The Buyer may not refuse to accept delivery of Products except where the Company has agreed in writing.

17. The Company will only be liable to the Buyer for shortfalls, losses, damage or failure to meet specifications where the Buyer has notified the Company of those matters within 7 days of taking delivery of such Products at the place designated for delivery on the Company's invoice.
18. Products which do meet the Buyer's order requirements may not be returned to the Company unless:
  - 18.1 the Company has agreed in writing that they may be returned; and
  - 18.2 the Buyer has not had the Products for more than 14 days; and
  - 18.3 the Products' containers have not been opened nor have their packaging been damaged in any way; and
  - 18.4 the Buyer will pay for the cost of returning the Products to the Company or to another location agreed in writing between the Parties; and
  - 18.5 the Buyer will pay the Company's handling and restocking fee of 15% of the selling price of the Products.
19. The Company will freight the Products to the Buyer "FOB" (as that term is defined in the latest "INCOTERMS") the Company's warehouse or other designated despatch point unless the Parties agree otherwise in writing. In the event that the Parties agree to freight the Products to the Buyer other than FOB the Company's warehouse or other designated despatch point, the provisions of the INCOTERMS shall apply to the freighting of the Products, subject always to these Terms and Conditions.
20. If for any cause beyond the Company 's control, including but without limitation any act of God, war, strike, lock out, industrial dispute, governmental or semi-governmental award, enactment priority or restriction, fire, flood, storm or tempest, delay in obtaining licenses, transport, Labour or materials, accidents, damage to our works or business or those of our suppliers, the Company is prevented from making delivery or performance at the time stipulated, the Company shall be entitled at its option either to extend the time for delivery or performance for a reasonable period or to determine the contract and the Buyer shall not in consequence in either case have any claim for damages and shall pay for all deliveries made or services performed prior to the date of such determination and all expenses incurred and monies paid by the Company in connection with the contract.

### **Installation and/or Commissioning**

21. In the case of Products that are equipment that the Company or the Manufacturer of the equipment undertakes to install and/or commission, it is the Buyer's responsibility to provide any utilities required, such as electric power outlets, drains, water outlets, compressed air lines, etc. If special handling equipment is required such as heavy lifting gear for movement of equipment to and/or at the installation and commissioning site the cost of hiring or using such equipment and any associated charges will be additional to the Company's account to the Buyer. Installation and/or commissioning will be made at the time of delivery or as soon as practicable thereafter and the equipment will be at the Buyer's risk. Unless otherwise mutually agreed, the Company's responsibility to install and/or commission such equipment may cease if the installation and/or commissioning is deferred by the Buyer for an indefinite period.

### **Cancellation**

22. No cancellation of any order or part thereof shall be effective until accepted by the Company in writing. In the event of cancellations being accepted by the Company, the Buyer will as a term of such acceptance pay the Company in full for any charges resulting from design, procurement of materials, work or services actually carried out, or any other committed costs the Company is liable to incur for supply of such .

### **Exclusions and Limitations to the Company's liability**

23. Where the Company is permitted by law, the Company hereby excludes or contracts out of all statutory conditions, guarantees and warranties.

24. The Company will give any and all technical advice or assistance entirely at the Buyer's risk.
25. The Company warrants only that the Products comply with the Company's specifications where the Company is the manufacturer of the Products, or that they comply with the Manufacturer's specifications where the Company is not the manufacturer of the Products.
26. All descriptions of the Products are only to enable their identification and do not mean that the sale of the Products is a sale by description.
27. The Company will not be liable to the Buyer for any direct or indirect loss in respect of the Products or for any delay or failure to supply the Products except where it is due to the Company's gross negligence or wilful default. However, the Company's liability to the Buyer in such instance is limited to the amount that the Company may receive from the manufacturer if the Company is not the manufacturer or to the sale price of the Products where the Company is the manufacturer.

### **Safety**

28. The Buyer will comply with all health and safety laws and with all of the Company's instructions in regard to the storage, handling and use of the Products and to bring all warnings supplied by the Company to the attention of all persons who might be at risk from the Products and will indemnify the Company for all its costs in respect of claims made against the Company except where those claims are directly caused by the Company's gross negligence or wilful default.

### **Intellectual Property**

29. All of the Company's or its suppliers' (as the case may be) trademarks or other intellectual property rights in respect of the Products remain the property of the Company or its suppliers' (as the case may be) and the Buyer may not use, remove, interfere with or alter them in any way.
30. The Company makes no representation that the Products will not infringe the intellectual property rights of any other person or entity and the Company will not be liable for any costs that the Buyer may incur as a result. The Buyer will notify the Company immediately if it receives a claim from a person or entity alleging that it is the owner of any intellectual property rights relating to the Products and if the Company considers it or its suppliers (as the case may be) to be affected, the Company or its suppliers (as the case may be) shall be entitled to completely control the defence or settlement of such claim.

### **Equipment Repair and Service**

31. Where the Company undertakes to repair or service the Buyer's equipment, either on the Buyer's site or at the Company's premises, these terms and conditions will apply whenever and wherever applicable. Additional terms and conditions may also apply, or replace some of these terms and conditions, as may be separately advised by the Company in writing at the time of such repair or service.
32. The Buyer's property, as supplied to the Company or otherwise made available to the Company for repair or service, shall be and remain wholly at the Buyer's risk unless otherwise agreed by the Company in writing.

### **Assignment**

33. The Buyer may not assign its rights or delegate its performance under this agreement without the Company's consent in writing.

### **Proper Law**

34. These Terms and Conditions shall be interpreted and governed by the law of New Zealand.

## **Arbitration**

35. If any dispute or difference shall arise, touching the meaning or interpretation of any clause or provision forming part of this contract or touching the rights or obligations of either party in any way relating to the subject matter of such contract or claims arising thereof, the same shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1908 and its amendments.