



ANNEXURE A

KINGFISHER INTERNATIONAL PTY LTD STANDARD TERMS & CONDITIONS OF SALE

1. GENERAL

(a) DEFINITIONS. "Company" means Kingfisher International Pty Ltd. "Customer" means the person, firm or corporation which has ordered Goods. "Terms & Conditions" means these terms and conditions. "Quotation" means the written or electronically generated quotation or other method used by the Company to respond to orders for Goods by the Customer. "Goods" means the products offered for sale by the Company to the Customer and described in the Quotation.

(b) TERMS & CONDITIONS: The Terms & Conditions (subject only to amendments notified in writing by the Company) and the law of the State of Victoria, Australia shall exclusively govern the Quotation and the supply by the Company to the Customer of the Goods. Any order by the Customer arising from the Quotation shall constitute acceptance by the Customer of these terms and conditions, and agreement that the terms and conditions shall supersede and prevail over all terms and conditions which may be contained in any order or other correspondence from or on behalf of the Customer.

2. **TERMS:** The Customer shall pay the net purchase price as agreed or stated in the Quotation or in the absence of anything stated or agreed within 30 days of date of invoice. When payment is not made within that period, an overdue charge at the annual rate equivalent to 3 times the current annual US Federal Reserve Rate, from the initial date of the invoice, will be payable (calculated on a daily basis) until full payment is made. However, nothing herein contained shall be interpreted as an indulgence to the Customer to effect payment after the due date.
3. **VALIDITY:** The Quotation is valid for a period of 30 days from the date of Quotation, howsoever generated, unless otherwise stated or unless the Company previously withdraws it.
4. **CANCELLATION OR VARIATION:** Any agreement to supply Goods may, at the Company's option, be terminated in the event of the insolvency of the Customer. The Customer may cancel its order only with the Company's written consent, and upon payment of reasonable and appropriate cancellation charges to be determined by the Company. An order may be varied only if the Company in writing accepts such variations.
5. **PRICES:** All prices are subject to change without notice and all orders are accepted by the Company on the condition that they will be invoiced at the prices ruling at the date of order acceptance. All prices are strictly net unless otherwise stated. Those prices shown in lists, catalogues or on a Company eCommerce or Web Site, which may be recommended selling prices, provide no obligation upon the part of the Company to abide by those list prices. The Company reserves the right to correct all typographical and clerical errors, which may be present in the prices or specifications of the Quotation. On any imported content in the Quotation, costs for freight, insurance, agency fees, wharfage and storage charges and Customs Duty, have been allowed in accordance with the rates and methods of assessment in force at the date of Quotation and if any variation shall occur after that date then it may be included in the final price to the Customer at the option of the Company.
6. **TAXES AND DUTIES:** The prices quoted by the Company are net of all taxes, tariffs, duties and levies imposed by any government or statutory authority. All such taxes, tariffs, duties and levies are to the Customer's account and shall be paid by the Customer or reimbursed to the Company (as the case may require) on demand by the Company. In the case of any applicable GST, the Company will provide a tax invoice prior to seeking payment or reimbursement of any GST.
7. **WARRANTY AND LIMITATION OF LIABILITY:**
 - (a) Goods manufactured by the Company are warranted to be free from defects in material and workmanship, which may develop within 3 years after delivery of the Goods to the Customer. The liability of the Company for a breach of a condition or warranty implied by the Trade Practices Act 1974 (other than the condition or warranty implied by Section 69) shall be limited to the repair of the Goods, provided that such Goods are returned to the place nominated by the Company, or at the Company's option the replacement of the Goods, the supply of equivalent Goods or the payment of the cost of replacement or repair of the Goods.
 - (b) The Company's liability for Goods manufactured by it arises so long as:



- (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 Customer are manufactured by or approved by the Company; and
 - (iv) the seals of any kind on the Goods remain unbroken.
- (c) The Customer is to pay the freight costs incurred in returning the Goods to the Company. The freight cost incurred shall be reimbursed to the Customer by the Company if the fault/repair was under warranty or a manufacturing defect.
- (d) For equipment not manufactured by the Company then the original manufacturers warranty will be offered by the Company to the Customer in the place of the express warranty contained in Clause 7(a), provided that the Company's liability for such equipment shall be limited to the manner specified in Clauses 7(a) and (b).
- (e) The Company shall not in any circumstances be liable for any indirect or consequential loss to the Customer (including, without limitation, loss of profit, revenue or goodwill and whether or not arising out of any liability of the Customer to any other person) arising from negligence or any breach or non-performance of these terms and conditions or any misrepresentation or any other tort on the part of the Company or its servants or agents and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this Clause 7 are hereby expressly excluded.
- (f) The Company's liability in respect of the direct consequences and, in the event that the Company is not entitled (for any reason) to rely upon the provisions of Clauses 7(a)-(f) inclusive above, the indirect consequences (including, but without limitation, loss of profit, revenue or goodwill and whether or not arising out of any liability of the Customer to any other person) resulting from negligence or any breach or non-performance of these terms and conditions or any misrepresentation or any other tort on the part of the Company or its servants or agents shall be limited to the price paid or to be paid by the Customer for the Goods in respect of which the liability arises and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this Clause 7 are hereby expressly excluded.
8. **GOODS RETURNED FOR CREDIT:** Goods will be accepted from the Customer for credit only by prior written agreement by the Company, or to the extent that they have been wrongly or over supplied. Returned goods shall be delivered to the Company at no charge to the Company, in good order and condition, unused and in the original packaging accompanied by a dispatch note stating the original invoice number, date of supply, and the reason for return. Except where the goods have been wrongly or over supplied, the Company will determine a charge to be applied to the Customer for the purpose of covering handling and restocking costs. Goods made to special order by the Company cannot be returned nor credited unless they do not meet the specifications, or otherwise not in accordance with the specific terms of the Contract.
9. **SHIPMENT AND DELIVERY:** Delivery of the Goods shall be FOB from the Company's main point of supply. Delivery dates are approximate and are based upon the prompt receipt of all necessary information by the Company to ensure uninterrupted manufacture. Extra costs as determined by the Company owing to delay in starting the work or suspension of the work due to the Customer's delays, overtime, mistakes or other causes for which the Company is not responsible, or through additional work entailed in taking down and refixing Goods to suit the Customer's changed requirement, shall be chargeable to the Customer. The Company shall not be liable for delay of delivery and failure to manufacture due to any causes whatsoever beyond its control. Partial shipments may be made and invoiced upon completion of manufacture. If delivery is delayed at the request of the Customer, Goods may be stored subject to payment of an extra charge based upon storage costs and the Company will invoice the full value of the Goods stored. The risk of loss or damage to Goods shall pass from the Company to the Customer upon delivery by the Company to the carrier at the point of supply, unless storage of the Goods has been requested in which case the risk passes at the start of the storage period, and any claims for loss or damage after risk of loss has passed to the Customer shall not be the responsibility of the Company. The Company assumes no liability for loss, damage or consequential damages due to delays.



10. **INSPECTION:** Where inspection by the Customer or other persons is required, this must be arranged by the Customer with the Company. Special witness tests are extras chargeable as determined by the Company.
11. **INJURY AND DAMAGE:** The Customer shall indemnify the Company against all claims whether made under these terms and conditions or statute or under common law, in respect to any loss or damage to any property whatsoever or injury to any person whatsoever arising out of any defect in material or workmanship of Goods manufactured and/or sold by the Company or for any default or negligence on the part of the Company's personnel in connection with or during the carrying out of any work by the Company on the Customer's or any other person's property.
12. **PROPERTY AND TITLE:** Notwithstanding that the Goods shall in whole or in part be at the risk of the Customer the Company reserves the following rights in relation to the Goods until all accounts owed by the Customer to the Company are fully paid:
 - (a) ownership of the Goods;
 - (b) to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods;
 - (c) to keep or re-sell any Goods repossessed pursuant to (b) above; and
 - (d) to suspend delivery or manufacture of any outstanding orders without liability.Notwithstanding the provisions above the Company shall be entitled to maintain an action against the Customer for the purchase price and the risk of the Goods shall pass to the Customer upon delivery in accordance with Clause 9.
13. **RE-EXPORT OF U.S.A SOURCED PRODUCTS:** The re-export by the Customer in any form, of Goods imported from the USA by the Company may constitute a violation of United States export license laws under which these items are obtained. The Customer will make all necessary enquiries and shall take all steps to ensure that such laws are not violated. Violation entitles the Company to deny any further supply of Goods to the Customer and termination of any agreement to supply Goods to the Customer. The local office of the USA Department of Commerce should be contacted to determine to which countries such goods might be sent.
14. **ESCALATION:** Prices quoted are based on material and equipment costs, wages as determined by appropriate National Awards rates and conditions, and material charges based upon C.P.I, operating at date of Quotation, and any variation in cost due to any alteration in these factors which may occur from the Quotation acceptance until the completion of the contract will be to the Customer's account.
15. **FORCE MAJEURE:** All Quotations, offers and contracts are subject to the express condition that the Company will not be in any way responsible for loss, damage, or delays arising from strikes, lock-outs, cessation of labour, fire, transport delays, shortened hours of labour, accidents of any kind, perils of the sea or rivers, war or the like, acts of terrorism, acts of God, non-delivery of material or parts by other manufacturers, or any other cause or contingency whatsoever beyond the control of the Company, whether "ejusdem generis" with the preceding causes or not.
16. **EXCLUSIONS:** All conversations, representations, and statements, not embodied in the Quotation, or not confirmed in writing by the Company are expressly excluded, and shall not be deemed to be part of the Quotation, or to have induced the order, or to have any legal effect whatsoever.
17. **DESIGNS:**
 - (a) All designs and specifications and dimensions shown in the Company's specification sheets are subject to change without notice.
 - (b) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
 - (c) Where specifications, drawings or other particulars are supplied by the Customer, the Company's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Company and set out in a Quotation, then any such increase or decrease is to be adjusted on a unit rate basis according to unit prices set out in the Quotation.
18. **STATUTORY AND COMPLIANCE ISSUES:** It is the nature of the Company's Goods that statutory and other compliance requirements are met, such as (without limitation) electrical



safety, laser safety, radio emission/susceptibility, Bellcore compliance, customer standards per territory. The Company and the Customer will co-operate where necessary to ensure appropriate compliance. Unless otherwise agreed by the Company in writing, the Customer will meet all local compliance requirements and all expenses associated with compliance. Where the Company meets the expenses of the relevant authorising agency, the Company will own the compliance and the benefit of any certification from that authority.

19. INTELLECTUAL PROPERTY:

- (a) The Customer confirms and acknowledges that any and all intellectual property used or embodied in or in connection with the Goods shall be and remain the sole property of the Company or such other party as identified accordingly.
- (b) All intellectual property rights, including but not limited to the right to patent, copyright, trademarks and design rights in the Goods and/or arising and created under and in connection with these terms and conditions shall remain vested in and/or automatically and immediately upon creation vest in the Company and/or its licensors.
- (c) The Company shall indemnify the Customer in the event of infringement of any third party intellectual property right, including patent, design rights, trade marks or copyright published or acquired at the date of these terms and conditions by the use or sale of the Goods against all costs and damages which the Customer incurs in any action for such infringement and or for which the Company becomes liable in any such action provided always that the Company shall not be liable to indemnify the Customer in the event that:
 - (i) the Customer has failed to permit the Company (at the Company's expense) to conduct any litigation that may ensue and all negotiations for a settlement of the claim, or
 - (ii) the Customer has made any admission that is or may be prejudicial to the Company in respect of an alleged infringement without the Company's written consent.
- (d) The Customer shall ensure that each reference to and use of any of the trade marks by the Customer is in a manner from time to time approved by the Company and accompanied by an acknowledgment, in a form approved by the Company, that the same is a trade mark (or registered trade mark) of the Company.
- (e) The Customer shall not:
 - (i) make any modifications to the goods or their packaging without the Company's prior written consent;
 - (ii) alter, remove or tamper with any of the Company's trade marks, numbers or other means of identification used on or in relation to the goods without the written consent of the Company;
 - (iii) use any of the Company's trade marks in any way which might prejudice their distinctiveness or validity or the goodwill of the Company;
 - (iv) use in relation to the goods any trade marks other than the Company's trade marks without obtaining the prior written consent of the Company; or
 - (v) use in the Customer's territory any trade marks or trade names so resembling any trade mark or trade names of the Company as to be likely to cause confusion or deception.
- (f) The Customer shall have no rights in respect of any trade names or trade marks used by the Company in relation to goods or of the goodwill associated therewith (including any of the rights specified in Section 26 of the Trade Marks Act 1995 (Cth)), and the Customer hereby acknowledges that, except as expressly provided in these terms and conditions, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and shall remain, vested in the Company.

20. SOFTWARE LICENCE

- (a) Where software is supplied as part of the Goods, such software shall be supplied strictly under licence by the Company in accordance with these terms. Where the Customer is not by agreement with the Company the end user of the Goods, the Customer shall be entitled to licence the software to end users of the Goods, provided the software is licensed under the same terms.
- (b) The Company hereby grants to the Customer a non-exclusive non-transferable irrevocable licence to use the software in perpetuity subject to compliance with these terms in connection with and for the operation of the Goods. This licence shall not be construed, deemed or interpreted as giving or having given to the Customer any proprietary right in any software.



- (c) Where the software is supplied to the Customer in object code it is to the best of the Company's knowledge the latest version of the software.
- (d) The Customer is not entitled, unless otherwise agreed in writing between the Customer and an authorised officer of the Company, to any source code (in full or in part) or documentation or other materials from which the source code or any part thereof can be derived.
- (e) Unless agreed otherwise (such agreement to be made in writing by an authorised officer of the Company) the Customer shall not in relation to the software or any documentation associated with the same do any of the following: copy, permit to be copied, de-compile, reverse engineer, translate, modify, disassemble, place on to the internet or any intranet, publish, decode, enhance, adapt, merge or reduce the software into source code or any other low level language.
- (f) In the event that the Company gives the Customer permission to do any of the acts referred to in Clause 21(a) to (e) inclusive with the software or associated documentation, then the Customer shall ensure that the Company is named as the author and include any copyright legend or other applicable and/or relevant proprietary mark identifying the Company as the author/owner and the Customer will take all steps required to preserve and protect the rights of the Company in the software.
- (g) In the event that the licence is terminated as a result of a breach by the Customer, then the Customer agrees to remove any non licensed software from its machines and return, at its expense, or, if required, destroy any software, back-up copies (to the extent that such back-up copies are no longer reasonably required by the Customer), associated documentation and information relating to the software.
- (h) This clause applies to all copies of the software as it applies to the original copy.
- (i) In the event that the Customer needs further advice, assistance or information to achieve interoperability not warranted under these terms and conditions then the Customer should contact the Company. If the Company then supplies the Customer with such information then the Customer agrees that it will only use that information for the purpose of achieving interoperability. (For the purposes of this clause "interoperability" has the meaning within Section 50B of the Copyright Designs and Patents Act 1988 as incorporated by the Copyright (Computer Program) Regulations 1992).

21. NOTIFICATION THROUGH eCOMMERCE AND WEB SITE

- (a) The Company may notify and the Customer be deemed to have received notification from the Company of changes in pricing, terms and conditions, guidelines and policies which are posted by the Company to its eCommerce or web sites, on the next business day following posting ("the effective date").
- (b) Any such notification made or deemed to be made by the Company through the eCommerce or web site shall apply to all Customer orders which are accepted on or after the effective date.